



Sen. Arthur J. Wilhelmi

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LRB094 09311 MKM 45851 a

1 AMENDMENT TO HOUSE BILL 3755

2 AMENDMENT NO. _____. Amend House Bill 3755 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Underground Utility Facilities
5 Damage Prevention Act is amended by changing Sections 2, 2.2,
6 2.3, 4, 6, 10, and 11 and by adding Sections 2.9, 2.10, and
7 2.11 as follows:

8 (220 ILCS 50/2) (from Ch. 111 2/3, par. 1602)

9 Sec. 2. Definitions. As used in this Act, unless the
10 context clearly otherwise requires, the terms specified in
11 Sections 2.1 through 2.11 ~~2.8~~ have the meanings ascribed to
12 them in those Sections.

13 (Source: P.A. 92-179, eff. 7-1-02.)

14 (220 ILCS 50/2.2) (from Ch. 111 2/3, par. 1602.2)

15 Sec. 2.2. Underground utility facilities. "Underground
16 utility facilities" or "facilities" means and includes wires,
17 ducts, fiber optic cable, conduits, pipes, sewers, and cables
18 and their connected appurtenances installed beneath the
19 surface of the ground by a public utility (as is defined in the
20 Illinois Public Utilities Act, as amended), or by a municipally
21 owned or mutually owned utility providing a similar utility
22 service, except an electric cooperative as defined in the
23 Illinois Public Utilities Act, as amended, or by a pipeline

1 entity transporting gases, crude oil, petroleum products, or
2 other hydrocarbon materials within the State, or by a
3 telecommunications carrier as defined in the Universal
4 Telephone Service Protection Law of 1985, or by a company
5 described in Section 1 of "An Act relating to the powers,
6 duties and property of telephone companies", approved May 16,
7 1903, as amended, or by a community antenna television system,
8 hereinafter referred to as "CATS", as defined in the Illinois
9 Municipal Code, as amended.

10 (Source: P.A. 92-179, eff. 7-1-02.)

11 (220 ILCS 50/2.3) (from Ch. 111 2/3, par. 1602.3)

12 Sec. 2.3. Excavation. "Excavation" means any operation in
13 which earth, rock, or other material in or on the ground is
14 moved, removed, or otherwise displaced by means of any tools,
15 power equipment or explosives, and includes, without
16 limitation, grading, trenching, digging, ditching, drilling,
17 augering, boring, tunneling, scraping, cable or pipe plowing,
18 and driving but does not include farm tillage operations or
19 railroad right-of-way maintenance or operations or coal mining
20 operations regulated under the Federal Surface Mining Control
21 and Reclamation Act of 1977 or any State law or rules or
22 regulations adopted under the federal statute, or land
23 surveying operations as defined in the Illinois Professional
24 Land Surveyor Act of 1989 when not using power equipment, or
25 roadway surface milling.

26 (Source: P.A. 92-179, eff. 7-1-02.)

27 (220 ILCS 50/2.9 new)

28 Sec. 2.9. "Forty-eight hours" means 2 business days
29 beginning at 8 a.m. and ending at 4 p.m. (exclusive of
30 Saturdays, Sundays, and holidays recognized by the State-Wide
31 One-Call Notice System or the municipal one-call notice
32 system). All requests for locates received after 4 p.m. will be

1 processed as if received at 8 a.m. the next business day.

2 (220 ILCS 50/2.10 new)

3 Sec. 2.10. "Open cut utility locate" means a method of
4 locating underground utility facilities that requires
5 excavation by the owner, operator, or agent of the underground
6 facility.

7 (220 ILCS 50/2.11 new)

8 Sec. 2.11. "Roadway surface milling" means the removal of a
9 uniform pavement section by rotomilling, grinding, or other
10 means not including the base or subbase.

11 (220 ILCS 50/4) (from Ch. 111 2/3, par. 1604)

12 Sec. 4. Required activities. Every person who engages in
13 nonemergency excavation or demolition shall:

14 (a) take reasonable action to inform himself of the
15 location of any underground utility facilities or CATS
16 facilities in and near the area for which such operation is to
17 be conducted;

18 (b) plan the excavation or demolition to avoid or minimize
19 interference with underground utility facilities or CATS
20 facilities within the tolerance zone by utilizing such
21 precautions that include, but are not limited to, hand
22 excavation, vacuum excavation methods, and visually inspecting
23 the excavation while in progress until clear of the existing
24 marked facility;

25 (c) if practical, use white paint, flags, stakes, or both,
26 to outline the dig site;

27 (d) provide notice not less than 48 hours ~~(exclusive of~~
28 ~~Saturdays, Sundays and holidays)~~ but no more than 14 calendar
29 days in advance of the start of the excavation or demolition to
30 the owners or operators of the underground utility facilities
31 or CATS facilities in and near the excavation or demolition

1 area through the State-Wide One-Call Notice System or, in the
2 case of nonemergency excavation or demolition within the
3 boundaries of a municipality of at least one million persons
4 which operates its own one-call notice system, through the
5 one-call notice system which operates in that municipality;

6 (e) provide, during and following excavation or
7 demolition, such support for existing underground utility
8 facilities or CATS facilities in and near the excavation or
9 demolition area as may be reasonably necessary for the
10 protection of such facilities unless otherwise agreed to by the
11 owner or operator of the underground facility or CATS facility;

12 (f) backfill all excavations in such manner and with such
13 materials as may be reasonably necessary for the protection of
14 existing underground utility facilities or CATS facilities in
15 and near the excavation or demolition area; and

16 (g) After February 29, 2004, when the excavation or
17 demolition project will extend past 28 calendar days from the
18 date of the original notice provided under clause (d), the
19 excavator shall provide a subsequent notice to the owners or
20 operators of the underground utility facilities or CATS
21 facilities in and near the excavation or demolition area
22 through the State-Wide One-Call Notice System or, in the case
23 of excavation or demolition within the boundaries of a
24 municipality having a population of at least 1,000,000
25 inhabitants that operates its own one-call notice system,
26 through the one-call notice system that operates in that
27 municipality informing utility owners and operators that
28 additional time to complete the excavation or demolition
29 project will be required. The notice will provide the excavator
30 with an additional 28 calendar days from the date of the
31 subsequent notification to continue or complete the excavation
32 or demolition project.

33 At a minimum, the notice required under clause (d) shall
34 provide:

1 (1) the person's name, address, and (i) phone number at
2 which a person can be reached and (ii) fax number, if
3 available;

4 (2) the start date of the planned excavation or
5 demolition;

6 (3) the address at which the excavation or demolition
7 will take place;

8 (4) the type and extent of the work involved; and

9 (5) section/quarter sections when the above
10 information does not allow the State-Wide One-Call Notice
11 System to determine the appropriate geographic
12 section/quarter sections. This item (5) does not apply to
13 residential property owners.

14 Nothing in this Section prohibits the use of any method of
15 excavation if conducted in a manner that would avoid
16 interference with underground utility facilities or CATS
17 facilities.

18 (Source: P.A. 92-179, eff. 7-1-02; 93-430, eff. 8-5-03.)

19 (220 ILCS 50/6) (from Ch. 111 2/3, par. 1606)

20 Sec. 6. Emergency excavation or demolition.

21 (a) Every person who engages in emergency excavation or
22 demolition outside of the boundaries of a municipality of at
23 least one million persons which operates its own one-call
24 notice system shall take all reasonable precautions to avoid or
25 minimize interference between the emergency work and existing
26 underground utility facilities or CATS facilities in and near
27 the excavation or demolition area, through the State-Wide
28 One-Call Notice System, and shall notify, as far in advance as
29 possible, the owners or operators of such underground utility
30 facilities or CATS facilities in and near the emergency
31 excavation or demolition area, through the State-Wide One-Call
32 Notice System. At a minimum, the notice required under this
33 subsection (a) shall provide:

1 (1) the person's name, address, and (i) phone number at
2 which a person can be reached and (ii) fax number, if
3 available;

4 (2) the start date of the planned emergency excavation
5 or demolition;

6 (3) the address at which the excavation or demolition
7 will take place; and

8 (4) the type and extent of the work involved.

9 There is a wait time of 2 hours or the date and time
10 requested on the notice, whichever is longer, A 2-hour wait
11 time exists after an emergency locate notification request is
12 made through the State-Wide One-Call Notice System. If the
13 conditions at the site dictate an earlier start than the
14 required 2-hour wait time, it is the responsibility of the
15 excavator to demonstrate that site conditions warranted this
16 earlier start time.

17 Upon notice by the person engaged in emergency excavation
18 or demolition, the owner or operator of an underground utility
19 facility or CATS facility in or near the excavation or
20 demolition area shall communicate with the person engaged in
21 emergency excavation or demolition within 2 hours or by the
22 date and time requested on the notice, whichever is longer.

23 The notice by the owner or operator to the person engaged
24 in emergency excavation or demolition may be provided by phone
25 or phone message or by marking the excavation or demolition
26 area. The owner or operator has discharged the owner's or
27 operator's obligation to provide notice under this Section if
28 the owner or operator attempts to provide notice by telephone
29 but is unable to do so because the person engaged in the
30 emergency excavation or demolition does not answer his or her
31 telephone or does not have an answering machine or answering
32 service to receive the telephone call. If the owner or operator
33 attempts to provide notice by telephone or by facsimile but
34 receives a busy signal, that attempt shall not discharge the

1 owner or operator from the obligation to provide notice under
2 this Section.

3 (b) Every person who engages in emergency excavation or
4 demolition within the boundaries of a municipality of at least
5 one million persons which operates its own one-call notice
6 system shall take all reasonable precautions to avoid or
7 minimize interference between the emergency work and existing
8 underground utility facilities or CATS facilities in and near
9 the excavation or demolition area, through the municipality's
10 one-call notice system, and shall notify, as far in advance as
11 possible, the owners and operators of underground utility
12 facilities or CATS facilities in and near the emergency
13 excavation or demolition area, through the municipality's
14 one-call notice system.

15 (c) The reinstallation of traffic control devices shall be
16 deemed an emergency for purposes of this Section.

17 (d) An open cut utility locate shall be deemed an emergency
18 for purposes of this Section.

19 (Source: P.A. 92-179, eff. 7-1-02.)

20 (220 ILCS 50/10) (from Ch. 111 2/3, par. 1610)

21 Sec. 10. Record of notice; marking of facilities. Upon
22 notice by the person engaged in excavation or demolition, the
23 person owning or operating underground utility facilities or
24 CATS facilities in or near the excavation or demolition area
25 shall cause a written record to be made of the notice and shall
26 mark, within 48 hours ~~(excluding Saturdays, Sundays and~~
27 ~~holidays)~~ of receipt of notice, the approximate locations of
28 such facilities so as to enable the person excavating or
29 demolishing to establish the location of the underground
30 utility facilities or CATS facilities. Owners and operators of
31 underground sewer facilities that are located outside the
32 boundaries of a municipality having a population of at least
33 1,000,000 inhabitants shall be required to respond and mark the

1 approximate location of those sewer facilities when the
2 excavator indicates, in the notice required in Section 4, that
3 the excavation or demolition project will exceed a depth of 7
4 feet. "Depth", in this case, is defined as the distance
5 measured vertically from the surface of the ground to the top
6 of the sewer facility. Owners and operators of underground
7 sewer facilities that are located outside the boundaries of a
8 municipality having a population of at least 1,000,000
9 inhabitants shall be required at all times to locate the
10 approximate location of those sewer facilities when: (1)
11 directional boring is the indicated type of excavation work
12 being performed within the notice; (2) the underground sewer
13 facilities owned are non-gravity, pressurized force mains; or
14 (3) the excavation indicated will occur in the immediate
15 proximity of known underground sewer facilities that are less
16 than 7 feet deep. Owners or operators of underground sewer
17 facilities that are located outside the boundaries of a
18 municipality having a population of at least 1,000,000
19 inhabitants shall not hold an excavator liable for damages that
20 occur to sewer facilities that were not required to be marked
21 under this Section, provided that prompt notice of the damage
22 is made to the State-Wide One-Call Notice System and the
23 utility owner as required in Section 7.

24 All persons subject to the requirements of this Act shall
25 plan and conduct their work consistent with reasonable business
26 practices. Conditions may exist making it unreasonable to
27 request that locations be marked within 48 hours. It is
28 unreasonable to request owners and operators of underground
29 utility facilities and CATS facilities to locate all of their
30 facilities in an affected area upon short notice in advance of
31 a large or extensive nonemergency project, or to request
32 extensive locates in excess of a reasonable excavation or
33 demolition work schedule, or to request locates under
34 conditions where a repeat request is likely to be made because

1 of the passage of time or adverse job conditions. Owners and
2 operators of underground utility facilities and CATS
3 facilities must reasonably anticipate seasonal fluctuations in
4 the number of locate requests and staff accordingly.

5 If a person owning or operating underground utility
6 facilities or CATS facilities receives a notice under this
7 Section but does not own or operate any underground utility
8 facilities or CATS facilities within the proposed excavation or
9 demolition area described in the notice, that person, within 48
10 hours ~~(excluding Saturdays, Sundays, and holidays)~~ after
11 receipt of the notice, shall so notify the person engaged in
12 excavation or demolition who initiated the notice, unless the
13 person who initiated the notice expressly waives the right to
14 be notified that no facilities are located within the
15 excavation or demolition area. The notification by the owner or
16 operator of underground utility facilities or CATS facilities
17 to the person engaged in excavation or demolition may be
18 provided in any reasonable manner including, but not limited
19 to, notification in any one of the following ways: by
20 face-to-face communication; by phone or phone message; by
21 facsimile; by posting in the excavation or demolition area; or
22 by marking the excavation or demolition area. The owner or
23 operator of those facilities has discharged the owner's or
24 operator's obligation to provide notice under this Section if
25 the owner or operator attempts to provide notice by telephone
26 or by facsimile, if the person has supplied a facsimile number,
27 but is unable to do so because the person engaged in the
28 excavation or demolition does not answer his or her telephone
29 or does not have an answering machine or answering service to
30 receive the telephone call or does not have a facsimile machine
31 in operation to receive the facsimile transmission. If the
32 owner or operator attempts to provide notice by telephone or by
33 facsimile but receives a busy signal, that attempt shall not
34 serve to discharge the owner or operator of the obligation to

1 provide notice under this Section.

2 A person engaged in excavation or demolition may expressly
3 waive the right to notification from the owner or operator of
4 underground utility facilities or CATS facilities that the
5 owner or operator has no facilities located in the proposed
6 excavation or demolition area. Waiver of notice is only
7 permissible in the case of regular or nonemergency locate
8 requests. The waiver must be made at the time of the notice to
9 the State-Wide One-Call Notice System. A waiver made under this
10 Section is not admissible as evidence in any criminal or civil
11 action that may arise out of, or is in any way related to, the
12 excavation or demolition that is the subject of the waiver.

13 For the purposes of this Act, underground facility
14 operators may utilize a combination of flags, stakes, and paint
15 when possible on non-paved surfaces and when dig site and
16 seasonal conditions warrant. If the approximate location of an
17 underground utility facility or CATS facility is marked with
18 stakes or other physical means, the following color coding
19 shall be employed:

20	<u>Underground Facility</u> Utility or Identification Color
21	Community Antenna
22	Television Systems and Type
23	of Product

24 Facility Owner or Agent Use Only

25	Electric Power, Distribution and	
26	Transmission	Safety Red
27	Municipal Electric Systems	Safety Red
28	Gas Distribution and Transmission	High Visibility
29		Safety Yellow
30	Oil Distribution and Transmission	High Visibility
31		Safety Yellow
32	Telephone and Telegraph Systems	Safety Alert Orange

1	Community Antenna Television Systems ..	Safety Alert Orange
2	Water Systems	Safety
3		Precaution Blue
4	Sewer Systems	Safety Green
5	Non-potable Water and Slurry Lines	Safety Purple
6	<u>Excavator Use Only</u>	
7	Temporary Survey	Safety Pink
8	Proposed Excavation	Safety White (Black
9		when snow is
10		on the ground)

11 (Source: P.A. 92-179, eff. 7-1-02; 93-430, eff. 8-5-03.)

12 (220 ILCS 50/11) (from Ch. 111 2/3, par. 1611)

13 Sec. 11. Penalties; liability; fund.

14 (a) Every person who, while engaging in excavation or
15 demolition, wilfully fails to comply with the Act by failing to
16 provide the notice to the owners or operators of the
17 underground facilities or CATS facility near the excavation or
18 demolition area through the State-Wide One-Call Notice System
19 as required by Section 4 or 6 of this Act shall be subject to a
20 penalty of up to \$5,000 for each separate offense and shall be
21 liable for the damage caused to the owners or operators of the
22 facility.

23 (b) Every person who, while engaging in excavation or
24 demolition, has provided the notice to the owners or operators
25 of the underground utility facilities or CATS facilities in and
26 near the excavation or demolition area through the State-Wide
27 One-Call Notice System as required by Section 4 or 6 of this
28 Act, but otherwise wilfully fails to comply with this Act,
29 shall be subject to a penalty of up to \$2,500 for each separate
30 offense and shall be liable for the damage caused to the owners
31 or operators of the facility.

32 (c) Every person who, while engaging in excavation or
33 demolition, has provided the notice to the owners or operators

1 of the underground utility facilities or CATS facilities in and
2 near the excavation or demolition area through the State-Wide
3 One-Call Notice System as required by Section 4 or 6 of this
4 Act, but otherwise, while acting reasonably, damages any
5 underground utility facilities or CATS facilities, shall not be
6 subject to a penalty, but shall be liable for the damage caused
7 to the owners or operators of the facility provided the
8 underground utility facility or CATS facility is properly
9 marked as provided in Section 10 of this Act.

10 (d) Every person who, while engaging in excavation or
11 demolition, provides notice to the owners or operators of the
12 underground utility facilities or CATS facilities through the
13 State-Wide One-Call Notice System as an emergency locate
14 request and the locate request is not an emergency locate
15 request as defined in Section 2.6 of this Act shall be subject
16 to a penalty of up to \$2,500 for each separate offense.

17 (e) Owners and operators of underground utility facilities
18 or CATS facilities (i) who wilfully fail to comply with this
19 Act by a failure to mark the location of an underground utility
20 or CATS facility or a failure to provide notice that facilities
21 are not within the proposed excavation or demolition area as
22 required in Section 10, or (ii) who willfully fail to respond
23 as required in Section 6 to an emergency request, after being
24 notified of planned excavation or demolition through the
25 State-Wide One-Call Notice System, shall be subject to a
26 penalty of up to \$5,000 for each separate offense resulting
27 from the failure to mark an underground utility facility or
28 CATS facility.

29 (f) As provided in Section 3 of this Act, all owners or
30 operators of underground utility facilities or CATS facilities
31 who fail to join the State-Wide One-Call Notice System by
32 January 1, 2003 shall be subject to a penalty of \$100 per day
33 for each separate offense. Every day an owner or operator fails
34 to join the State-Wide One-Call Notice System is a separate

1 offense. This subsection (f) does not apply to utilities
2 operating facilities or CATS facilities exclusively within the
3 boundaries of a municipality with a population of at least
4 1,000,000 persons.

5 (g) No owner or operator of underground utility facilities
6 or CATS facilities shall be subject to a penalty where a delay
7 in marking or a failure to mark or properly mark the location
8 of an underground utility or CATS facility is caused by
9 conditions beyond the reasonable control of such owner or
10 operator.

11 (h) Any person who is neither an agent, employee, or
12 authorized locating contractor of the owner or operator of the
13 underground utility facility or CATS facility nor an excavator
14 involved in the excavation activity who removes, alters, or
15 otherwise damages markings, flags, or stakes used to mark the
16 location of an underground utility or CATS facility other than
17 during the course of the excavation for which the markings were
18 made or before completion of the project shall be subject to a
19 penalty up to \$1,000 for each separate offense.

20 (i) The excavator shall exercise due care at all times to
21 protect underground utility facilities and CATS facilities.
22 If, after proper notification through the State-Wide One-Call
23 Notice System and upon arrival at the site of a proposed
24 excavation, the excavator observes clear evidence of the
25 presence of an unmarked utility or CATS facility in the area of
26 the proposed excavation, the excavator shall not begin
27 excavating until 2 hours after an additional call is made to
28 the State-Wide One-Call Notice System for the area. The
29 operator of the utility or CATS facility shall respond within 2
30 hours of the excavator's call to the State-Wide One-Call Notice
31 System.

32 (j) The Illinois Commerce Commission shall have the power
33 and jurisdiction to, and shall, enforce the provisions of this
34 Act. The Illinois Commerce Commission may impose

1 administrative penalties as provided in this Section. The
2 Illinois Commerce Commission may promulgate rules and develop
3 enforcement policies in the manner provided by the Public
4 Utilities Act in order to implement compliance with this Act.
5 When a penalty is warranted, the following criteria shall be
6 used in determining the magnitude of the penalty:

7 (1) gravity of noncompliance;

8 (2) culpability of offender;

9 (3) history of noncompliance for the 18 months prior to
10 the date of the incident;

11 (4) ability to pay penalty;

12 (5) show of good faith of offender;

13 (6) ability to continue business; and

14 (7) other special circumstances.

15 (k) There is hereby created in the State treasury a special
16 fund to be known as the Illinois Underground Utility Facilities
17 Damage Prevention Fund. All penalties recovered in any action
18 under this Section shall be paid into the Fund and shall be
19 distributed annually as a grant to the State-Wide One-Call
20 Notice System to be used in safety and informational programs
21 to reduce the number of incidents of damage to underground
22 utility facilities and CATS facilities in Illinois. The
23 distribution shall be made during January of each calendar year
24 based on the balance in the Illinois Underground Utility
25 Facilities Damage Prevention Fund as of December 31 of the
26 previous calendar year. In all such actions under this Section,
27 the procedure and rules of evidence shall conform with the Code
28 of Civil Procedure, and with rules of courts governing civil
29 trials.

30 (l) The Illinois Commerce Commission shall establish an
31 Advisory Committee consisting of a representative from each of
32 the following: utility operator, JULIE, excavator,
33 municipality, and the general public. The Advisory Committee
34 shall serve as a peer review panel for any contested penalties

1 resulting from the enforcement of this Act.

2 The members of the Advisory Committee shall be immune,
3 individually and jointly, from civil liability for any act or
4 omission done or made in performance of their duties while
5 serving as members of such Advisory Committee, unless the act
6 or omission was the result of willful and wanton misconduct.

7 (m) If, after the Advisory Committee has considered a
8 particular contested penalty and performed its review
9 functions under this Act and the Commission's rules, there
10 remains a dispute as to whether the Commission should impose a
11 penalty under this Act, the matter shall proceed in the manner
12 set forth in Article X of the Public Utilities Act, including
13 the provisions governing judicial review.

14 (Source: P.A. 92-179, eff. 7-1-02.)

15 Section 99. Effective date. This Act takes effect upon
16 becoming law."