GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2015 REGULAR SESSION

HOUSE BILL NO. 172

TUESDAY, FEBRUARY 24, 2015

The following bill was reported to the Senate from the House and ordered to be printed.

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY L. Adler

1 AN ACT relating to underground facility protection.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 367.4903 is amended to read as follows:

4 As used in KRS 367.4903 to 367.4917:

5 (1) "Underground facility" means an underground line or system used for producing,
6 storing, conveying, transmitting, or distributing telecommunications, electricity,
7 gas, petroleum, petroleum products, cable television, hazardous liquids, water,
8 steam, or sewerage, including storm drainage;

9 (2) "Damage" means weakening of structural or lateral support or penetration of a
10 facility coating, housing, or other protective device. It also means the partial or
11 complete dislocation or severance of underground facilities or rendering any
12 underground facility permanently inaccessible by the placement of a permanent
13 structure having one (1) or more stories;

14 (3) "Demolition" means any operation by which a structure or mass of material is
15 wrecked, razed, moved, or removed by means of mechanized equipment, or
16 discharge of explosives;

17 (4) "Excavator" means any entity or individual, other than those exempted by KRS
18 367.4915, engaged in excavation, demolition, or timber harvesting using
19 mechanized equipment;

20 (5) "Operator" means any entity or individual owning or operating underground
21 facilities to serve the public;

22 (6) "Excavation" means any activity that results in the movement, placement, probing,
23 boring, or removal of earth, rock, or other material in or on the ground by the use of
24 any tools or equipment, by the discharge of explosives, or by the harvesting of
25 timber using mechanized equipment. Forms of excavating include but are not
26 limited to auguring, backfilling, digging, ditching, drilling, driving, grading, piling,
27 pulling-in, ripping, scraping, trenching, and tunneling. Driving wooden stakes by

1 use of hand tools to a depth of six (6) inches or less below existing grade shall not
2 constitute excavation;
3 (7) "Emergency" means there exists substantial likelihood that loss of life or property,
4 the inability to restore interrupted utility service, an imminent danger to health or
5 the environment, or the blockage of public transportation facilities will result before
6 procedures required under KRS 367.4909 to 367.4913 can be completed;
7 (8) "Protection notification center" means an operator-provided notification center
8 through which an excavator can contact the operator to enable the operator to
9 provide the excavator with the approximate location of underground facilities;
10 (9) "Kentucky Contact Center" means Kentucky Underground Protection, Inc.,
11 organized as a nonprofit corporation and a multimember protection notification
12 center providing a single telephone contact number and designated by the Kentucky
13 Public Service Commission to be the sole recipient of 811 dialed calls through
14 which an excavator may contact all Kentucky Contact Center members and all
15 affected operators may receive information to enable them to provide the excavator
16 with the approximate location of underground facilities;
17 (10) "Routine road maintenance" means preservation, including road repairs and
18 resurfacing, and the replacement of signs, posts, and guardrails at the exact same
19 location when no additional penetration of existing grade is necessary, but does not
20 include road construction, installation of signs, posts, and guardrails, or any activity
21 that requires penetration of existing grade;
22 (11) "Approximate location," when referring to an underground facility, means:
23 (a) For underground metallic facilities and underground nonmetallic facilities
24 with metallic tracer wire, a distance not to exceed the combined width of the
25 underground facility plus eighteen (18) inches measured from the outer edge
26 of each side of the underground facility; or
27 (b) For nonmetallic facilities without metallic tracer wire, the underground

1 facility shall be located as accurately as possible from field location records
2 and shall require notification from the operator of the inability to accurately
3 locate the facility;
4 (12) ***"Working day"***[~~"Business day"~~] means ***a twenty-four (24) hour period***
5 ***commencing from the time of receipt of the notification by the Kentucky Contact***
6 ***Center***[~~any day~~] except Saturday, Sunday, and holidays established by federal or
7 state statute;
8 (13) "Nonintrusive excavating" means excavation using hand tools or equipment that
9 uses air or water pressure as the direct means to break up soil for removal by hand
10 tools or vacuum excavation;
11 (14) "Mechanized equipment" means mechanical power equipment, including trenchers,
12 bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows,
13 skidders, and yarders;
14 (15) "Normal excavation locate request" means a notification made to a protection
15 notification center where a request for locating utility facilities is processed;
16 (16) "Emergency locate request" means a notification made to a protection notification
17 center by an excavator to alert facility owners or operators of the need to begin
18 immediate excavation in response to an emergency;[~~ and~~]
19 (17) "Design information request" means a notification made to a protection notification
20 center by a person providing professional services and making a request in
21 preparation for bidding, preconstruction engineering, or other advance planning
22 efforts. A design information request may not be used for excavation purposes.***; and***
23 ***(18) "Large project" means an area of excavation occurring on or after July 1, 2016,***
24 ***measuring more than two thousand (2,000) feet in length. Multiple excavation***
25 ***notifications in an area may be considered together in determining if the***
26 ***excavations are part of a large project.***
27 ➔Section 2. KRS 367.4909 is amended to read as follows:

1 (1) Each operator shall provide protection notification center access to excavators.
2 (2) Voluntary operator membership in the Kentucky Contact Center shall satisfy the
3 requirement of subsection (1) of this section.
4 (3) Each operator member of the Kentucky Contact Center shall provide and update as
5 needed to the Kentucky Contact Center the general location of its underground
6 facilities, the operator identity and business address, and emergency notification
7 telephone numbers.
8 (4) An operator shall respond to facility locate requests as follows:
9 (a) To a normal excavation locate request within two (2) ***working***~~[business]~~ days
10 after receiving notification from an excavator***, excluding large projects***.
11 (b) To an emergency locate request as quickly as possible but not to exceed forty-
12 eight (48) hours after receiving notification from an excavator;~~[and]~~
13 (c) To a design information request within ten (10) ***working***~~[business]~~ days after
14 receiving notification from the person making the request***; and***
15 ***(d) To a large project request within five (5) working days from the later of***
16 ***receiving notification from an excavator or the scheduled excavation start***
17 ***date for that location***.
18 (5) An operator shall, upon receiving an emergency locate request or a normal
19 excavation locate request:
20 (a) Inform the excavator of the approximate location and description of any of the
21 operator's facilities that may be damaged or pose a safety concern because of
22 excavation or demolition;
23 (b) Inform the excavator of any other information that would assist in locating
24 and avoiding contact with or damage to underground facilities;
25 (c) Unless permanent facility markers are provided, provide temporary markings
26 to inform the excavator of the ownership and approximate location of the
27 underground facility; and

1 (d) Notify the requesting party if underground facilities are not in conflict with the
2 excavation or demolition.
3 (6) Upon receiving a design information request, an operator shall contact the person
4 making the request within the time period specified in subsection (4) of this section.
5 The operator shall:
6 (a) Designate with temporary underground facility markers the location of all
7 underground facilities owned by the operator within the area of the design
8 information request as defined in KRS 367.4903;
9 (b) Provide to the person making the design information request a description of
10 all underground facilities owned by the operator in the area of the design
11 information request and the location of the facilities, which may include
12 drawings marked with a scale, dimensions, and reference points for
13 underground utilities already built in the area or other facility records that are
14 maintained by the operator; or
15 (c) Allow the person making the design information request or an authorized
16 person to inspect the drawings or other records for all underground facilities
17 with the proposed area of excavation at a location that is acceptable to the
18 operator.
19 (7) An operator may reject a design information request based upon security
20 considerations or if producing the information will place the operator at a
21 competitive disadvantage, pending the operator obtaining additional information
22 confirming the legitimacy of the notice. The operator shall notify the person making
23 the design information request and may request additional information.
24 (8) Temporary underground facility markers shall consist of paint, chalk, flags, stakes,
25 or any combination thereof and shall conform to the following standards of the
26 American Public Works Association uniform color code:
27 (a) Electric power distribution and transmission Safety Red

(b)	Municipal electric systems	Safety Red
(c)	Gas distribution and transmission	High visibility safety yellow
(d)	Oil distribution and transmission	High visibility safety yellow
(e)	Dangerous materials, product lines	High visibility safety yellow
(f)	Telecommunication systems and cable television	Safety alert orange
(g)	Temporary survey markings	Safety pink
(h)	Police and fire communications	Safety alert orange
(i)	Water systems	Safety precaution blue
(j)	Sewer and storm drainage systems	Safety green
(k)	Proposed excavation or construction boundaries	White
(l)	Reclaimed water, slurry, and irrigation facilities	Purple

(9) If extraordinary circumstances exist, an operator shall notify the excavator of the operator's inability to comply with this section. Extraordinary circumstances include extreme weather conditions, force majeure, disasters, or civil unrest that make timely response difficult or impossible.

(10) All underground facilities installed after January 1, 2013, shall include a means to accurately identify and locate the underground facilities from the surface. This subsection does not apply to the repair of existing facilities.

➔Section 3. KRS 367.4911 is amended to read as follows:

(1) (a) Each excavator, or person responsible for an excavation, planning excavation or demolition work shall, not less than two (2) full ***working***~~[business]~~ days nor more than ten (10) full ***working***~~[business]~~ days prior to commencing work, notify each affected operator of the excavator's intended work and work schedule. Contacting the applicable protection notification centers shall satisfy this requirement.

(b) An excavator may commence work before the two (2) full ***working***~~[business]~~ days provided for in paragraph (a) of this subsection have elapsed if all

1 affected operators have notified the person that the location of all the affected
2 operators' facilities have been marked or that they have no facilities in the area
3 of the proposed excavation, demolition, or timber harvesting.
4 (2) Locate requests are valid for twenty-one (21) calendar days from the day of the
5 initial request.
6 (3) Each excavator shall provide each applicable protection notification center with
7 adequate information regarding:
8 (a) The name of the individual making the notification;
9 (b) The excavator's name, address, and a telephone number;
10 (c) The excavation or demolition site location or locations, each of which shall
11 not exceed two thousand (2,000) feet in length unless the excavator and
12 operator agree to a larger area, the city or community, county and street
13 address, including the nearest cross street;
14 (d) The type and extent of excavation or demolition to be performed;
15 (e) A contact name and telephone number of the person responsible for the work
16 to be performed.
17 (4) If more than one (1) excavator will operate at the same site, each excavator shall
18 notify the protection notification centers individually. Notification by an excavator
19 will serve as notification for any of that excavator's employees. Failure by an
20 excavator to notify the protection notification center does not relieve individual
21 employees of responsibility.
22 (5) The excavator shall inform and provide to excavation or demolition site employees:
23 (a) The underground facility location provided by each operator;
24 (b) Any related safety information provided by each operator; and
25 (c) The locate request identification number assigned by each protection
26 notification center.
27 (6) The excavator shall protect and preserve temporary underground facility markers

1 until the scheduled excavation or demolition is completed.

2 (7) If, after the two (2) day period provided by KRS 367.4909(4)(a), the excavator finds
3 evidence of an unmarked underground facility at the site, he shall immediately
4 notify the protection notification center.

5 (8) The excavator shall contact the protection notification center to request remarking
6 two (2) ***working***~~[business]~~ days in advance of the expiration of each twenty-one
7 (21) day period while excavation or demolition continues or if:

8 (a) The markings of any underground facility have been removed or are no longer
9 visible; or

10 (b) The excavator has changed the work plan or location previously filed.

11 (9) (a) Each excavator who conducts or is responsible for any excavation or
12 demolition that results in underground facility damage shall cease excavation
13 or demolition activities and notify all affected operators of the location and
14 nature of the underground facility damage.

15 (b) If the underground facility damage causes concern for public or workplace
16 safety, the excavator shall notify appropriate public safety agencies of the
17 location and nature of the safety concern.

18 (c) If the underground facility damage results in the escape of any flammable,
19 toxic, or corrosive gas or liquid, the excavator shall cease excavation or
20 demolition activities and immediately report to the appropriate authorities by
21 calling the 911 emergency telephone number.

22 (10) When excavation or demolition is necessary within the approximate location of the
23 underground facility, the excavator shall hand-dig or use nonintrusive means to
24 avoid damage to the underground facility.

25 (11) Upon request by an operator or when the proposed excavation location cannot be
26 accurately identified, an excavator shall mark the boundaries of the location to be
27 excavated using the procedure set forth in KRS 367.4909(8)(k). After marking the

1 boundaries, the excavator shall contact the protection notification center or centers.
2 The requirements of KRS 367.4909(4) to (10) are reestablished upon the operator
3 receiving notification of this marking from the protection notification center or
4 centers. This marking shall not alter, or relieve the excavator from complying with,
5 the requirements of KRS 367.4905 to 367.4917.
6 ➔Section 4. KRS 367.4913 is amended to read as follows:
7 (1) Each protection notification center shall:
8 (a) Operate the protection notification center during all ***working***~~[business]~~ days;
9 (b) Provide a locate request identification number to the excavator for each
10 excavation or demolition location request;
11 (c) Promptly after receiving an excavation or demolition work notification from
12 an excavator, provide to each of its affected operator members the excavator
13 information required by KRS 367.4911(3);
14 (d) Maintain a list of all its operator member's identities, business address and
15 business and emergency telephone numbers and record this information in
16 accordance with KRS 64.012 with the county clerk of each county where the
17 operator member has underground facilities. The county clerk shall provide
18 this information upon request for the actual cost of providing a copy, to be
19 paid by the requesting party to the county clerk. The county clerk shall assume
20 no liability associated with the receipt of this information from the protection
21 notification center or for subsequent provision of this same information to the
22 requesting party;
23 (e) Make the operator members information list available to any person for
24 inspection at its place of business without charge or provide a copy of the list
25 to any person for any county upon request for a fee not to exceed the actual
26 cost of providing a copy;
27 (f) Define and adopt policies and procedures for processing design information

1 requests; and
2 (g) Provide the person making a design information request a list of identified
3 operators that will receive notification and notify those operators.
4 (2) The Kentucky Contact Center shall be governed by a board of directors composed
5 of representatives of member operators who are elected by the membership. Board
6 seats may be filled by representatives of the following:
7 (a) A natural gas provider;
8 (b) An electric provider;
9 (c) A telecommunications provider;
10 (d) A water/sewer provider;
11 (e) An interstate pipeline operator;
12 (f) A municipal utility operator; and
13 (g) An advisory, nonvoting representative of one (1) of the following:
14 1. Home Builders Association of Kentucky;
15 2. National Electrical Contractors Association;
16 3. Associated General Contractors of Kentucky; or
17 4. Kentucky Association of Plumbing, Heating-Cooling Contractors.
18 (3) The Kentucky Contact Center's board of directors shall establish the method to
19 calculate the cost of service provided by the center.
20 (4) The Kentucky Contact Center shall serve all Kentucky counties.
21 ➔Section 5. KRS 367.4917 is amended to read as follows:
22 (1) An excavator who fails to comply with any provision of KRS 367.4911, or an
23 operator who fails to comply with any provision of KRS 367.4909, shall be guilty of
24 endangering underground facilities and may be subject to a fine of two hundred and
25 fifty dollars ($250) for the first offense, no more than one thousand dollars ($1,000)
26 for the second offense within one (1) year, and no more than three thousand dollars
27 ($3,000) for the third and any subsequent offense.

1 (2) A protection notification center that fails to comply with any provision of KRS
2 367.4913 shall be subject to a fine of one thousand dollars ($1,000) for each
3 offense.
4 (3) A person that knowingly provides false notice to a utility notification center of an
5 emergency as defined in KRS 367.4903 shall be subject to a fine of one thousand
6 dollars ($1,000) for each offense.
7 (4) Any person who violates any provision of the Underground Facility Damage
8 Prevention Act of 1994, KRS 367.4901 to 367.4917, that involves damage to a
9 facility containing any flammable, toxic, corrosive, or hazardous material or results
10 in the release of any flammable, toxic, corrosive, or hazardous material shall be
11 subject to a fine not to exceed one thousand dollars ($1,000) for each offense. The
12 penalties of this subsection are not in conflict with and are in addition to civil
13 damages for personal injury or property damage.
14 (5) (a) All fines recovered for a violation of this section shall be paid to the general
15 fund of the state, county, city, or fire protection agency which issued the
16 citation.
17 (b) In the event that more than one (1) government agency was involved, the court
18 shall direct an apportionment of the fines.
19 ***(c) Failure to comply with the provisions of the Underground Facility Damage***
20 ***Prevention Act of 1994, KRS 367.4901 to 367.4917, may be determined at***
21 ***the conclusion of an investigation and shall be based on evidence available***
22 ***to state, county, or city officials, law enforcement, or fire protection***
23 ***agencies which issue the citation.***

Speaker-House of Representatives

President of Senate

Attest: Chief Clerk of House of Representatives

Approved Governor

Date 3/20/15