

Louisiana Underground Utilities and Facilities Damage Prevention Law

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PART VII. UNDERGROUND UTILITIES AND FACILITIES

This Part was originally enacted as PART VII of Chapter 8 of Title 40, consisting of R.S. 40:1750 to 40:1761 by Acts 1988, No.923, 51. On authority of R.S. 24:253, the Part was redesignated as Part VII of Chapter 8 of Title 40, and the sections as R.S. 40:1749.11 to 40:1749.22. Sections 40:1749.23 to 40:1749.25 were added during the 1997 Louisiana Legislative Session. R.S. 40:1749.26 was added during the 2001 Louisiana Legislative Session.

§1749.11. Short title; purpose

A. This Part shall be known and may be cited as the "Louisiana Underground Utilities and Facilities Damage Prevention Law."

B. It is the public policy of this state to promote the protection of property, workmen, and citizens in the immediate vicinity of an underground utility or facility from damage, death, or injury and to promote the health and well-being of the community by preventing the interruption of essential services which may result from the destruction of, or damage to, underground facilities or utilities.

§1749.12. Definitions

As used in this Part, the following terms shall have the meanings ascribed to them in this Section:

(1) "Damage" means any defacing, scraping, gorging, breaking, cutting, or displacement of, impact upon or removal of an underground utility or facility or its means of primary support.

(2) "Demolition" means the total or partial wrecking, razing, rendering, moving, or removing of any building or structure, movable or immovable.

(3) "Emergency" means any crisis situation which poses an imminent threat or danger to life, health, or property and requires immediate action.

(4) "Excavation" or "excavate" means any operation for the purpose of movement or removal of earth, rock, or other materials in or on the ground by the use of powered or mechanical or manual means, including pile driving, digging, blasting, auguring, boring, back filling, dredging, compressing, plowing-in, trenching, ditching, tunneling, land-leveling, grading, and mechanical probing.

(5) "Excavator" means any person who engages in excavation operations.

(6) "Operator" means any person, individual, governmental agency or political subdivision or their agents, joint venture, firm, partnership, association, or corporation who owns or operates, a public or private underground facility or utility which furnishes a service or material or stores, transports, or transmits electric energy, steam, oil, natural gas, gas, mixture of gases, petroleum, petroleum products, hazardous or flammable fluids, toxic or corrosive fluids/gases, including telephone or telegraph system, fiber optic electronic communication systems, or water or water systems, or drainage, sewer systems, or traffic control systems or other items of like nature.

(7) "Person" means an individual, firm, partnership, association, corporation, joint venture, municipality, governmental agency, political subdivision, or agent of the state or any legal representative, thereof.

(8) "Regional notification center" means anyone of the following:

(a) an entity designated as nonprofit by the Internal Revenue Service under Section 501(c) of the Internal Revenue Code and which is organized to protect its members from damage and is certified by the Department of Public Safety and Corrections in accordance with this Chapter.

(b) an organization of operators, consisting of two or more separate operators who jointly have underground utilities or facilities in three or more parishes in Louisiana, which is organized to protect its own installation from damage and has been certified by the Department of Public Safety and Corrections in accordance with this Part.

(c) an operator who has underground utilities or facilities in a majority of parishes in Louisiana and is organized to protect its own installation from damage, and has been certified by the Department of Public Safety and Corrections in accordance with this Part.

(9) "Service line or lines" means underground utilities or facilities, which provide power, gas, natural gas, communication or water capabilities to a building or structure or buildings or group of structures.

(10) "Underground utility or facility" means any pipe, conduit, duct, wire, cable, valve, line, fiber optic equipment, or other structure which is buried or placed below ground or submerged for use in connection with storage, conveyance, transmission or protection of electronics communication system, telephone or telegraph system, or fiber optic, electric energy, oil, natural gas, gases, steam, mixture of gases, petroleum, petroleum products, hazardous or flammable fluids/gases, toxic or corrosive fluids/gases, hazardous fluids/gases or other substances of like nature or water or water systems, sewer systems or traffic, drainage control systems, or other items of like nature.

(11) "Mark by time" is the date and time provided by the regional notification center by which the utility or facility operator is required to mark the location or provide information to enable an excavator or demolisher, using reasonable and prudent means, to

determine the specific location of the utility or facility as provided for in R.S. 40:1749.14(D).

(12) "Demolisher" means any person engaged in the act of demolishing as defined in R.S. 40:1749.12(2)

(13) "Inclement weather" means weather that prohibits or impedes a worker's use of his locating equipment or causes undue risk to himself or his equipment such as lightning, heavy rain, tornadoes, hurricanes, floods, sleet, snow, or flooding conditions.

§1749.13. Excavation and demolition; prohibitions

A. Except as provided in this Section, no person shall excavate or demolish in any street, highway, public place or servitude of any operator, or near the location of an underground utility or facility, or on the premises of a customer served by an underground utility or facility without having first ascertained in the manner prescribed in Subsection B of this Section, the specific location as provided in R.S. 40:1749.14(D) of all underground utilities or facilities in the area which would be affected by the proposed excavation or demolition.

B.(1) Except as provided in R.S. 40:1749.15, prior to any excavation or demolition, each excavator or demolisher, including cable television owners or operators, shall serve telephonic notice of the intent to excavate or demolish to the regional notification center or centers serving the area in which the proposed excavation or demolition is to take place. Such notice shall be given to the notification center at least forty-eight hours, but not more than one hundred twenty hours, excluding weekends and holidays, in advance of the commencement of any excavation or demolition activity. Holidays shall consist of the following: New Year's Day; Good Friday; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day, and/or or those days that these holidays are observed by the state.

(2) This notice shall contain the name, address, and telephone number of the person filing the notice of intent, and, if different, the person responsible for the excavation or demolition, the starting date, anticipated duration, and description of the specific type of excavation or demolition operation to be conducted, the specific location of the proposed excavation or demolition and a statement as to whether directional boring or explosives are to be used. If the excavation or demolition is part of a larger project, the notice shall be confined to the actual area of proposed excavation or demolition that will occur during the ten-day time period under Section 1749.14(C).

(3) Telephonic notice shall be recorded on tape or stored into an electronic data bank by the regional notification center and a record of the notice shall be retained for a three-year period from the date of notification.

(4) Notice shall be given and shall include a specific location request for excavation or demolition work to be performed at least forty-eight hours, but not more than one

hundred twenty hours, excluding weekends and holidays, in advance of actual work commencement. Holidays shall consist of the following: New Year's Day; Good Friday; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day, and/or the days on which those holidays are observed by the state. The markings of an operator's facility or utility shall be provided for excavation or demolition purposes only.

(5) The excavator or demolisher shall wait at least forty-eight hours following notification before commencing any excavation or demolition activity, except in the case of an emergency as defined in the provisions of this Part or if informed by the regional notification center that no operators are to be notified.

C. This Part shall not apply to activities by operators or land owners excavating their own underground utilities or facilities on their own property or operators' exclusive right-of-way provided there is no encroachment on the right-of-way of any operator.

D. Excavators may use white paint as marking under American Public Works Association guidelines.

§1749.14. Regional notification center

[Special Section, Acts 1988 RS - See West's]

A. Each operator of an underground utility or facility, excluding cable television but, including all state agencies and political subdivision of the state, shall become a member of, participate in, and share the cost of a regional notification center, except as provided for in R.S 40:1749.19.

B. A regional notification center receiving a notice of intent to excavate shall notify all members operators having underground utilities or facilities in or near the site of the proposed excavation.

C. (1) Each operator of an underground utility or facility, after having received the notification request from the regional notification center of an intent to excavate, shall supply, prior to the proposed excavation, the following information to the person responsible for the excavation:

(a) The specific location and type of all of its underground utilities or facilities which may be damaged as a result of the excavation or demolition.

(b) (i) Unless otherwise required by federal or state statutes, the specific location and type of underground utility or facility may, at the operator's option, be marked to locate the utilities or facilities. If the utilities or facilities are visibly marked by the operator, they shall be marked by the operator by color coded paint, flags, or stakes or similar means using the American Public Works Association color code.

(ii) The location of underground fiber optic cables shall be identified in accordance with the provisions of this Subparagraph and such identification shall also include an added special marking that is uniquely associated with fiber optic cables.

(iii) When the utility or facility operator has marked the location of underground utilities or facilities, the marking shall be deemed good as long as visible but not longer than ten calendar days, including weekends and holidays, from the "mark by" time. An additional notice to the regional notification center shall be given by the excavator or demolisher in accordance with the provision of this Part when the marks are no longer visible or if the excavation or demolition cannot be completed within ten calendar days from the mark by time, whichever occurs first.

(iv) The excavator shall use all reasonable and prudent means, within common industry practice, to protect and preserve all marks of the underground utility or facility.

(2) If the operator does not visibly mark the location of these utilities or facilities, the operator shall provide information to enable an excavator using reasonable and prudent means to determine the approximate location of the utility or facility. The information provided by the operator shall include a contact person and a specific telephone number for the excavators to call. After the operator has received the notification request, the information on location, size, and type of underground utility or facility must be provided by the operator to the excavator prior to excavation.

(3) In the event of inclement weather as defined in this Part, the mark by time shall be extended by a duration equal to the duration of the inclement weather. The owner or operator shall notify the excavator or demolisher before the expiration of the mark by time of the need for such extension.

D. For the purpose of this Section, the specific location of the underground facilities is defined as an area not wider than the width of the underground facility or utility as marked plus eighteen inches on either side.

E. (1) An excavator or demolisher who has given notice and otherwise complied with the provisions of this Part shall be immune from civil liability for damages in the area of the proposed excavation or demolition caused by such excavation or demolition to any owner or operator who:

(a) Was required by the provisions of this Part to become a member, participate in, or share the cost of a regional notification center, and failed to do so.

(b) Failed to mark or provide information as required by the provisions of this Part.

(2) The immunity provided by this subsection shall not apply to civil liability for damages caused by the negligence of the excavator or demolisher.

F. Should an owner or operator file suit against an excavator or demolisher for damages to underground utilities or facilities and the court finds in favor of the owner or operator, in addition to damages provided for by this Part, the owner or operator shall be entitled to recover reasonable attorney fees and costs. If the court finds in favor of the excavator or demolisher, the excavator or demolisher shall be entitled to recover reasonable attorney fees and costs.

§1749.15. Emergency excavation

The notice required under R.S. 40:1749.13 shall not apply to any person conducting an emergency excavation. Oral notice of the emergency excavation shall be given as soon as practicable to the regional notification center or each operator having underground utilities and facilities located in the area and, if necessary, emergency assistance shall be requested from each operator in locating and providing immediate protection to its underground utilities and facilities.

§1749.16. Precautions to avoid damage

In addition to the notification requirements in R.S. 40:1749.13 and 1749.14 and the emergency notification requirements in R.S. 40:1749.15, each person responsible for an excavation or demolition operation shall do the following:

- (1) Plan the excavation or demolition to avoid damage to or minimize interference with underground utilities and facilities in and near the construction area.
- (2) Maintain a safe clearance between the underground utilities or facilities and the cutting edge or point of any power or mechanized equipment, taking into account the known limit of control of the cutting edge or point to avoid damage to utilities or facilities.
- (3) Provide support for underground utilities or facilities in and near the construction area, during excavation and back filling operations, as may be reasonably necessary to protect the facility.
- (4) Dig test pits to determine the actual location of utilities or facilities handling electricity, gas, natural gas, oil, petroleum products, or other flammable, toxic, or corrosive fluid/gases if these utilities or facilities are to be exposed.

§1749.17. Excavation or demolition; repair of damage

A. Each person responsible for any excavation or demolition operations which result in any damage to an underground utility or facility shall, immediately upon discovery of that damage, notify the owner or operator of the utility or facility of the location and nature of the damage and shall allow the owner or operator reasonable time to accomplish necessary repairs before continuing the excavation, demolition, or back filling in the immediate area of damage.

B. Each person responsible for an excavation or demolition operation which results in damage to an underground utility or facility permitting the escape of any flammable, toxic, or corrosive fluids/gases shall, immediately upon discovery of that damage:

(1) Notify the owner or operator of the utility or facility as provided in Subsection A, and all other appropriate emergency response personnel, including 911 and the local law enforcement and fire departments and allow the owner or operator reasonable time to accomplish necessary repairs before continuing the excavation, demolition, or back filling in the immediate area of damage.

(2) Take any other action as may be reasonably necessary to protect persons and property and to minimize hazards until arrival of the owner or operator's personnel and police or fire department.

(3) Comply with any other notification process required by law or regulation.

C. For the purpose of this Part, failure to comply with the provisions of Subsection B shall constitute a single violation, except as provided below by Subsection D.

D. After discovery of the damage, each day that an excavator or demolisher fails to comply with the provisions of Subsection B shall be considered a separate violation.

§1749.18. Certification of a regional notification center by Department of Public Safety and Corrections

A. The Department of Public Safety and Corrections shall promulgate rules and regulations in accordance with the Administrative Procedure Act to establish a certification program for regional notification centers in this state.

B. Such rules and regulations shall include, but not be limited to, requirements that the regional notification center must have and maintain the following:

(1) Ability to accept and timely process and locate requests as required by law, including providing of ticket numbers, copies of tickets, notifications, and other procedures and information.

(2) Ability to accept and timely process short notice, priority and emergency locate requests.

(3) Voice recording of all incoming calls and retention of voice tapes for at least three years.

(4) Any other requirements that may be necessary for a regional notification center to properly perform the duties and functions required under this Part.

C. The department shall include in the rules and regulations procedures for certification by the department and may charge a fee for the certification process, not to exceed two thousand five hundred dollars. The rules and regulations required by this Section shall be promulgated by the department within six months from the effective date of this Subsection.

D. An entity operating in this state as an authorized regional notification center prior to and upon the effective date of this Subsection shall have six months from the date of final adoption of the rules and regulations required by this Section to seek and obtain compliance certification from the Department of Public Safety and Corrections. Failure to obtain such certification shall result in the cessation of activities by the regional notification center.

E. An entity not operating in this state as an authorized regional notification center prior to and upon the effective date of this Subsection shall obtain compliance certification from the Department of Public Safety and Corrections prior to performing the operations of a regional notification center in or for this state.

§1749.19. Voluntary participation by incorporated municipalities and parish government

A. Each incorporated municipality or parish government which owns or operates, in its own right or through a special district or districts created pursuant to constitutional or statutory authority, a drainage system, a sewer system, drainage, water or water system, traffic control system, an electrical energy system and/or a gas or natural gas system underground utility or facility within its local jurisdiction which would otherwise be included in R.S. 40:1749.14, and which does not desire to be so included, shall adopt an ordinance indicating this desire by December 31,1998. The ordinance shall be filed with the secretary of state for verification purposes. An incorporated municipality or parish government which fails to adopt the ordinance shall be subject to the provisions of this Part on and after December 31,1998.

B. Each municipality or parish government which owns or operates in its own right, or through a special district or districts created pursuant to law, a drainage system, a sewer system, water or water system, telephone or telegraph, fiber optic, electronics equipment system, traffic control system, an electrical energy system, natural gas system, and/or a gas system underground utility or facility within its local jurisdiction which would otherwise be included in R.S. 40:1749.17, and which is incorporated or created subsequent to July 1,1997 and which does not desire to be so included, shall comply with the provisions of Subsection A of this Section with in one year of the date of its first municipal elections or within one year of the date of creation of a special district.

§1749.20. Violations; penalties

A.(1) A person who is required by this Part to become a member of, participate in, or share the cost of, a regional notification center and who fails to do so shall be subject to a civil penalty of not more than two hundred fifty dollars for the first violation and not

more than one thousand dollars for each subsequent violation. A subsequent violation shall be deemed to have occurred if the person fails to become a member of, participate in, or share the cost of, a regional notification center as required within ninety days after issuance of a citation for the previous violation.

(2) A person who participates in a regional notification center and who fails to mark or provide information regarding the location of underground utilities and facilities shall be subject to a civil penalty of not more than one thousand dollars. A subsequent violation shall be deemed to have occurred if a person fails to provide information or markings within two years of the issuance of a prior citation for the same or similar conduct.

(3) A person who is required by law to participate in a regional notification center and who fails to provide information or markings to indicate hazardous material as defined in Title 30 of the Louisiana Revised Statutes of 1950 shall be subject to the following:

(a) For the first violation, a civil penalty of not more than two hundred fifty dollars.

(b) For a second violation, a civil penalty of not more than five hundred dollars.

(c) For a third violation, a civil penalty of not more than one thousand dollars.

(d) For a fourth and each subsequent violation, a civil penalty of not less than two thousand dollars nor more than twenty-five thousand dollars.

B. An excavator or demolisher who violates the provisions of R.S. 40:1749.13, or 1749.17(B) shall be subject to the following:

(1) For the first violation, a civil penalty of not more than two hundred fifty dollars.

(2) For a second violation of a similar nature within a two-year period from the previous violation, a civil penalty of not more than five hundred dollars.

(3) For a third violation of a similar nature within a two-year period from a previous violation, a civil penalty of not more than one thousand dollars.

(4) For a fourth and each subsequent violation of a similar nature within a two-year period from the previous violation, a civil penalty of not less than two thousand dollars nor more than twenty-five thousand dollars.

(5) Any violation involving hazardous materials as defined in Title 30 of the Louisiana Revised Statutes of 1950, a civil penalty of not less than two thousand dollars nor more than twenty-five thousand dollars.

(6) An excavator or demolisher who is issued a citation for a violation shall immediately stop all excavation or demolition activity until the requirements of this Part are met. Failure to do so shall subject the excavator or demolisher to an additional citation and

civil penalty of not more than twenty-five thousand dollars for each such subsequent citation issued.

C. A person may be cited with a violation and held liable for a civil penalty under this Section although the commission of the offense did not occur in the presence of a law enforcement officer if the evidence is sufficient to establish that the defendant has committed the offense.

§1749.21. Miscellaneous provisions

A. Except as otherwise specifically provided herein, the provisions of this Part shall not affect any civil remedies for personal injury or property damage, including damage to underground utilities or facilities.

B. Nothing in this Part shall affect any permitting process granted to a parish, municipal, local, or state governing authority. If a permit is issued in conjunction with excavation or demolition subject to the provisions of this Part, upon issuing the permit, the governing authority is encouraged to distribute to the permittee information regarding compliance with the provisions of this Part. The regional notification centers shall provide the information to the governing authority for distribution. The failure of the governing authority to distribute the information shall not for that reason alone create any liability on the part of the governing authority or permittee nor otherwise reduce or limit the duties and responsibilities of excavators or demolishers under this Part.

§1749.22. Preemption

No parish, municipal, local, or state governing authority may enact any ordinance or promulgate any rules or regulations which are in conflict with the provisions of this Part.

§1749.23. Enforcement and adjudication; administration; levy of civil penalties

A. The provisions of this Part may be enforced by the Department of Public Safety and Corrections or by any local law enforcement agency. The Department of Public Safety and Corrections or its designee may provide forms, including citation, complaint, and incident report forms, to other law enforcement agencies for use in enforcement of the provisions of this Part.

B. The deputy secretary for the office of public safety services in the Department of Public Safety and Corrections or any local law enforcement agency shall have the right to:

(1) Exclusively monitor excavation or demolition that is subject to the provisions of this Part to ensure compliance with the provisions of this Part, including requesting the production by the excavator or demolisher of the locate request number issued by the regional notification center.

(2) Issue citations for violations of the provisions of this Part in addition to other enforcement powers provided by law.

(3) Seek restraining orders, injunctions or other civil remedies to halt or prevent violations of the provisions of this Part.

C. Proceedings and adjudication for the levying of civil penalties under this Part shall be conducted by the division of administrative law in accordance with regulations adopted pursuant to the Administrative Procedure Act.

D. The secretary of the Department of Public Safety and Corrections or his designee may promulgate rules and regulations for the implementation and administration of the provisions of this Part relative to enforcement, which shall include developing a procedure for reporting and investigating complaints of violations of this Part that includes the following:

(1) Establishing a centralized complaint reporting point using a toll-free phone number that is available to contractors, utility operators, and the general public.

(2) Establishing a uniform complaint form to record the complaint's name and identifying information, the nature and details of the complaint, the geographic location of the complaint, any information about excavators, the date and time of the complaint, the date and time of the complaint report, and whether any collateral damage or off-site impact occurred including information about that impact or damage.

(3) Establishing a procedure to investigate the validity of the complaint using information provided by but not limited to certified regional notification centers with jurisdiction in the reported geographic area.

(4) Establishing a procedure for determining the appropriate law enforcement agency in the reported geographic area that will be responsible for investigating the complaint and for forwarding the complaint report to that law enforcement agency.

(5) Establishing a procedure for the law enforcement agency to completely investigate a complaint and obtain the information needed to issue a citation and adjudicate the complaint.

(6) Establishing a procedure for receiving citations issued by law enforcement agencies, determining whether the cited party wishes to contest the charge, and transferring contested citations to the Division of Administration for adjudication.

(7) Establishing a procedure for recording the number of citations issued and their disposition.

(8) Establishing procedures for collecting civil penalties for deposit into the Underground Damages Prevention Fund and disbursing those civil penalties according to the provisions of this Part.

E. The secretary of the Department of Public Safety and Corrections may promulgate rules and regulations for the implementation and administration of the provisions of this Part relative to enforcement.

§1749.24. Collection and Distribution of Fines or Civil Penalties; Underground Damages Prevention Fund

A. All civil penalties collected under the provisions of R.S. 40:1749.20(A) and (B) shall be paid to the state treasury for credit to the Underground Damages Prevention Fund created by this Section and shall be disbursed from the fund as follows:

(1) Fifty percent shall be retained by the Underground Damages Prevention Fund.

(2) Within one year of the civil penalty being deposited into the Underground Damages Prevention Fund, the agency responsible for administering R.S. 40:1749.23 shall disburse the remaining fifty percent of the civil penalties to the law enforcement agency that issued the citation.

B. All funds received by the Department of Public Safety and Corrections under the provisions of this Part shall be retained in the Underground Damages Prevention Fund.

C. After compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, and prior to monies being placed in the state general fund, and amount equal to that deposited as required by Subsection B of this Section shall be credited to a special fund hereby created in the state treasury to be known as Underground Damages Prevention Fund. After disbursements as authorized in this Section, the monies in this fund shall be used solely as provided by Subsection D of this Section and only in the amounts appropriated by the legislature. All unexpended and unencumbered monies in this fund at the end of the fiscal year shall remain in such fund. The monies in this fund shall be invested by the state treasurer in the same manner as monies in the state general fund and interest earned on the investment of these monies shall be credited to this fund, following compliance with the requirement of Article VII, Section 9(B) relative to the Bond Security and Redemption Fund.

D. The monies in the Underground Damages Prevention Fund shall be used by the Department of Public Safety and Corrections or their designee solely for administration of the provisions of this Part, including payment to the Division of Administrative Law for adjudication services. Expenditures may also be made for information and programs designed to enhance awareness of the duties and responsibilities of persons governed by the provisions of this Part and the duties and responsibilities of persons who enforce and administer the provisions of this Part.

§1749.25. Department of Transportation and Development; compliance

Department of Transportation and Development right-of-way permit procedures, as promulgated in accordance with the Administrative Procedure Act and set forth in Title 70 of the Louisiana Administrative Code, constitute compliance with the provisions of this Part only insofar as this Part imposes upon the Department of Transportation and Development the duties of a regional notification center of operator.

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

§1749.26. Public Work Projects

In addition to any other applicable provision of this Part, R.S. 38:2223 shall apply to any public work project.