

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend and reenact §§ 56-265.15 and 56-265.32 of the Code of Virginia and to amend the  
3 Code of Virginia by adding a section numbered 56-265.19:1, relating to the Underground Utility  
4 Damage Prevention Act; sewer laterals.

5 [H 1230]  
6 Approved

7 **Be it enacted by the General Assembly of Virginia:**  
8 **1. That §§ 56-265.15 and 56-265.32 of the Code of Virginia are amended and reenacted and that**  
9 **the Code of Virginia is amended by adding a section numbered 56-265.19:1 as follows:**

10 § 56-265.15. Definitions; calculation of time periods.

11 A. As used in this chapter:

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

14 "Commission" means the State Corporation Commission.

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

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

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

24 "Designer" means any licensed professional designated by the project owner who designs government  
25 projects, commercial projects, residential projects consisting of ~~twenty-five~~ 25 or more units, or  
26 industrial projects, which projects require the approval of governmental or regulatory authorities having  
27 jurisdiction over the project area.

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

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

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

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

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

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

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

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

56 "Private sewer lateral" means a privately owned, legally authorized utility line that transports

57 wastewater from one or more buildings to a sewer system utility line owned by a sewer system operator.  
58 "Private water lateral" means a privately owned, legally authorized utility line that supplies water  
59 from a water system utility line owned by a water system operator to one or more buildings or  
60 properties.

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

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

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

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

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

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

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

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

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

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

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

92 § 56-265.19:1. Private sewer laterals and sewer system laterals.

93 A. Notwithstanding any provision of this chapter to the contrary, the protection of sewer system  
94 laterals and private sewer laterals shall be implemented as provided in this section. When an excavation  
95 is to take place within a public right-of-way or public sewer easement, the sewer system operator shall  
96 exercise reasonable care to mark the approximate horizontal location of sewer system laterals within the  
97 public right-of-way or public sewer easement as provided in § 56-265.19.

98 B. When (i) an excavation is to take place outside the public right-of-way or public sewer easement,  
99 (ii) the excavation involves the installation or maintenance of gas or electric utility lines by trenchless  
100 technology, (iii) the potential for a conflict with a sewer lateral exists, and (iv) sewer system laterals are  
101 located in the public right-of-way:

102 1. The sewer system operator shall exercise reasonable care to mark the approximate horizontal  
103 location of sewer system laterals by:

104 a. Marking the location of the sewer system lateral where it meets the edge of the right-of-way or  
105 public sewer easement, if known; or

106 b. If the location described in subdivision B 1 a is unknown, marking the location where the sewer  
107 system lateral connects to the sewer system main.

108 2. When the sewer system laterals have been marked in accordance with subdivision B 1 and the  
109 excavator reasonably concludes that a private sewer lateral may be impacted by the planned excavation  
110 based upon visual evidence, knowledge of the proposed excavation site, or other information available  
111 to the excavator, the excavator shall exercise reasonable care to protect the private sewer lateral. For  
112 purposes of this subdivision, reasonable care includes the following actions:

113 a. Reviewing information provided by the private sewer lateral owner;

114 b. Meeting with the sewer system operator on-site, if the sewer system operator has additional  
115 information to provide about the location of private sewer laterals; or

116 c. Conducting a visual inspection of the proposed excavation site in an effort to determine the  
117 probable path of the sewer lateral.

118 C. When (i) an excavation is to take place within or outside the public right-of-way or public sewer  
 119 easement, (ii) the excavation involves the installation or maintenance of gas or electric utility lines by  
 120 trenchless technology, (iii) the potential for a conflict with a sewer lateral exists, and (iv) private sewer  
 121 laterals are located in the public right-of-way or easement:

122 1. The sewer system operator shall assist the excavator by one of the following methods, unless the  
 123 operator marks private sewer laterals in the manner required for its sewer system laterals under  
 124 subsection B:

125 a. Provide copies of the best reasonably available records regarding the location of the private  
 126 sewer laterals by electronic message, mail, facsimile, or other delivery method. If an excavation affects  
 127 25 or more private sewer laterals, the sewer system operator's response shall be in accordance with the  
 128 timelines set forth in § 56-265.17:3. If the provision of records required by this subsection imposes an  
 129 unreasonable burden or substantial cost upon a sewer system operator, the excavator and the sewer  
 130 system operator shall endeavor in good faith to reach an agreement to provide the sewer system  
 131 operator with additional time to provide the records or any other mutually agreeable accommodation.

132 b. Provide the best reasonably available records on the Internet or another readily accessible  
 133 electronic system in order that the records may be retrieved by the excavator from a remote location. If  
 134 the sewer system operator has implemented such a system, then the sewer system operator shall have no  
 135 further obligations to provide records under subdivision C 1 a.

136 c. If the sewer system operator has no such records, but has additional information to provide about  
 137 the location of private sewer laterals, then the sewer system operator shall notify the excavator of such  
 138 information and, upon request, either meet with the excavator on-site or convey such information to the  
 139 excavator.

140 2. When the records have been made available in accordance with subdivision C 1 and the excavator  
 141 reasonably concludes that a private sewer lateral may be impacted by the planned excavation based  
 142 upon visual evidence, knowledge of the proposed excavation site, or other information available to the  
 143 excavator, the excavator shall exercise reasonable care to protect the private sewer lateral. For  
 144 purposes of this subdivision, reasonable care includes the following actions:

145 a. Reviewing information provided by the sewer system operator;

146 b. Reviewing information provided by the private sewer lateral owner;

147 c. Meeting with the sewer system operator on-site if the sewer system operator has additional  
 148 information to provide about the location of private sewer laterals; or

149 d. Conducting a visual inspection of the proposed excavation site in an effort to determine the  
 150 probable path of the sewer lateral.

151 D. Sewer system operators shall mark utility lines, other than sewer system laterals and private  
 152 sewer laterals, as provided by other sections of this chapter.

153 E. Water system operators shall mark water system utility lines as provided by other sections of this  
 154 chapter, except that a water system operator shall not be responsible for marking private water laterals.

155 F. Records regarding the location of private sewer laterals provided on the Internet or otherwise  
 156 made accessible by an electronic system pursuant to subdivision C 1 b shall also be accessible to other  
 157 public utilities and cable operators or excavators working on their behalf for purposes of compliance  
 158 with this chapter.

159 G. In all excavations, the excavator shall exercise reasonable care to protect underground utility  
 160 lines.

161 § 56-265.32. Commission to impose civil penalties for certain violations; establishment of  
 162 Underground Utility Damage Prevention Special Fund.

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

173 B. If the Commission asserts there is recurring noncompliance with any of the provisions of this  
 174 chapter by a county, city, town, or other political subdivision, the Commission, upon written notice to  
 175 the chairman of such operator's board or, in the case of a city or town, the mayor of such operator's  
 176 council, and to such operator's chief executive officer, may require a written response by such person or  
 177 his designee. Such response shall be made within 30 days of the operator's receipt of written notice  
 178 from the Commission. The response shall confirm that the operator will comply promptly or explain why

179 *it disputes any assertion by the Commission of noncompliance. If the operator is not able to return to*  
180 *compliance promptly, the operator shall describe its plan to achieve compliance in a corrective action*  
181 *plan to be submitted to the Commission no later than 60 days after the receipt of the written notice.*  
182 *Following submittal of a corrective action plan, the Commission may convene a hearing for the purpose*  
183 *of receiving additional evidence, determining whether noncompliance has occurred, and determining*  
184 *further suggested corrective action. The Commission may also convene such a hearing if the operator*  
185 *fails to provide a written response or a corrective action plan as required by this subsection, or*  
186 *provides a response that disputes the Commission's assertions. Nothing in this section shall limit the*  
187 *Commission's powers under this chapter with respect to persons who are not counties, cities, towns, or*  
188 *political subdivisions of the Commonwealth.*

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

199 E D. All civil penalties collected pursuant to this section shall be deposited into the Underground  
200 Utility Damage Prevention Special Fund. Interest earned on the fund shall be credited to the Special  
201 Fund. The Special Fund shall be established on the books of the Commission comptroller and any funds  
202 remaining in the Underground Utility Damage Prevention Special Fund at the end of the fiscal year shall  
203 not revert to the general fund, but shall remain in the Special Fund.

204 **2. That the provisions of this act shall become effective on January 1, 2011.**