

**REPORT OF THE  
STATE CORPORATION COMMISSION ON**

# **The Underground Utility Damage Prevention Act**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



## **HOUSE DOCUMENT NO. 43**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1994**

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## STATE CORPORATION COMMISSION

January 4, 1994

TO: The Honorable L. Douglas Wilder  
Governor of Virginia  
and  
The General Assembly of Virginia

This report is transmitted pursuant to House Joint Resolution No. 430 (1993) directing a study of the Underground Utility Damage Prevention Act. The report, including the proposed legislation, is a compromise and the product of a comprehensive study by various entities with expertise with utilities and the Underground Utility Damage Prevention Act.

The Commission submits this report for your review and consideration.

Respectfully submitted,

  
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APB/jo  
enclosure

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## EXECUTIVE SUMMARY

In 1979, the Virginia General Assembly passed the Underground Utility Damage Prevention Act ("Act"). The intent of the legislation was to minimize the probability of damage to underground utilities from excavation or demolition activities. The Act was amended in 1980, 1989, and 1992. The 1989 amendment requires, among other things, the notification center to be certificated by the State Corporation Commission ("Commission").

In July, 1992, the Commission recognized the need for a comprehensive review of the entire Act. Accordingly, the Commission directed its Staff to establish a committee to review the Act and identify needed revisions or additions.

In September, 1992, a meeting was held with all interested parties to select a committee. The committee established was comprised of representatives from the gas, electric, and telephone utilities, cable television, contractors, locating contractors, excavating contractors, notification centers, the Virginia Department of Transportation, the City of Richmond, the Department of Commerce, and the Commission Staff. From its beginning, the committee agreed that a comprehensive review of the Act was necessary to revise the many areas of the Act that were considered unworkable and frequently misinterpreted. The committee's work was formalized by the passage of House Joint Resolution 430 ("HJR 430") during the 1993 Session of the General Assembly. HJR 430 required the Commission to review the Act, with the aid of interested parties and other state agencies, and present its findings and recommendations to the 1994 Session.

As one of its first actions, the committee prepared and distributed a survey regarding damage to underground facilities to 22 of the major utilities statewide. The survey indicated that approximately 91.5 percent of the incidents of damage were due to person(s) not complying with the existing Act.

After many hours of discussion and deliberation, the committee completed draft legislation for the Commission's consideration. This draft is presented as Appendix J to this report. It was prepared in an effort to make the Act a more workable law. Furthermore, the draft contains enforcement provisions since the existing Act was not being complied with as evidenced by the survey.

One of the committee's major discussion items was the communication, or lack thereof, between the utility operators, notification centers, and the excavators. The committee's draft legislation provides for the establishment of a new "operator-excavator information exchange system" which should enhance communication between the operators and excavators and thereby minimize damage to underground utility lines.

The committee also recognized the need for cooperation and communication between the operators and excavators, municipalities, state agencies and others to further decrease underground utility damage. Toward this goal, the draft legislation contains a provision for the establishment of an Advisory Board. It is anticipated that this Board will assist the Commission in the drafting of rules and regulations necessary to enforce the Act. The Board will also review probable violations of the Act and make recommendations to the Commission in that regard. Further, the Board will assist in the development of public awareness programs with respect to the Act.

As an increasing number of lines are placed underground, the need to reduce the possibility of damage increases. Damage to facilities could result in not only additional cost to consumers, but to possible loss of life and property. The committee's draft legislation should further enhance underground utility damage prevention in Virginia in the coming years. The committee recommends that the draft legislation, as contained in Appendix J to this report, be presented to the 1994 General Assembly.

## BACKGROUND

In 1979, the Virginia General Assembly passed the Underground Utility Damage Prevention Act ("Act"). The intent of the legislation was to minimize the probability of damage to underground utilities from excavation or demolition activities. The Act required that notification centers be established and that anyone planning to make an excavation would call a notification center and inform the center as to the excavation site. The notification center would, in turn, notify all operators of the underground utilities in the area such that those facilities could be marked. The Act was amended in 1980, 1989, and 1992 to require, among other things, operators of underground utilities to join notification centers for the area in which they operate. Additionally, the Act required the notification centers to be certificated by the State Corporation Commission ("Commission"). Currently, two notification centers, certificated by the Commission, operate in Virginia. One center serves the area north of the Rappahannock River, and one serves the area south. A copy of the current Act is presented as Appendix A to this report.

Currently, the Commission receives reports of significant service interruptions and their causes from jurisdictional utilities. These reports indicate that the leading cause of service interruptions is third-party damage which is damage caused by entities other than the utility itself such as homeowners, excavators, and other utilities. In addition to the inconvenience and lost business caused by service outages, damage to underground gas, electric, and telephone facilities could seriously jeopardize public safety. As an example, in May, 1992,

during a boring operation, an excavator struck an 8" plastic gas line. The resulting fire damaged the boring machine, a tracked excavating machine, a pickup truck and overhead television cables and left 1,179 customers without gas service for up to 24 hours.

The excavator had called the notification center and had the line marked. However, the excavator failed to hand-dig and locate the line prior to the initiation of the boring operation. This is a probable violation of the current Act.

The Federal Office of Pipeline Safety ("OPS") annually reviews the Commission's gas pipeline safety program. These reviews are used to gauge the quality of the Commission's program and to provide information that may enhance gas pipeline safety in Virginia. OPS's review in 1992 indicated that, to be most effective, Virginia's Underground Utility Damage Prevention Act needed enforcement provisions. By letter dated January 23, 1992, OPS urged the Commission to establish enforcement provisions within the Act. OPS stated that, in its experience, "... in the absence of meaningful enforcement authority, the law is easily ignored." A copy of the letter is presented as Appendix B to this report.

Additionally, in 1992, a section known as "One-Call Enforcement" was added to the Pipeline Safety Act of 1968. The new enforcement section allows for fines and/or imprisonment of individuals who knowingly violate existing damage prevention laws and subsequently damage pipeline facilities resulting in



death, serious bodily harm or actual damage to property in excess of \$50,000.

The fine can be as much as \$25,000 a day, for each day the violation exists, up to a maximum of \$500,000 per violation, and possible jail terms not to exceed five years.

In July, 1993, the National Association of Regulatory Utility Commissioners ("NARUC") passed a resolution supporting "...the policy goal of preventing telecommunications cable dig-ups through more enforcement, expanded enactment, and/or revision of underground facility damage prevention laws". This resolution also encourages states to evaluate existing damage prevention laws and make any changes that would further the prevention of cable dig-ups. A copy of the resolution is presented as Appendix C to this report.

### **STAFF EVALUATION OF THE ACT**

Due to the concerns of OPS and NARUC, as well as its own, in May, 1992, the Commission directed its Staff to evaluate Virginia's Underground Utility Damage Prevention Act. The Commission Staff ("Staff") began its evaluation by examining other states' damage prevention laws. This examination revealed that at least 26 states currently have enforcement provisions in their third-party damage prevention laws with penalties ranging from \$50 to \$10,000 and up to 30 days in jail. These states believe that enforcement provisions have reduced the number of instances of third-party damage to underground utilities. For example:

- Massachusetts experienced an 84 percent increase in the volume of calls to their one-call center and a decrease of more than 71 percent in the number of probable violations of the damage prevention law since an enforcement provision was added in 1986.
- Arizona experienced a 147 percent increase in the volume of calls to the one-call center and a 76 percent decrease in the number of investigations of probable violations of the damage prevention law since an enforcement provision was added in 1986.

According to representatives of the enforcing agencies in Massachusetts and Arizona, enforcement provisions have helped make their damage prevention laws more effective. As previously indicated, both states noted a dramatic increase in the volume of calls to the notification center and a corresponding decrease in the number of probable violations.

In June, 1992, the Staff sent a survey to 24 telephone, 18 electric, and 8 gas utilities operating in the state. The survey was designed to aid the Staff in evaluating the magnitude of third-party damage to underground utilities. Of the 49 surveys distributed, 42 responses were received. The survey revealed some startling statistics. In 1990 and 1991, for example, there were a total of 8,356 instances of third-party damage to facilities. This is an average of 16 third-party damages per working day. The major cause of the damage was persons not calling the notification center in their area as required by the Act. The results of the survey were presented to the Commission in July, 1992.

Based on the results of the survey and the concern over third-party damage, the Commission determined that a comprehensive review of the Act was necessary. Accordingly, the Commission directed the Staff to establish a committee to review the entire Act, identify the sections that needed revision, and to prepare draft legislation to modify, if necessary, the existing Act. On August 25, 1992, the Staff held its first meeting with representatives of the various affected state agencies, utilities, cable television, railroads, contractors, Miss Utility centers, locating contractors, and municipalities. During the meeting, the contractor representatives requested a separate meeting with the Staff. On September 3, 1992, a meeting was held between the Staff and the contractors to discuss the Act and to focus on the contractor's concerns. After these two meetings, it became evident to the Staff that all participants agreed that the Act needed revision. Lists of the attendees of these meetings are detailed in Appendix D to this report.

On September 14, 1992, the Staff held a meeting with all interested parties to select a committee. The committee was ultimately comprised of representatives from the gas, electric, and telephone utilities, cable television, locating contractors, excavating contractors, one-call notification centers, the Virginia Department of Transportation, the Department of Commerce, City of Richmond and the Staff. A list of the committee members is detailed in Appendix E to this report.

## COMMITTEE DELIBERATIONS

On October 5, 1992, the committee held its first meeting. In this meeting, each member presented his/her views on the Act. The committee agreed to review the entire Act for possible revision and/or addition. The committee felt that a thorough assessment of the Act was necessary to ensure that it was as clear, concise, and comprehensive as possible. Additionally, the committee began developing an in-depth survey form (see Appendix F) to be sent to selected utilities.

During the November 10, and December 5, 1992 meetings, the committee continued the discussion on the proposed survey questions. By this time, it became evident that the group would be unable to develop legislative proposals for the 1993 Session of the General Assembly. Instead the group decided to concentrate on preparation of legislation for the 1994 Session. It also decided to prepare a draft resolution for presentation to the 1993 Session concerning the committee's work on the Act.

House Joint Resolution No. 430 was introduced by Delegate Alan E. Mayer and was passed by the House on February 5, 1993 and by the Senate on February 16, 1993. A copy of the resolution is presented as Appendix G to this report. The resolution required the Commission, with the assistance of other state agencies and interested parties, to study the Act. The resolution further required that the Commission present its findings to the 1994 Session.

Prior to the next meeting of the committee, the Staff completed the survey form and instructions. On January 28, 1993, the Staff sent the survey form to selected utilities and requested them to keep data from March 1, 1993 through August 31, 1993. The survey form requested detailed information regarding the cause of damage, the location of damage, and the individual(s) responsible for the damage. The Staff selected 22 of the major utilities to participate in the survey since the collection of the required data would have been a greater burden on the smaller utilities. The selected utilities provided coverage of the entire state. The survey results are discussed later in this report.

At its March 9, 1993 meeting, the committee agreed that each member should compile a draft of his/her recommended changes and/or additions to the Act for presentation at the April 13th meeting. Commencing with the meeting on April 13, 1993, the committee began reviewing the Act and the various members' proposed modifications. The committee held eight meetings in 1993.

Upon initial review of the Act, the committee found that many areas of the Act were unworkable or misinterpreted. The committee then identified several areas that needed redrafting. These areas of the Act involved the definitions, exemptions, duties of the operator and excavator, and duties of the notification center. The committee also identified several provisions which needed to be added to the Act such as enforcement provisions. The remainder of this report presents a brief discussion of the aforementioned areas of the Act. Other areas of the Act, such as marking of facilities, color of marks, and liability provisions

were revised. However, these areas are not discussed herein as only minor revisions were recommended.

## **Definitions and Exemptions**

The committee concluded that many of the definitions contained within the Act were unclear. Both utility and contractors representatives provided many examples of misinterpretations. For example, the operators stated that the definition of "emergency" was being misconstrued by the excavators. The notification center representatives agreed with the operators that many of the "emergency" calls to the notification centers were due to misunderstandings of what constituted an emergency per the Act.

The committee recommended changing the definition of "emergency" to:

*"'Emergency' means a sudden or unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, or property or essential public services."*

This definition is more succinct than the existing definition and leaves little room for misinterpretation. The committee also added definitions for "Extraordinary circumstances", "hand digging", and "willful". The definitions of "notify, notice, or notification", "operator", "person", and "utility line" were revised. The exemptions mentioned in the definitions in the existing Act were moved to a new code section (§56-265.15:1) titled "Exemptions; routine maintenance". The current routine maintenance exemption in section 56-265.23

was revised to exempt only those persons working on the traveled portions of the roadway to a depth below the road surface not to exceed 12 inches and moved to section 56-265.15:1. An exemption to apply only to the employees of the Virginia Department of Transportation and certain counties was added to section 56-265.23.

The exemption for the combined sanitary/storm drainage systems in the definition of "utility line" for the City of Richmond was discussed. The committee felt that there is no need to mark gravity storm drainage systems. However, the committee did believe sewer or combined storm-water/sewer lines should be marked. If sewer lines are damaged, a health risk to workers and/or the public is present. Furthermore, the City of Richmond has an on-going program to replace the combined storm/sewer system with separate storm drainage and sewer systems thereby making this exemption unnecessary.

### **Duties Required by the Act**

The current Act requires a person to give a 48-hour to 10-day notice to the notification center prior to the commencement of any scheduled excavation or demolition activity. All calls are recorded and certain information is obtained from the caller as required by the Act. The notification center is responsible for notifying the utility operators once; when the excavator makes the initial call. Each call is assigned a "ticket number" which is used by the utility, locators, and excavators to identify a specific site. The utilities must mark the location of their lines in the area and make two attempts to notify (call back) the excavator that the

lines have been marked or the area is clear. If no notice or marking was made as required by the Act, the excavator cannot begin excavation or demolition activities until giving an additional three-hour notice.

To independently evaluate compliance with the current Act, the Staff called the notification center to request marking of a proposed excavation area. Under the present Act, the Staff should have received at least five calls from the various affected utilities. At the end of the 48 hours, no calls had been received and only three of five utilities had marked facilities. Further, the Staff made a second call to give the required three-hour notice. The second call was made at 2 p.m. on a Friday. The notification center informed the Staff that the three hour notice would carry over until Monday. It is important to note that one of the unmarked utilities was a natural gas service line. No call-backs were ever received by the Staff.

Early in the committee's discussion, four issues became evident:

1. Excavators south of the Rappahannock River are not told what utilities are present in the proposed excavation area when they call the notification center.
2. Many excavators routinely make the second notification (three-hour notice), without checking to see if all utilities have been marked,
3. Many excavators do not receive the call-backs required by the Act.
4. The notification center receives a large number of tickets with less than the 48-hour notice required by the Act.

In addition to increased underground utility damage and potential safety concerns, the combined effect of the aforementioned issues is an increase in the



number of tickets given by the notification center which translates to increased costs to ratepayers.

The committee unanimously agreed that both notification centers should inform the excavators of the utilities in the proposed excavation area when they call the notification center.

In further discussions, the excavator representatives stated that they did not see the need for the second call to the notification center on every ticket and did not want to retain the liability placed upon them to make the call. They stated that any prudent excavator who saw evidence of utilities, such as pedestals or similar equipment, in the area with no corresponding markings, would re-notify the notification center. The excavators believe it is the operator's responsibility, not theirs, to ensure that the underground utilities are marked within the time frame required by the Act. However, the excavators do believe the operators should be re-notified if the lines have not been marked. The excavators contend that all notifications of proposed excavations to the utility operators and the verification that the utility lines have been marked, should be the responsibility of the notification center. This, they say, will provide an "audit trail" in the event of damage.

After much discussion, the committee members agreed that the second call serves as a "safety net". If the utility operator or locator inadvertently fails to mark the facility, he is given a second chance. Furthermore, all parties agreed that the excavator-operator communication method needs to be improved.

Committee members clearly expressed that an essential component of an effective damage-prevention program is the cooperation of, and communication between, the operators and excavators.

### **Excavator-Operator Communication**

The committee discussed and agreed that the operator-excavator information exchange system needed enhancement. Several options were reviewed. These included a voice-mail system, a computerized information exchange system with the utilities, or other excavator-operator information exchange systems.

The first proposal would have the notification centers adopt a "voice-mail" type of system wherein an excavator would call in and be assigned a ticket number and a voice-mail phone number. The operators would also be given the voice-mail number. After the operators had either marked their lines or determined the area was clear, they would call the voice-mail number and report "marked" or "clear". The excavator would check the voice-mail 48 hours after the first call to determine if all utilities had reported back. If so, the excavator could begin work. If not, the excavator would have the utilities re-notified by making a second call to the notification center.

The second proposal involves only the notification center and the utilities. Under this proposal, the excavator would call the notification center and be assigned a ticket number. The notification center would then notify the utilities.

The utilities would call back the notification center within 48 hours and state if they had "marked" or were "clear". If the notification center does not receive responses from all utilities within 48 hours, the notification center would re-notify those utilities that did not respond. After a total of 72 hours had passed since the initial call to the notification center, the excavator could begin work without making additional calls.

The committee finally agreed on the establishment of an "excavator-operator information exchange system" ("system") that combines the two methods mentioned previously. Under the agreed-to method, the excavator can access the system at the end of 48 hours to ascertain if all the operators' facilities have been marked. If so, the excavator could begin work. In addition, the notification center will also check the system and re-notify those operators who had not reported either "marked" or "clear" to the system. The operators so notified would have 24 hours to either mark or indicate the proposed excavation area is clear of their facilities. A flowchart detailing this system is presented as Appendix H to this report. Although this system is technologically possible, a period of time is required to develop and test the new information exchange system in parallel with the existing one. This new information exchange system should aid in the reduction of the number of second tickets generated at the notification center. Second tickets cause additional work for locators, delay the marking of new tickets, and result in additional operating cost to the operators and ratepayers.

To maintain the "safety net" provided by the three hour notice as required by the existing Act, the committee agreed to add the following language to the Act:

*"If, upon arrival at the site of a proposed excavation, the excavator observes clear evidence of the presence of an unmarked utility in the area of the proposed excavation, the excavator shall not begin excavating until an additional call is made to the notification center for the area. The operator of the utility shall respond within three hours of the excavator's call to the notification center."*

Another major concern became evident from discussions with the notification center representatives. The centers indicate that an inordinate number of tickets called in with less than 48-hours notice. These tickets are referred to as "insufficient notice" tickets. The utility representatives also expressed concern about the large number of insufficient notice tickets. They also stated these types of tickets were given priority over properly noticed tickets in an effort to protect underground lines. It appears that certain individuals do not plan ahead to allow for the stated 48-hour period so that the operators may mark their facilities. Instead, these individuals call in a "work-in-progress" ticket so they receive priority over those who have complied with the law. In an effort to eliminate these insufficient notice tickets, the committee agreed to strike the insufficient notice language from the Act.

The committee does not believe the insufficient notice tickets will ever be eliminated. To discourage such tickets, however, the notification center would maintain a list of these tickets. The agency having jurisdiction to enforce the provisions of the Act would investigate to determine if the insufficient notice

tickets were valid emergencies as defined by the Act. The enforcing agency would take proper action to dissuade those who are in violation of the Act.

The committee also discussed the feasibility of having one toll-free number for the two notification centers. The committee agreed that, although technically feasible, having two toll-free numbers in Virginia had only presented minor problems. If an individual calls the wrong notification center, they are provided with the correct number to call.

## **Education**

The committee recognized the importance of public awareness and education in the reduction of third-party damage. To aid in the education of the public, the Committee agreed that the members of each notification center "...be responsible for developing and implementing a public awareness program to assure that all parties affected by this Act shall be aware of their responsibilities." Further, the committee agreed to the development of an advisory board to the enforcing agency. This advisory board would, among other things, assist the notification centers in the development and implementation of the public awareness programs. The development of the advisory board and its responsibilities are addressed later in this report.

## Enforcement Provisions

The committee had many hours of discussion concerning penalties. All parties agreed that some type of deterrent and/or penalty are needed to ensure compliance with the Act. However, what type of penalty and which State agency should have enforcement jurisdiction were the main issues. The committee agreed that the State Corporation Commission was the appropriate agency for enforcement, as the Commission is a court of record and could enforce the Act most efficiently. The committee also agreed that the Commission should have the authority to impose civil penalties, after due process, of an amount not to exceed \$2,500 for each violation of the Act. The cap proposed for the civil penalty represents the estimated cost of adjudicating probable violations of the Act. A derivation of these costs is detailed in Appendix I.

The committee also proposed that a special fund known as the "Underground Utility Damage Prevention Special Fund" be established. Any civil penalties collected pursuant to the Act would be paid to this fund. The fund would be used for two things. First, the fund would be used by the Commission to administer the regulatory program authorized by the Act. Secondly, any excess funds would be used to support public awareness programs established by notification centers in compliance with the Act.

The committee also discussed punitive damages which would be paid to any operator damaged by an excavator who willfully fails to notify the notification center. The committee agreed that such punitive damages should be

equal to three times the cost of the damaged property. However, in no case would the punitive damages exceed \$10,000.

### **Advisory Board**

The committee agreed that an advisory board should be established. The board would consist of representatives of excavators, operators, Commission staff, notification centers, locating contractors, municipalities, and State agencies. This board would perform reviews of reports of violations of the Act and make recommendations to the Commission. In addition, the advisory board would perform other duties as assigned by the Commission. These duties may include drafting and proposing rules and regulations and review of public awareness programs established by notification centers. The membership of this board would be changed on a regular basis to allow all interested parties to participate in this review process. This advisory board would augment the regulatory oversight of the Act by providing interaction between the affected parties and the Commission.

The advisory board would have voting and non-voting members. Voting members would consist of representatives for the excavator, the operator (municipalities, utilities, etc.), and the Staff. Non-voting members would be comprised of locators, notification centers, state agencies and others.

## Survey Results

As mentioned previously, the Staff sent the committee-developed survey form to selected utilities on January 28, 1993. The survey results were returned to the Staff by September 10, 1993. During the September 28, 1993 meeting, the committee discussed the results (see Appendix F) of the survey. The survey revealed 3,459 instances of third-party damage from March 1, 1993 through August 31, 1993. This is an average of 26 incidents per working day. These incidents affected the service of 204,405 customers, an average of 59 customers per incident.

Persons not calling the notification center were responsible for 1,150 or 33.2 percent of the incidents. Persons either digging on, or within two feet of, the marks, or failing to hand-dig were responsible for 975 or 28.2 percent of the incidents. The operator not marking, or marking incorrectly, the location of the utility line caused 754 or 21.8 percent of the incidents and 290 or 8.3 percent were caused by persons digging on faded marks, outside the ticket area, or with expired tickets. In summary, 91.5 percent of the incidents were the result of persons not complying with the existing Underground Utility Damage Prevention Act.



## CONCLUSIONS

The goal of the committee, e.g., to reduce the number of instances of third-party damage to underground utilities, was the focus of the committee's extensive discussions that have occurred since August, 1992. At the onset, the committee recognized that the effectiveness of any program to prevent damage depends on many separate, yet interrelated factors. The committee also recognized that any program which did not address all factors would be only partially effective. Further, the committee felt that one of the primary factors missing from the Act was an enforcement provision.

Underground utility damage continues at an alarming rate in Virginia. A recent incident in Arlington could have had dire consequences. On October 29, 1993, a contractor struck an 8" steel natural gas distribution line at National Airport with a backhoe. The contractor had an expired ticket from the notification center. As a result of this incident, National Airport was left without gas for several hours; the George Washington Parkway and 4 other streets were closed for a period of time; and approximately 1,000 people were evacuated.

All the evidence points to the fact that compliance with the Act minimizes the likelihood of damaging underground lines. If damage to underground lines decreases, the possibility of loss of life and property, as well as the cost to the consumers and the number of service outages decreases. The committee members understand that all operators and excavators must work together to protect the underground infrastructure. Regulatory measures alone will not

prevent damage. As each day passes, public pressure and utility construction procedures require more and more utility lines to be placed underground. It is imperative that action be taken immediately to ensure that the integrity of the underground lines is maintained. The combination of communication, cooperation, and compliance by the affected parties will serve to mitigate underground utility damage in Virginia.

Appendix J presents the committee's proposed legislation which incorporates the factors discussed in this report. The proposed legislation provides a comprehensive program of education, communication, and regulatory oversight which will serve to protect the underground lines in Virginia in the coming years.

**APPENDIX A**

**CURRENT UNDERGROUND UTILITY DAMAGE PREVENTION ACT**

CHAPTER 10.3.

UNDERGROUND UTILITY DAMAGE PREVENTION ACT.

§ 56-265.14. Short title. — This chapter may be cited as the "Underground Utility Damage Prevention Act." (1979, c. 291.)

§ 56-265.15. Definitions. — As used in this chapter:

1. "Damage" shall mean any impact upon or removal of support from an underground facility as a result of excavation or demolition which according to the operating practices of the operator would necessitate the repair of such facility.

2. "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 which could damage underground utility lines.

3. "Emergency" means any condition constituting a clear and present danger to life or property by reason of escaping of any material or substance transported by means of a utility line, as hereinafter defined, or by reason of exposed wires or other breaks or defects in an operator's utility line; or in the case of the state highway systems or streets and roads maintained by political subdivisions, where the use of such highways, roads, streets or other public ways is, in the judgment of duly authorized officials of the State Highway and Transportation Department or such political subdivisions, impaired by an unforeseen occurrence which necessitates repair beginning immediately after such occurrence.

4. "Excavate" or "excavation" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosives and includes, without limitation, grading, trenching, digging, ditching, dredging, drilling, augering, tunnelling, scraping, cable or pipe plowing and driving, wrecking, razing, rendering, moving, or removing any structure or mass of material, but not including the tilling of the soil for agricultural purposes.

5. "Notify," "notice" or "notification" mean the completed delivery of information to the person to be notified, and the receipt of same by such person to be notified within the time limits prescribed in this chapter. When the person to be notified is an operator, the notification shall be made to the person whose name is on file pursuant to § 56-265.16, and, when the notification is to be made by an operator in response to a notification it has received, such notification shall be made to the same person who notified the operator. Notification may be either orally or in writing, with written notification to be made by hand delivery, telegram, United States mail or by United States certified mail, return receipt requested.

6. "Notification center" means an organization whose membership is open to all operators of underground facilities located within the notification center's designated service area, which maintains a data base, provided by its member operators, that includes the geographic areas in which its member operators desire transmissions of notices of proposed excavation, and which has the capability to transmit, within one hour of receipt, notices of proposed excavation to member operators by teletype, telecopy, personal computer, or telephone.

7. "Operator" means any person who furnishes or transports materials or services by means of a utility line; provided, however, that the meaning of the term "operator" shall not include the operation of a gravity storm or sanitary sewer system by the City of Richmond.

8. "Person" means any individual, firm, joint venture, partnership, corporation, association, municipality, or other political subdivision, governmental unit, department or agency, and shall include any trustee, receiver, assignee, or personal representative thereof; provided, however, that nothing in this chapter shall apply to any excavation done by the owner of property when said excavation is made entirely on such land, provided there is no encroachment on any operator's rights-of-way or easements; provided, further, that nothing in this chapter shall apply to any excavation done by a railroad when said excavation is made entirely on the land which the railroad owns and on which the railroad operates, provided there is no encroachment on any operator's rights-of-way or easements.

9. "Utility line" means any item of public or private property which is buried or placed below ground or submerged for use in connection with the storage or conveyance of water, sewage, electronic, telephonic, or telegraphic communications, electric energy, cable television, oil, petroleum products, gas, or other substances, and shall include but not be limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those portions of poles below ground. The term "sewage" as used herein shall not include any gravity storm or sanitary sewer system within the City of Richmond.

10. "Working day" means every day, except Saturdays, Sundays, and legal state and national holidays. (1979, c. 291; 1980, cc. 696, 710; 1992, c. 192.)

The 1992 amendment rewrote subdivision

6.

§ 56-265.16: Repealed by Acts 1989, c. 448, effective July 1, 1990.

§ 56-265.16:1. Operators to join notification centers; certification; notification centers to file locally. — A. Every operator, including counties, cities and towns, but excluding the Department of Transportation, having the right to bury underground utility lines shall join a notification center.

B. Except as provided herein, each notification center shall be certified by the State Corporation Commission. Any corporation desiring to serve as the notification center for an area of the Commonwealth may apply to the State Corporation Commission to be certified as the notification center for that area. The State Corporation Commission shall have authority to grant, amend, or revoke certificates under regulations which it may adopt relating to certification. However, any notification center which was engaged in the business of notification as of January 1, 1989, shall not be required to be certified by the State Corporation Commission and none of the provisions of this section shall be applicable to such a notification center.

C. Each notification center shall file with the clerk of the circuit court of the county or city in which the operator's lines are located, on behalf of all participating operators, its name, address and telephone number, and such information shall be kept current. (1989, c. 448; 1992, c. 192.)

Effective date. — This section is effective July 1, 1990.

The 1992 amendment, in the second sen-

tence of subsection B, substituted "the notification" for "a notification" in two places.

§ 56-265.17. Notification required prior to excavation or demolition. — A. No person shall make or begin any excavation or demolition without first notifying at least forty-eight hours but no more than ten days, excluding Saturdays, Sundays, and legal state and national holidays, prior to the commencement of the proposed excavation or demolition, or within such time as agreed upon in writing at any preconstruction meeting, the notification center for that area. Notice to the notification center shall be deemed to be notice to each operator who is a member of that notification center. When an operator requests a person to perform work with less than forty-eight hours' notice, the operator shall be required to meet the notification requirements of this section.

B. Notification as provided in subsection A of this section shall be valid for ten working days and may be extended for one additional ten-working-day period upon request to the notification center at least forty-eight hours prior to expiration of the original ten-working-day period. (1979, c. 291; 1989, c. 448; 1992, c. 192.)

The 1989 amendment, effective July 1, 1990, rewrote this section.

The 1992 amendment, in subsection B, substituted "one additional ten-working-day

period" for "an additional ten-working-day period," and substituted "notification center" for "operator."

§ 56-265.18. Notification requirements. — Every notice served by any person on a notification center shall contain the following information:

1. The name of the individual serving such notice.
2. The location of the proposed work.
3. The name, address and telephone number of the excavator or demolisher, to whom notification can be given.
4. The excavator's or demolisher's field telephone number, if one is available.
5. The type and extent of the proposed work.
6. The name of the person for whom the proposed work is being performed.
7. The approximate date and time when the work is to begin. (1979, c. 291; 1980, c. 696; 1989, c. 448.)

The 1989 amendment, effective July 1, 1990, deleted "an operator of an underground utility line or" following "by any person on" in the introductory language.

§ 56-265.19. Duty of operator upon notification. — A. If it is determined by an operator that a proposed excavation or demolition is planned within five feet of an underground utility line as measured in the horizontal plane, or if a proposed excavation or demolition by blasting is planned in such proximity to the underground utility line that the utility line may be destroyed, damaged, dislocated, or disturbed, the operator shall make at least two attempts to notify the person who proposes to excavate or demolish and shall mark the approximate horizontal location of the underground utility line on the ground to within two feet of either side of the underground utility line by means of stakes, paint, or other suitable means within forty-eight hours after the request, excluding Saturdays, Sundays, and legal state and national holidays. If one of the attempted notifications is telegram, or mailgram sent, or written notice left, at the address of the excavator or demolisher, as such address appears on a notification under § 56-265.18, or in a current telephone book or in another public information source if such notification contains no address, such notice shall be deemed evidence of a sufficient attempt. In the case of extraordinary circumstances, if the operator is unable to mark the location within forty-eight hours, excluding Saturdays, Sundays, and legal state and national holidays, the operator shall notify the person who proposes to excavate or demolish and shall, in addition, notify the person of the date and time when the location will be marked. Such notification of inability to mark location shall be within twenty-four hours, and the deferral to mark for extraordinary circumstances shall be within ninety-six hours, unless a longer time is otherwise agreed.

B. An operator shall participate in all preplanning and preconstruction meetings originated by state, county or municipal authorities relating to proposed construction projects which may affect the operator's existing or future utility lines and shall cooperate in implementing decisions reached in such preplanning and preconstruction meetings. (1979, c. 291; 1980, c. 696.)

§ 56-265.20. When excavation begun; notice when marking not required. — A. After giving the notice required by §§ 56-265.17 and 56-265.18, if no notice or marking has been made as provided in § 56-265.19, no person shall begin any excavation or demolition until three hours after an additional notification to the notification center.

B. If the operator has no underground utility line within five feet of the proposed excavation or demolition as measured in the horizontal plane, or if a proposed excavation or demolition by blasting is not planned in such proximity to the operator's underground utility lines that the utility lines may be damaged, the operator shall notify within forty-eight hours, excluding Saturdays, Sundays, and legal state and national holidays, the person who proposes to excavate or demolish that the person may begin the excavation or demolition. (1979, c. 291; 1980, c. 696; 1989, c. 448; 1992, c. 192.)

The 1989 amendment, effective July 1, 1990, in subsection A, added the language beginning "After giving the notice" and ending "§ 56-265.19," deleted "prior to the marking required by § 56-265.19" following "demolition," and substituted "the operator" for "an operator."

The 1992 amendment substituted "notification center" for "operator" at the end of subsection A.

§ 56-265.21. **Marking by color.** — In marking the approximate location of underground utility lines the operator shall follow the color coding described herein:

UTILITY AND TYPE OF PRODUCT	IDENTIFYING COLOR OR EQUIVALENT
Electric Power Distribution & Transmission	Safety Red
Municipal Electric Systems	Safety Red
Gas Distribution & Transmission	High Visibility Safety Yellow
Oil & Petroleum Products Distribution & Transmission	High Visibility Safety Yellow
Dangerous Materials, Product Lines, Steam Lines	High Visibility Safety Yellow
Telephone & Telegraph Systems	Safety Alert Orange
Police & Fire Communications	Safety Alert Orange
Cable Television	Safety Alert Orange
Water Systems	Safety Precaution Blue
Slurry Systems	Safety Precaution Blue
Sewer Systems (1979, c. 291.)	Safety Green

§ 56-265.22. **Record of notification made by telephone required.** — If the notification required by this chapter is made by telephone, a record of such notification shall be maintained by the operators or notification center notified to document compliance with the requirements of this chapter, and such records shall be maintained in compliance with the applicable statute of limitations. (1979, c. 291.)

§ 56-265.23. **Exemption of excavation for routine maintenance.** — Persons and operators excavating for routine maintenance, including "Patch" type paving, will not be required to comply with the notification and marking procedures of §§ 56-265.17, 56-265.18, 56-265.19, and 56-265.20 if:

1. They excavate within the limits of the original excavation; or on the traveled way, shoulders or drainage features of a public road, street, or highway and any excavation does not exceed twenty-four inches in depth below the grade existing prior to such excavation; or
2. They are replacing previously existing structures in their previous locations. (1979, c. 291.)

§ 56-265.24. **Duties of excavator.** — A. Any person excavating within two feet of either side of the staked or marked location of an operator's underground utility line or demolishing by blasting in such proximity to the underground utility line that the utility line may be destroyed, damaged, dislocated or disturbed, shall take all reasonable steps necessary to properly protect, support and backfill underground utility lines. This protection shall include but may not be limited to hand digging, within the limits of the planned excavation or demolition, starting two feet of either side of the extremities of the underground utility line for other than parallel type excavations and at reasonable distances along the line of excavation for parallel type excavations.

B. In the event of any damage to, or dislocation, or disturbance of any underground utility line including its appurtenances, covering, and coating, in connection with any excavation or demolition, the person responsible for the excavation or demolition operations shall immediately notify the operator of the underground utility line and shall not backfill around the underground utility line until the operator has repaired the damage or has given clearance to backfill. The operator shall either commence repair of the damage or give clearance to backfill within twenty-four hours, and upon his failure to commence or prosecute with diligence such repair or give clearance, the giving of clearance shall be presumed.

C. If the damage, dislocation, or disturbance of the underground utility line creates an emergency situation involving danger to life, health, or property, the person responsible for the excavation or demolition shall, in addition to complying with subsection B of this section, take immediate steps reasonably calculated to safeguard life and property. (1979, c. 291.)

**§ 56-265.25. Liability of operator and excavator.** — A. 1. If any underground utility line is damaged by any person who has failed to comply with any provision of §§ 56-265.17, 56-265.18 and 56-265.20, that person shall be liable to the operator of the underground utility line for the total cost to repair the damaged facilities as that cost is normally computed by the operator, provided the operator (i) is a member of the notification center covering the area in which the damage to the utility line takes place, and (ii) upon receiving proper notice in accordance with this chapter, has complied with the provisions of § 56-265.19. The liability of such a person for such damage shall not be limited by reason of this chapter.

2. If after receiving proper notice, an operator shall fail to discharge a duty imposed by any provision of this chapter and an underground utility line of such operator is damaged, as a proximate result of the operator's failure to discharge such duty, by any person who has complied with all of the provisions of this chapter, such person shall not be so liable; or

3. If an underground utility line of an operator is damaged by any person, who has complied with all the provisions of this chapter as the proximate result of the operator's failure to comply with any provision of this chapter, the operator shall be liable to such person for the total cost to repair any damage to the equipment or facilities of such person resulting from such damage to the operator's underground utility line.

B. Except as specifically set forth herein, the provisions of this chapter shall not be construed to either abrogate any rights, duties, or remedies existing under law or create any rights, duties, defenses, or remedies in addition to any rights, duties, or remedies existing under law. (1979, c. 291; 1980, c. 696; 1989, c. 448.)

The 1989 amendment, effective July 1, 1990, rewrote subdivision A 1.

**§ 56-265.26. Emergency excavations exempted.** — The provisions of this chapter shall not apply when making an excavation or demolition at times of an emergency as defined in § 56-265.15; provided all reasonable precaution has been taken to protect the underground utility lines. (1979, c. 291.)

**§ 56-265.27:** Not set out.

**Editor's note.** — Section 56-265.27 is a severability clause. See Acts 1979, c. 291.

**§ 56-265.28. Sovereign immunity.** — Nothing in this chapter shall be construed to abrogate the immunity from suit accruing to the Commonwealth, her political subdivisions, agencies, officers or employees, or the officers or employees of her political subdivisions and agencies, as exists prior to July 1, 1980. (1979, c. 291.)

**§ 56-265.29. Other similar laws.** — Compliance with the provisions of this chapter shall not exempt any operator or person from the operation of any other applicable laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction, unless exempted by such other laws, ordinances, regulations, or rules as a result of such compliance. (1979, c. 291.)



APPENDIX B

JANUARY 23, 1992 LETTER  
FROM THE  
FEDERAL OFFICE OF PIPELINE SAFETY



U.S. Department  
of Transportation

Research and  
Special Programs  
Administration

400 Seventh Street, S.W.  
Washington, D.C. 20590

JAN 23 1992

RECEIVED

JAN 27 1992

Mr. Theodore V. Morrison, Jr.  
Chairman  
Virginia State Corporation Commission  
Jefferson Building  
P.O. Box 1197  
Richmond, VA 23209

COMMISSIONER MORRISON

Dear Mr. Morrison:

On September 24-25, 1991, Ralph Kubitz, Chief, Eastern Region, Office of Pipeline Safety (OPS), reviewed the gas pipeline safety program of the State Corporation Commission (SCC). The program is conducted in cooperation with OPS pursuant to Section 5(a) of the Natural Gas Pipeline Safety Act of 1968, as amended. In addition, Mr. Kubitz observed an inspection at Commonwealth Gas by James Hotinger and Michael Doucette. Thank you for the courtesies extended to Mr. Kubitz.

As a result of this review, I would like to bring the following items to your attention:

1. I want to stress again our support for your efforts to secure passage of legislation to bring safety jurisdiction over municipal gas systems and master meter systems under the SCC. Enactment of this legislation will give you safety jurisdiction over all intrastate gas operators and will, in my judgment, serve the best safety interests of the public in a most positive manner.
2. As I understand it, the Virginia Underground Damage Prevention Law now includes all of the Federal requirements of Part 198 with the exception of § 198.37(h), civil penalties/injunctive relief. I mention it because of the importance we attach to that requirement. Our experience indicates that in the absence of meaningful enforcement authority the law is easily ignored. Outside force damage remains the leading cause of incidents, and because of the well demonstrated effectiveness of the civil penalty, I want to urge that this requirement, § 198.37(h), be added to your law.

3. I am pleased to learn the SCC is actively using civil penalties on Part 192 violations. OPS policy is to take full advantage of this authority and to use it stringently. There is no better way to stir operators into a truly serious approach toward full compliance. Active usage of the civil penalty also demonstrates meaningful support for the inspection/enforcement efforts of inspection personnel, and I commend the SCC for moving in that direction.

I would like to alert you to an impending change in the allocation formula used to distribute Federal pipeline safety grants to states. The formula is being revised to correspond with the evolution of the pipeline safety program over the years. Initially, in distributing funds, emphasis was placed on assisting states in establishing their pipeline safety programs. Now that this objective has largely been accomplished, attention is shifting to state program performance.

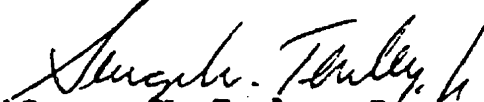
An Advance Notice of Proposed Rulemaking was issued February 25, 1991, 56 FR 7636, soliciting public comment on revising the allocation formula. The intent is to issue a Notice of Proposed Rulemaking, with a Final Rule following, which would phase in the revised formula beginning with the distribution of CY 1992 funds. In line with the shift to a performance-based formula, the annual OPS monitoring visit will become an increasingly important means for assessing state performance.

Revision of the allocation formula is being proposed in conjunction with efforts to fund up to the full 50 percent of the costs reasonably required by states to carry out their pipeline safety programs. The Department of Transportation's FY 1991 budget included a total of \$5.2 million for pipeline safety grants, representing a 21 percent increase over FY 1990. The FY 1992 budget earmarks \$7 million for pipeline safety grants, a 35 percent increase over FY 1991. These increases are in line with the National Association of Regulatory Utility Commissioners' resolution supporting additional Federal funding and also with the aims of the National Association of Pipeline Safety Representatives.

On the basis of the above described shift in emphasis to program performance and the move toward full 50 percent funding, I urge the SCC to begin taking steps to position itself to receive and utilize maximum grant funding.

I would appreciate your comments on items 1 and 2 within 30 days of receipt of this letter. Thank you for your interest and cooperation in pipeline safety.

Sincerely,

  
George W. Tenley, Jr.  
Associate Administrator  
for Pipeline Safety

## **APPENDIX C**

**National Association of  
Regulatory Utility Commissioners  
1102 Interstate Commerce Commission Building  
Post Office Box 684, Washington, DC 20044-0684  
Telephone (202) 898-2200  
Facsimile (202) 89802213**

**Sponsored by the Committee on Communications  
Adopted July 28, 1993**

### **Resolution of Underground Cable Damage Prevention**

**WHEREAS** Various organizations such as the FCC's Network Reliability Council (NRC), U. S. Congressional General Accounting Office and other segments of the industry have taken steps to examine factors contributing to damage of underground telecommunications facilities; and

**WHEREAS** The NRC identified fiber cable cuts as a dominant factor in telecommunications outages; and

**WHEREAS**, The Cable Focus Study Group of the NRC (comprised of representatives from BELLCORE, NASUCA, LECs and IXC's) identified the lack of notification prior to excavation as a dominate factor in cable outages; and

**WHEREAS**, The assessment of call-before-you-dig legislation conducted by the Cable Focus Study Group of the NRC, revealed "that the laws are inconsistent across the country and seem to lack depth of enforcement and penalties required to deter excavators from digging without providing notification; and

**WHEREAS**, The Cable Focus Study Group of the NRC recommended that effective legislation must include the following two key points:

1) That any person or entity excavating on utility rights-of-way must notify all underground utility owners at least two days prior to the time excavating work commences, and

2) That any person who negligently causes damage to underground facilities is responsible for all costs of emergency restoration and repair work needed to return the facility to its operational condition prior to excavation, now, therefore, be it

**RESOLVED**, That the Executive Committee of the National Association of Regulatory Utility Commissioners (NARUC), assembled at its July, 1993 Summer Meeting in San Francisco, California, supports the policy goal of preventing telecommunications cable dig-ups through more enforcement, expanded enactment, and/or revision of underground facility damage prevention laws; and be it further

**RESOLVED**, That the NARUC encourages states to evaluate existing legislation and commission rules and assign such responsibilities, liabilities and other obligations equitably, in a manner that furthers the prevention of cable dig-ups.

APPENDIX D

ATTENDANCE LISTS  
FOR THE  
INITIAL MEETINGS HELD  
TO DISCUSS THE  
UNDERGROUND UTILITY DAMAGE PREVENTION ACT

# List of Attendees to the August 25, 1992 Meeting

## Underground Utility Damage Prevention Act

NAME	REPRESENTING
Massoud Tahamtani	State Corporation Commission, Division of Energy Regulation
Alan Wickham	State Corporation Commission, Division of Communications
James M. Hotinger	State Corporation Commission, Division of Energy Regulation
Angela Bowser	State Corporation Commission, Division of Information Resources
Reggie Hock	State Corporation Commission, Assistant to Commissioner Morrison
Wayne Kidd	C & P Telephone
Carl Rosberg	Clifton Forge - Waynesboro Telephone Company
Mark Christie	Miss Utility of Virginia, Inc.
Robert Lopardo	MCI Communications
Roger Heflin	AT & T Communications
Bob Williams	Virginia Power
Bill Glover	Virginia Power
Allen Barbee	Northern Virginia Electric Cooperative
Tony Weaver	Northern Virginia Electric Cooperative
Mark Singer	Richmond Area Municipal Contractors Association
Mike Warmack	Miss Utility of Maryland, Virginia, and DC
Tom Hoff	One Call Concepts, Inc.
Albert E. Andrews	City of Petersburg
Bobby Heffinger	Cox Cable of Roanoke
Art Pendleton	Roanoke Gas Company
Lowell Sawyer	Washington Gas
Tom Ingram	Virginia Department of Transportation
G. C. Nacquin	William A. Hazel, Inc.
Danny Young	Norfolk Southern Corporation
Jack Watts	Contracting Enterprises, Inc.
Ralph Frye	Virginia Telephone Association
Tom Vaughn	Mega Contractors, Inc.
Alan Gray	Interstate Construction
Laura Bateman	Commonwealth Gas Services, Inc.
Florence Brassier	Virginia Department of Commerce, Board for Contractors

# List of Attendees to the September 3, 1992 Meeting

## between the Staff and the Contractors' Representatives

NAME	REPRESENTING
Massoud Tahamtani	State Corporation Commission, Division of Energy Regulation
Alan Wickham	State Corporation Commission, Division of Communications
Michael Doucette	State Corporation Commission, Division of Energy Regulation
Angela Bowser	State Corporation Commission, Division of Information Resources
Reggie Hock	State Corporation Commission, Assistant to Commissioner Morrison
Mark Singer	Richmond Area Municipal Contractors Association
G. C. Nacquin	William A. Hazel, Inc.
Jack Watts	Contracting Enterprises, Inc.
Tom Vaughn	Mega Contractors, Inc.
Alan Gray	Interstate Construction
John E. Johnson	J. H. Martin & Sons
Ernest Kuertz	J. H. Martin & Sons
Coleman Lyttle	Stamie E. Lyttle Company, Inc.
Gray Pruitt	F. G. Pruitt, Inc.



## APPENDIX E

### Working Committee on the Underground Utility Damage Prevention Act

NAME	REPRESENTING
Massoud Tahamtani, Chairman	State Corporation Commission, Division of Energy Regulation
Alan Wickham, Vice Chairman	State Corporation Commission, Division of Communications
James M. Hotinger	State Corporation Commission, Division of Energy Regulation
Angela Bowser	State Corporation Commission, Division of Information Resources
Reggie Hock	State Corporation Commission, Assistant to Commissioner Morrison
Lisa Hill O'Shea	State Corporation Commission, Division of Information Resources
Wayne Kidd	C & P Telephone
Phil Thompson	Miss Utility of Virginia, Inc.
Mark Christie	Miss Utility of Virginia, Inc.
Bob Williams	Virginia Power
Mark Singer	Richmond Area Municipal Contractors Association
Mike Warmack	Miss Utility of Maryland, Virginia, and DC
Sterling Mullins	City of Richmond
Sherri West	Media General Cable
Art Pendleton	Roanoke Gas Company
Richard Bennett	Virginia Department of Transportation
G. C. Nacquin	William A. Hazel, Inc.
Jack Watts	Contracting Enterprises, Inc.
Grey Pruitt	F. G. Pruitt, Inc.
Larry R. Liles	NC Utility Services
Fletcher Harris	Beyers Engineering
Elizabeth Young-Kirksey	Virginia Department of Professional and Occupational Registration

**APPENDIX F**

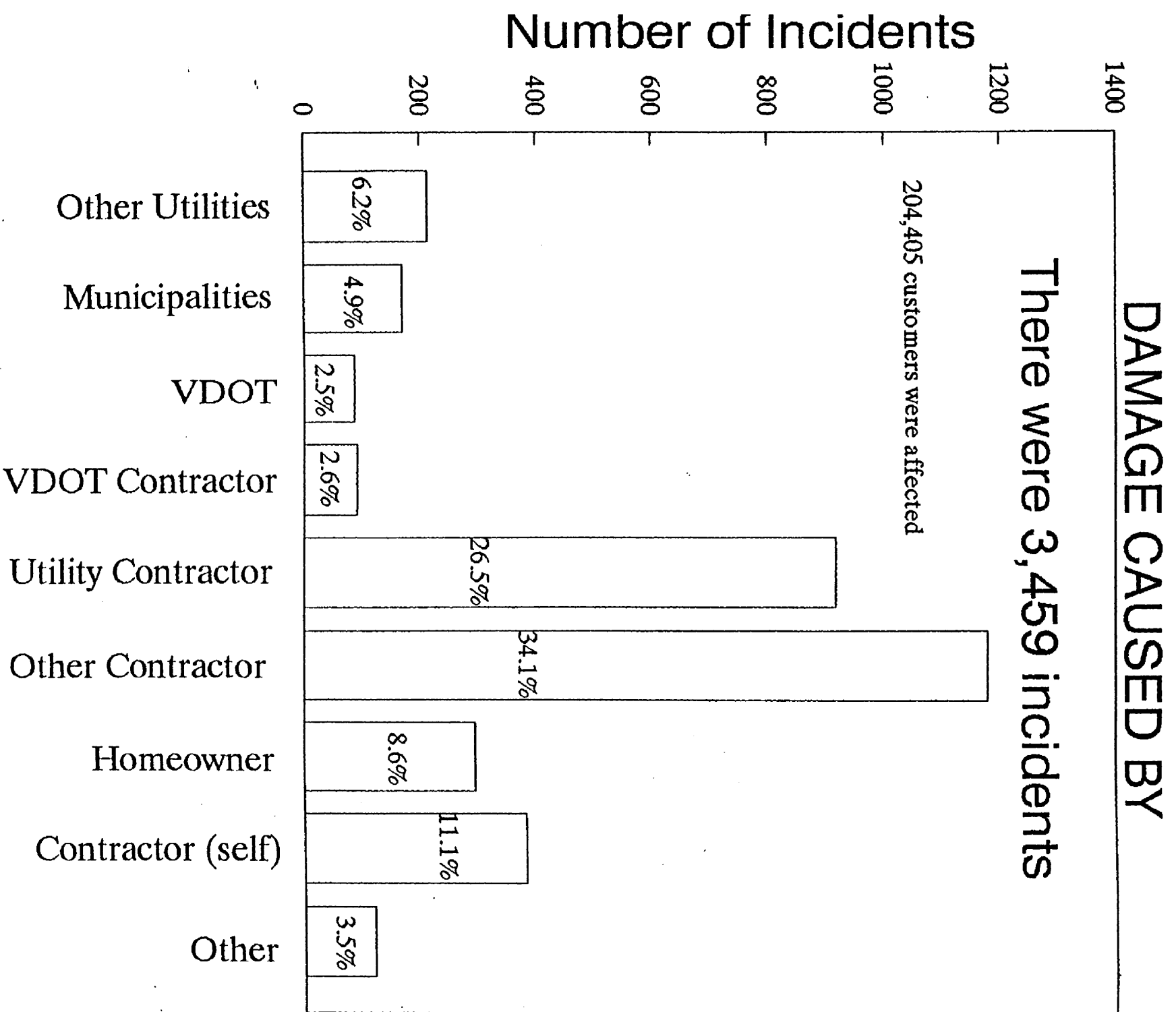
**MARCH 1, 1993 - AUGUST 31, 1993 SURVEY FORM**

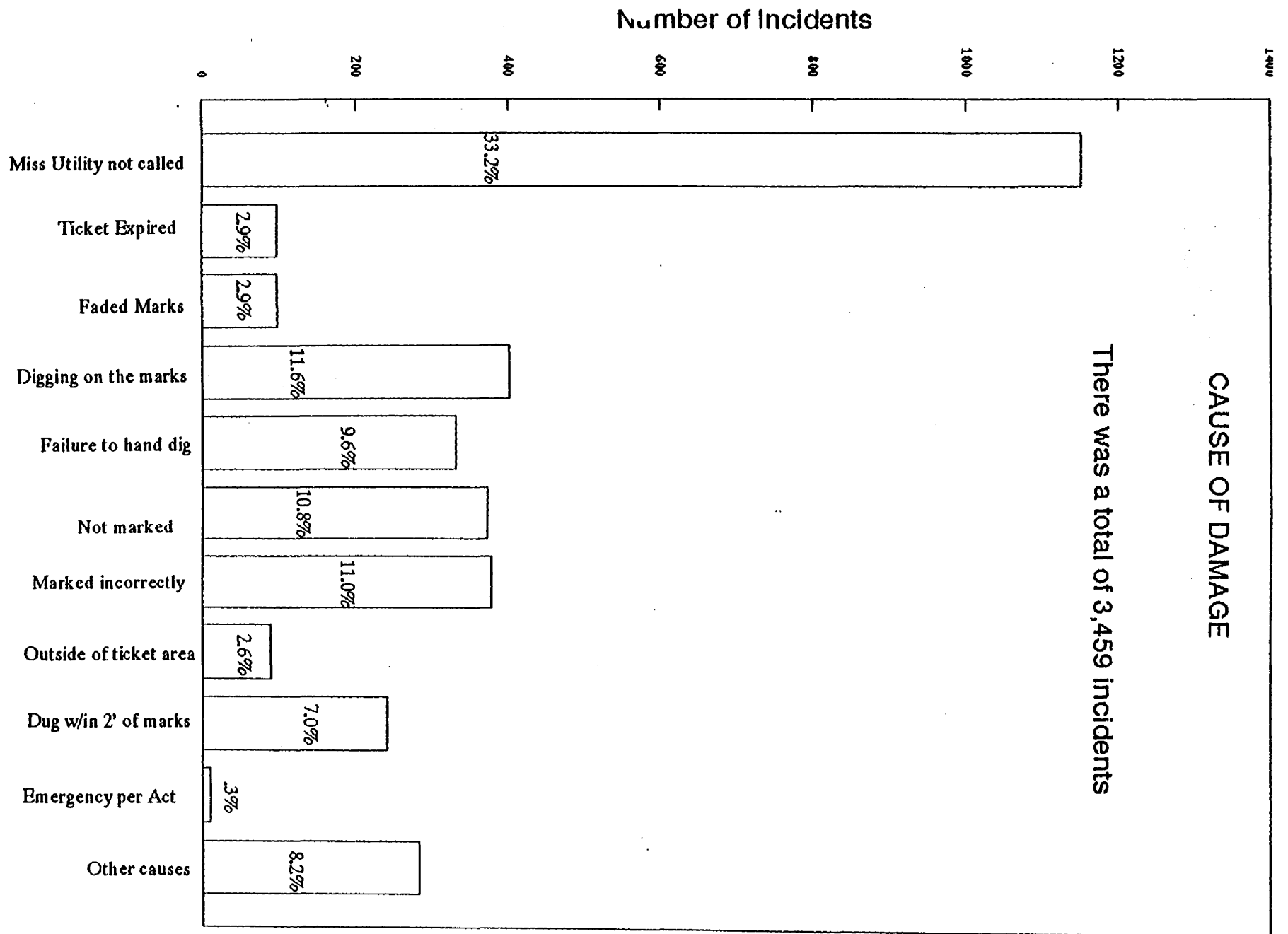
**AND**

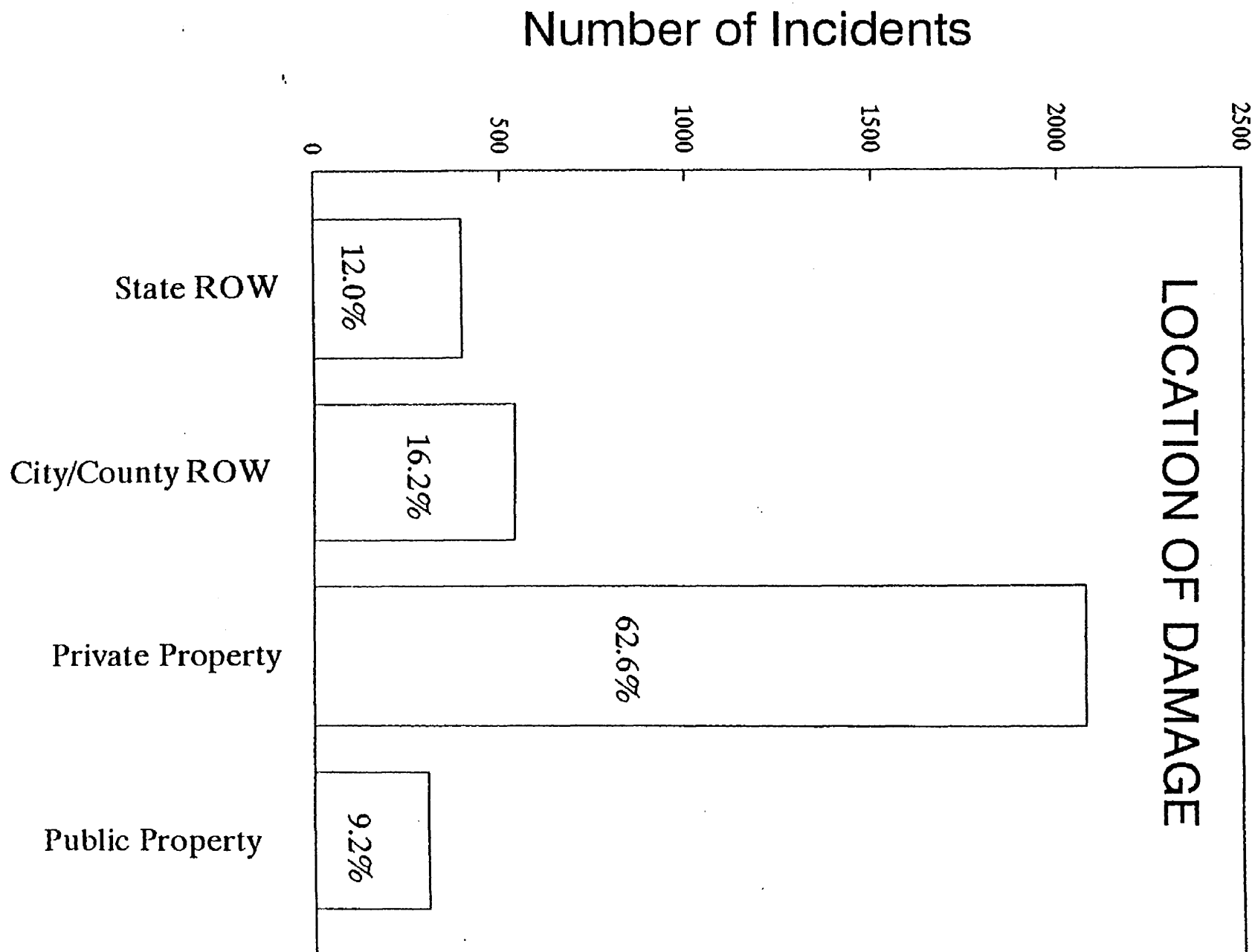
**RESULTS**

# UNDERGROUND UTILITY DAMAGE SURVEY

[illegible]







**APPENDIX G**

**HOUSE JOINT RESOLUTION NO. 430**

# GENERAL ASSEMBLY OF VIRGINIA--1993 SESSION

## HOUSE JOINT RESOLUTION NO. 430

*Requesting the Virginia State Corporation Commission to study the Underground Utility Damage Prevention Act.*

Agreed to by the House of Delegates, February 5, 1993

Agreed to by the Senate, February 16, 1993

WHEREAS, the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.) was enacted at the 1979 Session of the General Assembly and became effective in July of 1980; and

WHEREAS, the Act requires underground utility line operators to join a notification center; and

WHEREAS, excavators are required to contact a notification center prior to any excavation or demolition; and

WHEREAS, the notification center alerts affected utility line operators of the proposed excavation or demolition; and

WHEREAS, the utility line operator marks the approximate horizontal location of the underground utility line on the ground; and

WHEREAS, water, electric, telephone, natural gas, cable television and other underground utility lines have been cut or damaged due to reasons ranging from mismarkings, miscommunications and misunderstandings to the total disregard of the Act; and

WHEREAS, damage to these underground lines causes inconvenience to utility customers and, in many instances, threatens the safety of the community and excavators; and

WHEREAS, uncollected repair costs for damaged underground utility lines are often passed on to utility customers through increased rates; and

WHEREAS, the Virginia State Corporation Commission is authorized to grant, amend and revoke the certification of notification centers under regulations relating to certification; and

WHEREAS, the Act does not authorize the Virginia State Corporation Commission or any other state agency to provide for enforcement of the Act through civil penalties or injunctive relief; and

WHEREAS, in a January 1992 letter to the Commission, the Office of the Pipeline Safety of the United States Department of Transportation, which has jurisdiction over gas and hazardous liquid pipelines, stated "... Our experience indicates that in the absence of meaningful enforcement authority the law is easily ignored. Outside force damage remains the leading cause of incidents, and because of the well demonstrated effectiveness of the civil penalty, I want to urge that this requirement, 49 C.F.R. § 198.37 (h), be added to your law ..."; and

WHEREAS, at the request of the State Corporation Commission, Commission staff, excavator representatives, utility representatives, Miss Utility operators, utility line locator representatives, a representative of the Virginia Department of Transportation, and a representative of the Board of Contractors within the Department of Commerce have participated in several meetings during 1992 to discuss various issues regarding the Underground Utility Damage Prevention Act; and

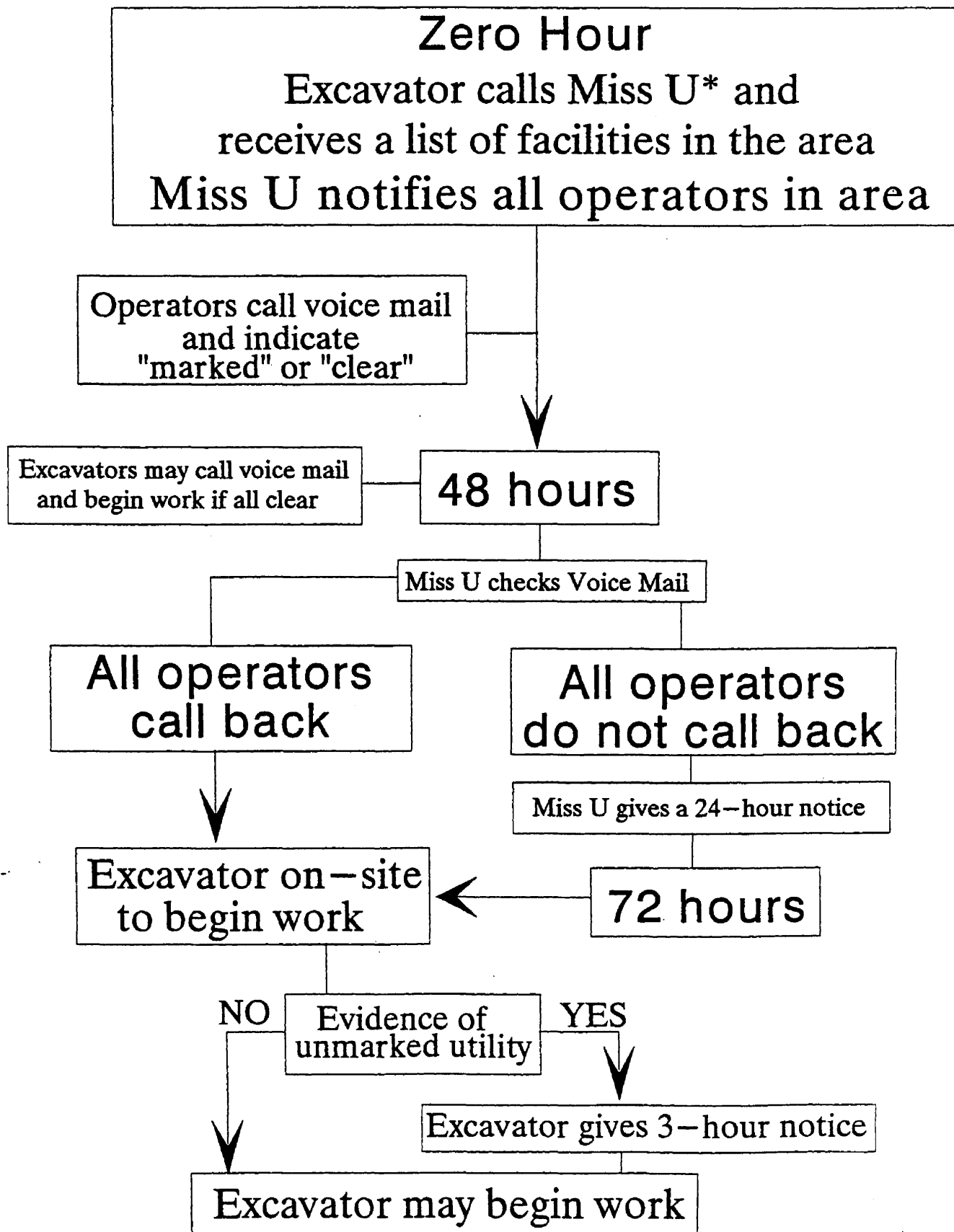
WHEREAS, these entities have determined that additional time is needed to evaluate the Act and develop any clarification amendments and enforcement provisions which may be necessary; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Corporation Commission be hereby requested to study the Underground Utility Damage Prevention Act to determine the need for clarification, enforcement provisions, or other amendments to the Act. During the course of the study, the State Corporation Commission shall seek the cooperation and participation of relevant state agencies, including the Department of Commerce and the Department of Transportation, as well as representatives of excavators, utility line operators, Miss Utility operators, and utility line locators.

The Virginia State Corporation Commission shall submit its findings and recommendations to the Governor and the 1994 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.



## APPENDIX H



\*Miss U is the notification center

## APPENDIX I

Estimated Investigative Cost for a Violation of the  
Proposed Underground Utility Damage Prevention Act

Notification of Probable Violation	.5 Hours @ \$19.00	\$9.50
Data Entry	.5 Hours @ \$10.00	\$5.00
Initiation of Investigation	3 Hours @ \$19.00	\$57.00
Investigative Costs		
Mileage	200 miles @ \$.24	\$48.00
Meals	2 days @ \$30.00	\$60.00
Lodging	1 day @ \$66.00	\$66.00
Labor	4 days @ \$152.00	\$608.00
Misc. Supplies	\$30.00	\$30.00
Clerical Costs	4 hours @ \$10.00	\$40.00
Preparation of Testimony	2 days @ \$152.00	\$304.00
Commission Hearing		
includes legal costs		\$1,300.00

**TOTAL ESTIMATED COST    \$2,527.50**

\*Estimated costs include benefits

**APPENDIX J**

**PROPOSED REVISIONS  
TO THE  
UNDERGROUND UTILITY DAMAGE PREVENTION ACT**

DRAFT

\*Stricken language shows current statutory language to be repealed.

\*Underscored language indicates addition to current statute.

CHAPTER 10.3.

UNDERGROUND UTILITY DAMAGE PREVENTION ACT.

§ 56-265.14. Short title.-- This chapter may be cited as the "Underground Utility Damage Prevention Act." (1979, c. 291.)

§ 56-265.15. Definitions; calculation of time periods. --  
A. As used in this chapter:

"Commission" means the State Corporation Commission.

1- "Damage" ~~shall-mean~~ means any impact upon or removal of support from an underground facility as a result of excavation or demolition which according to the operating practices of the operator would necessitate the repair of ~~such~~ the facility.

2- "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 which could damage underground utility lines.

3- "Emergency" means ~~any condition constituting a clear and present danger to life or property by reason of escaping of any~~

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~~material or substance transported by means of a utility line, as hereinafter defined, or by reason of exposed wires or other breaks or defects in an operator's utility line, or in the case of the state highway systems or streets and roads maintained by political subdivisions, where the use of such highways, roads, streets or other public ways is, in the judgment of duly authorized officials of the State Highway and Transportation Department or such political subdivisions, impaired by an unforeseen occurrence which necessitates repair beginning immediately after such occurrence~~ a sudden or 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 .

4. "Excavate" or "excavation" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosives and includes, without limitation grading, trenching, digging, ditching, dredging, drilling, augering, tunnelling, scraping, cable or pipe plowing and driving, wrecking, razing, rendering, moving, or removing any structure or mass of material, ~~but not including the tilling of the soil for agricultural purposes.~~

"Extraordinary circumstances" means floods, snow, ice storms, tornadoes, earthquakes, or other natural disasters.

"Hand digging" means any excavation involving non-mechanized tools or equipment. Hand digging includes, but is not limited to, digging with shovels, picks, and manual post hole

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diggers.

5- "Notify," "notice" or "notification" mean means the completed delivery of information to the person to be notified, and the receipt of same by such person ~~to be notified within the time limits prescribed in this chapter. When the person to be notified is an operator, the notification shall be made to the person whose name is on file pursuant to § 56-265.16 and, when the notification is to be made by an operator in response to a notification it has received, such notification shall be made to the same person who notified the operator. Notification may be either orally or in writing, with written notification to be made by hand delivery, telegram, United States mail or by United States certified mail, return receipt requested in accordance with this chapter. The delivery of information includes, but is not limited to, the use of any electronic or technological means of data transfer.~~

6- "Notification center" means an organization whose membership is open to all operators of underground facilities located within the notification center's designated service area, which maintains a data base, provided by its member operators, that includes the geographic areas in which its member operators desire transmissions of notices of proposed excavation, and which has the capability to transmit, within one hour of receipt, notices of proposed excavation to member operators by teletype, telecopy, personal computer, or telephone.

7- "Operator" means any person who owns, furnishes or transports materials or services by means of a utility line,

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~~provided, however, that the meaning of the term "operator" shall not include the operation of a gravity storm or sanitary sewer system by the City of Richmond.~~

8- "Person" means any individual, operator, firm, joint venture, partnership, corporation, association, municipality, or other political subdivision, governmental unit, department or agency, and ~~shall include~~ includes any trustee, receiver, assignee, or personal representative thereof, ~~provided, however, that nothing in this chapter shall apply to any excavation done by the owner of property when said excavation is made entirely on such land, provided there is no encroachment on any operator's rights of way or easements, provided, further, that nothing in this chapter shall apply to any excavation done by a railroad when said excavation is made entirely on the land which the railroad owns and on which the railroad operates, provided there is no encroachment on any operator's rights of way or easements.~~

9- "Utility line" means any item of public or private property which is buried or placed below ground or submerged for use in connection with the storage or conveyance of water, sewage, electronic, ~~telephonic, or telegraphic communications~~ telecommunications, electric energy, cable television, oil, petroleum products, gas, or other substances, and shall include but not be limited to pipes, sewers, combination storm/sanitary sewer systems, conduits, cables, valves, lines, wires, manholes, attachments, and those portions of poles below ground.

The term "sewage" as used herein shall does not include any gravity storm ~~or sanitary sewer system within the City of~~

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Richmond drainage systems.

"Willful" means an act done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.

10. "Working day" means every day, except Saturdays, Sundays, and legal state and national holidays. (1979, c. 291; 1980, cc. 696, 710; 1992, c. 192.)

B. Unless otherwise specified, all time periods used in this chapter shall be calculated from the time of the original notification to the notification center as provided in § 56-265.17. In addition, all time periods exclude Saturdays, Sundays, and legal state and national holidays.

§ 56-265.15:1. Exemptions; routine maintenance. -- A. Nothing in this chapter shall apply to:

1. Any excavation done by the owner of property when excavation is made entirely on such land, provided there is no encroachment on any operator's rights of way or easements.

2. The tilling of soil for agricultural purposes.

3. Any excavation done by a railroad when the excavation is made entirely on the land which the railroad owns and on which the railroad operates, provided there is no encroachment on any operator's rights-of-ways or easements.

4. An excavation or demolition during an emergency, as defined in § 56-265.15, provided all reasonable precaution has been taken to protect the underground utility lines.

In the case of the state highway systems or streets and

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roads maintained by political subdivisions, officials of the Department of Transportation or the political subdivision where the use of such highways, roads, streets or other public way is impaired by an unforeseen occurrence shall determine the necessity of repair beginning immediately after the occurrence.

5. Any excavation for routine pavement maintenance, including patch type paving or the milling of pavement surfaces, upon the paved traveled portion of any street, road, or highway of the Commonwealth provided that any such excavation does not exceed a depth of twelve inches (0.3 meter).

§ 56-265.16: Repealed by Acts 1989, c. 448, effective July 1, 1990.

§ 56-265.16:1. Operators to join notification centers; certification;~~notification centers to file locally~~ . -- A. Every operator, including counties, cities and towns, but excluding the Department of Transportation, having the right to bury underground utility lines shall join a the notification center for the area.

B. ~~Except as provided herein, each~~ Every notification center shall be certified by the State Corporation Commission. Any corporation desiring to serve as the notification center for an area of the Commonwealth may apply to the State Corporation Commission to be certified as the notification center for that area. The State Corporation Commission shall have authority to grant, amend, or revoke certificates under regulations which it

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may adopt relating to certification. However, ~~any notification center which was engaged in the business of notification as of January 1, 1989, shall not be required to be certified by the State Corporation Commission and none of the provisions of this section shall be applicable to such a notification center.~~ A notification center shall maintain an excavator-operator information exchange system in accordance with notification center certification regulations promulgated by the State Corporation Commission. The members of a notification center shall be responsible for developing and implementing a public awareness program to assure that all parties affected by this Act shall be aware of their responsibilities. There shall be only one notification center certified for each geographic area defined by the State Corporation Commission.

~~C. Each notification center shall file with the clerk of the circuit court of the county or city in which the operator's lines are located, on behalf of all participating operators, its name, address and telephone number, and such information shall be kept current. (1989, c. 448; 1992, c. 192.)~~

§ 56-265.17. Notification required prior to excavation or demolition; waiting periods; marking of proposed site. --A.

No person ,including operators, shall make or begin any excavation or demolition without first notifying at least forty-eight hours but no more than ten days, excluding Saturdays, Sundays, and legal state and national holidays, prior to the commencement of the proposed excavation or demolition, or within

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~~such--time--as--agreed-upon-in--writing--at--any--preconstruction~~  
~~meeting,~~ the notification center for that area. Notice to the  
notification center shall be deemed to be notice to each operator  
who is a member of that notification center. ~~When--an--operator~~  
~~requests--a--person-to-perform-work-with--less--than--forty-eight~~  
~~hours--notice,~~~~--the--operator--shall-be--required--to--meet--the~~  
~~notification--requirements--of--this--section.~~ The notification  
center shall provide the excavator with the identity of utilities  
which will be notified of the proposed excavation or demolition.  
An excavator who willfully fails to notify the notification  
center of proposed excavation or demolition shall be liable to  
the operator whose facilities are damaged by that excavator, for  
three times the cost to repair the damaged property, provided the  
operator is a member of the notification center. The total  
amount of punitive damages awarded under this section, as  
distinguished from actual damages, shall not exceed \$10,000 in  
any single cause of action.

~~B.--Notification-as-provided-in-subsection-A-of-this-section~~  
~~shall--be-valid-for-ten-working-days-and-may-be-extended-for--one~~  
~~additional---ten-working-day---period---upon---request---to---the~~  
~~notification---center--at--least--forty-eight--hours---prior---to~~  
~~expiration--of--the-original-ten-working-day-period.~~ (1979, c.  
291; 1989, c. 448; 1992, c. 192.)

B. Except in the case of an emergency as defined in § 56-  
265.15, or if informed by the notification center that no  
operators are to be notified, the excavator shall wait at least  
forty-eight hours following notification before commencing work.

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The excavator may commence work after forty-eight hours only if the excavator contacts the notification center's excavator-operator information exchange system and confirms that all applicable utilities have either marked their underground line locations or reported no lines are present in the vicinity of the excavation or demolition.

If any utilities fail to respond to the excavator-operator information exchange system by the end of the forty-eight hours after the excavator's notification, the excavator shall wait an additional twenty-four hours before commencing work. In addition, the notification center shall re-notify any operator who has failed to respond to the excavator-operator information exchange system within forty-eight hours from the original notification. Operators so notified shall mark all applicable utility lines or report that no lines are present and confirm the marking or the absence of lines to the excavator-operator information exchange system within twenty-four hours of re-notification.

The excavator shall exercise due care at all times to protect underground utility lines.

If upon arrival at the site of a proposed excavation the excavator observes clear evidence of the presence of an unmarked utility line in the area of the proposed excavation, the excavator shall not begin excavating until three hours after an additional call is made to the notification center for the area. The operator of the utility line shall respond within three hours of the excavator's call to the notification center.

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C. The excavator's notification shall be valid for fifteen working days from the time of notification to the notification center. Two working days before the end of the fifteen-working-day period, or at any time when line-location markings on the ground become illegible, the excavator shall contact the notification center and request the remarking of lines. The operator shall remark the lines as soon as possible; however, the remarking of the lines shall be completed within forty-eight hours from the request for the remark. Such remarking shall be valid for an additional fifteen working days from the time of request.

D. In the event a specific location of the excavation cannot be given as required by subdivision 2 of § 56-265.18, prior to notifying the notification center pursuant to subsection A of this section, the person proposing to excavate or demolish shall mark the route or boundary of the site of the proposed excavation or demolition by means of white paint, if practical.

§ 56-265.18. Notification requirements.--Every notice served by any person on a notification center shall contain the following information:

1. The name of the individual serving such notice.
2. The specific location of the proposed work. In the event a specific description of the location of the excavation cannot be given, the person proposing to excavate or demolish shall comply with subsection D of § 56-265.17.

3. The name, address and , telephone number ,and

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telefacsimile number if available, of the excavator or demolisher, to whom notification can be given.

4. The excavator's or demolisher's field telephone number, if one is available.

5. The type and extent of the proposed work.

6. The name of the person for whom the proposed work is being performed.

~~7. The approximate date and time when the work is to begin.~~  
(1979, c. 291; 1980, c. 696; 1989, c. 448.)

§ 56-265.19. ~~Duty~~ Duties of operator upon notification. --  
A. ~~If it is determined by an operator that a proposed excavation or demolition is planned within five feet of an underground utility line as measured in the horizontal plane, or if~~ If a proposed excavation or demolition by blasting is planned in such proximity to the underground utility line that the utility line may be destroyed, damaged, dislocated, or disturbed, the operator ~~shall make at least two attempts to notify the person who proposes to excavate or demolish and~~ shall mark the approximate horizontal location of the underground utility line on the ground to within two feet of either side of the underground utility line by means of stakes, paint or ~~other suitable means within forty-eight hours after the request, excluding Saturdays, Sundays, and legal state and national holidays~~ flags no later than forty-eight hours after receiving notice from the notification center and shall report no later than forty-eight hours that the location of the lines has been marked to the notification center's excavator-

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operator information exchange system. If one of the attempted notifications is telegram, or mailgram sent, or written notice left, at the address of the excavator or demolisher, as such address appears on a notification under 8-56-265.18, or in a current telephone book or in another public information source if such notification contains no address, such notice shall be deemed evidence of a sufficient attempt. In the case of If the operator is unable to mark the location within seventy-two hours due to extraordinary circumstances, -if the operator is unable to mark the location within forty-eight hours, excluding Saturdays, Sundays, and legal state and national holidays, the operator shall notify directly the person who proposes to excavate or demolish and shall, in addition, notify the person of the date and time when the location will be marked. Such notification of inability to mark location shall be within twenty-four seventy-two hours from the original notification, and the deferral to mark for extraordinary circumstances shall be within no longer than ninety-six hours, unless a longer time is otherwise agreed upon by the operator and excavator. The operator shall also inform the notification center of any deferral.

B. If a proposed excavation or demolition is not planned in such proximity to the operator's underground utility lines that the utility line may be damaged, the operator shall so report to the notification center's excavator-operator information exchange system within forty-eight hours of receiving notice from the notification center.

B- C. An operator shall participate in all preplanning and

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preconstruction meetings originated by state, county or municipal authorities relating to proposed construction projects which may affect the operator's existing or future utility lines and shall cooperate in implementing decisions reached in such preplanning and preconstruction meetings. (1979, c. 291; 1980, c. 696.)

§ 56-265.20. When excavation begun; notice when marking not required.---A.---After giving the notice required by §§ 56-265.17 and 56-265.18,---if no notice or remarking has been made as provided in § 56-265.19, no person shall begin any excavation or demolition until three hours after an additional notification to the notification center.

B.---If the operator has no underground utility line within five feet of the proposed excavation or demolition as measured in the horizontal plane, or if a proposed excavation or demolition by blasting is not planned in such proximity to the operator's underground utility lines that the utility lines may be damaged, the operator shall notify within forty-eight hours, excluding Saturdays, Sundays, and legal state and national holidays, the person who proposes to excavate or demolish that the person may begin the excavation or demolition. (1979, c. 291; 1980, c. 696; 1989, c. 448; 1992, c. 192.)

§ 56-265.21. Marking by color.-- In marking the approximate location of underground utility lines the operator shall follow or proposed excavation if required pursuant to subsection D of § 56-265.17 the following color coding described herein shall be

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used:

UTILITY AND TYPE OF PRODUCT	IDENTIFYING COLOR OR EQUIVALENT
Electric Power Distribution & Transmission	Safety Red
Municipal Electric Systems	Safety Red
Gas Distribution & Transmission	High Visibility Safety Yellow
Oil & Petroleum Products Distribution & Transmission	High Visibility Safety Yellow
Dangerous Materials, Product Lines, Steam Lines	High Visibility Safety Yellow
<del>Telephone-&amp;-Telegraph</del> <u>Telecommunications</u> Systems	Safety Alert Orange
Police & Fire Communications	Safety Alert Orange
Cable Television	Safety Alert Orange
Water Systems	Safety Precaution Blue
Slurry Systems	Safety Precaution Blue
Sewer Systems	Safety Green
<u>Proposed Excavation</u> (1979. c. 291.)	<u>White</u>

§ 56-265.22. Record Duties of notification center upon  
notification by person intending to excavate; record of

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notification made by telephone required.--A. The notification center shall, upon receiving notice by a person intending excavation or demolition, notify all operators whose underground lines are located in the area of the proposed excavation or demolition. The notification center shall also indicate the names of those operators being notified to the person intending excavation or demolition.

B. If the notification required by this chapter is made by telephone, a record of such notification shall be maintained by the operators or notification center notified to document compliance with the requirements of this chapter, and such records shall be maintained in compliance with the applicable statute of limitations. (1979, c. 291.)

§ 56-265.23. Exemption of excavation for routine for roadway maintenance operations by the Virginia Department of Transportation and certain counties. -- Persons--and--operators excavating--for--routine--maintenance,--including--"Patch"---type paving,--will--not--be--required--to--comply--with--the--notification--and marking-procedures-of-§§-56-265-17,--56-265-18,--56-265-19,--and-56-265-20-if: Employees of the Virginia Department of Transportation acting within the scope of their employment, and certain employees of those counties which maintain their secondary roads in accordance with § 33.1-23.5:1 acting within the scope of their employment, excavating entirely within the right of way of a public road, street or highway of the Commonwealth shall not be required to comply with the provisions of this chapter if

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reasonable care is taken to protect the utility lines placed in the right of way by permit and if they:

1. ~~They-exeavate~~ Excavate within the limits of the original excavation; ~~or~~ on the traveled way, shoulders or drainage features of a public road, street, or highway and any excavation does not exceed ~~twenty-four~~ eighteen inches (0.45 meter) in depth below the grade existing prior to such excavation, or

2. ~~They-are~~ Are replacing previously existing structures in their previous locations. (1979, c. 291.)

§ 56-265.24. Duties of excavator.--A. Any person excavating within two feet of either side of the staked or marked location of an operator's underground utility line or demolishing by ~~blasting~~ in such proximity to the underground utility line that the utility line may be destroyed, damaged, dislocated or disturbed, shall take all reasonable steps necessary to properly protect, support and backfill underground utility lines. This protection shall include but may not be limited to hand digging, within the limits of the planned excavation or demolition, starting two feet of either side of the extremities of the underground utility line for other than parallel type excavations and at reasonable distances along the line of excavation for parallel type excavations.

B. If the markings locating the underground lines become illegible due to time, weather, construction, or any other cause, the person performing the excavation or demolition shall so notify the notification center for the area. Such notification

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shall constitute an extension under subsection C of § 56-265.17.

C. If upon arrival at the site of a proposed excavation the excavator observes clear evidence of the presence of an unmarked utility line in the area of the proposed excavation, the excavator shall not begin excavating until an additional call is made to the notification center for the area pursuant to subsection B of § 56-265.17.

B- D. In the event of any damage to, or dislocation, or disturbance of any underground utility line including its appurtenances, covering, and coating in connection with any excavation or demolition, the person responsible for the excavation or demolition operations shall immediately notify the operator of the underground utility line and shall not backfill around the underground utility line until the operator has repaired the damage or has given clearance to backfill. The operator shall either commence repair of the damage or give clearance to backfill within twenty-four hours, and upon his failure to commence or prosecute with diligence such repair or give clearance, the giving of clearance shall be presumed.

e- E. If the damage, dislocation, or disturbance of the underground utility line creates an emergency ~~situation-involving danger--to-life, health, or property~~, the person responsible for the excavation or demolition shall, in addition to complying with subsection B D of this section, take immediate steps reasonably calculated to safeguard life, health, and property. (1979, c. 291.)

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§ 56-265.25. Liability of operator and excavator; penalties.

-- A. 1. If any underground utility line is damaged ~~by any person~~ who--has--failed as a proximate result of a person's failure to comply with any provision of ~~§§ 56-265.17, 56-265.18 and 56-265.20~~ this chapter, that person shall be liable to the operator of the underground utility line for the total cost to repair the damaged facilities as that cost is normally computed by the operator, provided the operator ~~{i}~~ is a member of the notification center covering the area in which the damage to the utility line takes place, ~~and {ii} upon receiving proper notice in accordance with this chapter, has complied with the provisions of §§ 56-265.19.~~ The liability of such a person for such damage shall not be limited by reason of this chapter.

2. Any person who willfully fails to notify the notification center of proposed excavation or demolition shall be liable to the operator as provided in subsection A of § 56-265.17.

2- 3. If after receiving proper notice, an operator shall fail to discharge a duty imposed by any provision of this chapter and an underground utility line of such operator is damaged, as a proximate result of the operator's failure to discharge such duty, by any person who has complied with all of the provisions of this chapter, such person shall not be so liable ~~or.~~

3- B. If an underground utility line of an operator is damaged by any person, who has complied with ~~all~~ the provisions of this chapter as the proximate result of the operator's failure to comply with any provision of this chapter, the operator shall

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be liable to such person for the total cost to repair any damage to the equipment or facilities of such person resulting from such damage to the operator's underground utility line.

B- C. Except as specifically set forth herein, the provisions of this chapter shall not be construed to either abrogate any rights, duties, or remedies existing under law or create any rights, duties, defenses, or remedies in addition to any rights, duties, or remedies existing under law. (1979, c. 291; 1980, c. 696; 1989, c. 448.)

~~§ 56-265.26. Emergency--excavations--exempted:-----The provisions--of--this--chapter--shall--not--apply--when--making--an excavation--or--demolition--at--times--of--an--emergency--as--defined--in--§ 56-265-15;--provided--all--reasonable--precaution--has--been--taken--to protect--the--underground--utility--lines. (1979, c. 291.)~~

§ 56-265.27: Not set out.

§ 56-265.28. Sovereign immunity.--Nothing in this chapter shall be construed to abrogate the immunity from suit accruing to the Commonwealth, her political subdivisions, agencies, officers or employees, or the officers or employees of her political subdivisions and agencies, as exists prior to July 1, 1980. (1979, c. 291.)

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§ 56-265.29. Other similar laws.--Compliance with the provisions of this chapter shall not exempt any operator or person from the operation of any other applicable laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction, unless exempted by such other laws, ordinances, regulations, or rules as a result of such compliance. (1979, c. 291.)

§ 56-265.30. Authority of the State Corporation Commission.  
-- The Commission shall enforce the provisions of the Underground Utility Damage Prevention Act as set out in this chapter. The Commission may promulgate any rules and regulations necessary to implement the Commission's authority to enforce this chapter.

§ 56-265.31. Commission to establish advisory committee.  
-- The Commission shall establish an advisory committee consisting of representatives of the following entities: Commission staff, utility operator, notification center, excavator, municipality, Virginia Department of Transportation, Board for Contractors, and underground line locator. Persons appointed to the advisory committee by the Commission shall have expertise with the operation of the Underground Utility Damage Prevention Act. The advisory committee shall perform duties which may be assigned by the Commission, including the review of reports of violations of the chapter, and make recommendations to the Commission.

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§ 56-265.32. Commission to impose civil penalties for certain violations; establishment of Underground Utility Damage Prevention Special Fund. -- A. The Commission may, by judgment entered after a hearing on notice duly served on any person not less than thirty days before the date of the hearing, impose a civil penalty not exceeding \$2,500 for each violation, if it is proved that the person violated any of the provisions of this chapter, except § 56-265.16:1. Any proceeding or civil penalty undertaken pursuant to this section shall not prevent nor preempt the right of any party to obtain civil damages for personal injury or property damage in private causes.

B. The Underground Utility Damage Prevention Special Fund (hereinafter referred to as "Special Fund") is hereby established as a revolving fund to be used by the Commission for administering the regulatory program authorized by this chapter. The Special Fund shall be composed entirely of funds generated by the enforcement of this Act. Excess funds shall be used to support any public awareness programs established by a notification center pursuant to subsection B of § 56-265.16:1. All civil penalties collected pursuant to this chapter shall be deposited into the Underground Utility Damage Prevention Special Fund. Interest earned on the fund shall be credited to the Special Fund. The Special Fund shall be established on the books of the Commission Comptroller and any funds remaining in the Underground Utility Damage Prevention Special Fund at the end of the fiscal year shall not revert to the general fund, but shall remain in the Special Fund.

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**\*\*An enactment clause will be inserted by Legislative Services providing for an effective date of January 1, 1995.**

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