

REFERENCE TITLE: **underground facilities; excavations; notification**

State of Arizona  
Senate  
Fifty-seventh Legislature  
Second Regular Session  
2026

# **SB 1137**

Introduced by  
Senator Kavanagh

## **AN ACT**

**AMENDING SECTIONS 40-360.21, 40-360.22, 40-360.23, 40-360.26 AND 40-360.28, ARIZONA REVISED STATUTES; AMENDING TITLE 40, CHAPTER 2, ARTICLE 6.3, ARIZONA REVISED STATUTES, BY ADDING SECTION 40-360.33; RELATING TO UNDERGROUND FACILITIES.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 40-360.21, Arizona Revised Statutes, is amended  
3 to read:

4 40-360.21. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Abandoned" means no longer in service and physically  
7 disconnected from a portion of the facility, or from any other facility,  
8 that is in use or still carries service.

9 2. "Apartment community" means any real property that has one or  
10 more structures and THAT contains five or more dwelling units for rent or  
11 lease that are subject to title 33, chapter 10. For the purposes of this  
12 paragraph, "dwelling unit" has the same meaning prescribed in section  
13 33-1310.

14 3. "Building official" means the agency or officer employed by a  
15 political subdivision of this state and charged with the administration  
16 and enforcement of a building code to regulate the quality, type of  
17 material and workmanship of construction of buildings or structures.

18 4. "Careful and prudent manner" means conducting an excavation in  
19 such a way that when the excavation is less than or equal to twenty-four  
20 inches from an underground facility that is marked with stakes or paint or  
21 in some customary manner, the facility is carefully exposed with hand  
22 tools, and the uncovered facility is supported and protected.

23 5. "Carefully" means acting with reasonable care under the  
24 circumstances.

25 6. "Cross culverts or similar roadway drainage facilities" means  
26 transverse drainage structures with both ends or openings visible  
27 including box culverts, drainage pipes or other covered structures.

28 7. "Detectible underground location device" means any device that  
29 is installed underground and that is capable of being detected from above  
30 ground with an electronic locating device.

31 8. "Excavation" means any operation in which earth, rock or other  
32 material in the ground is moved, removed or otherwise displaced by means  
33 or use of any tools, equipment or explosives and includes, without  
34 limitation, grading, trenching, digging, ditching, drilling, augering,  
35 boring, tunnelling, scraping, cable or pipe plowing and driving.

36 ~~12.~~ 9. "Homeowners' association" has the same meaning prescribed  
37 in section 33-2001.

38 ~~9.~~ 10. "Implied easement" means any easement or right-of-way on  
39 private property required to provide utility services by means of  
40 underground facilities in property of the owner requesting such service.

41 ~~10.~~ 11. "Inactive" means:

42 (a) That portion of an underground facility that is not in use but  
43 is still connected to the facility, or to any other facility, that is in  
44 use or still carries service.

1 (b) A new underground facility that has not been connected to any  
2 portion of an existing facility.

3 ~~11.~~ 12. "Installation records of an underground facility" means  
4 maps, drawings, diagrams, surveys, schematics, illustrations, sketches or  
5 any other depictions or descriptions of an underground facility that  
6 reflect the location at the time of installation of the underground  
7 facility and any surface extensions in a reasonably accurate manner.

8 13. "INTERACTIVE POSITIVE RESPONSE SYSTEM" MEANS AN ELECTRONIC  
9 INTERNET-BASED PLATFORM THAT IS ADMINISTERED BY A ONE-CALL NOTIFICATION  
10 CENTER AND THAT ENABLES EXCAVATORS AND UNDERGROUND FACILITIES OPERATORS TO  
11 EXCHANGE, RECORD AND VERIFY RESPONSES AND LOCATE STATUS UPDATES AND OTHER  
12 REQUIRED COMMUNICATIONS.

13 ~~13.~~ 14. "Landlord" has the same meaning prescribed in section  
14 33-1310 for an apartment community and has the same meaning prescribed in  
15 section 33-1409 for a mobile home park.

16 15. "LARGE PROJECT":

17 (a) MEANS AN EXCAVATION ACTIVITY THAT MEETS ONE OR MORE OF THE  
18 FOLLOWING CRITERIA:

19 (i) THE OVERALL PROJECT LENGTH EXCEEDS ONE MILE OF LINEAR  
20 EXCAVATION OR A POLYGON WITH AN AREA OF A QUARTER SQUARE MILE OR MORE.

21 (ii) THE PROJECT DURATION IS EXPECTED TO EXCEED NINETY CALENDAR  
22 DAYS.

23 (iii) THE PROJECT INCLUDES MORE THAN TEN ADJACENT LAND PARCELS,  
24 RIGHTS-OF-WAY OR EASEMENTS.

25 (b) DOES NOT INCLUDE THE ON-SITE DEVELOPMENT OF A NEW RESIDENTIAL  
26 OR COMMERCIAL PROJECT ON A PREVIOUSLY UNDEVELOPED PARCEL OF LAND.

27 16. "LARGE PROJECT NOTIFICATION" MEANS A NOTICE THAT IS FILED WITH  
28 A ONE-CALL NOTIFICATION CENTER FOR A LARGE PROJECT.

29 ~~14.~~ 17. "Locator strip" means a type of detectible underground  
30 location device that consists of a plastic or other durable material  
31 ribbon containing a material capable of being detected from above ground  
32 with an electronic locating device and color coded by type of underground  
33 facility.

34 ~~15.~~ 18. "Locator wire" means a type of detectible underground  
35 location device that consists of a copper wire or metallic, conductive,  
36 noncorrosive trace wire capable of being detected from above ground with  
37 an electronic locating device.

38 ~~16.~~ 19. "Mobile home park" has the same meaning prescribed in  
39 section 33-1409.

40 ~~17.~~ 20. "One-call notification center" means an organization of  
41 owners or operators of underground facilities that provides a ~~telephone~~  
42 ~~number~~ notification service for the purpose of receiving and distributing  
43 to its members advance notifications from persons regarding planned  
44 excavations.

1           ~~18.~~ 21. "Person":  
2           (a) Means any individual, firm, joint venture, partnership,  
3 corporation, association, homeowners' association, municipality,  
4 governmental unit, department or agency. ~~and shall include~~  
5           (b) INCLUDES any trustee, receiver, assignee or personal  
6 representative ~~thereof~~ OF AN ENTITY LISTED IN SUBDIVISION (a) OF THIS  
7 PARAGRAPH.  
8           ~~19.~~ 22. "Routine road maintenance grading" means the routine  
9 grading or resurfacing of the concrete, asphaltic or composite surface but  
10 not the subbase of a roadway by ~~the~~ THIS state or a political subdivision  
11 of ~~the~~ THIS state for the purpose of maintaining the surface condition of  
12 the road and includes recovery of material from a borrow ditch.  
13           ~~20.~~ 23. "Stakes or paint or in some customary manner" means  
14 marking the location of an underground facility by the colors established  
15 by the commission. These colors shall be restricted to the underground  
16 facility location.  
17           ~~21.~~ 24. "Underground facilities operator" means a public utility,  
18 municipal corporation, landlord or other person having the right to bury  
19 underground facilities in any public street, alley, right-of-way dedicated  
20 to the public use or public utility easement, in any apartment community  
21 or mobile home park or pursuant to any express or implied private property  
22 easement. Underground facilities operator does not include a homeowner or  
23 homeowners' association that owns a sewer facility in a public street,  
24 alley, right-of-way dedicated to public use or public utility easement.  
25           ~~22.~~ 25. "Underground facility" means any item of personal property  
26 that is buried or placed below ground for use in connection with the  
27 storage or conveyance of water, sewage, electronic, telephonic or  
28 telegraphic communications, electric energy, oil, gas or other substances,  
29 and shall include but not be limited to pipes, sewers, conduits, cables,  
30 valves, lines, wires, manholes, attachments and those portions of poles  
31 and their attachments below ground except cross culverts or similar  
32 roadway drainage facilities and landscape irrigation systems of two inches  
33 in diameter or less.  
34           26. "WHITE LINING" MEANS THE PRACTICE OF MARKING THE PROPOSED AREA  
35 OF EXCAVATION ON THE GROUND SURFACE USING ANY OF THE FOLLOWING:  
36           (a) PAINT.  
37           (b) FLAGS.  
38           (c) CHALK.  
39           (d) ANY OTHER METHOD THAT IS CUSTOMARILY USED.  
40           ~~23.~~ 27. "Working day" means every day excluding Saturday of each  
41 week, the fourth Friday in November, Sunday of each week and other legal  
42 holidays as prescribed in section 1-301.

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  
6                                   of markings; liability for misuse of locate  
7                                   requests; detectible underground locating  
8                                   devices; civil penalty; large project  
9                                   coordination

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

25           B. Except as otherwise provided in this subsection ~~OR SUBSECTION R~~  
26 ~~OF THIS SECTION,~~ ~~upon~~ ON receipt of the excavator's inquiry, the  
27 underground facilities operator shall respond as promptly as ~~practical~~  
28 PRACTICABLE, but ~~in no event~~ NOT later than two working days, by carefully  
29 marking such facility with stakes or paint or in some customary manner. A  
30 landlord shall respond in the same manner and as promptly as ~~practical~~  
31 PRACTICABLE, but ~~in no event~~ NOT later than ten working days. ~~No~~ A person  
32 ~~shall~~ MAY NOT begin excavating before the location and marking are  
33 complete or the excavator is notified that marking is unnecessary. If the  
34 excavator consents, an underground facilities operator may notify a one-  
35 call notification center that marking is unnecessary pursuant to a method  
36 established by the one-call notification center. An underground  
37 facilities operator may assign any marking or notification obligations  
38 required by this subsection to an agent or servant of the underground  
39 facilities operator. An underground facilities operator ~~may~~ SHALL notify  
40 the excavator that marking is unnecessary pursuant to ~~any mutually~~  
41 ~~agreeable method~~ THE INTERACTIVE POSITIVE RESPONSE SYSTEM.

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

7 C. BEFORE AN EXCAVATION NOTICE IS SUBMITTED TO THE ONE-CALL  
8 NOTIFICATION CENTER, AN EXCAVATOR SHALL CLEARLY MARK WITH WHITE LINING THE  
9 AREA THAT IS REQUESTED TO BE EXCAVATED IN COMPLIANCE WITH A COLOR CODE  
10 THAT IS ESTABLISHED BY THE COMMISSION OR BY APPLICABLE CUSTOM OR STANDARD.  
11 THIS SUBSECTION:

12 1. DOES NOT APPLY TO EXCAVATIONS THAT ARE PERFORMED BY A PERSON ON  
13 RESIDENTIAL PROPERTY THAT IS OWNED OR OCCUPIED BY THE PERSON.

14 2. EXCEPT FOR EXCAVATIONS PRESCRIBED IN PARAGRAPH 1 OF THIS  
15 SUBSECTION, APPLIES TO ALL EXCAVATIONS, INCLUDING LARGE PROJECTS AND  
16 EXCAVATIONS ON RESIDENTIAL PROPERTIES THAT ARE PERFORMED BY PERSONS WHO  
17 ARE EMPLOYED BY THE HOMEOWNER OR OCCUPANT OF THE RESIDENTIAL PROPERTY.

18 D. Except as provided in subsection F of this section, a person  
19 shall not begin excavating in any apartment community or mobile home park  
20 before the landlord has completed marking the underground facility or the  
21 excavator is notified that marking is unnecessary. After underground  
22 facility markings are complete or the excavator has received notice that  
23 marking is unnecessary, an excavator shall notify the landlord if any of  
24 the following conditions exist:

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

28 2. The excavator has concerns regarding the accuracy and meaning of  
29 the marks.

30 3. The excavator encounters an underground facility that has not  
31 been marked.

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

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

36 1. Every underground facilities operator shall be notified of this  
37 methodology.

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

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

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

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

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

9 2. The excavator investigates for the presence of visible and  
10 obvious evidence that would alert a reasonable excavator to the presence  
11 of an unmarked underground facility within the boundaries of the area to  
12 be excavated.

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

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

26 5. The excavator shall not excavate if the excavator receives a  
27 response from the landlord that notifies or alerts the excavator to the  
28 presence of a mistake or an intention by the landlord to respond in a  
29 manner that is consistent with this article, even if the response will be  
30 untimely. A landlord's delay, failure to respond to a location request,  
31 failure to mark or other noncompliance is not excused by the excavator's  
32 or landlord's compliance with this subsection.

33 G. Except as otherwise provided in this section, in performing the  
34 marking required by subsection B of this section, the underground  
35 facilities operator of an underground facility installed after December  
36 31, 1988 in a public street, alley or right-of-way dedicated to public use  
37 or public utility easement, but not including any express or implied  
38 private property utility easement, shall carefully locate the facility by  
39 referring to installation records of the facility that are in the  
40 possession of the underground facility operator and utilizing one of the  
41 following methods:

- 42 1. Vertical line or facility markers.
- 43 2. Locator strip or locator wire.
- 44 3. Signs or permanent markers.
- 45 4. Electronic or magnetic location or tracing techniques.

- 1           5. Electronic or magnetic sensors or markers.
- 2           6. Metal sensors or sensing techniques.
- 3           7. Sonar techniques.
- 4           8. Underground electrical or radio transmitters.
- 5           9. Manual location techniques, including pot-holing.
- 6           10. Surface extensions of underground facilities.
- 7           11. Any other surface or subsurface location technique that is at
- 8 least as accurate as the other marking methods in this subsection and that
- 9 is not prohibited by the commission or by federal or state law. This
- 10 paragraph does not obligate an underground facilities operator to be aware
- 11 of and utilize every surface or subsurface location technique available.

12           H. Except as otherwise provided in this section, for an underground

13 facility other than one installed after December 31, 1988, in a public

14 street, alley or right-of-way dedicated to public use or public utility

15 easement, in performing the marking required by subsection B of this

16 section, the underground facilities operator may refer to installation

17 records or other records relating to the facility to assist in locating

18 the facility and shall carefully locate the facility utilizing one of the

19 methods listed under subsection G of this section.

20           I. If an underground facilities operator is unable to complete the

21 location and marking within the time period provided by subsection B of

22 this section, the **UNDERGROUND** facilities operator shall satisfy the

23 requirements of this section by providing prompt notice of these facts to

24 the excavator and assigning one or more representatives to be present on

25 the excavation site at all pertinent times as requested by the excavator

26 to provide facility location services until the facilities have been

27 located and marked or the excavator is notified that marking is

28 unnecessary pursuant to any mutually agreeable method. A person that

29 receives notice from the underground facilities operator of these facts

30 shall not begin excavating before the underground facilities operator has

31 completed marking the underground facility or the excavator is notified

32 that marking is unnecessary. Except as provided in subsection J of this

33 section, the underground facilities operator shall bear all of its own

34 expenses associated with assigning representatives.

35           J. The marking required by subsection B of this section is valid

36 for fifteen working days from the date of the marking. If the excavation

37 will continue past the validity period of the marks as provided by this

38 subsection, the excavator shall notify the underground facilities operator

39 or an organization designated by the underground facilities operator at

40 least two working days before the end of the validity period. All

41 requests for facility markings and requests to extend the validity period

42 of the markings shall be for the purpose of excavating within the validity

43 period of the markings. An excavator that requests facility markings

44 shall limit the request to an area that can reasonably be excavated within

45 the validity period of the markings. A person who violates this

1 subsection is liable to the one-call notification center and to all  
2 affected underground facilities operators for any damages proximately  
3 caused by the violation, including economic loss.

4 K. ~~Nothing in~~ IN ADDITION TO THE PRECONSTRUCTION CONFERENCE THAT IS  
5 REQUIRED IN THE LARGE PROJECT NOTIFICATION PROCESS, this section ~~shall be~~  
6 ~~construed to~~ DOES NOT prevent an excavator and an underground facilities  
7 operator from holding a preconstruction conference regarding marking and  
8 location of underground facilities and entering into a mutually agreeable  
9 written schedule for marking or excavating or written arrangement that may  
10 constrain the excavation methods or that may provide for the delivery of  
11 installation records to the excavator for the purpose of satisfying the  
12 requirements of this section, except that this subsection does not  
13 eliminate the excavator's obligation to notify the underground facilities  
14 operator to locate and mark excavation sites under subsection B of this  
15 section based on the actual construction schedule.

16 L. For abandoned and apparently abandoned underground facilities:

17 1. The underground facilities operator shall notify the excavator  
18 whether the facility is active or abandoned. An inactive facility shall  
19 be considered active for purposes of this subsection. This section does  
20 not obligate any person to represent that an underground sewer facility in  
21 any public street, alley, right-of-way dedicated to public use or public  
22 utility easement is abandoned if it was installed on or before December  
23 31, 2005 and it is not owned by an underground facilities operator of a  
24 sewer system. This paragraph does not obligate a landlord to represent  
25 that an underground facility in any apartment community or mobile home  
26 park is abandoned if it was installed before January 1, 2007.

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

41 3. For the purposes of this article, if an excavator encounters an  
42 apparently abandoned underground facility, the excavator shall not treat  
43 the underground facility as abandoned until the excavator has received  
44 notification that the underground facility is abandoned pursuant to  
45 paragraph 1 of this subsection or has notified the underground facilities

1 operator of the apparent abandonment and has received verification of  
2 abandonment pursuant to paragraph 2 of this subsection.

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

14 M. All new and active underground facilities installed in any real  
15 property after December 31, 2005 shall be installed with a detectible  
16 underground location device unless the facility is capable of being  
17 detected from above ground with an electronic locating device or the  
18 facility is installed within single family residential property and is  
19 beneath a pool, permanent pool decking that is less than forty-eight  
20 inches from the pool or a permanent building. A person who violates this  
21 subsection is subject to a civil penalty in an amount ~~OF not to exceed~~  
22 ~~five thousand dollars~~ MORE THAN \$5,000. The building official shall  
23 administer and enforce this subsection for all underground facilities  
24 except those that are installed for a public utility or municipal  
25 corporation. Any penalties received by the building official shall be  
26 deposited in the municipality's or political subdivision's general fund,  
27 as applicable. Except as required by a city, town or county building code  
28 or other related code, for purposes of locating an underground facility a  
29 building official or political subdivision shall not compel the  
30 installation of one or more clean-outs on any underground sewer facility  
31 that is owned by another person and serves one customer where any portion  
32 of the underground sewer facility is in any public street, alley,  
33 right-of-way dedicated to public use, private property or easement.

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

37 O. For every underground facilities operator of a sewer system:

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

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

5           3. This subsection does not obligate an underground facilities  
6 operator of a sewer system to locate and mark the underground sewer  
7 facilities owned by another person if the customer receiving sewer service  
8 from the underground sewer facility refuses to grant permission to the  
9 underground facilities operator of a sewer system to access the real  
10 property for the purpose of ascertaining the location of the underground  
11 sewer facility in any public street, alley, right-of-way dedicated to  
12 public use or public utility easement.

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

16           P. For every landlord:

17           1. For the purposes of this article, each landlord is responsible  
18 for marking the underground facilities operated by the landlord pursuant  
19 to subsection B of this section. For the purposes of this paragraph,  
20 "underground facilities operated by the landlord" includes every  
21 underground facility that is in an apartment community or a mobile home  
22 park and that:

23           (a) Discharges into an underground facility that is operated by the  
24 landlord.

25           (b) Is supplied by an underground facility that is operated by the  
26 landlord.

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

28           2. If a landlord is unable to complete the location and marking  
29 within the time period provided by subsection B of this section, the  
30 landlord shall satisfy its obligations in the manner provided by  
31 subsection I of this section. ~~Nothing in~~ This subsection ~~shall be~~  
32 ~~construed to~~ DOES NOT prevent the excavator and the landlord from entering  
33 into a mutually agreeable written schedule or written arrangement for  
34 satisfying the requirements of this section in the manner provided by  
35 subsection K of this section.

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

41           4. In performing the marking required by this subsection for an  
42 underground facility installed before January 1, 2007, the landlord may  
43 refer to installation records or other records relating to the facility to  
44 assist in locating the facility and shall locate the facility using one of  
45 the methods listed in subsection G of this section.

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

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

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

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

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

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

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

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

32           R. AN EXCAVATOR THAT PROPOSES TO PERFORM A LARGE PROJECT SHALL  
33 NOTIFY A ONE-CALL NOTIFICATION CENTER AS SOON AS POSSIBLE BUT NOT LESS  
34 THAN FIFTEEN BUSINESS DAYS OR TWENTY-ONE CALENDAR DAYS BEFORE THE PROPOSED  
35 START DATE TO SCHEDULE A LARGE PROJECT COORDINATION MEETING. THE LARGE  
36 PROJECT NOTIFICATION TO A ONE-CALL NOTIFICATION CENTER INITIATES A MEETING  
37 BETWEEN THE EXCAVATOR AND THE UNDERGROUND FACILITIES OPERATOR TO:

38           1. IDENTIFY THE PROPOSED PLAN FOR MARKING REQUEST NOTIFICATIONS.

39           2. EVALUATE ANY POTENTIAL UNDERGROUND FACILITY CONFLICTS.

40           3. ESTABLISH A MARKING SCHEDULE.

41           4. DISCUSS ANY OTHER PROTECTIVE MEASURES THAT ARE APPROPRIATE TO  
42 THE SCOPE AND DURATION OF THE LARGE PROJECT.

43           S. AN EXCAVATOR THAT REQUESTS A LARGE PROJECT COORDINATION MEETING  
44 AS PRESCRIBED IN SUBSECTION R OF THIS SECTION SHALL PROVIDE THE FOLLOWING  
45 INFORMATION TO THE ONE-CALL NOTIFICATION CENTER:

- 1           1. THE TYPE OF WORK TO BE PERFORMED.
- 2           2. THE COMPLETE GEOGRAPHIC SCOPE.
- 3           3. THE PROPOSED PHASED PLAN FOR MARKING NOTIFICATIONS WITHIN THE
- 4 COMPLETE GEOGRAPHIC SCOPE OF THE LARGE PROJECT.
- 5           4. THE PROPOSED START DATE.
- 6           5. THE EXPECTED COMPLETION DATE.
- 7           6. A PROPOSED MEETING DATE, TIME AND LENGTH FOR SCHEDULING A
- 8 MEETING WITH THE AFFECTED UNDERGROUND FACILITY OPERATORS.
- 9           T. ON RECEIPT OF THE LARGE PROJECT NOTIFICATION FROM THE EXCAVATOR,
- 10 THE UNDERGROUND FACILITIES OPERATOR SHALL:
- 11           1. CONFIRM THE UNDERGROUND FACILITIES OPERATOR'S INTENT TO ATTEND
- 12 THE MEETING AS SOON AS POSSIBLE BUT NOT LATER THAN TWO BUSINESS DAYS AFTER
- 13 RECEIVING THE LARGE PROJECT NOTIFICATION.
- 14           2. IDENTIFY ANY EXPECTED CONFLICTS RELATED TO THE UNDERGROUND
- 15 FACILITIES THAT MAY OCCUR WITHIN THE COMPLETE GEOGRAPHIC SCOPE OF THE
- 16 LARGE PROJECT.
- 17           3. DETERMINE THE RESOURCES AND TIME FRAMES THAT ARE NECESSARY TO
- 18 COMPLETE MARKINGS BASED ON THE EXCAVATOR'S PROPOSED PHASE PLAN FOR MARKING
- 19 NOTIFICATIONS.
- 20           U. THE FOLLOWING APPLY TO THE LARGE PROJECT COORDINATION MEETING:
- 21           1. THE MEETING MAY BE ON-SITE OR VIRTUAL. THE EXCAVATOR MAY
- 22 INDICATE WHETHER THE MEETING SHOULD TAKE PLACE ON-SITE OR VIRTUALLY BASED
- 23 ON THE DISCRETION OF THE EXCAVATOR. IF VIRTUAL, THE EXCAVATOR SHALL
- 24 PROVIDE A LINK TO JOIN THE MEETING. IF ON-SITE, THE EXCAVATOR MAY USE THE
- 25 MEETING TO COMPLETE WHITE LINING.
- 26           2. AT THE MEETING, THE EXCAVATOR AND THE UNDERGROUND FACILITIES
- 27 OPERATOR SHALL ESTABLISH A SCHEDULE FOR MARKING, EXCAVATION, REMARKING AND
- 28 OTHER PROTECTIVE MEASURES THAT ARE APPROPRIATE TO THE SCOPE AND DURATION
- 29 OF THE LARGE PROJECT. THE EXCAVATOR AND THE UNDERGROUND FACILITIES
- 30 OPERATOR SHALL AGREE ON THE QUANTITY OF TICKETS AND THE GEOGRAPHIC AREA
- 31 THAT THE TICKETS WILL COVER. THE EXCAVATOR WILL FOLLOW THE PLAN FOR
- 32 TICKET CREATION THAT WAS AGREED TO AT THE MEETING.
- 33           3. THE UNDERGROUND FACILITIES OPERATOR HAS FIFTEEN BUSINESS DAYS
- 34 FROM THE DATE THE EXCAVATOR NOTIFIES THE ONE-CALL NOTIFICATION CENTER TO
- 35 LOCATE AND MARK THE GEOGRAPHIC AREA. THIS TIME FRAME MAY BE EXTENDED IF
- 36 AGREED ON BY THE EXCAVATOR IN THE INTERACTIVE POSITIVE RESPONSE SYSTEM.
- 37           V. THE ONE-CALL NOTIFICATION CENTER SHALL PROVIDE THE INTERACTIVE
- 38 POSITIVE RESPONSE SYSTEM, WHICH IS A TOOL FOR COMMUNICATION BETWEEN THE
- 39 EXCAVATOR AND THE UNDERGROUND FACILITIES OPERATOR FOR THE STATUS OF
- 40 LOCATING SITES, WORK UPDATES, CHANGES IN SCHEDULING AND OTHER FACTORS THAT
- 41 MAY IMPACT THE LARGE PROJECT.
- 42           W. THE EXCAVATOR AND THE UNDERGROUND FACILITIES OPERATOR MAY AGREE
- 43 TO A PHASED MARKING SCHEDULE THAT PROVIDES FOR TIMELY AND ACCURATE
- 44 MARKINGS OF ACTIVE WORK AREAS AS SUBMITTED BY THE EXCAVATOR WITHIN THE
- 45 MARKING REQUEST. COMPLIANCE WITH AN AGREED PHASED SCHEDULE IS DEEMED

1 COMPLIANCE WITH THE NOTICE AND MARKING REQUIREMENTS OF THIS ARTICLE. ANY  
2 CHANGES TO THE AGREED PHASED SCHEDULE SHALL BE COMMUNICATED AND AGREED TO  
3 BY THE EXCAVATOR AND THE UNDERGROUND FACILITIES OPERATOR THROUGH THE  
4 INTERACTIVE POSITIVE RESPONSE SYSTEM.

5 X. THE ONE-CALL NOTIFICATION CENTER IS RESPONSIBLE FOR DEVELOPING A  
6 PROCESS FOR UNDERGROUND FACILITIES OPERATORS, EXCAVATORS AND DESIGNERS TO  
7 USE THE INTERACTIVE POSITIVE RESPONSE SYSTEM TO ADMINISTER LARGE PROJECT  
8 NOTIFICATIONS, INCLUDING TICKET REQUEST PROCEDURES, COORDINATION MEETING  
9 STANDARDS AND RECORDKEEPING REQUIREMENTS.

10 Y. IF THE EXCAVATOR AND UNDERGROUND FACILITIES OPERATOR DO NOT  
11 MUTUALLY AGREE ON A MARKING SCHEDULE, THE MARKINGS SHALL BE COMPLETED  
12 WITHIN FIFTEEN BUSINESS DAYS.

13 Z. THE VALIDITY PERIOD FOR THE MARKINGS AND THE TICKET REFRESH  
14 PROCEDURES PRESCRIBED IN SUBSECTION J OF THIS SECTION APPLIES TO BOTH  
15 LARGE PROJECT TICKETS AND STANDARD EXCAVATION NOTICE TICKETS.

16 Sec. 3. Section 40-360.23, Arizona Revised Statutes, is amended to  
17 read:

18 40-360.23. Conducting excavation in careful, prudent manner;  
19 liability for negligence; notice; obliteration  
20 of marks

21 A. Except as otherwise provided in section 40-360.28, subsection E,  
22 obtaining information as required by this article does not excuse any  
23 person making any excavation from doing so in a careful and prudent  
24 manner, nor shall it excuse such persons from liability for any damage or  
25 injury resulting from their negligence.

26 B. Except as otherwise provided in section 40-360.22, subsection D,  
27 after markings have been made pursuant to section 40-360.22, an excavator  
28 shall notify either the underground facilities operator or an organization  
29 designated by the underground facilities operator if the excavator  
30 encounters an underground facility that has not been located and marked or  
31 has been marked in the wrong location.

32 C. An excavator or an underground facilities operator shall not  
33 move or obliterate markings made pursuant to this article or fabricate  
34 markings in an unmarked location for the purpose of concealing or avoiding  
35 liability for a violation of or noncompliance with this article.

36 D. AN EXCAVATOR MAY BEGIN EXCAVATING AFTER THE EXCAVATOR CONTACTS  
37 AND RECEIVES ALL OF THE AFFECTED UNDERGROUND FACILITY OWNERS' RESPONSES  
38 THROUGH THE INTERACTIVE POSITIVE RESPONSE SYSTEM. AN UNDERGROUND  
39 FACILITIES OPERATOR SHALL ENTER ALL LOCATE STATUS INFORMATION, INCLUDING  
40 MARKED, NO CONFLICT OR DELAYED INTO THE INTERACTIVE POSITIVE RESPONSE  
41 SYSTEM WITHIN THE TIME REQUIRED BY THIS ARTICLE. AN UNDERGROUND  
42 FACILITIES OPERATOR'S DUTY TO MARK IS SATISFIED BY COMPLIANCE WITH A LARGE  
43 PROJECT PLAN AS PRESCRIBED IN SECTION 40-360.22.

1           Sec. 4. Section 40-360.26, Arizona Revised Statutes, is amended to  
2 read:

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

5           A. If any underground facility is damaged by any person in  
6 violation of this article as a result of failing to obtain information as  
7 to its location, failing to take measures for protection of the facilities  
8 or failing to excavate in a careful and prudent manner, the person is  
9 liable to the owner of the underground facility for the total cost of the  
10 repair of the facility.

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

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

38           D. **AN EXCAVATOR THAT COMPLIES WITH AN AGREED LARGE PROJECT SCHEDULE**  
39 **PURSUANT TO SECTION 40-360.22 AND THAT USES THE INTERACTIVE POSITIVE**  
40 **RESPONSE SYSTEM FOR ALL COMMUNICATIONS REQUIRED UNDER THIS ARTICLE IS**  
41 **DEEMED TO HAVE SATISFIED THE EXCAVATOR'S DUTY TO REQUEST AND MAINTAIN**  
42 **MARKINGS UNDER THIS ARTICLE FOR THE PORTION OF THE PROJECT COVERED BY THE**  
43 **LARGE PROJECT SCHEDULE.**

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

3           40-360.28. Civil penalty; liability

4           A. Except as provided in section 40-360.22, subsection M, a person  
5 who violates any provision of this article is subject to a civil penalty  
6 in an amount ~~OF not to exceed five thousand dollars~~ MORE THAN \$5,000 to be  
7 imposed by the court in favor of the state. Any penalties received by the  
8 state shall be deposited in the state general fund.

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

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

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

24           E. If a landlord or an excavator complies with the duties set forth  
25 in sections 40-360.22, 40-360.30 and 40-360.32 for all facilities operated  
26 by a landlord as provided in section 40-360.22, subsection P, paragraph 1,  
27 the person is not liable for any death or injury to persons or property or  
28 for any economic loss to any person to the extent the conduct is regulated  
29 by this article. This section does not excuse any landlord or excavator  
30 from liability for any death or injury to persons or property or for any  
31 economic loss to any person to the extent the injury or loss does not  
32 arise from the conduct regulated by this article.

33           F. This section ~~is not applicable~~ DOES NOT APPLY to an excavation  
34 made:

35           1. During an emergency ~~which~~ THAT involves IMMEDIATE danger to  
36 life, health or property if reasonable precautions are taken to protect  
37 underground facilities.

38           2. In agricultural operations or for the purpose of finding or  
39 extracting natural resources.

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

42           G. AN UNDERGROUND FACILITIES OPERATOR OR AN EXCAVATOR MAY BE  
43 SUBJECT TO A CIVIL PENALTY AS PROVIDED BY THIS SECTION IF THE UNDERGROUND  
44 FACILITIES OPERATOR OR THE EXCAVATOR FAILS:

