

HOUSE BILL No. 2178

By Committee on Judiciary

2-7

1 AN ACT concerning utilities; relating to the Kansas underground utility
2 damage prevention act; definitions; location of facilities and duty to
3 mark, exceptions; amending K.S.A. 66-1802 and 66-1806 and
4 repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 66-1802 is hereby amended to read as follows: 66-
8 1802. As used in this act:

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

12 (b) "Emergency" means any condition constituting a clear and present
13 danger to life, health or property, or a customer service outage.

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

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

24 (e) "Facility" means any sanitary sewer or underground line, system
25 or structure used for transporting, gathering, storing, conveying,
26 transmitting or distributing potable water, gas, electricity, communication,
27 crude oil, refined or processed petroleum, petroleum products or hazardous
28 liquids; facility shall not include, any stormwater sewers or production
29 petroleum lead lines, salt water disposal lines or injection lines, which are
30 not located on platted land or inside the corporate limits of any city.

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

35 (g) "Marking" means the use of stakes, paint, flags or other clearly
36 identifiable materials to show the field location of underground facilities,

1 in accordance with the rules and regulations promulgated by the state
2 corporation commission in the administration and enforcement of this act.

3 (h) "Municipality" means any city, county, municipal corporation,
4 public district or public authority located in whole or in part within this
5 state which provides firefighting, law enforcement, ambulance, emergency
6 medical or other emergency services.

7 (i) "Notification center" means the statewide communication system
8 operated by an organization which has as one of its purposes to receive
9 and record notification of planned excavation in the state from excavators
10 and to disseminate such notification of planned excavation to operators
11 who are members and participants.

12 (j) "Operator" means any person who owns or ~~operates~~ leases an
13 underground tier 1 or tier 2 facility, ~~except for.~~ "Operator" does not mean
14 any person who is:

15 (1) The owner of real property wherein is located underground
16 facilities for the purpose of furnishing services or materials only to such
17 person or occupants of such property; or

18 (2) *providing electric service for that portion of an underground*
19 *facility downstream of the point where ownership of the facility changes*
20 *from the operator to another person as determined by the operator's rules*
21 *and regulation, tariffs, service or membership agreement or other similar*
22 *documents.*

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

34 (l) "Permitted project" means a project where a permit for the work to
35 be performed must be issued by a city, county, state or federal agency and,
36 as a prerequisite to receiving such permit, the applicant must locate all
37 underground facilities in the area of the work and in the vicinity of the
38 excavation and notify each owner of such underground facilities.

39 (m) "Person" means any individual, partnership, corporation,
40 association, franchise holder, state, city, county or any governmental
41 subdivision or instrumentality of a state and its employees, agents or legal
42 representatives.

43 (n) "Production petroleum lead line" means an underground facility

1 used for production, gathering or processing on the lease or unit, or for
2 delivery of hydrocarbon gas and/or liquids to an associated tank battery,
3 separator or sales facility. Production petroleum lead lines shall include
4 underground lines associated with lease fuel and saltwater disposal and
5 injection.

6 (o) "Platted land" means a tract or parcel of land which has been
7 subdivided into lots of less than five acres for the purpose of building
8 developments, including housing developments, and for which a
9 surveyor's plat has been filed of record in the office of the register of deeds
10 in the county where the land is located.

11 (p) "Tier 1 facility" means an underground facility used for
12 transporting, gathering, storing, conveying, transmitting or distributing
13 gas, electricity, communications, crude oil, refined or reprocessed
14 petroleum, petroleum products or hazardous liquids.

15 (q) "Tier 2 facility" means an underground facility used for
16 transporting, gathering, storing, conveying, transmitting or distributing
17 potable water or sanitary sewage.

18 (r) "Tier 3 facility" means a water or wastewater system utility which
19 serves more than 20,000 customers who elects to be a tier 3 member of the
20 notification center pursuant to this subsection. The operator of a tier 3
21 facility shall:

22 (1) Develop and operate a locate service website capable of receiving
23 locate requests;

24 (2) publish and maintain a dedicated telephone number for locate
25 services;

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

27 (4) employ not less than two individuals whose primary job function
28 shall be the location of underground utilities. Operators of tier 3 facilities
29 shall make either such website or contact information available to the
30 notification center. The notification center shall collect and charge a fee of
31 \$500 a year for each tier 3 facility. No other fee, charge or cost shall be
32 assessed to a tier 3 facility by the notification center. Tier 3 members shall
33 be subject to all provisions of K.S.A. ~~66-1805 through 66-1810~~ *66-1801 et*
34 *seq.*, and amendments thereto.

35 (s) "Tolerance zone" means the area not less than 24 inches of the
36 outside dimensions in all horizontal directions of an underground facility,
37 except that a larger tolerance zone for a tier 1, 2 or 3 facility may be
38 established by rules and regulations adopted under K.S.A. 66-1815, and
39 amendments thereto. An operator of a water or wastewater facility may
40 elect to use a tolerance zone for such water or wastewater facility in which
41 tolerance zone means the area not less than 60 inches of the outside
42 dimensions in all horizontal directions of an underground water or
43 wastewater facility upon notification of the excavator, except that a larger

1 tolerance zone may be established by rules and regulations adopted under
2 K.S.A. 66-1815, and amendments thereto.

3 (t) "Update" means an additional request from the excavator to extend
4 the time period of the request for intent to excavate beyond the 15 calendar
5 day duration of the request.

6 (u) "Whitelining" means the act of marking by the excavator the route
7 or boundary of the proposed excavation site with white paint, white stakes
8 or white flags.

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

13 Sec. 2. K.S.A. 66-1806 is hereby amended to read as follows: 66-
14 1806. (a) Within two working days, beginning on the later of the first
15 working day after the excavator has filed notice of intent to excavate or the
16 first day after the excavator has whitelined the excavation site, an operator
17 served with notice, unless otherwise agreed between the parties, shall
18 inform the excavator of the tolerance zone of the underground facilities of
19 the operator in the area of the planned excavation by marking, flagging or
20 other acceptable method.

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

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

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

35 (2) *If the operator of a tier 1 facility is a provider of electricity, the*
36 *duty to mark shall not extend downstream of the point where ownership of*
37 *the facility changes from the operator to another person as determined by*
38 *the operator's rules and regulations, tariffs, service or membership*
39 *agreements or other similar documents.*

40 (e) If the excavator notifies the notification center, within two
41 working days after the initial identification of the tolerance zone by the
42 operator, that the identifiers have been improperly removed or altered, the
43 operator shall make a reasonable effort to reidentify the tolerance zone

1 within one working day after the operator receives actual notice from the
2 notification center.

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

12 (g) For economic damages in any civil court of this state, failure of an
13 operator to inform the excavator within two working days of the tolerance
14 zone of the underground facilities of the operator in the manner required
15 by subsection (a) of K.S.A. 66-1806, and amendments thereto, shall not
16 give rise to a cause of action on the part of the excavator against an
17 operator, except that nothing in this act shall be construed to hold any
18 operator harmless from liability in those cases of inaccurate marking of the
19 tolerance zone, gross negligence or willful and wanton conduct. Such
20 failure may subject an operator to civil penalties as determined by the state
21 corporation commission.

22 (h) Any person claiming that an operator has failed to inform the
23 excavator within two working days of the tolerance zone of the
24 underground facilities of the operator shall file a complaint with the state
25 corporation commission requesting enforcement of subsection (a) within
26 one year of becoming aware of the violation.

27 (i) All tier 1 facilities installed by an operator after January 1, 2003,
28 shall be locatable.

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

31 Sec. 3. K.S.A. 66-1802 and 66-1806 are hereby repealed.

32 Sec. 4. This act shall take effect and be in force from and after its
33 publication in the Kansas register.