

Explanation Of Proposed Substantive Changes To The Illinois Underground Utility Facilities Damage Prevention Act 2023

The following is a companion document to explain the substantive language contained in the proposed changes to the Illinois Underground Utility Facilities Damage Prevention Act.



Scan this QR Code for more info, downloads and to provide your feedback

DEFINITIONS

Section 2.1.1 “Excavator” (new) – Changes the definition within the Act from “Person” to “Excavator” and means the entity (person or a public or private company) that is actually engaged in the Excavation or Demolition work. This definition change attempts to clarify enforcement.

Section 2.1.2 “Pre-mark” (new) – Inserts a definition of a proposed Excavation Pre-mark and how it can be accomplished.

Section 2.1.7 “Normal notice request” (new) – Creates a new definition to define the most common locate request that JULIE receives and processes.

Section 2.1.8 “One-Call Notice System” (new) – Creates a new definition to clarify the reference to “One-Call Notice System” throughout the Act means JULIE for most of the state or means the Chicago Utility Alert Network within the city of Chicago.

Section 2.1.9 “JULIE Excavation Safety Resource” (new) – Redefines the existing definition of the JULIE Excavator Handbook to the JULIE Excavator Safety Resource. JULIE Excavation Safety Resource is capable of being provided in multiple formats to offer more timely updates and revisions.

Section 2.1.11 “Project owner” (new) – Creates a new definition to define a Project owner as being financially responsible for undertaking a project.

Section 2.1.12 “Service lateral” (new) – Creates a new definition defining a Service lateral.

Section 2.2 “Underground Utility Facilities” – Adds to this existing definition by including 1) connected appurtenances installed or existing beneath the surface of the ground and either owned, operated, or controlled by 2) adding broadband service to the existing reference to Cable and Video Competition Law of 2007 3) adding solar farm or solar installation and 4) any previously non-mandated (voluntary) member of JULIE. This would provide the Act’s protections and responsibilities to these groups.

Section 2.3 “Excavation” – Adds to this definition

Subsection (a) saw cutting or Roadway surface milling when penetrating into the base or subbase of a paved surface

Subsection (a)(4) the requirement to hand probe with a round-tipped probe rod prior to manually driving a pin or rod for the land surveying exemption.

Subsection (a)(6)(7)(8) adds to the list of exempted activities (no notification required): the use of a round-tipped probe rod when used as part of underground facility locating, bar holing, a long-used technique by gas and pipeline utilities to find leaking underground facilities, and grounding utility equipment when an emergency exists and no other ground source is available

Subsection (b) Excavators are not prohibited from requesting a locate for these waived Excavation activities.

Subsection (c) new language in this definition makes it clear that utility owners or operators are not prohibited from seeking recovery of repair costs for any waived Excavation activities when Damages occur.

Section 2.5 “Damage” – Provides additional language to clarify the original intent of what constitutes a damaged facility.

Section 2.7 “Tolerance Zone” – Replaces the existing definition by defining the Tolerance zone for 1) facilities whose locate markings identify the diameter of that underground facility 2) facilities whose locate markings do not identify the diameter of the underground facility and 3) for the first time, subaqueous facilities 4) states that utility markings may not exceed the actual width of the facility and 5) recognizes that the Tolerance zone applies to visible utility structures.

Section 2.8 “Approximate location” – Replaces the existing definition by defining that the location of the marked Underground utility facility lies entirely within the Tolerance zone.

Section 2.9 “Day/Days” (new) – Replaces an existing definition of 48 hours to 2 Days, not including the Day of the notice.

Section 2.11 “Roadway surface milling” – Adding saw cutting that does not penetrate into the roadway base or subbase to the existing definition.

Section 2.12 “Damage Notification” (new) – Defines for the first time in the Act a notice to Underground utility facility owners or operators of a utility Damage.

Section 2.13 “Exposed Notification” (new) – Defines for the first time in the Act a notice to Underground utility facility owners or operators of an unmarked utility line that has been Exposed but not damaged.

Section 2.14 “Large project” (new) – Defines for the first time in the Act a definition of a Large project.

Section 2.15 “Planning design notification” (new) – Defines for the first time in the Act a notice to Underground utility facility owners or operators of a proposed project where the planner designer will request location information on existing Underground utility facilities from the Underground utility facility owners or operators.

Section 2.16 “Joint meet notification” (new) – Defines for the first time in the Act a notice to Underground utility facility owners or operators of a proposed project where the Excavator will request a meeting with the existing Underground utility facility owners and operators to discuss the proposed Excavation schedule, sequence and time frames of the work then after the Joint meet begins to submit locate requests based on the agreements made at the Joint meet.

Section 2.17 “Locatable service lateral” (new) – Defines for the first time in the Act a definition establishing timelines for when new or completely replaced service laterals will be required to be locatable.

Section 2.18 “Positive response system” (new) – Defines for the first time in the Act a definition for the automated system allowing the Underground utility facility owner or operator to communicate with the Excavator their response to the notice.

Section 2.19 “Geographic Information System Data” (new) – Defines for the first time in the Act a definition of the data applied to the One-Call Notice System software to more clearly define the notification area of the proposed Excavation or Demolition.

Section 3 “One-Call Notice System Membership” – Provides a title for the section and now that nearly all owners and operators of Underground utility facilities are members of JULIE or 811 Chicago (inside the City limits of Chicago), this language has been shortened to the simplest terms.

Section 4 “Required activities” –

Subsection (b) – Language expanded to clarify that precautions to avoid Underground utility facilities include hand or vacuum Excavation to the depth of the proposed Excavation or Demolition. This comports to existing education to stakeholders.

Subsection (c) – This language has been shortened to the simplest terms.

Subsection (d) – Changed to reflect the new definition of Days. Advance notice of 2 Days but not more than 10 Days in advance of the start of Excavation. Excavation shall start before the expiration of 10 Days after the valid dig start date and time of the notice. Also includes new language that merely captures the additional information that One-Call Notice System call center agents regularly collect as part of the notification process.

Subsection (g) – New language provides the timelines for extensions to be requested and prohibits Excavators from extending a notification without any Excavation taking place. New language provides for a 25 Day expiration of the locate request.

Subsection (h) – New language provides for subsequent notice for unmarked or incompletely marked Underground utility facilities with a wait time until the Underground utility facilities are marked or 2 hours whichever is shorter unless a greater time is requested by the Excavator on the notice.

Subsection (i) – New language provides that the area requested to be Re-marked be Pre-marked prior to making the subsequent notice.

Section 4.1 “Watch and protect” (new) – New section establishes within the Act for the first time some utilities’ longstanding practice of “Watch and protect”. It requires Excavators to honor the request of a utility for a “Watch and protect”, but also requires utilities to honor the Excavation schedule of the Excavator.

Section 5 “Notice of preconstruction conference” – Deleted

Section 5.1 “Positive response system” (new) – New section establishes timelines for the Excavators and Underground utility facility owners or operators to comply with and respond to the Positive response system and provides guidance for Excavators when Underground utility facility owners or operators fail to respond to the Positive response system prior to dig start on the notice.

Section 5.2 “Planning design notification” (new) – New section codifies a long-standing policy for the planner designer to work with existing Underground utility facility owners and operators to determine the location of the existing Underground utility facilities to plan the location of the proposed project to avoid those existing Underground utility facilities.

Section 5.3 “Joint meet notification” (new) – New section codifies a long-standing policy for the Excavator to meet with the existing Underground utility facility owners or operators to provide contact information, schedules, sequence of work, and details on the extent and submission of locate requests.

Section 5.4 “Geographic Information System Data” (new) – New section establishes criteria for providing and sharing data.

Section 6 “Emergency Excavation or Demolition” – Deleted existing subsection(b). Breakout section into subsections and renumbered due to deleting existing subsection (b).

Subsection (a) – New language captures information that has long been included in these notifications processed by the One-Call Notice System.

Subsection (g) (new) – New language recognizes extreme weather events and the ability for utilities that are trying to restore large outage areas to process locate requests on behalf of their subcontractors. However, liability remains with the utility owner/operator.

Subsection (h) (new) – New language provides for a 10 Day expiration of an Emergency request.

Section 7 “Damage or dislocation” – Breaks out section into subsections.

Subsection (d) (new) – New language requires the Underground utility facility owner or operator to provide a dedicated phone number for the Excavators to report the Damage.

Subsection (e) (new) – New language codifies a long-standing policy for the required information to report the Damage.

Section 7.5 “Exposed facility” (new) – New language codifies a long-standing policy for the Excavators to report unmarked “Exposed” but otherwise undamaged facilities via a notification through the One-Call Notice System.

Section 9 “Negligence” – Provides title for section and breaks section into subsections.

Section 10 “Record of notice; marking of facilities” – First, this very long section has been broken up into easier to read subsections.

Subsection (a)(1) (new) – New language establishes the method and response time for a subaqueous Underground utility facility locate.

Subsection (e)(1) – New language captures a long-standing practice for all stakeholders to work cooperatively with the Underground utility facility owners or operators when situations arise outside the Act’s normal parameters.

Subsection (e)(5) (new) – New language establishes reasonable control measurements and the possibility of additional 2 Day advance notice.

Subsection (f)(1) (new) – New language establishes seasonal fluctuations that exceed the reasonable control measurements and are not considered reasonable.

Subsection (f)(2) (new) – New language establishes reasonable control measurements.

Subsection (i) – New language better explains and expands upon when an Underground utility facility owner or operator obligation to provide notice under this Section has been met, including attempting to deliver to an email address.

Subsection (j) – Reword subsection description along with updating category for Communication Systems.

Section 11 “Penalties; liability; fund” –

Subsection (d) – This section addresses penalties for Emergency locate requests that are not actually emergency requests. New language adds “No show” and “Incomplete” requests to those request types that are subject to Excavator penalties for misrepresentation.

Subsection (e) – Reduces the penalty from \$5,000 to \$2,500 for each separate offense for willfull failure to respond and mark.

Subsection (e)(1) (new) – New language establishes a penalty for Underground utility facility owners or operators for not responding to a request in the Positive response system.

Subsection (e)(2) (new) – New language allows for an exemption of penalty for not responding to the Positive response system due to conditions beyond the reasonable control of the Underground utility facility owner or operator.

Subsection (e)(3) (new) – New language establishes the requirement of the One-Call Notice System to report Positive response system non-compliance to ICC One-Call Enforcement on a quarterly basis.

Subsection (g)(1) (new) – New language establishes the requirement of the Underground utility facility owner or operator to staff to the reasonable control measurement.

Subsection (g)(2) (new) – New language establishes that advanced notice of Large projects will factor into the reasonable control measurement.

Subsection (j) – New language provides the addition of a reference to where the Illinois Commerce Commission (ICC) rules are located and removes from the criteria that the ICC One-Call Enforcement will use in determining the magnitude of the penalty: “ability to pay and ability to continue business.”

Subsection (l) – Removes entity that receives penalty funds from the role that could determine penalties and adds a non-municipality public seat.

Section 12 “Noncompliance and enforcement action time frames” – Add title to Section. New language establishes who can submit an incident report for non-compliance to the ICC One-Call Enforcement. Adds timeline for ICC to provide notice of receipt of non-compliance report. Provides timelines for submission of a suspected violation. New language clarifies the actual timeframes that are followed for submitting alleged violation reports.

Section 14 “Home rule” – New language provides that a municipality with over one million inhabitants that operates its own One-Call Notice System may regulate Underground utility facilities damage prevention.

The proposed effective date is January 1, 2024, unless alternative dates are listed in the proposed legislation.

In addition, references to CATS (Community Antenna Television System Service) facilities currently in the Act to be removed. These types of Underground utility facilities are captured in Section 2.2.