



an unmarked underground facility to notify the protection notification centers and give the operators 6 hours to identify the facility, and provides that if an operator of underground facilities (other than one transporting gas or hazardous liquids) fails to respond to locate requests with a positive response the excavator shall not be liable for damages resulting from the operator's failure to comply with the duties provided in the Underground Facility Damage Prevention Act of 1994.

SB 165 SCS amends KRS 367.4913 to clarify the duties of the protection notification centers, changes the composition of the Kentucky Contact Center Board of Directors; and requires the centers to maintain certain information for 5 years.

SB 165 SCS amends KRS 369.4915 to exempt certain nonintrusive inspection and maintenance excavating and amends KRS 367.4917 to impose certain civil penalties and fines penalties excavators and operators for non-compliance, and on the employer if the violation is committed in the scope of employment.

Positions regarding the impact of SB 165 and SB 165 SCS on municipal utilities are recorded below:

**The Kentucky Municipal Utilities Association (KMUA)** states that the Act may compel small municipal utility systems to join KY 811. According to KMUA, if such towns do not join KY 811, the Act will result in significant additional costs for some small municipal utilities that serve as their own location and call center. These utilities receive the locate calls directly and locate lines themselves due to the low number of people they serve in remote areas. KMUA also states that additional requirements of SB 165 will require municipal utility systems to increase administration, personnel, and equipment. For a few small cities serving only 80 to 90 citizens, the Act will require a significant investment in personnel and administration. These cities generally have only one utility service person and two administrative assistants that also work part time for a mayor. Their only option is to join KY 811 to avoid all these additional costs. If they do join KY 811, they will pay \$1.50 for each call they receive to locate an underground line, a cost that is currently avoided by acting as their own call and locate center. Finally, KMUA states that while costs and personnel impacts may be more easily absorbed for medium and larger city utilities, the bill represents an unfunded mandate that will be passed on to the utility rate payer/customers.

**The Kentucky League of Cities (KLC)** states that the positive response system would involve some costs in set up and operation, turnaround times are short, and there would be some cost in keeping the records for at least five years. KLC is mostly concerned about the waiver of civil liability in Section 3(7) and the potential costs involved. Over half of city utilities have chosen not to join the statewide KY 811 service, due to the membership and response fees associated with it. If KY 811 creates a positive response system as a result of SB 165, cities could join it, but at additional costs.

The **Kentucky Rural Water Association** has not recorded a position on the bill other than to note that it does not mandate membership requirements for water and wastewater utilities.

**Part III: Differences to Local Government Mandate Statement from Prior Versions**

The provisions of SB 165 SCS do not appreciably change the impact on municipal utilities or the responses from the Association of Municipal Utilities or Kentucky League of Cities. SB 165 SCS retains original provisions of SB 165 and amends KRS 367.4903 to redefine "operator," "approximate location," "working day" "person," "positive response," "tolerance zone," and "unlocatable facility". It amends KRS 367.4909 to require a positive response from operators of underground facilities and enunciates timing of operator responses. The Act amends KRS 367.4911 to provide excavator start dates and when mechanized equipment can be used in the tolerance zone and amends KRS 367.4913 to change the composition of the Kentucky Contact Center board of directors; amend KRS 369.4915 to exempt certain noninvasive inspection and maintenance excavating; amend KRS 367.4917 to impose penalties on the employer if the violation is committed in the scope of employment.

**Data Source(s):** Kentucky Rural Water Association; LRC staff; Kentucky League of Cities; Kentucky Municipal Utilities Association; Kentucky Association of County Clerks

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