



# HOUSE BILL 872: Underground Utility Safety Act/Changes.

2019-2020 General Assembly

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<b>Committee:</b> Senate Rules and Operations of the Senate	<b>Date:</b> July 8, 2019
<b>Introduced by:</b> Reps. Arp, Riddell, Holley	<b>Prepared by:</b> Jennifer McGinnis
<b>Analysis of:</b> Third Edition	Staff Attorney

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**OVERVIEW:** *House Bill 872 would make various changes to the Underground Utility Safety and Damage Prevention Act, including authorizing the Underground Damage Prevention Review Board (Board) to approve training courses and to impose a fee on operators to fund the activities of the Board.*

**CURRENT LAW/BACKGROUND:** The Underground Utility Safety and Damage Prevention Act was enacted by the General Assembly "to protect the citizens and workforce of this State from the dangers inherent in excavating or demolishing in areas where underground lines, systems, or infrastructure are buried beneath the surface of the ground, and it is necessary to protect from costly damage underground facilities used for producing, storing, conveying, transmitting, or distributing communication, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam, or sewage." The Act is designed to provide "for a systematic, orderly, and uniform process to identify existing facilities in advance of any excavation or demolition in this State and to implement safe digging practices."

Key requirements of the Act include:

- All utility owners ("operators") must participate in operation of a Notification Center established to receive notifications from excavators and designers, and then transmit the information to utility operators. The Center also provides damage prevention training for operators.
- Operators must provide excavators and designers information designating the location of underground facilities in the area of a proposed excavation.
- Excavators must:
  - Provide notice of proposed work to the Notification Center before the start of excavation and take action to prevent damage to underground utilities.
  - Apprise the Notification Center and the operator when damage to a facility occurs.
  - Train employees in accordance with applicable OSHA standards.

The Act exempts certain activities, including excavations or demolitions:

- Performed by owners of single-family residential property on their land that does not encroach on any operator's right-of-way, easement, or permitted use, or that does encroach but is performed using nonmechanized equipment.
- That involves the tilling of soil for agricultural or gardening purposes.
- For agricultural purposes, performed on property that does not encroach on any operator's right-of-way, easement, or permitted use.
- Performed by an operator or surveyor with nonmechanized equipment for the following purposes:

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- Locating for a valid notification request or for the minor repair, connection, or routine maintenance of an existing facility or survey pin.
- Probing underground to determine the extent of gas or water migration.
- Performed when those responsible for routine maintenance of a right-of-way are conducting maintenance activities within the right-of-way.
- Performed by a railroad entirely on land which the railroad owns or operates or, in the event of an emergency, on adjacent land.
- Performed for grave space, the installation of a monument or memorial at a grave space, or an excavation related to the placement of a temporary structure or tent by a cemetery that does not encroach on any operator's right-of-way, easement, or permitted use.

The Act established the **Underground Damage Prevention Review Board (Board)**, which is a 15-member board appointed by the Governor and consists of representatives from various stakeholder groups. The Notification Center must transmit all reports of alleged violations of the Act to the Board, which then acts as an arbitrator between the parties to the report. If the Board determines that a violation of the Act occurred, the Board must determine the appropriate action or penalty to impose for the violation, which may include training, education, and a civil penalty not to exceed \$2,500. If the Board recommends a penalty, it is required to notify the Utilities Commission, which will issue an order imposing the penalty.

**BILL ANALYSIS:** The bill would do all of the following:

- Delete the requirement that the Notification Center receive, maintain, and provide general administration of reports of alleged violations of the Act, including providing notice to persons against whom reports of violations have been filed, and transfer this responsibility to the Board.
- Modify the information that an operator must provide to excavators designating the location of underground facilities in the area of a proposed excavation to require the operator to mark:
  - The dimension of an underground facility every 50 feet, rather than every 25 feet, in certain circumstances.
  - The operator's identity in an area where the proposed excavation or demolition is to occur. At a minimum, the operator's identity must be marked at the beginning point, at intervals of 200 linear feet, and at the end point of the proposed excavation or demolition.
- Modify the minimum requirements for the notice that an excavator must provide to the Notification Center concerning the location of a proposed excavation or demolition, by identifying:
  - A single parcel that may exceed 1/4 mile in linear length, by a single address.
  - The lesser of five adjoining parcels, not to exceed 1/4 mile in linear length or an area not to exceed 1/4 mile in linear length, by addresses.
- Prohibit an excavator from using mechanized equipment within 24 inches of a facility that is a highly volatile liquid pipeline system (in addition to existing prohibitions on gas, oil, and petroleum transmission lines).
- Modify the exemption concerning routine maintenance in a right-of-way, requiring that persons doing such maintenance must be on "permanent payroll" of the entity performing the maintenance, and not a contractor acting behalf of such an entity.
- Add an exemption for pavement milling and resurfacing (which had previously been included in the exemption for maintenance activities).

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- Modify the notice provision for emergency excavation or demolition to require written notice to the Notification Center as soon as practicable.
- Add a new requirement that the Board approve training courses and the sponsors of those training courses in connection with actions or penalty the Board may impose for a violation.
- Authorize the Board to employ contractors or other personnel it deems necessary.
- Require the Attorney General's Office to assign a legal representative to the Board.

The bill would also authorize the Board to impose an annual fee on operators in order to provide sufficient moneys to fund the activities and operations of the Board in reviewing reports of alleged violations of this Article. The fee would be based on the volume of notifications provided by the Center to the operator compared to the total volume of notifications in the preceding fiscal year. The fee must be set at a rate such that the total proceeds of all fees collected would not exceed \$200,000 annually to fund the activities and operations of the Board.

**EFFECTIVE DATE:** This bill would become effective October 1, 2019, and apply to excavations and demolitions occurring on or after that date.