



Unofficial Reference Guide to
South Carolina
Underground Facility Damage
Prevention Act

Effective May 22, 2026

**SAFETY IS IN YOUR HANDS.
EVERY DIG. EVERY TIME.**

Please Read

This document is intended as an informal reference guide to the South Carolina Underground Facility Damage Prevention Act (HB 3571). It is *not* an official copy of the statute, and while care has been taken to ensure accuracy, it may contain errors, omissions, or outdated information. Users must consult the official, enacted version of the South Carolina Code of Laws and any regulations or agency guidance for legally binding requirements. Nothing in this document should be interpreted as legal advice.

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A BILL

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 58-36-20, RELATING TO DEFINITIONS, SO AS TO ADD DEFINITIONS FOR “COMMENCEMENT DATE,” “LARGE PROJECT,” “LARGE PROJECT FACILITY LOCATION AGREEMENT,” “NOTICE,” “PRE-MARKING,” “PRIVATE FACILITY,” “PROJECT INITIATOR,” AND “SOFT DIGGING” AND TO AMEND THE DEFINITIONS OF “EXCAVATE,” “EXCAVATOR,” AND “OPERATOR”; BY AMENDING SECTION 58-36-50, RELATING TO THE OPERATORS ASSOCIATION NOTIFICATION CENTER, SO AS TO CLARIFY OPERATOR PENALTY FOR FAILURE TO BE A MEMBER OF THE ASSOCIATION, THE NOTIFICATION CENTER’S DUTIES, AND OTHER CHANGES; BY AMENDING SECTION 58-36-60, RELATING TO THE NOTICE OF INTENT TO EXCAVATE OR DEMOLISH, SO AS TO PROVIDE ADDITIONAL TIME FOR NOTICE FOR CERTAIN EXCAVATIONS OR DEMOLITIONS AND OTHER CHANGES; BY AMENDING SECTION 58-36-70, RELATING TO INFORMATION SUPPLIED BY OPERATORS, SO AS TO REQUIRE NOTICE TO EXCAVATORS PRIOR TO THE COMMENCEMENT DATE, REQUIRE QUARTERLY REPORTS OF DAMAGE CAUSED BY AN EXCAVATION OR DEMOLITION AND TO CLARIFY PAYMENT OF A CIVIL PENALTY IN CERTAIN CIRCUMSTANCES; BY AMENDING SECTION 58-36-80, RELATING TO EMERGENCY EXCAVATIONS OR DEMOLITIONS EXEMPT FROM NOTICE REQUIREMENTS AND LIABILITY FOR DAMAGES, SO AS ESTABLISH ADDITIONAL NOTIFICATION AND RESPONSE REQUIREMENTS IN THE EVENT OF AN EMERGENCY AND TO MAKE A FALSE CLAIM OF AN EMERGENCY A VIOLATION OF THIS CHAPTER; BY AMENDING SECTION 58-36-90, RELATING TO NOTICE OF DAMAGES, SO AS TO REQUIRE AN EXCAVATOR TO IMMEDIATELY REPORT ANY KNOWN DAMAGE TO THE NOTIFICATION CENTER AND FACILITY OPERATOR; BY AMENDING SECTION 58-36-100, RELATING TO DESIGN REQUESTS AND OPERATOR RESPONSE, SO AS TO ADD A REFERENCE TO LARGE PROJECTS; BY AMENDING SECTION 58-36-110, RELATING TO EXEMPTION FROM NOTICE REQUIREMENTS, SO AS TO STRIKE CURRENT PROVISIONS; BY AMENDING SECTION 58-36-120, RELATING TO PENALTIES AND CIVIL REMEDIES, SO AS TO PROVIDE FOR A COMPLAINT PROCESS THROUGH THE ATTORNEY GENERAL’S OFFICE AND TO PROVIDE FOR PENALTIES; AND BY ADDING SECTION 58-36-75, SO AS TO PROVIDE A PROCESS FOR LARGE PROJECTS.

Section 58-36-10 (Short Title)

This chapter may be cited as the Underground Facility Damage Prevention Act.

Section 58-36-20. (Definitions)

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) “Commencement date” means the date that an excavator provides to the notification center of the excavator’s intent to begin the excavation or demolition for which notice is being given;
- (5) “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.
- (6) “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.
- (7) “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.
- (8) “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.
- (9) “Emergency” means a sudden or unforeseen event involving a clear and imminent danger to life, health, or property; the interruption of essential existing utility services; or the blockage of transportation facilities, including highway, rail, water, and air, which require immediate action.

(10)(A) “Excavate” or “excavation” means an operation for the purpose of the displacement, movement, or removal of soil, earth, rock, or other materials in or on the ground by use of hand digging, mechanized equipment or by discharge of explosives. This includes, but is not limited to, augering, blasting, boring, backfilling, digging, ditching, drilling to include directional, horizontal, and vertical, driving, grading, marine construction, partial- and full-depth patching, piling, plowing-in, pulling-in, ripping, scraping, soft digging, spudding, staking, trenching, and tunneling.

(B) “Excavate” or “excavation” shall not include:

(1) activity by the owner of a single-family residential property on their 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 nonmechanized equipment; and
- (c) is less than twelve inches in depth;

(2) tilling or plowing of soil when less than twelve inches in depth for agricultural purposes;

(3) activity by an operator or an agent of an operator with nonmechanized equipment for the following purposes:

- (a) locating for a valid notification request; or
- (b) for the minor repair, connecting, or routine maintenance of an existing facility;

(4) road and right-of-way maintenance activities by a governmental entity responsible for the maintenance of those roads and rights-of-way, within the designated right-of-way of such entity, including resurfacing, milling, or emergency replacement of signs critical for maintaining safety, and the reshaping of shoulders and ditches to the original road profile; provided, however, this subsection shall not apply to contractors or subcontractors acting on behalf of an entity pursuant to this subsection, unless such contractor or subcontractor is performing a repair related to a gubernatorial declared emergency or an emergency declared by the Secretary of Transportation.

(11) “Excavator” means any entity or person engaged in excavation or demolition.

(12) “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.

(13) “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, potable and non-potable 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 chapter, 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 chapter, 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.

(14) “Large project” means excavation or demolition that:

(a) involves more work to locate underground facilities than can reasonably be completed within the requirements of Section 58-36-70;

(b) is reasonably expected to take more than ninety days to complete; and

(c) is either a:

(i) highway infrastructure project that is:

(A) greater than one mile measured linearly or encompasses more than a two-square-mile polygon; and

(B) proposed for areas in which existing underground facilities are located;

(ii) a development project that is located in areas in which existing underground facilities are located; or

(iii) utility infrastructure project that is:

(A) greater than one mile measured linearly or encompasses a two-square-mile polygon; and

(B) proposed for areas in which existing underground facilities are located.

(15) “Large project facility location agreement” means an agreement between the excavators, locators, and facility owners involved in a large project that meets the requirements in Section [3571]

58-36-75.

(16) “Locator” means a person that identifies and marks facilities for operators.

(17) “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.

(18) “Non-mechanized equipment” means hand tools.

(19) “Notice” means the provision by an excavator of information to the notification center as required by Section 58-36-60(A).

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

(21) “Operator” means any person, public utility, communications and cable service provider, provider of interactive fiber, 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 S.C. Code of Laws, who owns or operates a facility for commercial purposes in the State of South Carolina. The term “operator” includes entities that own, maintain, or operate a facility that is used to provide utility service to third parties for commercial or multi-family residential purposes, even where no separate charge is imposed for such utility service.

(22) “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.

(23) “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.

(24) “Pre-marking” means identifying the proposed excavation or demolition site by using APWA uniform color code rules for the proposed excavation. This includes, but is not limited to, utilization of white paint, flags, whiskers, stakes, digital or virtual drawings, prints, and other elements identifying the proposed excavation visually. If the locate notice indicates the existence of pre-marks, the location

of those marks must be described on the notice.

(25) “Private facility” is a facility owned and operated by a person or entity that is not an operator.

(26) “Project initiator” means the person or entity that causes a large project to be initiated. The project initiator for large projects for highway infrastructure shall be the South Carolina Department of Transportation; the project initiator for large projects for development shall be the development owner; and the project initiator for a utility infrastructure project shall be the utility infrastructure project owner.

(27) “Soft digging” means any excavation using tools or equipment that utilizes air or water pressure as the direct means to break up soil or earth for removal by vacuum excavation.

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

(29) “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.

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

Section 58-36-30. (Ordinances and Permits)

(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) Nothing in this chapter shall supersede or preempt any ordinance enacted by a municipality that purports to regulate the permitting and inspection of utility work being conducted within the public right-of-way.

(C) 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. (Cost and Expenses)

(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. (Responsibilities of Notification Center)

(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 as of June 7, 2012, must elect the board as required by the provisions of this subsection within nine months following June 7, 2012.

(B)(1) All operators are required to join the association and utilize the services of the notification center.

(2) Beginning on January 1, 2026, every month that an operator is not a member of the association shall be a separate violation of this chapter.

(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 the 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 commencement 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 and maintain a positive response system.

(J) The notification center shall file with the South Carolina Public Service Commission the telephone number, email address, and physical address of the notification center and a list of the names and email 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:

- (1) establish and operate a damage prevention training program.
- (2) establish large project facility location agreements that must include, but not be limited to, the notice and response requirements in Sections 58-36-60(A), (B), (C), and (E) and 58-36-70(B), (C), (E), and (F);
- (3) develop systems and processes to assist project initiators, excavators, and facility operators with implementation of large project procedures pursuant to Section 58-36-75;
- (4) receive complaints forwarded from the Attorney General's Office pursuant to Section 58-36-120;
 - (a) review notification center records for information relating to such complaints;
 - (b) contact and obtain information from parties involved in the events giving rise to such complaints;
- (5) investigate and mediate complaints within six months from receipt of the referral from the Attorney General's Office; however, the notification center may request that the Attorney General grant an extension of no more than six additional months;
- (6) submit a recommendation to the Attorney General after mediation with terms for the resolution of such complaints and all documents and records in connection with the case; and
- (7) provide any other assistance that the Attorney General may request in regards to the investigation and resolution of actions in violation of this chapter.

(M) The notification center is not a public body pursuant to Section 30-4-20(a).

Section 58-36-60. (Responsibilities of Excavators)

(A)(1) Before commencing any excavation or demolition, the excavator must provide timely 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, not including the day upon which notice is given, 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, not including the day upon which notice is given, before the proposed commencement date of the excavation or demolition.

(2) A subcontractor may rely on a general contractor's notice to the notification center if the notice specifically references the subcontractor by name.

(3) The notification number, as assigned by the notification center and provided to the excavator pursuant to this section, must be provided by the notification center to an operator or an agent working on the operator's behalf if requested, by physical or digital means.

(B) Notice given pursuant to subsection (A) shall expire within fifteen working days after the date and time for commencement of work as provided in the 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 using the same method as provided in subsection (A). This subsequent notice only extends the commencement date and does not require operators to re-mark facilities unless otherwise required pursuant to subsection (F)(7).

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

- (1) the name, address, and telephone number of the person providing the notice;
- (2) the commencement 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, whichever is less; 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 commences.

(E) For projects that do not meet the requirements of large projects as defined in Section 58-36-20(14), a notice must not cover an area greater than one linear mile. Notice for projects less than one linear mile but greater than one quarter mile must be reduced to sections not greater than one quarter mile or five adjoining addresses, whichever is less, for purposes of transmitting notice to operators. Notice for projects that do qualify as large projects must be provided as required by Section 58-36-75.

(F) 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.

(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 commence prior to the commencement date provided in the notice required in this section 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)(a) 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 where an aerial facility transitions to underground, 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 notice is provided 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 notice is received by the notification center.

(b) If the three-hour notice is made pursuant to item (a) and an operator failed to give a positive response within the timeframe required in this subitem and the excavator has fully complied with this section, the excavator shall not be deemed liable for any damages to an underground facility that would have been located if the operator had complied with its duties as an operator. This item shall not apply to any underground facility used to transport gas or hazardous liquid subject to the federal pipeline safety laws.

(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, including work done in the tolerance zone below or above an existing facility, unless the following conditions are met:

(a) no use of mechanized equipment, except soft digging 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. When excavation involves crossing an existing marked facility, the excavator must visually verify minimum clearance of the tolerance zone above or below the existing facility using appropriate methods, such as hand digging or soft digging techniques to visually identify and protect existing facilities where the excavation crossing occurs. 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. (Responsibilities of Facility Operators)

(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 prior to the commencement date provided in the notice or as otherwise provided by written agreement between the excavator and

the operator or designated representative of the operator.

These timelines do not apply in the event the operator declares an extraordinary circumstance pursuant to subsection (F) below, or for a large project in which these timelines are modified in a large project facility location agreement.

(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 June 7, 2012, 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 June 7, 2012, in a public street, alley, or right-of-way dedicated to public use, excluding [3571]

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.

(K) An operator must provide to the notification center a report, on a quarterly basis, of damage to its facilities caused by excavations and demolitions. The report must include the date of the incident and a brief summary of the extent of the damage. The board of the notification center must approve forms for use by operators in reporting damages. These forms shall gather information to improve the protection of underground facilities in this State. Nothing in this section shall be construed to restrict or limit in any way the protections of Rule 407 of the South Carolina Rules of Evidence.

(L) In the event that an operator designates a representative to carry out its duties described in this section and the designated representative fails to carry out those duties, then the operator shall be responsible for payment of any civil penalty in accordance with Section 58-36-120.

SECTION 2. Chapter 36, Title 58 of the S.C. Code is amended by adding:

Section 58-36-75. (Large Projects)

(A) All project initiators and affected operators, excavators, and locators must comply with the provisions of this section for large projects.

(B) Notwithstanding the notice timelines provided in Section 58-36-60, the project initiator or designee for a large project must provide notice to the notification center at least thirty days prior to the commencement of the large project.

(C) Within three days from receipt of a notice of a large project, the notification center must provide:

(1) a list of all operators of facilities in the large project area to the project initiator or its designee;
and

(2) notice to all of the operators of the proposed large project.

(D) Within fifteen days of the notification of the proposed large project, the project initiator or its designee must provide notice through the notification center of a planning meeting of all affected facility operators, locators, and excavators known by the project initiator or its designee to be involved in any excavation or demolition work on the large project.

(E)(1) At the planning meeting, the project initiator or its designee must provide:

(a) an overview of the proposed large project;

(b) contact information for the project initiator and, if applicable, the project initiator's designee for the initial planning meeting; however, after the initial planning meeting, the contact information for each excavator, locator, facility operator, and their respective agents, involved in the proposed large project must be updated in a timely manner;

(c) expected timelines for the work to be concluded, including descriptions of phases if appropriate; and

(d) a proposed large project facility location agreement which must include, but not be limited to, proposed timelines of notices of excavation, marking of facilities, and positive responses to notices.

(2) The project initiator or its designee and all excavators, locators, and facility operators involved in the large project must negotiate in good faith to reach an agreement on notice and response procedures that will be reasonable for all entities involved in the large project. A large project facility location agreement must include provisions to address the notice and response requirements in Section 58-36-60(A), (B), (C), and (E) and Section 58-36-70(B), (D), (E), and (F); these provisions must meet or exceed the standards in these subsections to protect underground facilities.

(F) All large project facility location agreements must be submitted to the notification center by the project initiator or its designee. The notification center shall be responsible for maintaining records of these agreements and must provide copies of these agreements, upon request, to any of the excavators, locators, facility operators, or any of their respective agents of subcontractors identified on the notification sheet.

(G) All excavators, locators, and facility operators that comply with the provision of a large project facility location agreement are relieved of the notice, pre-marking, marking, and response requirements

in Section 58-36-60(A), (B), (C), and (E) and Section 58-36-70(B), (D), (E), and (F).

(H) In the event any excavator, locator, or facility operator is unable or unwilling to attend the planning meeting or meetings conducted pursuant to this section, that excavator, locator, or operator must comply with the notice and location requirements agreed to in the large project facility location agreement that is a result of the meeting or meetings required under this section.

(I) The notification center must make available to any such excavator, locator, or operator a copy of the large project facility location agreement. Nothing in this section will prevent such excavator, locator, or operator from requesting adjustments to the agreement and nothing will prevent the parties to such agreement from agreeing to the requested adjustments. Any such modifications to the large project facility location agreement must be submitted by the project initiator to the notification center and maintained by it as part of its responsibilities pursuant to Section 58-36-50(L)(2) and (3).

Section 58-36-80. (Emergency Excavation)

(A) An excavator performing an emergency excavation or demolition is exempt from the notice requirements in Section 58-36-60. However, the excavator must, as soon as practicable, provide notice of the emergency to the notification center and oral notice to any affected facility operators. 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) All operators within the delineated emergency excavation or demolition area are required to respond in the notification center's positive response system within three hours from the notification center's notice of the emergency.

(C) The person responsible for the emergency excavation or demolition shall either be on-site or in communication with the operator, their contract locator, or their representative through the notification center's positive response system. This communication must be made within three hours after the transmission of the notice of the emergency excavation or demolition by the notification center.

(D) 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.

(E) Any person who falsely claims that an emergency exists requiring excavation or demolition shall have violated the provisions of this chapter.

Section 58-36-90. (Damages, Reporting, and Responsibilities)

(A) The excavator performing an excavation or demolition that results in any damage to a facility must, immediately report the location and nature of the damage to the notification center and to the facility operator, if known. This report must be made on a form prepared by, and made available by, the notification center. 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. (Design Requests)

(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); or

(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-

(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).

(D) The provisions of this section may be used for a large project that follows the procedures established in Section 58-36-75. For excavations that are not large projects, the provisions of Sections 58-36-60 and 58-36-70 must be followed.

Section 58-36-110. Reserved.

Section 58-36-120. (Complaints; Penalties)

(A)(1) A party affected by an alleged violation of this chapter may file a complaint with the Attorney General's Office within forty-five days of the alleged violation. Upon receipt of the complaint, the Attorney General's Office must refer the complaint to the notification center for an investigation and mediation pursuant to Section 58-36-50(L). Each mediation recommendation proposed by the notification center must be submitted to the Attorney General's Office for approval or rejection.

(2) The Attorney General's Office, upon receipt of a mediation recommendation from the notification center, may approve or reject the mediation recommendation.

(3) If the notification center informs the Attorney General's Office that a mediation recommendation could not be reached or a mediation recommendation is rejected by the Attorney [3571]

General's Office, the Attorney General's Office shall review the complaint and any additional information gathered by the notification center to determine whether there exists a prima facie case that a violation of this chapter has occurred. If the Attorney General's Office determines that there exists a prima facie case that a violation of this chapter occurred, the Attorney General's Office shall inform the complainant who shall then be authorized to file an action seeking the imposition of a civil penalty. Actions seeking the imposition of a civil penalty within the jurisdictional threshold of magistrate court pursuant to Section 22-3-10(3) may be brought in magistrate court. All other actions shall be filed in circuit court. If the Attorney General's Office determines that a prima facie case has not been established, the Attorney General's Office shall inform the complainant. A determination that a prima facie case has not been established by the Attorney General's Office shall preclude the complainant from filing an action seeking the imposition of a civil penalty. A determination that a prima facie case has not been established may be reviewed by the circuit court.

(4) Upon filing of an action pursuant to this section, the clerk of court shall forward a copy of the complaint to the notification center.

(5) In any action brought by a complainant seeking the imposition of penalties as authorized by this section, the complainant may seek penalties up to the statutory limit and may, during the litigation, resolve the action by a settlement within the statutory limits.

(6) An employee of the notification center who participated in the investigation of the complaint as provided in Sections 58-36-120(A)(1) and 58-36-50(L) may be called to testify in a proceeding brought to impose penalties pursuant to this section. However, that person may not testify to settlement discussions that would be protected by Rule 408 of the S.C. Rules of Evidence.

(7) Upon the finding by the court of a violation of this chapter, the court shall award the person bringing such action under this section reasonable attorney's fees and costs.

(B)(1) Except as provided in item (2), the court may impose a civil penalty of up to \$5,000 for each violation of this chapter.

(2) The court may impose a civil penalty of up to \$25,000 for each violation of the following:

(a) operators who do not join the association to operate the notification center as required in

Section 58-36-50(B);

(b) persons or entities who damage an underground facility as a result of gross negligence in excavation or demolition;

(c) persons or entities who damage an underground facility and fail to promptly notify the notification center;

(d) persons or entities who damage an underground facility and take actions to conceal the damage;

(e) persons or entities who willfully remove or otherwise destroy stakes or other physical markings used to mark the approximate location of underground facilities prior to the completion of the excavation or demolition, unless that removal or destruction occurs after the excavation or demolition;

(f) persons or entities who intentionally violate requirements of this chapter.

(C) 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.

(D) All penalties recovered in any actions brought under this section shall be paid into the state's general fund.

SECTION 3. If any section, subsection, 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 declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect one year after approval by the Governor.

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