

VIRGINIA ACTS OF ASSEMBLY -- 2010 RECONVENED SESSION

CHAPTER 777

An Act to amend and reenact §§ 33.1-375.1, 56-265.15, and 56-265.15:1 of the Code of Virginia, relating to signage in rights-of-way of the Virginia Department of Transportation.

[S 64]

Approved April 21, 2010

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-375.1, 56-265.15, and 56-265.15:1 of the Code of Virginia are amended and reenacted as follows:

§ 33.1-375.1. Commissioner may enter into certain agreements; penalties.

A. The Commonwealth Transportation Commissioner may enter into agreements with the local governing body of Fairfax County authorizing local law-enforcement agencies or other local governmental entities to act as agents of the Commissioner for the purpose of (i) enforcing the provisions of § 33.1-373 and (ii) collecting the penalties and costs provided for in that section. However, no local governing body shall enter into any such agreement until it has held a public hearing thereon.

B. Notwithstanding the provisions of § 33.1-373, one-half of the penalties and costs collected under this section shall be paid to the affected locality, and the remainder shall be remitted to the Commissioner and paid into the Highway Maintenance and Operating Fund.

C. Notwithstanding the foregoing provisions of this section, the following signs and advertising shall not be subject to the agreements provided for in subsection A of this section:

1. Signs and advertising supporting an individual's candidacy for elected public office or other ballot issues, provided this exception shall not include signs and advertising in place more than three days after the election to which they apply.

2. Signs and advertising promoting and/or providing directions to a special event to be held at a specified date stated on the sign or advertising, provided this exception shall not include special event signs in place more than three days after the conclusion of the special event.

3. Other signs and advertising erected for no more than three days.

D. Notwithstanding the foregoing provisions of this section, the Commissioner may enter into agreements with the local governing bodies of localities to which the foregoing provisions of this section do not apply to authorize those governing bodies to act as agents of the Commissioner and the Department in enforcing the provisions of § 33.1-373. The limitations applicable to agreements entered into under subsections A through C of this section shall not apply to agreements entered into under this subsection.

E. If a county acts as an agent of the Commissioner under this section, the county shall require each of its employees and any volunteers who are authorized to act on behalf of the county to comply with the provisions of this section and any other applicable law. If a lawfully placed sign is confiscated by an employee or volunteer authorized to act for the county in violation of the authority granted under this section, the sign owner shall have the right to reclaim the sign within five business days of the date of such confiscation.

§ 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. *"Excavate" or "excavation" shall not include installation of a sign that consists of metal, plastic, or wooden poles placed in the ground by hand or by foot without the use of tools or equipment.*

"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.

"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.

"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.

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

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

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

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

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

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

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

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

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

Nothing in this chapter shall apply to:

1. Any hand digging performed by an owner or occupant of a property.
2. The tilling of soil for agricultural purposes.
3. Any excavation done by a railroad when the excavation is made entirely on the land which the railroad owns and on which the railroad operates, provided there is no encroachment on any operator's rights-of-way or easements.
4. An excavation or demolition during an emergency, as defined in § 56-265.15, provided all reasonable precaution has been taken to protect the underground utility lines.

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

5. Any excavation for routine pavement maintenance, including patch type paving or the milling of

pavement surfaces, upon the paved portion of any street, road, or highway of the Commonwealth provided that any such excavation does not exceed a depth of twelve inches (0.3 meter).

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

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

8. *Any installation of a sign that does not involve excavation as defined in § 56-265.15.*