

Substitute for SENATE BILL No. 58

By Committee on Utilities

2-17

10 AN ACT concerning utilities; relating to the underground utility damage
11 prevention act; definitions; amending K.S.A. 66-1802, 66-1804, 66-
12 1805 and 66-1806 and repealing the existing sections; also repealing
13 K.S.A. 66-1802, as amended by section 5 of chapter 122 of the 2008
14 Session Laws of Kansas, 66-1804, as amended by section 6 of chapter
15 122 of the 2008 Session Laws of Kansas, 66-1805, as amended by
16 section 7 of chapter 122 of the 2008 Session Laws of Kansas, 66-1806,
17 as amended by section 8 of chapter 122 of the 2008 Session Laws of
18 Kansas, section 9 of chapter 122 of the 2008 Session Laws of Kansas
19 and section 10 of chapter 122 of the 2008 Session Laws of Kansas.
20

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

22 Section 1. On January 1, 2010, K.S.A. 66-1802 is hereby amended to
23 read as follows: 66-1802. As used in this act:

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

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

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

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

39 (e) "Facility" means any *sanitary sewer* or underground line, system
40 or structure used for *transporting*, gathering, storing, conveying, trans-
41 mitting or distributing *potable water*, gas, electricity, communication,
42 crude oil, refined or processed petroleum, petroleum products or haz-
43 ardous liquids; facility shall not include, any *stormwater sewers* or pro-

- 1 duction petroleum lead lines, salt water disposal lines or injection lines,
2 which are not located on platted land or inside the corporate limits of any
3 city.
- 4 (f) “Locatable facility” means facilities for which the tolerance zone
5 can be determined by the operator using generally accepted practices
6 such as as-built construction drawings, system maps, probes, locator de-
7 vices or any other type of proven technology for locating.
- 8 (g) “Marking” means the use of stakes, paint, flags or other clearly
9 identifiable materials to show the field location of underground facilities,
10 in accordance with the rules and regulations promulgated by the state
11 corporation commission in the administration and enforcement of this
12 act.
- 13 (h) “Municipality” means any city, county, municipal corporation,
14 public district or public authority located in whole or in part within this
15 state which provides firefighting, law enforcement, ambulance, emer-
16 gency medical or other emergency services.
- 17 (i) “Notification center” means the statewide communication system
18 operated by an organization which has as one of its purposes to receive
19 and record notification of planned excavation in the state from excavators
20 and to disseminate such notification of planned excavation to operators
21 who are members and participants.
- 22 (j) “Operator” means any person who owns or operates an under-
23 ground *tier 1 or tier 2* facility, except for any person who is the owner of
24 real property wherein is located underground facilities for the purpose of
25 furnishing services or materials only to such person or occupants of such
26 property.
- 27 (k) “Preengineered project” means a public project or a project which
28 is approved by a public agency wherein the public agency responsible for
29 the project, as part of its engineering and contract procedures, holds a
30 meeting prior to the commencement of any construction work on such
31 project in which all persons, determined by the public agency to have
32 underground facilities located within the construction area of the project,
33 are invited to attend and given an opportunity to verify or inform the
34 public agency of the location of their underground facilities, if any, within
35 the construction area and where the location of all known and under-
36 ground facilities are duly located or noted on the engineering drawing as
37 specifications for the project.
- 38 (l) “Permitted project” means a project where a permit for the work
39 to be performed must be issued by a city, county, state or federal agency
40 and, as a prerequisite to receiving such permit, the applicant must locate
41 all underground facilities in the area of the work and in the vicinity of the
42 excavation and notify each owner of such underground facilities.
- 43 (m) “Person” means any individual, partnership, corporation, asso-

1 ciation, franchise holder, state, city, county or any governmental subdivi-
2 sion or instrumentality of a state and its employees, agents or legal
3 representatives.

4 (n) “Production petroleum lead line” means an underground facility
5 used for production, gathering or processing on the lease or unit, or for
6 delivery of hydrocarbon gas ~~and/or~~, liquids, *or both* to an associated tank
7 battery, separator or sales facility. Production petroleum lead lines shall
8 include underground lines associated with lease fuel and saltwater dis-
9 posal and injection.

10 (o) “Platted land” means a tract or parcel of land which has been
11 subdivided into lots of less than five acres for the purpose of building
12 developments, including housing developments, and for which a sur-
13 veyor’s plat has been filed of record in the office of the register of deeds
14 in the county where the land is located.

15 (p) *“Tier 1 facility” means an underground facility used for trans-*
16 *porting, gathering, storing, conveying, transmitting or distributing gas,*
17 *electricity, communications, crude oil, refined or reprocessed petroleum,*
18 *petroleum products or hazardous liquids.*

19 (q) *“Tier 2 facility” means an underground facility used for trans-*
20 *porting, gathering, storing, conveying, transmitting or distributing pota-*
21 *ble water or sanitary sewage.*

22 (r) *“Tier 3 facility” means a water or wastewater system utility that*
23 *elects to be a tier 3 member of the notification center pursuant to this*
24 *subsection. The operator of a tier 3 facility shall:*

25 (1) *Develop and operate a locate service website capable of receiving*
26 *locate requests;*

27 (2) *publish and maintain a dedicated telephone number for locate*
28 *services;*

29 (3) *maintain 24-hour response capability for emergency locates; and*

30 (4) *employ not less than two individuals whose primary job function*
31 *shall be the location of underground utilities. Operators of tier 3 facilities*
32 *shall make either such website or contact information available to the*
33 *notification center. The notification center shall collect and charge an*
34 *annual fee based on 50% of the rate charged to tier 1 facility members*
35 *for each notice of proposed excavation submitted to the notification center*
36 *or \$5,000 per year, whichever is less for each tier 3 facility. No other fee,*
37 *charge or cost shall be assessed to a tier 3 facility by the notification center.*
38 *The referral fee charged to operators of tier 3 facilities shall be increased*
39 *on a proportional basis every 12 months after the effective date of this*
40 *section until parity of charges between all operators of tier 2 facilities is*
41 *reached by the year 2014. Tier 3 members shall be subject to all provisions*
42 *of the underground utility damage prevention act, K.S.A. 66-1801, et seq.,*
43 *and amendments thereto.*

- 1 ~~(p)~~ (s) “Tolerance zone” means the area within 24 inches of the out-
2 side dimensions in all horizontal directions of an underground facility,
3 *except that a tolerance zone larger than 24 inches may be established by*
4 *rules and regulations adopted under K.S.A. 2008 Supp. 66-1815, and*
5 *amendments thereto. An operator of a water or wastewater facility may*
6 *elect to define the tolerance zone as the area within 60 inches of the outside*
7 *dimensions in all horizontal directions of an underground water or waste-*
8 *water facility provided notice of such election is given to the excavator*
9 *prior to locates being performed.*
- 10 ~~(q)~~ (t) “Update” means an additional request from the excavator to
11 extend the time period of the request for intent to excavate beyond the
12 15 calendar day duration of the request.
- 13 ~~(r)~~ (u) “Whiteline” means the act of marking by the excavator the
14 route or boundary of the proposed excavation site with white paint, white
15 stakes or white flags.
- 16 ~~(s)~~ (v) “Working day” means every day Monday through Friday be-
17 ginning at 12:01 a.m., except for the following officially recognized holi-
18 days: New Year’s day, Memorial day, Independence day, Labor day,
19 Thanksgiving day, the day after Thanksgiving and Christmas.
- 20 Sec. 2. On January 1, 2010, K.S.A. 66-1804 is hereby amended to
21 read as follows: 66-1804. (a) Except in the case of an emergency, an
22 excavator shall serve notice of intent of excavation at least two full working
23 days, but not more than 15 calendar days before the scheduled excavation
24 start date, on each operator having underground *tier 1* facilities located
25 in the proposed area of excavation.
- 26 (b) *An excavator may serve notice of intent of excavation at least two*
27 *full working days, but not more than 15 calendar days before the sched-*
28 *uled excavation start date, on each operator of tier 2 facilities located in*
29 *the proposed area of excavation.*
- 30 ~~(b)~~ (c) The notice of intent to excavate or any subsequent updates
31 shall be valid for 15 calendar days after the excavation start date and such
32 notice shall only describe an area in which the proposed excavation rea-
33 sonably can be completed within the 15 calendar days.
- 34 ~~(c)~~ (d) No person shall make repeated requests for remarking unless
35 the request is due to circumstances not reasonably within the control of
36 such person.
- 37 ~~(d)~~ (e) The notice of intent of excavation shall contain the name, ad-
38 dress and telephone number of the person filing the notice of intent, the
39 name of the excavator, the date the excavation activity is to commence
40 and the type of excavation being planned. The notice shall also contain
41 the specific location of the excavation.
- 42 ~~(e)~~ (f) The person filing the notice of intent to excavate shall, at the
43 request of the operator, whitenline the proposed excavation site when the

1 excavation location cannot be described with sufficient detail to enable
2 the operator to ascertain the location of the proposed excavation.

3 ~~(f)~~ (g) The provisions of this section shall not apply to a preengineered
4 project or a permitted project, except that the excavators shall be required
5 to give notification in accordance with this section prior to starting such
6 project.

7 Sec. 3. On January 1, 2010, K.S.A. 66-1805 is hereby amended to
8 read as follows: 66-1805 (a) This act recognizes the establishment of a
9 single notification center for the state of Kansas *that is owned and op-*
10 *erated by its members.* ~~The notification center shall provide prompt notice~~
11 ~~to each affected member of any proposed excavation.~~ Each operator who
12 has an underground facility shall become a member of the notification
13 center.

14 (b) *The notification center shall provide, in a manner that is just,*
15 *reasonable, not unjustly discriminatory and not unduly preferential, serv-*
16 *ices to each member as prescribed in this section.*

17 (c) *The state corporation commission, in its discretion, may at any*
18 *time review a fee, term or practice being used by the notification center.*
19 *Upon such review, the commission may initiate a proceeding to determine*
20 *whether a violation of this section has occurred. Upon notice and an op-*
21 *portunity for hearing in accordance with the Kansas administrative pro-*
22 *cedure act, the commission shall have authority to order the remediation*
23 *of any violation of this section that the commission finds has occurred.*

24 (d) *Any member of the notification center may request the commis-*
25 *sion to investigate and initiate proceedings to review a fee, term or prac-*
26 *tice being used by the notification center.*

27 (e) *For operators of tier 1 facilities or operators of tier 2 facilities that*
28 *desire notification in the same manner as operators of tier 1 facilities, the*
29 *notification center shall provide prompt notice of any proposed excavation*
30 *to each affected operator that has facilities recorded with the notification*
31 *center in the area of a proposed excavation site.*

32 (f) *For operators of tier 2 facilities that desire direct contact with the*
33 *excavator, the notification center shall provide the excavator with the*
34 *name and contact information of the affected operator that has facilities*
35 *recorded with the notification center in the area of the proposed exca-*
36 *vation.*

37 ~~(b)~~ (g) Notification, ~~as required by K.S.A. 66-1804, and amendments~~
38 ~~thereto,~~ to operators *as defined in subsection (b)* shall be given by noti-
39 fying the notification center by telephone at the toll free number or by
40 other communication methods approved by the notification center. The
41 content of such notification shall be as required by K.S.A. 66-1804, and
42 amendments thereto.

43 (h) *Notification to operators as defined in subsection (c) may be given*

1 *by notifying the operator of tier 2 facilities using the contact information*
2 *provided by the notification center. The content of such notification shall*
3 *be as required by K.S.A. 66-1804, and amendments thereto.*

4 ~~(e)~~ (i) *Each operator who has an underground facility within the state*
5 *shall be afforded the opportunity to become a member of the notification*
6 *center on the same terms as the original members.*

7 ~~(f)~~ (j) *A suitable record shall be maintained by the notification center*
8 *to document the receipt of notices from excavators as required by this*
9 *act.*

10 (k) *A suitable record shall be maintained by operators of tier 2 facil-*
11 *ities that desire direct contact with the excavator pursuant to subsection*
12 *(c) to document the receipt of notices from excavators.*

13 (l) *The notification center shall charge and collect an annual mem-*
14 *bership fee in the amount of \$25 from each tier 2 facility member.*

15 (m) *The notification center shall charge a referral fee to operators of*
16 *a tier 2 facility that desire direct contact with the excavator in an amount*
17 *no more than 50% of the referral fee rate charged to tier 1 facility mem-*
18 *bers for each notice of proposed excavation submitted to the notification*
19 *center.*

20 (n) *Upon request of the operator, the person filing the notice of intent*
21 *to excavate shall whitenline the proposed excavation site prior to locates*
22 *being performed.*

23 (o) *The notification center shall not disseminate, make available or*
24 *otherwise distribute data or information provided by an operator unless*
25 *such dissemination, making available or distributing is necessary for the*
26 *state corporation commission or the notification center to carry out legal*
27 *duties or specific statutory duties prescribed under this chapter.*

28 (p) *On and after January 1, 2010, the notification center's board of*
29 *directors shall include two members from tier 2 facilities and 1 member*
30 *from tier 3 facilities.*

31 Sec. 4. *On January 1, 2010, K.S.A. 66-1806 is hereby amended to*
32 *read as follows: 66-1806. (a) Within two working days, beginning on the*
33 *later of the first working day after the excavator has filed notice of intent*
34 *to excavate or the first day after the excavator has whitenlined the exca-*
35 *vation site, an operator served with notice, unless otherwise agreed be-*
36 *tween the parties, shall inform the excavator of the tolerance zone of the*
37 *underground facilities of the operator in the area of the planned exca-*
38 *vation by marking, flagging or other acceptable method.*

39 (b) *If the operator of tier 2 facilities cannot accurately mark the tol-*
40 *erance zone, such operator shall mark the approximate location to the best*
41 *of its ability, notify the excavator that the markings may not be accurate,*
42 *and provide additional guidance to the excavator in locating the facilities*
43 *as needed during the excavation.*

- 1 (c) *The operator of tier 2 facilities shall not be required to provide*
2 *notification of the tolerance zone for facilities which are at a depth at least*
3 *two feet deeper than the excavator plans to excavate but does have to*
4 *notify the excavator of their existence.*
- 5 ~~(b)~~ (d) *If the operator of a tier 1 facility has no underground facilities*
6 *in the area of the proposed excavation, such operator, before the exca-*
7 *vation start date, shall notify the excavator that it has no facilities in the*
8 *area of proposed excavation by telephone, facsimile, marking the area all*
9 *clear or by other technology that may be developed for such purposes.*
- 10 ~~(c)~~ (e) *If the excavator notifies the notification center, within two*
11 *working days after the initial identification of the tolerance zone by the*
12 *operator, that the identifiers have been improperly removed or altered,*
13 *the operator shall make a reasonable effort to reidentify the tolerance*
14 *zone within one working day after the operator receives actual notice from*
15 *the notification center.*
- 16 ~~(d)~~ (f) *If the excavator has provided notice to an operator pursuant*
17 *to K.S.A. 66-1804, and amendments thereto, and the operator fails to*
18 *comply with subsections (a), (b) or (c) or notifies the excavator that it has*
19 *no underground facilities in the area of the planned excavation, ~~fails to~~*
20 *~~respond or improperly marks the tolerance zone for the facilities,~~ the*
21 *excavator may proceed and shall not be liable to the operator for any*
22 *direct or indirect damages resulting from contact with the operator's fa-*
23 *ilities, except that nothing in this act shall be construed to hold any*
24 *excavator harmless from liability to the operator in those cases of gross*
25 *negligence or willful and wanton conduct.*
- 26 ~~(e)~~ (g) *For economic damages in any civil court of this state, failure*
27 *of an operator to inform the excavator within two working days of the*
28 *tolerance zone of the underground facilities of the operator in the manner*
29 *required by subsection (a) of K.S.A. 66-1806, and amendments thereto,*
30 *shall not give rise to a cause of action on the part of the excavator against*
31 *an operator, except that nothing in this act shall be construed to hold any*
32 *operator harmless from liability in those cases of inaccurate marking of*
33 *the tolerance zone, gross negligence or willful and wanton conduct. Such*
34 *failure may subject an operator to civil penalties as determined by the*
35 *state corporation commission.*
- 36 ~~(f)~~ (h) *Any person claiming that an operator has failed to inform the*
37 *excavator within two working days of the tolerance zone of the under-*
38 *ground facilities of the operator shall file a complaint with the state cor-*
39 *poration commission requesting enforcement of subsection (a) within one*
40 *year of becoming aware of the violation.*
- 41 ~~(g)~~ (i) *All tier 1 facilities installed by an operator after January 1, 2003,*
42 *shall be locatable.*
- 43 (j) *All tier 2 facilities installed by an operator after July 1, 2008, shall*

1 *be locatable.*

2 Sec. 5. K.S.A. 66-1802, 66-1804, 66-1805 and 66-1806 and K.S.A. 66-
3 1802, as amended by section 5 of chapter 122 of the 2008 Session Laws
4 of Kansas, 66-1804, as amended by section 6 of chapter 122 of the 2008
5 Session Laws of Kansas, 66-1805, as amended by section 7 of chapter 122
6 of the 2008 Session Laws of Kansas, 66-1806, as amended by section 8
7 of chapter 122 of the 2008 Session Laws of Kansas, section 9 of chapter
8 122 of the 2008 Session Laws of Kansas and section 10 of chapter 122 of
9 the 2008 Session Laws of Kansas are hereby repealed.

10 Sec. 6. This act shall take effect and be in force from and after [**Jan-**
11 **uary 1, 2010, and**] its publication in the ~~Kansas register~~ [**statute book**].