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# HOUSE BILL No. 1253

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1-26.

**Synopsis:** Underground utility facility protection. For purposes of the statute concerning the location and protection of underground utility facilities during excavation or demolition activities, provides that the "approximate location" of a facility means a strip of land not more than 18 inches horizontally from the outside wall of the facility. (Current law provides that the "approximate location" of a facility means a strip of land at least four feet wide but not wider than the width of the facility.) Provides that a "qualified person" under the statute means a person who has completed a training program that meets certain minimum training guidelines and practices for utility locators. Provides that: (1) subsurface installation locating activities; and (2) the location of utilities in areas involving pavement; must be performed by a qualified person. Requires a utility operator to: (1) maintain a record of all as-built and record drawings for all the operator's live or active underground facilities; and (2) make such drawings available to any: (A) person providing locating services to the operator; and (B) person responsible for an excavation or demolition at a site where the operator's facilities are located; to the extent necessary for the person to perform the person's duties in compliance with the statute. Provides that a utility operator that violates the statute is subject to a civil penalty in an amount not to exceed \$10,000. Provides that if a person responsible for an excavation or demolition suffers a pecuniary loss as a result of a violation of the statute, the person may bring a civil action against the person that caused the loss. (Current law provides a cause of action only for a utility operator that suffers a loss.)

**Effective:** July 1, 2013.

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## Niezgodski

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January 14, 2013, read first time and referred to Committee on Utilities and Energy.

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First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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# HOUSE BILL No. 1253



A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 8-1-26-2 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2013]: Sec. 2. As used in this chapter,  
3 "approximate location", **with respect to an underground facility**,  
4 means a strip of land at least four (4) feet wide but not wider more than  
5 the width of eighteen (18) inches horizontally from the outside wall  
6 of the underground facility. plus two (2) feet on either side of the outer  
7 limits of the physical plant.

8 SECTION 2. IC 8-1-26-3.5 IS ADDED TO THE INDIANA CODE  
9 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
10 1, 2013]: **Sec. 3.5. As used in this chapter, "communications  
11 service" has the meaning set forth in IC 8-1-32.5-3.**

12 SECTION 3. IC 8-1-26-17, AS AMENDED BY P.L.62-2009,  
13 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
14 JULY 1, 2013]: Sec. 17. (a) An operator that has underground facilities  
15 located in Indiana must be a member of the Indiana Underground Plant  
16 Protection Service or its successor organization. The articles of  
17 incorporation or the bylaws of the Indiana Underground Plant



1 Protection Service or its successor organization shall do the following:

2 (1) Provide that the board of directors of the Indiana Underground  
3 Plant Protection Service or its successor organization is composed  
4 of:

5 (A) five (5) members representing electric utilities other than  
6 municipal electric utilities, including corporations organized  
7 or operating under IC 8-1-13 or corporations organized under  
8 IC 23-17, some of whose members are local district  
9 corporations (as described in IC 8-1-13-23);

10 (B) five (5) members representing investor owned gas utilities,  
11 including pipelines;

12 (C) five (5) members representing ~~telecommunications~~  
13 **communications service** providers, at least one (1) of whom  
14 is a provider of cable television service;

15 (D) five (5) members representing water or sewer utilities  
16 other than municipal water or sewer utilities; and

17 (E) five (5) members representing political subdivisions,  
18 including municipal utilities, which must include the political  
19 subdivision that owns the largest waterworks utility in Indiana.

20 (2) Require the affirmative vote of at least sixty percent (60%) of  
21 each category of members appointed under subdivision (1) to  
22 approve an increase, a decrease, or any other adjustment to the  
23 membership dues, rates, tariffs, locate fees, or any other charges  
24 imposed by the Indiana Underground Plant Protection Service or  
25 its successor organization.

26 (b) The association shall provide for mutual receipt of notice of  
27 excavation or demolition operations under section 16 of this chapter.

28 (c) The association shall:

29 (1) annually update the association's base map data, including  
30 street addresses; and

31 (2) make reasonable efforts to reduce incorrect locate requests  
32 issued to the association's members.

33 (d) The association shall develop and implement guidelines to  
34 provide that, for purposes of providing notice to an operator under  
35 section 16 of this chapter, the time of receipt of a notice of an intent to  
36 excavate or demolish is determined as follows:

37 (1) For a notice that is received between the hours of 7 a.m. and  
38 6 p.m. on a working day, at the time of receipt.

39 (2) For a notice that is received after 6 p.m. on a working day and  
40 before 7 a.m. on the following working day, at 7 a.m. on the  
41 following working day.

42 SECTION 4. IC 8-1-26-18, AS AMENDED BY P.L.62-2009,

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1 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 JULY 1, 2013]: Sec. 18. (a) As used in this section, "qualified  
3 person" means a person who has completed a training program  
4 that meets the minimum training guidelines and practices for  
5 locator training set forth in the most recent version of the Best  
6 Practices Manual of the Common Ground Alliance.

7 (a) (b) Subject to subsections (j), (k), and (l), each operator  
8 notified under section 16 of this chapter shall, in not later than two (2)  
9 full working days after receiving the notice of intent provided in  
10 section 16 of this chapter, supply to the person responsible for the  
11 excavation or demolition the following information, using maps when  
12 appropriate:

- 13 (1) The approximate location and description of all the operator's
- 14 underground facilities that may be damaged as a result of the
- 15 excavation or demolition.
- 16 (2) The location and description of all facility markers indicating
- 17 the approximate location of the underground facilities.
- 18 (3) Any other information that would assist that person in locating
- 19 and avoiding damage to the underground facilities, including
- 20 providing adequate temporary markings indicating the
- 21 approximate location of the underground facility and locations
- 22 where permanent facility markers do not exist.

23 (b) (c) Facility locate markings must consist of paint, flags, or stakes  
24 or any combination that mark the approximate location of the  
25 underground facilities. The method of marking must be appropriate for  
26 the location of the underground facilities.

27 (c) (d) Color coding of facility locate markings indicating the type  
28 of underground facility must conform to the following color coding:

29 Facility and Type of Product	Specific Group Identifying Color
30	
31 (1) Electric power distribution	
32 and transmission . . . . .	Safety red
33 (2) Municipal electric systems . . . . .	Safety red
34 (3) Gas distribution and	
35 transmission . . . . .	High visibility safety yellow
36	
37 (4) Oil distribution and	
38 transmission . . . . .	High visibility safety yellow
39	
40 (5) Dangerous materials, product	
41 lines, steam lines . . . . .	High visibility safety yellow
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1 thousand dollars (\$10,000). This subsection does not apply to a person  
2 that moves, removes, damages, or otherwise alters a facility locate  
3 marking as part of the excavation or demolition for which the facility  
4 locate markings were supplied.

5 **(j) If, in order to provide the information required under**  
6 **subsection (b), an operator must perform, or cause to be**  
7 **performed, subsurface installation locating activities, the**  
8 **subsurface installation locating activities must be performed by a**  
9 **qualified person. The qualified person performing subsurface**  
10 **installation locating activities on behalf of the operator must use at**  
11 **least a single frequency utility locating device and shall be provided**  
12 **access to alternative sources of verification of the approximate**  
13 **location of the underground facilities for which the subsurface**  
14 **installation locating activities are being performed, including all**  
15 **drawing records, if necessary.**

16 **(k) If an underground facility is located or contained in, under,**  
17 **or immediately adjacent to pavement, the location of the**  
18 **underground facility must be determined by a qualified person.**  
19 **The qualified person responsible for locating the underground**  
20 **facility shall notify the person responsible for the excavation or**  
21 **demolition of the underground facility's location in, under, or**  
22 **immediately adjacent to pavement. The operator of the**  
23 **underground facility shall assist the person responsible for the**  
24 **excavation or demolition in protecting the underground facility**  
25 **during the removal of any pavement that is necessary during**  
26 **excavation or demolition. If the notice required under this**  
27 **subsection is not provided to the person responsible for the**  
28 **excavation or demolition, the person responsible for the excavation**  
29 **or demolition is not liable for any damage to the underground**  
30 **facility that occurs as a result of any pavement removal performed**  
31 **during the excavation or demolition.**

32 **(l) If, after receiving the information required under subsection**  
33 **(b), the person responsible for the excavation or demolition**  
34 **determines that the exact location of an underground facility**  
35 **cannot be determined by hand excavation, the person responsible**  
36 **for the excavation or demolition shall, before performing any**  
37 **excavation or demolition at the site of the proposed excavation or**  
38 **demolition, request the operator of the facility to provide**  
39 **additional information to the person, to the extent that information**  
40 **is available to the operator, to enable the person to determine the**  
41 **exact location of the underground facility.**

42 **(m) An operator shall maintain a record of all as-built and**

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1 record drawings for all the operator's live or active underground  
2 facilities. The operator shall make the drawings available to:

3 (1) any qualified person or other person providing locating  
4 services to the operator, regardless of whether the qualified  
5 person or other person providing the services is an employee  
6 of the operator; and

7 (2) any person responsible for an excavation or demolition at  
8 a site where the operator's underground facilities are located;  
9 to the extent necessary for a person described in subdivision (1) or  
10 (2) to perform the person's duties in compliance with this chapter.  
11 A person who is given access to any drawings under this subsection  
12 shall ensure the adequate protection of any confidential and  
13 proprietary business plans and other confidential information  
14 contained in the drawings.

15 SECTION 5. IC 8-1-26-22 IS AMENDED TO READ AS  
16 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 22. (a) If an operator  
17 or a person responsible for an excavation or demolition suffers a  
18 pecuniary loss as a result of a violation of this chapter, the operator or  
19 the person responsible for the excavation or demolition may bring  
20 a civil action against the person who caused the loss for the following:

21 (1) An amount equal to the operator's or the person's actual  
22 damage to the facility: damages.

23 (2) The costs of the action.

24 (3) A reasonable attorney's fee.

25 (b) At the court's discretion, a court having jurisdiction may award  
26 punitive damages up to three (3) times the operator's or the person's  
27 actual damage.

28 (c) It is a defense to an action brought under this chapter if: ~~an~~

29 (1) the operator; or

30 (2) the person responsible for an excavation or demolition;  
31 who brings the action fails to comply with the duties imposed on the  
32 operator or person under this chapter.

33 (d) In addition to the remedies described in subsection (a), an  
34 operator may bring an action to enjoin a person excavating or  
35 demolishing a structure in an area that includes the operator's facilities  
36 until that person complies with this chapter.

37 SECTION 6. IC 8-1-26-25, AS ADDED BY P.L.62-2009,  
38 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
39 JULY 1, 2013]: Sec. 25. ~~An~~ (a) Except as otherwise provided in this  
40 chapter with respect to a particular violation of this chapter, an  
41 operator that violates this chapter is subject to a civil penalty in an  
42 amount recommended by the advisory committee and approved by

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1 **the commission, not to exceed ten thousand dollars (\$10,000). A**  
2 **pipeline facility** operator of a pipeline facility that violates this chapter  
3 may be subject to a civil penalty imposed by the commission under  
4 IC 8-1-22.5 in addition to a penalty or fine imposed under this chapter.  
5 **(b) This chapter is not intended to affect any civil remedies**  
6 **otherwise provided by law for personal injury or for property**  
7 **damage, including any damage to subsurface installations.**

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