

025448404

SENATE BILL NO. 433

Offered January 9, 2002

Prefiled January 9, 2002

A BILL to amend and reenact §§ 56-265.15, 56-265.15:1, 56-265.17, 56-265.18, 56-265.19, 56-265.21, 56-265.22, and 56-265.24 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 56-265.17:1, 56-265.17:2, 56-265.17:3, 56-265.20:1, 56-265.22:1, and 56-265.26:1, relating to the Underground Utility Damage Prevention Act.

Patrons—Williams and Bolling

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-265.15, 56-265.15:1, 56-265.17, 56-265.18, 56-265.19, 56-265.21, 56-265.22, and 56-265.24 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 56-265.17:1, 56-265.17:2, 56-265.17:3, 56-265.20:1, 56-265.22:1, and 56-265.26:1, as follows:

§ 56-265.15. Definitions; calculation of time periods.

A. As used in this chapter:

"Abandoned" means no longer in service and physically disconnected from a portion of the underground utility line that is in use for storage or conveyance of service.

"Commission" means the State Corporation Commission.

"Contract locator" means any person contracted by an operator specifically to determine the approximate horizontal location of the operator's utility lines that may exist within the area specified by a notice served on a notification center.

"Damage" means any impact upon or removal of support from an underground facility as a result of excavation or demolition which according to the operating practices of the operator would necessitate the repair of such facility.

"Demolish" or "demolition" means any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any tools, equipment, or discharge of explosives which could damage underground utility lines.

"Designer" means any licensed professional designated by the project owner who designs government projects, commercial projects, residential projects consisting of twenty-five or more units, or industrial projects, which projects require the approval of governmental or regulatory authorities having jurisdiction over the project area.

"Emergency" means a sudden or unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

"Excavate" or "excavation" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosives and includes, without limitation, grading, trenching, digging, ditching, dredging, drilling, augering, tunneling, scraping, cable or pipe plowing and driving, wrecking, razing, rendering, moving, or removing any structure or mass of material.

"Extraordinary circumstances" means floods, snow, ice storms, tornadoes, earthquakes, or other natural disasters.

"Hand digging" means any excavation involving nonmechanized tools or equipment. Hand digging includes, but is not limited to, digging with shovels, picks, and manual post hole diggers, *vacuum excavation* or *soft digging*.

"Notify," "notice" or "notification" means the completed delivery of information to the person to be notified, and the receipt of same by such person in accordance with this chapter. The delivery of information includes, but is not limited to, the use of any electronic or technological means of data transfer.

"Notification center" means an organization whose membership is open to all operators of underground facilities located within the notification center's designated service area, which maintains a data base, provided by its member operators, that includes the geographic areas in which its member operators desire transmissions of notices of proposed excavation, and which has the capability to transmit, within one hour of receipt, notices of proposed excavation to member operators by teletype, telecopy, personal computer, or telephone.

"Operator" means any person who owns, furnishes or transports materials or services by means of a

INTRODUCED

SB433

59 utility line.

60 "Person" means any individual, operator, firm, joint venture, partnership, corporation, association,
61 municipality, or other political subdivision, governmental unit, department or agency, and includes any
62 trustee, receiver, assignee, or personal representative thereof.

63 *"Soft digging" means any excavation using tools or equipment that utilize air or water pressure as*
64 *the direct means to break up soil or earth for removal by vacuum excavation.*

65 *"Special project notice" means a valid notice to the notification center by an excavator covering a*
66 *specific, unique or long-term project.*

67 "Utility line" means any item of public or private property which is buried or placed below ground
68 or submerged for use in connection with the storage or conveyance of water, sewage,
69 telecommunications, electric energy, cable television, oil, petroleum products, gas, or other substances,
70 and includes but is not limited to pipes, sewers, combination storm/sanitary sewer systems, conduits,
71 cables, valves, lines, wires, manholes, attachments, and those portions of poles below ground. The term
72 "sewage" as used herein does not include any gravity storm drainage systems. Except for any publicly
73 owned gravity sewer system within a county which has adopted the urban county executive form of
74 government, the term "utility line" does not include any gravity sewer system or any combination
75 gravity storm/sanitary sewer system within any counties, cities, towns or political subdivisions
76 constructed or replaced prior to January 1, 1995. No excavator shall be held liable for the cost to repair
77 damage to any such systems constructed or replaced prior to January 1, 1995, unless such systems are
78 located in accordance with § 56-265.19.

79 "Willful" means an act done intentionally, knowingly, and purposely, without justifiable excuse, as
80 distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.

81 "Working day" means every day, except Saturdays, Sundays, and legal state and national holidays.

82 B. Unless otherwise specified, all time periods used in this chapter shall be calculated from the time
83 of the original notification to the notification center as provided in § 56-265.17. In addition, all time
84 periods exclude Saturdays, Sundays, and legal state and national holidays.

85 § 56-265.15:1. Exemptions; routine maintenance.

86 Nothing in this chapter shall apply to:

87 1. Any hand digging performed by an owner or occupant of a property.

88 2. The tilling of soil for agricultural purposes.

89 3. Any excavation done by a railroad when the excavation is made entirely on the land which the
90 railroad owns and on which the railroad operates, provided there is no encroachment on any operator's
91 rights-of-way or easements.

92 4. An excavation or demolition during an emergency, as defined in § 56-265.15, provided all
93 reasonable precaution has been taken to protect the underground utility lines.

94 In the case of the state highway systems or streets and roads maintained by political subdivisions,
95 officials of the Department of Transportation or the political subdivision where the use of such
96 highways, roads, streets or other public way is impaired by an unforeseen occurrence shall determine the
97 necessity of repair beginning immediately after the occurrence.

98 5. Any excavation for routine pavement maintenance, including patch type paving or the milling of
99 pavement surfaces, upon the paved portion of any street, road, or highway of the Commonwealth
100 provided that any such excavation does not exceed a depth of twelve inches (0.3 meter).

101 6. Any excavation for the purpose of mining pursuant to and in accordance with the requirements of
102 a permit issued by the Department of Mines, Minerals and Energy.

103 7. *Any hand digging performed by an operator to locate the operator's utility lines in response to a*
104 *notice of excavation from the notification center, provided all reasonable precaution has been taken to*
105 *protect the underground utility lines.*

106 § 56-265.17. Notification required prior to excavation or demolition; waiting periods; marking of
107 proposed site.

108 A. ~~No~~ *Except as provided in subsection G, no person, including operators, shall make or begin any*
109 *excavation or demolition without first notifying the notification center for that area. Notice to the*
110 *notification center shall be deemed to be notice to each operator who is a member of that the*
111 *notification center. The notification center shall provide the excavator with the identity of utilities that*
112 *will be notified of the proposed excavation or demolition. Except for counties, cities, and towns, an*
113 *excavator who willfully fails to notify the notification center of proposed excavation or demolition shall*
114 *be liable to the operator whose facilities are damaged by that excavator, for three times the cost to*
115 *repair the damaged property, provided the operator is a member of the notification center. The total*
116 *amount of punitive damages awarded under this section, as distinguished from actual damages, shall not*
117 *exceed \$10,000 in any single cause of action.*

118 B. Except in the case of an emergency as defined in § 56-265.15, ~~or if informed by the notification~~
119 ~~center that no operators are to be notified, the excavator shall wait at least forty-eight hours following~~
120 ~~notification before commencing work. The excavator may commence work after forty-eight hours only if~~

the excavator contacts the notification center's excavator-operator information exchange system and confirms that all applicable utilities have either marked their underground line locations or reported that no lines are present in the vicinity of the excavation or demolition the excavator may commence work under one of the following conditions:

1. After waiting forty-eight hours, beginning 7:00 a.m. the next working day following notice to the notification center;

2. At any time, if the excavator confirms that all applicable operators have either marked their underground utility lines or reported that no lines are present in the vicinity of the excavation or demolition. The confirmation shall be obtained by contacting or receiving information from the notification center's excavator-operator information exchange system; or

3. If informed by the notification center that no operators are to be notified.

If any utilities fail operator fails to respond to the excavator-operator information exchange system by the end of the forty-eight hours after the excavator's notification, the excavator shall wait an additional twenty-four hours before commencing work. In addition, as required by this chapter, the notification center shall renotify any operator who has failed to respond to the excavator-operator information exchange system within forty-eight hours from the original notification. Operators so notified shall mark all applicable utility lines or report that no lines are present and confirm the marking or the absence of lines to the excavator-operator information exchange system within twenty-four hours of renotification of its failure. This renotification shall not constitute an exemption from the duties of the operator set forth in § 56-265.19.

C. The excavator shall exercise due care at all times to protect underground utility lines. If, upon arrival at the site of a proposed excavation, the excavator observes clear evidence of the presence of an unmarked utility line in the area of the proposed excavation, the excavator shall not begin excavating until three hours after an additional call is made to the notification center for the area. The operator of the any unmarked utility line shall respond within three hours of the excavator's call to the notification center.

D. The excavator's notification shall be valid for fifteen working days from the time of notification 7:00 a.m. on the next working day following notice to the notification center. Two Three working days before the end of the fifteen-working-day period, or at any time when line-location markings on the ground become illegible, the excavator intending to excavate shall contact the notification center and request the re-marking of lines. The operator shall re-mark the lines as soon as possible; however, the re-marking of the lines shall be completed within forty-eight hours from 7:00 a.m. on the next working day following the request for the re-mark. Such re-marking shall be valid for an additional fifteen working days from the time of request 7:00 a.m. on the next working day following notice to the notification center.

E. In the event a specific location of the excavation cannot be given as required by subdivision 2 of § 56-265.18, prior to notifying the notification center pursuant to subsection A of this section, the person proposing to excavate or demolish shall mark the route or boundary of the site of the proposed excavation or demolition by means of white paint, if practical.

F. The extent of the excavator's proposed work shall be a work area that can be excavated within fifteen working days from 7:00 a.m. on the next working day following notice to the notification center. The area covered under each notice shall not exceed one mile.

G. An excavator may request a special project notice from the notification center for the purpose of notifying the operators of the excavator's desire to enter into an agreement for locating and protecting the operator's underground utility lines for a specific, unique or long-term project. An excavator using a special project notice shall have complete control over all activities within the project area. The terms and conditions of such agreements must be agreed upon, in writing, by the excavator and the operator before excavation commences. Such agreement and compliance with the terms of the agreement shall constitute an exemption from the requirements of subsections A, B, C, D and E of this section.

§ 56-265.17:1. Notification and procedures for designers.

A. Each designer, who prepares drawings and plans for projects requiring excavation or demolition work, may notify the notification center and provide the center with the information required by § 56-265.18 and the designer's professional license number.

B. If a designer notifies the notification center to receive underground utility line information in accordance with § 56-265.17:3, the designer shall:

1. Indicate on the construction drawings, the type of underground utility lines, the horizontal location of these lines as provided by the operators, and the names of the operators of these lines;

2. Consider, when designing a project and preparing drawings therefore, the location of existing underground lines so as to minimize damage or interference with the existing facilities;

3. Indicate, on the construction plans or drawings, the designer ticket number and the notification center's toll-free number; and

4. Request only one designer ticket per project through the notification center at no cost.

§ 56-265.17:2. Procedures for project owners.

The project owner shall provide copies of final construction drawings to all operators with underground utility lines in the project area who have responded in accordance with § 56-265.17:3.

§ 56-265.17:3. Procedures for operators in response to a designer notice.

An operator, upon notification by a designer in accordance with § 56-265.17:1, shall:

1. Respond to the designer's request for underground utility line information within 15 working days in accordance with subdivisions 2, 3, and 4 of this section;

2. Provide designers with the operator's name, the type of underground utility line, and the approximate horizontal location of the utility line. The foregoing information may be provided to the designer through the means that include, but are not limited to, field locates, maps, surveys, installation records or other means. If the designer requests field locates, the operator shall provide field locates in accordance with the accuracy set forth in subsection A of § 56-265.19. Marking shall be done by both paint and flags whenever possible;

3. Provide such information about the location of the utility lines to designers for informational purposes only. Operators will not be liable for any incorrect information provided or for the subsequent use of this information, nor will they be subject to civil penalties for the accuracy of the information or marks provided. Any concerns about the accuracy of information or marks should be directed to the appropriate operator; and

4. Respond to the operator-excavator information exchange system by no later than 7:00 a.m. on the sixteenth working day following the designer's notice to the notification center.

§ 56-265.18. Notification requirements.

Every notice served by any person on a notification center shall contain the following information:

1. The name of the individual serving such notice.

2. The specific location of the proposed work. In the event a specific description of the location of the excavation cannot be given, the person proposing to excavate or demolish shall comply with subsection D E of § 56-265.17.

3. The name, address, telephone number, and telefacsimile number if available, of the excavator or demolisher, to whom notification can be given.

4. The excavator's or demolisher's field telephone number, if one is available.

5. The type and extent of the proposed work.

6. The name of the person for whom the proposed work is being performed.

§ 56-265.19. Duties of operator.

A. If a proposed excavation or demolition is planned in such proximity to the underground utility line that the utility line may be destroyed, damaged, dislocated, or disturbed, the operator shall mark the approximate horizontal location of the underground utility line on the ground to within two feet of either side of the underground utility line by means of stakes, paint, or flags no later than forty-eight hours after receiving notice from the notification center and shall report no later than forty-eight hours that the location of the lines has been marked to the notification center's excavator-operator information exchange system, or a combination thereof. The operator shall mark the underground utility line and report the marking status to the excavator-operator information exchange system by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, unless the operator is unable to do so due to extraordinary circumstances. If the operator is unable to mark the location within ~~seventy-two hours~~ the time allowed under this section due to extraordinary circumstances, the operator shall notify directly the person who proposes to excavate or demolish and shall, in addition, notify the person of the date and time when the location will be marked. ~~Such notification of inability to mark location shall be within seventy-two hours from the original notification, and the~~ The deferral to mark for extraordinary circumstances shall be no longer than ninety-six hours from 7:00 a.m. on the next working day following notice to the notification center, unless a longer time is otherwise agreed upon by the operator and excavator. The operator shall also inform the notification center of any deferral.

B. If a proposed excavation or demolition is not planned in such proximity to the operator's underground utility lines that the utility line may be damaged, the operator shall so report to the notification center's excavator-operator information exchange system ~~within forty-eight hours of receiving notice from the notification center~~ from 7:00 a.m. on the third working day following the excavator's notice to the notification center.

C. An operator shall participate in all preplanning and preconstruction meetings originated by state, county or municipal authorities relating to proposed construction projects which may affect the operator's existing or future utility lines and shall cooperate in implementing decisions reached in such preplanning and preconstruction meetings.

D. Any contract locator acting on behalf of an operator and failing to perform the duties imposed by this chapter shall be subject to the liabilities in § 56-265.25 and the civil penalties in § 56-265.32.

E. Locators shall be trained in applicable locating industry standards and practices no less stringent than the National Utility Locating Contractors Association's locator training standards and practices. Each locator's training shall be documented. Such documents shall be maintained by the operator or contract locator.

F. The Commission shall be authorized to adopt regulations designating: (i) letters for each operator to be used in conjunction with marking of underground utility lines, and (ii) symbols for marking of underground utility lines, in compliance with subsection B of § 56-265.17:3. Such letter designation and marking symbols shall be in accordance with industry standards.

G. For underground utility lines abandoned after July 1, 2002, operators shall make a reasonable attempt to keep records of these abandoned utility lines, excluding service lines connected to a single-family dwelling unit. Operators may provide a response to the excavator-operator information exchange system when an operator has knowledge that the operator's abandoned utility lines may be present within the area of the proposed excavation.

H. An operator shall respond to an emergency notice as soon as possible but no later than three hours from the excavator's call to the notification center.

§ 56-265.20:1. Locating nonmetallic underground utility lines.

Notwithstanding the provisions of § 56-257.1, any plastic or other nonmetallic utility lines installed underground on and after July 1, 2002, shall be installed in such a manner as to be locatable by the operator for the purposes of this chapter.

§ 56-265.21. Marking by color.

In marking the approximate location of underground utility lines or proposed excavation if required pursuant to subsection D E of § 56-265.17 the following color coding American Public Works Association color codes shall be used:

UTILITY AND TYPE	IDENTIFYING COLOR
OF PRODUCT	OR EQUIVALENT
Electric Power Distribution & Transmission	Safety Red
Municipal Electric Systems	Safety Red
Gas Distribution & Transmission	High Visibility Safety Yellow
Oil & Petroleum Products Distribution & Transmission	High Visibility Safety Yellow
Dangerous Materials, Product Lines, Steam Lines	High Visibility Safety Yellow
Telecommunications Systems	Safety Alert Orange
Police & Fire Communications	Safety Alert Orange
Cable Television	Safety Alert Orange
Water Systems	Safety Precaution Blue
Slurry Systems	Safety Precaution Blue
Sewer Systems	Safety Green
Proposed Excavation	White

§ 56-265.22. Duties of notification center upon notification by person intending to excavate; record of notification made by telephone required.

A. The notification center shall, upon receiving notice by a person intending excavation or demolition, notify all member operators whose underground lines are located in the area of the proposed excavation or demolition. The notification center shall also indicate the names of those operators being notified to the person intending excavation or demolition.

B. If the notification required by this chapter is made by telephone, a record of such notification shall be maintained by the operators or notification center notified to document compliance with the requirements of this chapter, and such records shall be maintained in compliance with the applicable statute of limitations.

C. The notification center shall notify excavators, within the time frame allowed by the law to mark underground utility lines, of any responses placed on the excavator-operator information exchange system by a locator. Such notification shall occur by facsimile or other mutually acceptable means of automatically transmitting and receiving this information.

If the excavator cannot provide the notification center with a facsimile number or other mutually acceptable means of automatically transmitting and receiving this information, it shall be the excavator's responsibility to contact the excavator-operator information exchange system after the period allowed by law to mark underground facilities and prior to commencing excavation in order to determine if any responses to the notice have been recorded.

§ 56-265.22:1. Meetings between excavators and operators.

304 A. Any person planning excavation or demolition in such proximity to the underground utility lines
305 that the utility lines may be destroyed, damaged, dislocated, or disturbed may request a meeting with the
306 operator whose underground utility lines are located in the area of the proposed excavation or
307 demolition to discuss the marking of such lines. The project requiring excavation shall be of sufficient
308 complexity to require a pre-marking meeting. The meeting notice shall include all information required
309 by § 56-265.18 and a specific time and location for the meeting.

310 B. The notification center shall, upon receiving a meeting notice, notify all member operators whose
311 underground utility lines are located in the area of the proposed excavation or demolition. The
312 notification center shall provide to the excavator the names of those operators being notified of the
313 meeting.

314 C. The operators notified by the notification center shall meet with the excavator by 7:00 a.m. on the
315 third working day following the excavator's meeting notice. If an operator does not agree to the
316 excavator's suggested time and location, the operator shall set up a mutually agreeable time and
317 location to meet no later than 7:00 a.m. on the third working day following the meeting notice.

318 D. The excavator's meeting notice shall not be the notice to excavate required under § 56-265.17.
319 The notice to excavate required under § 56-265.17 for the project shall not be submitted to the
320 notification center until after the meeting referenced in subsection A of § 56-265.22:1 has occurred, or
321 after 7:00 a.m. on the third working day following the meeting notice.

322 § 56-265.24. Duties of excavator.

323 A. Any person excavating within two feet of ~~on~~ either side of the staked or marked location of an
324 operator's underground utility line or demolishing in such proximity to ~~the~~ an underground utility line
325 that the utility line may be destroyed, damaged, dislocated or disturbed, shall take all reasonable steps
326 necessary to properly protect, support and backfill underground utility lines. ~~This protection shall include~~
327 ~~but may not be limited to hand digging, within the limits of the planned excavation or demolition,~~
328 ~~starting two feet of either side of the extremities of the underground utility line for other than parallel~~
329 ~~type excavations and at reasonable distances along the line of excavation for parallel type excavations.~~
330 For excavations not parallel to an existing underground utility line, such steps shall include, but may
331 not be limited to:

332 1. Exposing the underground utility line to its extremities by hand digging;

333 2. Not utilizing mechanized equipment within two feet of the extremities of all exposed utility lines;
334 or

335 3. Protecting the exposed utility lines from damage.

336 In addition, for excavations parallel to an existing utility line, such steps shall include, but may not
337 be limited to, hand digging at reasonable distances along the line of excavation. The excavator shall
338 exercise due care at all times to protect underground utility lines when exposing these lines by hand
339 digging.

340 B. If the markings locating the underground lines become illegible due to time, weather, construction,
341 or any other cause, the person performing the excavation or demolition shall so notify the notification
342 center for the area. Such notification shall constitute an extension under subsection C of § 56-265.17.

343 C. If, upon arrival at the site of a proposed excavation, the excavator observes clear evidence of the
344 presence of an unmarked utility line in the area of the proposed excavation, the excavator shall not
345 begin excavating until an additional call is made to the notification center for the area pursuant to
346 subsection B of § 56-265.17.

347 D. In the event of any damage to, or dislocation, or disturbance of any underground utility line
348 including its appurtenances, covering, and coating, in connection with any excavation or demolition, the
349 person responsible for the excavation or demolition operations shall immediately notify the operator of
350 the underground utility line and shall not backfill around the underground utility line until the operator
351 has repaired the damage or has given clearance to backfill. The operator shall either commence repair of
352 the damage or give clearance to backfill within twenty-four hours, and upon his failure to commence or
353 prosecute with diligence such repair or give clearance, the giving of clearance shall be presumed.

354 E. If the damage, dislocation, or disturbance of the underground utility line creates an emergency, the
355 person responsible for the excavation or demolition shall, in addition to complying with subsection D of
356 this section, take immediate steps reasonably calculated to safeguard life, health and property.

357 F. No person, including operators, shall request marking of a site through a notification center unless
358 excavation is scheduled to commence; ~~nor make repeated requests for remarking, unless the repeated~~
359 ~~request is due to circumstances not reasonably within the control of such person shall commence within~~
360 ~~thirty working days from the date of the original notification to the notification center.~~ Except for
361 counties, cities, and towns, any person who willfully fails to comply with this subsection shall be liable
362 to the operator for three times the cost of marking its utility line, not to exceed \$1,000.

363 G. Any person performing excavation or demolition shall provide to the operator of the underground
364 utility line in the area of excavation or to the appropriate regulatory authority having jurisdiction, the
365 number issued by the notification center for that excavation site in response to the excavator's notice,

366 within one hour of a request for the number issued by the notification center.

367 H. If an excavator discovers an unmarked line, the excavator shall protect this line pursuant to
368 subsection C of this section. An excavator shall not remove an abandoned line without first receiving
369 authorization to do so by the operator.

370 § 56-265.26:1. Utility line depth requirement,

371 Every operator having the right to install underground utility lines, shall install such underground
372 utility lines at depths required by accepted industry standards. Such standards shall include, as
373 applicable, standards established by the National Electric Safety Code, Bellcore Blue Book-Manual of
374 Contractor's Procedures, the Commission's pipeline safety regulations, the Department of Health's
375 waterworks regulations, and the corresponding publication endorsed by the National Cable and
376 Telecommunications Association. At no time shall a utility line be installed with less than 12 inches of
377 cover.

378 2. That the State Corporation Commission shall convene a task force (i) to study the operation
379 and effectiveness of the requirements of § 56-265.17:1 of the Code of Virginia and (ii) to study the
380 effectiveness of the requirements of subsection G of § 56-265.19 and to make recommendations as
381 to whether the requirements of subsection G of § 56-265.19 should become mandatory. The task
382 force shall consist of representatives of utility operators, excavators, notification centers, local
383 governments, contract locators, State Corporation Commission staff, and other appropriate
384 persons. The Commission shall report the results of the task force's study, including any
385 recommendations, to the 2005 Session of the General Assembly. The provisions of this enactment
386 shall become effective January 1, 2004.