

HOUSE BILL No. 2226

By Committee on Energy, Utilities and Telecommunications

1-30

1 AN ACT concerning the state corporation commission; relating to the
2 Kansas underground utility damage prevention act; extending the time
3 period for notice for excavations; permitting virtual whitelining of
4 excavation sites; amending K.S.A. 66-1804 and 66-1810 and K.S.A.
5 2022 Supp. 66-1802, 66-1805 and 66-1806 and repealing the existing
6 sections.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 2022 Supp. 66-1802 is hereby amended to read as
10 follows: 66-1802. As used in this act:

11 (a) "Damage" means any impact or contact with an underground
12 facility, its appurtenances or its protective coating, or any weakening of the
13 support for the facility or protective housing ~~which~~ *that* requires repair.

14 (b) "Electric public utility" means the same as such term is defined in
15 K.S.A. 66-101a, and amendments thereto.

16 (c) "Emergency" means any condition constituting a clear and present
17 danger to life, health or property, or a customer service outage.

18 (d) "Excavation" means any operation in which earth, rock or other
19 material below the surface is moved or otherwise displaced by any means,
20 except tilling the soil for normal agricultural purposes, or railroad or road
21 and ditch maintenance that does not change the existing railroad grade,
22 road grade and/or ditch flowline, or operations related to exploration and
23 production of crude oil or natural gas, or both.

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

28 (f) "Facility" means any sanitary sewer or underground line, system
29 or structure used for transporting, gathering, storing, conveying,
30 transmitting or distributing potable water, gas, electricity, communication,
31 crude oil, refined or processed petroleum, petroleum products or hazardous
32 liquids; ~~"Facility" shall not include, any stormwater sewers or:~~

33 (1) Production petroleum lead lines, salt water disposal lines or
34 injection lines, ~~which~~ *that* are ~~not~~ located on platted land or ~~inside~~ *outside*
35 the corporate limits of any city; *or*

36 (2) *any stormwater sewers.*

1 (g) "Locatable facility" means facilities for which the tolerance zone
2 can be determined by the operator using generally accepted practices such
3 as as-built construction drawings, system maps, probes, locator devices or
4 any other type of proven technology for locating.

5 (h) "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 act.

9 (i) "Municipality" means any city, county, municipal corporation,
10 public district or public authority located in whole or in part within this
11 state ~~which~~ *that* provides firefighting, law enforcement, ambulance,
12 emergency medical or other emergency services.

13 (j) "Notification center" means the statewide communication system
14 operated by an organization which has as one of its purposes to receive
15 and record notification of planned excavation in the state from excavators
16 and to disseminate such notification of planned excavation to operators
17 who are members and participants.

18 (k) "Operator" means any person who owns or leases an underground
19 tier 1 or tier 2 facility, except for any person who is the owner of real
20 property wherein is located underground facilities for the purpose of
21 furnishing services or materials only to such person or occupants of such
22 property.

23 An electric public utility shall not be considered an operator of any
24 portion of an underground facility that is on another person's side of the
25 point where ownership of the facility changes from the electric public
26 utility to another person as determined by the electric public utility's rules
27 and regulation, tariffs, service or membership agreement or other similar
28 documents.

29 (l) "Preengineered project" means a public project or a project ~~which~~
30 *that* is approved by a public agency wherein the public agency responsible
31 for the project, as part of its engineering and contract procedures, holds a
32 meeting prior to the commencement of any construction work on such
33 project in which all persons, determined by the public agency to have
34 underground facilities located within the construction area of the project,
35 are invited to attend and given an opportunity to verify or inform the
36 public agency of the location of their underground facilities, if any, within
37 the construction area and where the location of all known and underground
38 facilities are duly located or noted on the engineering drawing as
39 specifications for the project.

40 (m) "Permitted project" means a project where a permit for the work
41 to be performed must be issued by a city, county, state or federal agency
42 and, as a prerequisite to receiving such permit, the applicant must ~~locate~~
43 *serve notice of intent of excavation to all operators of* underground

1 facilities in the area of the work and in the vicinity of the excavation ~~and~~
2 ~~notify each owner of such underground facilities.~~

3 (n) "Person" means any individual, partnership, corporation,
4 association, franchise holder, state, city, county or any governmental
5 subdivision or instrumentality of a state and its employees, agents or legal
6 representatives.

7 (o) "Production petroleum lead line" means an underground facility
8 used for production, gathering or processing on the lease or unit, or for
9 delivery of hydrocarbon gas ~~and/or~~ or liquids to an associated tank battery,
10 separator or sales facility. "Production petroleum lead lines" ~~shall include~~
11 *includes* underground lines associated with lease fuel and saltwater
12 disposal and injection.

13 (p) "Platted land" means a tract or parcel of land ~~which~~ *that* has been
14 subdivided into lots of less than five acres for the purpose of building
15 developments, including housing developments, and for which a
16 surveyor's plat has been filed of record in the office of the register of deeds
17 in the county where the land is located.

18 (q) "Tier 1 facility" means an underground facility used for
19 transporting, gathering, storing, conveying, transmitting or distributing
20 gas, electricity, communications, crude oil, refined or reprocessed
21 petroleum, petroleum products or hazardous liquids.

22 (r) "Tier 2 facility" means an underground facility used for
23 transporting, gathering, storing, conveying, transmitting or distributing
24 potable water or sanitary sewage.

25 (s) "Tier 3 facility" means a water or wastewater system utility ~~which~~
26 *that* serves more than 20,000 customers who elects to be a tier 3 member
27 of the notification center pursuant to this subsection. The operator of a tier
28 3 facility shall:

29 (1) Develop and operate a locate service website capable of receiving
30 locate requests;

31 (2) publish and maintain a dedicated telephone number for locate
32 services;

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

34 (4) employ not less than two individuals whose primary job function
35 shall be the location of underground utilities. Operators of tier 3 facilities
36 shall make either such website or contact information available to the
37 notification center. The notification center shall collect and charge a fee of
38 \$500 a year for each tier 3 facility. No other fee, charge or cost shall be
39 assessed to a tier 3 facility by the notification center. Tier 3 members shall
40 be subject to all provisions of K.S.A. 66-1801 et seq., and amendments
41 thereto.

42 (t) "Tolerance zone" means the area not ~~less~~ *more* than 24 inches of
43 the outside dimensions in all horizontal directions of an underground

1 facility, except that a larger tolerance zone for a tier 1, 2 or 3 facility may
2 be established by rules and regulations adopted under K.S.A. 66-1815, and
3 amendments thereto. An operator of a water or wastewater facility may
4 elect to use a tolerance zone for such water or wastewater facility in which
5 tolerance zone means the area not ~~less~~ *more* than 60 inches of the outside
6 dimensions in all horizontal directions of an underground water or
7 wastewater facility upon notification of the excavator, except that a larger
8 tolerance zone may be established by rules and regulations adopted under
9 K.S.A. 66-1815, and amendments thereto.

10 (u) "Update" means an additional request from the excavator to
11 extend the time period of the request for intent to excavate beyond the ~~15~~
12 *20* calendar day duration of the request.

13 (v) "Whitelining" means the act of marking by the excavator the route
14 or boundary of the proposed excavation site with white paint, white stakes
15 or white flags *or identifying such route or boundary by other technology*
16 *developed for such purposes.*

17 (w) "Working day" means every day Monday through Friday
18 beginning at 12:01 a.m., except for the following officially recognized
19 holidays: New Year's day, Memorial day, Independence day, Labor day,
20 Thanksgiving day, the day after Thanksgiving and Christmas.

21 Sec. 2. K.S.A. 66-1804 is hereby amended to read as follows: 66-
22 1804. (a) Except in the case of an emergency, an excavator shall serve
23 notice of intent of excavation at least two full working days; but not more
24 than ~~15~~ *20* calendar days before the scheduled excavation start date, on
25 each operator having underground tier 1 facilities located in the proposed
26 area of excavation.

27 (b) An excavator may serve notice of intent of excavation at least two
28 full working days; but not more than ~~15~~ *20* calendar days before the
29 scheduled excavation start date, on each operator of tier 2 facilities located
30 in the proposed area of excavation.

31 (c) The notice of intent to excavate or any subsequent updates shall
32 be valid for ~~15~~ *20* calendar days after the excavation start date and such
33 notice shall only describe an area in which the proposed excavation
34 reasonably can be completed within the ~~15~~ *20* calendar days.

35 (d) *Notwithstanding the provisions of subsections (a) through (c), the*
36 *state corporation commission may adjust the extent of time that a notice of*
37 *intent to excavate is valid in accordance with rules and regulation adopted*
38 *by the commission pursuant to K.S.A. 66-1815, and amendments thereto.*

39 (e) No person shall make repeated requests for remarking unless the
40 request is due to circumstances not reasonably within the control of such
41 person.

42 ~~(e)~~(f) The notice of intent of excavation shall contain the name,
43 address and telephone number of the person filing the notice of intent, the

1 name of the excavator, the date the excavation activity is to commence and
2 the type of excavation being planned. The notice shall also contain the
3 specific location of the excavation.

4 ~~(f)~~(g) The person filing the notice of intent to excavate shall, at the
5 request of the operator, whitenline the proposed excavation site ~~when the~~
6 ~~excavation location cannot be described with sufficient detail to enable the~~
7 ~~operator to ascertain the location of the proposed excavation.~~

8 ~~(g)~~(h) The provisions of this section shall not apply to a
9 preengineered project or a permitted project, except that the excavators
10 shall be required to give notification in accordance with this section prior
11 to starting such project.

12 Sec. 3. K.S.A. 2022 Supp. 66-1805 is hereby amended to read as
13 follows: 66-1805. (a) This act recognizes the establishment of a single
14 notification center for the state of Kansas. Each operator who has an
15 underground facility shall become a member of the notification center.

16 (b) For operators of tier 1 facilities or operators of tier 2 facilities that
17 desire notification in the same manner as operators of tier 1 facilities, the
18 notification center shall provide prompt notice of any proposed excavation
19 *or report of damage or contact with underground facility* to each affected
20 operator that has facilities recorded with the notification center in the area
21 of a proposed excavation site.

22 (c) For operators of tier 2 facilities that desire direct contact with the
23 excavator, the notification center shall provide the excavator with the name
24 and contact information of the affected operator that has facilities recorded
25 with the notification center in the area of the proposed excavation.

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

31 (e) Notification to operators as defined in subsection (c) may be given
32 by notifying the operator of tier 2 facilities using the contact information
33 provided by the notification center. The content of such notification shall
34 be as required by K.S.A. 66-1804, and amendments thereto.

35 (f) Each operator who has an underground facility within the state
36 shall be afforded the opportunity to become a member of the notification
37 center on the same terms as the original members.

38 (g) A suitable record shall be maintained by the notification center to
39 document the receipt of notices from excavators as required by this act.

40 (h) A suitable record shall be maintained by operators of tier 2
41 facilities that desire direct contact with the excavator pursuant to
42 subsection (c) to document the receipt of notices from excavators.

43 (i) The notification center shall charge and collect an annual

1 membership fee in the amount of \$25 from each tier 2 facility member.

2 (j) The notification center shall charge a referral fee to tier 2 facility
3 members in an amount no more than 50% of the referral fee rate charged
4 to tier 1 facility members.

5 ~~(k) Upon request of the operator, the person filing the notice of intent
6 to excavate shall whitelist the proposed excavation site prior to locates
7 being performed.~~

8 ~~(l)~~—The notification center established pursuant to this section shall be
9 and is hereby deemed to be a public agency and shall be subject to the
10 provisions of the open records act, K.S.A. 45-215 et seq., and amendments
11 thereto, and the open meetings act, K.S.A. 75-4317 et seq., and
12 amendments thereto, except that the notification center or board of
13 directors, or successor managing organization, shall not disseminate, make
14 available or otherwise distribute data or information provided by an
15 operator of a tier 1, 2 or 3 facility unless such dissemination, making
16 available or distributing is necessary for the state corporation commission
17 or the notification center to carry out legal duties or specific statutory
18 duties prescribed under this chapter.

19 ~~(m)(l) On and after July 1, 2009,~~ The notification center's board of
20 directors shall include two members from tier 2 facilities and one member
21 from tier 3 facilities.

22 ~~(m)(m)~~ The notification center shall prepare an annual report ~~which~~
23 *that* describes the activities of such center. An annual audit of the
24 notification center shall be conducted by an independent certified public
25 accountant. The notification center shall provide copies of such reports to
26 each member of the notification center and shall be subject to the open
27 records act, K.S.A. 45-215 et seq., and amendments thereto.

28 ~~(n)~~ The notification center shall solicit proposals for operation of
29 the notification center not more than every five years which shall be
30 awarded in an open meeting by the board of directors of the notification
31 center. The bidding process prescribed by this subsection shall be subject
32 to the open records act, K.S.A. 45-215 et seq., and amendments thereto.

33 ~~(o)~~ The notification center shall conduct a cost of service audit not
34 more than every five years or as otherwise requested by the board of
35 directors of the notification center or a majority of the members of such
36 center.

37 ~~(p)~~ ~~On and after July 1, 2019,~~ The notification center shall notify
38 any person or excavator requesting identification of the location of
39 underground facilities that utilities are only required to identify the
40 location of utility-owned facilities and are not required to identify the
41 location of privately owned facilities.

42 Sec. 4. K.S.A. 2022 Supp. 66-1806 is hereby amended to read as
43 follows: 66-1806. (a) ~~Within two working days~~ *Except as provided by*

1 subsection (j), beginning on the later of the first working day after the
2 excavator has filed notice of intent to excavate or the first day after the
3 excavator has whitelined the excavation site, an operator served with
4 notice, unless otherwise agreed between the parties, shall inform the
5 excavator of the tolerance zone of the underground facilities of the
6 operator in the area of the planned excavation by marking, flagging or
7 other acceptable method.

8 (b) If the operator of tier 2 facilities cannot accurately mark the
9 tolerance zone, such operator shall mark the approximate location to the
10 best of its ability, notify the excavator that the markings may not be
11 accurate, and provide additional guidance to the excavator in locating the
12 facilities as needed during the excavation.

13 (c) The operator of tier 2 facilities shall not be required to provide
14 notification of the tolerance zone for facilities ~~which~~ that are at a depth at
15 least two feet deeper than the excavator plans to excavate but does have to
16 notify the excavator of their existence.

17 (d) (1) If the operator of a tier 1 facility has no underground facilities
18 in the area of the proposed excavation, such operator, before the
19 excavation start date, shall notify the excavator that it has no facilities in
20 the area of proposed excavation by telephone, facsimile, marking the area
21 all clear or by other technology that may be developed for such purposes.

22 (2) If the operator of a tier 1 facility is a provider of electricity, the
23 duty of the operator to mark shall not extend to another person's side of the
24 point where ownership of the facility changes from the operator to another
25 person as determined by the operator's rules and regulations, tariffs,
26 service or membership agreements or other similar documents.

27 ~~(e) If the excavator notifies the notification center, within two~~
28 ~~working days after the initial identification of the tolerance zone by the~~
29 ~~operator, that the identifiers have been improperly removed or altered, the~~
30 ~~operator shall make a reasonable effort to reidentify the tolerance zone~~
31 ~~within one working day after the operator receives actual notice from the~~
32 ~~notification center.~~

33 (f) If the excavator has provided notice to an operator pursuant to
34 K.S.A. 66-1804, and amendments thereto, and the operator fails to comply
35 with subsections (a), (b) or (c) or notifies the excavator that it has no
36 underground facilities in the area of the planned excavation, the excavator
37 may proceed and shall not be liable to the operator for any direct or
38 indirect damages resulting from contact with the operator's facilities,
39 except that nothing in this act shall be construed to hold any excavator
40 harmless from liability to the operator in those cases of gross negligence or
41 willful and wanton conduct.

42 ~~(g)~~(f) For economic damages in any civil court of this state, failure of
43 an operator to inform the excavator ~~within two working days before the~~

1 *excavation start date* of the tolerance zone of the underground facilities of
2 the operator in the manner required by K.S.A. 66-1806(a), and
3 amendments thereto, shall not give rise to a cause of action on the part of
4 the excavator against an operator, except that nothing in this act shall be
5 construed to hold any operator harmless from liability in those cases of
6 inaccurate marking of the tolerance zone, gross negligence or willful and
7 wanton conduct. Such failure may subject an operator to civil penalties as
8 determined by the state corporation commission.

9 ~~(h)~~(g) Any person claiming that an operator has failed to inform the
10 excavator within two working days of the tolerance zone of the
11 underground facilities of the operator shall file a complaint with the state
12 corporation commission requesting enforcement of subsection (a) within
13 one year of becoming aware of the violation.

14 ~~(i)~~(h) All tier 1 facilities installed by an operator after January 1,
15 2003, shall be locatable.

16 ~~(j)~~(i) All tier 2 facilities installed by an operator after July 1, 2008,
17 shall be locatable.

18 (j) *Notwithstanding the provisions of subsection (a), the maximum*
19 *number of days allowed to an operator for providing the location of the*
20 *tolerance zone may be adjusted by the state corporation commission in*
21 *accordance with rules and regulations.*

22 Sec. 5. K.S.A. 66-1810 is hereby amended to read as follows: 66-
23 1810. When any contact with or damage to any underground facility
24 occurs, ~~the operator shall be informed immediately by~~ the excavator *shall*
25 *immediately notify the operator and the notification center.* Upon receiving
26 such notice, the operator immediately shall dispatch personnel to the
27 location to provide necessary temporary or permanent repair of the
28 damage. If the protective covering of an electrical line is penetrated or
29 dangerous gases or fluids are escaping from a broken line, the excavator
30 immediately shall inform emergency personnel of the municipality in
31 which such electrical short or broken line is located and take any other
32 action as may be reasonably necessary to protect persons and property and
33 to minimize hazards until arrival of the operator's personnel, emergency
34 medical responders or first responders.

35 Sec. 6. K.S.A. 66-1804 and 66-1810 and K.S.A. 2022 Supp. 66-1802,
36 66-1805 and 66-1806 are hereby repealed.

37 Sec. 7. This act shall take effect and be in force from and after
38 January 1, 2024, and its publication in the statute book.