

SESSION OF 2007

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR SENATE BILL NO. 20**

As Amended by House Committee on
Energy and Utilities

Brief*

Sub. for SB 20 would amend the Kansas Underground Utility Damage Prevention Act (KUUDPA) to include operators of potable water and sanitary sewage systems as a part of the Kansas One Call System. Provisions of the bill incorporating water and sewer systems into One Call would go into effect on July 1, 2008.

In order to include operators of potable water and sanitary sewage in the provisions of the Act, the statute defining terms would be amended to provide definitions for two new terms: "tier 1 facility" and "tier 2 facility." A "tier 1 facility" would be defined to mean an underground facility used for transporting, gathering, storing, conveying, transmitting, or distributing gas, electricity, communications, crude oil, refined or reprocessed petroleum, petroleum products or hazardous liquids. (A "tier 1" facility generally is a "facility" under current law.) A "tier 2 facility" would be defined to mean an underground facility used for transporting, gathering, storing, conveying, transmitting or distributing potable water or sanitary sewage.

In addition, the definition of "tolerance zone" would be amended to mean the area more than 24 inches from the outside dimension of a tier 1 facility, and the area more than 36 inches from the outside of a tier 2 facility.

Operators of tier 2 facilities would be able to participate in the One Call system as if they were tier 1 facilities. Those

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

operators would be required by January 1, 2008 to notify the call center of their intent to participate as tier 1 facilities. Alternatively, for operators of tier 2 facilities desiring direct contact with excavators, the notification center would provide the excavator with appropriate contact information. Operators of tier 2 facilities also could choose not to be notified of impending excavation.

Under the bill, excavators could, but would not be required to, notify operators of tier 2 facilities of their intent to excavate at least five, but not more than 15 days prior to excavation. Persons who are not excavators, but who engage in excavation, would be required to directly notify operators of tier 2 facilities of their intent to excavate. Under current law, excavators are required to provide notice of any proposed excavation to each affected facility operator in the area of a proposed excavation site at least two, but not more than 15 days prior to excavation. That provision of existing law would remain in effect for tier 1 facilities.

The bill would require operators of tier 2 facilities to maintain a suitable record to document the receipt of notices from excavators. The notification center would be required to maintain a record of all contacts as under current law.

Excavators would be required to pay half of each referral fee assessed by the notification center for notification of tier 2 facilities. The tier 2 facility operator would be required to pay the remainder of the fee, up to a maximum of 25¢. Excavators would be required to pay the entire referral fee assessed to tier 2 facility operators when a facility's location needs to be marked again, unless the circumstances are not within the excavator's control. Tier 2 operators that can demonstrate a planning process through which excavators much receive authorization prior to beginning excavation would be able to certify to the Kansas Corporation Commission (KCC) and the notification center that the operator's system is comparable to the process used by the notification center. The KCC and the notification center would be required to provide that information to excavators at no charge to the tier 2 facility operator.

An operator of a “tier 2 facility” would be required to mark the approximate location of an underground facility to the best of its ability, and notify the excavator that the marks may not be accurate if the tolerance zone cannot be determined. The tolerance zone would have to be marked within five working days after the excavator filed notice or after the excavator whitelined the excavation site. If the operator cannot accurately mark the location of its tier 2 facilities, the operator would have to provide additional guidance to the excavator during excavation. An operator of a “tier 2 facility” would not be required to mark the tolerance zone for facilities located at least two feet deeper than the excavator plans to excavate but would be required to notify the excavator of the existence of the facility.

Under the bill, the excavator would not be held liable for any direct or indirect damages, if the excavator notifies the operator of the excavator’s intent to excavate and the operator fails to mark the facility in accordance with the law or notifies the excavator that no underground facilities are in the area of excavation. As in current law, excavators would be liable for cases of gross negligence or willful and wanton conduct.

The Act would require all water and sanitary sewage pipes installed by operator after July 1, 2007 to be “locatable.” That provision of the bill would become effective on July 1, 2007.

Background

SB 20 was introduced by the Special Committee on Utilities at the end of the 2006 interim. The Special Committee recommended legislation that would require:

- Water and sewer utility operators to become members of One Call;
- The KCC to develop, through rules and regulations, appropriate tolerance zones of water and sewer utilities;

- The KCC to develop a protocol for excavating near water and sewer lines in hard-to-mark areas; and
- That water and sewer lines installed after January 1, 2008 be locatable.

Conferees who testified before the Senate Committee in support of the bill, as introduced, included: Kansas Gas Service, a Division of ONEOK, Inc.; the KCC; Westar Energy; Kansas Contractors Association; Associated General Contractors of Kansas; BRB Contractors, Inc; a city commissioner from Abilene; a councilman of Canton; and Associated Builders and Contractors Heart of America Chapter. Written testimony in support of the bill also was submitted by: Cornejo and Sons, Inc.; Smoky Hills, LLC; and Dale Goter from the City of Wichita.

The opponents of the bill at the Senate Committee hearing included representatives of Water District No. 1 of Johnson County (Water One); the Kansas Rural Water Association; the City of Olathe; and the League of Kansas Municipalities (LKM). After the full Committee hearing, the bill was referred to a subcommittee for further consideration.

At the House Committee hearing, the bill was supported by representatives of the KCC, Associated Builders and Contractors Heart of America Chapter, Kansas Contractors Association, BRB Contractors, Inc., the Kansas League of Municipalities, and Kansas Gas Service. Opponents of the bill at the House hearing included representatives of the Kansas Rural Water Association and Water One.

The House Committee amended the bill to:

- Increase from 24 inches to 36 inches the minimum tolerance zone around tier 2 facilities;
- Increase from two to five days the minimum notice excavators must provide to operators of tier 2 facilities;

- Require individuals other than excavators to directly contact tier 2 facilities of intent to excavate;
- Require excavators to pay half of the referral fee for initial calls and all of the referral fee for request to remark the tolerance zone around a tier 2 facility;
- Impose a 25¢ cap on the referral fee charged to tier 2 facilities;
- Exempt from any referral fee charges excavators and tier 2 operators if the operator certifies that it has a process by which excavators must receive authorization prior to beginning excavation as long as that process is at least comparable to the process used by the notification center;
- Require tier 2 operators to mark the tolerance zone around their facilities within 5 working days after an excavator has filed notice or after the excavator has whitelined the excavation site; and
- Require operators of tier 2 facilities to notify the notification center of the operator's intent to receive notification in the same manner as a tier 1 facility.

The Division of the Budget's fiscal note on the introduced version of SB 20 states that the Kansas Corporation Commission and the Citizens Utility Ratepayer Board indicate that any additional expenditures associated with the implementation of the bill would be negligible. The League of Kansas Municipalities (LKM) indicates that the enactment of SB 20 would result in additional expenditures for cities. The organization states that approximately 300 cities would have to join the Kansas One Call Center, which charges an annual \$25 membership fee and a fee of \$1.24 for each locate request within a member's jurisdiction.

In addition to the Kansas One Call Center membership

fees, the LKM indicates that cities would incur additional staff time and equipment costs associated with the locating and marking of underground water and sewer lines. Furthermore, the LKM states that a large number of cities which would be required to join the program do not have adequate mapping systems, and these cities would incur large initial costs to locate existing lines and produce reliable maps. Cities also would have ongoing expenses for updating maps. The LKM believes that the enactment of SB 20 would reduce the liability of excavators that damage water and sewer lines, and that this would result in the costs associated with damaged lines being passed on to utility ratepayers. The Substitute bill contains provisions that may substantively change the fiscal impact of the bill.