

Explanation of PROPOSED CHANGES in HB5546

The following document explains the important proposed changes to the Illinois Underground Utility Facilities Damage Prevention Act.



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Definitions

“Approximate location” – Replaces the existing definition by defining that the location of the marked facility lies entirely within the tolerance zone.

“Beyond the reasonable control” (new) – Defines what is considered beyond reasonable control of the underground utility facility owner operator.

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

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

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

“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)(6)(7)(8) This subsection 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 facility owners or operators to determine the area of a potential leak from underground gases or liquids 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 notice for these waived excavation activities.

Subsection (c) New language in this definition makes it clear that facility owners or operators are not prohibited from seeking recovery of repair costs for any waived excavation activities when damages occur.



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“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.

“Exposed Notification” (new) – Defines for the first time in the Act a notice to facility owners or operators of unmarked facilities that have been exposed but not damaged.

“Extension” (new) – Creates a definition that means a request made by an excavator, to extend the expiration date of a normal notice to allow additional time to continue or complete the excavation or demolition project.

(a) An extension request may be made no earlier than the 20th day from the initial normal notice request or latest extension request.

(b) An extension request will extend, by 25 days, the expiration of the initial normal notice request or latest extension request.

(c) An extension request may not be made simply to keep a prior notice open without continued excavation occurring within the period of that subsequent notice.

“Geographic Information System Data” (new) – Defines for the first time in the Act a definition of the data applied to the JULIE software to more clearly define the notification area of the proposed excavation or demolition.

“Historical Averages” (new) – Determines a benchmark for notice volumes and dig site notification areas.

“Incomplete request” (new) - Defines for the first time in the Act a notice to facility owners or operators of an incompletely marked facility by the dig start date and time and through the positive response system once implemented.

“Joint meet request” (new) – Defines for the first time in the Act a notice to facility owners or operators of a proposed project where the excavator will request a meeting with the existing facility owners or operators to discuss the proposed excavation schedule, sequence, and time frames of the work. After the joint meet the excavator submits notices based on the agreements made at the joint meet.

“JULIE Inc. or “JULIE” (new) – Creates a new definition to clarify the communication system known as “JULIE Inc.” or “JULIE” throughout the Act throughout the state outside of the city of Chicago.

“Large project” (new) – Defines for the first time in the Act that means a single excavation that exceeds the expiration date of a normal notice request, or involves a series of repetitive, related-scope excavations.

“Normal notice request” (new) – Creates a new definition for the most common request that JULIE receives and processes.

“No show request” (new) - Defines for the first time in the Act a verification process through the positive response system once implemented.



“Notice” (new) – Creates a new definition that means any record transmitted to a facility owner or operator (member) of JULIE which includes, but is not limited to, cancel, damage, emergency, exposed, extension, incomplete, joint meet, no show, normal, planning design, or re-mark.

“Open cut utility locate” (new) – Defines the existing method of locating facilities that requires excavation by the facility owner or operator, or their contractor or subcontractor.

“Place” (new) – Creates a new definition that means any incorporated city, village or town or unincorporated township or road district, listed within the JULIE database.

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

“Positive response system” (new) – Defines for the first time in the Act a definition for the automated system allowing the facility owners or operators to communicate with the excavator their response to the notice.

“Pre-mark” (new) – Creates a new definition of a proposed excavation pre-mark and how it can be accomplished.

“Project owner” (new) – Creates a new definition to define a project owner as being financially responsible for undertaking a project that involves excavation or demolition.

“Reasonable Control Measurement” (new) – Defines for the first time how the notice volumes or dig site notification areas uses the historical averages adding conditions per place to determine beyond reasonable control of the underground utility facility owner or operator.

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

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

“Submerged” (new) – Creates a new definition that means any facility installed below the surface of a lake, river, or navigable waterway.

“Tolerance Zone” – Replaces the existing definition by defining the tolerance zone for a) facilities whose locate markings identify the size of that facility b) facilities whose locate markings do not identify the size of the facility and c) for the first time, submerged facilities. States that facility markings may not exceed the actual width of the facility or 2” whichever is greater and recognizes that the tolerance zone applies to visible utility structures.

“Underground Utility Facilities” – Adds to this existing definition by 1) including 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 facilities that generate electrical power and 4) any previously non-mandated (voluntary) member of JULIE. This would provide the Act’s protections and responsibilities to these groups.



Section 3

Section 3 “JULIE Membership” – Provides a title for the section and requires underground utility facility owners or operators to be members of JULIE. Requires all facility owners or operators to provide JULIE with all facility information within their domain.

Section 4

Section 4 “Required activities” –

Subsection (b) – Language expanded to clarify that precautions to avoid facilities include hand or vacuum excavation to the depth of the proposed excavation or demolition. This is consistent with existing education efforts 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 or demolition. Also includes new language that merely captures the additional information that JULIE call center agents regularly collect as part of the notification process.

Subsection (e) – Adds known service laterals to the facilities that are to be protected during and following excavation.

Subsection (g) – New language provides the timelines for extensions and requires the excavator to pre-mark before requesting an extension if remarks are needed. New language provides for a 25 day expiration of the original and subsequent extension notices.

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

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

Subsection (j) – New language provides for informational and planning purposes where greater than 10 days advance notice may be provided for large projects.

Section 4.1 “Watch and protect” (new) – New section establishes within the Act for the first time some facility owners’ or operators’ longstanding practice of “watch and protect”. It requires excavators to honor the request of a facility owner or operator for a “watch and protect”, but also requires facility owners or operators to honor the excavation schedule.



Section 5

Section 5 “Notice of preconstruction conference” – Deleted.

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

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

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

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

Section 6

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 JULIE.

Subsection (d) – New language that requires response to a notice through the positive response system once implemented.

Subsection (g) (new) – New language recognizes extreme weather events and the ability for facility owners or operators that are trying to restore large outage areas to process notices on behalf of their contractors or subcontractors. However, liability remains with the facility owner or operator.

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

Section 7

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

Subsection (d) (new) – New language requires the 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 JULIE.

Section 9

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

Section 10

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 submerged facility notices.

Subsection (e)(1) – New language captures a long-standing practice for all stakeholders to work cooperatively with the 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 an additional 2 day advance notice.

Subsection (f) (new) – New language establishes seasonal fluctuations that exceed the reasonable control of the facility owners or operators.

Subsection (i) (new) – Provides requirements that all newly installed, or completely replaced service laterals installation be made locatable after January 1, 2026.

Subsection (j) – Rewords the subsection description along with updating what can be utilized to mark as seasonal and dig site conditions warrant and update the category for Communication Systems.

Section 11

Section 11 “Penalties; liability; fund” –

Subsection (a) - Penalties remain at \$5,000 for each separate offense for willful failure to provide notice of proposed excavation or demolition

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) – Penalties remain at \$5,000 for each separate offense for willful failure to respond and mark.

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



Subsection (e)(2) (new) – New language establishes the requirement of JULIE to report positive response system non-compliance to ICC One-Call Enforcement on a quarterly basis.

Subsection (g) (new) – New language provides that the underground utility facility owner or operator is required to demonstrate the condition is beyond their reasonable control.

Subsection (h) – Adds to the list of items used to mark the location of facilities.

Subsection (i-5) (new)– New language establishes timelines for submitting alleged violation reports.

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 nonmunicipal public body seat.

Section 12

Section 12 “Noncompliance and enforcement action time frames” – Adds title to Section. Adds timeline for Illinois Commerce Commission to provide notice of receipt of alleged violation report to involved parties. Provides timelines for submission after discovery of an alleged violation and notice of violation. Adds requirement that the Illinois Commerce Commission shall produce a public facing report of received notices of alleged violations. Allows JULIE the ability to report alleged violations of section 5.1.

Section 14

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, 2025.

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 the definition in Section 2.



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