

Regular Session, 2011

HOUSE BILL NO. 383

BY REPRESENTATIVE ARNOLD

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

UTILITIES: Provides for changes to the La. Underground Utilities and Facilities Damage Prevention Law

1 AN ACT

2 To amend and reenact R.S. 40:1749.12(4), 1749.13(B)(2) and (5), 1749.14(B) and
3 (C)(1)(b)(iii) and (v), 1749.15, and 1749.20(C) and to enact R.S. 40:1749.12(15) and
4 1749.20(D), relative to the Louisiana Underground Utilities and Facilities Damage
5 Prevention Law; to define "emergency"; to define "agricultural excavator"; to
6 provide for a delay period following notification before the commencement of any
7 excavation or demolition activity; to specify who shall receive a notice of intent to
8 excavate; to define the period of time that markings shall be deemed good; to require
9 certification of immediate action in a notice of emergency excavation; to provide for
10 violations; to provide for penalties; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 40:1749.12(4), 1749.13(B)(2) and (5), 1749.14(B) and (C)(1)(b)(iii)
13 and (v), 1749.15, and 1749.20(C) are hereby amended and reenacted and R.S.
14 40:1749.12(15) and 1749.20(D) are hereby enacted to read as follows:

15 §1749.12. Definitions

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

18 * * *

(4) "Emergency" means any crisis situation which poses an imminent threat or danger to life, health, or property, ~~and requires immediate action, and immediate action is taken.~~

* * *

(15) "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.

§1749.13. Excavation and demolition; prohibitions

* * *

B.

* * *

(2) This notice shall 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 description of the specific type of excavation or demolition operation to be conducted, the specific location of the proposed excavation or demolition and a statement as to whether directional boring or explosives are to be used. If the excavation or demolition is part of a larger project, the notice shall be confined to the actual area of proposed excavation or demolition that will occur during the ~~ten-day~~ twenty-day time period under R.S. 40:1749.14(C).

* * *

(5) The excavator or demolisher shall wait at least forty-eight hours, beginning at 7:00 a.m. on the next working day, following notification before commencing any excavation or demolition activity, except in the case of an emergency as defined in the provisions of this Part or if informed by the regional notification center that no operators are to be notified.

* * *

§1749.14. Regional notification center

* * *

1 B. A regional notification center receiving a notice of intent to excavate shall
2 notify all member operators having underground utilities or facilities in or near the
3 site of the proposed excavation, except for the operator who provided the notice of
4 intent unless the operator requested to receive such notification. All member
5 operators shall furnish the regional notification center with current emergency
6 contact or notification information, including twenty-four hour telephone numbers.

7 C.(1) Each operator of an underground facility or utility, after having
8 received the notification request from the regional notification center of an intent to
9 excavate, shall supply, prior to the proposed excavation, the following information
10 to the person responsible for the excavation:

11 * * *

12 (b)

13 * * *

14 (iii) When the utility or facility operator has marked the location of
15 underground facilities or utilities, the marking shall be deemed good as long as
16 visible but not longer than ~~ten~~ twenty calendar days, including weekends and
17 holidays, from the "mark by" time. An additional notice to the regional notification
18 center shall be given by the excavator or demolisher in accordance with the
19 provisions of this Part when the marks are no longer visible or if the excavation or
20 demolition cannot be completed within ~~ten~~ twenty calendar days from the "mark by"
21 time, whichever occurs first.

22 * * *

23 (v) In the case whereby a forestry excavator or agricultural excavator has
24 requested that the utilities and facilities be marked for location, the operator of a
25 utility or facility shall mark the area of their utilities or facilities. The markings
26 provided by the operator shall be deemed good as long as the markings are visible
27 or up to thirty calendar days from the time the markings were made, whichever is
28 shorter.

29 * * *

§1749.15. Emergency excavation

A. The notice required ~~under~~ pursuant to R.S. 40:1749.13 shall not apply to any person conducting an emergency excavation. Oral notice of the emergency excavation shall be given as soon as practicable to the regional notification center or each operator having underground utilities and facilities located in the area and, if necessary, emergency assistance shall be requested from each operator in locating and providing immediate protection to its underground utilities and facilities.

B. The excavator shall orally certify in the notice required in Subsection A of this Section that the situation poses an imminent threat or danger to life, health, or property and requires immediate action and that the excavator has a crew on site.

* * *

§1749.20. Violations; penalties

* * *

C. An excavator or demolisher who violates the provisions of R.S. 40:1749.15(B) shall be subject to the following:

(1) For the first violation, a civil penalty of not more than fifty dollars.

(2) For a second violation of a similar nature within a two-year period from the previous violation, a civil penalty of not more than two hundred dollars.

(3) For a third violation of a similar nature within a two-year period from a
previous violation, a civil penalty of not more than five hundred dollars.

(4) For a fourth and each subsequent violation of a similar nature within a two-year period from the previous violation, a civil penalty of not less than five hundred dollars nor more than five thousand dollars.

D. A person may be cited with a violation and held liable for a civil penalty pursuant to this Section although the commission of the offense did not occur in the presence of a law enforcement officer if the evidence is sufficient to establish that the defendant has committed the offense.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Arnold

HB No. 383

Abstract: Makes changes to the La. Underground Utilities and Facilities Damage Prevention Law.

Present law defines "emergency" as any crisis situation which poses an imminent threat or danger to life, health, or property and requires immediate action.

Proposed law defines "emergency" as any crisis situation which poses an imminent threat or danger to life, health, or property, requires immediate action, and immediate action is taken.

Proposed law defines "agricultural excavator" as a person who owns or operates a farm and is directly involved in the cultivation of land or crops or who raises livestock.

Present law provides that the notice of intent to excavate shall 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 description of the specific type of excavation or demolition operation to be conducted, the specific location of the proposed excavation or demolition and a statement as to whether directional boring or explosives are to be used. If the excavation or demolition is part of a larger project, the notice shall be confined to the actual area of proposed excavation or demolition that will occur during the 10-day time period prescribed by present law.

Proposed law maintains present law but changes the 10-day time period to a 20-day time period.

Present law requires the excavator or demolisher to wait at least 48 hours following notification before commencing any excavation or demolition activity, except in the case of an emergency or if informed by the regional notification center that no operators are to be notified.

Proposed law maintains present law but specifies that the 48 hours does not start until 7:00 a.m. on the next working day following notification.

Present law requires a regional notification center receiving a notice of intent to excavate to notify all member operators having underground utilities or facilities in or near the site of the proposed excavation.

Proposed law retains present law but adds an exception for the operator who provided the notice of intent unless the operator requested to receive such notification.

Present law requires all member operators to furnish the regional notification center with current emergency contact or notification information, including 24-hour telephone numbers.

Proposed law retains present law.

Present law provides that, when the utility or facility operator has marked the location of underground facilities or utilities, the marking shall be deemed good as long as visible but not longer than 10 calendar days, including weekends and holidays, from the "mark by" time. An additional notice to the regional notification center shall be given by the excavator

or demolisher in accordance when the marks are no longer visible or if the excavation or demolition cannot be completed within 10 calendar days from the "mark by" time, whichever occurs first.

Proposed law retains present law but changes the period of 10 calendar days to 20 calendar days.

Present law provides that, in the case whereby a forestry excavator has requested that the utilities and facilities be marked for location, the operator of a utility or facility shall mark the area of their utilities or facilities. The markings provided by the operator shall be deemed good as long as the markings are visible or up to 30 calendar days from the time the markings were made, whichever is shorter.

Proposed law retains present law but adds agricultural excavator to the list of persons for whom markings are good up to 30 calendar days.

Present law provides that the 48-hour notice requirement shall not apply to any person conducting an emergency excavation. Oral notice of the emergency excavation shall be given as soon as practicable to the regional notification center or each operator having underground utilities and facilities located in the area and, if necessary, emergency assistance shall be requested from each operator in locating and providing immediate protection to its underground utilities and facilities.

Proposed law retains present law and adds the requirement that the excavator orally certify in the notice that the situation poses an imminent threat or danger to life, health, or property and requires immediate action and that the excavator has a crew on site.

Proposed law provides that an excavator who fails to provide the required oral certification in the notice of emergency excavation shall be subject to the following:

- (1) For the first violation, a civil penalty of not more than \$50.
- (2) For a second violation of a similar nature within a two-year period from the previous violation, a civil penalty of not more than \$200.
- (3) For a third violation of a similar nature within a two-year period from a previous violation, a civil penalty of not more than \$500.
- (4) For a fourth and each subsequent violation of a similar nature within a two-year period from the previous violation, a civil penalty of not less than \$500 nor more than \$5,000.

(Amends R.S. 40:1749.12(4), 1749.13(B)(2) and (5), 1749.14(B) and (C)(1)(b)(iii) and (v), 1749.15, and 1749.20(C); Adds R.S. 40:1749.12(15) and 1749.20(D))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Made technical corrections.
2. Deleted situations involving the unanticipated interruption of utility services from the definition of "emergency".

3. Added an exception to the requirement that a regional notification center shall notify all member operators having underground utilities or facilities in or near the site of the proposed excavation for the operator who provided the notice of intent unless the operator requested to receive such notice.