

SESSION OF 2019

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2178

As Amended by Senate Committee of the Whole

Brief*

HB 2178, as amended, would amend law concerning the duty of an operator to mark the tolerance zone (the area not less than 24 inches of the outside dimensions in all horizontal directions) around an underground facility within the Kansas Underground Utility Damage Prevention Act (KUUDPA).

Specifically, the bill would amend the definition of “operator” to specify an electric public utility would not be considered an operator of any portion of an underground facility that is on another person’s side of the point where ownership of the facility changes from the electric public utility to another person as determined by the electric public utility’s rules and regulations, tariffs, service or membership agreements or other similar documents. The bill would provide if the operator of a facility used for transporting, gathering, storing, conveying, transmitting or distributing gas, electricity, communications, crude oil, refined or reprocessed petroleum, petroleum products or hazardous liquids, is also a provider of electricity, the duty of the operator to mark the tolerance zone would not extend to another person’s side of the point where ownership of the facility changes from the operator to another person as determined by the operator’s rules and regulations, tariffs, service, or membership agreements or similar documents. The bill would make a clarifying amendment to the definition of “operator” to include any person who leases (rather than operates) an underground Tier 1 or Tier 2 facility.

*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>

The bill also would amend law concerning the notification center established by KUUDPA to require, on and after July 1, 2019, the notification center notify any person or excavator requesting identification of the location of underground facilities that utilities are only required to identify the location of utility-owned facilities and not the location of privately-owned facilities.

Finally, the bill would add the definition of “electric public utility,” as defined by statutes governing the powers of the Kansas Corporation Commission (KCC), to KUUDPA, and would make a technical amendment to a statutory reference.

The bill would be in effect upon publication in the *Kansas Register*.

Background

The bill was introduced by the House Committee on Judiciary at the request of Kansas Electric Cooperatives, Inc. (KEC). In the House Committee hearing, a representative of KEC provided proponent testimony on behalf of KEC, the Kansas Cooperative Council, Kansas Electric Power Cooperative, Inc., and Sunflower Electric Power Corp. A representative of Midwest Energy, Inc., also provided testimony in support of the bill. A representative of Pioneer Electric Cooperative, Inc. and Southern Pioneer Electric Company and a representative of Wheatland Electric Cooperative, Inc. submitted written-only proponent testimony. Proponents generally stated the bill is a response to a recent KCC order interpreting the definition of “operator” in KUUDPA. A representative of the KCC provided neutral testimony and written-only neutral testimony was submitted by representatives of the City of Overland Park, the League of Kansas Municipalities (LKM), and WaterOne. Written-only opponent testimony was submitted by representatives of the American Council of Engineering Companies of Kansas and K&W Underground, Inc.

The House Committee amended the bill by adding the definition of “electric public utility” to KUUDPA and replacing references to “operator” with “electric public utility” in the definition of “operator.”

In the Senate Committee on Judiciary hearing, a representative of KEC again provided proponent testimony on behalf of KEC, the Kansas Cooperative Council, Kansas Electric Power Cooperative, Inc., and Sunflower Electric Power Corp. Written-only proponent testimony was submitted by a representative of Pioneer Electric Cooperative, Inc. and Southern Pioneer Electric Company, and representatives of Midwest Energy, Inc. and Wheatland Electric Cooperative. Neutral testimony was provided by a representative of the KCC, and written-only neutral testimony was submitted by LKM. A representative of K&W Underground, Inc., testified in opposition to the bill.

The Senate Committee amended the bill by adding a provision requiring an advisory concerning the duty of utility-owned facilities to be given in requests for identification of underground facilities on and after July 1, 2019.

The Senate Committee of the Whole amended the bill by adjusting the definition of “operator” and clarifying language regarding an operator’s duty to mark pursuant to the bill.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the KCC indicates enactment of the bill would have no fiscal effect on the agency.