

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Utilities and Technology, to which was referred Senate Bill No. 487, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, delete lines 1 through 7, begin a new paragraph and insert:
2 "SECTION 1. IC 8-1-26-1 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Except as
4 provided by this section, this chapter does not apply to the following:
5 (1) Excavation ~~using only nonpowered hand tools: that is~~
6 **performed:**
7 **(A) only with a hand tool;**
8 **(B) on property owned or controlled by the person**
9 **performing the excavation; and**
10 **(C) to a depth not greater than twelve (12) inches.**
11 (2) Excavation using only animals.
12 (3) Tilling of soil for agricultural purposes, such as plowing,
13 planting, and combining.
14 (4) Surface coal mining and reclamation operations conducted
15 under a permit issued by the natural resources commission under
16 IC 14-34.
17 (5) Railroad right-of-way maintenance or operations.
18 **(6) Underground probing to determine the extent of gas**
19 **migration.**
20 (b) This chapter does apply to blasting, setting drainage tile,
21 subsoiling, and other subsurface activities.

1 (c) Sections 16, 19, 20, and 22 of this chapter apply to the
 2 construction and installation of railroad signal facilities and drainage
 3 facilities at public grade crossings.

4 SECTION 2. IC 8-1-26-1.3 IS ADDED TO THE INDIANA CODE
 5 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
 6 1, 2009]: **Sec. 1.3. As used in this chapter, "account" refers to the**
 7 **underground plant protection account established by section 24 of**
 8 **this chapter.**

9 SECTION 4. IC 8-1-26-1.5 IS ADDED TO THE INDIANA CODE
 10 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
 11 1, 2009]: **Sec. 1.5. As used in this chapter, "advisory committee"**
 12 **refers to the underground plant protection advisory committee**
 13 **established by section 23 of this chapter.**

14 SECTION 4. IC 8-1-26-3 IS AMENDED TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2009]: Sec. 3. As used in this chapter,
 16 "association" means an organization **that is:**

- 17 (1) formed in Indiana to provide for mutual receipt of notice of
 18 excavation or demolition for the organization's **members;**
 19 ~~member operators that have underground facilities in Indiana.~~
 20 (2) **known as the Indiana Underground Plant Protection**
 21 **Service (or its successor organization); and**
 22 (3) **accessed by dialing the abbreviated dialing code 811, as**
 23 **designated by the Federal Communications Commission as**
 24 **the nationwide toll free number to be used by state One Call**
 25 **systems.**

26 SECTION 5. IC 8-1-26-6 IS AMENDED TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2009]: Sec. 6. As used in this chapter,
 28 "excavate" means an operation for the movement, placement, or
 29 removal of earth, rock, or other materials in or on the ground by use of
 30 **tools or** mechanized equipment or by discharge of explosives,
 31 including augering, backfilling, **boring**, digging, ditching, drilling,
 32 **driving**, grading, **jacking**, plowing in, pulling in, ripping, scraping,
 33 trenching, and tunneling.

34 SECTION 5. IC 8-1-26-7 IS AMENDED TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 2009]: Sec. 7. As used in this chapter, "facility"
 36 means a line or system used for producing, storing, conveying,
 37 transmitting, or distributing communication, information, electricity,
 38 gas, petroleum, petroleum products, hazardous liquids, **carbon dioxide**
 39 **fluids**, water, steam, or sewerage. **The term includes pipelines and**
 40 **pipeline facilities."**

41 Page 2, between lines 3 and 4, begin a new paragraph and insert:

42 "SECTION 8. IC 8-1-26-11.2 IS ADDED TO THE INDIANA

1 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2009]: **Sec. 11.2. As used in this chapter,**
 3 **"pipeline facilities" has the meaning set forth in IC 8-1-22.5-1(d).**

4 SECTION 9. IC 8-1-26-11.4 IS ADDED TO THE INDIANA CODE
 5 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 6 1, 2009]: **Sec. 11.4. As used in this chapter, "pipeline" has the**
 7 **meaning set forth in IC 8-1-22.5-1(c).**

8 SECTION 10. IC 8-1-26-11.5 IS ADDED TO THE INDIANA
 9 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2009]: **Sec. 11.6. As used in this chapter,**
 11 **"white lining" means the act of marking the route or boundary of**
 12 **a proposed excavation or demolition with white paint, flags, or**
 13 **stakes, or a combination of white paint, flags, and stakes."**

14 Page 2, line 19, strike "written or".

15 Page 2, line 20, strike "telephonic".

16 Page 2, delete lines 34 through 42, begin a new paragraph and
 17 insert:

18 **"(c) A person other than an operator may be a member of the**
 19 **association.**

20 **(d) A person that is required, but fails, to maintain membership**
 21 **in the association after December 31, 2009, may be subject to a fine**
 22 **in an amount recommended by the advisory committee and**
 23 **approved by the commission, not to exceed one hundred dollars**
 24 **(\$100). Each day that a person that is required, but fails, to**
 25 **maintain membership in the association constitutes a separate**
 26 **violation for purposes of imposing a fine under this subsection.**

27 SECTION 12. IC 8-1-26-16 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) Except as
 29 provided in section 19 of this chapter, before commencing an
 30 excavation or demolition operation described in section 14 of this
 31 chapter each person responsible for the excavation or demolition ~~must~~
 32 **shall:**

33 **(1) serve ~~written or telephonic~~ notice on the association of the**
 34 **person's intent to excavate or demolish; and**

35 **(2) perform white lining at the site of the excavation or**
 36 **demolition if the association is unable to adequately identify**
 37 **the site on the locate ticket.**

38 The notice **required under subdivision (1)** must be received at least
 39 two (2) full working days but not more than twenty (20) calendar days
 40 before the commencement of the work. **A notice expires twenty (20)**
 41 **days after the date on which the notice is served. Upon receiving**
 42 **the notice, the association immediately shall notify each operator**

1 **that has underground facilities located in the proposed area of**
 2 **excavation or demolition.** However, A person responsible for
 3 excavation or demolition may commence work before the elapse of two
 4 (2) full working days if all affected operators have notified the person
 5 that the location of all the affected operators' facilities have been
 6 marked or that the affected operators have no facilities in the location
 7 of the proposed excavation or demolition.

8 ~~(b) For a notice served under this section before September 1, 2004,~~
 9 ~~the notice must be served on each operator, or each operator's~~
 10 ~~association, who has recorded a list required by section 15 of this~~
 11 ~~chapter indicating that the operator has underground facilities located~~
 12 ~~in the proposed area of excavation or demolition.~~

13 ~~(c) After August 31, 2004, a notice under this section must be~~
 14 ~~served on the association described in section 17(c) of this chapter. (b)~~
 15 A county recorder who receives an inquiry from a person seeking to
 16 provide notice of an excavation or a demolition under this section shall
 17 refer the person to the association. ~~described in section 17(c) of this~~
 18 ~~chapter.~~ After receiving a notice under this section, the association
 19 shall

20 ~~(1) determine whether one (1) or more of the association's~~
 21 ~~members have underground facilities located in the proposed area~~
 22 ~~of excavation or demolition, based on recordings made under~~
 23 ~~section 15 or 15.5 of this chapter; and~~

24 ~~(2) provide notice of the proposed excavation or demolition to any~~
 25 ~~member identified under subdivision (1) as having each member~~
 26 **operator that has** underground facilities located in the proposed
 27 area of excavation or demolition.

28 ~~(d) (c)~~ A person responsible for demolition must give an operator a
 29 reasonable amount of time, as mutually determined by the operator, the
 30 person responsible for demolition, and the project owner, to remove or
 31 protect the operator's facilities before demolition of the structure is
 32 commenced.

33 ~~(e) (d)~~ The ~~written or telephonic~~ notice required by subsection (a)
 34 must contain the following information:

35 (1) The name, address, and telephone number of the person
 36 serving the notice, and, if different, the person responsible for the
 37 excavation or demolition.

38 (2) The starting date, anticipated duration, and type of excavation
 39 or demolition operation to be conducted.

40 (3) The location of the proposed excavation or demolition.

41 (4) Whether or not explosives or blasting are to be used.

42 (5) The approximate depth of excavation.

1 **(6) Whether the person responsible for the proposed**
 2 **excavation or demolition intends to perform white lining at**
 3 **the site of the proposed excavation or demolition.**

4 **(e) The person responsible for the excavation or demolition shall**
 5 **submit a separate locate request along with the notice provided**
 6 **under subsection (d)(3) to the association as follows:**

7 **(1) Within an incorporated area, for each one thousand five**
 8 **hundred (1,500) linear feet of proposed excavation or**
 9 **demolition.**

10 **(2) In an unincorporated area, for each two thousand five**
 11 **hundred (2,500) linear feet of proposed excavation or**
 12 **demolition.**

13 (f) If the notice required by this section is by telephone, the ~~operator~~
 14 ~~or~~ association shall maintain an adequate record of the notice for ~~three~~
 15 ~~(3)~~ **seven (7) years** to document compliance with this chapter. A copy
 16 of the record shall be furnished to the person giving notice to excavate
 17 or demolish upon written request. ~~For a notice given by telephone after~~
 18 ~~August 31, 2004, the association described in section 17(c) of this~~
 19 ~~chapter is responsible for maintaining the record of notice required by~~
 20 ~~this subsection.~~

21 **(g) A person that:**

22 **(1) causes damage to a pipeline or pipeline facility located in**
 23 **an area of excavation or demolition;**

24 **(2) is required to provide notice under this section for the**
 25 **excavation or demolition; and**

26 **(3) fails to provide the notice;**

27 **is subject to a civil penalty in an amount recommended by the**
 28 **advisory committee and approved by the commission, not to exceed**
 29 **ten thousand dollars (\$10,000).**

30 **(h) A person that:**

31 **(1) is required to perform white lining under subsection**
 32 **(a)(2); and**

33 **(2) fails to perform white lining before an operator arrives at**
 34 **the site of the proposed excavation or demolition to mark the**
 35 **operator's facilities;**

36 **is subject to a civil penalty in an amount recommended by the**
 37 **advisory committee and approved by the commission, not to exceed**
 38 **ten thousand dollars (\$10,000)."**

39 Delete page 3.

40 Page 4, delete lines 1 through 26.

41 Page 5, line 42, strike "grid" and insert "base".

42 Page 6, between lines 3 and 4, begin a new paragraph and insert:

1 **"(d) The association shall develop and implement guidelines to**
 2 **provide that, for purposes of providing notice to an operator under**
 3 **section 16 of this chapter, the time of receipt of a notice of an intent**
 4 **to excavate or demolish is determined as follows:**

5 **(1) For a notice that is received between the hours of 7:00 a.m.**
 6 **and 6:00 p.m. on a working day, at the time of receipt.**

7 **(2) For a notice that is received after 6:00 p.m. on a working**
 8 **day and before 7:00 a.m. on the following working day, at**
 9 **7:00 a.m. on the following working day."**

10 Page 6, line 8, after "chapter" insert ",".

11 Page 6, line 8, strike "(unless a shorter period".

12 Page 6, strike line 9.

13 Page 6, line 10, strike "excavation or demolition and the operator),".

14 Page 7, line 15, after "chapter," insert "**make a reasonable attempt**
 15 **to"**.

16 Page 7, between lines 20 and 21, begin a new paragraph and insert:

17 **"(f) This subsection applies only to an operator of a pipeline or**
 18 **pipeline facility. An operator that:**

19 **(1) is required to supply information, including facility locate**
 20 **markings, under subsection (a) to a person responsible for an**
 21 **excavation or demolition;**

22 **(2) fails to supply the information or provide the facility locate**
 23 **markings; and**

24 **(3) has not entered into an agreement with another party that**
 25 **allocates liability, including financial liability, between the**
 26 **operator and the other party for damages to the operator's**
 27 **underground facilities as a result of a failure to supply**
 28 **information or provide facility locate markings described in**
 29 **subdivision (2);**

30 **is subject to a civil penalty in an amount recommended by the**
 31 **advisory committee and approved by the commission, not to exceed**
 32 **one thousand dollars (\$1,000).**

33 **(g) Subsection (f) does not apply to an operator that:**

34 **(1) is repairing its own underground facilities; or**

35 **(2) fails to supply required information or provide facility**
 36 **locate markings due to factors beyond the control of the**
 37 **operator.**

38 **(h) A person that knowingly moves, removes, damages, or**
 39 **otherwise alters a facility locate marking supplied under this**
 40 **section is subject to a civil penalty in an amount recommended by**
 41 **the advisory committee and approved by the commission, not to**
 42 **exceed ten thousand dollars (\$10,000)."**

1 Page 7, between lines 38 and 39, begin a new paragraph and insert:

2 **"(c) A person that knowingly provides false notice of an**
 3 **emergency excavation or demolition to the association under**
 4 **subsection (a) is subject to a civil penalty in an amount**
 5 **recommended by the advisory committee and approved by the**
 6 **commission, not to exceed one thousand dollars (\$1,000)."**

7 Page 8, line 19, delete "knowingly" and insert "**operates a pipeline**
 8 **or pipeline facility;**

9 **(2)".**

10 Page 8, line 20, delete "(2)" and insert "(3)".

11 Page 8, delete line 22, begin a new line blocked left and insert:

12 **"is subject to a civil penalty in an amount recommended by the**
 13 **advisory committee and approved by the commission, not to exceed**
 14 **one thousand dollars (\$1,000)."**

15 Page 9, between lines 2 and 3, begin a new paragraph and insert:

16 "SECTION 18.IC 8-1-26-23 IS ADDED TO THE INDIANA CODE
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 18 1, 2009]: **Sec. 23. (a) The underground plant protection advisory**
 19 **committee is established.**

20 **(b) The advisory committee consists of the following nine (9)**
 21 **members appointed by the governor:**

22 **(1) One (1) member representing the commission.**

23 **(2) One (1) member representing the association.**

24 **(3) One (1) member representing investor owned gas utilities.**

25 **(4) One (1) member representing operators of pipeline**
 26 **facilities or pipelines.**

27 **(5) One (1) member representing municipal gas utilities.**

28 **(6) One (1) member representing commercial excavators.**

29 **(7) One (1) member representing providers of facility locate**
 30 **marking services.**

31 **(8) Two (2) members representing the general public. A**
 32 **member appointed under this subdivision must have expertise**
 33 **in and knowledge of the requirements of this chapter.**

34 **(c) The term of a member is four (4) years. A member of the**
 35 **advisory committee serves at the pleasure of the governor. The**
 36 **governor shall fill a vacancy in the membership of the advisory**
 37 **committee for the unexpired term of the vacating member.**

38 **(d) The association and the commission shall provide staff**
 39 **support and meeting space to the advisory committee.**

40 **(e) The members of the advisory committee shall elect a**
 41 **chairperson. The advisory committee shall meet at the call of the**
 42 **chairperson.**

1 **(f) The affirmative vote of a majority of members appointed**
 2 **under subsection (b) is required to take action.**

3 **(g) The advisory committee shall act in an advisory capacity to**
 4 **the commission concerning the implementation and enforcement**
 5 **of this chapter. If the advisory committee determines that a person**
 6 **has violated this chapter, the advisory committee shall recommend**
 7 **a civil penalty to the commission. The advisory committee shall**
 8 **hold hearings under IC 4-21.5 to administer its responsibilities**
 9 **under this subsection.**

10 **(h) Upon receiving a recommendation under subsection (g), the**
 11 **commission shall:**

12 **(1) approve the penalty;**

13 **(2) collect the penalty; and**

14 **(3) deposit the penalty in the underground plant protection**
 15 **account.**

16 SECTION 19. IC 8-1-26-24 IS ADDED TO THE INDIANA CODE
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 18 1, 2009]: **Sec. 24. (a) The underground plant protection account is**
 19 **established to provide funding for the following programs**
 20 **established and administered by the commission:**

21 **(1) Public awareness programs concerning underground plant**
 22 **protection.**

23 **(2) Training and educational programs for contractors,**
 24 **excavators, locators, operators, and other persons involved in**
 25 **underground plant protection.**

26 **(3) Incentive programs for contractors, excavators, locators,**
 27 **operators, and other persons involved in underground plant**
 28 **protection to reduce the number of violations of this chapter.**

29 **(b) The commission shall administer the account.**

30 **(c) The treasurer of state shall invest money in the account not**
 31 **currently needed to meet the obligations of the account in the same**
 32 **manner as other public money may be invested. Interest that**
 33 **accrues from these investments shall be deposited in the account.**

34 **(d) Money in the account at the end of a state fiscal year does**
 35 **not revert to the state general fund.**

36 **(e) The expenses of administering the account shall be paid from**
 37 **money in the account.**

- 1 **(f) The account consists of penalties deposited under section**
- 2 **23(h) of this chapter."**
- 3 Renumber all SECTIONS consecutively.
 (Reference is to SB 487 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 10, Nays 0.

Senator Merritt, Chairperson