

SENATE BILL NO. 469

BY SENATOR ABRAHAM

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AN ACT

To amend and reenact R.S. 40:1749.12, 1749.13(B)(6), 1749.14(C)(2) and (4), 1749.18(B)(4), and 1749.19 and to enact R.S. 40:1749.13(F) and 1749.23(B)(4), relative to the Louisiana Underground Utilities and Facilities Damage Prevention Law; to provide for regional notification centers; to provide for enforcement of excavation or demolition; to provided for notices; to provide for exemptions; to provide for terms, conditions, and definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:1749.12, 1749.13(B)(6), 1749.14(C)(2) and (4), 1749.18(B)(4), and 1749.19 are hereby amended and reenacted and R.S. 40:1749.13(F) and 1749.23(B)(4) are hereby enacted to read as follows:

§1749.12. Definitions

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

(1) "Agricultural excavator" means a person who owns or operates a farm and is directly involved in the cultivation of land or crops or who raises livestock.

(2) "Clear or no conflict" means a response provided by an owner or operator of underground utilities or facilities when the owner or operator determines that its facilities or utilities are not in conflict with the proposed area of excavation.

~~(2)~~**(3)** "Commissioner" means the commissioner of conservation.

~~(3)~~**(4)** "Damage" means any defacing, scraping, gouging, breaking, cutting, or displacement of, impact upon or removal of an underground facility or utility or its means of primary support.

~~(4)~~**(5)** "Demolisher" means any person engaged in the act of demolishing as defined in Paragraph ~~(2)~~**(6)** of this Section.

~~(5)~~**(6)** "Demolition" means the total or partial wrecking, razing, rendering,

1 moving, or removing of any building or structure, movable or immovable.

2 ~~(6)~~(7) "Emergency" means any crisis situation which poses an imminent
3 threat or danger to life, health, or property, which requires immediate action, if such
4 action is taken. The term also includes an unplanned utility outage, which requires
5 immediate action, if such action is taken.

6 ~~(7)~~(8) "Excavation" or "excavate" means any operation causing movement
7 or removal of earth, rock, or other materials in or on the ground or submerged in a
8 marine environment that could reasonably result in damage to underground or
9 submerged utilities or facilities by the use of powered or mechanical or manual
10 means, including but not limited to pile driving, digging, blasting, augering, boring,
11 back filling, dredging, compaction, plowing-in, trenching, ditching, tunneling,
12 land-leveling, grading, and mechanical probing. "Excavation" or "excavate" shall not
13 include manual probing, normal commercial farming operations, or any activity
14 resulting from force majeure related occurrences, including but not limited to an act
15 of God or an act of nature.

16 ~~(8)~~(9) "Excavator" means any person who engages in excavation operations.

17 ~~(9)~~(10) "Forestry excavator" means an excavator who is a logger, prescribed
18 burner, site preparation operator, or tree planter for commercial forestry operations.

19 ~~(10)~~(11) "Inclement weather" means weather that prohibits or impedes a
20 worker's use of his locating equipment or causes undue risk to himself or his
21 equipment such as lightning, heavy rain, tornadoes, hurricanes, floods, sleet, snow,
22 or flooding conditions.

23 ~~(11)~~(12) "Large project excavation or demolition" means excavation or
24 demolition activity within a contiguous area that cannot reasonably be completed
25 within twenty calendar days for routine demolition or excavation or within thirty
26 calendar days for agricultural, forestry, or marine excavation or demolition activity.

27 **(13) "Locate request" means a communication between an excavator or**
28 **demolisher and the regional notification center in which a request for locating**
29 **underground utilities or facilities is processed.**

30 ~~(12)~~(14) "Marine excavator" means an excavator or demolisher who is

1 performing excavation or demolition in areas such as swamps, wetlands, shallow
2 water, waterways, rivers, bayous, bays, lakes, the sea, and arms of the sea.

3 ~~(13)~~**(15)** "Mark-by time" is the date and time provided by the regional
4 notification center by which the utility or facility operator is required to mark the
5 location or provide information to enable an excavator or demolisher, using
6 reasonable and prudent means, to determine the specific location of the utility or
7 facility as provided for in R.S. 40:1749.14(D). The mark-by time may be extended
8 if mutually agreed upon and documented between the excavator and operator.

9 ~~(14)~~**(16)** "Normal commercial farming operations" means the following
10 operations or activities for agriculture cultivation purposes:

11 (a) Operations or activities that do not encroach upon a private utility or
12 pipeline servitude, public right-of-way, or a public franchise area.

13 (b) Operations or activities that do encroach upon a private utility or pipeline
14 servitude and the depth of the excavation is less than twelve inches in the soil below
15 the existing surface grade.

16 ~~(15)~~**(17)** "Operator" means any person who owns or operates a public or
17 private underground facility or utility which furnishes a service or material or stores,
18 transports, or transmits electric energy, steam, oil, gases, natural gas, gas, mixture
19 of gases, petroleum, petroleum products, hazardous or flammable fluids, toxic or
20 corrosive ~~fluids/gases~~ **fluids or gases**, including telephone or telegraph system, fiber
21 optic electronic communication systems, or water or water systems, or drainage,
22 sewer systems, or traffic control systems or other items of like nature.

23 ~~(16)~~**(18)** "Person" means an individual, firm, partnership, association, limited
24 liability company, corporation, joint venture, municipality, governmental agency,
25 political subdivision, or agent of the state or any legal representative thereof.

26 ~~(17)~~**(19)** "Pipeline" means all intrastate and interstate pipeline facilities
27 defined by 49 CFR 192.3 and 49 CFR 195.2.

28 **(20) "Positive response" means once a facility owner or facility operator**
29 **marks the location of existing facilities in the proposed excavation area or**
30 **determines that excavation or demolition is not in conflict with any existing**

1 underground facilities, the facility owner or facility operator then notifies the
 2 excavator of the status of the location request ticket by appropriate response
 3 through the regional notification center's positive response system.

4 ~~(18)~~**(21)** "Regional notification center" means any one of the following:

5 (a) An entity designated as nonprofit by the Internal Revenue Service ~~under~~
 6 pursuant to Section 501(c) of the Internal Revenue Code and which is organized to
 7 protect its members from damage and is certified by the Department of Public Safety
 8 and Corrections in accordance with this Part.

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

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

18 ~~(19)~~**(22)** "Routine excavation or demolition" means excavation or demolition
 19 activity that requires no more than twenty calendar days to be completed, and no
 20 more than thirty calendar days for agricultural, forestry, or marine excavation or
 21 demolition activity.

22 ~~(20)~~**(23)** "Service line or lines" means underground facilities or utilities
 23 which provide power, gas, natural gas, communication, or water capabilities to a
 24 building or structure or buildings or group of structures.

25 **(24) "Ticket" means the notification sent by the regional notification**
 26 **center to any owner or operator who has a facility located within the proposed**
 27 **area of excavation.**

28 **(25) "Ticket number" means a unique identification number assigned by**
 29 **the regional notification center to each locate request.**

30 ~~(21)~~**(26)** "Underground facility or utility" means any pipe, conduit, duct,

1 wire, cable, valve, line, fiber optic equipment, or other structure which is buried or
 2 placed below ground or submerged for use in connection with storage, conveyance,
 3 transmission, or protection of electronics communication system, telephone or
 4 telegraph system, or fiber optic, electric energy, oil, natural gas, gas, gases, steam,
 5 mixture of gases, petroleum, petroleum products, hazardous or flammable
 6 ~~fluids/gases~~ **fluids or gases**, toxic or corrosive ~~fluids/gases~~ **fluids or gases**,
 7 hazardous ~~fluids/gases~~ **fluids or gases**, or other substances of like nature or water or
 8 water systems, sewer systems or traffic, drainage control systems, or other items of
 9 like nature.

10 ~~(22)~~**(27)** "Wildfire" means an uncontrolled combustion of natural vegetation.

11 §1749.13. Excavation and demolition; prohibitions

12 * * *

13 B.(1) * * *

14 (6) At least one person on any underground or submerged excavation or
 15 demolition site shall have proof of completion of the training and education provided
 16 by the Regional Notification Center. Training is required on an annual basis through
 17 the Regional Notification Center and shall be available through its website free of
 18 charge. Excavators or demolishers **engaged in logging operations, or those who**
 19 **have been** certified by an operator qualification program subject to Title 49; CFR;
 20 Part 192 or Part 195, shall be exempt from this requirement.

21 * * *

22 **F.(1) The provisions of this Subsection shall apply only to excavation**
 23 **activities performed in connection with broadband development projects**
 24 **funded in whole or in part through the Broadband Equity, Access, and**
 25 **Deployment, or BEAD, Program.**

26 **(2) Prior to commencing excavation on a BEAD-funded broadband**
 27 **project, an excavator shall provide not less than thirty days advance notice to**
 28 **all operators with underground facilities located in the proposed project area**
 29 **by utilizing the regional notification center's large project excavation or**
 30 **demolition locate request. The notice required by this Paragraph is separate**

1 from and in addition to the notice requirements provided in R.S. 51:2370.35(A).

2 (3) After providing thirty days advanced notice, but prior to the
3 requirements of R.S. 40:1749.13(B), the excavator or demolisher and the
4 operator having facilities within the excavation project area shall attempt in
5 good faith to enter into a mutual written agreement that shall determine the
6 scope of work, the mark-by-times, and any other project-specific coordination
7 requirements. The agreement shall not be unreasonably withheld, conditioned,
8 or delayed. In the event the parties are unable to reach a mutual written
9 agreement, excavation shall not be delayed on that basis alone. The operator
10 may comply with either of the following:

11 (a) The standard marking requirements and timelines set forth in this
12 Chapter.

13 (b) At the operator's election, any marking schedule or coordination
14 agreement already agreed to by other operators for the same excavation
15 project. Nothing in this Section shall relieve any party of its obligations
16 pursuant to this Chapter.

17 (4) Each executed written agreement shall be electronically uploaded by
18 the excavator or demolisher to the regional notification center and attached to
19 the applicable large project excavation or demolition ticket. The written
20 agreement shall be available at the excavation site for inspection.

21 (5) If facility markings are not visible at the time excavation is to
22 commence, and no positive response has been provided by the operator with any
23 underground utility or facility in conflict in the proposed area of excavation, the
24 excavator shall not begin excavation until documented notice is made to the
25 operator of the underground utility or facility. The operator shall have three
26 hours from the time documented notice is made to either mark the facility or
27 provide a positive response that there is no conflict. If the operator fails to
28 respond within three hours of the documented notice, the excavation may
29 commence with the excavator or demolisher exercising due care to protect any
30 underground utility or facility within the area of excavation.

1 the operator's facilities are present and marked, not present, or that additional
2 time is required.

3 * * *

4 §1749.18. Certification of a regional notification center by Department of Public
5 Safety and Corrections

6 * * *

7 B. For the purposes of promoting cost effectiveness, ease of use, safety, and
8 the protection of property, workmen, and citizens from damage, injury, and death,
9 the rules and regulations shall include but not be limited to requirements that any
10 regional notification center, that is either certified or that applies for certification
11 pursuant to the provisions of this Chapter, shall have and maintain the following:

12 * * *

13 (4)(a) Specifically defined geopolitical services areas that are coterminous
14 with parish boundaries and do not overlap any other defined service area.

15 (b) The provisions of this Paragraph shall apply only to those regional
16 notification centers described in R.S. 40:1749.12~~(13)(a)~~**(21)(a)**.

17 * * *

18 §1749.19. Voluntary participation by incorporated municipalities and parish
19 governments

20 ~~A.~~ Each incorporated municipality or parish government **having a**
21 **population of not less than three hundred eighty-three thousand nine hundred**
22 **and not more than four hundred forty thousand eight hundred persons**
23 **according to the most recent federal decennial census,** which owns or operates,
24 in its own right or through a special district or districts created pursuant to
25 constitutional, **home rule,** or statutory authority, a drainage system, a sewer system,
26 drainage, water or water system, **telephone or telegraph, fiber optic, electronics**
27 **equipment system,** traffic control system, **or** an electrical energy system ~~and/or a~~
28 ~~gas or natural gas system underground facility~~ within its local jurisdiction which
29 would otherwise be included in R.S. 40:1749.14, and which ~~does not desire to be so~~
30 ~~included, shall adopt an ordinance indicating this desire by~~ **adopted an ordinance**

1 on or before December 31, 1998, indicating its desire to be excluded from the
 2 provisions of R.S. 40:1749.14 shall be exempt from the requirements of R.S.
 3 40:1749.14. This exemption shall apply to all such systems that are owned or
 4 operated by the incorporated municipality or parish government in its own
 5 right or through a special district or districts, including those systems existing
 6 at the time that the incorporated municipality or parish government adopted
 7 the ordinance indicating its desire to be excluded from the provisions of R.S.
 8 40:1749.14 and those subsequently established or acquired. Each exempt
 9 incorporated municipality, parish government, and public utility shall maintain
 10 a permitting process or other established procedure through which a permittee
 11 may obtain, if available, information regarding the approximate location of
 12 such systems owned or operated by the incorporated municipality, parish
 13 government, or public utility that are situated in the immediate vicinity of the
 14 permitted work or area of excavation. Any incorporated municipality having
 15 a population of not less than sixty-six thousand and not more than sixty-six
 16 thousand five hundred persons according to the most recent federal decennial
 17 census shall be exempt from the requirements of R.S. 40:1749.14. Each exempt
 18 incorporated municipality shall maintain a permitting process or other
 19 established procedure through which a permittee may obtain, if available,
 20 information regarding the approximate location of such systems owned or
 21 operated by the incorporated municipality that are in the immediate vicinity of
 22 the permitted work or area of excavation. ~~The ordinance shall be filed with the~~
 23 ~~secretary of state for verification purposes. An incorporated municipality or parish~~
 24 ~~government which fails to adopt the ordinance shall be subject to the provisions of~~
 25 ~~this Part on and after December 31, 1998.~~

26 B. ~~Each municipality or parish government which owns or operates in its own~~
 27 ~~right, or through a special district or districts created pursuant to law, a drainage~~
 28 ~~system, a sewer system, water or water system, telephone or telegraph, fiber optic,~~
 29 ~~electronics equipment system, traffic control system, an electrical energy system,~~
 30 ~~natural gas system, and/or a gas system underground facility within its local~~

1 ~~jurisdiction which would otherwise be included in R.S. 40:1749.17, and which is~~
2 ~~incorporated or created subsequent to July 1, 1997, and which does not desire to be~~
3 ~~so included, shall comply with the provisions of Subsection A of this Section within~~
4 ~~one year of the date of its first municipal elections or within one year of the date of~~
5 ~~creation of a special district.~~

6 * * *

7 §1749.23. Enforcement and adjudication; administration; levy of civil penalties

8 * * *

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

12 * * *

13 **(4) Order the cessation of excavation or demolition activities when the**
14 **officer has reasonable cause to believe the excavator is operating in violation of**
15 **this Part. Excavation or demolition shall not resume until the excavator**
16 **demonstrates compliance with this Part. For the purposes of this Paragraph,**
17 **"reasonable cause" means articulable facts observed by the officer that would**
18 **lead a reasonable person to believe that a violation of this Part is occurring or**
19 **is about to occur, including but not limited to the absence of a valid locate**
20 **ticket, an expired ticket, excavation within unmarked or improperly marked**
21 **areas, or other observable noncompliance pursuant to this Part.**

22 * * *

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____