**A** **BILL**

TO AMEND CHAPTER 36, TITLE 58 OF THE 1976 CODE, RELATING TO THE UNDERGROUND FACILITY DAMAGE PREVENTION ACT, BY ADDING SECTION 58-36-95, TO REQUIRE THAT ANY DAMAGES TO AN UNDERGROUND FACILITY RESULTING FROM EXCAVATION OR DEMOLITION BE ASSESSED BY AN INDEPENDENT, THIRD-PARTY INVESTIGATOR, TO PROVIDE A PROCESS FOR THE ASSESSMENT, AND TO PROVIDE REPORTING REQUIREMENTS; TO AMEND SECTION 58-36-50 OF THE 1976 CODE, RELATING TO THE OPERATORS ASSOCIATION NOTIFICATION CENTER AND DAMAGE PREVENTION TRAINING PROGRAM, TO REQUIRE THAT THREE MEMBERS OF THE BOARD OF DIRECTORS BE CONTRACTORS OR SUBCONTRACTORS LICENSED IN SOUTH CAROLINA THAT REGULARLY PROVIDE EXCAVATION OR DEMOLITION SERVICES AND DO NOT OWN OR OPERATE FACILITIES, TO REQUIRE THAT THE NOTIFICATION CENTER MAINTAIN A LIST OF QUALIFIED INVESTIGATORS AND ESTABLISH A MANDATORY TRAINING PROGRAM FOR INVESTIGATORS, AND TO DELETE OBSOLETE PROVISIONS; TO AMEND SECTION 58-36-80 OF THE 1976 CODE, RELATING TO EMERGENCY EXCAVATIONS OR DEMOLITIONS EXEMPT FROM THE NOTICE REQUIREMENT, TO PROVIDE THAT AN INVESTIGATOR SHALL ASSESS DAMAGES RESULTING FROM EMERGENCY EXCAVATIONS OR DEMOLITIONS; AND TO DEFINE NECESSARY TERMS.

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

SECTION 1. Chapter 36, Title 58 of the 1976 Code, is amended by adding:

“Section 58-36-95. (A) Upon receiving notice of damages pursuant to Section 58-36-90, the notification center shall assign an investigator from the list pursuant to Section 58-36-50(M) to assess the damages.

(B) The investigator must perform an assessment of the damages within fifteen working days of his assignment and must generate a report on his findings. At minimum, the report must include:

(1) a description of the damages;

(2) a determination as to whether the person responsible for excavation or demolition acted in accordance with Section 58-36-60, unless an exemption is applicable;

(3) a determination as to whether the operator or designated representative provided the required information pursuant to Section 58-36-70; and

(4) a description of the surrounding events, if the damages resulted from an emergency excavation or demolition or an extraordinary circumstance.

(C) The investigator must provide a copy of the report to the person responsible for excavation or demolition, the operator or designated representative, and the notification center. The notification center must maintain this record for at least three years.”

SECTION 2. Section 58-36-20 of the 1976 Code is amended by adding an appropriately numbered new item to read:

“( ) ‘Investigator’ means a contractor or subcontractor licensed in South Carolina who has met the requirements of this chapter and has been selected by the notification center to assess damages resulting from excavation or demolition, pursuant to Section 58-36-95. An investigator shall serve as an independent third party in the assessment of damages.”

SECTION 3. Section 58-36-50 of the 1976 Code is amended to read:

“Section 58-36-50. (A)(1) Operators must maintain an association that will operate a notification center providing for the receipt of notice of excavation or demolition in a defined geographical area. The notification center must be governed by a board of directors composed of operators, ~~and~~ damage prevention stakeholders that are members of the association, and representatives from construction companies engaged in excavation and demolition services. The by-laws of the association must provide for a board of directors with the following membership:

~~(1)~~(a) one representative from each of the six facility members that receive the highest annual notification transmission volumes from the notification center;

~~(2)~~(b) one representative of a public water or sewer company;

~~(3)~~(c) one representative of an electric cooperative;

~~(4)~~(d) one representative of an investor-owned natural gas utility;

~~(5)~~(e) one representative of a company that transports hazardous liquids as defined in 49 U.S.C. 60101(a)(4);

~~(6)~~(f) one representative of a telephone cooperative;

~~(7)~~(g) one representative of a rural water district;

~~(8)~~(h) one representative of the South Carolina Association of Municipal Power Systems;

~~(9)~~(i) one representative of the South Carolina Association of Counties;

~~(10)~~(j) one representative of a company licensed in South Carolina for facility contract locating;

~~(11)~~(k) one representative of the South Carolina Department of Transportation;

~~(12)~~(l) one representative of a company licensed in South Carolina for construction of roads and highways;

~~(13)~~(m) one representative of a company licensed in South Carolina for construction of facilities;

~~(14)~~(n) one representative of a company licensed in South Carolina for landscaping or irrigation;

~~(15)~~(o) ~~one representative of a company~~ three representatives of companies licensed in South Carolina as ~~a~~ general ~~contractor~~ contractors or as ~~a subcontractor~~ subcontractors in the construction industry that regularly provide excavation or demolition services and do not own or operate facilities;

~~(16)~~(p) three representatives employed by different facility operators in South Carolina; and

~~(17)~~(q) one representative of a special purpose district providing natural gas.

(2) In choosing members of the association to fill these board positions, the association will solicit nominations from the membership of the association and industry organizations representing entities designated by this subsection. ~~The South Carolina 811 Board of Directors existing on the effective date of this act must elect the board as required by the provisions of this subsection within nine months following the effective date of this act.~~

(B) All operators are required to join the association and utilize the services of the notification center.

~~(1)~~ ~~Operators that are members of the existing association on the effective date of this act must remain members.~~

~~(2)~~ ~~Operators with more than fifty thousand customers or one thousand miles of facilities who are not members must join the association within one year from the effective date of this act.~~

~~(3)~~ ~~Operators with more than twenty‑five thousand customers or five hundred miles of facilities, who are not members, must join the association within two years from the effective date of this act.~~

~~(4)~~ ~~All operators that do not meet the thresholds described in items (1), (2), or (3) must join the association within three years from the effective date of this act.~~

(C) There shall be only one notification center for the State of South Carolina.

(D) The association shall provide for a reasonable way of apportioning the cost of operating the notification center among its members.

(E) The notification center shall receive notices from persons with intention of performing excavation or demolition and transmit to the operators the following information:

(1) the name, address, and telephone number of the person providing the notice, and, if different, the excavator completing the proposed excavation or demolition;

(2) the start date of the proposed excavation or demolition;

(3) the anticipated duration of the proposed excavation or demolition;

(4) the type of proposed excavation or demolition to be conducted;

(5) the location of the proposed excavation or demolition; and

(6) whether or not explosives are to be used in the proposed excavation or demolition.

(F) The notification center must maintain a record of the notices received pursuant to subsection (E), and information regarding operators failing to provide a response pursuant to subsection (E), and excavators failing to provide notice pursuant to Section 58‑36‑60(C). This record must be maintained for at least three years.

(G) The notification center shall receive and transmit notices.

(H) The notification center must have a business continuation plan.

(I) The notification center shall provide a positive response system ~~that must be fully operational within three years from the effective date of this act~~.

(J) The notification center shall file with the South Carolina Public Service Commission the telephone number and address of the notification center and a list of the names and addresses of each operator that received service from the notification center. This filing must be made no later than April fifteenth of each year.

(K) The notification center shall provide to the Chairman of the House of Representatives Labor, Commerce and Industry Committee and the Chairman of the Senate Judiciary Committee a report regarding the activities and operations of the notification center for the preceding calendar year. This report must include, but is not limited to, the following information:

(1) average speed of answer;

(2) abandoned call rate;

(3) transmit times;

(4) total number of locate requests;

(5) total number of transmissions to operators of locate requests; and

(6) business continuation plan.

This report must be made no later than April fifteenth of each year.

(L) The notification center must establish and operate a damage prevention training program and a mandatory training program for investigators.

(M) The notification center must maintain a list of independent investigators who have completed the mandatory training program pursuant to subsection (L) and who are available to assess damages pursuant to Section 58-36-95.”

SECTION 4. Section 58-36-80 of the 1976 Code is amended to read:

“Section 58-36-80. (A) An excavator performing an emergency excavation or demolition is exempt from the notice requirements in Section 58-36-60. However, the excavator must give, as soon as practicable, oral notice of the emergency to the notification center and the facility operator. The excavator must provide a description of the circumstances to the notification center and request emergency assistance from each affected operator in locating and providing immediate protection to the facilities.

(B) The declaration of an emergency excavation or demolition does not relieve any party of liability for causing damage ~~to an operator's facilities, even if those facilities are unmarked~~.

(C) Any assessment of damages resulting from an emergency excavation or demolition shall be carried out pursuant to Section 58-36-95.”

SECTION 5. This act takes effect upon approval by the Governor.

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