

Tenn. Code Ann. Title 65, Chapter 31
Underground Utility Damage Prevention Act
Current through 2019 Legislative Session

§ 65-31-101. Short title

This chapter may be cited as the “Underground Utility Damage Prevention Act.”

§ 65-31-102. Definitions

As used in this chapter, unless the context otherwise requires:

- (1) “Agricultural purposes,” for purposes of this chapter only, includes surface activities, such as plowing, planting, and combining, but does not include blasting, setting drainage tiles, subsoiling, or other subsurface activities;
- (2) “Blasting” means the use of an explosive device for the excavation of earth, rock, or other material or the demolition of a structure;
- (3) “Board” means the underground utility damage enforcement board, created by § 65-31-114;
- (4) “Calendar day” means a twenty-four (24) hour period beginning with the date and time that a notification to excavate or demolish is to begin, including Monday through Sunday and all holidays;
- (5) “Contract locator” means any person contracted with an operator, or operating on behalf of an operator, specifically to determine and mark the approximate location of the operator’s utility lines that exist within the area specified by a notice served on the one-call service;
- (6) “Damage” includes the substantial weakening of structural or lateral support of an underground utility, penetration or destruction of any protective coating, housing or other protective device of an underground utility, the partial or complete severance of an underground utility and rendering any underground utility inaccessible;
- (7) “Demolish” or “demolition” means any operation by which a structure or mass of material is wrecked, razed, rendered, moved or removed by means of any tools, equipment, or discharge of explosives;
- (8) “Design locate request” means a communication to the one-call service in which a request for locating existing utility facilities for predesign or advance planning purposes is made;
- (9) “Excavate” or “excavation”:
 - (A) Means an operation for the purpose of the movement, placement, or removal of earth, rock, or other materials in or on the ground by use of mechanized equipment or by discharge of explosives, and includes augering, backfilling, blasting, boring, digging, ditching, drilling, grading, pile-driving, plowing-in, pulling-in, ripping, scraping, sub-soiling, trenching, and tunneling; and
 - (B) Does not include:

- (i) Pavement milling or pavement repair that does not exceed the depth of the existing base stone and pavement;
 - (ii) Routine railroad maintenance activities, including removal and replacement of base material up to twenty-four inches (24") below the flow line of the ditch or ground surface of the railroad right-of-way adjacent to the existing track structure if the work is conducted by railroad employees or railroad contractors and is carried out with reasonable care so as to protect any installed underground facilities placed in the railroad right-of-way by agreement with the railroad;
 - (iii) Routine road maintenance activities; and
 - (iv) The tilling of soil for agricultural purposes or the digging of holes for fence posts on private property in any area that is not located within a recorded easement of an operator or that is not located within one hundred feet (100') of the edge of the pavement of a street or highway;
- (10) "Excavator" means any person who engages in activities described in subdivisions (A) and (B) in the definition of "excavate" contained in this section;
- (11) "Executive committee" means the executive committee created by § 65-31-114(f);
- (12) "Impending emergency" means circumstances potentially dangerous to life, health, property, the environment or the repair or restoration of service, which would likely develop into an emergency, as defined in § 65-31-109, if excavation is not initiated within seventy-two (72) hours;
- (13) "Location" means the proposed area for which digging or excavating is scheduled within three (3) to ten (10) working days, such area not to exceed two thousand feet (2,000') in length unless an excavator and an operator or an operator's designated representative, such as a one-call service, agree to a larger area;
- (14) "Mechanized equipment" means equipment operated by means of mechanical power including trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows and other equipment used for plowing-in or pulling-in cable or pipe;
- (15) "One-Call Service" means a telephone notification service described in § 65-31-107 that provides services to its members for the purposes of receiving and distributing notification regarding planned excavations or demolitions that are required under this chapter;
- (16) "Operator" means any person who owns or operates a utility;
- (17) "Person" means any individual; any corporation, partnership, association, or any other entity organized under the laws of any state; any state; any subdivision or instrumentality of a state; and any employee, agent, or legal representative thereof;
- (18) "Proposed area of excavation" means a general surface location which excavators are to furnish to operators of underground utilities or to a one-call service as defined in § 65-31-106. The proposed area of excavation does not constitute a specified depth for the purpose of complying with this chapter;
- (19) "Routine road maintenance activities":
- (A) Means activities carried out by or for those responsible for publicly-maintained roadways

if the activities:

- (i) Occur entirely within the right-of-way of a public road, street, or highway;
 - (ii) Are carried out with reasonable care so as to protect any utility-owned facilities and laterals placed in the right-of-way;
 - (iii) Are carried out within the limits of any original excavation on the traveled way, shoulders, or drainage ditches of a public road, street, or highway, and do not exceed eighteen inches (18") in depth below the flow line of the ditch or the grade existing prior to the activities; and
 - (iv) If involving the replacement of existing structures at a depth greater than eighteen inches (18"), replace those existing structures in their previous locations and at their previous depths; and
- (B) Does not include work on a roadway done pursuant to a contract awarded by a state or local government through a bid process for which plan drawings have been developed in advance;

(20) "Utility":

- (A) Means any line, system, or facility used for producing, storing, conveying, transmitting, or distributing communications, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam, sewerage, and other underground facilities; and
- (B) Does not include any railroad, the Tennessee department of transportation, or any natural flowing runoff systems;

(21) "Willful noncompliance" means the intentional refusal or failure to perform, or comply with, a duty created or imposed by this chapter or by rules promulgated pursuant to this chapter; and

(22) "Working day" means every day, except Saturday, Sunday, and national and legal state holidays. For purposes of measuring any period of time that requires notice under this chapter, a working day shall commence at the time the written notice or telephone call is received and shall expire at the same time on the next working day.

§ 65-31-103. Licenses and permits; liability

A permit issued pursuant to law authorizing excavation or demolition operations shall not be deemed to relieve a person from the responsibility for complying with this chapter.

§ 65-31-104. Excavations; DIG certificate

(a) Except as provided in § 65-31-109, no person may excavate in a street, highway, public space, a private easement of an operator or within one hundred feet (100') of the edge of the pavement of a street or highway, or demolish a building, without giving the notice required by § 65-31-106 in the manner prescribed by such section.

(b) A general DIG certificate shall be issued for agricultural land as defined in § 67-5-1004 that lies outside a street, highway, public space or a private easement of an operator but within one hundred feet (100') of the edge of the pavement of a street or highway when no utilities are located within that area. The general certificate shall be valid until title to the land is transferred or until a utility line is located within the area.

§ 65-31-105. Filing requirements

- (a) Each operator, except operators participating in a one-call service, having underground facilities in a county, including those facilities that have been abandoned in place by the operator but not yet physically removed, shall file a notice with the register of deeds of the county that states that the operator has underground utilities located in that county, the name of the operator and the name, title, address, telephone number and electronic mail (e-mail address), if the representative has an e-mail address, of its representative designated to receive the written, telephonic or e-mail notice of intent required by § 65-31-106. It is only necessary that such notice shall consist of the fact that the operator possesses underground facilities in the listed counties. It is not necessary that the operator list the exact physical location of each and every item of its underground facilities in such counties.
- (b) Changes in any of the information contained in the list filed under subsection (a) shall be filed by the operator with the register of deeds of the county, or the register of deeds of each county in which these utilities are located, within thirty (30) working days of the change.
- (c) A filing fee as determined by the register of deeds may accompany the filing. These filings shall be filed and an index shall be maintained and kept up to date by the register's office.
- (d) The register of deeds shall, within one (1) working day, furnish to the party requesting such information, in writing when requested, a list of all operators having filed notices pursuant to subsection (a) and all other information regarding each such operator that has been filed with the register of deeds in accordance with subsection (a). When submitted in writing by the register of deeds, the information shall also include the name of the requesting party, and the date and time the register of deeds received the request from the requesting party.
- (e) After March 27, 1978, operators shall maintain records and drawings of all changes and additions to its underground facilities.
- (f) All underground utilities owned by an operator that are installed on or after January 1, 2017, shall be installed in a manner that will make those underground utilities locatable using a generally accepted electronic locating method.

§ 65-31-106. Notice

- (a) Except as provided in § 65-31-109, before beginning any excavation or demolition operation described in § 65-31-104, other than an impending emergency as defined in § 65-31-102, each person responsible for such excavation or demolition shall serve written, telephonic or e-mail notice of intent to excavate or demolish at least three (3) working days prior to the actual date of excavation or demolition, but not more than ten (10) full working days prior to such time, unless a different period has been agreed to in writing by the person responsible for the excavation or demolition and the operator or designated representative. Should a period of time of fifteen (15) calendar days from the actual date specified to start excavation or demolition expire without the excavation or demolition being completed, then the person responsible for such excavation or demolition shall serve an additional written, telephonic or e-mail notice of intent to excavate or demolish at least three (3) working days prior to the expiration of time on the fifteenth calendar day.

(1) If the proposed area of excavation or demolition is not served by the one-call service as provided in § 65-31-107, then the notice required by subsection (a) shall be served on each operator which has filed a list required by § 65-31-105 indicating that it has underground utilities located in the county where the excavation or demolition is to occur; or

(2) If the proposed area of excavation or demolition is served by the one-call service, as provided for in § 65-31-107, the notice required by subsection (a) shall be served on such one-call service; provided, that where demolition of a building is proposed, each affected operator shall be given reasonable time to remove or protect its utilities before demolition of the building begins.

(b) The written, telephonic or e-mail notice required by subsection (a) shall contain the name, address, telephone number and e-mail address of the person filing the notice of intent and, if different, the person responsible for the excavation or demolition, the starting date, the anticipated duration of the excavation or demolition, the type of excavation or demolition operation to be conducted, the specific location of the proposed excavation or demolition, and whether or not explosives are anticipated to be used. The location of the proposed area of excavation or demolition shall be designated by the person responsible for the excavation or demolition by marking such area with “safety white” color-coded stakes or white paint, unless:

(1) The operator or its agent can determine the precise location of the proposed area of excavation based solely on the street address from a one-call service locate ticket because of the size of the property;

(2) The operator or its agent can determine the precise location of the proposed area of excavation from a one-call service locate ticket that references a driveway or other easily identifiable point on the property and that identifies the property by street address or block and lot number;

(3) The operator or its agent can determine the precise location of the proposed area of excavation from a one-call service locate ticket that identifies the property as being located on a street or road between two designed intersections of the street or road and two cross streets or roads when a street address or block and lot number is unavailable or does not apply; or

(4) The person responsible for the excavation or demolition and all operators with underground facilities in the proposed area of excavation have had a meeting prior to the beginning of the excavation or demolition for the exchange of information on the location of the proposed excavation or demolition.

(c) If the notification required by this section is made by telephone or e-mail, an adequate record of such notification shall be maintained by each notified operator or one-call service to document compliance with the requirements of this chapter, and a copy of this record shall be furnished by any operator or one-call service to the person giving notice of intent to excavate or demolish, when so requested by that person.

(d) Except as provided in § 65-31-109, before beginning any excavation or demolition within one hundred feet (100') of the edge of the pavement of a street or highway when that area lies outside a street, highway, public space or a private easement of an operator, an excavator shall serve notice of the excavation or demolition at least three (3) working days before the actual date of excavation or demolition as set forth in this section. If after receiving proper notification as required in this section, an operator fails to locate its facilities within three (3) working days in the manner required by § 65-31-108, the excavator shall be authorized to proceed with the excavation. If an operator fails to locate its facilities within three (3) working days in the manner required by § 65-31-108 after receiving proper

notification as required by this section and an underground facility of the operator is damaged by an excavator as a result of the operator's failure to discharge such duty, then the excavator shall not be liable for the damage; provided, that, if the excavator observes clear evidence of the presence of an unmarked utility in the area of the proposed excavation, the excavator shall exercise reasonable care to avoid damage to the utility that may be caused by the excavation, and the excavator shall be liable for damages arising from its failure to use reasonable care in such circumstances.

§ 65-31-107. Operator associations; one-call service

(a) Subject to the requirements of subsection (b), operators may form and operate a one-call service providing for mutual receipt of notifications of excavation or demolition operations, pursuant to § 65-31-106, in a defined geographical area. Any operator that suffers damage as a result of not participating in a one-call service providing for receipt of the notification of excavation or demolition operations in a defined geographic area, pursuant to § 65-31-106, waives the right to recover damages to the operator's underground utilities from the excavator; provided, that the provisions of this chapter were met by the excavator.

(b) (1) All operators are required to join the one-call service and utilize the services of the notification center as follows:

(A) Operators that are members of the existing one-call service on May 20, 2015, shall remain members;

(B) Operators with more than fifty thousand (50,000) customers served underground or one thousand (1,000) miles of facilities underground, who are not members, shall join the one-call service no later than January 1, 2016;

(C) Operators with more than twenty-five thousand (25,000) customers served underground or five hundred (500) miles of facilities underground, who are not members, shall join the one-call service no later than January 1, 2017;

(D) All operators that do not meet the thresholds described in subdivision (b)(1)(A), (b)(1)(B), or (b)(1)(C) shall join the one-call service no later than January 1, 2018; and

(E) Failure of an operator as described in this subdivision (b)(1) to join the one-call service and utilize the services of the notification center in accordance with this section is a violation of this chapter and subjects the operator to the fines and penalties described in § 65-31-112.

(2) This subsection (b) shall not apply to operators whose total amount of underground facilities constitutes less than twenty percent (20%) of their total utility plant in service.

(c) There shall be only one (1) one-call service for this state.

(d) The one-call service shall provide for a proportional method of apportioning the cost of operating the notification center among its members.

(e) The one-call service shall provide training for those who have violated this chapter, unless otherwise determined by the board.

§ 65-31-108. Marking excavation and demolition site

- (a)(1) (A) Each operator notified in accordance with § 65-31-106 shall stake or otherwise mark, prior to the noticed time of the proposed excavation or demolition, the surface of the tract or parcel of land affected by the excavation or demolition to indicate the approximate location of all its underground utilities that may be damaged as a result of the excavation or demolition. The operator shall not be required to indicate the depth of any such utility, but only the approximate ground location under which the utility is located. Such staking or other marking shall utilize the following color code:
- (i) SAFETY RED shall be used to mark electric power distribution and transmission facilities;
 - (ii) HIGH VISIBILITY SAFETY YELLOW shall be used to mark gas and oil distribution and transmission facilities;
 - (iii) SAFETY ALERT ORANGE shall be used to mark telephone, telegraph, cable television, video, and other telecommunications facilities;
 - (iv) SAFETY PRECAUTION BLUE shall be used to mark water systems facilities;
 - (v) SAFETY GREEN shall be used to mark sewer systems facilities; and
 - (vi) SAFETY PURPLE shall be used to mark reclaimed water.
- (B) In the event more than one (1) operator uses the same color code under subdivision (a)(1)(A), each operator using the same color shall include a distinctive marking, such as the initials of the operator's name or other marking, that appropriately identifies each operator and sufficiently distinguishes each operator's marking from any other operator authorized to use the same color under subdivision (a)(1)(A).
- (2) Notwithstanding subdivision (a)(1), the underground utility damage enforcement board may establish, by rule, best practices for uniform color code and marking consistent with this part. The rules may include stakes, flags, non-permanent paint, or other low impact marking practices. Rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.
- (3) Notwithstanding any law to the contrary, marking methods established by subdivisions (a)(1) and (2) shall be the methods of marking underground facilities in this state.
- (b) Each operator participating in a one-call service that has been notified in accordance with § 65-31-106 shall notify the one-call service that the operator has marked the approximate location of all of its underground utilities as required by this section or that the operator has no underground utilities in the proposed area of excavation. The operator shall provide this notice to the one-call service in accordance with procedures adopted by the one-call service for this notification. This notice shall fulfill the operator's obligation set forth in subsection (e). When each operator notified in accordance with § 65-31-106 has notified the one-call service that its underground utilities in the proposed area of excavation have been marked or that the operator has no underground utilities in the proposed area of excavation, the person responsible for the excavation or demolition may immediately proceed with the excavation or demolition, notwithstanding the minimum three-working-day notice requirement before excavation or demolition can begin set forth in § 65-31-106(a).
- (c) An excavator shall exercise reasonable care to avoid damage caused by an excavation or demolition within the safety zone around the marked location of the underground utilities. For the purpose of this section, "safety zone" means a strip of land at least four feet (4') wide, but not wider than the width of the utility plus two feet (2') on either side of the utility.

(d) If, upon arrival at the site of a proposed excavation, the excavator observes clear evidence of the presence of an unmarked utility in the area of the proposed excavation, the excavator shall not begin excavating until an additional notice is made to the one-call. The excavator may then proceed, exercising reasonable care to avoid damage to the utility which may be caused by such excavation or demolition.

(e) If no facilities exist in the tract or parcel of land, the operators shall make a reasonable effort to so advise the individual who initiated the request, provided the request is received in accordance with § 65-31-106.

(f) The approximate location of underground utilities does not include a designation of location as to depth below the surface of the ground. Excavators must use reasonable care to ascertain for themselves the exact depth of the underground utilities below the surface of the ground. If, after so ascertaining, the excavator learns that its excavation or demolition is likely to interfere with the operation of the underground utility facilities, it must again notify the affected operator of such underground utility facilities and reasonably cooperate with the operator of the underground utility facilities to conduct its excavation or demolition in such a way that the operations of the underground utility facilities are not disturbed or the affected underground utility facilities are placed out of the way of the proposed excavation or demolition.

(g) Each operator notified in accordance with § 65-31-109, shall within two (2) hours stake or otherwise mark, utilizing the color code set forth in subsection (a), the surface of the tract or parcel of land affected by the excavation or demolition to indicate the approximate location of all its underground utilities that may be damaged as a result of the excavation or demolition.

(h) Each operator notified of an impending emergency, as defined in § 65-31-102, shall stake or otherwise mark, prior to the noticed time of the proposed excavation or demolition, utilizing the color code set forth in subsection (a), the surface of the tract or parcel of land affected by the excavation or demolition to indicate the approximate location of all its underground utilities that may be damaged as a result of the excavation or demolition.

(i) Any contract locator acting on behalf of an operator is subject to this section.

§ 65-31-109. Notice waiver; emergencies

(a) Compliance with the notice requirements of § 65-31-106 is not required of any person responsible for emergency excavation or demolition, for repair or restoration of service or to ameliorate an imminent danger to life, health, or property; provided, that such person gives, as soon as practicable, oral notice of the emergency excavation or demolition to each operator having underground utilities located in the area or to a one-call service provided for in § 65-31-107, that serves an operator, where such excavation or demolition is to be performed and requests emergency assistance from each operator so identified in locating and providing immediate protection to the operator's underground utilities. "Emergency" means an imminent danger to life, health, or property, whenever there is a substantial likelihood that loss of life, health or property will result before the procedures under §§ 65-31-106 and 65-31-108 can be fully complied with.

(b) Any excavator providing a misrepresentation of an emergency excavation as stated in subsection

(a), or an “impending emergency,” as defined in § 65-31-102, shall be subject to the penalties stated in § 65-31-112.

(c) For the purposes of this section, repair or replacement of an existing traffic control device at its existing location and existing depth shall be considered an emergency, and compliance with the notice requirements of this section and § 65-31-106 shall not be required of any local or state government responding to the emergency repair or replacement of a traffic control device.

§ 65-31-110. Damage avoidance; precautions

In addition to the notification requirements of § 65-31-106, each person responsible for any excavation or demolition operation designated in § 65-31-104 shall:

- (1) Plan the excavation or demolition to avoid damage to and minimize interference with underground utilities in and near the construction area;
- (2) Maintain a clearance between an underground utility and the cutting edge or point of any mechanized equipment in accordance with § 65-31-108(b) and (d), taking into account the known limit of control of such cutting edge or point, as may be reasonably necessary to avoid damage to such utility;
- (3) Provide such support and protection for underground utilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such utilities; and
- (4) Each utility, regardless of the use or material, shall be installed with sufficient clearance to permit the maintenance of existing utilities, and to protect against damage to existing utilities.

§ 65-31-111. Damage; notice

(a) Except as provided by subsection (b), each person responsible for any excavation or demolition operation described in § 65-31-104 that results in any damage to an underground utility shall, immediately upon discovery of such damage, notify the operator of such utility of the location and nature of the damage and shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of such utility.

(b) Each person responsible for any excavation or demolition operation described in § 65-31-104 that results in damage to an underground utility permitting the escape of any flammable, toxic, or corrosive gas or liquid shall, immediately upon discovery of such damage, notify the operator, police and fire departments, and take any other action as may be reasonably necessary to protect persons and property and to minimize the hazards until arrival of the operator’s personnel or police and fire departments.

(c) During initial excavation, if an underground utility is found to be unsound due to deterioration, the person responsible for excavation shall immediately notify the utility company involved and shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of such utility.

(d) The financial impact of all damages to underground utilities shall be calculated using generally accepted accounting principles (GAAP).

(e) Each operator whose utility facilities have been damaged shall report the incident using the Damage Information Reporting Tool (DIRT) utilized by the Common Ground Alliance.

§ 65-31-112. Civil and criminal violations and penalties

(a) Any person who violates this chapter, or the rules promulgated under this chapter, shall be subject to a civil penalty as follows:

(1) For a first violation, the violator shall complete a course of training concerning compliance with this chapter as determined by the executive committee;

(2) For a second or subsequent violation, the violator shall complete a course of training concerning compliance with this chapter as determined by the executive committee or pay a civil penalty in an amount set by the executive committee, not to exceed two thousand five hundred dollars (\$2,500) per incident, or both; and

(3) Notwithstanding subdivisions (e)(1) and (2), if any violation was the result of gross negligence or willful or wanton misconduct as determined by the executive committee, the executive committee shall require the violator to complete a course of training concerning compliance with this chapter as determined by the executive committee and pay a civil penalty in an amount set by the executive committee, not to exceed five thousand dollars (\$5,000) per incident.

(b) (1) For the purposes of this chapter, monetary civil penalties shall not be levied against any department of this state. In the event that a state department is found by the executive committee to be noncompliant, the executive committee may submit a notice of noncompliance to the department head along with a request for an action plan for future compliance.

(2) For the purposes of this chapter, monetary civil penalties shall not be levied against a county, city, town, utility district, or other political subdivision of this state unless the executive committee finds that the county, city, town, utility district, or other political subdivision of this state has engaged in a pattern of willful noncompliance with the requirements of this chapter.

(c) Except as provided in subsection (e), this section shall not limit any person's right to pursue any additional civil remedy otherwise allowed by law.

(d) Any person who is required to complete a course of training under subsection (a) shall be responsible for paying for the cost of the training.

(e) (1) Any excavator who violates this chapter may be issued a notice of violation by the inspector, and the inspector may require any excavator to cease work on any excavation, or not start a proposed excavation, until the excavator complies with this chapter.

(2) An excavator who complies with this chapter shall not be liable for damage that the excavator causes to an operator's underground facility, if:

(A) The operator received the notification required by § 65-31-106;

(B) The operator fails to locate its underground facilities as required by § 65-31-108; and

(C) The damage is a proximate result of the operator's failure to locate its underground facilities as required by § 65-31-108.

(3) (A) Any person who violates § 65-31-106 and whose subsequent excavation or blasting damages utility facilities or sewer laterals shall also indemnify the affected facility owner or operator and the one-call service against all claims or costs incurred, if

any, for personal injury, property damage, or service interruptions resulting from damaging the utility facilities or sewer laterals.

(B) The requirements of subdivision (e)(3)(A) shall not apply to any state agency, county, city, town, utility district, or other political subdivision of this state.

(f) Any person who knowingly and willfully removes or otherwise destroys the stakes or other physical markings used to mark the horizontal route of an underground facility commits the offense of vandalism under § 39-14-408, and shall be subject to the punishment for vandalism under § 39-14-105.

§ 65-31-113. Severability

If any provisions of this chapter or the applicability thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 65-31-114. Underground utility damage enforcement board; creation; members

(a) There is created within the Tennessee public utility commission, created by § 65-1-101, an underground utility damage enforcement board for the purpose of enforcing this chapter.

(b) The Tennessee public utility commission will provide administrative and investigative support for the board, both subject to concurrence by the board. Pursuant to § 65-2-122, the Tennessee public utility commission shall charge the expenses associated with the administration and investigative duties of the board back to the board, subject to concurrence by the board.

(c) The board shall be composed of seventeen (17) members. Except for initial appointments, members who are not ex officio members shall be appointed to four-year terms. Appointments to the board shall be made as follows:

(1) The president of Tennessee One-Call, Inc., or the president's designee, who shall be a voting, ex officio member;

(2) One (1) member shall be a person representing the interests of Tennessee natural gas distribution systems, to be appointed by the governor, whose initial term shall be four (4) years. In considering appointees, the governor shall review a list of qualified persons submitted by the Tennessee Gas Association;

(3) One (1) member shall be a person representing the interests of Tennessee utility districts, to be appointed by the speaker of the senate, whose initial term shall be four (4) years. In considering appointees, the speaker shall review a list of qualified persons submitted by the Tennessee Association of Utility Districts;

(4) One (1) member shall be a person representing the interests of the Tennessee cable industry, to be appointed by the speaker of the house of representatives, whose initial term shall be four (4) years. In considering appointees, the speaker shall review a list of qualified persons submitted by the Tennessee Cable and Telecommunications Association;

(5) One (1) member shall be a person representing the interests of large Tennessee incumbent local exchange carriers with more than one hundred thousand (100,000) customers, to be appointed by the speaker of the house of representatives, whose initial term shall be four (4) years;

(6) One (1) member shall be a person who represents the interests of public utilities, as

defined in § 65-4-101, and who provides water or wastewater services, to be appointed by the speaker of the senate, whose initial term shall be four (4) years;

(7) One (1) member shall be a person representing the interests of Tennessee towns and cities, to be appointed by the governor whose initial term shall be three (3) years. In considering appointees, the governor shall review a list of qualified persons submitted by the Tennessee Municipal League;

(8) One (1) member shall be a person representing the interests of small Tennessee incumbent local exchange carriers, to be appointed by the speaker of the senate, whose initial term shall be three (3) years. In considering appointees, the speaker shall review a list of qualified persons submitted by the Tennessee Telecommunications Association;

(9) One (1) member shall be a person representing the interests of Tennessee counties, to be appointed by the speaker of the house of representatives, whose initial term shall be three (3) years. In considering appointees, the speaker shall review a list of qualified persons submitted by the Tennessee County Services Association;

(10) One (1) member shall be a person representing the interests of Tennessee road builders, to be appointed by the governor, whose initial term shall be three (3) years. In considering appointees, the governor shall review a list of qualified persons submitted by the Tennessee Road Builders Association;

(11) One (1) member shall be a person representing the interests of the excavation industry, to be appointed by the speaker of the senate, whose initial term shall be two (2) years. In considering appointees, the speaker shall review a list of qualified persons submitted by the Associated Builders and Contractors of Tennessee;

(12) One (1) member shall be a person representing the interests of interstate pipelines, to be appointed by the speaker of the house of representatives, whose initial term shall be two (2) years;

(13) One (1) member shall be a private property owner representing agricultural or homeowners' interests, to be appointed by the governor, whose initial term shall be two (2) years;

(14) One (1) member shall be a person representing the interests of municipal electric utilities with underground facilities, to be appointed by the speaker of the senate, whose initial term shall be two (2) years. In considering appointees, the speaker shall review a list of qualified persons submitted by the Tennessee Municipal Electric Power Association;

(15) One (1) member shall be a person representing the interests of cooperative electric systems with underground facilities, to be appointed by the speaker of the house of representatives, whose initial term shall be two (2) years. In considering appointees, the speaker shall review a list of qualified persons submitted by the Tennessee Electric Cooperative Association;

(16) One (1) member shall be a person who represents the interests of public utilities, as defined in § 65-4-101, and who provides electric power services, to be appointed by the governor, whose initial term shall be four (4) years; and

(17) One (1) member shall be a person representing the interests of contract locators, to be appointed by the speaker of the senate, whose initial term shall be four (4) years.

(d) Every two (2) years, the board shall elect a chair from among its members and other officers as the board deems necessary.

(e) The members of the board shall serve without compensation.

- (f) (1) The board shall elect an executive committee, which shall be responsible for levying civil penalties and taking action as described in § 65-31-116.
 - (2) The executive committee shall be composed of the following members of the board:
 - (A) One (1) member from subdivision (c)(10), (c)(11), or (c)(13);
 - (B) One (1) member from a local government; and
 - (C) One (1) member from a utility.
 - (3) (A) Except as provided in subdivision (f)(3)(B), a member serving on the executive committee shall be limited to two (2) consecutive one-year terms.
 - (B) In order to stagger the terms of the members serving on the executive committee, the members serving on the executive committee as of April 12, 2018, shall be appointed as follows:
 - (i) The person appointed under subdivision (f)(2)(A) shall serve a term of one (1) year, which shall expire on June 30, 2019;
 - (ii) The person appointed under subdivision (f)(2)(B) shall serve a term of two (2) years, which shall expire on June 30, 2020; and
 - (iii) The person appointed under subdivision (f)(2)(C) shall serve a term of three (3) years, which shall expire on June 30, 2021.
 - (C) Following the expiration of members' terms as prescribed in subdivision (f)(3)(B), a member serving on the executive committee shall be limited to two (2) consecutive one-year terms.
- (g) The board and the executive committee may hold meetings and vote by telephone, television, or other electronic means.

§ 65-31-115. Board powers and duties

- (a) The board has the power and authority to:
 - (1) Promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the conduct of the affairs of the board;
 - (2) Adopt a seal for the board, prescribe the style of the seal, and alter the seal at the board's pleasure; and
 - (3) Make and enter into contracts.
- (b) The board shall:
 - (1) Through its executive committee, initiate investigations and conduct hearings as required by § 65-31-116;
 - (2) Meet a minimum of two (2) times per calendar year;
 - (3) Examine data regarding underground utility damage and make recommendations to the general assembly for further updates to this chapter;
 - (4) Manage the underground damage prevention fund created by § 65-31-117;
 - (5) Assess its annual operating cost to operators in an amount equal to the amount necessary to offset the cost of investigative and administrative services performed by the Tennessee public utility commission at the direction of the board. The annual operating costs shall be apportioned in a proportional manner and collected by the one-call service from the operators; and
 - (6) Subject to the availability of funding in the underground damage prevention fund created by § 65-31-117, contract with appropriate entities or agencies to conduct training and public awareness for damage prevention.
- (c) (1) Any member who misses more than fifty percent (50%) of the scheduled meetings in a

calendar year shall be removed as a member of the board.

(2) The board's chair shall promptly notify, or cause to be notified, the appointing authority of any member who fails to satisfy the attendance requirement as prescribed in subdivision (c)(1).

(d) The executive committee shall review the reasonableness of fees and any subsequent changes to the fees charged to violators by the board's designated provider of compliance training ordered pursuant to § 65-31-112.

§ 65-31-116. Violation complaint; investigation; citations; hearing; appeal

(a) Upon receipt of a complaint of a violation of this chapter, the executive committee shall initiate an investigation of the complaint by requesting that the Tennessee public utility commission designate an employee of the commission who will investigate the complaint at the executive committee's direction.

(b) Any investigator acting at the direction of the executive committee may issue citations for violations of this chapter. Any citation may include a recommendation for the penalty to be assessed under § 65-31-112.

(c) If the person to whom the citation is issued under subsection (b) does not pay the citation or submit to ordered training, or both, within thirty (30) days, then the executive committee shall appoint a hearing officer to conduct a hearing and issue an initial order pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The hearing shall be held in the Nashville, Davidson County, offices of the Tennessee public utility commission at the time set forth in the citation notice of hearing.

(d) An appeal of the initial order pursuant to § 4-5-315 shall be heard by the executive committee.

(e) A person aggrieved by the final order may, within sixty (60) days, file a petition for judicial review pursuant to § 4-5-322. In the case of a decision involving an excavation in proximity to underground facilities of a municipally-owned utility located in a county having a population of greater than three hundred thousand (300,000), according to the 2010 federal census or any subsequent federal census, the petition for review shall be filed in the chancery court located in that county. In all other cases, the petition for review shall be filed in the chancery court of Davidson County.

(f) Nothing in this chapter shall grant the executive committee or the board jurisdiction over damage to utilities located above ground.

§ 65-31-117. Underground damage prevention fund; deposits; expenditures

(a) There is created an underground damage prevention fund within the Tennessee public utility commission. All civil penalties collected pursuant to this chapter shall be deposited into the underground damage prevention fund. Any moneys remaining in the underground damage prevention fund at the end of the fiscal year shall not revert to the general fund, but shall remain in the underground damage prevention fund for the exclusive use of the board.

(b) The expenditure of moneys in the underground damage prevention fund shall be at the discretion of the board for the following purposes:

(1) Providing grants to operators with fewer than five thousand (5,000) customers to assist the recipient in complying with the mandatory notification center requirements of this chapter. However, grants shall not be used for operating expenses, and no grants shall be given for this purpose after January 1, 2018; and

(2) Contracting with providers of public awareness, educational, and compliance training.

§ 65-31-118. Design locate request; submission; response

(a) Any person may submit a design locate request to the one-call service. The design locate request shall:

(1) Describe the tract or parcel of land for which the design locate request has been submitted with sufficient particularity, as defined by policies developed by the one-call service, to enable the facility owner or operator to ascertain the precise tract or parcel of land involved; and

(2) State the name, address, and telephone number of the person who has submitted the design locate request, as well as the name, address, and telephone number of any other person authorized to review any records subject to inspection under subdivision (b)(1)(C).

(b) (1) Within fifteen (15) working days after a design locate request has been submitted to the one-call service for a proposed project, the facility owner or operator shall respond by one (1) of the following methods:

(A) Designate or cause to be designated by a locator under § 65-31-108, the location of all utility facilities and sewer laterals within the area of the proposed excavation;

(B) Provide to the person submitting the design locate request the best available description of all utility facilities and sewer laterals in the area of proposed excavation, which might include drawings of utility facilities and sewer laterals already built in the area, or other facility records that are maintained by the facility owner or operator; or

(C) Allow the person submitting the design locate request or any other authorized person to inspect or copy the drawings or other records for all utility facilities and sewer laterals within the proposed area of excavation.

(2) In the event that the one-call service charges a fee to a member operator for design location notification, the utility operator may recover that fee from the requestor.

(c) Upon responding pursuant to subsection (b), the facility owner or operator shall provide the response to the one-call service in accordance with one-call service procedures.

(d) An operator may reject a design locate request based upon homeland security considerations pending the operator obtaining additional information confirming the legitimacy of the request. The operator shall notify the person making the request of the denial and may request additional information through the positive response system provided by the one-call service.

(e) Nothing in this section shall supersede any federal, state, or local laws governing the confidentiality of the location of utility facilities.

(f) Any utility operator responding to a design locate request under this section shall not be liable for any damages associated with the response to the request.

- (g) Nothing in this chapter shall amend, alter, or affect title 54, chapter 5, part 8.
- (h) A design locate request shall not be used for excavation purposes.

§ 65-31-119. Tennessee public utility commission; support; advisory

The administrative and investigative support provided by the Tennessee public utility commission is provided to the board in an advisory capacity only, and nothing in this chapter shall expand the jurisdiction of the Tennessee public utility commission in any way.

§ 65-31-120. Excavation; liability per se for damage to underground utilities; reporting requirements

- (a) Engaging in the activities described in the definition of “excavate” or “excavation” in § 65-31-102(8)(B) shall not remove or impose liability per se for damage to underground utilities.
- (b) Nothing in the definition of “excavate” or “excavation” in § 65-31-102 shall remove the obligation of any excavator, whether engaged in excavation or in activities described in § 65-31-102(8)(B), from the reporting requirements of § 65-31-111.