

2002 SUMMARY OF LEGISLATION ON UTILITIES

The following is a summary of legislation affecting utilities in Kansas. This information was provided by the Legislative Research Department of the Kansas Legislature. A complete summary of all legislation in 2002 can be found at www.kslegislature.org/kIRD

Kansas Open Records Act and Security Measures

Sub. for SB 112 amends the Kansas Open Records Act (KORA). The bill exempts from KORA all records that pose a substantial likelihood of revealing security measures that protect systems, facilities, or equipment used in the production, transmission, or distribution of:

- energy;
- water;
- communications services; or
- sewer or wastewater treatment systems, facilities, or equipment.
- Security measures are those that protect against criminal acts intended to intimidate or coerce the civilian population, influence government policy by intimidation or coercion, or affect the operation of government by disruptions of public services, mass destruction, assassination, or kidnapping.

Kansas No-Call Act and Telemarketing

Sub. for SB 296 establishes the Kansas No-call Act and redefines what constitutes an unsolicited telephone call in the State of Kansas. The bill authorizes the Attorney General to contract with the Direct Marketing Association (DMA) to maintain the no-call list of Kansas consumers. The list is to be part of the DMA's national do-not-call list and maintained by the DMA's Telephone Preference Service. The bill does the following:

No-Call Lists

- The DMA is to supply the Attorney General with a national no-call list free of charge and to update the list on a quarterly basis.
- A telephone solicitor has 30 days to delete a consumer's number after the list's publication. Consumers are admonished that it may be up to 150 days from the time the consumer registered to be on the no-call list before the consumer and the Attorney General are able to enforce the provisions of the act.
- Telephone solicitors will be provided updates of the no-call lists on January 1, April 1, July 1, and October 1 as part of the contract between the Attorney General and the DMA.
- Telephone solicitors, prior to accessing no-call list, are to submit a fee and complete a subscription agreement.

- The DMA shall comply with any lawful subpoena or court order directing disclosure of list.
- Attorney General may contract with the DMA for a national no-call list establishing certain conditions. The Attorney General also may contract, under the competitive bidding process, with another vendor to establish and maintain the no-call list, provided the DMA does not agree to enter into a contract.
- The DMA is prohibited from using the list for any other purpose than as directed by the Attorney General.
- The time period prior to the date of the next quarterly update in which consumers must register in order to appear on the next quarterly update of the no-call list is not to exceed 30 days.
- The Attorney General may designate the federal trade commission no-call list as the Kansas No-Call List.

Registration

- The DMA must offer consumers one free method of registration valid for five years.
- Consumers may contact the DMA, vendor, or Attorney General to register. The Attorney General may compile a list of numbers of consumers desiring to register and shall forward to the DMA within 15 days, and no fee shall be charged to the Attorney General by DMA for submitting the list.
- The Attorney General and the DMA are to notify consumers that telephone numbers may not be added to the no-call list for up to 120 days.

Violations

- Telephone solicitors are prohibited from using the list for any other purpose than to remove consumer's telephone number.
- Telephone solicitors are liable for violations of the act if consumers who have their numbers on no-call list are contacted, unless the telephone solicitor can demonstrate non-liability due to certain conditions. The conditions for an affirmative defense to a violation are that the consumer listed to the public that the consumer's residential number was a business number; the telephone solicitor had knowledge that the consumer listed it as a business number; and the purpose of the call was directly related to the consumer's business.
- A telephone solicitor can use an affirmative defense only once every 12 months.
- Violations are considered an unconscionable act under the Kansas Consumer Protection Act.
- The DMA is to furnish information on all alleged violations to the Attorney General at no cost.
- Penalties and fees recovered from prosecution are to be paid to the Attorney General.
- Attorney General may convene a meeting with consumers to notify, educate, and promote the availability of the no-call list and solicitors' obligations.
- The DMA will consent to subject itself to the jurisdiction of the Kansas courts. The DMA will designate a resident agent for service of process.

Reporting Requirements

- The Attorney General is to report to the Legislature on the status of implementation of the act.

Other Requirements

- The bill defines an established business relationship as it applies to unsolicited telephone calls. Such a relationship is defined as one that is formed by a voluntary twoway communication between a telemarketer and consumer with or without an exchange of consideration. The communication must be based on an application, purchase, or transaction by the consumer, within the preceding 36 months. At any time, the consumer can object to a continuation of the relationship and can request that the telephone solicitor cease calling.
- Telephone solicitors' telephone numbers are not to be required to be displayed from a caller identification service prior to January 1, 2005.

Electric Utilities and Cooperatives

SB 480 amends two statutes in the Retail Electric Suppliers Act that concern retail electric suppliers, the annexation by a city of territory served by such retail suppliers, and the termination of service rights by a city. The bill also amends a statute that concerns electric cooperatives.

The amendments provide, whenever a city proposes to annex land located within the certified territory of a retail electric supplier, the city shall (1) provide notice to the retail electric supplier; (2) negotiate for the issuance of a franchise agreement with the retail electric supplier certified to serve the annexed area; and (3) have the final selection of which supplier receives a franchise to operate within the annexed area. A retail supplier having both a certificate of convenience and a franchise is not required to obtain a new franchise for the annexed area. When selecting a supplier to operate within the annexed area, the city must consider nine factors set out in the bill. Under the new provisions, any retail electric supplier aggrieved by the decision made by the city annexing land may, within 30 days after the city's final decision, appeal the decision in the district court in the county in which the annexed area is located. In the event of an appeal, the supplier providing service at the time of annexation is to continue to serve the annexed area until the appeal is concluded. Another amendment changes one of the components in the formula for determining the compensation to be paid to the retail supplier when the supplier and the supplier who is newly authorized to provide electric service cannot reach a mutual agreement on the amount of compensation to be paid by the latter. The same change is made in a statute that concerns the termination of the service rights of a retail electric supplier holding a valid franchise when the service rights are terminated and assumed by a city.

A statute that concerns cooperatives that serve fewer than 15,000 customers, are principally retail suppliers of power, and which in certain circumstances may elect to be exempt from the jurisdiction of the Kansas Corporation Commission, is amended to require an exempt cooperative to maintain a schedule of rates and charges at its headquarters and to make copies available to the general public. An exempt cooperative failing to meet the requirement for making rates and charges available could be subject to a civil penalty of not more than \$500.

Underground Utility Damage Prevention Act—Amendments

SB 490 makes amendments to the Kansas Underground Utility Damage Prevention Act. In addition to other things, the amendments to the act modify and add new definitions. The term "excavation" is modified to exclude tilling the soil for normal agricultural purposes. The term "facility" is 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" is 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

Kansas Corporation Commission (KCC). New definitions are established for the terms “production petroleum lead line,” “platted land,” “update,” “whitelining,” and “working day.” The bill also provides 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 provides 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 requires that the notice of intent of excavation contain the location of the excavation and eliminates 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 requires that the person filing the notice of intent to excavate whitenline 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 is to occur when requested by the operator.

The act is modified to clarify that the notification center provide prompt notice to each affected member of a proposed excavation. The bill allows communications to the notification center by other communication methods other than the toll free number if approved by the notification center. The bill requires 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 provides 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 requires that all facilities installed by an operator after January 1, 2003, be locatable. Also, the bill provides 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 provides 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 clarifies the 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 is January 1, 2003.

Public Utilities and Public Right-of-Way Fees

Sub. for SB 545 allows a public utility, which is assessed by a city and which collects and remits fees associated with the utility’s use, occupancy, or maintenance of its facilities in the public right-of-way, to file a tariff with the Kansas Corporation Commission (KCC). The tariff could then be added to the end-user customer’s bill, statement, or invoice as a surcharge equal to the pro rata share of any fee. Costs are not to include expenses covered by any other cost recovery mechanism in existence as of April 1, 2002, including franchise fee and relocation expenses. The bill provides the same relief for costs which are incurred by a public utility in excess of those normal and reasonable costs incurred applying good utility practices due to actions of a city’s governing body. The bill’s provisions do not apply to telecommunications public utilities.

The KCC is required to approve tariffs within 30 days of filing, provided the KCC finds that:

- the recovery fees in a surcharge were required to be paid by the utility as a result of action by a city;
- the costs were incurred as a result of an action of a city;
- the costs were reasonably incurred to meet the requirements imposed by a city;
and
- the surcharge is applied to bills in a reasonable manner and is calculated to collect the increase in fees and costs of the utility or reduce any existing surcharge based upon decreases in fees and costs.

If the KCC determines that the surcharge is not applied to bills in a reasonable manner, the costs do not meet the above requirements, or the calculation is not adequately supported by documentation provided in the filing, the KCC may either disapprove the tariff within 30 days of filing and require resubmission or suspend the effective date of the tariff for an additional 60 days, or modify the tariff. The establishment of a surcharge may not be considered a rate increase.

The utility is required to deliver to the affected city a copy of the filing within 10 days of the filing. Only cost and fees incurred between April 1, 2002, and June 30, 2003, are subject to this act.

The provisions of the first three sections of the bill sunset on June 30, 2003. The bill also allows the KCC to authorize electric and natural gas public utilities to recover costs incurred from implementing security measures used to protect electricity and natural gas production and transmission. Such authorization sunsets on July 1, 2004.

Franchise Agreements—Natural Gas Suppliers

SB 546 creates two new laws that relate to the termination of the service rights of a natural gas supplier.

The bill applies to the termination of the service rights of a natural gas supplier by a city during the time the supplier has a valid franchise in effect and the city or an entity acting on behalf of the city assumes the service rights. The governing body of the city is required to acquire the parts of the local natural gas distribution system necessary to serve all customers within the previously franchised area and the terminated supplier is required to sell. The terminated supplier is to be fairly compensated for the parts of the distribution system acquired by the city.

Fair compensation is to be an amount negotiated by the parties to the sale or an amount reached through the application of a formula set out in the new legislation. If the parties are not able to agree on the compensation to be paid to the terminated supplier within 60 days after the termination of service rights, either party may apply to the district court for a determination of fair compensation.

A new provision, applicable when the service rights of a retail natural gas supplier expire by reason of non-renewal of a franchise, sets out the formula for compensating the supplier whose franchise is not renewed.

Rural Kansas Self-Help Gas Act—Enactment

SB 547 enacts the Rural Kansas Self-Help Gas Act. Under the bill, any rural gas user who desires to construct a pipeline connection to a gas supply system and any gas provider assisting the rural gas user, would not be considered a public utility. If the rural gas service is provided within an area where a public utility holds a

certificate, the rural gas user or its gas provider would first notify the existing gas service utility of the intent to provide a rural gas service.

Under the bill a “rural gas user” means any person currently using natural gas from a wellhead or gathering facility for agricultural purposes on property they own, lease, or operate that is located outside city limits and not presently receiving gas service from an existing gas service utility.

When notified, an existing gas service utility has 30 days to develop plans and propose an offer to the potential rural gas user for providing rural gas service. The proposed plan is to include plans for installing facilities, price of natural gas, and projected completion date. Failure of the existing gas service utility to propose an offer or complete the project by the projected completion date, unless otherwise agreed to by the rural gas user and the existing gas service utility, would cause the existing gas service utility to waive its exclusive right to serve the rural user. If the potential rural gas user does not accept the offer presented by the existing gas service utility, the existing gas service utility releases the rural gas user from the certificated area or may request from the State Corporation Commission (KCC) a determination to approve the utility’s plan or allow the rural gas user to use a different public utility or gas provider to provide rural gas service. The KCC has 30 days to complete the determination. The KCC could suspend its determination for an additional 60 days for sufficient cause. The bill also requires that all facilities comply with all applicable pipeline safety law.

Retail Electric Service Statutes and Station Power

HB 2746 amends retail electric service statutes by defining station power and exempting it from being classified as retail electric service. Station power is the electricity used by a generating facility owned by a utility or a generating plant operated as a merchant power plant as specified in subsection (e) of KSA 66-104 to operate generating equipment, but not electricity used for heating, lighting, air conditioning, or other general office needs of the generating facility.

The provisions only apply to those generating plants placed in use on or after January 1, 2002. The electricity could originate from the same generating facility or be provided through the electrical grid via transformation. Station power is also included in the definition of “distribution line.”

The bill allows the Kansas Corporation Commission (KCC) to authorize an electric public utility to retain revenues from wholesale off-system sales of electricity generated from renewable power resources. Renewable resources include wind, solar, thermal, photovoltaic, biomass, hydropower, geothermal, waste incineration, and landfill gas located in Kansas.

The bill permits, upon authorization by the KCC, an electric public utility to retain 65 percent of wholesale off-system electricity sales if the electricity was purchased at not less than the average price paid by the utility in contracts lasting five or more years. The bill also permits retention of 50 percent of net revenues from all other wholesale off-system electricity sales, provided that its source is a renewable technology. Revenues also are permitted to be retained from sales of renewable attributes, which are tradeable energy or tradeable emission credits, or other market instruments originating from renewable energy sources.

Natural Gas Production

HB 3031 as amended by **Sen. Sub. for HB 2034** (see note), allows natural gas to be flared, vented, or used in any manner authorized by order, rule, or regulation of the Kansas Corporation Commission. The natural gas produced can come from natural gas wells or be extracted from coal seams or associated shale. (Note: Due to an error in processing, the incorrect version of the bill was signed and the Legislature enacted a replacement bill.)

WORKERS COMPENSATION

Workers Compensation Act

HB 2729 would change the Workers Compensation Act as follows:

- Provide that limited liability company members will be defined the same as individual employers, partners, and self-employed persons.
- Provide that individuals receiving death benefits will continue to file an annual statement. The change requires the annual statement to be filed with the insurance carrier or self-insured employers group funded workers compensation pool. Prior law required the filing of such statements with the Director of Workers Compensation and the employer.
- Provide that workers compensation records that are open to the public will no longer include a person's Social Security number unless there is (1) an order of the court; or (2) to the worker upon written request.
- Provide that the Secretary of Revenue must disclose to the Director of Workers Compensation certain taxpayer information to be used for verification of workers compensation data files.
- Clarify that attorney fees and costs that may be awarded by the administrative law judge in a workers compensation case can include witness fees, mileage allowances, any costs associated with reproduction of documents that become a part of the hearing record, and the expense of making a record of the hearing.
- Provide guidelines and procedures for the recusal of a workers compensation administrative law judge.
- Allow insurers to voluntarily submit claims information electronically to the Director of Workers Compensation.