

23105226D

HOUSE BILL NO. 2132

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Energy
on January 24, 2023)

(Patron Prior to Substitute—Delegate Wilt)

A BILL to amend and reenact §§ 56-265.15, 56-265.16:1, 56-265.17, 56-265.17:3, 56-265.18, 56-265.19, 56-265.22, 56-265.24, 56-265.31, and 56-265.32 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-265.24:1, relating to Underground Utility Damage Prevention Act; schedule of excavation; stop work authority; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-265.15, 56-265.16:1, 56-265.17, 56-265.17:3, 56-265.18, 56-265.19, 56-265.22, 56-265.24, 56-265.31, and 56-265.32 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-265.24:1 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 locate request.

"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 25 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 does 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.

"Exigent circumstances" means circumstances outside of an operator's or contract locator's, as described in subsection D of § 56-265.19, control that necessarily prevent an operator or locator from completing the marking task, including a wrong address provided with the locate request; failure to provide a reasonably specific location of proposed excavation; inaccessibility of the excavation site due to physical barrier or risk of serious bodily injury; a locate request that cannot be carried out by a traditional locating method and requires assistance from the operator; catastrophic technological failure outside of the locator's, operator's, or notification center's control; or the area of excavation does not conform with the requirements of subsection F of § 56-265.17.

"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.

"Locate request" means the completed delivery of information to the notification center requesting markings for a specified area of excavation or demolition and receipt of the same by the notification center in accordance with this chapter.

"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

60 data base, provided by its member operators, that includes the geographic areas in which its member
61 operators desire transmissions of notices of proposed excavation, and which has the capability to
62 transmit, within one hour of receipt, notices of proposed excavation to member operators by ~~teletype,~~
63 ~~telecopy, personal computer, or telephone~~ *electronic means*.

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

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

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

73 *"Positive response" means a code or phrase posted by an operator or locator to the notification*
74 *center detailing the marking status of a locate request.*

75 *"Positive response system" means the excavator-operator information exchange system that is*
76 *required by subsection E of § 56-265.16:1 and provides the means for operators or their contract*
77 *locators to respond to and report the marking status of a locate request.*

78 "Private sewer lateral" means a privately owned, legally authorized utility line that transports
79 wastewater from one or more buildings to a sewer system utility line owned by a sewer system operator.

80 "Private water lateral" means a privately owned, legally authorized utility line that supplies water
81 from a water system utility line owned by a water system operator to one or more buildings or
82 properties.

83 "Sewer system" means a system of utility lines used for conveying wastewater, and includes sewer
84 system laterals but does not include private sewer laterals.

85 "Sewer system lateral" means a lateral utility line located in the public right-of-way or public sewer
86 easement, owned by a sewer system operator, and used to transport wastewater to the operator's main
87 sewer line.

88 "Sewer system operator" means an operator of a sewer system.

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

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

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

105 "Water system" means a system of utility lines used for supplying water, and does not include
106 private water laterals.

107 "Water system operator" means an operator of a water system.

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

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

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

114 **§ 56-265.16:1. Operators to join notification centers; certification.**

115 A. Every operator, including counties, cities and towns, but excluding the Department of
116 Transportation, having the right to bury underground utility lines shall join the notification center for the
117 area.

118 B. Every notification center shall be certified by the Commission. The Commission shall determine
119 the optimum number of notification centers in the Commonwealth. If the Commission determines that
120 there shall be more than one notification center in the Commonwealth, it shall define the geographic
121 area to be served by each notification center.

C. Any corporation desiring to serve as the notification center for an area of the Commonwealth may apply to the Commission to be certified as the notification center for that area. The Commission shall have authority to grant, amend, or revoke certificates under regulations promulgated relating to certification. An application for certification shall include such information as the Commission may reasonably require addressing the applicant's operational plan for the notification center.

D. Every Commission action regarding the optimum number of notification centers, the geographic area to be served by each notification center, the promulgation of notification center certification regulations, and the grant, amendment, or revocation of notification center certifications shall be made in furtherance of the purpose of preventing or mitigating loss of, or damage to, life, health, property or essential public services resulting from damage to underground utility lines. Any action by the Commission to approve or revoke any notification center certification shall:

1. Ensure protection for the public from the hazards that this chapter is intended to prevent or mitigate;

2. Ensure that all persons served by the notification center receive an acceptable level of performance, which level shall be maintained throughout the period of the notification center's certification; and

3. Require the notification center and its agents to demonstrate financial responsibility for any damages that may result from their violation of any provision of this chapter. Such requirement may be met by purchasing and maintaining liability insurance on such terms and in such amount as the Commission deems appropriate.

E. A notification center shall maintain ~~an excavator-operator information exchange~~ *a positive response* system in accordance with notification center certification regulations promulgated by the Commission. The members of a notification center shall be responsible for developing and implementing a public awareness program to ensure that all parties affected by this chapter shall be aware of their responsibilities. There shall be only one notification center certified for each geographic area defined by the Commission.

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

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

B. Except in the case of an emergency as defined in § 56-265.15 *or in cases subject to subsection C*, the excavator ~~may~~ *shall only* 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 *the excavator has confirmed, by reviewing the positive response information posted on the notification center's positive response system, that each operator has marked its utility lines, notified the notification center that its utility lines are not present in the area of proposed excavation, or otherwise posted a positive response indicating excavation may begin;* or

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

If any operator fails to respond to the ~~excavator-operator information exchange~~ *positive response* system as required by this chapter, the notification center shall renotify any operator 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 after at least 48 hours beginning with 7:00 a.m. the next working day following a locate request or on the date of excavation, the excavator, upon arrival at the site of a proposed excavation, 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 ~~each~~ contact is made to the notification center for the area, *provided that no information has*

183 *been posted to the positive response system or information posted to the positive response system is*
 184 *inconsistent with the clear evidence observed by the excavator.*

185 The operator of any unmarked utility line shall respond within three hours of the excavator's ~~each~~
 186 *contact to the notification center. After the clear evidence of an unmarked utility line is addressed*
 187 *pursuant to the additional contact to the notification center, excavation may proceed. During any*
 188 *excavation subject to this subsection, the excavator shall exercise reasonable care at all times to protect*
 189 *underground utility lines and shall be liable for any damages.*

190 D. The excavator's notification shall be valid for ~~fifteen~~ 15 working days from 7:00 a.m. on the next
 191 working day following ~~notice to the notification center a locate request or 15 working days following a~~
 192 *scheduled excavation date provided to the notification center, whichever is later.* Three working days
 193 before the end of the ~~fifteen-working-day~~ 15-working-day period, or at any time when line-location
 194 markings on the ground become illegible, the excavator intending to excavate shall contact the
 195 notification center and request the re-marking of lines. The operator shall re-mark the lines as soon as
 196 possible; however, the re-marking of the lines shall be completed within ~~forty-eight~~ 48 hours from 7:00
 197 a.m. on the next working day following the request for the re-mark. Such re-marking shall be valid for
 198 an additional ~~fifteen~~ 15 working days from 7:00 a.m. on the next working day following ~~notice to the~~
 199 ~~notification center a locate request.~~

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

204 F. The extent of the excavator's proposed ~~work excavation or demolition~~ shall be a work area that
 205 can be excavated within ~~fifteen~~ 15 working days from 7:00 a.m. on the next working day following
 206 ~~notice to the notification center a locate request.~~ The area covered under each ~~notice locate request~~ shall
 207 not exceed ~~one one-third of a mile.~~

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

215 **§ 56-265.17:3. Procedures for operators in response to a designer notice.**

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

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

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

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

230 4. Respond to the ~~operator-excavator information exchange positive response system~~ by no later than
 231 7:00 a.m. on the sixteenth working day following the designer's ~~notice to the notification center locate~~
 232 ~~request.~~

233 **§ 56-265.18. Notification requirements.**

234 Every ~~locate request and designer notice~~ served by any person on a ~~the~~ notification center shall
 235 contain the following information:

236 1. The name of the individual serving such notice.

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

240 3. The name, physical address, telephone number, and ~~telefacsimile number~~ electronic mailing
 241 address, if available, of the excavator or demolisher, to whom notification can be given.

242 4. The excavator's or demolisher's field telephone number and, if ~~one~~ is available, electronic mailing
 243 address.

244 5. The type and extent of the proposed ~~work excavation or demolition.~~

6. The name of the person for whom the proposed ~~work~~ excavation or demolition is being performed.

§ 56-265.19. Duties of operator; regulations.

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, flags, or a combination thereof. The operator ~~or contract locator~~ shall mark the underground utility line and report the marking status to the ~~excavator-operator information exchange~~ *positive response* system by no later than 7:00 a.m. on the third working day following the excavator's ~~notice to the notification center~~ *locate request*, unless a *scheduled excavation date is provided by the excavator to the notification center* or the operator or contract locator is unable to do so due to extraordinary or exigent circumstances. Any *scheduled excavation date shall not be less than 48 hours nor more than 12 working days from the date of the locate request*. If a *scheduled excavation date is provided by the excavator to the notification center*, the operator or contract locator shall mark the underground utility line and report the marking status to the *positive response* system by no later than 7:00 a.m. on the scheduled day of excavation. Any *locate request made on a day that is not a working day shall be considered as having been submitted to the notification center on the next working day at 7:00 a.m.* If the operator is unable to mark the location within the time allowed under this section due to extraordinary or exigent 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. The deferral to mark for extraordinary or exigent circumstances shall be no longer than 96 hours from 7:00 a.m. on the next working day following ~~notice to the notification center~~ *the locate request*, 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~~ *positive response* system no later than 7:00 a.m. on the third working day following the excavator's ~~notice to the notification center~~ *locate request*.

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 subdivision 2~~ 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. When an operator has knowledge that the operator's abandoned utility lines may be present within the area of the proposed excavation, the operator shall provide a response to the ~~excavator-operator information exchange~~ *positive response* system. Such information regarding abandoned lines shall be for informational purposes only. An operator shall not be liable to any person, or subject to civil penalties, as a result of the operator's providing incorrect information regarding abandoned lines or the subsequent use of such information. The ~~excavator-operator information exchange~~ *positive response* system may refer any person with concerns about the accuracy of information regarding abandoned lines to the appropriate operator.

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

§ 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, notify all member operators whose ~~underground utility~~ lines are ~~located~~ *present* in the area of the proposed project, excavation, or demolition. The notification center shall also indicate the names of those operators being notified to the person providing notice.

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~~ *positive response* 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~~ *positive response* 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.

§ 56-265.24. Duties of excavator.

A. *No excavator shall begin any excavation or demolition before reviewing and heeding the positive response marking status of the excavation area.* Any person excavating within two feet on either side of the staked or marked location of an operator's underground utility line or demolishing in such proximity to an underground utility line that the utility line may be destroyed, damaged, dislocated or disturbed shall take all reasonable steps necessary to properly protect, support and backfill underground utility lines. For excavations not parallel to an existing underground utility line, such steps shall include, but may not be limited to:

1. Exposing the underground utility line to its extremities by hand digging;
2. Not utilizing mechanized equipment within two feet of the extremities of all exposed utility lines; and
3. Protecting the exposed utility lines from damage.

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

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

C. If, *after at least 48 hours beginning with 7:00 a.m. the next working day following a locate request or on the date of excavation*, 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 contact is made to the notification center for the area pursuant to subsection B C of § 56-265.17 and the excavator has verified that no information has been posted to the positive response system or information posted to the positive response system is inconsistent with the clear evidence observed by the excavator.*

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

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

F. With the exception of designers requesting marking of a site, in accordance with § 56-265.17, no person, including operators, shall request marking of a site through a notification center unless excavation shall commence within thirty working days from the date of the original notification to the notification center. Except for counties, cities, and towns, any person who willfully fails to comply with this subsection shall be liable to the operator for three times the cost of marking its utility line, not to exceed \$1,000.

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

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

§ 56-265.24:1. Request to cease operation; immediate threat; penalty.

Subject to the provisions of § 56-265.15:1, any person who knowingly excavates in violation of this chapter and fails or refuses to stop work and cease such excavation when requested to do so by a representative of the Commission's division responsible for enforcement of this chapter who has determined that an immediate threat to safety or property exists is guilty of a Class 6 felony. The representative shall immediately notify the agency with primary law-enforcement responsibility over the area of excavation, as well as the fire marshal, of the threat to safety or property and the request to cease excavation.

§ 56-265.31. Commission to establish advisory committee.

A. The Commission shall establish an advisory committee consisting of representatives of the following entities: Commission staff, utility operator, notification center, excavator, municipality, Virginia Department of Transportation, Board for Contractors, and underground line locator. Persons appointed to the advisory committee by the Commission shall have expertise with the operation of the Underground Utility Damage Prevention Act. The advisory committee shall perform duties which may be assigned by the Commission, including the review of reviewing reports of violations of the chapter, establishing positive response codes for use by the notification center's positive response system, and make making recommendations to the Commission.

B. The members of the advisory committee shall be immune, individually and jointly, from civil liability for any act or omission done or made in performance of their duties while serving as members of such advisory committee, but only in the absence of willful misconduct.

§ 56-265.32. Commission to impose civil penalties for certain violations; establishment of Underground Utility Damage Prevention Special Fund.

A. The Commission may, by judgment entered after a hearing on notice duly served on any person not less than 30 days before the date of the hearing, impose a civil penalty not exceeding \$2,500 \$10,000 for each violation of subsection A of § 56-265.17 and \$5,000 for all other violations of this chapter, if it is proved that the person violated any of the provisions of this chapter as a result of a failure to exercise reasonable care. Any proceeding or civil penalty undertaken pursuant to this section shall not prevent nor preempt the right of any party to obtain civil damages for personal injury or property damage in private causes of action. This subsection shall not authorize the Commission to impose civil penalties on any county, city, town, or other political subdivision. However, the Commission shall inform the counties, cities, towns, and other political subdivisions of reports of alleged violations involving the locality or political subdivision and, at the request of the locality or political subdivision, suggest corrective action.

B. If the Commission asserts there is recurring noncompliance with any of the provisions of this chapter by a county, city, town, or other political subdivision, the Commission, upon written notice to the chairman of such operator's board or, in the case of a city or town, the mayor of such operator's council, and to such operator's chief executive officer, may require a written response by such person or his designee. Such response shall be made within 30 days of the operator's receipt of written notice from the Commission. The response shall confirm that the operator will comply promptly or explain why it disputes any assertion by the Commission of noncompliance. If the operator is not able to return to compliance promptly, the operator shall describe its plan to achieve compliance in a corrective action plan to be submitted to the Commission no later than 60 days after the receipt of the written notice. Following submittal of a corrective action plan, the Commission may convene a hearing for the purpose of receiving additional evidence, determining whether noncompliance has occurred, and determining further suggested corrective action. The Commission may also convene such a hearing if the operator fails to provide a written response or a corrective action plan as required by this subsection, or provides a response that disputes the Commission's assertions. Nothing in this section shall limit the Commission's powers under this chapter with respect to persons who are not counties, cities, towns, or political subdivisions of the Commonwealth.

C. The Underground Utility Damage Prevention Special Fund (hereinafter referred to as Special Fund) is hereby established as a revolving fund to be used by the Commission for administering the regulatory program authorized by this chapter. The Special Fund shall be composed entirely of funds generated by and for the enforcement of this chapter. Enforcement of this chapter also includes education and outreach provided by the Commission for training and educational programs for excavators, operators, utility line locators, and other persons. Excess funds shall be used to support any one or more of the following: (i) public awareness programs established by a notification center pursuant to subsection B of § 56-265.16:1; (ii) training and education programs for excavators, operators, line locators, and other persons; and (iii) programs providing incentives for excavators, operators, line locators, and other persons to reduce the number and severity of violations of the Act. The Commission shall determine the appropriate allocation of any excess funds among such programs, and shall establish required elements for any program established under clause (ii) or (iii).

D. All civil penalties collected pursuant to this section shall be deposited into the Underground

429 Utility Damage Prevention Special Fund. Interest earned on the fund shall be credited to the Special
430 Fund. The Special Fund shall be established on the books of the Commission comptroller and any funds
431 remaining in the Underground Utility Damage Prevention Special Fund at the end of the fiscal year shall
432 not revert to the general fund, but shall remain in the Special Fund.

433 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
434 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
435 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
436 **correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I,**
437 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**
438 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
439 **appropriation cannot be determined for periods of commitment to the custody of the Department**
440 **of Juvenile Justice.**