

**Local Government Mandate Statement  
Kentucky Legislative Research Commission  
2021 Regular Session**

**Part I: Measure Information**

**Bill Request #:** 822

**Bill #:** HB 303 GA

**Document ID #:** 5945

**Bill Subject/Title:** AN ACT relating to underground facility protection.

**Sponsor:** Rep. Sal Santoro

Unit of Government:  City  County  Urban-County  
Unified Local  
 Charter County  Consolidated Local  Government

Office(s) Impacted: Municipal and county utilities

Requirement:  Mandatory  Optional

Effect on  
Powers & Duties:  Modifies Existing  Adds New  Eliminates Existing

**Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government**

HB 303 GA amends KRS 367.4903 to redefine "operator," "Kentucky Contact Center," "fiber-to-the- premises", "approximate location," and "working day". It defines "person," "positive response," "unique identification number" or "locate request number", "locator", "second notice", "tolerance zone", "untonable facility", and "work site contact".

The bill amends KRS 367.4909 to **require a “positive response”** from operators of underground facilities and establishes the timing of operator responses. It amends KRS 367.4911:

- To provide for excavator start dates;
- To include entities engaged in exempt activities to notify operators immediately on discovery of damage to an underground facility; and
- To provide when mechanized equipment can be used in the tolerance zone.

HB 303 GA mends KRS 367.4913 to require **contact centers to maintain certain locate request information for five years** and to change the composition of the Kentucky Contact Center board of directors.

The bill provides that any entity or individual otherwise exempt from the requirements of KRS 367.4901 to 367.4917 under Section 5 of this Act, who conducts or is responsible for any excavation or demolition that damages **an underground facility resulting in the escape of flammable, toxic, or corrosive gas or liquids must cease excavation or demolition activities and notify all affected operators of the location and nature of the underground facility damage.**

The Act amends KRS 369.4915 to include nonintrusive excavating to inspect or perform maintenance for an existing utility pole.

HB 303 GA amends KRS 367.4917 **to impose civil penalties on the employer if the violation is committed in the scope of employment** and provides that the Public Service Commission establish a written agreement form to deviate from the locate request dates provided for in Kentucky's Underground Facility Damage Prevention Act of 1994.

**The fiscal impact of HB 303 GA is nil to potentially moderate.** The impact, costs or potential cost savings for utilities will depend on multiple factors, such as the size and location of a utility's underground facilities, the utility's current support for its required protection notification center, and the structure, function, and responsiveness of a protection notification center functioning in compliance with the provisions of HB 303 GA, and potential benefits provided by the Kentucky Contact Center (which serves the majority of utilities in the state).

**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(12) and the potential costs involved. However, the waiver of civil liability only arises after a second opportunity to respond and it doesn't exclude intentional or negligent conduct. 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.

**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.

**The Kentucky Municipal Utilities Association (KMUA)** (with 42 members) estimates HB 303 GA will create extra costs for city utilities that locate their own lines as they will have to locate the lines and pay 811 a fee of \$1.50 for each line they locate. Several members of KMUA are voluntary members of 811 Call Before You Dig, but it is still an expense for all underground facilities (water, wastewater, natural gas, and telecommunications.) KMUA states that additional costs for 811 calls are indeterminable at this time.

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

**The fiscal impact of HB 303 GA is the same as for HB 303.** HB 303 passed with Floor Amendments 2 and 5. Amendment 5 provides that an entity or individual otherwise exempt from the requirements of KRS 367.4901 to 367.4917 under Section 5 of the Act,

**who conducts an excavation that results in the escape or suspected escape of any flammable, toxic, or corrosive gas or liquid shall cease excavation and notify affected operators.**

Floor amendment 2 adds a definition for "fiber-to-the-premises", and adds a **fiber-to-the-premises broadband deployment excavation locate request that requires underground facility operators to respond to within four working days.**

**Data Source(s):** Kentucky Municipal Utilities Association; Kentucky League of Cities; Kentucky Association of Counties

**Preparer:** H. Marks **Reviewer:** KHC **Date:** 3/1/21