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Underground Utility Damage Prevention Act

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Chapter 692 of the Public Acts of 1978, an act relating to the prevention of negligent or unsafe excavation or demolition operations resulting in damage to underground utilities, is reprinted below in its entirety for your information. If further interpretation or assistance is needed, contact MTAS.

This act applies to municipalities with underground utilities, including electric, gas, water, and sewage. It establishes a specific procedure for excavators to follow in obtaining information about the location of underground utilities. It also mandates the procedure and type of information municipalities with underground utilities must provide upon request.

CHAPTER 692
PUBLIC ACTS OF 1978

AN ACT Relating to the prevention of negligent or unsafe excavation or demolition operations resulting in damage to underground utilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. (Short Title.) This act may be cited as the "Underground Utility Damage Prevention Act".

SECTION 2. (Definitions.) As used in this act:

(1) "damage" includes the substantial weakening of structural or lateral support of an underground utility, penetration or destruction of any protective coating, housing or other protective device of an underground utility, the partial or complete severance of an underground utility and rendering any underground utility inaccessible;

(2) "demolish" or "demolition" means any operation by which a structure or mass of material is wrecked, razed, rendered, moved or removed by means of any tools, equipment, or discharge of explosives;

(3) "excavate" or "excavation" means an operation for the purpose of the movement, placement, 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, grading, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling, but not including the tilling of soil for agricultural purposes; or the digging of holes for fence posts on private property. Agricultural purposes
shall include surface activities, such as plowing, planting and combining, but does not include blasting, setting drainage tiles, subsoiling, or other sub-surface activities;

(4) "mechanized equipment" means equipment operated by means of mechanical power including 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;

(5) "person" means any individual; any corporation, partnership, association, or any other entity organized under the laws of any state; any state; any subdivision or instrumentality of a state; and any employee, agent, or legal representative thereof;

(6) "utility" means any line, system or facility used for producing, storing, conveying, transmitting, or distributing communications, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam or sewerage;

(7) "operator" means any person who owns or operates a utility; and

(8) "working day" means every day, except Saturday, Sunday, and national and legal state holidays.

SECTION 3. (Excavation and Demolition Permits.) A permit issued pursuant to law authorizing excavation or demolition operations, shall not be deemed to relieve a person from the responsibility for complying with the provisions of this act.

SECTION 4. (Prohibition.) Except as provided in Section 9, no person may excavate in a street, highway, public space, a private easement of an operator, or demolish a building without having first ascertained in the manner prescribed in Sections 6 and 8 the location of all underground utilities in the area that would be affected by the proposed excavation or demolition.

SECTION 5. (Filing Requirements of Utility Operators.)
(a) No later than 30 days before the effective date of all other sections of this act, each operator having underground facilities (including those facilities that have been abandoned in place by the operators but not yet physically removed) in a county shall file a notice with the Register of Deeds of said county that said utility company has facilities in that county, including a list also of towns and cities where facilities are located, the name of the operator and the name, title, address and telephone number of its representative designated to receive the written or telephonic notice of intent required by Section 6.

(b) Changes in any of the information contained in the list filed under Section 5(a) shall be filed by the operator with the Register of Deeds of the county, or the Register of Deeds of each county in which these utilities are located, within thirty working days of the change.

(c) A filing fee as determined by the Register of Deeds shall accompany the filing. These filings shall be filed and an index shall be maintained and kept up to date by the Register's office.
(d) The Register of Deeds shall, within one working day, furnish to the party requesting such information, in writing when requested, a list of utility companies having facilities in that county and all other information about those utility companies as outlined in paragraph (a). This information shall also include the date, time and name of requesting party.

(e) After the effective date of this act, operators shall maintain records and drawings of all changes and additions to its underground facilities.

SECTION 6. (Notice of Intent to Excavate or Demolish.)

(a) Except as provided in Section 9, before commencing any excavation or demolition operation designated in Section 4, each person responsible for such excavation or demolition shall serve written or telephonic notice of intent to excavate or demolish at least three, but not more than ten full working days, unless a shorter period is provided by agreement between the person responsible for the excavation or demolition and the operator or designated representative.

1. On each operator which has filed a list required by Section 5 indicating that it has underground utilities located in the proposed area of excavation or demolition; or

2. If the proposed area of excavation or demolition is served by an association provided for in Section 7, on such association and on each operator which has filed a list required by Section 5 indicating that it has underground utilities in the proposed area of excavation or demolition that is not receiving the services of the association; provided, where demolition of a building is proposed, operators shall be given reasonable time to remove or protect their utilities before demolition of the building is commenced.

(b) The written or telephonic notice required by Section 6(a) must 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 type of excavation or demolition operation to be conducted, the specific location of the proposed excavation or demolition, and whether or not explosives are anticipated to be used.

(c) If the notification required by this section is made by telephone, an adequate record of such notification shall be maintained by the operators and associations notified to document compliance with the requirements of this act, and a copy of this record shall be furnished to the person giving notice of intent to excavate or demolish if requested.

SECTION 7. (Operator Associations.) Operators may form and operate an association providing for mutual receipt of Section 6 notifications of excavation or demolition operations in a defined geographical area. An association that provides such service on behalf of operators having underground utilities within Tennessee (county) shall file with the Register of Deeds of the county in which those utilities are located, the telephone
number and address of the association, a description of the geographical area served by the association, and a list of the names and addresses of each operator receiving such service from the association.

SECTION 8. (Response to Notice of Intent to Excavate or Demolish.) Each operator or designated representative (including an association established in accordance with Section 7) notified in accordance with Section 6, shall, not less than two working days in advance of the proposed excavation or demolition (unless a shorter period is provided by agreement between the person responsible for the excavation or demolition and the operator or designated representative), furnish the following information to the person responsible for the excavation or demolition:

(1) The approximate location and description of all its known underground utilities which may be damaged as a result of the excavation or demolition;
(2) The location and description of all known utility markers including the approximate location of the underground utilities; and
(3) Any other information that would assist that person in locating and thereby avoiding damage to the underground utilities including temporary markings or maps, if required in the judgment of the operator, indicating the approximate location of the underground utility in locations where permanent utility markers do not exist.

For the purposes of this section the approximate location of underground utilities is defined as a (strip of land at least 4 feet wide but not wider than the width of the utility plus 2 feet on either side of the utility.) If the approximate location of an underground facility is marked with temporary markers, stakes or other physical means, the public utility shall follow the color coding prescribed herein:

<table>
<thead>
<tr>
<th>Utility and Type of Product</th>
<th>Specific Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electric power distribution and transmission</td>
<td>Identifying Color</td>
</tr>
<tr>
<td>Municipal electric systems</td>
<td>Safety red</td>
</tr>
<tr>
<td>Gas distribution and transmission</td>
<td>Safety red</td>
</tr>
<tr>
<td>Oil distribution and transmission</td>
<td>High visibility safety yellow</td>
</tr>
<tr>
<td>Dangerous materials, product lines</td>
<td>High visibility safety yellow</td>
</tr>
<tr>
<td>Telephone and telegraph systems</td>
<td>Safety alert orange</td>
</tr>
<tr>
<td>Cable television</td>
<td>Safety alert orange</td>
</tr>
<tr>
<td>Police and fire communications</td>
<td>Safety alert orange</td>
</tr>
<tr>
<td>Water systems</td>
<td>Safety precaution blue</td>
</tr>
<tr>
<td>Sewer systems</td>
<td>Safety green</td>
</tr>
</tbody>
</table>

SECTION 9. (Emergency Excavation or Demolition.) Compliance with the notice requirements of Section 6 is not required of persons responsible for emergency excavation or demolition, for repair or restoration of service or to ameliorate an imminent danger to life, health, or property, provided, however, that such persons give, as soon as practicable, oral notice of the emergency excavation or demolition to each operator having underground util-
ities located in the area (or to an association provided for in Section 7, that serves an operator) where such excavation or demolition is to be performed and requests emergency assistance from each operator so identified in locating and providing immediate protection to its underground utilities. An imminent danger to life, health, or property exists whenever there is a substantial likelihood that loss of life, health, or property will result before the procedures under Sections 6 and 8 can be fully complied with.

SECTION 10. (Precautions to Avoid Damage.) In addition to the notification requirements of Section 6, each person responsible for any excavation or demolition operation designated in Section 4 shall:
(1) Plan the excavation or demolition to avoid damage to or minimize interference with underground utilities in and near the construction area;
(2) Maintain a clearance between an underground utility 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 utility; and
(3) Provide such support for underground utilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such utilities.

SECTION 11. (Excavation or Demolition Damage.)
(a) Except as provided by Section 11(b), each person responsible for any excavation or demolition operation designated in Section 4 that results in any damage to an underground utility shall, immediately upon discovery of such damage, notify the operator of such utility of the location and nature of the damage and shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of such utility.
(b) Each person responsible for any excavation or demolition operation designated in Section 4 that results in damage to an underground utility permitting the escape of any flammable, toxic, or corrosive gas or liquid shall, immediately upon discovery of such damage, notify the operator, police and fire departments, and take any other action as may be reasonably necessary, to protect persons and property and to minimize the hazards until arrival of the operator's personnel or police and fire departments.
(c) During initial excavation, if an underground utility is found to be unsound due to deterioration, the person responsible for excavation shall immediately notify the utility company involved and shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of such utility.

SECTION 12. (Civil Penalties.) Any person who violates any provision of this act shall be subject to a civil penalty of not to exceed $1,000.00 for each violation. Actions to recover the penalty provided for in this section shall be brought by the Attorney General of Tennessee at the request of any person in the chancery or circuit court in 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 paid into the general fund of the state. Nothing in this
act shall be construed to modify or repeal existing laws pertaining to the tort liability of local governments and their employees. This act does not affect any civil remedies for personal injury or property (including underground utilities) damage except as otherwise specifically provided for in this act.

SECTION 13. (Severability.) If any provision of this act or the applicability thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 14. (Effective Date.) Except for the filing requirement of Section 5, this act is effective September 1, 1978. Section 5 is effective upon enactment of this act, the public welfare requiring it.

PASSED: March 8, 1978