

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2118

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Title 28, chapter 20, article 5, Arizona Revised Statutes,  
3 is amended by adding section 28-7060, to read:

4 28-7060. Removal and relocation of underground facilities:  
5 notice: definitions

6 A. AN UNDERGROUND FACILITIES OPERATOR IS NOT REQUIRED TO REMOVE OR  
7 RELOCATE AN ACTIVE, INACTIVE OR ABANDONED UNDERGROUND FACILITY LOCATED IN THE  
8 RIGHT-OF-WAY OF A STATE HIGHWAY, STATE ROUTE OR INTERSTATE HIGHWAY UNDER THE  
9 DIRECT CONTROL OF THE DIRECTOR EXCEPT IF DURING THE DESIGN PHASE THE  
10 UNDERGROUND FACILITIES OPERATOR IS NOTIFIED THAT THE UNDERGROUND FACILITY  
11 WILL BE IN DIRECT PHYSICAL CONFLICT WITH THE EXCAVATION FOR ACTIVE ROADWAY  
12 CONSTRUCTION AND WILL BE WITHIN THE BOUNDARY OF THE AREA IDENTIFIED FOR  
13 EXCAVATION.

14 B. AFTER NOTIFICATION UNDER SUBSECTION A OF THIS SECTION, AN  
15 UNDERGROUND FACILITIES OPERATOR MUST PROMPTLY REMOVE OR RELOCATE AS MUCH OF  
16 THE UNDERGROUND FACILITIES AS WOULD BE WITHIN THE MUTUALLY IDENTIFIED  
17 BOUNDARY OF ACTIVE EXCAVATION AND IN A POSITION OF EXPOSURE AT THE TIME OF  
18 EXCAVATION.

19 C. THIS SECTION DOES NOT RELIEVE AN UNDERGROUND FACILITIES OPERATOR  
20 FROM ITS OBLIGATIONS UNDER TITLE 40, CHAPTER 2, ARTICLE 6.3 IN CONNECTION  
21 WITH REMOVAL AND RELOCATION OF AN UNDERGROUND FACILITY UNDER THIS SECTION.

22 D. FOR THE PURPOSES OF THIS SECTION, "ABANDONED", "EXCAVATION",  
23 "INACTIVE", "UNDERGROUND FACILITIES OPERATOR" AND "UNDERGROUND FACILITY" HAVE  
24 THE SAME MEANINGS PRESCRIBED IN SECTION 40-360.21.

1           Sec. 2. Section 40-360.22, Arizona Revised Statutes, is amended to  
2 read:

3           40-360.22. Excavations; determining location of underground  
4           facilities; providing information; excavator  
5           marking; on-site representative; validity period of  
6           markings; liability for misuse of locate requests;  
7           detectible underground locating devices; civil  
8           penalty

9           A. A person shall not make or begin any excavation in any public  
10 street, alley, right-of-way dedicated to the public use or public utility  
11 easement or in any express or implied private property utility easement or in  
12 any apartment community or mobile home park without first determining whether  
13 underground facilities will be encountered, and if so where they are located  
14 from each and every underground facilities operator and taking measures for  
15 control of the facilities in a careful and prudent manner. For all  
16 excavations in an apartment community or mobile home park, the excavator  
17 shall inform the landlord as promptly as ~~practical~~ PRACTICABLE that the  
18 excavator intends to submit an inquiry to the landlord that will trigger the  
19 landlord's obligations provided by subsection B of this section and the  
20 inquiry itself shall be made by certified mail to the landlord, using a form  
21 prepared by a one-call notification center. The inquiry to a landlord may be  
22 made by a one-call notification center for a reasonable fee to the excavator.

23           B. Except as otherwise provided in this subsection, ~~upon~~ ON receipt of  
24 the excavator's inquiry, the underground facilities operator shall respond as  
25 promptly as ~~practical~~ PRACTICABLE, but ~~in no event~~ NOT later than two working  
26 days, by carefully marking such facility with stakes or paint or in some  
27 customary manner. A landlord shall respond in the same manner and as  
28 promptly as ~~practical~~ PRACTICABLE, but ~~in no event~~ NOT later than ten working  
29 days. No person shall begin excavating before the location and marking are  
30 complete or the excavator is notified that marking is unnecessary. If the  
31 excavator consents, an underground facilities operator may notify a one-call  
32 notification center that marking is unnecessary pursuant to a method

1 established by the one-call notification center. An underground facilities  
2 operator may assign any marking or notification obligations required by this  
3 subsection to an agent or servant of the underground facilities operator. An  
4 underground facilities operator may notify the excavator that marking is  
5 unnecessary pursuant to any mutually agreeable method.

6 C. On a timely request by the underground facilities operator, the  
7 excavator shall mark the boundaries of the area requested to be excavated in  
8 accordance with a color code designated by the commission or by applicable  
9 custom or standard in the industry. A request under this subsection for  
10 excavator marking does not alter any other requirement of this section.

11 D. Except as provided in subsection F of this section, a person shall  
12 not begin excavating in any apartment community or mobile home park before  
13 the landlord has completed marking the underground facility or the excavator  
14 is notified that marking is unnecessary. After underground facility markings  
15 are complete or the excavator has received notice that marking is  
16 unnecessary, an excavator shall notify the landlord if any of the following  
17 conditions exist:

18 1. Visible and obvious evidence, such as pavement cuts, that would  
19 alert a reasonable excavator to the presence of an unmarked underground  
20 facility within the boundary of the intended area of excavation.

21 2. The excavator has concerns regarding the accuracy and meaning of  
22 the marks.

23 3. The excavator encounters an underground facility that has not been  
24 marked.

25 4. The excavator encounters an underground facility that has been  
26 incorrectly marked or marked in the wrong location.

27 E. For every excavation in an apartment community or mobile home park  
28 where the excavation method is boring:

29 1. Every underground facilities operator shall be notified of this  
30 methodology.

31 2. The excavator shall ensure that sufficient clearance is maintained  
32 between the bore path and any marked underground facility.

1           3. The excavator shall visually check the drill head each time it  
2 passes through potholes, entrances and exit pits, including during pullback.

3           4. Each underground facilities operator shall be given a reasonable  
4 opportunity to inspect its facility before and during the boring operation.

5           F. If a landlord fails to respond to an excavator's request in a  
6 manner required by this article, an excavator does not violate this article  
7 and fulfills the standard of care of a reasonably prudent excavator if the  
8 excavator complies with all of the following:

9           1. One working day before conducting the excavation, the excavator  
10 notifies the landlord in writing or by fax that the excavator has determined  
11 that the acts or omissions of the landlord ~~is~~ CONSTITUTE a refusal to respond  
12 to an excavator's request.

13           2. The excavator investigates for the presence of visible and obvious  
14 evidence that would alert a reasonable excavator to the presence of an  
15 unmarked underground facility within the boundaries of the area to be  
16 excavated.

17           3. The excavator carefully locates all unmarked facilities that are  
18 known to exist due to the excavator's investigation performed pursuant to  
19 paragraph 2 of this subsection using one of the methods listed in subsection  
20 G of this section and carefully marks the facilities with stakes or paint or  
21 in some customary manner. In addition, when a landlord provides verbal or  
22 written information regarding the location of underground facilities that are  
23 within the boundaries of the area to be excavated, the excavator carefully  
24 locates all such identified facilities using one of the methods listed in  
25 subsection G of this section and carefully marks the facilities with stakes  
26 or paint or in some customary manner.

27           4. The excavator takes measures to control all such located facilities  
28 in a careful and prudent manner.

29           5. The excavator shall not excavate if the excavator receives a  
30 response from the landlord that notifies or alerts the excavator to the  
31 presence of a mistake or an intention by the landlord to respond in a manner  
32 that is consistent with this article, even if the response will be untimely.

1 A landlord's delay, failure to respond to a location request, failure to mark  
2 or other noncompliance is not excused by the excavator's or landlord's  
3 compliance with this subsection.

4 G. Except as otherwise provided in this section, in performing the  
5 marking required by subsection B of this section, the underground facilities  
6 operator of an underground facility installed after December 31, 1988 in a  
7 public street, alley or right-of-way dedicated to public use or public  
8 utility easement, but not including any express or implied private property  
9 utility easement, shall carefully locate the facility by referring to  
10 installation records of the facility that are in the possession of the  
11 underground facility operator and utilizing one of the following methods:

- 12 1. Vertical line or facility markers.
- 13 2. Locator strip or locator wire.
- 14 3. Signs or permanent markers.
- 15 4. Electronic or magnetic location or tracing techniques.
- 16 5. Electronic or magnetic sensors or markers.
- 17 6. Metal sensors or sensing techniques.
- 18 7. Sonar techniques.
- 19 8. Underground electrical or radio transmitters.
- 20 9. Manual location techniques, including pot-holing.
- 21 10. Surface extensions of underground facilities.
- 22 11. Any other surface or subsurface location technique that is at least  
23 as accurate as the other marking methods in this subsection and that is not  
24 prohibited by the commission or by federal or state law. This paragraph does  
25 not obligate an underground facilities operator to be aware of and utilize  
26 every surface or subsurface location technique available.

27 H. Except as otherwise provided in this section, for an underground  
28 facility other than one installed after December 31, 1988, in a public  
29 street, alley or right-of-way dedicated to public use or public utility  
30 easement, in performing the marking required by subsection B of this section,  
31 the underground facilities operator may refer to installation records or  
32 other records relating to the facility to assist in locating the facility and

1 shall carefully locate the facility utilizing one of the methods listed under  
2 subsection G of this section.

3 I. If an underground facilities operator is unable to complete the  
4 location and marking within the time period provided by subsection B of this  
5 section, the facilities operator shall satisfy the requirements of this  
6 section by providing prompt notice of these facts to the excavator and  
7 assigning one or more representatives to be present on the excavation site at  
8 all pertinent times as requested by the excavator to provide facility  
9 location services until the facilities have been located and marked or the  
10 excavator is notified that marking is unnecessary pursuant to any mutually  
11 agreeable method. A person that receives notice from the underground  
12 facilities operator of these facts shall not begin excavating before the  
13 underground facilities operator has completed marking the underground  
14 facility or the excavator is notified that marking is unnecessary. Except as  
15 provided in subsection J of this section, the underground facilities operator  
16 shall bear all of its own expenses associated with assigning representatives.

17 J. The marking required by subsection B of this section is valid for  
18 fifteen working days from the date of the marking. If the excavation will  
19 continue past the validity period of the marks as provided by this  
20 subsection, the excavator shall notify the underground facilities operator or  
21 an organization designated by the underground facilities operator at least  
22 two working days before the end of the validity period. All requests for  
23 facility markings and requests to extend the validity period of the markings  
24 shall be for the purpose of excavating within the validity period of the  
25 markings. An excavator that requests facility markings shall limit the  
26 request to an area that can reasonably be excavated within the validity  
27 period of the markings. A person who violates this subsection is liable to  
28 the one-call notification center and to all affected underground facilities  
29 operators for any damages proximately caused by the violation, including  
30 economic loss.

31 K. ~~Nothing in~~ This section ~~shall be construed to~~ DOES NOT prevent an  
32 excavator and an underground facilities operator from holding a

1       preconstruction conference regarding marking and location of underground  
2       facilities and entering into a mutually agreeable written schedule for  
3       marking or excavating or written arrangement that may constrain the  
4       excavation methods or that may provide for the delivery of installation  
5       records to the excavator for the purpose of satisfying the requirements of  
6       this section, except that this subsection does not eliminate the excavator's  
7       obligation to notify the underground facilities operator to locate and mark  
8       excavation sites under subsection B of this section based on the actual  
9       construction schedule.

10       L. For abandoned and apparently abandoned underground facilities:

11       1. The underground facilities operator shall notify the excavator  
12       whether the facility is active or abandoned. An inactive facility shall be  
13       considered active for purposes of this subsection. This section does not  
14       obligate any person to represent that an underground sewer facility in any  
15       public street, alley, right-of-way dedicated to public use or public utility  
16       easement is abandoned if it was installed on or before December 31, 2005 and  
17       it is not owned by an underground facilities operator of a sewer system.  
18       This paragraph does not obligate a landlord to represent that an underground  
19       facility in any apartment community or mobile home park is abandoned if it  
20       was installed before January 1, 2007.

21       2. For an underground facility abandoned after December 31, 1988 or  
22       covered by installation records prepared under section 40-360.30, the  
23       underground facilities operator may not advise or represent to the excavator  
24       that a facility or portion of a facility is abandoned unless the underground  
25       facilities operator has verified, by reference to installation records or by  
26       testing, that the facility or portion is actually abandoned and not merely  
27       inactive. For all other abandoned or apparently abandoned underground  
28       facilities, each one-call notification center shall establish a method of  
29       providing personnel from an underground facilities operator qualified to  
30       safely inspect and verify that the facility is abandoned or active. For the  
31       purposes of this article, an underground facilities operator shall not

1 represent that an underground facility is abandoned unless the facility has  
2 been verified as abandoned pursuant to this subsection.

3 3. For the purposes of this article, if an excavator encounters an  
4 apparently abandoned underground facility, the excavator shall not treat the  
5 underground facility as abandoned until the excavator has received  
6 notification that the underground facility is abandoned pursuant to paragraph  
7 1 of this subsection or has notified the underground facilities operator of  
8 the apparent abandonment and has received verification of abandonment  
9 pursuant to paragraph 2 of this subsection.

10 4. Each one-call notification center may establish a method for  
11 reimbursing the verifying underground facilities operator for the expenses  
12 incurred under paragraph 2 of this subsection. The reimbursement method  
13 shall not include any charge or expense to the excavator. A landlord that  
14 fails to advise or represent that an underground facility is abandoned  
15 pursuant to paragraph 1 of this subsection, whose underground facility is  
16 verified as abandoned pursuant to this subsection and who has not filed  
17 information with a one-call notification center is liable to the one-call  
18 notification center and to all affected underground facilities operators and  
19 excavators for the cost of verifying abandonment together with any damages,  
20 including economic loss, proximately caused by the violation.

21 M. All new and active underground facilities installed in any real  
22 property after December 31, 2005 shall be installed with a detectible  
23 underground location device unless the facility is capable of being detected  
24 from above ground with an electronic locating device or the facility is  
25 installed within single family residential property and is beneath a pool,  
26 permanent pool decking that is less than forty-eight inches from the pool or  
27 a permanent building. A person who violates this subsection is subject to a  
28 civil penalty in an amount not to exceed five thousand dollars. The building  
29 official shall administer and enforce this subsection for all underground  
30 facilities except those that are installed for a public utility or municipal  
31 corporation. Any penalties received by the building official shall be  
32 deposited in the municipality's or political subdivision's general fund, as

1 applicable. Except as required by a city, town or county building code or  
2 other related code, for purposes of locating an underground facility a  
3 building official or political subdivision shall not compel the installation  
4 of one or more clean-outs on any underground sewer facility that is owned by  
5 another person and serves one customer where any portion of the underground  
6 sewer facility is in any public street, alley, right-of-way dedicated to  
7 public use, private property or easement.

8 N. THE REMOVAL OR RELOCATION OF UNDERGROUND FACILITIES UNDER SECTION  
9 28-7060 DOES NOT RELIEVE THE UNDERGROUND FACILITY OPERATOR FROM ITS  
10 OBLIGATIONS UNDER THIS ARTICLE FOR ITS REMAINING ACTIVE, INACTIVE OR  
11 ABANDONED UNDERGROUND FACILITIES.

12 ~~N. 0. Nothing in~~ This section ~~shall be construed as prohibiting~~ DOES  
13 NOT PROHIBIT the use of warning tape, warning markers or any other warning  
14 device by the underground facilities operator.

15 ~~P.~~ P. For every underground facilities operator of a sewer system:

16 1. For the purposes of this article, an underground facilities  
17 operator of a sewer system is responsible for locating and carefully marking  
18 the underground sewer facilities owned by another person pursuant to  
19 subsection B of this section if those underground facilities are installed  
20 after December 31, 2005 and are in any public street, alley, right-of-way  
21 dedicated to public use or public utility easement.

22 2. In performing the marking required by this subsection, the  
23 underground facilities operator of the sewer system shall carefully locate  
24 the facility by referring to installation records of the facility and by  
25 using one of the methods listed in subsection G of this section.

26 3. This subsection does not obligate an underground facilities  
27 operator of a sewer system to locate and mark the underground sewer  
28 facilities owned by another person if the customer receiving sewer service  
29 from the underground sewer facility refuses to grant permission to the  
30 underground facilities operator of a sewer system to access the real property  
31 for the purpose of ascertaining the location of the underground sewer

1 facility in any public street, alley, right-of-way dedicated to public use or  
2 public utility easement.

3 4. This subsection does not obligate an underground facilities  
4 operator of a sewer system to maintain, clean or unstop underground sewer  
5 facilities owned by another person.

6 ~~P.~~ Q. For every landlord:

7 1. For the purposes of this article, each landlord is responsible for  
8 marking the underground facilities operated by the landlord pursuant to  
9 subsection B of this section. For the purposes of this paragraph,  
10 "underground facilities operated by the landlord" includes every underground  
11 facility that is in an apartment community or a mobile home park and that:

12 (a) Discharges into an underground facility that is operated by the  
13 landlord.

14 (b) Is supplied by an underground facility that is operated by the  
15 landlord.

16 (c) Is not operated by a public utility or municipal corporation.

17 2. If a landlord is unable to complete the location and marking within  
18 the time period provided by subsection B of this section, the landlord shall  
19 satisfy its obligations in the manner provided by subsection I of this  
20 section. ~~Nothing in~~ This subsection ~~shall be construed to~~ DOES NOT prevent  
21 the excavator and the landlord from entering into a mutually agreeable  
22 written schedule or written arrangement for satisfying the requirements of  
23 this section in the manner provided by subsection K of this section.

24 3. In performing the marking required by this subsection for an  
25 underground facility installed after December 31, 2006, the landlord shall  
26 carefully locate the facility by referring to installation records of the  
27 facility that are in the possession of the landlord and by using one of the  
28 methods listed in subsection G of this section.

29 4. In performing the marking required by this subsection for an  
30 underground facility installed before January 1, 2007, the landlord may refer  
31 to installation records or other records relating to the facility to assist

1 in locating the facility and shall locate the facility using one of the  
2 methods listed in subsection G of this section.

3 5. Subject to the availability of monies, landlords may apply for  
4 grants from a grant account established for the purpose of meeting the  
5 standards prescribed by this article and for the purpose of creating  
6 installation records for facilities that are not required to be created or  
7 maintained by this article.

8 6. Notwithstanding any other provision in this article, a landlord is  
9 not liable for any costs or expenses, including damage to third parties,  
10 resulting from damage to an underground sewer facility owned by the landlord  
11 and located within a public right-of-way if the damage was not caused by  
12 either:

13 (a) The landlord's or tenant's actions.

14 (b) The landlord's or tenant's refusal to grant access to the operator  
15 of the sewer system that connects to the landlord's underground sewer  
16 facility.

17 7. This article does not obligate a landlord to locate and mark a  
18 facility owned by a tenant if the tenant owns the mobile home, the tenant  
19 refuses to grant permission to the landlord to access the mobile home and the  
20 facility cannot be located without accessing the mobile home.

21 8. Any rule, regulation, lease or agreement that purports to obligate  
22 a tenant to perform the landlord's obligations required by this article is  
23 against the public policy of this state and is void.

24 9. This subsection does not obligate a landlord to maintain, clean or  
25 unstop underground facilities owned by another person.

26 ~~Q.~~ R. All inquiries and notices to a landlord shall be made to the  
27 address on file at a one-call notification center. Notwithstanding any other  
28 law, if the landlord has not filed information at the one-call notification  
29 center, the excavator does not violate this article and fulfills the standard  
30 of care of a reasonably prudent excavator if the excavator makes the inquiry  
31 or notice to the property owner of record according to the records of the  
32 county assessor in the county in which the property is located.

1           Sec. 3. Section 40-360.26, Arizona Revised Statutes, is amended to  
2 read:

3           40-360.26. Damage of underground facility; liability to owner;  
4                           homeowner and tenant exemption

5           A. If any underground facility is damaged by any person in violation  
6 of this article as a result of failing to obtain information as to its  
7 location, failing to take measures for protection of the facilities or  
8 failing to excavate in a careful and prudent manner, the person is liable to  
9 the ~~owner of the underground facility~~ UNDERGROUND FACILITIES OPERATOR for the  
10 total cost of the repair of the facility AND ALL OTHER RESULTING DAMAGES THAT  
11 ARE PROXIMATELY CAUSED BY THE DAMAGE TO THE UNDERGROUND FACILITY.

12           B. A homeowner or homeowners' association engaging in excavating in an  
13 express or implied private property utility easement across property owned by  
14 the homeowner or homeowners' association is not liable to the owner or  
15 operator of the underground facility damaged by the homeowner or homeowners'  
16 association pursuant to this section if the damaged underground facility is  
17 not buried or placed below ground in accordance with the applicable  
18 standards, if the underground facility is not located within the easement or  
19 if the homeowner or homeowners' association engaged in the excavation has  
20 complied with section 40-360.22. This subsection does not apply to any  
21 person employed by a homeowner or a homeowners' association including a  
22 contractor licensed pursuant to title 32, chapter 10 or a person engaging in  
23 contracting without a license as prohibited by section 32-1151.

24           C. Notwithstanding any other provision in this article, a homeowner is  
25 not liable for any costs or expenses, including damage to third parties,  
26 resulting from damage to an underground facility owned by the homeowner but  
27 located within a public right-of-way if the damage was not caused by the  
28 homeowner's actions or by the homeowner's refusal to grant permission to the  
29 underground facilities operator of a sewer system to access the real property  
30 for the purpose of ascertaining the location of the underground sewer  
31 facility. A tenant is not liable for any costs or expenses, including damage  
32 to third parties, resulting from damage to an underground facility owned by

1 the tenant but located within a mobile home park if the damage was not caused  
2 by the tenant's actions or by the tenant's refusal to grant permission to the  
3 landlord to access the mobile home for the purpose of ascertaining the  
4 location of the underground facility.

5 Sec. 4. Section 40-360.28, Arizona Revised Statutes, is amended to  
6 read:

7 40-360.28. Civil penalty; liability

8 A. Except as provided in section 40-360.22, subsection M, a person who  
9 violates any provision of this article is subject to a civil penalty in an  
10 amount not to exceed five thousand dollars to be imposed by the court in  
11 favor of the state. Any penalties received by the state shall be deposited  
12 in the state general fund.

13 B. If a violation of this article results in damage to an underground  
14 facility, the violator is liable to all affected underground facilities  
15 operators and excavators for all resulting damages proximately caused by the  
16 violations, including economic loss.

17 C. If a person violates this article by failing to provide timely  
18 notice as required by this article, by failing to respond in the time and  
19 manner provided by this article or by failing to locate and mark an  
20 underground facility in the manner provided by this article, the person is  
21 liable to all affected underground facilities operators and excavators for  
22 all damages proximately caused by the violation, including economic loss.

23 D. Notwithstanding any other law, a violation of section 40-360.22,  
24 subsection D or subsection L, paragraph 3 is a superseding event that breaks  
25 the chain of causation for any damages that could result from an underground  
26 facilities operator's failure to accurately locate or mark an underground  
27 facility.

28 E. If a landlord or an excavator complies with the duties set forth in  
29 sections 40-360.22, 40-360.30 and 40-360.32 for all facilities operated by a  
30 landlord as provided in section 40-360.22, subsection ~~P~~ Q, paragraph 1, the  
31 person is not liable for any death or injury to persons or property or for  
32 any economic loss to any person to the extent the conduct is regulated by

1 this article. This section does not excuse any landlord or excavator from  
2 liability for any death or injury to persons or property or for any economic  
3 loss to any person to the extent the injury or loss does not arise from the  
4 conduct regulated by this article.

5 F. This section is not applicable to an excavation made:

6 1. During an emergency ~~which~~ THAT involves danger to life, health or  
7 property if reasonable precautions are taken to protect underground  
8 facilities, **UNLESS THE EXCAVATION IS PERFORMED IN VIOLATION OF SECTION**  
9 **40-360.24, SUBSECTION A.**

10 2. In agricultural operations or for the purpose of finding or  
11 extracting natural resources.

12 3. With hand tools on property owned or occupied by the person  
13 performing the excavation while gardening or tilling such property.

14 Sec. 5. Section 40-360.30, Arizona Revised Statutes, is amended to  
15 read:

16 **40-360.30. Installation records of underground facilities**

17 A. Except as otherwise provided in this subsection, for all new  
18 underground facilities, excluding service drops and service lines, installed  
19 after December 31, 1988 in a public street, alley or right-of-way dedicated  
20 to the public use or public utility easement, but not including any express  
21 or implied private property utility easement, the underground facilities  
22 operator shall prepare and maintain installation records of the underground  
23 facility ~~and shall refer to such records in marking pursuant to section~~  
24 ~~40-360.22, subsection B.~~

25 B. For all new sewer facilities installed after December 31, 2005 in  
26 any public street, alley, right-of-way dedicated to the public use or public  
27 utility easement, the underground facilities operator of a sewer system shall  
28 prepare and maintain installation records of the underground facility ~~and~~  
29 ~~shall refer to such records in marking pursuant to section 40-360.22,~~  
30 ~~subsection B.~~ To assist the underground facilities operator of a sewer  
31 system in preparing and maintaining such records, a certified survey plan of  
32 the sewer's location in the public street, alley, right-of-way dedicated to

1 public use or public utility easement shall be provided to the underground  
2 facilities operator of a sewer system by the customer receiving sewer service  
3 as a condition to receiving such sewer service.

4 C. For all new underground facilities that are installed after  
5 December 31, 2006 in an apartment community or mobile home park and that are  
6 not owned or operated by a public utility or municipal corporation, the  
7 landlord at the time the facilities are installed or abandoned shall prepare  
8 and maintain installation records of the underground facilities. Successor  
9 landlords shall maintain the installation records that come into their  
10 possession. The landlord shall keep records in its possession and shall  
11 refer to records in marking pursuant to section 40-360.22, subsection B.

12 D. Installation records required by this section shall reflect, if  
13 applicable, any field notes or other indications by the installer of the  
14 facilities that the installation involved deviations or changes from  
15 installation standards, instructions or designs and the correction of any  
16 inaccuracies found as a result of locating or marking the underground  
17 facilities. Installation records of an underground facility shall indicate  
18 if all or a portion of the facility has been abandoned. Installation records  
19 required by this section are for the internal use of the underground  
20 facilities operator and its successor in locating its underground facilities  
21 and are not intended to be relied on by others.

22 E. Information contained in installation records relating to the  
23 nature and location of underground facilities, but not the installation  
24 records themselves, shall be made available on a confidential basis within  
25 ten working days from a written request to persons who are engaged in the  
26 design of construction projects involving excavation in a public street,  
27 alley, right-of-way dedicated to the public use, or public utility easement,  
28 in any express or implied private property utility easement, or in an  
29 apartment community or mobile home park. The underground facilities operator  
30 shall make the same information available to authorized persons who are  
31 complying with a requirement imposed by contract providing for construction  
32 projects involving excavation in a public street, alley or right-of-way

1 dedicated to the public use or public utility easement, in any express or  
2 implied private property utility easement, in any apartment community or  
3 mobile home park or by operation of law. The only lawful use of the  
4 information that is obtainable pursuant to this subsection is to minimize  
5 delays of construction projects. The underground facilities operator may  
6 indicate any portions of the information that are proprietary and require the  
7 authorized person to protect proprietary matters. The underground facilities  
8 operator may satisfy the requirements of this subsection by allowing an  
9 authorized person to inspect or copy the installation records required by  
10 this section, without charge, or may provide the information in another  
11 manner for a reasonable fee. The underground facilities operator is not  
12 liable to any person for damages arising from any person's inspection of or  
13 reliance on the installation records that are made available for the purpose  
14 of complying with this subsection."  
15 Amend title to conform

KAREN FANN

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