



Model State One-Call Law

Adopted

by the

NTDPC

November 2002

Model State One-Call Law

PROPOSED STATE ONE-CALL LEGISLATION UNDERGROUND FACILITY DAMAGE PREVENTION AND SAFETY ACT

An act relating to underground facilities, creating a state One-Call system for the protection of underground infrastructures; providing legislative intent; providing for participation by Underground Facility Owner/Operators; providing procedures; requiring notice of excavation and demolition; providing for liability of certain entities and the system providing civil and criminal penalties; providing an exemption for private individual property owners; and providing an exception for emergencies.

BE IT ENACTED BY THE LEGISLATURE OF STATE

SECTION 1: SHORT TITLE; LEGISLATIVE INTENT

- a. It is the purpose of this act to aid the public by preventing injury to persons and/or property and preventing the interruption of services resulting from damage to an Underground Facility caused by excavation or demolition operations.
- b. It is the intent of this act to provide minimum recommended guidelines for uniform state One-Call legislation.
- c. This act may be cited as the “Underground Facility Damage Prevention and Safety Act”.

SECTION 2: DEFINITIONS

As used in this article the following definitions apply:

- a. “Tolerance Zone” means a strip of land not less than 18 inches on either side measured on a horizontal plane and from the outer edge of the exterior surface of the underground facility.
- b. “Business Days” means any day other than business days, excluding Saturdays, Sundays and any recognized holidays by the state. “Hours” is meant to include all of the hours of a day.
- c. “Damage” means any impact upon or contact with, including without limitation, penetrating, striking, scraping, displacing, or denting, however slight, the protective coating, housing, duct, or other protective devices of any underground facility, or the removal or weakening of any lateral or vertical support from any underground facility, or the severance partial or complete, of any underground facility.
- d. “Demolish” or “demolition” means any operation by which a structure or mass of material is wrecked, razed, rended, moved, or removed by means of any tool, equipment,

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or discharge of explosives, or any disturbances of the earth in any manner on public or private lands which could damage any underground facility.

e. “Design Locate Request” means a communication to the Notification Center in which a request is made for locating existing utility facilities for bidding, predesign, or advance planning purposes. A Design Locate Request may not be used for excavation purposes.

f. “Emergency” means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. “Unexpected occurrence” includes, but is not limited to, fires, floods, earthquakes or other soil or geologic movements, riots, accidents, vandalism, or sabotage that cause damage to an underground facility requiring immediate repair.

g. “Excavation” means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives in any of the following ways, including but not limited to: grading, trenching, digging, ditching, drilling, augering, boring, tunneling, scraping, cable or pipe plowing or driving, cable mining or salvage.

h. “Excavator” means any person, firm, contractor or subcontractor, owner, operator, utility, association, corporation, partnership, sole proprietor, business trust, Public Agency, or other entity which, with their, or his or her, own employees or equipment performs any excavation.

i. “Field Mark” means stakes, paint, pin flags or temporary marks made in some other customary manner, placed in accordance with the CGA Best Practices Appendix B that identifies the approximate location of an underground facility.

j. “Inquiry Identification Number” means a unique number that is provided by the Notification Center to every person who contacts the center informing the center of its intent to excavate. This is also referred to as a ‘locate request’.

k. “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.

l. “Notification Center” means a singular nonprofit association of Owner/Operators’ of underground facilities that receives and transmits advance warning of excavations or other work close to existing underground facilities, for the purpose of protecting those facilities from damage, removal, relocation, or repair, as defined in Section 3 of this Act.

m. “Owner/Operator” means a person who owns, operates or controls an underground facility. A person is not considered an Owner/Operator solely because the person is an owner or tenant of real property where underground facilities are located if

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the underground facilities are used exclusively to furnish services or commodities on that property, unless the underground facility crosses a public right of way, or unless the person is the state, a state agency, or a local government unit.

n. “Person” means any individual acting on his or her own behalf, sole proprietor, corporation, partnership, association, joint venture, or Public Agency.

o. “Positive Response” means a communication made to the Notification Center by an owner/operator reporting the status of a specific locate request.

p. “Project Engineer” means any architect, engineer, planner, estimator or other person who prepares plans that requires excavation as herein defined.

q. “Proposed Excavation Work” means any excavation activity, or excavation planning and design work.

r. “Public Improvement” means any construction, reconstruction, improvement, enlargement, alteration, or repair of a building, highway, drainage system, water system, road, street alley, sewer, ditch sewage disposal plant, water works, and all other structures or works of any nature by a Public Agency.

s. “Public Agency” means the state, local or municipal government and any political subdivision thereof.

t. “Underground Facility” means any public or private facility which is buried, placed below ground, or submerged on any Owner/Operator’s right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water, power, communications, petroleum products, natural gas, sewage, or other such substances transported underground; and includes, but is not limited to, pipes, ducts, sewers, conduits, cables, valves, lines, and associated underground equipment. For the purposes of this act, a liquefied petroleum gas line is not an Underground Facility unless such line is subject to the requirements of Title 49, Code of Federal Regulations, provided there is no encroachment on any Owner/Operator’s right-of-way, easement, or permitted use.

SECTION 3: NOTIFICATION CENTER STRUCTURE

a. There shall be a single, comprehensive statewide one-call Notification Center, in accordance with the Act, to provide notice of all excavations or demolitions near underground facilities.

b. The Notification Center shall be incorporated or operated as a non-profit corporation and governed by a board of directors that represents and is elected by facility owners/operators, excavators, locators, and other stakeholders involved in underground utility damage prevention.

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c. All Owner/Operators, as defined in this act, shall participate in and share in the costs of one statewide Notification Center established pursuant to Section 4. Costs for the Notification Center shall be shared, in an equitable manner for services received, by facility owners/operators as determined by the center's board of directors. Political subdivisions with a population of less than (two thousand persons) or municipal authorities having an aggregate population in the area served by the municipal authority of less than (five thousand persons) shall be exempt from payment of any service, but shall participate in the Notification Center and locate their underground facilities.

d. The Notification Center shall maintain a list showing the counties within which its participating utilities maintain gas pipes and other underground utility facilities. The center shall also maintain a list of the name, address, and telephone number of the office, department, or other source from or through which information respecting the location of gas pipes and other underground utility facilities of its participating utilities facility owners or operators may be obtained.

SECTION 4: ELEMENTS OF THE NOTIFICATION CENTER

The Notification Center shall:

- a. Operate in all areas of the state containing underground facilities;
- b. Receive and distribute advance notifications of excavations or demolitions to all member Underground Facility Owner/Operators for the purpose of marking underground facilities, except as provided by this Act;
- c. Develop and implement a public awareness/damage prevention program to educate the general public, excavators, and Owners/Operators, about the one-call telephone number and the requirements and penalties of the Act;
- d. Provide for acceptance of '811' dialed calls 24 hours a day and 365 days a year, to receive and record the information provided by excavators and project engineers and to respond to information requests from excavators and project engineers. An existing nationally-accessible toll-free telephone number and facsimile number may also be made or kept available.
- e. Establish and maintain a "Positive Response" system whereby Owner/Operators can electronically report the status of a locate request received and whereby excavators can monitor the status of a locate request it submitted. The status of the locate request may be reported as one of the following classifications:
 1. No Conflict – the owner/operator has no facilities within the excavation area described in the locate request
 2. Facility has been marked

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3. Invalid locate information – the excavation area described in the locate request cannot be found or determined
4. An alternate marking schedule has been agreed to by the excavator and locator
 - a. When updating a locate request using this classification, the locator must have a documented written agreement that includes:
 - 1) Name of each party to the agreement
 - 2) Date the agreement was made
 - 3) Details of the alternate marking schedule
 - f. Transmit prompt notification to Owner/Operators on a 24-hour a day, seven-day a week basis; and
 - g. Maintain professional liability and errors and omissions insurance to cover duties created by this Act.

SECTION 5: PLANNED EXCAVATION; INQUIRY; TIME; MARKING AREA; IDENTIFICATION NUMBER; NOTIFICATION OF A MEMBER WITH UNDERGROUND FACILITIES; RECORDS

- a. Except in an emergency, every person planning to conduct any excavation or demolition operation shall inform the Notification Center of the intended excavation, at least 2 business days, but not more than 14 calendar days, prior to commencing that excavation.
- b. In addition to providing a clear description of the planned excavation area, when the excavation site cannot be clearly and adequately identified on the locate ticket, the excavator should designate the route and/or area to be excavated by using white paint or other suitable means prior to the arrival of the locator.
- c. The Notification Center shall provide an Inquiry Identification Number to the person who informs the center pursuant to this section and shall promptly notify any member who has an Underground Facility in the area of the proposed excavation. An inquiry validation number will be valid for 14 calendar days beginning two business days after notification of intent to excavate.
- d. A record of all notifications by excavators and Owner/Operators to the Notification Center shall be maintained in accordance with applicable statutes. The records shall be available for inspection by the excavator and any member, or their representative, during normal business hours and according to guidelines for inspection as may be established by the Notification Centers.
- e. An excavator shall provide the following information to the Notification Center: the excavator's name, address, telephone number and facsimile number, that of his/her employer if subcontracting and the project owner; the nature and extent of the excavation

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or demolition, including, but not limited to, the type of work being done, the depth if known; whether directional boring will be used; the start date and time; duration of the work, and the location of the work. For purposes of locating the work, the excavator may supply the closest street address, road crossing, or intersection, the applicable railroad milepost, county, township and range, or other location identifier in unincorporated areas.

f. The Notification Center shall provide to the excavator a list of all owners/operators being notified of the intended notification at the time of the excavator's notification.

SECTION 6: MARKING UNDERGROUND FACILITIES; NONCOMPLIANCE WITH REQUIREMENT; RECORDS

a. Any Owner/Operator of a Underground Facility who receives timely notification of any Proposed Excavation Work in accordance with Section 5 shall, within 2 business days of that notification, or before the indicated start of the excavation work, whichever is later, or at a later time mutually agreeable to the Owner/Operator and the excavator, locate and Field Mark the approximate location of its facility(s).

b. Any Owner/Operator who receives timely notification of any Proposed Excavation Work in accordance with Section 5 shall update the status of the notification request via the Positive Response System at the One-Call Notification Center. If a Positive Response System is not available, the Owner/Operator shall make reasonable efforts to communicate the status of the notification request directly to the excavator. Communication to the excavator may include one or more of the following: marking the facilities, telephone communication or voice-mail, facsimile, email. Reasonable efforts are defined as (3) three attempts of any of the above stated communication methods.

c. Every Owner/Operator of an Underground Facility shall Field Mark the location of an Underground Facility in conformance with the current marking requirements set forth by the CGA Best Practices Appendix B.

d. The excavator shall notify the Notification Center of any obvious failure of an Owner/Operator to comply with this section before any excavation commences. The excavator may proceed if such excavator exercises due care and caution to prevent damage to any Underground Facility.

SECTION 7: EXCAVATING NEAR UNDERGROUND FACILITIES

When excavating within the Tolerance Zone, the excavator shall do all of the following:

a. Plan the excavation to avoid damage to or minimize interference with the underground facilities in and near the construction area.

b. Determine the exact location of any marked Underground Facility utilizing non-invasive methods of excavation. Methods to consider include hand

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digging, pot holing, soft digging, vacuum excavation methods or any other methods with the approval of the facility Owner/Operator. For parallel type excavations, the existing facility shall be exposed at intervals as often as necessary to avoid damages.

- c. Maintain 18” clearance between any Underground Facility and the cutting edge or point of Mechanized Equipment.
- d. Provide such support for underground utilities in and near the construction area, including backfill operations, as may be reasonably required by the operator for the protection of such utilities.
- e. When utilizing a trenchless excavation technique, perform electronic monitoring of the drilling head during the backream procedure as well as the pilot hole drilling.
- f. Protect and preserve the markings of approximate locations of underground facilities until those markings are no longer required for proper and safe excavations. If, at any time during an excavation, an Owner/Operator’s Field Markings are no longer reasonably visible, the excavator shall notify the Notification Center. The Notification Center shall contact all known members who have underground facilities in the area of the excavation. Upon receiving timely notification or renotification pursuant to this subsection, the Owner/Operator shall re-locate and re-mark, as soon as possible, but no later than 48 hours, those underground facilities that may be affected by the excavation to the extent necessary, in conformance with this section.
- g. As soon as any damage to a Underground Facility or its protective facilities, including grounding and warning tape, is discovered, report the type and location of the damage to the Notification Center and the Owner/Operator, if known, and cooperate to mitigate damages to the extent reasonably possible, including the provision of in-kind work by the excavator where technical or specialty skills are not required by the nature of the Underground Facility. Such in-kind work may be under the supervision and pursuant to the specifications of the Owner/Operator.
- h. Immediately report to the Owner/Operator and, appropriate law enforcement agencies and fire departments, any damage to a Underground Facility that results in escaping flammable, corrosive, explosive, or toxic liquids or gas, and take reasonable actions needed to protect persons or property and to minimize safety hazards until those agencies and departments and the Owner/Operator arrive at the scene.

SECTION 8: PROJECT ENGINEER’S RESPONSIBILITY; DESIGN REQUESTS

- a. Any person may submit a Design Locate Request to the Notification Center. Such Design Locate Request shall: (1) Describe the tract or parcel of land for which the

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Design Locate Request has been submitted with sufficient particularity, as defined by policies developed and promulgated by the Notification Center, to enable the facility Owner/Operator to ascertain the precise tract or parcel of land involved; and (2) State the name, address, telephone number and facsimile number of the person who has submitted the Design Locate Request, and the company name of the project owner.

b. Within ten business days after a Design Locate Request has been submitted to the Notification Center for a proposed project, the facility Owner/Operator shall respond by one of the following methods: (1) Designate the location of all utility facilities within the area of the proposed excavation; (2) Provide to the person submitting the Design Locate Request the best available description of all utility facilities in the area of proposed excavation, which might include drawings of utility facilities already built in the area, or other facility records that are maintained by the facility Owner/Operator; or (3) Allow the person submitting the Design Locate Request or any other authorized person to inspect or copy the drawings or other records for all utility facilities within the proposed area of excavation. Owner/Operators have the right to recover reasonable and compensatory costs for providing information pursuant to a Design Locate Request.

SECTION 9: PERMIT VALIDITY CONTINGENT ON COMPLIANCE

Before commencing any excavation activity, an Inquiry Identification Number issued by the Notification Center must be provided to any Public Agency requiring an excavation permit. No permit to excavate issued by a Public Agency shall be valid unless and until the excavator has also provided an Inquiry Identification Number issued by the Notification Center to the Public Agency issuing the permit.

SECTION 10: PUBLIC AGENCIES

The requirements of this Act apply to public agencies which own or operate underground facilities and/or which perform excavation or demolition, with the exception of underground emergency repair to traffic control devices used on any street or highway under the agency's jurisdiction. The Public Agency shall notify the Notification Center of the emergency repair site at the earliest opportunity and take all reasonable precautions to protect any Underground Facility.

SECTION 11: VIOLATIONS; PENALTIES; OTHER REMEDIES; GOVERNMENT IMMUNITY; ACTIONS

a. Any person who violates the requirements of this Act shall:

(1) On the first offense, receive a written warning notification and / or be required to complete a damage prevention education program provided by the Notification Center.

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- (2) On the second offense within a 12-month period, be subject to a civil penalty for a minimum of \$250 and required to repeat the damage prevention education program provided by the Notification Center.
- (3) On subsequent offenses within a 12-month period, be subject to a civil penalty for a minimum of \$500 per violation and referral to the appropriate licensing board.
- (4) Any person who knowingly and willfully violates any of the provisions of this article is subject to a civil penalty in an amount not to exceed fifty thousand dollars (\$50,000).
- b. Good faith, flagrancy, or magnitude of an offense may permit deviation from subsection 11(a). In determining the amount of any penalty, the following shall be considered: (1) the nature, circumstances and gravity of the violation; (2) the degree of the person's culpability; (3) the person's history of prior offenses; (4) the person's level of cooperation with the requirements of this regulation; (5) effect of the penalty on the person's ability to continue business; (6) and the good faith on the part of the person in attempting to remedy the cause of the violation shall be considered.
- c. An action to recover a civil penalty under this section may be brought by an Owner/Operator, excavator, aggrieved party, district attorney or the attorney general. Venue for such an action shall be proper in the district or county court for the county in which the Owner/Operator, excavator, or aggrieved party resides or maintains a principal place of business in this state or in the county in which the conduct giving rise to a civil penalty occurred.
- d. Any civil penalty imposed pursuant to this section, including reasonable attorney's fees, shall be paid to the prevailing party.
- e. The penalties provided in this article are in addition to any other remedy at law or equity available to an excavator or to the Owner/Operator of a damaged Underground Facility.
- f. No civil penalty shall be imposed under this section against an excavator or Owner/Operator who violates any of the provisions of this section if the violation occurred while the excavator or Owner/Operator was responding to a service outage or other emergency; except that such penalty shall be imposed if the violation was willful or malicious.
- g. This section shall not be construed to limit any other provision of law granting governmental immunity to state or local agencies or to impose any liability or duty of care not otherwise imposed by law upon any state or local agency.

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h. Except as otherwise specifically provided in this article, this section is not intended to affect any civil remedies otherwise provided by law for personal injury or for property damage.

i. Any person who willfully or maliciously removes a marking used by an Owner/Operator to mark the location of any Underground Facility, except in the ordinary course of excavation, is guilty of a misdemeanor, and, upon conviction thereof, in addition to any order for restitution, shall be punished by a fine of not more than five thousand dollars for each offense, by imprisonment for not more than one year or by both such fine and imprisonment.

j. The state commerce or corporate commission shall administer penalties and/or fines. For any disputed penalties and/or fines, the commission will establish an Advisory Committee consisting of impartial representatives from the excavating industry, the locating industry, the Notification Center staff or board of directors, a utility Owner/Operator, and the general public.

k. The state shall establish a Special Fund solely composed of funds collected from fines resulting from violation of this Act. All fines recovered under this Act shall be paid into the Fund and shall be distributed annually as a grant to the Notification Center to be used specifically for supplementing the existing public awareness/damage prevention program to educate the general public, excavators, and Owners/Operators.

SECTION 12: LIABILITY; DAMAGES

a. Whenever a person has violated, intends to violate, or will violate any provision of this Act, the state or any person may institute a civil court action for injunctive relief.

b. If any Underground Facility is damaged as a proximate result of a excavator's failure to comply with the provisions of this Act, that person shall be liable to the Owner/Operator of the Underground Facility for any cost or damage incurred by the Owner/Operator in restoring, repairing, replacing its damaged Underground Facility, and/or other consequential damages, including but not limited to loss of product, loss of use, interruption of service occurring because of the damage or injury to the Underground Facility, together with reasonable costs and expenses of suit, if any, including reasonable attorneys' fees, provided the Owner/Operator is a member of the Notification Center. Additionally, the person shall be liable for any injury or damage to persons or property resulting from the damage to the Underground Facility, and shall indemnify, defend and hold harmless the affected Owner/Operator against any and all claims or actions, if any, for personal injury, death, property damage or service interruption proximately caused by the damage to the Underground Facility.

c. If any Underground Facility is damaged as a proximate result of an Owner/Operator's failure to comply with the provisions of this Act, that Owner/Operator

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shall forfeit any claim for damages to its Underground Facility arising from the excavation against an excavator who has complied with the provisions of this Act. The Owner/Operator shall be liable for any reasonable cost or damage incurred directly by the excavator as a result of any delay in the excavation project while the Underground Facility is restored, repaired, replaced together with reasonable costs and expenses of suit, if any, including reasonable attorneys' fee. Additionally, the Owner/Operator shall be liable for any injury or damage to persons or property proximately caused by the Owner/Operator's failure to comply with the provisions of this Act, and shall indemnify, defend and hold harmless the affected excavator against any and all claims or actions, if any, for personal injury, death, property damage or service interruption proximately caused by the Owner/Operator's failure to comply.

SECTION 13. NEGLIGENCE PER SE

Violation of this Act by an excavator or Owner/Operator shall constitute negligence per se.

SECTION 14. ALTERNATIVE DISPUTE RESOLUTION

The Notification Center shall create a voluntary alternative dispute resolution program in consultation with its members and all affected parties. The alternative dispute resolution program shall be available to all Owner/Operators, excavators, and other interested parties regarding disputes arising from damage to underground facilities including but not limited to, any cost or damage incurred by the Owner/Operator or the excavator as a result of any delay in the excavation project while the Underground Facility is restored, repaired or replaced, exclusive of civil penalties set forth in Section 11, that cannot be resolved through consultation and negotiation. The alternative dispute resolution program shall include mediation, arbitration, or other appropriate process of dispute resolution. The issue of liability and amount of damages under (state) law may be decided by the appointed arbitrator or by the parties in mediation. Nothing in this section shall be construed to change the basis for civil liability for damages.

SECTION 15: EXEMPTION AND EXCEPTIONS

This article does not apply to any individual private owner of real property who excavates on the property, not requiring a permit issued by a state or local agency, and not bordering on railroad or public rights-of-way. This exemption does not apply to a contractor or any other professional hired to perform the excavation.

The provisions of this Act do not apply to making excavation or demolition during an emergency, provided that the Notification Center is notified at the earliest opportunity and all reasonable precautions have been taken to protect underground facilities.

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SECTION 16: NON-DELEGABLE DUTY

An Owner/Operator or excavator subject to performance of duties imposed by this Act shall not delegate their responsibilities to any other person or related entity for those duties imposed by this Act.