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Sen. Sokola; Reps. Brady, Heffernan

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 189

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO THE UNDERGROUND UTILITY AND SAFETY ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 803, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as
2 shown by underline as follows:

3 § 803 Duties of operator.

4 It shall be duty of each operator:

5 (1) To participate in the approved notification center.

6 (2) To give written notice to such approved notification center which shall state:

7 a. The name of the operator;

8 b. The location of the operator's lines; and

9 c. The operator's office address (street, number and political subdivision) and the telephone numbers to which
10 inquiries may be directed as to the location of such lines.

11 (3) To give like written notice within 5 working days after any of the matters stated in the last previous notice shall
12 have changed.

13 (4) To respond to requests from an excavator or operator who identifies the site of excavation or demolition, or
14 proposed excavation or demolition, for information as to the approximate location and type of the operator's utility
15 lines in the area, not more than 2 working days after receipt of such requests.

16 (5) To inform excavators or operators who identify the site of excavation or demolition, or proposed excavation or
17 demolition, not more than 2 working days after receipt of a request therefor, of the following:

18 a. If it is determined by an operator that a proposed excavation or demolition is planned within 5 feet of a utility
19 line as measured in the horizontal plane and that the utility line may be damaged, the operator shall notify the
20 person who proposes to excavate or demolish and shall physically mark the horizontal location of the utility line
21 within 18 inches of the utility line on the ground by means of stakes, paint or other suitable means within 2
22 working days after the request. The operator shall also notify the person who proposes to excavate or demolish

23 as to the size of the utility line, the type of temporary marking provided and how to identify the markings. In the
24 case of extraordinary circumstances, if the operator cannot mark the location within 2 working days, the
25 operator shall, upon making such determination, notify the person who proposes to excavate or demolish and
26 shall, in addition, notify the person of the date and time when the location will be marked;

27 b. The cooperative steps which the operator may take, either at or off the excavation or demolition site, to assist
28 in avoiding damage to its lines;

29 c. Suggestions for procedures that might be followed in avoiding such damage;

30 d. If the operator has no utility line within 5 feet of the proposed excavation or demolition as measured in the
31 horizontal plane and if a proposed excavation or demolition by blasting is not planned in such proximity to the
32 operator's utility lines that the utility lines may be damaged, the operator shall advise the person who proposes to
33 excavate or demolish that marking is unnecessary and that the person may therefore begin the excavation or
34 demolition;

35 e. In marking the approximate location of utility lines, the operator shall follow the color coding described
36 herein:

37 Electric power distribution and transmission — Safety red

38 Municipal electric systems — Safety red

39 Gas distribution and transmission — High visibility safety yellow

40 Oil and petroleum products distribution and transmission — High visibility safety yellow

41 Dangerous materials, product lines, steam lines — High visibility safety yellow

42 Telephone and telegraph systems — Safety alert orange

43 Police and fire communications — Safety alert orange

44 Cable television — Safety alert orange

45 Water systems — Safety precaution blue

46 Slurry systems — Safety precaution blue

47 Sewer systems — Safety green.

48 (6) To respond to requests from designers who identify the site of excavation or demolition, for information as to
49 the approximate location and type of the operator's utility lines in the area within 15 working days of receipt of a
50 request therefor.

51 (7) To inform designers who identify the site of excavation or demolition, or proposed excavation or demolition,
52 not more than 15 working days after receipt of a request therefor of the information set forth at paragraph (5) of this
53 section.

54 (8) Upon receipt of a request pursuant to paragraphs (4), (5), (6) and/or (7) of this section to assign such request an
55 identifying number (which may be the same as the number assigned by the approved notification center in
56 accordance with § 807(b)(5) of this title), inform the requestor of such number and maintain a record showing the
57 name, address and telephone number of the requestor, the site to which the request pertains and the identifying
58 number assigned to the request.

59 (9) To provide notification of any facilities damage caused by excavators to the Public Service Commission and the
60 Attorney General's office within 15 working days.

61 Section 2. Amend § 807, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as
62 shown by underline as follows:

63 § 807 Approved notification center.

64 (a) The approved notification center shall be Utilities Service Protection of Delmarva, Inc.

65 (b) The approved notification center shall:

66 (1) Receive and record information prescribed by § 803 of this title regarding the location of operators' utility lines
67 within the State;

68 (2) Receive and record information prescribed by §§ 805 and 806 of this title regarding notice by excavators or
69 designers of intended excavation or demolition activity;

70 (3) Promptly transmit to the operators identified in accordance with § 803 of this title, the information received as
71 prescribed by paragraph (b)(2) of this section;

72 (4) Maintain records of each notice received in accordance with paragraph (b)(2) of this section for a period of not
73 less than 6 years;

74 (5) Assign an identifying number to the notice prescribed in paragraph (b)(2) of this section;

75 (6) Notify those persons giving notice as prescribed by § 806 of this title, of the names of participating operators to
76 whom the notice will be transmitted as prescribed by paragraph (b)(3) of this section and approved notification
77 center's identifying number assigned (pursuant to paragraph (b)(5) of this section) to the notice prescribed in
78 paragraph (b)(2) of this section;

79 (7) Provide a toll-free telephone number for use by any person providing notice as prescribed by §§ 803, 805 and
80 806 of this title;

- 81 (8) Identify persons who normally engage in excavation activities in this State;
- 82 (9) Notify the persons identified in paragraphs (b)(7) and (8) of this section and the general public as often as
83 necessary to make them aware of:
- 84 a. The existence of the approved notification center;
 - 85 b. The purpose and general requirements of this chapter;
 - 86 c. How to learn the location of utility lines before excavation or demolition activities are begun; and
 - 87 d. The toll-free telephone number provided as required by paragraph (b)(7) of this section.
- 88 (10) Promptly transmit to the appropriate contact of DNREC the information contained in the notice by excavators
89 or designers of intended excavation or demolition activity as to any DNREC Regulated Site.
- 90 (11) Promptly notify the Public Service Commission and the Attorney General's office within 15 days of any notice
91 of facilities damage received by the notification center.

92 Section 3. Amend § 810, Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as
93 shown by underline as follows:

94 § 810 Penalties.

95 It is unlawful and a misdemeanor for any person to do any act forbidden, or fail to perform an act required by this
96 chapter.

97 (1) Except as provided in paragraph (2) of this section, whoever, by action or inaction, violates a provision of this
98 chapter shall, for the first offense, be fined not less than \$100 nor more than \$500. For each subsequent like offense,
99 such person shall be fined not less than \$200 nor more than \$1,000 for each violation.

100 (2) Operators of underground pipeline facilities, excavators, and the approved notification center shall, upon
101 violation of any applicable requirements of 49 C.F.R. part 198, Subpart C [49 C.F.R. § 198.31 et seq.], be subject to
102 civil penalties not to exceed \$10,000 for each violation for each day that the violation persists, except that the
103 maximum civil penalty shall not exceed \$500,000 for any related series of violations. In determining the amount of
104 the fine, the court shall consider the nature, circumstances and gravity of the violation and, with respect to the
105 person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on
106 ability to continue to do business, any good faith in attempting to achieve compliance, ability to pay the fine and
107 such other matters as justice may require.

108 (3) The Attorney General and the Public Service Commission shall review each notification of damage to facilities
109 to determine any violations by operators, excavators or the notification center. Pursuant to that review, the Attorney

110 General or the Public Service Commission may impose penalties appropriate to the circumstances and gravity of the
111 violation.

SYNOPSIS

The U.S. Department of Transportation has recently found Delaware to be non-compliant with enforcement of underground excavation violations. This jeopardizes federal funding for the Commissions pipeline safety program. Two principal reasons for this have been the lack of notification to State agencies and the lack of enforcement when damage is known. This bill updates Title 26, Chapter 8 by ensuring notification of excavation damage to the appropriate State agencies for potential penalties or other enforcement proceedings. It provides that either the Attorney General or the Public Service Commission may enforce penalties appropriate for the circumstances and gravity of the violation.

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