

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 farming operations**, or any **activity resulting**
 4 **from** force majeure; **related occurrences, including but not limited to an** act of
 5 God, or **an** act of nature.

6 * * *

7 (12) **"Normal farming operations" means the following operations or**
 8 **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 is less than twelve inches in the soil below the**
 13 **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 C.F.R. 192.3 and 49 CFR C.F.R. 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.

24 * * *

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

SB 169 Original 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 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 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 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))