

SESSION OF 2009

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR SENATE BILL NO. 58**

As Amended by Senate Committee of the Whole

Brief*

Sub. for SB 58 would amend the Underground Utility Damage Prevention Act by modifying several provisions of the amendments made to the Act by 2008 HB 2637, which were scheduled to take effect July 1, 2009. The substitute bill would make the following changes:

- Remove the requirement added in 2008 for the member-owned notification center (a role currently filled by Kansas One-Call) to be deemed a public agency subject to the Kansas Open Records Act (KORA) and the Kansas Open Meetings Act (KOMA);
- Require the notification center to provide just and reasonable services to each member;
- Authorize the Kansas Corporation Commission to, at any time, review a fee, term or practice being used by the notification center and order remediation of any violation the Commission finds has occurred. In addition, allow any member of the notification center to request the Commission make such a review;
- Delete the size limit for Tier 3 facilities (large water and sanitary sewer utilities) added in 2008 and institute a process to bring fees charged to Tier 3 facilities by the notification center up to parity with fees charged to Tier 2 facilities (water and sanitary sewer utilities) by 2014;

*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>

- Make technical changes to clarify the definition of “tolerance zone” as used in the 2008 amendments to the Act; and
- Delay implementation of the 2008 amendments to the Act, as further amended by this bill, from July 1, 2009 to January 1, 2010.

Background

SB 58, as introduced, contained only technical changes, including clarification of the definition of tolerance zone as used in 2008 amendments to the Act. Proponents testifying in favor of the bill included representatives of the Kansas Corporation Commission, Kansas One-Call, Kansas Gas Service, Westar, K.C. Construction, and Johnson County Water District #1. Written testimony in support of the bill was provided by a representative of Kansas Contractors Association and the Kansas Rural Water Association.

There was no testimony in opposition to the bill.

The Kansas Underground Utility Damage Prevention Act was significantly amended by 2008 HB 2637 to include water and sanitary sewer in the definition of utilities covered by the Act and to create a three-tiered system for membership in Kansas One-Call. Tier 1 included gas and oil pipelines, buried electric and all telecommunications, which includes phone and cable television. Tier 2 included water and sanitary sewer utilities. Tier 3 included water and sanitary sewer utilities with at least 20,000 customers and which operate a call center on a 24-hour basis. Fees charged by the notification center to Tier 3 facilities were capped at \$500 annually. The bill delayed implementation of the amendments to July 1, 2009.

The Senate Committee on Utilities considered amendments proposed by Kansas One-Call and heard testimony from several conferees about the effects of the three-tier system of membership created by 2008 amendments to the

Act. Issues discussed included whether Kansas One-Call should be deemed a public agency subject to KORA and KOMA; the difference in fees for different membership tiers; and that the size distinction between Tier 2 and Tier 3 members would result in non-uniform application of the law to cities of various classes, which would allow city-owned utilities to opt-out of coverage under the Act.

The Senate Committee of the Whole made a technical amendment to clarify the effective date of the Act, which is delayed to January 1, 2010.

The fiscal note prepared by the Division of the Budget for the original version of SB 58 indicates passage of the bill would have no fiscal effect. That fiscal note may not be relevant to the substitute bill.