

1 AN ACT related to underground facility protection.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 367.4903 is amended to read as follows:

4 As used in KRS 367.4903 to 367.4917:

- 5 (1) "Underground facility" means an underground line or system used for producing,
6 storing, conveying, transmitting, or distributing telecommunications, electricity,
7 gas, petroleum, petroleum products, cable television, hazardous liquids, water,
8 steam, or sewerage, including storm drainage;
- 9 (2) "Damage" means weakening of structural or lateral support or penetration of a
10 facility coating, housing, or other protective device. It also means the partial or
11 complete dislocation or severance of underground facilities or rendering any
12 underground facility permanently inaccessible by the placement of a permanent
13 structure having one (1) or more stories;
- 14 (3) "Demolition" means any operation by which a structure or mass of material is
15 wrecked, razed, moved, or removed by means of mechanized equipment, or
16 discharge of explosives;
- 17 (4) "Excavator" means any entity or individual, other than those exempted by KRS
18 367.4915, engaged in excavation, demolition, or timber harvesting using
19 mechanized equipment;
- 20 (5) "Operator" means any entity or individual owning or operating underground
21 facilities to serve the public, ***but does not include any entity or individual owning***
22 ***or operating underground storage tanks that are subject to Subchapter 60 of KRS***
23 ***Chapter 224;***
- 24 (6) "Excavation" means any activity that results in the movement, placement, probing,
25 boring, or removal of earth, rock, or other material in or on the ground by the use of
26 any tools or equipment, by the discharge of explosives, or by the harvesting of
27 timber using mechanized equipment. Forms of excavating include but are not

1 limited to auguring, backfilling, digging, ditching, drilling, driving, grading, piling,
2 pulling-in, ripping, scraping, trenching, and tunneling. Driving wooden stakes by
3 use of hand tools to a depth of six (6) inches or less below existing grade shall not
4 constitute excavation;

5 (7) "Emergency" means there exists substantial likelihood that loss of life or property,
6 the inability to restore interrupted utility service, an imminent danger to health or
7 the environment, or the blockage of public transportation facilities will result before
8 procedures required under KRS 367.4909 to 367.4913 can be completed;

9 (8) "Protection notification center" means an operator-provided notification center
10 through which an excavator can contact the operator to enable the operator to
11 provide the excavator with the approximate location of underground facilities;

12 (9) "Kentucky Contact Center" means Kentucky Underground Protection, Inc.,
13 organized as a nonprofit corporation and a multimember protection notification
14 center providing a single telephone contact number and designated by the Kentucky
15 Public Service Commission to be the sole recipient of 811 dialed calls through
16 which an excavator may contact all Kentucky Contact Center members and all
17 affected member operators may receive information to enable them to provide the
18 excavator with the approximate location of underground facilities;

19 (10) "Routine road maintenance" means preservation, including road repairs and
20 resurfacing, and the replacement of signs, posts, and guardrails at the exact same
21 location when no additional penetration of existing grade is necessary, but does not
22 include road construction, installation of signs, posts, and guardrails, or any activity
23 that requires penetration of existing grade;

24 (11) "Approximate location," when referring to an underground facility, means:

25 (a) For underground metallic facilities and underground nonmetallic facilities
26 with metallic tracer wire, a distance not to exceed the combined width of the
27 underground facility plus twenty-four (24)~~eighteen (18)~~ inches measured

1 from the outer edge of each side of the underground facility; or

2 (b) For unmapped or unlocatable facilities~~[nonmetallic facilities without~~
 3 ~~metallic tracer wire]~~, the underground facility shall be located as accurately as
 4 possible from field location records and shall require notification from the
 5 operator of the inability to accurately locate the facility;

6 (12) "Working day" means every day, except Saturday, Sunday, and holidays
 7 established by federal or state statute. For purposes of measuring any period of
 8 time prescribed or allowed under the Underground Facility Damage Prevention
 9 Act of 1994, a working day shall commence at 12:01 a.m. eastern standard time
 10 and end at 12 midnight eastern standard time excluding the day the locate
 11 request was made~~[a twenty four (24) hour period commencing from the time of~~
 12 ~~receipt of the notification by the Kentucky Contact Center except Saturday, Sunday,~~
 13 ~~and holidays established by federal or state statute];~~

14 (13) "Nonintrusive excavating" means excavation using hand tools or equipment that
 15 uses air or water pressure as the direct means to break up soil for removal by hand
 16 tools or vacuum excavation;

17 (14) "Mechanized equipment" means mechanical power equipment, including trenchers,
 18 bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows,
 19 skidders, and yarders;

20 (15) "Normal excavation locate request" means a notification made to a protection
 21 notification center where a request for locating utility facilities is processed;

22 (16) "Emergency locate request" means a notification made to a protection notification
 23 center by an excavator to alert facility owners or operators of the need to begin
 24 immediate excavation in response to an emergency;

25 (17) "Design information request" means a notification made to a protection notification
 26 center by a person providing professional services and making a request in
 27 preparation for bidding, preconstruction engineering, or other advance planning

1 efforts. A design information request may not be used for excavation purposes;

2 (18) "Large project **request**" means an area of excavation occurring on or after July 1,
3 2016, measuring more than two thousand (2,000) feet in length. Multiple
4 excavation notifications in an area may be considered together in determining if the
5 excavations are part of a large project;~~and~~

6 (19) "Commission" means the Kentucky Public Service Commission;

7 **(20) "Person" means an individual, an entity, a foreign entity, or other legal or**
8 **commercial entity;**

9 **(21) "Positive response" means an automated or written communication system**
10 **provided by each protection notification center for all locate requests the center**
11 **receives pursuant to Section 2 of this Act that allows excavators, locators,**
12 **operators, and other interested parties to determine the status of locating an**
13 **underground facility and requires response and verification by operators and**
14 **excavators to comply with their respective requirements of the Underground**
15 **Facility Damage Prevention Act of 1994;**

16 **(22) "Unique identification number" or "locate request number" means a unique**
17 **number that any protection notification center or operator pursuant to Section 4**
18 **of this Act has assigned to a locate request for excavation;**

19 **(23) "Locator" means any entity or individual that locates lines or facilities for an**
20 **operator;**

21 **(24) "Second notice" means a notice that is made by an excavator to a notification**
22 **center when an operator has failed to comply with the positive response**
23 **requirements under subsection (5) of Section 2 of this Act;**

24 **(25) "Tolerance zone" means a strip of land at least four (4) feet wide but not wider**
25 **than the width of the underground facility plus two (2) feet on either side of the**
26 **outer limits of the facility; and**

27 **(26) "Unlocatable facility" means an underground facility that cannot be located**

1 *from the surface using locating methods which meet industry standards and that*
 2 *requires additional efforts and extended time.*

3 ➔Section 2. KRS 367.4909 is amended to read as follows:

- 4 (1) Each operator shall provide protection notification center access to excavators.
- 5 (2) Voluntary operator membership in the Kentucky Contact Center shall satisfy the
 6 requirement of subsection (1) of this section.
- 7 (3) Each operator member of the Kentucky Contact Center shall provide and update as
 8 needed to the Kentucky Contact Center the general location of its underground
 9 facilities, the operator identity and business address, and emergency notification
 10 telephone numbers.
- 11 (4) Each operator shall report to the commission excavation damage to an underground
 12 facility used in the transportation of gas or hazardous liquid within thirty (30)
 13 calendar days of being informed of the damage. Each report of excavation damage
 14 shall be made by electronic mail or as otherwise prescribed by the commission.
- 15 (5) An operator shall respond to facility locate requests *and provide a positive response*
 16 as follows:
- 17 (a) To a normal excavation locate request, within two (2) working days after
 18 receiving notification from an excavator *or any time prior to the scheduled*
 19 *excavation start date if agreed to and documented by the operator and the*
 20 *excavator or the protection notification center handling the locate request,*
 21 *excluding large project requests, design information requests, emergency*
 22 *locate requests, and unmapped or unlocatable facilities*~~[- excluding large~~
 23 ~~projects];~~
- 24 (b) To an emergency locate request, as quickly as possible but not to exceed forty-
 25 eight (48) hours after receiving notification from an excavator;
- 26 (c) To a design information request, within ten (10) working days after receiving
 27 notification from the person making the request;~~[- and]~~

- 1 (d) To a large project request, within two (2) working days the operator shall
2 notify the excavator that an excavation area has been determined to be a
3 large project, and the operator shall respond to the request within five (5)
4 working days from the later of receiving notification from an excavator or
5 prior to the scheduled excavation start date for that location; and
- 6 (e) To an unmapped or unlocatable facility request, within two (2) working
7 days the operator shall notify the excavator that an excavation area has
8 been determined to be an unmapped or unlocatable project, and the
9 operator shall respond to the request within five (5) working days for a
10 normal locate request or eight (8) working days for a large project request
11 from the later of receiving notification from an excavator or prior to the
12 scheduled excavation start date for that location.
- 13 (6) Within one (1) working day after receiving a second notice request from an
14 excavator pursuant to subsection (12) of Section 3 of this Act, an operator shall
15 update the positive response system. The operator shall respond to facility locate
16 requests as follows:
- 17 (a) To a normal excavation locate request, within two (2) working days after
18 receiving notification from an excavator or any time prior to the scheduled
19 excavation start date if agreed to and documented by the operator and the
20 excavator or the protection notification center handling the locate request,
21 excluding large project requests, design information requests, emergency
22 locate requests, and unmapped or unlocatable facilities, excluding large
23 projects;
- 24 (b) To an emergency locate request, as quickly as possible but not to exceed
25 forty-eight (48) hours after receiving notification from an excavator;
- 26 (c) To a design information request, within ten (10) working days after
27 receiving notification from the person making the request;

1 (d) To a large project request, within two (2) working days the operator shall
 2 notify the excavator that an excavation area has been determined to be a
 3 large project, and the operator shall respond to the request within five (5)
 4 working days from the later of receiving notification from an excavator or
 5 the scheduled excavation start date for that location; and

6 (e) To an unmapped or unlocatable facility request, within two (2) working
 7 days the operator shall notify the excavator that an excavation area has
 8 been determined to be an unmapped or unlocatable project, and the
 9 operator shall respond to the request within five (5) working days for a
 10 normal locate request or eight (8) working days for a large project request
 11 from the later of receiving notification from an excavator or prior to the
 12 scheduled excavation start date for that location.

13 (7) An operator shall, after~~upon~~ receiving an emergency locate request, ~~or~~ a normal
 14 excavation locate request, or large project request as provided in subsection (5) of
 15 this section:

16 (a) Inform the excavator of the approximate location and description of any of the
 17 operator's underground facilities that may be damaged or pose a safety
 18 concern because of excavation or demolition;

19 ~~(b) [Inform the excavator of any other information that would assist in locating~~
 20 ~~and avoiding contact with or damage to underground facilities;~~

21 ~~(c)~~ Unless permanent facility markers are provided, provide temporary markings
 22 to inform the excavator of the ownership and approximate location of the
 23 underground facility; and

24 ~~(d)~~ (8) Provide a positive response to the requesting party~~[Notify the~~
 25 ~~requesting party if underground facilities are not in conflict with the~~
 26 ~~excavation or demolition].~~

27 ~~(7)~~ Upon receiving a design information request, an operator shall contact the

1 person making the request within the time period specified in subsection (5) of this
2 section. The operator shall:

- 3 (a) Designate with temporary underground facility markers the location of all
4 underground facilities owned by the operator within the area of the design
5 information request as defined in KRS 367.4903;
- 6 (b) Provide to the person making the design information request a description of
7 all underground facilities owned by the operator in the area of the design
8 information request and the location of the facilities, which may include
9 drawings marked with a scale, dimensions, and reference points for
10 underground utilities already built in the area or other facility records that are
11 maintained by the operator; or
- 12 (c) Allow the person making the design information request or an authorized
13 person to inspect the drawings or other records for all underground facilities
14 with the proposed area of excavation at a location that is acceptable to the
15 operator.

16 ~~(9)~~ An operator may reject a design information request ***and not be held in***
17 ***violation of subsection (6) of this section*** based upon security considerations or if
18 producing the information will place the operator at a competitive disadvantage,
19 pending the operator obtaining additional information confirming the legitimacy of
20 the notice. The operator shall notify the person making the design information
21 request and may request additional information.

22 ~~(10)~~ Temporary underground facility markers shall consist of paint, chalk, flags,
23 stakes, or any combination thereof and shall conform to the following standards of
24 the American Public Works Association uniform color code:

- 25 (a) Electric power distribution and transmission Safety Red
- 26 (b) Municipal electric systems Safety Red
- 27 (c) Gas distribution and transmission High visibility safety yellow

- | | | |
|----|--|-----------------------------------|
| 1 | (d) Oil distribution and transmission | High visibility safety yellow |
| 2 | (e) Dangerous materials, product lines | High visibility safety yellow |
| 3 | (f) Telecommunication systems and cable television | Safety alert orange |
| 4 | (g) Temporary survey markings | Safety pink |
| 5 | (h) Police and fire communications | Safety alert orange |
| 6 | (i) Water systems | Safety precaution blue |
| 7 | (j) Sewer and storm drainage systems | Safety green |
| 8 | (k) Proposed excavation or construction boundaries | White |
| 9 | (l) Reclaimed water, slurry, and irrigation facilities | Purple |
| 10 | <u>(m) Fiber optic and critical telecommunication</u> | <u>Safety alert orange</u> |

11 ~~(11)~~~~(10)~~ If extraordinary circumstances exist, an operator shall notify the excavator of
 12 the operator's inability to comply with this section. **Notification under this**
 13 **subsection shall temporarily relieve the operator of complying with subsections**
 14 **(5) and (6) of this section until the operator can recover from the extraordinary**
 15 **circumstances.** Extraordinary circumstances include **snow, rain,** extreme weather
 16 conditions, force majeure, disasters, or civil unrest that make timely response
 17 difficult or impossible.

18 ~~(12)~~~~(11)~~ All underground facilities installed after January 1, 2013, shall include a
 19 means to accurately identify and locate the underground facilities from the surface.
 20 This subsection does not apply to the repair of existing facilities.

21 ➔Section 3. KRS 367.4911 is amended to read as follows:

- 22 (1) (a) Each excavator, or person responsible for an excavation, planning excavation,
 23 or demolition work shall, not less than two (2) full working days nor more
 24 than ten (10) full working days prior to commencing work, notify each
 25 affected **operator's designated protection notification center**~~[operator]~~ of the
 26 excavator's intended work and work schedule, **unless a future start date is**
 27 **agreed upon and documented by the excavator and the operator or the**

1 protection notification center handling the locate request~~]. Contacting the~~
 2 applicable protection notification centers shall satisfy this requirement].

3 (b) An excavator may ***not*** commence work before the ***operator, the operator's***
 4 ***designee, or the operator's designated protection notification center has***
 5 ***given a positive response as defined in Section 1 of this Act***~~[two (2) full~~
 6 working days provided for in paragraph (a) of this subsection have elapsed if
 7 all affected operators have notified the person] that the location of all the
 8 affected operators' facilities have been marked or that they have no facilities in
 9 the area of the proposed excavation, demolition, or timber harvesting.

10 (2) Locate requests are valid for twenty-one (21) calendar days from the day ***the final***
 11 ***positive response was received for that locate request***~~[of the initial request].~~

12 (3) Each excavator shall provide each applicable protection notification center with
 13 adequate information regarding:

14 (a) ***Name and phone number of the excavator or person requesting the***
 15 ***underground facility locate;***

16 (b) ***Approximate location and type of work being performed by the excavator;***

17 (c) ***Name and phone number of excavator or person responsible for the work***
 18 ***performed; and***

19 (d) ***Estimated start date and start time of excavation***~~[The name of the individual~~
 20 making the notification;

21 (b) ~~The excavator's name, address, and a telephone number;~~

22 (c) ~~The excavation or demolition site location or locations, each of which shall~~
 23 ~~not exceed two thousand (2,000) feet in length unless the excavator and~~
 24 ~~operator agree to a larger area, the city or community, county and street~~
 25 ~~address, including the nearest cross street;~~

26 (d) ~~The type and extent of excavation or demolition to be performed;~~

27 (e) ~~A contact name and telephone number of the person responsible for the work~~

1 ~~to be performed~~.

- 2 (4) If more than one (1) excavator will operate at the same site, each excavator shall
3 notify the protection notification centers individually. Notification by an excavator
4 will serve as notification for any of that excavator's employees. Failure by an
5 excavator to notify the protection notification center does not relieve individual
6 employees of responsibility.
- 7 (5) The excavator shall inform and provide to excavation or demolition site employees:
8 (a) The underground facility location provided by each operator;
9 (b) Any related safety information provided by each operator; and
10 (c) The locate request identification number assigned by each protection
11 notification center.
- 12 (6) The excavator shall protect and preserve temporary underground facility markers
13 until the scheduled excavation or demolition is completed.
- 14 (7) If, after the **response time**~~[two (2) day period]~~ provided by KRS 367.4909(5)(a), the
15 excavator finds evidence of an unmarked underground facility at the site, he shall
16 immediately notify ~~a~~the protection notification center. **When an excavator has**
17 **complied with subsection (1)(b) of this section and evidence of an unmarked**
18 **underground facility is uncovered, the operator shall have six (6) hours to**
19 **identify the underground facility.**
- 20 (8) The excavator shall contact the protection notification center to request remarking
21 two (2) working days in advance of the expiration of each twenty-one (21) day
22 period while excavation or demolition continues or if:
23 (a) The markings of any underground facility have been removed or are no longer
24 visible; or
25 (b) The excavator has changed the work plan or location previously filed.
- 26 (9) (a) Each excavator who conducts or is responsible for any excavation or
27 demolition that results in underground facility damage shall cease excavation

- 1 or demolition activities and notify all affected operators of the location and
2 nature of the underground facility damage *immediately upon discovery of the*
3 *damage. If a gas leak is suspected, the excavator shall call 911 emergency*
4 *service.*
- 5 (b) If the underground facility damage causes concern for public or workplace
6 safety, the excavator shall notify appropriate public safety agencies of the
7 location and nature of the safety concern.
- 8 (c) If the underground facility damage results in the escape of any flammable,
9 toxic, or corrosive gas or liquid, the excavator shall cease excavation or
10 demolition activities and immediately report to the appropriate authorities by
11 calling the 911 emergency telephone number.
- 12 (10) When excavation or demolition is necessary within the *tolerance zone*~~[approximate~~
13 ~~location of the underground facility]~~, the excavator shall hand-dig or use
14 nonintrusive means to avoid damage to the underground facility, *except that*
15 *mechanized equipment may be used:*
- 16 *(a) To remove the pavement or other manmade hard surface if used during the*
17 *initial penetration only to the depth necessary and if an individual other*
18 *than the equipment operator visually monitors the excavation activity;*
- 19 *(b) To remove indigenous rock if used during the initial penetration only to the*
20 *extent necessary, if an individual other than the equipment operator*
21 *visually monitors the excavation activity, and if the excavation is planned to*
22 *avoid damage to the underground facility. However, if the underground*
23 *facility contains flammable, toxic, corrosive, or hazardous products, the*
24 *excavator shall notify the facility owner of the excavator's intent prior to*
25 *removing indigenous rock;*
- 26 *(c) To remove materials that are more than twelve (12) inches in any direction*
27 *from the outer edge of the located facility if the excavator visually identifies*

1 the precise location of the underground facility or visually confirms that no
2 facility is present within the depth of the excavation, if an individual other
3 than the equipment operator visually monitors the excavation activity, and
4 if the excavation is planned to avoid damage to the underground facility;

5 (d) By an operator or contractor working on behalf of the operator near that
6 operator's own facilities if no other underground facility is located within
7 twelve (12) inches in any direction of the mechanized equipment; and

8 (e) To place shores into an existing excavation or remove shores from an
9 existing excavation.

10 (11) Upon request by an operator or when the proposed excavation location cannot be
11 accurately identified, an excavator shall mark the boundaries of the location to be
12 excavated using the procedure set forth in subsection (10)(k) of Section 2 of this
13 Act~~[KRS 367.4909(9)(k)]~~. After marking the boundaries, the excavator shall
14 contact the protection notification center or centers. The requirements of
15 subsections (5) to (11) of Section 2 of this Act~~[KRS 367.4909(5) to (10)]~~ are
16 reestablished upon the operator receiving notification of this marking from the
17 protection notification center or centers. This marking shall not alter, or relieve the
18 excavator from complying with, the requirements of KRS 367.4905 to 367.4917.

19 (12) If an operator has failed to give a positive response within the timeframes
20 provided in subsection (5) of Section 2 of this Act, the excavator shall submit a
21 second notice to the protection notification center. If one (1) working day after
22 receiving a second notice request as provided in subsection (6) of Section 2 of this
23 Act, the operator has still failed to give a positive response, an excavator that has
24 fully complied with this section shall not be deemed liable for any damages to an
25 underground facility that would have been located if the operator had complied
26 with the operator's duties under Section 2 of this Act, except for damages to a
27 person or an underground facility due to negligence or intentional misconduct of

1 *an excavator. This subsection shall not apply to any underground facility used to*
 2 *transport gas or hazardous liquid subject to the federal pipeline safety laws, 49*
 3 *U.S.C. secs. 60101 et seq.*

4 → Section 4. KRS 367.4913 is amended to read as follows:

5 (1) ~~All~~~~Each~~ protection notification ~~centers~~~~center~~ shall:

6 (a) *Provide locate request services during working days and provide an*
 7 *emergency contact number for incidents occurring outside the working*
 8 *day*~~[Operate the protection notification center during all working days];~~

9 (b) *Provide a positive response system for excavators, locators, operators, and*
 10 *other interested parties to determine the status of locating an underground*
 11 *facility;*

12 (c) *Provide any excavation request with an identification number and the*
 13 *names of the facility owners or operators who will be notified for each*
 14 *locate request*~~[Provide a locate request identification number to the excavator~~
 15 ~~for each excavation or demolition location request];~~

16 ~~(d)~~~~(e)~~ Promptly after receiving an excavation or demolition work notification
 17 from an excavator, provide to each of its affected operator members the
 18 excavator information required by KRS 367.4911(3);

19 ~~(e)~~~~(d)~~ Maintain a list of all its operator ~~members~~~~[member's identities]~~, *their*
 20 business *addresses*~~[address]~~ and *their* business and emergency telephone
 21 numbers and *provide*~~[record]~~ this information in accordance with KRS 64.012
 22 with the county clerk of each county where the operator member has
 23 underground facilities. The county clerk shall provide this information upon
 24 request for the actual cost of providing a copy, to be paid by the requesting
 25 party to the county clerk. The county clerk shall assume no liability associated
 26 with the receipt of this information from the protection notification center or
 27 for subsequent provision of this same information to the requesting party;

1 ~~(f)~~~~(e)~~ Make the operator members information list available to any person for
 2 inspection at its place of business without charge or provide a copy of the list
 3 to any person for any county upon request for a fee not to exceed the actual
 4 cost of providing a copy;

5 ~~(g)~~~~(f)~~ Define and adopt policies and procedures for processing design
 6 information requests;~~and~~

7 ~~(h)~~~~(g)~~ Provide the person making a design information request a list of
 8 identified operators that will receive notification and notify those operators;

9 (i) Maintain the following information provided by excavators for all requests
 10 to locate facilities for at least five (5) years from the date of the request:

11 1. Name and phone number of the excavator or person requesting the
 12 underground facility locate;

13 2. Approximate location and type of work being performed by the
 14 excavator;

15 3. Name and phone number of excavator or person responsible for the
 16 work performed;

17 4. Name, address, and phone number of underground facility operators;
 18 and

19 5. Estimated start date and start time of excavation;

20 (j) Provide contact information for the protection notification center on its
 21 Web site or pursuant to paragraph (e) of this subsection; and

22 (k) Provide public awareness education and damage prevention programs in
 23 the manner and amount determined by each protection notification center.

24 (2) The Kentucky Contact Center shall be governed by a board of directors ~~composed~~
 25 ~~of representatives of member operators~~ who are elected by the membership. Board
 26 seats shall be composed of no more than twenty-two (22) voting members and six
 27 (6) nonvoting members as follows~~may be filled by representatives of the~~

1 following]:

- 2 (a) At least one (1) but not more than two (2) voting members representing[A]
3 natural gas providers[provider];
- 4 (b) At least one (1) but not more than two (2) voting members representing[An]
5 electric providers[provider];
- 6 (c) At least one (1) but not more than two (2) voting members representing[A]
7 telecommunications providers[provider];
- 8 (d) At least one (1) but not more than two (2) voting members representing[A]
9 water/sewer providers[provider];
- 10 (e) At least one (1) but not more than two (2) voting members representing[An]
11 interstate pipeline operators[operator];
- 12 (f) At least one (1) but not more than two (2) voting members representing[A]
13 municipal utility operators[operator];[and]
- 14 (g) At least one (1) but not more than two (2) voting members representing
15 rural electric cooperatives;
- 16 (h) At least one (1) but not more than two (2) voting members representing
17 rural telecommunications providers;
- 18 (i) At least one (1) but not more than two (2) voting members representing
19 rural water providers;
- 20 (j) At least one (1) but not more than two (2) voting members representing
21 commercial excavators;
- 22 (j) At least one (1) but not more than two (2) voting members representing oil
23 and gas producers; and
- 24 (k) At least one (1) but not more than six (6) advisory, nonvoting members
25 representing the following:
- 26 1. Public Service Commission;
- 27 2. Kentucky Transportation Cabinet

- 1 **3. Home Builders Association of Kentucky;**
 2 **4. National Electric Contractors Association;**
 3 **5. Associated General Contractors of Kentucky; or**
 4 **6. Kentucky Association of Master Contractors**~~[An advisory, nonvoting~~
 5 representative of one (1) of the following:
 6 1.—Home Builders Association of Kentucky;
 7 2.—National Electrical Contractors Association;
 8 3.—Associated General Contractors of Kentucky; or
 9 4.—Kentucky Association of Plumbing, Heating Cooling Contractors].

10 **(3) Nonvoting members shall be elected by a majority of the voting members and**
 11 **shall serve for one (1) year terms which expire on December 31. Nonvoting**
 12 **members are eligible for reappointment by a majority of the voting members.**

13 **(4)** The Kentucky Contact Center's board of directors shall establish the method to
 14 calculate the cost of service provided by the center.

15 **(5)**~~[(4)]~~ The Kentucky Contact Center shall serve all Kentucky counties.

16 ➔Section 5. KRS 367.4915 is amended to read as follows:

17 The requirements of KRS 367.4905 to 367.4917 shall not apply to the following:

- 18 (1) Excavation by an operator on its own easement except where that easement is
 19 crossed by another operator's facilities;
 20 (2) Routine road maintenance or railroad maintenance or repairs;
 21 (3) Tilling of soil for agricultural purposes;
 22 (4) Excavators excavating on private property, using nonmechanized equipment, if
 23 there is no encroachment on any operator's right-of-way or easement;
 24 (5) The opening of a grave in a cemetery;
 25 (6) A solid waste disposal site which is properly permitted;
 26 (7) Coal mining operations which are currently regulated under KRS Chapter 350;
 27 (8) A utility operator or utility operator subcontractor performing emergency work as

1 defined in KRS 367.4903;

2 (9) Leak migration testing using metal probes inserted by hand by an authorized
3 representative of the operator;~~[-or]~~

4 (10) Any nonintrusive excavating performed by an operator or his subcontractor to
5 locate the operator's underground facilities in response to a notice of excavation
6 from the notification center, if all reasonable precautions have been taken to protect
7 the underground facilities; or

8 **(11) Nonintrusive excavating to inspect or perform maintenance for an existing utility**
9 **pole.**

10 ➔Section 6. KRS 367.4917 is amended to read as follows:

11 (1) An excavator who fails to comply with any provision of KRS 367.4911, or an
12 operator who fails to comply with any provision of KRS 367.4909~~[-, shall be guilty~~
13 ~~of endangering underground facilities and]~~ may be subject to a **civil penalty**~~[fine]~~ of
14 two hundred~~[- and]~~ fifty dollars (\$250) for the first **violation**~~[offense]~~, no more than
15 one thousand dollars (\$1,000) for the second **violation**~~[offense within one (1) year,]~~
16 and no more than three thousand dollars (\$3,000) for the third and any subsequent
17 **violation. A violation shall be considered a first violation under this subsection if**
18 **more than three hundred sixty-five (365) days have elapsed since the last incident**
19 **attributable to a person in violation of Section 2 or Section 3 of this Act. If a**
20 **person commits a violation in the course and scope of employment, the penalties**
21 **shall be imposed on the employer**~~[offense].~~

22 (2) A protection notification center that fails to comply with any provision of KRS
23 367.4913 shall be subject to a **civil penalty**~~[fine]~~ of one thousand dollars (\$1,000)
24 for each **violation**~~[offense]~~.

25 (3) A person that knowingly provides false notice to a utility notification center of an
26 emergency as defined in KRS 367.4903 shall be subject to a **civil penalty**~~[fine]~~ of
27 one thousand dollars (\$1,000) for each **violation**~~[offense]~~.

- 1 (4) Any person who violates any provision of the Underground Facility Damage
2 Prevention Act of 1994, KRS 367.4901 to 367.4917, that involves damage to a
3 facility containing any flammable, toxic, corrosive, or hazardous material or results
4 in the release of any flammable, toxic, corrosive, or hazardous material shall be
5 subject to a **civil penalty, in addition to the civil penalty in subsection (1) of this**
6 **section,**~~[fine]~~ not to exceed one thousand dollars (\$1,000) for each
7 **violation**~~[offense]~~. The penalties of this subsection are not in conflict with and are
8 in addition to civil damages for personal injury or property damage.
- 9 (5) (a) Except as provided in subsection (6) of this section, all **civil penalties**~~[fines]~~
10 recovered for a violation of this section shall be paid to the general fund of the
11 state, county, city, or fire protection agency which issued the citation.
- 12 (b) In the event that more than one (1) government agency was involved, the court
13 shall direct an apportionment of the **civil penalties**~~[fines]~~.
- 14 (c) Failure to comply with the provisions of the Underground Facility Damage
15 Prevention Act of 1994, KRS 367.4901 to 367.4917, may be determined at the
16 conclusion of an investigation and shall be based on evidence available to
17 state, county, or city officials, law enforcement, or fire protection agencies
18 which issue the citation.
- 19 (6) The commission shall have statewide authority to enforce and assess civil penalties
20 provided for in this section and to seek injunctive relief for any violation that results
21 in damage to an underground facility used to transport gas or hazardous liquid
22 subject to the federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq. Once the
23 commission initiates an investigation or undertakes an enforcement action against a
24 person for an alleged violation, no other state, county, city, or fire protection agency
25 shall initiate or continue any enforcement action against the person for the same
26 alleged violation. Any action to recover penalties assessed pursuant to this
27 subsection shall be brought in the Franklin Circuit Court. All penalties recovered by

1 the commission shall be paid into the State Treasury and credited to the account of
2 the commission.

3 (7) The commission may promulgate administrative regulations in accordance with
4 KRS Chapter 13A to enforce the Underground Facility Damage Prevention Act of
5 1994. The commission shall exercise its authority under the Underground Facility
6 Damage Prevention Act of 1994 in accordance with the rules and procedures set
7 forth in KRS Chapter 278 and all applicable administrative regulations promulgated
8 by the commission.

9 ➔Section 7. This Act takes effect January 1, 2021.