

## HOUSE BILL No. 2240

By Committee on Appropriations

2-3

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9 AN ACT concerning utilities; relating to the Kansas underground utility  
10 damage prevention act; amending K.S.A. 66-1802, 66-1804, 66-1805  
11 and 66-1806 and repealing the existing sections; also repealing K.S.A.  
12 66-1802, as amended by Section 5 of Chapter 122 of the 2008 Session  
13 Laws of Kansas, K.S.A. 66-1804, as amended by Section 6 of Chapter  
14 122 of the 2008 Session Laws of Kansas, K.S.A. 66-1805, as amended  
15 by Section 7 of Chapter 122 of the 2008 Session Laws of Kansas and  
16 K.S.A. 66-1806, as amended by Section 8 of Chapter 122 of the 2008  
17 Session Laws of Kansas.

18

19 *Be it enacted by the Legislature of the State of Kansas:*

20 Section 1. K.S.A. 66-1802 is hereby amended to read as follows: 66-  
21 1802. As used in this act:

22 (a) "Damage" means any impact or contact with an underground fa-  
23 cility, its appurtenances or its protective coating, or any weakening of the  
24 support for the facility or protective housing which requires repair.

25 (b) "Emergency" means any condition constituting a clear and pres-  
26 ent danger to life, health or property, or a customer service outage.

27 (c) "Excavation" means any operation in which earth, rock or other  
28 material below the surface is moved or otherwise displaced by any means,  
29 except tilling the soil for normal agricultural purposes, or railroad or road  
30 and ditch maintenance that does not change the existing railroad grade,  
31 road grade and/or ditch flowline, or operations related to exploration and  
32 production of crude oil or natural gas, or both.

33 (d) "Excavator" means any person who engages directly in excavation  
34 activities within the state of Kansas, but shall not include any occupant  
35 of a dwelling who: (1) Uses such dwelling as a primary residence; and (2)  
36 excavates on the premises of such dwelling.

37 (e) "Facility" means any *sanitary sewer*, underground line, system or  
38 structure used for *transporting*, gathering, storing, conveying, transmit-  
39 ting or distributing *potable water*, gas, electricity, communication, crude  
40 oil, refined or processed petroleum, petroleum products or hazardous  
41 liquids; facility shall not include, any *stormwater sewers*, production pe-  
42 troleum lead lines, salt water disposal lines or injection lines, which are  
43 not located on platted land or inside the corporate limits of any city.

- 1 (f) “Locatable facility” means facilities for which the tolerance zone  
2 can be determined by the operator using generally accepted practices  
3 such as as-built construction drawings, system maps, probes, locator de-  
4 vices or any other type of proven technology for locating.
- 5 (g) “Marking” means the use of stakes, paint, flags or other clearly  
6 identifiable materials to show the field location of underground facilities,  
7 in accordance with the rules and regulations promulgated by the state  
8 corporation commission in the administration and enforcement of this  
9 act.
- 10 (h) “Municipality” means any city, county, municipal corporation,  
11 public district or public authority located in whole or in part within this  
12 state which provides firefighting, law enforcement, ambulance, emer-  
13 gency medical or other emergency services.
- 14 (i) “Notification center” means the statewide communication system  
15 operated by an organization which has as one of its purposes to receive  
16 and record notification of planned excavation in the state from excavators  
17 and to disseminate such notification of planned excavation to operators  
18 who are members and participants.
- 19 (j) “Operator” means any person who owns or operates an under-  
20 ground *tier 1 or tier 2* facility, except for any person who is the owner of  
21 real property wherein is located underground facilities for the purpose of  
22 furnishing services or materials only to such person or occupants of such  
23 property.
- 24 (k) “Preengineered project” means a public project or a project which  
25 is approved by a public agency wherein the public agency responsible for  
26 the project, as part of its engineering and contract procedures, holds a  
27 meeting prior to the commencement of any construction work on such  
28 project in which all persons, determined by the public agency to have  
29 underground facilities located within the construction area of the project,  
30 are invited to attend and given an opportunity to verify or inform the  
31 public agency of the location of their underground facilities, if any, within  
32 the construction area and where the location of all known and under-  
33 ground facilities are duly located or noted on the engineering drawing as  
34 specifications for the project.
- 35 (l) “Permitted project” means a project where a permit for the work  
36 to be performed must be issued by a city, county, state or federal agency  
37 and, as a prerequisite to receiving such permit, the applicant must locate  
38 all underground facilities in the area of the work and in the vicinity of the  
39 excavation and notify each owner of such underground facilities.
- 40 (m) “Person” means any individual, partnership, corporation, asso-  
41 ciation, franchise holder, state, city, county or any governmental subdi-  
42 vision or instrumentality of a state and its employees, agents or legal  
43 representatives.

- 1 (n) “Production petroleum lead line” means an underground facility  
2 used for production, gathering or processing on the lease or unit, or for  
3 delivery of hydrocarbon gas and/or liquids to an associated tank battery,  
4 separator or sales facility. Production petroleum lead lines shall include  
5 underground lines associated with lease fuel and saltwater disposal and  
6 injection.
- 7 (o) “Platted land” means a tract or parcel of land which has been  
8 subdivided into lots of less than five acres for the purpose of building  
9 developments, including housing developments, and for which a sur-  
10 veyor’s plat has been filed of record in the office of the register of deeds  
11 in the county where the land is located.
- 12 (p) *“Tier 1 facility” means an underground facility used for trans-  
13 porting, gathering, storing, conveying, transmitting or distributing gas,  
14 electricity, communications, crude oil, refined or reprocessed petroleum,  
15 petroleum products or hazardous liquids.*
- 16 (q) *“Tier 2 facility” means an underground facility used for trans-  
17 porting, gathering, storing, conveying, transmitting or distributing pota-  
18 ble water or sanitary sewage.*
- 19 (r) “Tolerance zone” means the area within 24 inches of the outside  
20 dimensions in all horizontal directions of an underground facility, *except*  
21 *that a tolerance zone larger than 24 inches may be established by rules*  
22 *and regulations adopted under K.S.A. 2008 Supp. 66-1815, and amend-*  
23 *ments thereto. An operator of a water or wastewater facility may elect to*  
24 *define the tolerance zone as the area within 60 inches of the outside di-*  
25 *mensions in all horizontal directions of an underground water or waste-*  
26 *water facility upon notification of the excavator.*
- 27 ~~(s)~~ (s) “Update” means an additional request from the excavator to  
28 extend the time period of the request for intent to excavate beyond the  
29 15 calendar day duration of the request.
- 30 ~~(t)~~ (t) “Whitelining” means the act of marking by the excavator the  
31 route or boundary of the proposed excavation site with white paint, white  
32 stakes or white flags.
- 33 ~~(u)~~ (u) “Working day” means every day Monday through Friday be-  
34 ginning at 12:01 a.m., except for the following officially recognized holi-  
35 days: New Year’s day, Memorial day, Independence day, Labor day,  
36 Thanksgiving day, the day after Thanksgiving and Christmas.
- 37 Sec. 2. K.S.A. 66-1804 is hereby amended to read as follows: 66-  
38 1804. (a) Except in the case of an emergency, an excavator shall serve  
39 notice of intent of excavation at least two full working days, but not more  
40 than 15 calendar days before the scheduled excavation start date, on each  
41 operator having underground facilities located in the proposed area of  
42 excavation.
- 43 (b) The notice of intent to excavate or any subsequent updates shall

1 be valid for 15 calendar days after the excavation start date and such notice  
2 shall only describe an area in which the proposed excavation reasonably  
3 can be completed within the 15 calendar days.

4 (c) No person shall make repeated requests for remarking unless the  
5 request is due to circumstances not reasonably within the control of such  
6 person.

7 (d) The notice of intent of excavation shall contain the name, address  
8 and telephone number of the person filing the notice of intent, the name  
9 of the excavator, the date the excavation activity is to commence and the  
10 type of excavation being planned. The notice shall also contain the specific  
11 location of the excavation.

12 (e) The person filing the notice of intent to excavate shall, at the  
13 request of the operator, whitenline the proposed excavation site when the  
14 excavation location cannot be described with sufficient detail to enable  
15 the operator to ascertain the location of the proposed excavation, *prior*  
16 *to locates being performed*.

17 (f) The provisions of this section shall not apply to a preengineered  
18 project or a permitted project, except that the excavators shall be required  
19 to give notification in accordance with this section prior to starting such  
20 project.

21 Sec. 3. K.S.A. 66-1805 is hereby amended to read as follows: 66-  
22 1805. (a) This act recognizes the establishment of a single notification  
23 center for the state of Kansas. The notification center shall provide  
24 prompt notice to each affected member of any proposed excavation. Each  
25 operator who has an underground facility shall become a member of the  
26 notification center.

27 (b) Notification, as required by K.S.A. 66-1804, and amendments  
28 thereto, to operators shall be given by notifying the notification center by  
29 telephone at the toll free number or by other communication methods  
30 approved by the notification center. The content of such notification shall  
31 be as required by K.S.A. 66-1804, and amendments thereto.

32 (c) Each operator who has an underground facility within the state  
33 shall be afforded the opportunity to become a member of the notification  
34 center on the same terms as the original members.

35 (d) A suitable record shall be maintained by the notification center  
36 to document the receipt of notices from excavators as required by this  
37 act.

38 (e) *The notification center shall not disseminate, make available or*  
39 *otherwise distribute data or information provided by an operator unless*  
40 *such dissemination, making available or distributing is necessary for the*  
41 *state corporation commission or the notification center to carry out legal*  
42 *duties or specific statutory duties prescribed under this chapter.*

43 Sec. 4. K.S.A. 66-1806 is hereby amended to read as follows: 66-

- 1 1806. (a) Within two working days, beginning on the later of the first  
2 working day after the excavator has filed notice of intent to excavate or  
3 the first day after the excavator has whitelined the excavation site, an  
4 operator served with notice, unless otherwise agreed between the parties,  
5 shall inform the excavator of the tolerance zone of the underground fa-  
6 cilities of the operator in the area of the planned excavation by marking,  
7 flagging or other acceptable method.
- 8 (b) *If the operator of tier 2 facilities cannot accurately mark the tol-*  
9 *erance zone, such operator shall mark the approximate location to the best*  
10 *of its ability, notify the excavator that the markings may not be accurate*  
11 *and provide additional guidance to the excavator in locating the facilities*  
12 *as needed during the excavation.*
- 13 (c) *If the operator of tier 2 facilities shall not be required to provide*  
14 *notification of the tolerance zone for facilities which are at a depth of at*  
15 *least two feet deeper than the excavator plans to excavate but does have*  
16 *to notify the excavator of their existence.*
- 17 (d) If the operator of a tier 1 facility has no underground facilities in  
18 the area of the proposed excavation, such operator, before the excavation  
19 start date, shall notify the excavator that it has no facilities in the area of  
20 proposed excavation by telephone, facsimile, marking the area all clear  
21 or by other technology that may be developed for such purposes.
- 22 ~~(e)~~ (e) If the excavator notifies the notification center, within two  
23 working days after the initial identification of the tolerance zone by the  
24 operator, that the identifiers have been improperly removed or altered,  
25 the operator shall make a reasonable effort to reidentify the tolerance  
26 zone within one working day after the operator receives actual notice from  
27 the notification center.
- 28 ~~(f)~~ (f) If the excavator has provided notice to an operator pursuant  
29 to K.S.A. 66-1804, and amendments thereto, and the operator fails to  
30 comply with subsections (a) or (b) or notifies the excavator that it has no  
31 underground facilities in the area of the planned excavation, fails to re-  
32 spond or improperly marks the tolerance zone for the facilities, the ex-  
33 cavator may proceed and shall not be liable to the operator for any direct  
34 or indirect damages resulting from contact with the operator's facilities,  
35 except that nothing in this act shall be construed to hold any excavator  
36 harmless from liability to the operator in those cases of gross negligence  
37 or willful and wanton conduct.
- 38 ~~(g)~~ (g) For economic damages in any civil court of this state, failure  
39 of an operator to inform the excavator within two working days of the  
40 tolerance zone of the underground facilities of the operator in the manner  
41 required by subsection (a) of K.S.A. 66-1806, and amendments thereto,  
42 shall not give rise to a cause of action on the part of the excavator against  
43 an operator, except that nothing in this act shall be construed to hold any

1 operator harmless from liability in those cases of inaccurate marking of  
2 the tolerance zone, gross negligence or willful and wanton conduct. Such  
3 failure may subject an operator to civil penalties as determined by the  
4 state corporation commission.

5 ~~(g)~~ (h) Any person claiming that an operator has failed to inform the  
6 excavator within two working days of the tolerance zone of the under-  
7 ground facilities of the operator shall file a complaint with the state cor-  
8 poration commission requesting enforcement of subsection (a) within one  
9 year of becoming aware of the violation.

10 ~~(g)~~ (i) All *tier 1* facilities installed by an operator after January 1, 2003,  
11 shall be locatable.

12 (j) All *tier 2* facilities installed by an operator after July 1, 2008, shall  
13 be locatable.

14 Sec. 5. K.S.A. 66-1802, 66-1804, 66-1805, 66-1806 and K.S.A. 66-  
15 1802, as amended by Section 5 of Chapter 122 of the 2008 Session Laws  
16 of Kansas, K.S.A. 66-1804, as amended by Section 6 of Chapter 122 of  
17 the 2008 Session Laws of Kansas, K.S.A. 66-1805, as amended by Section  
18 7 of Chapter 122 of the 2008 Session Laws of Kansas and K.S.A. 66-1806,  
19 as amended by Section 8 of Chapter 122 of the 2008 Session Laws of  
20 Kansas are hereby repealed.

21 Sec. 6. This act shall take effect and be in force from and after its  
22 publication in the statute book.