

South Carolina General Assembly
119th Session, 2011-2012

R66, S705

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(R66, S705)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 36 TO TITLE 58 SO AS ENACT THE "UNDERGROUND FACILITY DAMAGE PREVENTION ACT", TO PROVIDE DEFINITIONS, TO PROVIDE LIMITS ON COSTS RELATED TO THIS CHAPTER, TO REQUIRE THE CREATION OF A NOTIFICATION CENTER ASSOCIATION PROVIDING FOR RECEIVING NOTICE OF EXCAVATION OR DEMOLITION IN A DEFINED AREA, TO CREATE AND SPECIFY THE MEMBERSHIP OF A BOARD TO GOVERN THE NOTIFICATION CENTER, TO PROVIDE MISCELLANEOUS REQUIREMENTS AND DUTIES RELATED TO THE NOTIFICATION CENTER, TO REQUIRE CERTAIN NOTICE RELATED TO EXCAVATIONS, DEMOLITIONS, AND DAMAGE RESULTING DURING AN EXCAVATION OR DEMOLITION, TO PROVIDE EXCEPTIONS TO THE NOTICE REQUIREMENTS AND OTHER PROVISIONS OF THIS CHAPTER, AND TO PROVIDE PENALTIES FOR A VIOLATION OF THIS CHAPTER; AND TO REPEAL SECTIONS 58-35-10, 58-35-20, 58-35-30, 58-35-40, 58-35-50, 58-35-60, 58-35-70, 58-35-80, 58-35-90, 58-35-100, 58-35-110, AND 58-35-120 ALL RELATING TO THE UNDERGROUND UTILITY DAMAGE PREVENTION ACT.

Be it enacted by the General Assembly of the State of South Carolina:

Underground Facility Damage Prevention Act

SECTION 1. Title 58 of the 1976 Code is amended by adding:

“CHAPTER 36

South Carolina Underground Facility Damage Prevention Act

Section 58-36-10. This chapter may be cited as the Underground Facility Damage Prevention Act.

Section 58-36-20. For purposes of this chapter, the following words and terms are defined as follows:

(1) ‘APWA’ means the American Public Works Association or successor organization or entity.

(2) ‘Association’ means a group of operators, or their representatives, formed for the purpose of operating a notification center.

(3) ‘Business continuation plan’ means a plan that includes actions to be taken in an effort to provide uninterrupted service during catastrophic events.

(4) ‘Damage’ means the substantial weakening of structural or lateral support of a facility, penetration or destruction of protective coating, housing, or other protective device of a facility and the partial or complete severance of a facility.

(5) ‘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.

(6) ‘Designer’ means any architect, engineer, or other person who prepares or issues a drawing or blueprint for a construction or other project that requires excavation or demolition work.

(7) ‘Design request’ means a communication to the notification center in which a request for identifying existing facilities for advance planning purposes is made. A design request may not be used for excavation purposes.

(8) ‘Emergency’ means a sudden or unforeseen event involving a clear and imminent danger to life, health, or property; the interruption of essential utility services; or the blockage of transportation facilities, including highway, rail, water, and air, which require immediate action.

(9) ‘Excavate’ or ‘excavation’ means an operation for the purpose of the movement or removal of earth, rock, or other materials in or on the ground by use of mechanized equipment or by discharge of

explosives and including augering, backfilling, digging, ditching, drilling, well drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling.

(10) 'Excavator' means any person engaged in excavation or demolition.

(11) 'Extraordinary circumstances' means circumstances which make it impractical or impossible for the operator to comply with the provisions of this chapter. Extraordinary circumstances may include hurricanes, tornadoes, floods, ice, snow, and acts of God.

(12) 'Facility' means any underground line, underground system, or underground infrastructure used for producing, storing, conveying, transmitting, or distributing communication, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam, or sewerage. Provided there is no encroachment on any operator's right-of-way, easement, or permitted use and for purposes of this act, the following are not considered as an underground 'facility': petroleum storage systems subject to regulation pursuant to Chapter 2, Title 44; septic tanks as regulated by Chapter 55, Title 44; swimming pools and irrigation systems. For purposes of this act, and provided there is no encroachment on any operator's right-of-way, easement, or permitted use, liquefied petroleum gas 'systems' as defined in Section 40-82-20(8) do not constitute an underground 'facility' unless such a system is subject to Title 49 C.F.R. Part 192.

(13) 'Locator' means a person that identifies and marks facilities for operators.

(14) 'Mechanized equipment' means equipment operated by means of mechanical power, including, but not limited to, trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, and other equipment used for plowing-in or pulling-in cable or pipe.

(15) 'Non-mechanized equipment' means hand tools.

(16) 'Notification center' means an entity that administers a system through which a person can notify operators of proposed excavations or demolitions.

(17) 'Operator' means any person, public utility, communications and cable service provider, municipality, electrical utility, electric and telephone cooperatives, and the South Carolina Public Service Authority as defined in Titles 5, 6, 33, and 58 of the South Carolina Code of Laws, who owns or operates a facility for commercial purposes in the State of South Carolina.

(18) 'Person' means any individual, owner, corporation, partnership, association, or any other entity organized under the laws of any state;

any subdivision or instrumentality of a state; and any authorized representative thereof.

(19) 'Positive response' means an automated information system that allows excavators, locators, operators, and other interested parties to determine the status of a locate request until excavation or demolition is complete.

(20) 'Subaqueous' means a facility that is under a body of water, including rivers, streams, lakes, waterways, swamps, and bogs.

(21) 'Tolerance zone' means:

(a) if the diameter of the facility is known, the distance of one-half of the known diameter plus twenty-four inches on either side of the designated center line;

(b) if the diameter of the facility is not marked, twenty-four inches on either side of the outside edge of the mark indicating a facility; or

(c) for subaqueous facilities, a clearance of fifteen feet on either side of the indicated facility.

(22) 'Working day' means every day, except Saturday, Sunday, and legal holidays as defined by South Carolina law.

Section 58-36-30. (A) The provisions in this chapter supersede and preempt any ordinance enacted by a local political subdivision that purports to:

(1) require operators to obtain permits from local governments in order to identify facilities;

(2) require pre-marking or marking of facilities;

(3) specify the types of paint or other marking devices that are used to identify facilities; or

(4) require removal of marks.

(B) A permit issued pursuant to law authorizing an excavation or demolition shall not be deemed to relieve a person from the responsibility for complying with the provisions of this chapter.

Section 58-36-40. (A) Any costs or expenses associated with compliance by an excavator with the requirements in this chapter applicable to excavators shall not be charged to any operator. Any costs or expenses associated with compliance by an operator with the requirements in this chapter applicable to operators shall not be charged to any excavator. Neither the association nor the notification center may impose any charge on any person giving notice to the notification center.

(B) This section shall not excuse an operator or excavator from liability for any damage or injury for which it would be responsible under applicable law.

Section 58-36-50. (A) Operators must maintain an association that will operate a notification center providing for the receipt of notice of excavation or demolition in a defined geographical area. The notification center must be governed by a board of directors composed of operators and damage prevention stakeholders that are members of the association. The by-laws of the association must provide for a board of directors with the following membership:

(1) one representative from each of the six facility members that receive the highest annual notification transmission volumes from the notification center;

(2) one representative of a public water or sewer company;

(3) one representative of an electric cooperative;

(4) one representative of an investor-owned natural gas utility;

(5) one representative of a company that transports hazardous liquids as defined in 49 U.S.C. 60101(a)(4);

(6) one representative of a telephone cooperative;

(7) one representative of a rural water district;

(8) one representative of the South Carolina Association of Municipal Power Systems;

(9) one representative of the South Carolina Association of Counties;

(10) one representative of a company licensed in South Carolina for facility contract locating;

(11) one representative of the South Carolina Department of Transportation;

(12) one representative of a company licensed in South Carolina for construction of roads and highways;

(13) one representative of a company licensed in South Carolina for construction of facilities;

(14) one representative of a company licensed in South Carolina for landscaping or irrigation;

(15) one representative of a company licensed in South Carolina as a general contractor or as a subcontractor in the construction industry;

(16) three representatives employed by different facility operators in South Carolina; and

(17) one representative of a special purpose district providing natural gas.

In choosing members of the association to fill these board positions, the association will solicit nominations from the membership of the association and industry organizations representing entities designated by this subsection. The South Carolina 811 board of directors existing on the effective date of this act must elect the board as required by the provisions of this subsection within nine months following the effective date of this act.

(B) All operators are required to join the association and utilize the services of the notification center.

(1) Operators that are members of the existing association on the effective date of this act must remain members.

(2) Operators with more than fifty thousand customers or one thousand miles of facilities who are not members must join the association within one year from the effective date of this act.

(3) Operators with more than twenty-five thousand customers or five hundred miles of facilities, who are not members, must join the association within two years from the effective date of this act.

(4) All operators that do not meet the thresholds described in items (1), (2), or (3) must join the association within three years from the effective date of this act.

(C) There shall be only one notification center for the State of South Carolina.

(D) The association shall provide for a reasonable way of apportioning the cost of operating the notification center among its members.

(E) The notification center shall receive notices from persons with intention of performing excavation or demolition and transmit to the operators the following information:

(1) the name, address, and telephone number of the person providing the notice, and, if different, the excavator completing the proposed excavation or demolition;

(2) the start date of the proposed excavation or demolition;

(3) the anticipated duration of the proposed excavation or demolition;

(4) the type of proposed excavation or demolition to be conducted;

(5) the location of the proposed excavation or demolition; and

(6) whether or not explosives are to be used in the proposed excavation or demolition.

(F) The notification center must maintain a record of the notices received pursuant to subsection (E), and information regarding operators failing to provide a response pursuant to subsection (E), and

excavators failing to provide notice pursuant to Section 58-36-60(C). This record must be maintained for at least three years.

(G) The notification center shall receive and transmit notices.

(H) The notification center must have a business continuation plan.

(I) The notification center shall provide a positive response system that must be fully operational within three years from the effective date of this act.

(J) The notification center shall file with the South Carolina Public Service Commission the telephone number and address of the notification center and a list of the names and addresses of each operator that received service from the notification center. This filing must be made no later than April fifteenth of each year.

(K) The notification center shall provide to the Chairman of the House of Representatives Labor, Commerce and Industry Committee and the Chairman of the Senate Judiciary Committee a report regarding the activities and operations of the notification center for the preceding calendar year. This report must include, but is not limited to, the following information:

(1) average speed of answer;

(2) abandoned call rate;

(3) transmit times;

(4) total number of locate requests;

(5) total number of transmissions to operators of locate requests;

and

(6) business continuation plan.

This report must be made no later than April fifteenth of each year.

(L) The notification center must establish and operate a damage prevention training program.

Section 58-36-60. (A) Before commencing any excavation or demolition, the person responsible for the excavation or demolition shall provide, or cause to be provided, notice to the notification center of his intent to excavate or demolish. Notice for any excavation or demolition that does not involve a subaqueous facility must be given within three to twelve full working days before the proposed commencement date of the excavation or demolition. Notice for any excavation or demolition in the vicinity of a subaqueous facility must be made within ten to twenty full working days before the proposed commencement date of the excavation or demolition.

(B) Notice given pursuant to subsection (A) shall expire within fifteen working days after the date of notice. No excavation or demolition may continue after this fifteen-day period unless the person

responsible for the excavation or demolition provides a subsequent notice pursuant to subsection (A).

(C) The notice to the notification center must contain:

(1) the name, address, and telephone number of the person providing the notice;

(2) the anticipated start date of the proposed excavation or demolition;

(3) the anticipated duration of the proposed excavation or demolition;

(4) the type of proposed excavation or demolition to be conducted;

(5) the location of the proposed excavation or demolition, not to exceed one-quarter mile in geographical length, or five adjoining addresses; and

(6) whether or not explosives are to be used in the proposed excavation or demolition.

(D) When demolition of a building is proposed, operators shall be given reasonable time to remove or protect their facilities before demolition is commenced.

(E) An excavator must comply with the following:

(1) When the excavation site cannot be clearly and adequately identified within the area described in the notice, the excavator must designate the route, specific area to be excavated, or both, by pre-marking before the operator performs a locate. Pre-marking must be made with white paint, flags, or stakes.

(2) Check the notification center's positive response system prior to excavating or demolishing to ensure that all operators have responded and that all facilities that may be affected by the proposed excavation or demolition have been marked.

(3) Plan the excavation or demolition to avoid damage to or minimize interference with facilities in and near the construction area.

(4) Excavation or demolition may begin prior to the specified waiting period if the excavator has confirmed that all operators responded with an appropriate positive response.

(5) If an operator declares extraordinary circumstances, the excavator must not excavate or demolish until after the time and date that the operator provided in its response.

(6) An operator's failure to respond to the positive response system does not prohibit the excavator from proceeding, provided there are no visible indications of a facility, such as a pole, marker, pedestal, or valve at the proposed excavation or demolition site. However, if the excavator is aware of or observes indications of an unmarked facility, the excavator must not begin excavation or demolition until an

additional call is made to the notification center detailing the facility, and an arrangement is made for the facility to be marked by the operator within three hours from the time the additional call is received by the notification center.

(7) Beginning on the date provided in the excavator's notice to the notification center, the excavator shall preserve the staking, marking, or other designation until no longer required. When a mark is no longer visible, but the work continues in the vicinity of the facility, the excavator must request a re-mark from the notification center to ensure the protection of the facility.

(8) The excavator shall notify the notification center's positive response system when the excavation or demolition is complete.

(9) An excavator may not perform any excavation or demolition within the tolerance zone unless the following conditions are met:

(a) no use of mechanized equipment, except non-invasive equipment specifically designed or intended to protect the integrity of the facility, within the marked tolerance zone of an existing facility until:

(i) the excavator has visually identified the precise location of the facility, or has visually confirmed that no facility is present up to the depth of excavation; and

(ii) reasonable precautions are taken to avoid any substantial weakening of the facility's structural or lateral support, or both, or penetration or destruction of the facilities or their protective coatings.

Mechanical means may be used, as necessary, for initial penetration and removal of pavement or other materials requiring use of mechanical means of excavation and then only to the depth of the pavement or other materials. For parallel type excavations within the tolerance zone, the existing facility shall be visually identified at intervals not to exceed fifty feet along the line of excavation to avoid damages. The excavator shall exercise due care at all times to protect the facilities when exposing these facilities;

(b) maintain clearance between a facility and the cutting edge or point of any mechanized equipment, taking into account the known limit of control of such cutting edge or point, as may be reasonably necessary to avoid damage to such facility; and

(c) provide support for facilities in and near the excavation or demolition area, including backfill operations, as may be reasonably required by the operator for the protection of such facilities.

Section 58-36-70. (A) An operator or designated representative must provide to an excavator the following information:

(1) The horizontal location and description of all of its facilities in the area of the proposed excavation or demolition. The location shall be marked by stakes, paint, flags, or any combination thereof as appropriate depending on the site conditions of the proposed excavation or demolition using the APWA Uniform Color Code. If the diameter or width of the facility is greater than three inches, the dimension of the facility will be indicated at least every twenty-five feet in the area of the proposed excavation or demolition. Operators who operate multiple facilities in the same trench shall locate each facility individually.

(2) Any other information that would assist the excavator to identify, and thereby avoid damage to, the marked facilities.

(B) The information in subsection (A) must be provided to the excavator within:

(1) three full working days, not including the day the notice was made, for a facility after notice of the proposed excavation or demolition to the notification center;

(2) ten full working days, not including the day the notice was made, for a subaqueous facility after notice of the proposed excavation or demolition to the notification center; or

(3) as otherwise provided by written agreement by the excavator and the operator or designated representative of the operator.

These time lines do not apply in the event the operator declares an extraordinary circumstance.

(C) An operator may reject an excavation or demolition locate request due to homeland security considerations based upon federal statutes or federal regulations until the operator can confirm the legitimacy of the request. The operator must notify the person making the request of the denial and request additional information, through the positive response system, within the time frame established in subsection (B).

(D) An operator must provide a positive response to the notification center prior to the expiration of the required notice period. This response shall indicate the status of the required activities of the operator or designated representative in regard to the proposed excavation or demolition.

(E) If the operator determines that provisions for marking subaqueous facilities are required, the operator or their designated representative will provide a positive response to the notification center not more than three full working days after notice of the proposed excavation or demolition from the notification center.

(F) If extraordinary circumstances prevent the operator from marking the location in the required time period, the operator must

notify the excavator either by contacting the notification center or by directly contacting the excavator. The operator must state the date and time when the location will be marked.

(G) All facilities installed by or on behalf of an operator as of the effective date of this act, must be electronically locatable using a generally accepted locating method by operators.

(H) A facility locator must notify the operator if the locator becomes aware of an error or omission in facility placement documentation. The operator must update its records to correct the error or omission.

(I) An operator must prepare, or cause to be prepared, installation records of all facilities installed on or after the effective date of this act in a public street, alley, or right-of-way dedicated to public use, excluding service drops and services lines. The operator must maintain these records in its possession while the facility is in service.

(J) An operator that fails to become a member of the association as required by Section 58-36-50(B) may not recover for damages to a facility caused by an excavator that has complied with this chapter and has exercised reasonable care in the performance of the excavation or demolition.

Section 58-36-80. (A) An excavator performing an emergency excavation or demolition is exempt from the notice requirements in Section 58-36-60. However, the excavator must give, as soon as practicable, oral notice of the emergency to the notification center and the facility operator. The excavator must provide a description of the circumstances to the notification center and request emergency assistance from each affected operator in locating and providing immediate protection to the facilities.

(B) The declaration of an emergency excavation or demolition does not relieve any party of liability for causing damage to an operator's facilities, even if those facilities are unmarked.

Section 58-36-90. (A) The excavator performing an excavation or demolition that results in any damage to a facility must, immediately upon discovery of such damage, notify the notification center and the facility operator, if known, of the location and nature of the damage. The excavator must allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of such facility. The excavator shall delay any backfilling in the immediate area of the damaged facility until authorized by the operator. The repair of any damage shall be performed by the operator or by qualified personnel authorized by the operator.

(B) An excavator responsible for any excavation or demolition that results in damage to a facility where damage results in the escape of any flammable, toxic, or corrosive gas or liquid, or electricity, or endangers life, health, or property, immediately shall notify emergency services, including 911, the notification center and the operator, if known. The excavator must take reasonable measures to protect themselves, those in immediate danger, the general public, property, and the environment until the operator or emergency responders have arrived and completed their assessment.

Section 58-36-100. (A) A designer may submit a design request to the notification center. The design request shall describe the tract or parcel of land for which the design request has been submitted with sufficient particularity, as defined by policies developed and promulgated by the notification center, so that the operator can ascertain the precise tract or parcel of land involved.

(B) Within fifteen working days after a design request has been submitted to the notification center for a proposed project, the operator shall respond by one of the following methods:

(1) designate the location of all facilities within the area of the proposed excavation pursuant to Section 58-36-70(A);

(2) provide to the person submitting the design request the best available description of all facilities in the area of proposed excavation, which may include drawings of facilities already built in the area, or other facility records that are maintained by the operator; or

(3) allow the person submitting the design request or any other authorized person to inspect the drawings or other records for all facilities within the proposed area of excavation at an acceptable location.

(C) An operator may reject a design request based on homeland security pending additional information confirming the legitimacy of the request. The operator must notify the person making the request of the denial and request additional information, through the positive response system, within the time frame set forth in Section 58-36-70(B).

Section 58-36-110. A person is exempt from the requirements of Section 58-36-60(A) when an excavation is performed under the following conditions:

(1) by the owner of a single-family residential property on his own land when the excavation:

(a) does not encroach on any operator's known right-of-way, easement, or permitted use;

- (b) is performed with non-mechanized equipment; and
- (c) is less than ten inches in depth;
- (2) tilling or plowing of soil when less than twelve inches in depth for agricultural purposes;
- (3) for excavation with non-mechanized equipment by an operator or an agent of an operator for the following purposes:
 - (a) locating for a valid notification request, or for the minor repair, connecting or routine maintenance of an existing facility; or
 - (b) underground probing to determine the extent of gas or water migration.
- (4) when the Department of Transportation, a local government, special purpose district, or public service district is carrying out maintenance activities within its designated right-of-way, which may include resurfacing, milling, emergency replacement of signs critical for maintaining safety, or the reshaping of shoulder and ditches to the original road profile.

Section 58-36-120. Any person who violates any provision of this chapter shall be subject to a civil penalty not to exceed one thousand dollars for each violation. Actions to recover the penalty provided for in this section shall be brought by the Attorney General at the request of the injured party in the proper forum in and for the county in which the cause, or some part thereof, arose or in which the defendant has its principal place of business or resides. All penalties recovered in any such actions shall be equally divided between the state's general fund and the Attorney General's Office.

This chapter does not affect any civil remedies for personal injury or property damage except as otherwise specifically provided for in this chapter. The penalty provisions of this chapter are cumulative to, and not in conflict with, provisions of law with respect to civil remedies for personal injury or property damage.”

Repeal

SECTION 2. Chapter 35, Title 58 of the 1976 Code is repealed.

Severability clause

SECTION 3. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act. The General Assembly hereby declares that it would have passed

this act irrespective of the fact that any of one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid or otherwise ineffective.

Time effective

SECTION 4. The provisions of this chapter become effective one year after approval by the Governor.

Ratified the 1st day of June, 2011.