

## STATE LAW PRESENTATION

### *2010 Revisions and Updates*

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*This presentation is not intended to be a full and complete statement of the law, nor of the excavators' duties and responsibilities when engaging in excavation work. Questions regarding the interpretation of the law should be directed to an attorney.*

# IL Underground Utility Facilities Damage Prevention Act

## Legislative Changes Effective January 1, 2010

- Definitions
  - Ticket Type
  - Property Owner
  - Wind Farms
  - Underground Facilities
  - Emergency Request
- Required Activities
- Damage or Dislocation
- Record of Notice
- Penalties: Liabilities: Fund

# IL Underground Utility Facilities Damage Prevention Act

## •Definitions

### •Ticket Type

#### **(220 ILCS 50/2.1.3)**

Sec. 2.1.3. No show request. "No show request" means a notice initiated by an excavator through the State-Wide One-Call Notice System to the owners or operators of underground utility facilities notified in the prior locate request that either failed to mark their facilities or to communicate their non-involvement with the excavation prior to the requested dig start date and time.

(Source: P.A. 96-714, eff. 1-1-10.)

#### **(220 ILCS 50/2.1.4)**

Sec. 2.1.4. Incomplete request. "Incomplete request" means a notice initiated by an excavator through the State-Wide One-Call Notice System to the owners or operators of underground utility facilities notified in a prior locate request that such facility owners or operators, as identified by the person excavating, did not completely mark the entire extent or the entire segment of the proposed excavation, as identified by the excavator in the prior notice.

(Source: P.A. 96-714, eff. 1-1-10.)

#### **(220 ILCS 50/2.1.5)**

Sec. 2.1.5. Re-mark request. "Re-mark request" means a notice initiated by an excavator through the State-Wide One-Call Notice System to the owners or operators of underground utility facilities notified in the initial locate request requesting facility owners or operators to re-mark all or part of the work area identified in the initial locate request, because facility markings are becoming or have become indistinguishable due to factors, including, but not limited to, weather, fading, construction activity, or vandalism.

(Source: P.A. 96-714, eff. 1-1-10.)

# IL Underground Utility Facilities Damage Prevention Act

- Definitions

- **Property Owner**

**(220 ILCS 50/2.1.6)**

Sec. 2.1.6. Residential property owner. "Residential property owner" means any individual or entity that owns or leases real property that is used by such individual or entity as its residence or dwelling. **Residential property owner does not include any persons who own or lease residential property for the purpose of holding or developing such property or for any other business or commercial purposes.**

(Source: P.A. 96-714, eff. 1-1-10.)

# IL Underground Utility Facilities Damage Prevention Act

- Definitions

- **Wind Farms**

(220 ILCS 50/2.1.10)

Sec. 2.1.10. Internal electric grid of a wind turbine generation farm. "Internal electric grid of a wind turbine generation farm" means those facilities located within a wind generation farm from a tower to a substation.

(Source: P.A. 96-714, eff. 1-1-10.)

# IL Underground Utility Facilities Damage Prevention Act

## •Definitions

### •Underground Facilities

#### Sec. 2.2. Underground utility facilities.

(a) "Underground utility facilities" or "facilities" means and includes wires, ducts, fiber optic cable, conduits, pipes, sewers, and cables and their connected appurtenances installed beneath the surface of the ground by:

- (1) a public utility as defined in the Public Utilities Act;
- (2) a municipally owned or mutually owned utility providing a similar utility service;
- (3) a pipeline entity transporting gases, crude oil, petroleum products, or other hydrocarbon materials within the State;
- (4) a telecommunications carrier as defined in the Universal Telephone Service Protection Law of 1985, or by a company described in Section 1 of the Telephone Company Act;
- (5) a community antenna television system, as defined in the Illinois Municipal Code or the Counties Code;
- (6) a holder, as that term is defined in the Cable and Video Competition Law of 2007;
- (7) any other entity owning or operating underground facilities that transport generated electrical power to other utility owners or operators or transport generated electrical power within the internal electric grid of a wind turbine generation farm; and
- (8) an electric cooperative as defined in the Public Utilities Act.

(Source: P.A. 96-714, eff. 1-1-10.)

# IL Underground Utility Facilities Damage Prevention Act

## •Definitions

### •Emergency Request

#### 220 ILCS 50/2.6)

Sec. 2.6. Emergency locate request. "Emergency locate request" means a locate request for any condition constituting an imminent danger to life, health, or property, or a utility service outage, **and which requires repair or action before the expiration of 48 hours.**

(Source: P.A. 96-714, eff. 1-1-10.)

Section 6. Upon notice by the person engaged in emergency excavation or demolition, the owner or operator of an underground utility facility in or near the excavation or demolition area shall communicate with the person engaged in emergency excavation or demolition within 2 hours or by the date and time requested on the notice, whichever is longer by (1) marking the approximate location of underground facilities; (2) advising the person excavating that their underground facilities are not in conflict with the emergency excavation; or (3) **notifying the person excavating that the owner or operator shall be delayed in marking because of conditions as referenced in subsection (g) of Section 11 of this Act.**

Sec. 11. Penalties; liability; fund.

(g) No owner or operator of underground utility facilities shall be subject to a penalty where a delay in marking or a failure to mark or properly mark the location of an underground utility is caused by conditions beyond the reasonable control of such owner or operator.

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# IL Underground Utility Facilities Damage Prevention Act

## •Required Activities

At a minimum, the notice required under

- (1) the person's name, address, phone number at which a person can be reached, and fax number, if available;
- (2) the start date and time of the planned excavation or demolition;
- (3) all counties, cities, or townships, or any combination thereof, where the proposed excavation shall take place;
- (4) the address at which the excavation or demolition shall take place;
- (5) the type and extent of the work involved; and
- (6) the section or quarter sections when the information in items (1) through (5) of this subsection (d) does not allow the State-Wide One-Call Notice System to determine the appropriate excavation or demolition site. This item (6) does not apply to residential property owners;

# IL Underground Utility Facilities Damage Prevention Act

## •Required Activities

(h) exercise due care at all times to protect underground utility facilities. If, after proper notification through the State-Wide One-Call Notice System and upon arrival at the site of the proposed excavation, the excavator observes clear evidence of the presence of an unmarked or incompletely marked utility in the area of the proposed excavation, the excavator shall not begin excavating until all affected facilities have been marked or 2 hours after an additional call is made to the State-Wide One-Call Notice System for the area. The owner or operator of the utility shall respond within 2 hours of the excavator's call to the State-Wide One-Call Notice System; and

(i) when factors, including, but not limited to, weather, construction activity, or vandalism, at the excavation site have caused the utility markings to become faded or indistinguishable, the excavator shall provide an additional notice through the State-Wide One-Call Notice System requesting that only the affected areas where excavation or demolition is to continue be re-marked. Facility owners or operators must respond to the notice to re-mark according to the requirements of Section 10 of this Act. (Source: P.A. 96-714, eff. 1-1-10.)

Nothing in this Section prohibits the use of any method of excavation if conducted in a manner that would avoid interference with underground utility facilities.

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# IL Underground Utility Facilities Damage Prevention Act

## •Damage or Dislocation

Sec. 7. Damage or dislocation. In the event of any damage to or dislocation of any underground utility facilities in connection with any excavation or demolition, emergency or nonemergency, the person responsible for the excavation or demolition operations shall immediately notify the affected utility and the State-Wide One-Call Notice System **and cease excavation in the area of the damage when the damaged facility is a threat to life or property or if otherwise required by law** or, in the case of damage or dislocation in connection with any excavation or demolition within the boundaries of a municipality having a population of at least 1,000,000 inhabitants that operates its own one-call notice system, notify the affected utility and the one-call notice system that operates in that municipality **The person responsible for the excavation or demolition shall not attempt to repair, clamp, or constrict the damaged utility facility unless under the supervision or advisement of the utility facility owner or operator. At no time shall a person under this Act be required by a utility facility owner or operator to attempt to repair, clamp, or constrict a damaged utility facility. In the event of any damage to any underground utility facility that results in the escape of any flammable, toxic, or corrosive gas or liquid, the person responsible for the excavation or demolition shall call 9-1-1 and notify authorities of the damage.**

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## •Record of Notice

Sec. 10. Record of notice; marking of facilities. Upon notice by the person engaged in excavation or demolition, the person owning or operating underground utility facilities in or near the excavation or demolition area shall cause a written record to be made of the notice and shall mark, within 48 hours of receipt of notice **or by the requested date and time indicated on the notice, whichever is later**, the approximate locations of such facilities so as to enable the person excavating or demolishing to establish the location of the underground utility facilities.

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# IL Underground Utility Facilities Damage Prevention Act

## •Penalties: Liabilities: Fund

Every person who, while engaging in excavation or demolition, willfully fails to comply with the Act by failing to provide the notice to the owners or operators of the underground facilities near the excavation or demolition area through the State-Wide One-Call Notice System as required by Section 4 or 6 of this Act shall be subject to a penalty of up to \$5,000 for each separate offense and shall be liable for the damage caused to the owners or operators of the facility. **Every person who fails to provide notice and willfully fails to comply with other provisions of this Act shall be subject to additional penalties of up to \$2,500 for each separate offense and shall be liable for the damage caused to the owners or operators of the facility.**

When a penalty is warranted, the following criteria shall be used in determining the magnitude of the penalty:

- (1) gravity of noncompliance;
- (2) culpability of offender;
- (3) history of noncompliance for the 18 months prior to the date of the incident;

**however, when determining non-compliance the alleged violator's roles as operator or owner and the person engaged in excavating shall be treated separately;**

- (4) ability to pay penalty;
- (5) show of good faith of offender;
- (6) ability to continue business; and
- (7) other special circumstances.



# Contact Information for Damage Prevention Managers

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For more information, including an Excavator Handbook, and/or to request an on-site presentation, please visit our Web site at

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