**A** **BILL**

TO AMEND CHAPTER 35, TITLE 58 OF THE 1976 CODE, RELATING TO UNDERGROUND UTILITIES, TO INCLUDE THE WORD ‘SAFETY’ IN THE ACT NAME, TO DEFINE TERMS USED IN THE ACT, TO PROVIDE SAFETY REGULATIONS FOR THE USE AND MAINTENANCE OF UNDERGROUND FACILITIES, TO PROVIDE FOR FACILITY NOTIFICATION REQUIREMENTS PRIOR TO EXCAVATION, TO REQUIRE FACILITY OPERATORS TO FORM AND OPERATE A NOTIFICATION CENTER, TO PROVIDE FOR REQUIRED ACTIONS ON THE PART OF THE NOTIFICATION CENTER AFTER THE CENTER HAS RECEIVED NOTIFICATION, TO PROVIDE THAT OPERATORS MUST FOLLOW CERTAIN SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION POLICIES, TO PROVIDE PROCEDURES FOR NEW UTILITY INSTALLATIONS, TO PROVIDE RESTRICTIONS ON CERTAIN TYPES OF EXCAVATION EQUIPMENT, TO PROVIDE FOR ACTIONS THAT MUST BE TAKEN BY AN OPERATOR IN THE EVENT OF DAMAGE TO A FACILITY, TO PROVIDE PROCEDURES FOR DESIGN LOCATE REQUESTS, TO CREATE THE SOUTH CAROLINA UNDERGROUND UTILITY SAFETY AND DAMAGE PREVENTION BOARD AND TO PROVIDE FOR THE DUTIES AND POWERS OF THE BOARD, TO PROVIDE COMPLAINT PROCEDURES, TO PROVIDE FOR THE RECOVERY OF DAMAGES DUE TO VIOLATIONS OF THE ACT, AND TO PROVIDE EXCEPTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 35, Title 58 of the 1976 Code is amended to read:

“Chapter 35

Underground Utility Safety and Damage Prevention Act

Section 58‑35‑10. This ~~Chapter~~ chapter may be cited as the ‘Underground Utility Safety and Damage Prevention Act.’

Section 58‑35‑20. As used in this chapter:

(1) ~~‘Association’ means a group of public utilities or their representatives or an organization contracting with a group of public utilities formed for the purpose of receiving and giving notice of excavation, demolition or similar activities in the State.~~ ‘Abandoned facilities’ means an underground or submerged line or facility no longer in use. When information on abandon facilities is available, they shall be located and treated as live facilities unless the owner/operator agrees to their destruction.

(2) ‘Common Ground Alliance’ means a not‑for‑profit corporation created pursuant to issuance of the United States Department of Transportation’s Common Ground Study of One Call System Best Practices.

(~~2~~3) ‘Damage’ includes, but is not limited to, the substantial weakening of structural or lateral support of an underground ~~utility~~ facility, penetration, or destruction of protective coating, housing, or other protective device of a ~~utility~~ facility and the partial or complete severance of a ~~utility~~ facility.

(~~3~~4) ‘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.

(5) ‘Design locate request’ means a communication to the notification center in which a request for locating existing facilities for bidding, predesign, or advance planning purposes is made. A design locate request may not be used for excavation purposes.

(6) ‘Emergency’ means a sudden or unforeseen occurrence involving a clear and imminent danger to life, health, or property; the interruption of essential utility services; or the blockage of transportation facilities that require immediate action.

(~~4~~7) ‘Excavate’ or ‘excavation’ means an operation for the purpose of the movement 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, well drilling, grading, plowing‑in, pulling‑in, ripping, scraping, trenching, and tunneling, but not including the tilling of soil for agricultural purposes, gardening, or landscaping which involves the movement of less than one cubic yard of soil or other materials.

(8) ‘Facility’ means any underground line, system or facility used for producing, storing, conveying, transmitting, or distributing communication, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam, or sewerage, including storm drainage.

(9) ‘Facility owner/operator’ means any person, utility, municipality, authority, political subdivision, or other person or entity who owns, operates, or controls the operation of an underground line/facility.

(10) ‘Location of underground facilities’ means the space in which a facility is located and in which due care is to be taken. The location of underground facilities shall extend eighteen inches each side of the indicated location of the facility or eighteen inches each side of the indicated outside edge of the facility.

(~~5~~11) ‘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.

(12) ‘Member’ means a facility owner/operator that is a member of the non‑profit notification center as set forth in Section 58‑35‑70.

(13) ‘Notification center’ means non‑profit notification center, sponsored by facility owner/operators or units of local government, that will provide for the receipt of notification of excavation operations within the State and will maintain a database provided by its members that includes the geographic areas in which its members will receive transmissions of notices of proposed excavation to its members.

(~~6~~14) ‘Person’ means any individual, owner, corporation, partnership, association, or any other entity organized under the laws of any state; any subdivision or instrumentality of a state; and any authorized representative thereof.

~~(7)~~ ~~‘Utility’ means any underground line, system or facility used for producing, storing, conveying, transmitting, or distributing communication, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam or sewerage, including storm drainage.~~

(~~8~~15) ‘Operator’ means any person who owns or operates a ~~utility~~ facility.

(~~9~~16) ‘Public utility’ means any organization, corporation, municipality, municipal department, authority, or other association providing service to the general public or segments thereof with any type of ~~utility~~ facility.

(~~10~~17) ‘Working day’ means every day, except Saturday, Sunday, and legal holidays.

Section 58‑35‑30. 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 chapter.

Section 58‑35‑40. Except as provided in Sections 58‑35‑50 and 58‑35‑90, no person may excavate in a street, highway, public space, a private easement of an operator, or near the location of an underground ~~utility~~ facility installed on the premises of a customer served by such a ~~utility~~ facility, or demolish a building without having first ascertained from the public ~~utilities~~ facilities the location of all their underground ~~utilities~~ facilities in the area that would be affected by the proposed excavation or demolition.

Prior to any excavation or demolition, the person financially responsible or the architect, engineer, or designer responsible for such activities should consult with all the public utilities operating in the area and cause a detailed plan to be drawn and furnished to the entity physically doing the excavation or demolition that will show the location of all ~~utilities~~ facilitiesin accordance with the provisions of Section 58‑35‑80.

Section 58‑35‑50. Excavation is exempt from the provisions of this chapter under the following conditions:

(~~a~~A) When conducted after individual contacts with public utilities or after joint preconstruction conferences with public utilities and the person proposing the excavation or demolition has a statement in writing from all public utilities operating in the area that the proposed activity was reviewed and notification provided; or

(~~b~~B) When the Department of Transportation or a public utility is carrying out excavation or demolition entirely on and within an easement or rights‑of‑way owned and controlled or controlled by that public utility or department and where no other public utility’s facilities have been permitted, are existing, or are likely to exist; or

(~~c~~C) When a landowner installs or has installed facilities for his own purposes and under his direction on his own land provided: (1) he or his authorized representative has general knowledge of the location of underground utilities on his lands; and

(2) the work location is remote from these utilities or facilities of a public utility serving the landowner or others.

(~~d~~D) In those localities or communities and within recognized boundaries, the Department of Transportation and public utilities are exempt if they (1) are doing minor excavations such as for replacing or setting one or two poles, digging test holes, handholes, normal roadway maintenance, or similar minor excavations, and (2) there is a local agreement between public utilities and the Department of Transportation which includes notification before excavation or demolition.

Section 58‑35‑60. (~~a~~A) Except as provided in Sections 58‑35‑50 and 58‑35‑90, before commencing any excavation or demolition operation as described in Section 58‑35‑40, each person responsible for such excavation or demolition shall serve advance written, electronic, or telephonic notice of intent to excavate or demolish not less than ~~three~~ two, but not more than ~~ten~~ fifteen full working days

~~1.~~ ~~On each operator which 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~~ on the ~~association~~ notification center provided for in Section 58‑35‑70~~, on such association and on each operator which has underground utilities in the proposed area of excavation or demolition that is not receiving the services of the association;~~ where demolition of a building is proposed, operators shall be given reasonable time to remove or protect their underground utilities before demolition of the building is commenced.

(~~b~~B) The written, electronic, or telephonic notice required by Section 58‑35‑60(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 location of the proposed excavation or demolition, and whether or not explosives are to be used.

(~~c~~C) ~~If the notification required by this section is made by telephone, an~~ An adequate record of such notification shall be maintained by the operators and ~~associations~~ notification center notified to document compliance with the requirements of this chapter. This record shall be made available to the person filing the notice of intent upon request.

Section 58‑35‑70. (A) Operators must form and operate ~~an association~~ a notification center providing for mutual receipt of Section 58‑35‑60 notification of excavation or demolition operations in a defined geographical area. County governments shall provide to the notification center any geographical information requested for an excavation or demolition operations area. ~~An association that provides this service on behalf of operators having utilities within South Carolina~~ The notification center must file with the South Carolina Public Service Commission the telephone number and address of the ~~association~~ notification center, a description of the geographical area served by the ~~association~~ notification center, and a list of the names and addresses of each operator receiving this service from the ~~association~~ notification center. The South Carolina Underground Utility Safety and Damage Prevention Board created by Section 58‑35‑140 of this bill shall oversee operation of the notification center.

(B) The ~~association~~ notification center must file with the Public Service Commission, not later than April fifteenth of each year, a report covering the activities and operations of the association for the preceding calendar year including, but not limited to, information reflecting average speed of answer, abandoned call rate, transmit times, total number of locate requests, total number of transmissions, and a disaster recovery plan.

(C) ~~No operator is required to join an association~~ Every facility owner or operator shall be a member of the notification center, or be fined an amount equal to the penalty provided in Section 58‑35‑150.

Section 58‑35‑80. ~~Each~~ Unless another period is provided by agreement between the person responsible for the excavation or demolition and the operator or designated representatives, each operator or designated representative, including ~~an association~~ the notification center established in accordance with Section 58‑35‑70, notified in accordance with Section 58‑35‑60, shall, within two working days from the time of the notification to the notification center ~~not less than one working day in advance of the proposed excavation or demolition,~~ supply~~, by use of maps or other appropriate means,~~ the following information to the person responsible for the excavation or demolition in accordance with Common Ground Alliance Guidelines for Operator’s Facility Field Delineation:

(1) ~~The approximate~~ the location and description of all of its underground ~~utilities~~ facilities which may be ~~damaged as a result of~~ in the proposed area of excavation or demolition;

(2) ~~The~~ the location and description of all ~~utility~~ facility markers indicating the approximate location of the underground ~~utilities~~ facilities;

(3) ~~Any~~ any other information that would assist that person in locating and thereby avoiding damage to the underground utilities ~~including providing adequate temporary markings, when necessary, 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 ~~five~~ three feet wide, but not wider than the width of the utility plus ~~two and one‑half feet~~ eighteen inches on either side of the utility;

(4) Each facility owner or operator, either upon determining that no utility facility is present on the tract or parcel of land or upon completion of the designation of the location of any facilities on the tract or parcel of land as required by Section 58‑35‑80(1), (2), (3), shall provide this information to the notification center and the information shall be made readily available to the excavator.

(5) The owner of an underground facility shall notify the excavator whether the facility is active or abandoned. For an underground facility abandoned after December 31, 2010, or covered by installation records prepared under Section 58‑35‑100(A), the owner of the facility may not advise or represent to the excavator that a facility or portion of a facility is abandoned unless the owner has verified, by reference to installation records or by testing, that the facility or portion is actually abandoned and not merely inactive. An inactive facility shall be considered active for purposes of this article. For all purposes under this article, a facility owner, excavator, or other person subject to this article may not represent that an underground facility is abandoned, or treat an underground facility as abandoned, unless the facility has been verified as abandoned pursuant to this subsection.

(6) Locators shall be trained in applicable locating industry standards and practices no less stringent than the National Utility Locating Contractors Association’s locator training standards and practices. Facility owners or operators shall maintain documentation for all locators they employ and/or contract to respond to notices of intent to excavate as set forth in Section 58‑35‑80(1), (2) and (3). Should there be no response by the operators of all the public utilities at the site within ~~three~~ two working days of ~~telephonic~~ notification, the person responsible for the excavation or demolition is free to proceed as though the location of all utilities had been determined as described earlier in this section.

(7) If a facility locator becomes aware of an error or omission in facility placement documentation when responding to a notice of intent to excavate, the facility locator shall notify the facility owner or operator and the facility owner or operator shall update their records to correct the error or omission. The notification shall include the following information:

(a) name (and company if contracted);

(b) contact phone number of the individual submitting change;

(c) location;

(d) size and type of facility;

(e) nature of the error or omission; and

(f) sketch of the change in relation to the other facilities.

(8) A facility locator shall document work completed in response to a notice of intent to excavate. The documentation shall include, but not be limited to, all facilities marked in the area of proposed excavation.

Section 58‑35‑90. ~~Compliance with the notice requirements of Section 58‑35‑60 is not required of persons responsible for emergency excavation or demolition to ameliorate an imminent danger to life, health, or property or to restore existing service. Such persons shall give, as soon as practicable, oral notice of the emergency excavation or demolition to each operator having underground utilities located in the area or to an association provided for in Section 58‑35‑70, 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 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 58‑35‑60 and 58‑35‑80 can be fully complied with.~~ Facility owners or operators that operate or construct facilities within an easement or right‑of‑way owned or controlled by the Department of Transportation shall comply with the Department of Transportation’s ‘Policy for Accommodating Utilities on Highway Rights‑of‑Way.’ Facility owners or operators shall comply with all local utility rights‑of‑way accommodation placement requirements and policies where they operate or construct facilities in an area under such jurisdictional authority.

Section 58‑35‑100. (A) For all new underground facilities, excluding service drops and service lines, installed after January 1, 2011, in a public street, alley, or right‑of‑way dedicated to the public use, but not including any express or implied private property utility easement, the facility owner or operator of an underground facility shall prepare, or cause to be prepared, installation records of the underground facility, shall keep such records in its possession, and shall refer to the records in locating and marking pursuant to Section 58‑35‑80. Installation records shall also reflect any field notes or other indications by the installer of the facilities that the installation involved deviates or changes from installation standards, instructions, or designs, including vertical and horizontal deviations, and the correction of any inaccuracies found as a result of locating or marking the underground facilities. Installation records of an underground facility shall indicate if all or a portion of the facility has been abandoned.

(B) Information contained in installation records relating to the nature and location of underground facilities shall be made available to persons who request the same information as specified in Section 58‑35‑60 and who are engaged in design of construction projects involving excavation in a public street, alley, or right‑of‑way dedicated to the public use, excluding any express or implied private property utility easement. The owner of the underground facility may indicate any portions of the information that are proprietary and require the person to protect proprietary matters. The owner of the underground facility shall respond to these requests as specified in Section 58‑35‑80.

(C) All facilities installed by facility owners or operators on or after January 1, 2011 shall be installed in a manner which will make them locatable using a generally accepted electronic locating method by facility owners or operators.

(D) Compliance with the notice requirements of Section 58‑35‑60 is not required of persons responsible for emergency excavation or demolition to ameliorate an imminent danger to life, health, or property or to restore existing service. These persons shall give, as soon as practicable, oral notice of the emergency excavation or demolition to each operator having underground utilities located in the area or to an association provided for in Section 58‑35‑70, that serves an operator where the excavation or demolition is to be performed and requests emergency assistance from each operator so identified in locating and providing immediate protection to its 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 58‑35‑60 and 58‑35‑80 can be fully complied with.

Section 58‑35‑~~100~~110. In addition to the notification requirements of Section 58‑35‑60, each person responsible for any excavation or demolition operation designated in Sections 58‑35‑40 shall:

(1) ~~Plan~~ plan the excavation or demolition to avoid damage to or minimize interference with underground utilities in and near the construction area;

(2) not use powered or mechanized equipment, except non‑invasive equipment specifically designed or intended to protect the integrity of the underground facility, within the marked tolerance zone of existing underground facilities until the precise location of the underground facilities has been visually identified by the excavator and reasonable precautions are taken to avoid any substantial weakening of the facilities structural/lateral support and/or penetration or destruction of the facilities or their protective coatings. Mechanical means may be used, as necessary, for initial penetration and removal of pavement or other materials requiring use of mechanical means of excavation and then only to the depth of the pavement or other materials.

For parallel type excavations within the tolerance zone, the existing facility shall be visually identified at intervals not to exceed fifty feet along the line of excavation to avoid damages. The excavator shall exercise due care at all times to protect underground utility lines when exposing these facilities;

(~~2~~3) ~~Maintain~~ maintain a clearance between an underground ~~utility~~ facility 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~~ facility; and

(~~3~~4) ~~Provide~~ provide such support for underground ~~utilities~~ facilities in and near the construction area, including backfill operations, as may be reasonably required by the operator for the protection of such utilities.

Section 58‑35‑~~110~~120. (~~a~~A) Except as provided by Section 58‑35‑110(b), each person responsible for any excavation or demolition operation designated in Section 58‑35‑40 that results in any damage to an underground ~~utility~~ facility shall, immediately upon discovery of such damage, notify the operator of such ~~utility~~ facility 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~~ facility.

(~~b~~B) Each person responsible for any excavation or demolition operation designated in Section 58‑35‑40 that results in damage to an underground utility facility where ~~such damage may endanger life, health or property, the person responsible for the work shall, immediately upon discovery of such damage, take immediate action to protect the public and property, notify the operator, police or fire departments and take such other actions as may be appropriate to minimize the hazards until the arrival of the operator’s personnel, police or fire departments. The excavator shall delay any backfilling in the immediate area of the damaged utility until authorized by the operator. Repair of any damage shall be performed by the operator or by qualified personnel authorized by the operator~~ damage results in the escape of any flammable, toxic, or corrosive gas or liquid or endangers life, health, or property, the excavator responsible shall immediately notify emergency services and the facility owner or operator if known. The excavator must take reasonable measures to protect themselves, those in immediate danger, the general public, property, and the environment until the facility owner or operator or emergency responders have arrived and completed their assessment.

Section 58‑35‑130. (A) Any person may submit a design locate request to the notification center. The design locate request

shall:

(1) describe the tract or parcel of land for which the 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, and telephone number of the person who has submitted the design locate request, as well as the name, address, and telephone number of any other person authorized to review any records subject to inspection.

(B) Within ten working days after a design locate request has been submitted to the notification center for a proposed project, the facility owner or operator shall respond by one of the following methods:

(1) designate in accordance with Section 58‑35‑80 the location of all facilities within the area of the proposed excavation;

(2) provide to the person submitting the design locate request the best available description of all facilities in the area of proposed excavation, which might include drawings of facilities already built in the area, or other facility records that are maintained by the facility owner/operator; or

(3) at an acceptable location, allow the person submitting the design locate request or any other authorized person to inspect or copy the drawings or other records for all facilities within the proposed area of excavation.

(C) A facility owner or operator may reject a design or survey locate request based on homeland security pending additional information confirming the legitimacy of the request. The owner or operator must notify the person making the request of the denial and request additional information within the time frame set forth in Section 58‑35‑80.

Section 58‑35‑140. (A) There is hereby created and established the South Carolina Underground Utility Safety and Damage Prevention Board for the purposes of assisting in the enforcement of this chapter, reviewing reported violations of this chapter, and educating facility owners and operators about the provisions of this chapter.

(B) The Public Service Commission shall appoint thirteen members as follows:

(1) one South Carolina Department of Transportation representative;

(2) one South Carolina Department of Labor representative;

(3) one facility contract locator representative;

(4) one notification center representative;

(5) one electric utility company representative;

(6) one telecommunications company representative;

(7) one natural gas utility representative;

(8) one hazardous liquid pipeline company representative; (9) one municipal representative;

(10) one licensed highway contractor representative who does not own or operate facilities;

(11) one licensed public utility contractor representative who does not own or operate facilities;

(12) one licensed building contractor representative who does not own or operate facilities; and

(13) one other excavator representative who does not own or operate facilities.

(C) The board shall meet quarterly and shall publish records of business conducted, measures taken, and progress made in reducing underground damage.

(D) The members of the board shall be immune, individually and jointly, from civil liability for any act or omission done or made in the performance of their duties while serving as members of the board.

(E) Failure to comply with this chapter may be reported to the board.

(F) A person reporting an alleged violation may file a complaint to the board within ninety calendar days from the date of an alleged violation, or discovery an alleged violation. The complaint must be in writing, on a form provided by the board, and must include details of the alleged violation and a filing fee set forth by the Public Service Commission. The cost to file will be retained for expenses of the board.

(G) The board shall send a copy of the complaint by registered mail to the alleged violator within ten calendar days of receipt of the complaint . The alleged violator has thirty calendar days to respond to the complaint.

(H) The board shall schedule a meeting to determine if a violation has occurred, and render a decision of the alleged violation. Either party to the complaint may request a hearing before the board.

(I) The non‑prevailing party will be required to reimburse or relinquish the cost to file and pay the appropriate fine or penalty provided by this chapter. Penalties collected shall be remitted as directed by the Public Service Commission.

Section 58‑35‑~~120~~150. Any person who violates any provision of this chapter shall be subject to a civil penalty not to exceed one thousand dollars for each such violation. Actions to recover the penalty provided for in this section shall be brought by the ~~attorney general~~ South Carolina Underground Utility Safety and Damage Prevention Board at the request of the injured party ~~in the proper forum in and for 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. This chapter does not affect any civil remedies for personal injury or property damage except as otherwise specifically provided for in this chapter. The penalty provisions of this chapter are cumulative to and not in conflict with any provisions of law with respect to civil remedies for personal injury or property damage.

Section 58‑35‑160. (A) If a violation of this article results in physical contact with an underground facility, the violator is liable to the owner of the facility for actual damages to the facilities.

(B) If the owner or operator fails to locate or incorrectly locates the underground facility, pursuant to this article, the owner or operator becomes liable for resulting damages, costs, and expenses to the injured party.

(C) If, after receiving proper notification, the notification center fails to discharge its duties, resulting in damage to an underground facility, the notification center, if found liable, shall be liable to all parties as defined in this act. (D) This section is not applicable to an excavation made:

(1) during an emergency which involves danger to life, health, or property if reasonable precautions are taken to protect underground facilities;

(2) with hand tools on property owned or occupied by the person performing the excavation while gardening or tilling such property.”

SECTION 2. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑