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HOUSE BILL NO. 182

Offered January 10, 1996

A BILL to amend and reenact §§ 56-265.15, 56-265.15:1, 56-265.19, 56-265.24, and 56-265.31 of the Code of Virginia, relating to the Underground Utility Damage Prevention Act.

Patrons—Fisher; Senator: Howell

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-265.15, 56-265.15:1, 56-265.19, 56-265.24, and 56-265.31 of the Code of Virginia are amended and reenacted as follows:

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

A. As used in this chapter:

"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.

"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.

"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 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.

"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, electronic, 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 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*

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60 storm/sanitary sewer system within any counties, cities, towns or political subdivisions constructed or
61 replaced prior to January 1, 1995. No excavator shall be held liable for the cost to repair damage to any
62 such systems constructed or replaced prior to January 1, 1995, unless such systems are located in
63 accordance with § 56-265.19.

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

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

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

70 § 56-265.15:1. Exemptions; routine maintenance.

71 Nothing in this chapter shall apply to:

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

73 2. The tilling of soil for agricultural purposes.

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

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

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

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

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

88 § 56-265.19. Duties of operator upon notification.

89 A. If a proposed excavation or demolition is planned in such proximity to the underground utility
90 line that the utility line may be destroyed, damaged, dislocated, or disturbed, the operator shall mark the
91 approximate horizontal location of the underground utility line on the ground to within two feet of either
92 side of the underground utility line by means of stakes, paint, or flags no later than forty-eight hours
93 after receiving notice from the notification center and shall report no later than forty-eight hours that the
94 location of the lines has been marked to the notification center's excavator-operator information
95 exchange system. If the operator is unable to mark the location within seventy-two hours due to
96 extraordinary circumstances, the operator shall notify directly the person who proposes to excavate or
97 demolish and shall, in addition, notify the person of the date and time when the location will be marked.
98 Such notification of inability to mark location shall be within seventy-two hours from the original
99 notification, and the deferral to mark for extraordinary circumstances shall be no longer than ninety-six
100 hours, unless a longer time is otherwise agreed upon by the operator and excavator. The operator shall
101 also inform the notification center of any deferral.

102 B. If a proposed excavation or demolition is not planned in such proximity to the operator's
103 underground utility lines that the utility line may be damaged, the operator shall so report to the
104 notification center's excavator-operator information exchange system within forty-eight hours of receiving
105 notice from the notification center.

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

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

112 § 56-265.24. Duties of excavator.

113 A. Any person excavating within two feet of either side of the staked or marked location of an
114 operator's underground utility line or demolishing in such proximity to the underground utility line that
115 the utility line may be destroyed, damaged, dislocated or disturbed, shall take all reasonable steps
116 necessary to properly protect, support and backfill underground utility lines. This protection shall include
117 but may not be limited to hand digging, within the limits of the planned excavation or demolition,
118 starting two feet of either side of the extremities of the underground utility line for other than parallel
119 type excavations and at reasonable distances along the line of excavation for parallel type excavations.

120 B. If the markings locating the underground lines become illegible due to time, weather, construction,
121 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 C of § 56-265.17.

C. 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 an additional call is made to the notification center for the area pursuant to subsection B of § 56-265.17.

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. No person, including operators, shall request marking of a site unless excavation is scheduled to commence within fifteen working days. Except for counties, cities, and towns, any person who willfully fails to comply with this subdivision shall be liable to the operator for three times the cost of marking its utility line. The total amount of punitive damages awarded under this section, as distinguished from actual damages, shall not exceed \$1,000 in any single cause of action.

§ 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 reports of violations of the chapter, and make 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, provided that such act or omission is not done or made in bad faith or with malicious intent.