

2021 Regular Session

SENATE BILL NO. 169

BY SENATOR ALLAIN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PUBLIC UTILITIES. Provides relative to the Louisiana Underground Utilities and Facilities Damage Prevention Law. (8/1/21)

1 AN ACT

2 To amend and reenact R.S. 40:1749.12(7) and (12) through (18), and to enact R.S.  
3 40:1749.12(19), relative to the Louisiana Underground Utilities and Facilities  
4 Damage Prevention Law; to provide for definitions, terms, and conditions; and to  
5 provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 40:1749.12(7) and (12) through (18) are hereby amended and  
8 reenacted and R.S. 40:1749.12(19) is hereby enacted to read as follows:

9 §1749.12. Definitions

10 As used in this Part, the following terms have the meanings ascribed to them  
11 in this Section:

12 \* \* \*

13 (7) "Excavation" or "excavate" means any operation causing movement or  
14 removal of earth, rock, or other materials in or on the ground or submerged in a  
15 marine environment that could reasonably result in damage to underground or  
16 submerged utilities or facilities by the use of powered or mechanical or manual  
17 means, including but not limited to pile driving, digging, blasting, augering, boring,

1 back filling, dredging, compaction, plowing-in, trenching, ditching, tunneling, land-  
 2 leveling, grading, and mechanical probing. "Excavation" or "excavate" shall not  
 3 include manual probing, **normal commercial farming operations**, or any **activity**  
 4 **resulting from** force majeure; **related occurrences, including but not limited to**  
 5 **an** act of God; or **an** act of nature.

6 \* \* \*

7 (12) **"Normal commercial farming operations" means the following**  
 8 **operations or activities for agriculture cultivation purposes:**

9 **(a) Operations or activities that do not encroach upon a private utility**  
 10 **or pipeline servitude, public right-of-way, or a public franchise area.**

11 **(b) Operations or activities that do encroach upon a private utility or**  
 12 **pipeline servitude and the depth of the excavation is less than twelve inches in**  
 13 **the soil below the existing surface grade.**

14 (13) "Operator" means any person who owns or operates a public or private  
 15 underground facility or utility which furnishes a service or material or stores,  
 16 transports, or transmits electric energy, steam, oil, gases, natural gas, gas, mixture  
 17 of gases, petroleum, petroleum products, hazardous or flammable fluids, toxic or  
 18 corrosive fluids/gases, including telephone or telegraph system, fiber optic electronic  
 19 communication systems, or water or water systems, or drainage, sewer systems, or  
 20 traffic control systems or other items of like nature.

21 ~~(13)~~(14) "Person" means an individual, firm, partnership, association, limited  
 22 liability company, corporation, joint venture, municipality, governmental agency,  
 23 political subdivision, or agent of the state or any legal representative thereof.

24 ~~(14)~~(15) "Pipeline" means all intrastate and interstate pipeline facilities  
 25 defined by 49 CFR 192.3 and 49 CFR 195.2.

26 ~~(15)~~(16) "Regional notification center" means any one of the following:

27 (a) An entity designated as nonprofit by the Internal Revenue Service under  
 28 Section 501(c) of the Internal Revenue Code and which is organized to protect its  
 29 members from damage and is certified by the Department of Public Safety and

1 Corrections in accordance with this Part.

2 (b) An organization of operators, consisting of two or more separate operators  
3 who jointly have underground utilities or facilities in three or more parishes in  
4 Louisiana, which is organized to protect its own installation from damage and has  
5 been certified by the Department of Public Safety and Corrections in accordance  
6 with this Part.

7 (c) An operator who has underground utilities or facilities in a majority of  
8 parishes in Louisiana and is organized to protect its own installation from damage,  
9 and has been certified by the Department of Public Safety and Corrections in  
10 accordance with this Part.

11 ~~(16)~~**(17)** "Service line or lines" means underground facilities or utilities  
12 which provide power, gas, natural gas, communication, or water capabilities to a  
13 building or structure or buildings or group of structures.

14 ~~(17)~~**(18)** "Underground facility or utility" means any pipe, conduit, duct,  
15 wire, cable, valve, line, fiber optic equipment, or other structure which is buried or  
16 placed below ground or submerged for use in connection with storage, conveyance,  
17 transmission, or protection of electronics communication system, telephone or  
18 telegraph system, or fiber optic, electric energy, oil, natural gas, gas, gases, steam,  
19 mixture of gases, petroleum, petroleum products, hazardous or flammable  
20 fluids/gases, toxic or corrosive fluids/gases, hazardous fluids/gases, or other  
21 substances of like nature or water or water systems, sewer systems or traffic,  
22 drainage control systems, or other items of like nature.

23 ~~(18)~~**(19)** "Wildfire" means an uncontrolled combustion of natural vegetation.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Elizabeth O'Quin.

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SB 169 Engrossed DIGEST 2021 Regular Session Allain

Present law provides relative to the La. Underground Utilities and Facilities Damage  
Prevention Law.

Present law provides that except as provided by law, no person shall excavate or demolish in any street, highway, public place, or servitude of any operator, or near the location of an underground facility or utility, or on the premises of a customer served by an underground facility or utility without having first ascertained, as provided by law, the specific location of all underground facilities or utilities in the area that would be affected by the proposed excavation or demolition.

Present law provides that prior to any excavation or demolition, each excavator or demolisher shall serve telephonic or electronic notice of the intent to excavate or demolish to the regional notification center or centers serving the area in which the proposed excavation or demolition is to take place.

Present law defines "excavation" or "excavate" to mean any operation causing movement or removal of earth, rock, or other materials in or on the ground or submerged in a marine environment that could reasonably result in damage to underground or submerged utilities or facilities by the use of powered or mechanical or manual means, including but not limited to pile driving, digging, blasting, augering, boring, back filling, dredging, compaction, plowing-in, trenching, ditching, tunneling, land-leveling, grading, and mechanical probing. "excavation" or "excavate" shall not include manual probing or any force majeure, act of God, or act of nature.

Proposed law adds normal commercial farming operations as an exception to the definition of "excavation" or "excavate" and changes the definition of "excavation" or "excavate" with regards to an exception from any force majeure, act of God or act of nature to any activity resulting from force majeure related occurrences, including but not limited to an act of God or an act of nature.

Proposed law defines "normal commercial farming operations" as the following operations or activities for agriculture cultivation purposes:

- (1) Operations or activities that do not encroach upon a private utility or pipeline servitude, public right-of-way, or public franchise area.
- (2) Operations or activities that do encroach upon a private utility or pipeline servitude and the depth of the excavation is less than 12 inches in the soil below the existing surface grade.

Effective August 1, 2021.

(Amends R.S. 40:1749.12(7) and (12)-(18); adds R.S. 40:1749.12(19))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Makes technical changes.
2. Changes the term "normal farming operations" to "normal commercial farming operations".
3. Specifies in the definition of "normal commercial farming operations" that the depth of the excavation is less than 12 inches in the soil below the existing surface grade.