

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## SENATE ENROLLED ACT No. 405

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AN ACT to amend the Indiana Code concerning utilities.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 8-1-26-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 3.5. As used in this chapter, "communications service" has the meaning set forth in IC 8-1-32.5-3.**

SECTION 2. IC 8-1-26-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. As used in this chapter, "mechanized equipment" means equipment operated by means of mechanical power, including:

- (1) trenchers;
- (2) bulldozers;
- (3) power shovels;
- (4) augers;
- (5) backhoes;
- (6) scrapers;
- (7) drills;
- (8) cable and pipe plows;
- (9) ~~hydroexcavators~~; **hydraulic excavators**; and
- (10) other equipment that may cause damage to underground facilities.

SECTION 3. IC 8-1-26-16, AS AMENDED BY P.L.62-2009, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 16. (a) Except as provided in section 19 of this

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chapter, before commencing an excavation or demolition operation described in section 14 of this chapter, each person responsible for the excavation or demolition shall:

- (1) serve notice on the association of the person's intent to excavate or demolish; and
- (2) perform white lining at the site of the excavation or demolition if the person responsible for the excavation or demolition is unable to provide to the association the physical location of the proposed excavation or demolition by one (1) of the following means:
  - (A) A street address.
  - (B) A legal description of the location.
  - (C) A highway location using highway mile markers or cross streets.

The notice required under subdivision (1) must be received at least two (2) full working days but not more than twenty (20) calendar days before the commencement of the work. Upon receiving the notice, the association immediately shall notify each operator that has underground facilities located in the proposed area of excavation or demolition. A person responsible for excavation or demolition may commence work before the elapse of two (2) full working days if all affected operators have notified the person that the location of all the affected operators' facilities have been marked or that the affected operators have no facilities in the location of the proposed excavation or demolition.

(b) A county recorder who receives an inquiry from a person seeking to provide notice of an excavation or a demolition under this section shall refer the person to the association. After receiving a notice under this section, the association shall provide notice of the proposed excavation or demolition to each member operator that has underground facilities located in the proposed area of excavation or demolition.

(c) A person responsible for demolition must give an operator a reasonable amount of time, as mutually determined by the operator, the person responsible for demolition, and the project owner, to remove or protect the operator's facilities before demolition of the structure is commenced.

(d) The notice required by subsection (a) must contain the following information:

- (1) The name, address, and telephone number of the person serving the notice, and, if different, the person responsible for the excavation or demolition.



- (2) The starting date, anticipated duration, and type of excavation or demolition operation to be conducted.
- (3) The location of the proposed excavation or demolition.
- (4) Whether or not explosives or blasting are to be used.
- (5) The approximate depth of excavation.
- (6) Whether the person responsible for the proposed excavation or demolition intends to perform white lining at the site of the proposed excavation or demolition.

(e) The person responsible for the excavation or demolition shall submit a separate locate request along with the notice provided under subsection (d)(3) to the association as follows:

- (1) Within an incorporated area, for each one thousand five hundred (1,500) linear feet of proposed excavation or demolition.
- (2) In an unincorporated area, for **at least** each two thousand ~~five~~ **six** hundred ~~(2,500)~~ **forty (2,640)** linear feet of proposed excavation or demolition.

**(f) A notice provided under this section by a person responsible for an excavation or demolition expires twenty (20) days after the date the notice is submitted to the association under subsection (a), as determined in the manner specified in section 17(d) of this chapter. If, at the conclusion of the twenty (20) day period described in this subsection, any part of the excavation or demolition is not complete at any part of the site for which the original notice was submitted, the person responsible for the excavation or demolition may not continue or resume the excavation or demolition at any part of the site for which the original notice was submitted until:**

- (1) the person responsible for the excavation or demolition submits to the association a new locate request, along with a notice that complies with subsection (d), with respect to that part of the site for which the excavation or demolition is not complete; and**
- (2) each affected operator provides facility locate markings in compliance with section 18 of this chapter for that part of the site for which the new locate request and notice are submitted under subdivision (1).**

~~(f)~~ (g) The association shall maintain an adequate record of the notice required by this section for seven (7) years to document compliance with this chapter. A copy of the record shall be furnished to the person giving notice to excavate or demolish upon written request.

~~(g)~~ (h) A person that:

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- (1) causes damage to a pipeline facility located in an area of excavation or demolition;
- (2) is required to provide notice under this section for the excavation or demolition; and
- (3) fails to provide the notice;

may be subject to a civil penalty in an amount recommended by the advisory committee and approved by the commission, not to exceed ten thousand dollars (\$10,000).

~~(h)~~ **(i)** A person that:

- (1) causes damage to a pipeline facility located in an area of excavation or demolition;
- (2) is required to perform white lining under subsection (a)(2); and
- (3) fails to perform white lining before an operator of a pipeline facility arrives at the site of the proposed excavation or demolition to mark the operator's pipeline facilities;

may be subject to a civil penalty in an amount recommended by the advisory committee and approved by the commission, not to exceed ten thousand dollars (\$10,000).

SECTION 4. IC 8-1-26-17, AS AMENDED BY P.L.62-2009, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 17. (a) An operator that has underground facilities located in Indiana must be a member of the Indiana Underground Plant Protection Service or its successor organization. The articles of incorporation or the bylaws of the Indiana Underground Plant Protection Service or its successor organization shall do the following:

(1) Provide that the board of directors of the Indiana Underground Plant Protection Service or its successor organization is composed of:

- (A) five (5) members representing electric utilities other than municipal electric utilities, including corporations organized or operating under IC 8-1-13 or corporations organized under IC 23-17, some of whose members are local district corporations (as described in IC 8-1-13-23);
- (B) five (5) members representing investor owned gas utilities, including pipelines;
- (C) five (5) members representing ~~telecommunications~~ **communications service** providers, at least one (1) of whom is a provider of cable television service;
- (D) five (5) members representing water or sewer utilities other than municipal water or sewer utilities; and
- (E) five (5) members representing political subdivisions,



including municipal utilities, which must include ~~the political subdivision that owns a member representing~~ the largest waterworks utility in Indiana **that is owned by:**

**(i) a political subdivision; or**

**(ii) a department of public utilities created by IC 8-1-11.1.**

(2) Require the affirmative vote of at least sixty percent (60%) of each category of members appointed under subdivision (1) to approve an increase, a decrease, or any other adjustment to the membership dues, rates, tariffs, locate fees, or any other charges imposed by the Indiana Underground Plant Protection Service or its successor organization.

(b) The association shall provide for mutual receipt of notice of excavation or demolition operations under section 16 of this chapter.

(c) The association shall:

(1) annually update the association's base map data, including street addresses; and

(2) make reasonable efforts to reduce incorrect locate requests issued to the association's members.

(d) The association shall develop and implement guidelines to provide that, for purposes of providing notice to an operator under section 16 of this chapter, the time of receipt of a notice of an intent to excavate or demolish is determined as follows:

(1) For a notice that is received between the hours of 7 a.m. and 6 p.m. on a working day, at the time of receipt.

(2) For a notice that is received after 6 p.m. on a working day and before 7 a.m. on the following working day, at 7 a.m. on the following working day.

SECTION 5. IC 8-1-26-18, AS AMENDED BY P.L.62-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 18. (a) **Subject to subsection (i)**, each operator notified under section 16 of this chapter shall, ~~in~~ **not later than two** (2) full working days after receiving the notice of intent provided in section 16 of this chapter, supply to the person responsible for the excavation or demolition the following information, using maps when appropriate:

(1) The approximate location and a description of all the operator's underground facilities that may be damaged as a result of the excavation or demolition.

(2) The location and description of all facility markers indicating the approximate location of the underground facilities.

(3) Any other information that would assist that person in locating



and avoiding damage to the underground facilities, including providing adequate temporary markings indicating the approximate location of the underground facility and locations where permanent facility markers do not exist.

(b) Facility locate markings must consist of paint, flags, or stakes or any combination that mark the approximate location of the underground facilities. The method of marking must be appropriate for the location of the underground facilities.

(c) Color coding of facility locate markings indicating the type of underground facility must conform to the following color coding:

Facility and Type of Product	Specific Group Identifying Color
(1) Electric power distribution and transmission . . . . .	Safety red
(2) Municipal electric systems . . . . .	Safety red
(3) Gas distribution and transmission . . . . .	High visibility safety yellow
(4) Oil distribution and transmission . . . . .	High visibility safety yellow
(5) Dangerous materials, product lines, steam lines . . . . .	High visibility safety yellow
(6) <del>Telephone and telegraph</del> <b>Communications service</b> systems . . . . .	Safety alert orange
(7) Cable television . . . . .	Safety alert orange
(8) Police and fire communications . . . . .	Safety alert orange
(9) Water systems . . . . .	Safety precaution blue
(10) Sewer systems . . . . .	Safety green
(11) Proposed excavation . . . . .	White

(d) Each operator notified under section 16 of this chapter shall, **within not later than** two (2) full working days **of after** receiving the notice of intent provided in section 16 of this chapter, make a reasonable attempt to provide notification to the person responsible for the excavation or demolition if the operator has no facilities in the location of the proposed excavation or demolition.



(e) This section does not apply to an operator making an emergency repair to its own underground facility.

(f) This subsection applies if all of the following occur:

(1) An operator of a pipeline facility is required to supply information, including facility locate markings, under subsection (a) to a person responsible for an excavation or demolition.

(2) The operator of the pipeline facility fails to supply the information described in subdivision (1) or provides incorrect facility locate markings.

(3) The operator's pipeline facility is damaged during the excavation or demolition for which the operator was required to supply the information described in subdivision (1).

The operator of the pipeline facility may be subject to a civil penalty in an amount recommended by the advisory committee and approved by the commission, not to exceed one thousand dollars (\$1,000).

(g) Subsection (f) does not apply to an operator that:

(1) is repairing its own underground facilities; or

(2) fails to supply required information or provide facility locate markings due to factors beyond the control of the operator.

(h) A person that knowingly moves, removes, damages, or otherwise alters a facility locate marking supplied under this section may be subject to a civil penalty in an amount recommended by the advisory committee and approved by the commission, not to exceed ten thousand dollars (\$10,000). This subsection does not apply to a person that moves, removes, damages, or otherwise alters a facility locate marking as part of the excavation or demolition for which the facility locate markings were supplied.

**(i) If an operator receives, under section 16 of this chapter, notice of an excavation or demolition and determines that the operator is unable to do either or both of the following, the operator shall notify the person responsible for the excavation or demolition of the operator's determination and shall provide additional information and, if requested, onsite assistance to the person responsible for the excavation or demolition:**

**(1) Locate and mark the operator's affected underground facilities in the time required by subsection (a).**

**(2) Mark the approximate location of the operator's affected underground facilities.**

SECTION 6. IC 8-1-26-20, AS AMENDED BY P.L.62-2009, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 20. (a) In addition to the notice required in section 16 of this chapter, a person responsible for an excavation or demolition



operation under section 14 of this chapter shall do all of the following:

(1) Plan the excavation or demolition to avoid damage to or minimize interference with underground facilities in and near the construction area.

(2) Maintain a clearance between an underground facility, as marked by the operator, and the cutting edge or point of mechanized equipment. The clearance must be not less than two (2) feet on either side of the outer limits of the physical plant. However, if the clearance is less than two (2) feet, **or if an underground facility is located or contained in or under pavement or another manmade hard surface**, exposure of the underground facility may be accomplished **only as follows**:

(A) Only by the use of:

- (i) hand excavation;
- (ii) air cutting; **or**
- (iii) vacuum excavation; **or**
- (iv) **hydro vacuum excavation.**

(B) **Mechanized equipment may not be used within the two (2) feet on either side of the outer limits of the physical plant unless the person responsible for the excavation or demolition does the following:**

- (i) **Visually identifies the precise location of the underground facilities or visually confirms that no facility is present within the depth of the excavation.**
- (ii) **Takes reasonable precautions to avoid any substantial weakening of the underground facilities' structural or lateral support.**
- (iii) **Takes reasonable precautions to avoid penetration or destruction of the underground facilities, including their protective coatings.**
- (iv) **Requires an individual other than the equipment operator to visually monitor the excavation activity.**

(C) **Mechanized equipment may be used for the initial penetration and removal of pavement or other manmade hard surfaces if an underground facility is located or contained in or under pavement or another manmade hard surface, or if there is pavement or another manmade hard surface extending up to two (2) feet from either side of the outer limits of the physical plant, subject to the following:**

- (i) **The person responsible for the excavation or demolition must plan the excavation to avoid damage to or minimize interference with the underground facilities,**





as required under subdivision (1).

(ii) The person responsible for the excavation or demolition must take into account the known limits of control of the mechanized equipment's cutting edge or point.

(iii) The mechanized equipment may be used only to the depth necessary to remove the pavement or other manmade hard surface.

(3) Notify the association if:

(A) there is evidence of an unmarked pipeline facility in the area of the excavation or demolition; or

(B) the markings indicating the location of an underground facility have become illegible.

(b) A person who:

(1) violates subsection (a); and

(2) causes damage to a pipeline facility in the area of the excavation or demolition;

may be subject to a civil penalty in an amount recommended by the advisory committee and approved by the commission, not to exceed ten thousand dollars (\$10,000).

**SECTION 7. [EFFECTIVE JULY 1, 2014] (a) The definitions in IC 8-1-26 apply throughout this SECTION.**

**(b) As used in this SECTION, "legislative council" means the legislative council created by IC 2-5-1.1-1.**

**(c) The general assembly urges the legislative council to assign to an interim or a statutory study committee during the 2014 legislative interim the topic of the technology (both technology that is currently available and technology that is under development) used to determine the elevation or depth, or both, of underground facilities that are subject to IC 8-1-26, including an examination of the following:**

**(1) The feasibility, benefits, and costs of requiring facility operators to provide elevation or depth information for their existing facilities or for facilities that are installed, repaired, or replaced.**

**(2) The appropriate tolerance zones for interstate pipelines regulated under 15 U.S.C. 717 et seq. or 49 U.S.C. 1 et seq. to ensure public safety and the integrity of the facilities.**

**The legislative council is further urged to include in this study assignment the topic of underground facilities that are subject to IC 8-1-26, generally.**

**(d) If an interim or a statutory study committee is assigned the**



**topic described in subsection (c), the committee shall, not later than November 1, 2014, issue to the legislative council and to the governor a final report containing the committee's findings and recommendations, if any, on the topic described in subsection (c), including any recommended legislation for introduction in the general assembly. A report to the legislative council under this subsection must be in an electronic format under IC 5-14-6.**

**(e) This SECTION expires January 1, 2015.**



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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