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MEMORANDUM

To: Senate Committee on Judiciary
From: Nick Myers, Assistant Revisor of Statutes
Date: March 12, 2019
Subject: House Bill 2178 as amended by House Committee

House Bill 2178 makes amendments to the Underground Utility Damage Prevention Act. The bill amends the definition of an operator who is subject to the act and provides a cut-off point for the duty to mark certain underground facilities.

Summary of the Underground Utility Damage Prevention Act

The Underground Utility Damage Prevention Act imposes requirements upon digging and excavation activities to prevent damage to underground facilities such as electrical, gas, oil, communication, water and sewer lines. Generally, the act provides that an excavator has a duty to ascertain the location of underground facilities prior to engaging in any excavation activities. To do this, an excavator would file a notice of intent to excavate with the central notification center, Kansas One-Call, or directly to the operators of underground facilities. After notification is provided by an excavator, the act provides that operators of underground facilities have a duty to mark the locations of such operator's underground facilities or notify the excavator that the operator does not have facilities in that area.

Current law in K.S.A. 66-1802 provides that an "Operator" is any person who owns or operates an underground facility, such as an electric, gas, oil, communication, water or sewer line, but does not include an owner of property where underground facilities are located for the purpose of furnishing services or materials only to such person or occupants of such property.

House Bill 2178 as Amended by House Committee

HB 2178 amends the definition of an "operator" to provide that an operator is any person who owns or "leases" an underground facility. The bill also adds another exception to such definition to provide that an operator does not include any person who is "providing electric service for that portion of an underground facility downstream of the point where ownership of the facility changes from an electric public utility to another person as determined by the electric public utility's rules and regulation, tariffs, service or membership agreements."

HB 2178 would also make a corresponding amendment in K.S.A. 66-1806 to provide that an operator of an underground electric facility would not have a duty to mark "downstream of the point where ownership of the facility changes from the operator to another person as determined by the operator's rules and regulation, tariffs, service or membership agreements."