AN ACT concerning the underground utility damage prevention act; relating to appointment of members; amending K.S.A. 2011 Supp. 66-1805 and repealing the existing section.

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

Section 1. K.S.A. 2011 Supp. 66-1805 is hereby amended to read as follows: 66-1805. (a) This act recognizes the establishment of a single notification center for the state of Kansas. Each operator who has an underground facility shall become a member of the notification center.

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

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

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

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

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

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

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

(i) The notification center shall charge and collect an annual
membership fee in the amount of $25 from each tier 2 facility member.

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

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

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

(m) On and after July 1, 2009, the notification center's board of directors shall include two members from tier 2 facilities and 1 member from tier 3 facilities.

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

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

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

(q) Notwithstanding any contrary provisions of subsection (a) of K.S.A. 17-6501 and subsections (c) and (d) of K.S.A. 17-6502, and amendments thereto, for any corporation which has as one of its purposes the operation of a notification center as provided in this act, no proxy may be appointed by or for a member of such corporation due to inaction, failure to respond to a proxy solicitation, adoptive admission, failure to attend a meeting or failure to appoint their own proxy for a meeting of
members. In order for a member to lawfully appoint a proxy of such
corporation, the member must appoint the proxy by actual and direct
appointment, pursuant to subsections (c) or (d) of K.S.A. 17-6502, and
amendments thereto, as evidenced by the member’s signature or other
appropriate affirmation. A proxy not directly appointed by a member in
this manner or who cannot evidence such member’s direct appointment
shall not be allowed to vote on any matter that comes before the meeting
of members of such corporation.

Sec. 2. K.S.A. 2011 Supp. 66-1805 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its
publication in the statute book.