

SESSION OF 2002

SUPPLEMENTAL NOTE ON SENATE BILL NO. 490

As Amended by Senate Committee on
Utilities

Brief*

SB 490 would make amendments to the Kansas Underground Utility Damage Prevention Act. Some of the amendments to the act would modify or add new definitions. The term "excavation" would be modified to exclude tilling the soil for normal agricultural purposes. The term "facility" would be modified to make it clear that the items being excluded from the definition are those which are not located on platted land or inside the corporate limits of any city. The term "marking" would be modified to include flags and to clarify that the marking is done with materials to show the field location of underground facilities in accordance with rules and regulations of the Kansas Corporation Commission (KCC). New definitions would be established for the terms "production petroleum lead line," "platted land," "update," "whitelining," and "working day."

The bill also would provide that, except in the case of an emergency, an excavator would be required to serve notice of intent of excavation at least two full working days, but not more than 15 calendar days before the scheduled excavation start date. The bill would provide that the notice of intent to excavate or any subsequent updates would be valid for 15 calendar days after the excavation start date and the notice would only describe an area in which the proposed excavation reasonably can be completed within the 15 calendar days. No person could make repeated requests for remarking unless the request is due to circumstances not reasonably within the person's control. The bill would require that the notice of intent of excavation contain the location of the excavation and would eliminate the conditional requirement of location within the boundaries of a city or the specific quarter section if outside the boundaries of a city. The bill also would require that the

*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/cgi-bin/fulltext/bills.cgi>

person filing the notice of intent to excavate whitelined the proposed excavation site when the excavation location cannot be described with sufficient detail to enable the operator to ascertain the location of the proposed excavation. This would occur when requested by the operator.

The act would be modified to clarify that the notification center provide prompt notice to each affected member of a proposed excavation. The bill would allow communications to the notification center by other communication methods other than the toll free number if approved by the notification center.

The bill would require that an operator, beginning on the later of the first working day after the excavator has filed notice of intent to excavate or the first day after the excavator has whitelined the excavation site, inform the excavator of the tolerance zone of the underground facilities. If the operator has no underground facilities in the area of the proposed excavation, the operator, before the excavation starting date, would be required to notify the excavator of the fact that there are no facilities.

The bill also would provide that for economic damages in any civil court, failure of an operator to inform the excavator within the two working days of the tolerance zone would not give rise to a cause of action on the part of the excavator against an operator, except nothing in the act would be construed to hold any operator harmless from liability in those cases of inaccurate marking of the tolerance zone, gross negligence, or willful and wanton conduct. Any person claiming that an operator has failed to inform the excavator within two working days of the tolerance zone of the underground facilities could file a complaint with the KCC requesting enforcement of the provisions of the act within one year of the violation.

The bill further would require that all facilities installed by an operator after January 1, 2003, be locatable.

Also, the bill would provide that in emergency conditions, that an operator make a reasonable effort to locate its facility within two hours of receiving notification or before excavation is scheduled to begin, whichever is later. The bill would provide for penalties for any person misrepresenting an emergency excavation.

Trenchless excavation techniques would need to be developed in order to meet minimum operating guidelines as prescribed in rules and regulations developed and adopted by the KCC. The bill also would clarify existing law by requiring excavators who do have contact with or damage a facility to take actions as may be necessary to protect persons and property and to minimize hazards until arrival of the operator's personnel or emergency responders.

The provision of the act dealing with the rebuttable presumption of negligence on the part of any person who violates the act would be made applicable to all operators and not just to those who participate in the notification center.

The effective date of the bill would be January 1, 2003.

Background

Several conferees appeared before the Committee in support of the bill which included representatives of the KCC, Kansas Gas Service, Greeley Gas, Southwestern Bell, and Westar Energy. A representative of the Kansas Trial Lawyers Association appeared in opposition to the bill. Most of the conferees presented amendments to the bill which they wished the Committee to adopt. The Chairperson asked all the conferees to meet and work out their difficulties with the bill in its original form. The bill adopted by the Committee reflects the collaborative efforts of the conferees as well as other interested parties.

The fiscal note on the original bill indicates that the KCC believes that SB 490 would not have a fiscal effect.