

UTILITIES CODE

TITLE 5. PROVISIONS AFFECTING THE OPERATION OF UTILITY FACILITIES
CHAPTER 251. UNDERGROUND FACILITY DAMAGE PREVENTION AND SAFETY
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 251.001. SHORT TITLE. This chapter may be cited as the Underground Facility Damage Prevention and Safety Act. Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.002. DEFINITIONS. In this chapter:

(1) "Class A underground facility" means an underground facility that is used to produce, store, convey, transmit, or distribute:

(A) electrical energy;
(B) natural or synthetic gas;
(C) petroleum or petroleum products;
(D) steam;
(E) any form of telecommunications service, including voice, data, video, or optical transmission, or cable television service; or

(F) any other liquid, material, or product not defined as a Class B underground facility.

(2) "Class B underground facility" means an underground facility that is used to produce, store, convey, transmit, or distribute:

(A) water;
(B) slurry; or
(C) sewage.

(3) "Corporation" means the Texas Underground Facility Notification Corporation.

(4) "Damage" means:

(A) the defacing, scraping, displacement, penetration, destruction, or partial or complete severance of an underground facility or of any protective coating, housing, or other protective device of an underground facility;

(B) the weakening of structural or lateral support of an underground facility; or

(C) the failure to properly replace the backfill covering an underground facility.

(5) "Excavate" means to use explosives or a motor, engine, hydraulic or pneumatically powered tool, or other mechanized equipment of any kind and includes auguring, backfilling, boring, compressing, digging, ditching, drilling, dragging, dredging, grading, mechanical probing, plowing-in, pulling-in, ripping, scraping, trenching, and tunneling to remove or otherwise disturb soil to a depth of 16 or more inches.

(6) "Excavator" means a person that excavates or intends to excavate in this state.

(7) "Exploration and production underground facility" means an underground facility used by a person producing gas or oil, or both, for the production of that gas or oil, including facilities used for field separation, treatment, gathering, or storage of gas or oil.

(8) "High speed data transmission" means a method of data transmission that does not include facsimile or voice transmission.

(9) "Legal holiday" means a holiday specified as a legal holiday by Subchapter B, Chapter 662, Government Code.

(10) "Mechanized equipment" means equipment operated by mechanical power, including a trencher, bulldozer, power shovel, auger, backhoe, scraper, drill, cable or pipe plow, and other equipment used to plow in or pull in cable or pipe.

(11) "Operator" means a person that operates an underground facility.

(12) "Secured facility" means a parcel of land used for commercial or industrial purposes that is surrounded entirely by a fence or other means of preventing access, including a fence with one or more gates that are locked at all times or monitored by an individual who can prevent unauthorized access.

(13) "Underground facility" means a line, cable, pipeline system, conduit, or structure that is located partially or totally underground and that is used to produce, store, convey, transmit, or distribute telecommunications, electricity, gas, water, sewage, steam, or liquids such as petroleum, petroleum products, or hazardous liquids.

(14) "Saturday notification" means a notice of intent

to excavate provided by an excavator to a notification center on a Saturday before 11:59 a.m.

(15) "Violation" means a violation of Section 251.151, 251.152, or 251.159.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.003. EXEMPTIONS. The following are not subject to this chapter as underground facilities:

(1) an aboveground or underground storage tank, sump, or impoundment or piping connected to an aboveground or underground storage tank, sump, or impoundment located in the same tract of land as the storage tank, sump, or impoundment;

(2) an underground facility operated by the owner of a secured facility and located entirely within the secured facility;

(3) an underground facility that serves only the owner of the underground facility or the owner's tenant and that is located solely on the owner's property;

(4) piping within a well bore;

(5) the portion of an exploration and production underground facility that is located within the boundaries of the oil or gas field from which the oil and gas is produced and that is not located in the boundaries of an established easement or right-of-way granted for the benefit of a governmental entity or a private entity if the easement or right-of-way is granted for a public purpose; or

(6) an underground facility that serves a cemetery and is located solely on the cemetery's property.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.004. APPLICATION TO CERTAIN CONTRACTORS AND STATE EMPLOYEES. (a) This chapter does not apply to a contractor working in the public right-of-way under a contract with the Texas Department of Transportation.

(b) Excavation by an employee of the Texas Department of Transportation on a segment of the state highway system is not subject to this chapter if the excavation is more than 10 feet from the right-of-way line.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 17.004(a), eff. Sept. 1, 2003.

Sec. 251.005. CONVERSION OF FACILITY OR OPERATOR. (a) An operator of an underground facility that is exempted under this subchapter may voluntarily convert that facility to a Class A underground facility by sending written communication from a competent authority of the operator to the corporation advising of the status change.

(b) An operator of a Class B underground facility may voluntarily convert to a Class A underground facility operator by sending written communication from a competent authority of the operator to the corporation advising of the status change.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.006. COMPLIANCE BY PERMIT HOLDERS. (a) The fact that a person has a legal permit, permission from the owner of the property or the owner's licensee, or an easement to conduct excavation operations does not affect the person's duty to comply with this chapter.

(b) Compliance with this chapter does not affect a person's responsibility to obtain a permit required by law.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.007. FACILITY ON COUNTY OR MUNICIPAL ROAD. This chapter does not affect a contractual or statutory right of a county or municipality to require an operator to relocate, replace, or repair its underground facility.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.008. EFFECT ON CIVIL REMEDIES. Except as otherwise specifically provided by this chapter, this chapter, including Section 251.201, does not affect any civil remedy for personal injury or for property damage, including any damage to an underground facility.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.009. PROVISION OF GENERAL INFORMATION. At least

once each calendar year, at intervals not exceeding 15 months, each Class A underground facility operator who conveys, transmits, or distributes by means of its underground facilities service directly to more than one million residential customers within this state shall provide all of its residential customers in this state general information about excavation activities covered by this chapter and the statewide toll-free telephone number established by the corporation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

SUBCHAPTER B. TEXAS UNDERGROUND FACILITY NOTIFICATION CORPORATION

Sec. 251.051. PURPOSE. The Texas Underground Facility Notification Corporation provides statewide notification services under this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.052. NONPROFIT CORPORATION. The corporation is a public nonprofit corporation and has all the powers and duties incident to a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), except that the corporation:

(1) may not make donations for the public welfare or for charitable, scientific, or educational purposes or in aid of war activities;

(2) may not merge or consolidate with another corporation;

(3) is not subject to voluntary or involuntary dissolution; and

(4) may not be placed in receivership.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.053. APPLICATION OF OPEN MEETINGS AND OPEN RECORDS LAWS. The corporation is subject to Chapters 551 and 552, Government Code, except that the corporation may not disseminate, make available, or otherwise distribute service area map data or information provided by an operator unless that action is necessary to perform the corporation's specific obligations under this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.054. EXPENSES AND LIABILITIES OF CORPORATION. (a) All expenses of the corporation shall be paid from income of the corporation.

(b) A liability created by the corporation is not a debt of this state, and the corporation may not secure a liability with funds or assets of this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.055. BOARD OF DIRECTORS. (a) The board of directors of the corporation is composed of the following 12 members appointed by the governor:

(1) six representatives of the general public;

(2) one representative of the gas industry;

(3) one representative of the telecommunications industry;

(4) one representative of the electric industry;

(5) one representative of cable television companies;

(6) one representative of municipalities; and

(7) one representative of persons who engage in excavation operations who are not also facility operators.

(b) Board membership is voluntary and a director is not entitled to receive compensation for serving on the board.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.056. TERMS. (a) Directors serve staggered three-year terms, with the terms of four directors expiring each August 31.

(b) A director serves until the director's successor is appointed by the governor and assumes office.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.057. DECLARATION OF BOARD VACANCY. (a) The board may declare a director's office vacant if the director ceases to be associated with the industry or an operator the director represents.

(b) Not later than the 60th day after the date a vacancy on the board is declared, the governor shall appoint a person to fill the vacancy for the remainder of the unexpired term.
Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.058. OFFICERS. (a) The board shall elect from among its directors a chair and vice chair.

(b) The chair and vice chair serve for a term of one year and may be reelected.
Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.059. ENTITLEMENT TO VOTE. The corporation's bylaws must provide that each director is entitled to one vote.
Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.060. DUTIES OF CORPORATION. The corporation shall develop and implement processes to:

(1) maintain a registration of:
(A) notification centers as provided by Section 251.101(a)(3);

(B) operators who elect to convert facilities to Class A facilities under Section 251.005(a); or

(C) operators who elect to become Class A underground facility operators under Section 251.005(b);

(2) establish minimum technical standards used by notification centers;

(3) establish a statewide toll-free telephone number to be used by excavators that incorporates the use of a call router system that routes calls to the notification centers on a pro rata basis;

(4) oversee the bid process and select the vendor for the statewide toll-free telephone number;

(5) oversee the bid process and select the vendor for the call router system;

(6) determine before May 1 of each year the cost-sharing between the notification centers of:

(A) the toll-free telephone number; and
(B) the call router system prescribed by Section 251.102(4);

(7) develop public service announcements to educate the public about statewide one-call notification and its availability;

(8) establish a format for information transfer among notification centers other than high speed data transmission, if appropriate;

(9) on a complaint concerning charges, investigate and determine appropriate charges;

(10) recommend a civil penalty against a notification center that does not meet the requirements of this chapter of not less than \$1,000 or more than \$5,000 for each violation;

(11) refer the recommended penalty to the attorney general, who shall institute a suit in a court of competent jurisdiction to recover the penalty;

(12) assist in dispute resolution among notification centers or between a notification center and an operator;

(13) assist any operator who encounters difficulty in joining a notification center; and

(14) review and study design standards for the placement of underground facilities throughout this state.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.061. CONTRACT FOR STATEWIDE TOLL-FREE NUMBER AND CALL ROUTER SYSTEM. (a) The corporation shall solicit proposals for the contract to establish and operate the statewide toll-free telephone number and the call router system by using a request for proposals process that includes specifications that have been approved by the board of directors in accordance with this chapter.

(b) The corporation is not required to award the contract to the lowest offeror if the terms of another proposal would result in a lower annual cost and are more advantageous to the corporation and its members. The corporation may reject all proposals if the corporation finds that none of the proposals is acceptable.

(c) After the proposals are opened, each document relating to the consideration of a proposal or the award of a contract and the text of the contract are considered books and records of the

corporation for the purposes of Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, Vernon's Texas Civil Statutes).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.062. FEES AND RATES. (a) Except as provided by this section, the corporation may not, for any reason, impose an assessment, fee, or other charge, including a charge for inputting data, against an operator.

(b) Before January 15 of each year, a Class A facility operator shall pay to the corporation a fee of \$50 for services to be performed by the corporation during that calendar year. A fee for a part of a year may not be prorated.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

SUBCHAPTER C. NOTIFICATION CENTERS

Sec. 251.101. NOTIFICATION CENTER. (a) A notification center is a legal entity that:

(1) operates a notification system capable of serving excavators and operators statewide;

(2) is created to:

(A) receive notification of an intent to excavate and of damage to an underground facility and disseminate that information to member operators that may be affected by the excavation or damage and to other notification centers operating in this state; and

(B) receive notification of an extraordinary circumstance and disseminate that information to member operators and to other notification centers operating in this state; and

(3) registers the following information with the corporation:

(A) its name, address, and telephone number;

(B) the name of a contact person;

(C) a statement of compliance with Section 251.104; and

(D) a listing of the counties in which it operates.

(b) A notification center operating on September 1, 1997, may continue to operate if the notification center complies with this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.102. GENERAL DUTIES OF NOTIFICATION CENTER. A notification center shall:

(1) operate 24 hours a day every day of the year;

(2) have the capability to receive emergency information 24 hours a day from excavators and disseminate the information as soon as it is received to the appropriate operators and to all registered and affected notification centers operating in this state;

(3) have the capacity to receive extraordinary circumstance information 24 hours a day from operators and disseminate the information as soon as it is received to all registered and affected notification centers;

(4) submit to the corporation, not later than May 15 of each year, a pro rata share of the expense, as established by the corporation, of the statewide toll-free telephone number and the call router;

(5) provide, on request of an excavator, a contact name and telephone number of a representative of the operator for special circumstances; and

(6) have personnel capable of assisting Spanish-speaking customers.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.103. RECORDS. (a) A notification center shall maintain for not less than four years a record to document:

(1) the receipt of a notice of:

(A) intent to excavate;

(B) damage to an underground facility;

(C) an emergency excavation; and

(D) an extraordinary circumstance;

(2) the information the excavator is required to provide to the notification center under this chapter;

(3) contact with operators and other notification

centers; and

(4) the information the notification center provided to the excavator.

(b) A notification center may not destroy records that relate to any matter that is involved in litigation if the notification center is placed on notice that the litigation has not been finally resolved.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.104. INSURANCE. A notification center shall, at all times, maintain a minimum of \$5 million professional liability and errors and omissions insurance to cover duties prescribed by this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.105. FEES AND CHARGES. (a) A notification center that notifies another notification center under Section 251.102(2) or (3) or Section 251.153(b) shall recover an amount not exceeding the actual cost of providing the notice from the notification center receiving the notice.

(b) The notification center shall charge a Class A underground facility operator not more than \$1.25 for a call made to the system that affects the operator. The board may increase or decrease the maximum charge only on an affirmative vote of at least two-thirds of the total number of votes entitled to be cast. A notification center may petition the corporation for an increase in the maximum charge and is entitled to the increase on proof that costs exceed the maximum charge.

(c) The notification center may not charge an operator any additional fee such as an initiation fee, a membership fee, or a set-up fee.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.106. PAYMENTS TO CORPORATION. Each time a notification center receives a call from an excavator under Section 251.151, the notification center shall pay the corporation five cents. The corporation shall waive this charge for the remainder of any year in which the corporation receives \$250,000 under this section.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 652, Sec. 1, eff. Sept. 1, 2001.

Sec. 251.107. DUTY TO PARTICIPATE IN NOTIFICATION CENTER. (a) Each operator of a Class A underground facility, including a political subdivision of this state, shall participate in a notification center as a condition of doing business in this state.

(b) Each operator of a Class A underground facility shall provide to the notification center:

(1) maps or grid locations or other identifiers determined by the operator indicating the location of the operator's underground facilities;

(2) the name and telephone number of a contact person or persons; and

(3) at least quarterly but, if possible, as those changes occur, information relating to each change in the operator's maps or grid locations or other identifiers or in the person or persons designated as the operator's contact person or persons.

(c) The notification center may not require an operator to conduct a survey of the operator's underground facilities or alter the operator's existing signage.

(d) A notification center may not disseminate, make available, or otherwise distribute maps or information provided by an operator unless that action is necessary to perform the notification center's specific obligations under this chapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

SUBCHAPTER D. REQUIREMENTS RELATING TO EXCAVATION

Sec. 251.151. DUTY OF AN EXCAVATOR. (a) Except as provided by Sections 251.155 and 251.156, a person who intends to excavate shall notify a notification center not earlier than the 14th day before the date the excavation is to begin or later than the 48th hour before the time the excavation is to begin, excluding Saturdays, Sundays, and legal holidays.

(b) Notwithstanding Subsection (a), if an excavator makes a Saturday notification, the excavator may begin the excavation the following Tuesday at 11:59 a.m. unless the intervening Monday is a holiday. If the intervening Monday is a holiday, the excavator may begin the excavation the following Wednesday at 11:59 a.m.

(c) To have a representative present during the excavation, the operator shall contact the excavator and advise the excavator of the operator's intent to be present during excavation and confirm the start time of the excavation. If the excavator wants to change the start time, the excavator shall notify the operator to set a mutually agreed-to time to begin the excavation.
Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.152. INFORMATION INCLUDED IN NOTICE. The excavator shall include in the notice required under Section 251.151:

- (1) the name of the person serving the notice;
- (2) the location of the proposed area of excavation, including:
 - (A) the street address, if available, and the location of the excavation at the street address; or
 - (B) if there is no street address, an accurate description of the excavation area using any available designations such as the closest street, road, or intersection;
- (3) the name, address, and telephone number of the excavator or the excavator's company;
- (4) the excavator's field telephone number, if one is available;
- (5) a telephone facsimile number, e-mail address, or another electronic number or address approved by the board to which an operator may send the notification required by Section 251.157(d);
- (6) the starting date and time and the anticipated completion date of excavation; and
- (7) a statement as to whether explosives will be used.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 858, Sec. 1, eff. Nov. 1, 2001.

Sec. 251.153. DUTY OF NOTIFICATION CENTER. (a) At the time an excavator provides a notification center with the excavator's intent to excavate, the notification center shall advise the excavator that water, slurry, and sewage underground facilities in the area of the proposed excavation may not receive information concerning the excavator's proposed excavation.

(b) Not later than two hours after the time the notification center receives a notice of intent to excavate from an excavator, the notification center shall provide to every other affected notification center operating in this state the information required by Section 251.152 and received from the excavator. The notification center shall provide the information by the use of high speed data transmission.

(c) Not later than two hours after the time the notification center receives a notice of intent to excavate from an excavator or from a different notification center, the notification center shall notify each member operator that may have an underground facility in the vicinity of the proposed excavation operation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.154. NOTIFICATION BY AN EXCAVATOR. (a) A person required to provide notice under this chapter is considered to have provided the notice when the person delivers the required information and a notification center receives that information within the time limits prescribed by this chapter.

(b) A person may deliver information required under this chapter by any appropriate method, including the use of any electronic means of data transfer.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.155. EXCEPTION IN CASE OF EMERGENCY. (a) Section 251.151 does not apply to an emergency excavation that is necessary to respond to a situation that endangers life, health, or property or a situation in which the public need for uninterrupted service and immediate reestablishment of service if service is interrupted compels immediate action.

(b) The excavator may begin emergency excavation under Subsection (a) immediately and shall take reasonable precautions to

protect underground facilities.

(c) When an emergency exists, the excavator shall notify a notification center as promptly as reasonably possible.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.156. OTHER EXCEPTIONS TO DUTY OF EXCAVATORS. (a) Section 251.151 does not apply to:

(1) interment operations of a cemetery;

(2) operations at a secured facility if:

(A) the excavator operates each underground facility at the secured facility, other than those within a third-party underground facility easement or right-of-way; and

(B) the excavation activity is not within a third-party underground facility or right-of-way;

(3) routine railroad maintenance within 15 feet of either side of the midline of the track if the maintenance will not disturb the ground at a depth of more than 18 inches;

(4) activities performed on private property in connection with agricultural operations;

(5) operations associated with the exploration or production of oil or gas if the operations are not conducted within an underground facility easement or right-of-way;

(6) excavations by or for a person that:

(A) owns, leases, or owns a mineral leasehold interest in the real property on which the excavation occurs; and

(B) operates all underground facilities located at the excavation site; or

(7) routine maintenance by a county employee on a county road right-of-way to a depth of not more than 24 inches.

(b) If a person excepted under Subsection (a)(4) elects to comply with this chapter and the operator fails to comply with this chapter, the person is not liable to the underground facility owner for damages to the underground facility.

(c) In this section:

(1) "Agricultural operations" means activities performed on land and described by Section 23.51(2), Tax Code.

(2) "Routine maintenance" means operations, not to exceed 24 inches in depth, within a road or drainage ditch involving grading and removal or replacement of pavement and structures.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.157. DUTY OF OPERATOR TO PERSON EXCAVATING. (a) Each Class A underground facility operator contacted by the notification system shall mark the approximate location of its underground facilities at or near the site of the proposed excavation if the operator believes that marking the location is necessary. The operator shall mark the location not later than:

(1) the 48th hour after the time the excavator gives to the notification system notice of intent to excavate, excluding Saturdays, Sundays, and legal holidays;

(2) 11:59 a.m. on the Tuesday following a Saturday notification unless the intervening Monday is a holiday;

(3) 11:59 a.m. on the Wednesday following a Saturday notification if the intervening Monday is a holiday; or

(4) a time agreed to by the operator and the excavator.

(b) An operator shall refer to the American Public Works Association color coding standards when marking.

(c) An excavator who has fully complied with this chapter may not be liable for damage to an underground facility that was not marked in accordance with this chapter.

(d) Not later than the 48th hour after the time the excavator gives to the notification center notice of intent to excavate, an operator contacted by the notification center shall notify the excavator of the operator's plans to not mark the proximate location of an underground facility at or near the site of the proposed excavation. The operator must provide the notification by e-mail or facsimile or by another verifiable electronic method approved by the board.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 858, Sec. 2, eff. Nov. 1, 2001.

Sec. 251.158. DUTY OF OPERATOR IN EVENT OF AN EXTRAORDINARY CIRCUMSTANCE. (a) The deadline prescribed by Section 251.157(a) does not apply if the operator experiences an extraordinary circumstance due to an act of God, including a tornado, a hurricane,

an ice storm, or a severe flood, or a war, riot, work stoppage, or strike that limits personnel or resources needed to fulfill the operator's obligations under this chapter.

(b) The operator shall notify a notification center of the extraordinary circumstance and shall include in the notification:

(1) the nature and location of the extraordinary circumstance;

(2) the expected duration of the situation and the approximate time at which the operator will be able to resume location request activities; and

(3) the name and telephone number of the individual that the notification system can contact if there is an emergency that requires the operator's immediate attention.

(c) In addition to the notification required by Subsection (b), the operator shall also notify each excavator that has a pending location request in the location where an extraordinary circumstance is being experienced and shall include in the notification:

(1) the fact that the operator is experiencing an extraordinary circumstance; and

(2) the approximate time at which the operator will mark the requested location.

(d) A notification center shall inform each excavator notifying the system under Section 251.151 that the operator's location request activities are suspended until the extraordinary circumstance has discontinued or has been corrected within the affected location.

(e) An excavator is relieved from all provisions of this chapter until the operator notifies the notification center that the operator has resumed location request activities within the affected location.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.159. EXCAVATION DAMAGE. (a) If an excavation operation results in damage to an underground facility, the excavator shall immediately contact the underground facility operator to report the damage.

(b) If the excavator is not certain of the operator's identity, the excavator shall contact a notification center to report the damage, and the notification center shall immediately notify all other affected notification centers. Immediately on receiving notification, each notification center shall contact each member operator that has underground facilities in or near the area in which the damage occurred.

(c) Only the operator or a person authorized by the operator may perform repairs, and the repairs must be made in an expeditious manner.

(d) An excavator shall delay backfilling in the immediate area of the damage until the damage is reported to the operator and a repair schedule is mutually agreed to by the excavator and the operator.

(e) If damage endangers life, health, or property because of the presence of flammable material, the excavator shall keep sources of ignition away.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

SUBCHAPTER E. PENALTIES

Sec. 251.201. CIVIL PENALTY OR WARNING LETTER. (a) An excavator that violates Section 251.151, 251.152, or 251.159 is liable for a civil penalty of not less than \$500 or more than \$1,000. If a county attorney or district attorney decides not to bring an action to recover the civil penalty, the board of directors of the corporation may, in accordance with Section 251.2011, give the excavator a warning letter and require the excavator to attend a safety training course approved by the board. The county attorney or district attorney shall notify the board of its decision.

(b) If it is found at the trial on a civil penalty that the excavator has violated this chapter and has been assessed a penalty under this section or has received a warning letter from the board one other time before the first anniversary of the date of the most recent violation, the excavator is liable for a civil penalty of not less than \$1,000 or more than \$2,000.

(c) If it is found at the trial on a civil penalty that the excavator has violated this chapter and has been assessed a penalty under this section at least two other times before the first

anniversary of the date of the most recent violation, or has been assessed a penalty at least one other time before the first anniversary of the date of the most recent violation and has received a warning letter from the board during that period, the excavator is liable for a civil penalty of not less than \$2,000 or more than \$5,000.

(d) In assessing the civil penalty the court shall consider the actual damage to the facility, the effect of the excavator's actions on the public health and safety, whether the violation was a wilful act, and any good faith of the excavator in attempting to achieve compliance.

(e) Venue for a proceeding to collect a civil penalty under this section is in the county in which:

- (1) all or part of the alleged violation occurred;
- (2) the defendant has its principal place of business in this state; or
- (3) the defendant resides, if in this state.

(f) The appropriate county attorney or criminal district attorney shall bring the action to recover the civil penalty.

(g) This section does not apply to a residential property owner excavating on the property owner's own residential lot.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 652, Sec. 2, eff. Sept. 1, 2001.

Sec. 251.201. WARNING LETTER AND SAFETY TRAINING COURSE. (a) The board of directors of the corporation shall establish a procedure to ensure that the board verifies that an excavator has violated Section 251.151, 251.152, or 251.159 before giving the excavator a warning letter and requiring the excavator to attend a safety training course under Section 251.201.

(b) The board shall solicit and consider advice and recommendations from excavators in establishing or approving a safety training course that an excavator may be required to attend under Section 251.201.

Added by Acts 2001, 77th Leg., ch. 652, Sec. 3, eff. Sept. 1, 2001.

Sec. 251.202. ALLOCATION OF CIVIL PENALTY. (a) Fifty percent of the civil penalty collected under Section 251.201 shall be transferred to the county treasurer of the county prosecuting the action and 50 percent of the civil penalty collected under Section 251.201 shall be transferred to the corporation.

(b) The county treasurer shall deposit all money received under this section in the county road and bridge fund.

(c) The corporation shall use the money received under this section to develop public service announcements to educate the public about the statewide one-call notification system and its availability as prescribed by Section 251.060(7).

Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.

Sec. 251.203. CRIMINAL PENALTY FOR REMOVAL, DAMAGE, OR CONCEALMENT OF MARKER OR SIGN. (a) A person commits an offense if:

(1) the person without authorization from the owner or operator of the facility intentionally removes, damages, or conceals a marker or sign giving information about the location of a Class A underground facility; and

(2) the marker or sign gives notice of the penalty for intentional removal, damage, or concealment of the marker or sign.

(b) An offense under this section is a Class B misdemeanor.
Added by Acts 1999, 76th Leg., ch. 62, Sec. 18.17(a), eff. Sept. 1, 1999.