

LD2912845

HOUSE BILL NO. 409

Offered January 21, 1994

A BILL to amend and reenact §§ 56-265.15, 56-265.16:1 through 56-265.19 and 56-265.21 through 56-265.25 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 10 of Title 56 sections numbered 56-265.15:1, 56-265.30, 56-265.31 and 56-265.32; and to repeal §§ 56-265.20 and 56-265.26 of the Code of Virginia, relating to the Underground Utility Damage Prevention Act; penalties.

Patrons—Mayer, Cohen, Diamonstein, Giesen, Hargrove, Harris, Heilig, Jones, J.C., Keating, Morgan, O'Brien, Parrish, Plum, Purkey, Tata, Van Landingham and Woodrum; Senators: Colgan, Holland, R.J., Miller, Y.B. and Schewel

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-265.15, 56-265.16:1 through 56-265.19 and 56-265.21 through 56-265.25 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 10 of Title 56 sections numbered 56-265.15:1, 56-265.30, 56-265.31 and 56-265.32 as follows:

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

A. As used in this chapter:

"Commission" means the State Corporation Commission.

1. "Damage" ~~shall mean~~ 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.

2. "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.

3. "Emergency" means ~~any condition constituting a clear and present danger to life or property by reason of escaping of any material or substance transported by means of a utility line, as hereinafter defined, or by reason of exposed wires or other breaks or defects in an operator's utility line; or in the case of the state highway systems or streets and roads maintained by political subdivisions, where the use of such highways, roads, streets or other public ways is, in the judgment of duly authorized officials of the State Highway and Transportation Department or such political subdivisions, impaired by an unforeseen occurrence which necessitates repair beginning immediately after such occurrence 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.~~

4. "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; ~~but not including the tilling of the soil for agricultural purposes.~~

"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.

5. "Notify," "notice" or "notification" ~~mean~~ means the completed delivery of information to the person to be notified, and the receipt of same by such person to be notified within the time limits prescribed in this chapter. When the person to be notified is an operator, the notification shall be made to the person whose name is on file pursuant to § 56-265.16, and, when the notification is to be made by an operator in response to a notification it has received, such notification shall be made to the same person who notified the operator. Notification may be either orally or in writing, with written notification to be made by hand delivery, telegram, United States mail or by United States certified mail, ~~return receipt requested 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.~~

6. "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

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60 transmit, within one hour of receipt, notices of proposed excavation to member operators by teletype,
61 telecopy, personal computer, or telephone.

62 7. "Operator" means any person who *owns*, furnishes or transports materials or services by means of
63 a utility line; ~~provided, however, that the meaning of the term "operator" shall not include the operation~~
64 ~~of a gravity storm or sanitary sewer system by the City of Richmond.~~

65 8. "Person" means any individual, *operator*, firm, joint venture, partnership, corporation, association,
66 municipality, or other political subdivision, governmental unit, department or agency, and ~~shall include~~
67 ~~includes~~ any trustee, receiver, assignee, or personal representative thereof; ~~provided, however, that~~
68 ~~nothing in this chapter shall apply to any excavation done by the owner of property when said~~
69 ~~excavation is made entirely on such land; provided there is no encroachment on any operator's~~
70 ~~rights-of-way or easements; provided, further, that nothing in this chapter shall apply to any excavation~~
71 ~~done by a railroad when said excavation is made entirely on the land which the railroad owns and on~~
72 ~~which the railroad operates; provided there is no encroachment on any operator's rights-of-way or~~
73 ~~easements.~~

74 9. "Utility line" means any item of public or private property which is buried or placed below ground
75 or submerged for use in connection with the storage or conveyance of water, sewage, electronic,
76 ~~telephonic, or telegraphic communications~~ *telecommunications*, electric energy, cable television, oil,
77 petroleum products, gas, or other substances, and ~~shall include~~ *includes* but is not be limited to pipes,
78 sewers, ~~combination storm/sanitary sewer systems~~, conduits, cables, valves, lines, wires, manholes,
79 attachments, and those portions of poles below ground. The term "sewage" as used herein ~~shall~~ *does* not
80 include any gravity storm or sanitary sewer system ~~within the City of Richmond~~ *drainage systems*.

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

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

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

88 § 56-265.15:1. Exemptions; routine maintenance.

89 A. Nothing in this chapter shall apply to:

90 1. Any excavation done by the owner of property when excavation is made entirely on such land,
91 provided there is no encroachment on any operator's rights-of-way or easements.

92 2. The tilling of soil for agricultural purposes.

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

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

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

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

105 § 56-265.16:1. Operators to join notification centers; certification.

106 A. Every operator, including counties, cities and towns, but excluding the Department of
107 Transportation, having the right to bury underground utility lines shall join a *the* notification center for
108 the area.

109 B. ~~Except as provided herein, each~~ Every notification center shall be certified by the State
110 Corporation Commission. Any corporation desiring to serve as the notification center for an area of the
111 Commonwealth may apply to the State Corporation Commission to be certified as the notification center
112 for that area. The State Corporation Commission shall have authority to grant, amend, or revoke
113 certificates under regulations which it may adopt relating to certification. ~~However, any notification~~
114 ~~center which was engaged in the business of notification as of January 1, 1989, shall not be required to~~
115 ~~be certified by the State Corporation Commission and none of the provisions of this section shall be~~
116 ~~applicable to such a notification center. A notification center shall maintain an excavator-operator~~
117 ~~information exchange system in accordance with notification center certification regulations promulgated~~
118 ~~by the State Corporation Commission. The members of a notification center shall be responsible for~~
119 ~~developing and implementing a public awareness program to assure that all parties affected by this~~
120 ~~chapter shall be aware of their responsibilities. There shall be only one notification center certified for~~
121 ~~each geographic area defined by the State Corporation Commission.~~

C. Each notification center shall file with the clerk of the circuit court of the county or city in which the operator's lines are located, on behalf of all participating operators, its name, address and telephone number, and such information shall be kept current.

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

A. No person, *including operators*, shall make or begin any excavation or demolition without first notifying at least ~~forty-eight hours but no more than ten days~~, excluding Saturdays, Sundays, and legal state and national holidays, prior to the commencement of the proposed excavation or demolition, or within such time as agreed upon in writing at any preconstruction meeting, the notification center for that area. Notice to the notification center shall be deemed to be notice to each operator who is a member of that notification center. ~~When an operator requests a person to perform work with less than forty-eight hours' notice, the operator shall be required to meet the notification requirements of this section.~~ The notification center shall provide the excavator with the identity of utilities that will be notified of the proposed excavation or demolition. An excavator who willfully fails to notify the notification center of 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 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. Notification as provided in subsection A of this section shall be valid for ten working days and may be extended for one additional ~~ten-working-day period~~ upon request to the notification center at least forty-eight hours prior to expiration of the original ~~ten-working-day period~~. Except in the case of an emergency as defined in § 56-265.15, or if informed by the notification center that no operators are to be notified, the excavator shall wait at least forty-eight hours following 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.

If any utilities fail 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, 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.

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 utility line shall respond within three hours of the excavator's call to the notification center.

C. The excavator's notification shall be valid for fifteen working days from the time of notification to the notification center. Two 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 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 the request for the re-mark. Such re-marking shall be valid for an additional fifteen working days from the time of request.

D. 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.

§ 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 of § 56-265.17.*

3. The name, address and , 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.

7. ~~The approximate date and time when the work is to begin.~~

§ 56-265.19. Duties of operator upon notification.

A. If it is determined by an operator that a proposed excavation or demolition is planned within five feet of an underground utility line as measured in the horizontal plane, or if a proposed excavation or demolition by blasting is planned in such proximity to the underground utility line that the utility line may be destroyed, damaged, dislocated, or disturbed, the operator shall make at least two attempts to notify the person who proposes to excavate or demolish and 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 other suitable means within forty-eight hours after the request, excluding Saturdays, Sundays, and legal state and national holidays 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. If one of the attempted notifications is telegram, or mailgram sent, or written notice left, at the address of the excavator or demolisher, as such address appears on a notification under § 56-265.18, or in a current telephone book or in another public information source if such notification contains no address, such notice shall be deemed evidence of a sufficient attempt. In the case of the operator is unable to mark the location within seventy-two hours due to extraordinary circumstances, if the operator is unable to mark the location within forty-eight hours, excluding Saturdays, Sundays, and legal state and national holidays, 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 twenty-four seventy-two hours from the original notification, and the deferral to mark for extraordinary circumstances shall be within no longer than ninety-six hours, 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.

B-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.

§ 56-265.21. Marking by color.

In marking the approximate location of underground utility lines the operator shall follow or proposed excavation if required pursuant to subsection D of § 56-265.17 the following color coding described herein shall be used:

UTILITY AND TYPE OF PRODUCT	IDENTIFYING COLOR OR EQUIVALENT
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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
Telephone & Telegraph 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 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.

§ 56-265.23. Exemption for roadway maintenance operations by the Virginia Department of Transportation and certain counties.

Persons and operators excavating for routine maintenance, including "Patch" type paving, will not be required to comply with the notification and marking procedures of §§ 56-265.17, 56-265.18, 56-265.19, and 56-265.20 if: *Employees of the Virginia Department of Transportation acting within the scope of their employment, and certain employees of those counties which maintain their secondary roads in accordance with § 33.1-23.5:1 acting within the scope of their employment, excavating entirely within the right-of-way of a public road, street or highway of the Commonwealth shall not be required to comply with the provisions of this chapter if reasonable care is taken to protect the utility lines placed in the right-of-way by permit and if they:*

1. ~~They excavate~~ *Excavate* within the limits of the original excavation; ~~or~~ on the traveled way, shoulders or drainage features of a public road, street, or highway and any excavation does not exceed ~~twenty-four~~ *eighteen inches (0.45 meter)* in depth below the grade existing prior to such excavation; or

2. ~~They are~~ *Are* replacing previously existing structures in their previous locations.

§ 56-265.24. Duties of excavator.

A. Any person excavating within two feet of either side of the staked or marked location of an operator's underground utility line or demolishing ~~by blasting~~ in such proximity to the 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. This protection shall include but may not be limited to hand digging, within the limits of the planned excavation or demolition, starting two feet of either side of the extremities of the underground utility line for other than parallel type excavations and at reasonable distances along the line of excavation for parallel type excavations.

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 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.*

B-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.

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

§ 56-265.25. Liability of operator and excavator; penalties.

A. 1. If any underground utility line is damaged ~~by any person who has failed as a proximate result of a person's failure~~ to comply with any provision of §§ 56-265.17, 56-265.18 and 56-265.20 *this chapter*, that person shall be liable to the operator of the underground utility line for the total cost to repair the damaged facilities as that cost is normally computed by the operator, provided the operator (i) is a member of the notification center covering the area in which the damage to the utility line takes place, and (ii) ~~upon receiving proper notice in accordance with this chapter, has complied with the provisions of § 56-265.19.~~ The liability of such a person for such damage shall not be limited by reason of this chapter.

304 2. Any person who willfully fails to notify the notification center of proposed excavation or
305 demolition shall be liable to the operator as provided in subsection A of § 56-265.17.

306 2.3. If, after receiving proper notice, an operator ~~shall fail~~ fails to discharge a duty imposed by any
307 provision of this chapter and an underground utility line of such operator is damaged, as a proximate
308 result of the operator's failure to discharge such duty, by any person who has complied with all of the
309 provisions of this chapter, such person shall not be so liable; ~~or~~ .

310 3.B. If an underground utility line of an operator is damaged, *as the proximate result of the*
311 *operator's failure to comply with any provision of this chapter*, by any person; who has complied with
312 all the provisions of this chapter as ~~the proximate result of the operator's failure to comply with any~~
313 ~~provision of this chapter~~, the operator shall be liable to such person for the total cost to repair any
314 damage to the equipment or facilities of such person resulting from such damage to the operator's
315 underground utility line.

316 B.C. Except as specifically set forth herein, the provisions of this chapter shall not be construed to
317 either abrogate any rights, duties, or remedies existing under law or create any rights, duties, defenses,
318 or remedies in addition to any rights, duties, or remedies existing under law.

319 § 56-265.30. Authority of the State Corporation Commission.

320 The Commission shall enforce the provisions of the Underground Utility Damage Prevention Act as
321 set out in this chapter. The Commission may promulgate any rules or regulations necessary to
322 implement the Commission's authority to enforce this chapter.

323 § 56-265.31. Commission to establish advisory committee.

324 The Commission shall establish an advisory committee consisting of representatives of the following
325 entities: Commission staff, utility operator, notification center, excavator, municipality, Virginia
326 Department of Transportation, Board for Contractors, and underground line locator. Persons appointed
327 to the advisory committee by the Commission shall have expertise with the operation of the
328 Underground Utility Damage Prevention Act. The advisory committee shall perform duties which may be
329 assigned by the Commission, including the review of reports of violations of the chapter, and make
330 recommendations to the Commission.

331 § 56-265.32. Commission to impose civil penalties for certain violations; establishment of
332 Underground Utility Damage Prevention Special Fund.

333 A. The Commission may, by judgment entered after a hearing on notice duly served on any person
334 not less than thirty days before the date of the hearing, impose a civil penalty not exceeding \$2,500 for
335 each violation, if it is proved that the person violated any of the provisions of this chapter, except
336 § 56-265.16:1. Any proceeding or civil penalty undertaken pursuant to this section shall not prevent nor
337 preempt the right of any party to obtain civil damages for personal injury or property damage in
338 private causes.

339 B. The Underground Utility Damage Prevention Special Fund (hereinafter referred to as "Special
340 Fund") is hereby established as a revolving fund to be used by the Commission for administering the
341 regulatory program authorized by this chapter. The Special Fund shall be composed entirely of funds
342 generated by the enforcement of this chapter. Excess funds shall be used to support any public
343 awareness programs established by a notification center pursuant to subsection B of § 56-265.16:1. All
344 civil penalties collected pursuant to this chapter shall be deposited into the Underground Utility
345 Damage Prevention Special Fund. Interest earned on the fund shall be credited to the Special Fund. The
346 Special Fund shall be established on the books of the Commission comptroller and any funds remaining
347 in the Underground Utility Damage Prevention Special Fund at the end of the fiscal year shall not
348 revert to the general fund, but shall remain in the Special Fund.

349 2. That §§ 56-265.20 and 56-265.26 of the Code of Virginia are repealed.

350 3. That the provisions of this act shall become effective January 1, 1995.