

**Selected Portions of the Tennessee Code
Annotated Related to Cable Television
(as of November 1999)**

CABLE TELEVISION

7-59-101. Short Title.

This part shall be known and may be cited as the "Cable Television Act of 1977."

7-59-102. Franchise Licenses.

(a) The governing body of each municipality in each county in this state has the power and authority to regulate the operation of any cable television company which serves customers within its territorial limits, by the issuance of franchise licenses after public notice and showing the terms of any proposed franchise agreement and public initiation for fees and not inconsistent with any rules and regulations of the federal communications commission.

(b) One (1) year after May 18, 1977, cable television systems shall not serve customers in any unincorporated area without obtaining a franchise from the county; provided, that a cable television system to which this subsection applies may continue to serve customers after May 18, 1977, if an application for franchise is filed at least ninety (90) days prior to the date on which such franchise shall otherwise be required, and the cable television system and the county have despite good faith negotiations not been able to reach an agreement upon the terms of such franchise.

(c) A county shall not issue a franchise that is within any municipality.

(d) A franchise shall not be required for line extensions of a cable television system that do not serve any customers in the unincorporated area through which such lines are extended or where such line extensions are constructed upon public lands or with easements not obtained from any public body.

(e) The governing body of a county shall not deny any cable television system a franchise for any area in which such cable television system was in place on May 18, 1977, or held a certificate of compliance from the federal communications commission.

(f) Franchises issued by a municipality or a county shall not be inconsistent with the rules and regulations of the federal communications commission.

(g) However, nothing in this part shall be construed as prohibiting any county or municipal government from withdrawing a franchise from a cable television company for cause.

(h) A franchise shall not be required of a cable television system to erect any tower or transmission cable in an unincorporated area for the purpose of providing service for an incorporated area.

(i) Any municipal electric system permitted to operate under the authority of chapter 52, part 6 of this title, before delivering any cable services, two-way video transmission or video programming shall obtain a franchise from the appropriate municipal governing body or county governing body.

(j) The franchising authority shall not employ terms more favorable or less burdensome upon a municipal electric system operating under the authority of chapter 52, part 6 of this title than those imposed by the franchising authority upon any private provider providing the same services within the franchising authority's jurisdiction. The franchising authority shall not impose or enforce any local franchise requirement on any such private provider, which is not also made

applicable to such a municipal electric system, nor shall the franchising authority discriminate between such providers.

(k) Nothing contained in this section shall be interpreted to limit the authority of the franchising authority to collect franchise fees, control and regulate its streets and public ways, or enforce its powers to provide for the public health, safety, and welfare.

7-59-103. Above and below ground cables – Permits.

Any cable television company incorporated under the laws of this state and any other such company incorporated or operating under the laws of any other state, upon complying with the laws of this state regulating the doing of business in this state by foreign corporations or foreign business, may upon approval of the governing body of the city or county construct, maintain and operate its cable over or beneath any of the public lands of this state, but not including the "freeway system" which is defined as a fully controlled access facility, or over or beneath or along any of the highways or public roads of the state or over or beneath any of the waters of the state. The cable television company shall, unless heretofore covered by court decree, where possible and practical, enter into an agreement with the telephone company or electric power distribution company whereby the cable television company has a right to attach its cable to the poles owned by the telephone company or electric power company or to bury its cables beneath the ground; provided, that such cable is constructed so as not to endanger the safety of persons or to interfere with the use of such public lands, highways or public roads or the navigation of such waters. The agency charged with the maintenance of such public lands, highways, or along such public lands, highways, public roads or waters of the state shall provide that the cable television company obtain a permit prior to placing its cables over, under or along such public lands, highways, public roads or waters. If both electrical and telephone facilities in an area are underground, then the cable television lines in that area shall also be placed underground. If the cable is located in such a manner so as to contribute to interference with the right of ingress or egress to land that is subject to any easement, the cable television company shall obtain the consent of the landowner, the landowner's heirs, or assigns from which the original easement was obtained.

7-59-104. Relocation of cables and apparatus – Damage to public property.

Whenever the agency charged with the maintenance of such public lands, highways or public roads or waters of the state deems it necessary to move or remove the poles or underground conduit of such telephone company or electric power distribution company, the cable television company and its apparatus shall be moved or removed at the cost of the cable television company. Whenever damage results to the public highways or roads as a result of operation by a cable television company, such cable television company shall repair the highway or road according to department standards and all costs shall be borne by the cable television company.

7-59-105. Damage to private property – Underground installation on private property.

(a) No cable television company may damage private property on which the utility pole is located without just compensation to the landowner for the damage suffered to the landowner's property.

(b) No cable television company may install underground wires or underground equipment on private property without the written consent of the property owner. A violation of this subsection is a Class A misdemeanor.

7-59-106. Fees Payable by Companies Operating Under Grandfather Clauses.

Any cable television company which shall receive the benefits of operating under the grandfather clauses contained herein shall pay the county governing body or municipality the same fees as would be charged to a new franchise company by the county or municipality. These fees shall not be inconsistent with the requirements and regulations of the federal communications commission.

7-59-107. Customer Complaints – Records.

Any cable television company franchised and operating in this state shall maintain a complete service for the purpose of receiving customer complaints concerning service or any other matter relating to its operations. These companies shall keep written records of complaints received, including the name of the complaining party, the nature of the complaint, and the disposition of the complaint. Such records shall be subject to inspection by the governing body granting the franchise.

7-59-108. Prohibited Activities – Penalties.

(a) It is unlawful for any person, firm, or corporation to make or use any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable television system for the purpose of enabling such person, firm, or corporation, or others, to receive or use any television signal, radio signal, picture, program or sound, without payment to the owner of the system.

(b) It is unlawful for any person, without the consent of the franchise owner, to willfully transfer with, remove, or injure in any manner, cables, wires, or equipment used for the distribution of television signals, radio signals, pictures, programs or sound.

(c) Any person who willfully violates this section commits a Class C misdemeanor.

(d) Nothing in this section shall be construed to apply to licensed and certified electrical contractors while performing usual and ordinary service in accordance with recognized standards.

7-59-109. Theft of Cable Television Service.

(a) A person also commits the offense of theft of services as prohibited by section 39-14-104, who knowingly:

(1) Obtains or attempts to obtain cable television service from a company by trick, artifice, deception or other fraudulent means with the intent to deprive such company of any or all lawful compensation for rendering each type of service obtained;

(2) Assists any other person in obtaining or attempting to obtain any cable television service without payment of all lawful compensation to the company providing such service;

(3) Makes or maintains a connection or connections, whether physical, electrical, mechanical, acoustical or by other means, with any cable, wires, components or other devices used for the distribution of cable television without authority from the cable television company;

(4) Makes or maintains any modification or alteration to any device installed with the authorization of a cable television company for the purpose of intercepting or receiving any program or other service carried by such company which such person is not authorized by such company to receive;

(5)(A) Manufactures, imports into this state, distributes, sells, leases or offers, possesses, or advertises for sale or lease of any device, or any plan or kit for a device or for a printed circuit designed in whole or in part to decode, descramble or otherwise make intelligible any encoded,

scrambled or other nonstandard signal carried by a cable television company with the intent that such device, plan or kit be used for the theft of such company's services;

(B) Nothing in this subsection shall be construed to prohibit the manufacture, importation, sale, lease or possession of any television device possessing the internal hardware necessary to receive cable television signals without the use of a converter device or box, or of any television advertised as "cable ready"; or

(6)(A) Manufactures, imports into this state, distributes, sells, offers for sale, rents or uses any device, plan or kit for a device, designed in whole or in part to unlawfully perform or facilitate the unlawful performance of any of the acts set out in subdivisions (a)(1)-(5).

(B) Nothing in this subsection shall be construed to limit a subscriber's equipment selection to that of the cable company so long as all equipment is properly installed and meets all local and FCC requirements.

(b) Each day a person is in violation of subsection (a) constitutes a separate offense.

(c)(1) Except as provided in subdivision (c)(2), theft of cable services, as prohibited by subsection (a), is a Class A misdemeanor, except a person who subscribes to cable television service for such person's residence and whose only offense is making or maintaining additional connections for the distribution of cable television within the same residence without authority from the cable television company shall be punished as a Class C misdemeanor, punishable by a fine only of not more than fifty dollars (\$50.00).

(2) Theft of cable services as prohibited by subdivision (a)(5)(A) is a class E felony.

(3) Prosecution for theft of cable television services shall be pursuant to this part and shall be precluded under any other title or part.

(d)(1) Any person who violates the provisions of subdivision (a)(5) shall, in addition to the criminal penalties provided in this section, be civilly liable to the aggrieved cable television company for the greater of the following amounts:

(A) One thousand dollars (\$1,000); or

(B) Double the amount of actual damages, if any, sustained by the cable television company.

(2) Any person who violates any of the provisions of subdivision (a)(5) for a second or subsequent time shall, in addition to the criminal penalties provided by this section, be civilly liable to the aggrieved cable television company for the greater of the following amounts:

(A) Two thousand dollars (\$2,000); or

(B) Double the amount of actual damages, if any, sustained by the cable television company.

(e) In a prosecution for a violation of this section, the existence on the property and in the actual possession of the defendant:

(1) Of any connection, wire conductor, microwave antenna or any device whatsoever, which is connected in such a manner as would permit the receipt of cable television service without such service being reported for payment to and specifically authorized by the cable television company; or

(2) Where the totality of the circumstances, including quantities or volumes, surrounding the defendant's arrest indicates possession for resale, of any device designed in whole or in part to facilitate the performance of any of the illegal acts set out in subsection (a); shall create an inference that the defendant intended to violate the provisions of this section.

(f)(1) Any cable television company may, in accordance with the Tennessee Rules of Civil Procedure, bring an action to enjoin and restrain any violation of the provisions of this section, and may in the same action seek damages as provided in subsection (d).

(2) It is not a necessary prerequisite to a civil action pursuant to this section that the cable television company prove it has suffered, or is threatened with, actual damages.

(g) Any electronic or communications equipment or any other such devices used to violate the provisions of this section shall be considered contraband subject to seizure and forfeiture to the state as provided in title 40, chapter 33.

(h) It is the intent of the general assembly that the connecting of VCRs in addition to a television to a cable television outlet shall not be considered an additional cable television service.

7-59-201. Definitions.

As used in this part, unless the context otherwise requires:

(1) "Cable service" means:

(A) The one-way transmission to subscribers of video programming or other programming service; and

(B) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service;

(2) "Cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

(A) A facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

(B) A facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way;

(C) A facility of a common carrier, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or

(D) Any facilities of any electric utility used solely for operating its electric utility system;

(3) "Franchise" means an initial authorization or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system;

(4) "Franchising authority" means any governmental entity empowered by federal, state, or local law to grant a franchise;

(5) "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity; and

(6) "Video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station or cable system.

7-59-202. Public Notice and Hearing.

No municipality or county shall grant a franchise for cable service to a cable system within its jurisdiction without first, at a public hearing for which public notice was given at least ten (10) days prior to such meeting, having considered:

(1) The economic impact upon private property within the franchise area;

(2) The public need for such franchise, if any;

(3) The capacity of public rights-of-way to accommodate the cable system;

- (4) The present and future use of the public rights-of-way to be used by the cable system;
- (5) The potential disruption to existing users of the public rights-of-way to be used by the cable system and the resultant inconvenience which may occur to the public;
- (6) The financial ability of the franchise applicant to perform;
- (7) Other societal interests as are generally considered in cable television franchising; and
- (8) Such other additional matters, both procedural and substantive, as the municipality or county may, in its sole discretion, determine to be relevant.

7-59-203. More Favorable Terms Prohibited.

No municipality or county shall grant any overlapping franchises for cable service within its jurisdiction on terms or conditions more favorable or less burdensome than those in any existing franchise within such municipality or county.

7-59-204. Applicability of Certain Provisions.

The provisions of section 7-59-203 shall not apply when the area in which the overlapping franchise is being sought is not actually being served by the existing cable service provider holding a franchise for such area. The provisions of section 7-59-202 shall apply to the provisions of this section and section 7-59-205. As used in this section, "actually being served" means that cable service is actually available to subscribers to such extent that the only act remaining in order to provide cable service is the physical connection to the individual subscriber location fifteen (15) days prior to any subsequent application for a franchise.

7-59-205. Additional Terms and Conditions.

Nothing in this part shall be construed to prevent any municipality or county considering the approval of an additional cable service franchise in all or any part of the area of such municipality or county from imposing additional terms and conditions upon the granting of such franchise as such municipality or county shall in its sole discretion deem necessary or appropriate.

7-59-206. Existing Franchises.

All cable service franchises in existence on July 1, 1988, shall remain in full force and effect according to their terms.

7-59-207. Renewal of Franchises.

Nothing in this part shall be construed to alter or amend the process or procedure for renewal of franchises in existence on July 1, 1988.

7-59-208. Franchise Requests.

This part shall not affect any franchise request filed in an area with an existing franchise prior to July 1, 1988.

CRIMINAL OFFENSES

39-14-101. Consolidation of theft offenses.

Conduct denominated as theft in this part constitutes a single offense embracing the separate offenses heretofore known as; embezzlement, false pretense, fraudulent conversion, larceny, receiving/concealing stolen property, and other similar offenses.

39-14-102. Definitions.

The following definitions apply in this part unless the context otherwise requires:

(1) "Cable television company" means any franchise or other duly licensed company which is operated or intended to be operated to perform the service of receiving and amplifying the signals broadcast by one (1) or more television stations and redistributing such signals by wire, cable or other device or means for accomplishing such redistribution to members of the public who subscribe to such service, or distributing through such company's antennae, poles, wires, cables, conduits, or other property used in providing service to its subscribers and customers any television signals whether broadcast or not.

(9) "Receiving" includes, but is not limited to, acquiring possession, control, title or taking a security interest in the property.

39-14-103. Theft of property.

A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent.

39-14-104. Theft of Services.

A person commits theft of services who:

- (1) Intentionally obtains services by deception, fraud, coercion, false pretense or any other means to avoid payment for the services;
- (2) Having control over the disposition of services to others, knowingly diverts those services to the person's own benefit or to the benefit of another not entitled thereto; or
- (3) Knowingly absconds from establishments where compensation for services is ordinarily paid immediately upon the rendering of them, including, but not limited to, hotels, motels and restaurants, without payment or a bona fide offer to pay.

39-14-105. Grading of Theft

Theft of property or services is:

- (1) A Class A misdemeanor if the value of the property or services obtained is five hundred dollars (\$500) or less;
- (2) A Class E felony if the value of the property or services obtained is more than five hundred dollars (\$500) but less than one thousand dollars (\$1,000);
- (3) A Class D felony if the value of the property or services obtained is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000);
- (4) A Class C felony if the value of the property or services obtained is ten thousand dollars (\$10,000) or more but less than sixty thousand dollars (\$60,000); and
- (5) A Class B felony if the value of the property or services obtained is sixty thousand dollars (\$60,000) or more.

39-14-107. Claim of right.

It is an affirmative defense to prosecution under subsection 39-14-103, 39-14-104 and 39-14-106 that the person:

- (1) Acted under an honest claim of right to the property or service involved;
- (2) Acted in the honest belief that the person had the right to obtain or exercise control over the property or service as the person did; or
- (3) Obtained or exercised control over property or service honestly believing that the owner, if present, would have consented.

39-14-108. Pawned or conveyed rental property.

(a) With respect to the theft of rental property, evidence of any of the following shall create an inference of intent to deprive the owner of the rental property, as provided in subsection 39-14-103:

- (1) The person leasing or renting the property has pawned or otherwise conveyed the property;
- (2) The person leasing or renting the property pursuant to a written agreement presents identification to the owner at the time of the execution of the written agreement which bears a fictitious name, telephone number or address; or
- (3) The person leasing or renting the property pursuant to a written agreement designating the principal location at which such property is to be used, and specifying the principal location at which such property is to be used, and specifying the date and time when the same is to be returned, fails to return the same to such owner on or before such return date and within ten (10) days after the date of mailing or written notice to return such property sent by registered or certified mail, return receipt requested, deliver to addressee only, and the property is not to be found at the location designated in the lease or rental agreement as the principal place of use of the property.

(b) Any leased or rented tangible personal property that has been sold, pawned or otherwise disposed of by the person renting or leasing the property during the period of the lease or rental agreement shall be returned to the owner of such property if the property is properly marked and identified as leased or rental property and is no longer needed as evidence against such person, and if the owner of the property can, by serial number, manufacturer's identification number or other sufficient means, demonstrate ownership of the property.

(c)(1) Each owner of rental property shall conspicuously mark and identify such property as rented or lease property. Such markings shall include, but not be limited to, the name and address of the rental company and the serial number of such property.

(2) The provisions of this subsection do not apply to motor vehicles, as defined in title 55.

SALES AND USE TAXES

67-6-101. Short title – Nature of tax.

This chapter shall be known as the "Retailers' Sales Tax Act," and the tax imposed by this chapter shall be in addition to all other privilege taxes, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes levied.

67-6-102. Definitions

As used in this chapter, unless the context otherwise requires:

(24)(E) "Sale at retail", "use", "storage" and "consumption" do not include the sale, use, storage or consumption of: Home communication terminals, remote control devices, and other similar equipment purchased on or after January 1, 2000, by a cable television service provider authorized pursuant to Title 7, Chapter 59, and held for sale or lease to its subscribers.

(30)(A) "Telecommunications" means communication by electric or electronic transmission of impulses;

(B) "Telecommunications" includes transmission by or through any media such as wires, cables, microwaves, radio waves, light waves, or any combinations of those or similar media;

(C) Except as provided in subdivision (D), "telecommunications" includes, but is not limited to, all types of telecommunication transmissions, such as telephone service, telegraph service, telephone service sold by hotels or motels to their customers or to others, telephone service sold by colleges and universities to their students or to others, telephone service sold by hospitals to their patients or to others, WATS service, paging service, and cable television service sold to customers or to others by hotels or motels;

(D) "Telecommunications" does not include public pay telephone services, television or radio programs which are broadcast over the airwaves for public consumption, coaxial cable television (CATV) which is offered for public consumption, interstate WATS service, private line service, or automatic teller machine (ATM) service, wire transfer or other services provided by any corporation defined as a financial institution under section 67-4-804(a)(9) [Repealed], unless the company separately bills or charges its customers for specific telecommunication services rendered;

67-6-103. Deposit and Allocation of Receipts – Transportation Equity Trust Fund – Major League Football Franchise.

(f) Notwithstanding the provisions of subsections (a), (b), (c), (d) and (e), the state tax on fees or charges for subscription to, access to, or use of television programming or television services provided by a cable television service provider authorized pursuant to title 7, chapter 59, or by a provider of wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) offered for public consumption on charges or fees in excess of fifteen dollars (\$15.00) but less than twenty-seven dollars and fifty cents (\$27.50) per month, shall be for state purposes only and shall be earmarked and allocated specifically and exclusively to the general fund. Any amounts derived from the sales tax on fees or charges for subscription to, access to, or use of television programming or television services provided by a cable television service provider authorized pursuant to title 7, chapter 59, or by a provider of wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) offered for public consumption, in excess of twenty-seven dollars and fifty cents (\$27.50) shall be taxed at the state rate of six percent (6%) in accordance with the provisions of part 2 of this chapter as well as pursuant to the local option revenue act in part 7 of this chapter, and be distributed in accordance with the provisions of §67-6-103. Counties and incorporated municipalities shall use funds in the same manner and for the same purposes as funds distributed pursuant to section 67-6-712.

67-6-201. Taxable Privilege Declared.

It is declared to be the legislative intent that every person is exercising a taxable privilege who:

(9) Charging a fee for subscription to, access to or use of television services provided by a cable television service provider authorized pursuant to title 7, chapter 59, or by a provider of wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) offered for public consumption.

(10) Charging a fee for subscription to, access to or use of television services delivered by a provider of direct-to-home satellite service.

67-6-212. Amusement tax. [REPEALED AS TO CABLE TELEVISION]**67-6-226. Sales Tax on Cable and Wireless Television Services.**

Notwithstanding other provisions of this chapter to the contrary, commencing on September 1, 1999, state tax at the rate of eight and one-quarter percent (8.25%) on each sale at retail is imposed with respect to fees for subscription to, access to, or use of television programming or television services provided by a cable television service provider authorized pursuant to title 7, chapter 59, or by a provider of wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) offered for public consumption, except such state tax shall not apply to television programming or television service charges or fees in an amount less than fifteen dollars (\$15.00) provided by a cable television service provider authorized pursuant to title 7, chapter 59, or by a provider of wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) offered for public consumption.

67-6-227. Sales Tax on Satellite Television Services.

Notwithstanding other provisions of this chapter to the contrary, state tax at the rate of eight and one-quarter percent (8.25%) on each sale at retail is imposed with respect to fees for subscription to, access to, or use of television programming or television services delivered by a provider of direct-to-home satellite service.

67-6-714. Local Option Tax Exemption for Cable or Wireless Cable Television Services.

There is exempt from the local option tax fees for subscription to, access to or use of television programming or television services provided by a cable television service provider authorized pursuant to title 7, chapter 59, or by a provider of wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) offered for public consumption up to but not exceeding twenty-seven dollars and fifty cents (\$27.50) per month.

PUBLIC UTILITIES AND CARRIERS – ELECTRIC COOPERATIVES

65-25-205. Powers of Cooperative.

(c) Neither the provisions of this part nor of any other Tennessee law shall be construed to authorize a cooperative to own, operate or otherwise acquire a legal or beneficial interest in a city-franchised or county-franchised cable television system; provided, that each cooperative may, within its service area and with the authorization of its board, contract to establish a joint venture with an entity that is a current franchise holder under title 7, chapter 59, within the cooperative's service area and has been operating, either itself or its predecessor franchise holder, for not less than three (3) years at the time of the establishment of the joint venture

(hereinafter “cable joint venture”). A cable joint venture shall be authorized to provide cable service, two-way video transmission, video programming, internet services, and other like services and shall comply in all respects with the requirements of section 65-25-230.

65-25-227. Sale of Cable Programming.

No cooperative shall sell any cable programming to any users served or serviceable by a franchised cable company on April 7, 1988, except through the establishment of a telecommunications joint venture with such a cable company pursuant to section 65-25-231.

65-25-228. Existing Electric Cooperatives – Restrictions on Concurrent Operation with Microwave Systems.

The provisions of this part shall not be construed to authorize any existing electric cooperative to provide or perform services or activities in any geographic area in the state where such services or activities are currently being provided or performed by a wireless cable (microwave) system authorized and licensed by the federal communications commission as a multi-channel and/or multipoint distribution system (MDS) on April 7, 1988, without the express written consent of the MDS/MMDS owner/operator. This section applies only to a wireless cable (microwave) system authorized and licensed by the federal communications commission as a multi-channel and /or multi-point distribution system (MDS) in existence and operating on April 7, 1988.

65-25-230. Subsidies by Electric Cooperatives to Joint Cable Ventures – Antitrust Provisions – Remedies.

(a) An electric cooperative may not provide subsidies to a cable joint venture. Notwithstanding the limitations set forth in the preceding sentence, an electric cooperative participating in a cable joint venture may:

(1) Dedicate a reasonable portion of the electric plant to the provision of such service, the costs of which shall be allocated to such services by agreement of the parties to the joint venture.

(2) Lend funds, at a rate of interest not less than the highest rate then earned by the electric cooperative on invested electric plant funds, to acquire, construct, and provide working capital for the system, plant, and equipment necessary to provide any such services; provided, that such interest costs shall be allocated to the cost of such service for regulatory purposes, and further provided that no financing for a cable joint venture shall come from loans from the rural utility service of the United States department of agriculture unless and until such loans are specifically authorized by federal statute.

(b) To the extent that an electric cooperative offers the services authorized by section 65-25-205 in a joint venture, such cooperative shall have all the powers, obligations, and authority granted other entities providing such services under the applicable laws of the United States, the state of Tennessee, or local governments; provided, however, the franchise under which the joint venture shall operate shall in no way be considered an overlapping franchise nor in any way modify or amend section 7-59-203.

(c) Nothing in this part shall be construed to alter or amend the process or procedure for renewal of franchises.

(d) It shall be unlawful during the negotiation of the joint venture or thereafter for any party to a cable joint venture or the local franchising authority, as defined in title 7, chapter 59, to use

unfair or anti-competitive practices under any applicable provision of state or federal law. Such practices shall include, but are not limited to, predatory pricing, collusion, and price tying.

(e) The parties to a cable joint venture or the local franchising authority, as defined in title 7, chapter 59, may bring a civil action for injunctive or declaratory relief in chancery court to enforce the provisions of subsection (d). Venue for such action may be in any county where the unfair or anti-competitive practice is alleged to have occurred or to be threatened.

(f) If the cable joint venture or any member of the cable joint venture providing such service is exempt from paying federal, state, or local taxes, then, for regulatory purposes, the cable joint venture shall allocate to the costs of such services an amount equal to a reasonable determination of the state, local and federal taxes which would be required to be paid if the cable joint venture were not exempt and each of its members were not exempt from paying such taxes.

65-25-231. Joint Ventures for Provision of Telephone, Telegraph or Telecommunications Services – Subsidies – Antitrust provisions – Remedies – Joint Ventures for Provision of Natural Gas.

(a)(1) Each cooperative may, within its service area and with the authorization of its board, contract to establish a joint venture with any entity for the provision of telephone, telegraph, or telecommunications services in compliance with chapters 4 and 5 of this title, and all other applicable state and federal laws, rules and regulations (hereinafter "telecommunications joint venture"). Notwithstanding section 65-4-101(a)(2) or any other provision of this code or of any private act, a telecommunication joint venture and every member of a telecommunication joint venture shall be subject to regulation by the Tennessee regulatory authority in the same manner and to the same extent as other certified providers of telecommunications services, including, without limitation, rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in section 65-4-101, but only to the extent necessary to effect such regulation and only with respect to the provision of telephone, telegraph and telecommunication services.

(2) Neither an electric cooperative nor any other entity participating in a telecommunications joint venture that provides such services may provide subsidies for such services. Notwithstanding the limitations set forth in the preceding sentence, an electric cooperative participating in a telecommunications joint venture may:

(A) Dedicate a reasonable portion of the electric plant to the provision of such services, the costs of which shall be allocated to such services for regulatory purposes; and

(B) Lend funds, at a rate of interest not less than the highest rate then earned by the electric cooperative on invested electric plant funds, to acquire, construct, and provide working capital for the system, plant, and equipment necessary to provide any such services; provided, that such interest costs shall be allocated to the cost of such services for regulatory purposes.

(3) To the extent that it provides such services, a telecommunications joint venture has all the powers, obligations and authority granted entities providing telecommunications services under applicable laws of the United States or the state of Tennessee. To the extent that such authority and powers do not conflict with the provisions of chapter 4 or 5 of this title, and any rules, regulations, or orders issued thereunder, a telecommunications joint venture providing any such services shall have all the authority and powers with respect to such services as are enumerated in this chapter.

(4) If the telecommunications joint venture or any member of the telecommunications joint venture providing such service is exempt from paying federal, state, or local taxes, then for regulatory purposes, the telecommunications joint venture shall allocate to the costs of such services an amount equal to a reasonable determination of the state, local and federal taxes which would be required to be paid if the telecommunications joint venture and each of its members were not exempt from paying such taxes.

(5) The provisions of this subsection are not applicable to areas served by an incumbent local exchange telephone company or telephone cooperative with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995, or section 65-4-201(d), is declared unconstitutional or unlawful by a court of competent jurisdiction in a final non-appealable order.

(b) Each cooperative may, within its service area and with the authorization of its board, contract to establish a joint venture with any entity to provide the transmission, transportation, distribution, delivery, or sale of natural gas, or similar products provided, however, that the entity with which the joint venture is established shall be engaged in such business at the time the contract to establish the joint venture is effective.

65-25-232. Joint Ventures Subject to Excise and Franchise Fees.

Each joint venture created pursuant to section 65-25-205 or 65-25-231 of this act in which one or more of the owners of the joint venture is an entity subject to the taxes imposed by title 67, chapter 4, parts 8 and 9 (or any tax imposed in place thereof) shall itself be subject to and shall pay the taxes required by parts 8 and 9 (or any tax imposed in place thereof).

65-25-233. Joint Ventures to Provide Alarm Systems Not Authorized.

Nothing in act 1999, ch. 430, title 67, chapter 4 shall be construed to allow an electric cooperative or a joint venture in which an electric cooperative is a member to engage in the business of providing alarm systems as defined in title 62, chapter 32, part 3.

MUNICIPAL TELECOMMUNICATIONS SERVICES

7-52-401. Authority With Relations to Telecommunications Equipment and Services.

Every municipality operating an electric plant, whether pursuant to this chapter or any other public or private act or the provisions of the charter of the municipality, county or metropolitan government, has the power and is authorized, on behalf of its municipality acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant or equipment for the provision of telephone, telegraph, telecommunications services, or any other like system, plant, or equipment within and/or without the corporate or county limits of such municipality, and, with the consent of such other municipality, within the corporate or county limits of any other municipality, in compliance with Tennessee Code Annotated, Title 65, Chapters 4 and 5, and all other applicable state and federal laws, rules and regulations. A municipality shall only be authorized to provide telephone, telegraph or telecommunications services through its board or supervisory body having responsibility for the municipality's electric plant. A municipality providing any of the services authorized by this section may not dispose of all or substantially all of the system, plant and equipment used to provide such services except upon compliance with the procedures set forth in Tennessee Code Annotated, section 7-52-132. Notwithstanding section 65-4-101(a)(2) or any other provision of this code or of any private act, to the extent that any municipality provides any of the services authorized by this section, such municipality shall be subject to regulation by the Tennessee Regulatory Authority in the same manner and to the same extent as other certificated providers of telecommunications services, including without limitations rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in Section 65-4-101, but only to the extent necessary to effect such regulation and only with respect to such municipality's provision of telephone, telegraph and communication services.

7-52-402. Subsidies – Municipal Costs.

A municipality providing any of the services authorized by section 7-52-401 shall not provide subsidies for such services. Notwithstanding the limitations set forth in the preceding sentence, a municipality providing such services shall be authorized to:

- (1) dedicate a reasonable portion of the electric plant to the provision of such services the costs of which shall be allocated to such services for regulatory purposes; and
- (2) lend funds, at a rate of interest not less than the highest rate then earned by the municipality on invested electric plant funds, to acquire, construct, and provide working capital for the system, plant, and equipment necessary to provide any of the services authorized under Section 7-52-401; provided, that such interest costs shall be allocated to the cost of such services for regulatory purposes. Any loan of funds made pursuant to this section shall be approved in advance by the state director of local finance and shall contain such provisions as are required by the state director.

7-52-403. Applicability to Municipalities – Municipalities Subject to Regulatory Laws and Rules.

(a) To the extent that it provides any of the services authorized by section 7-52-401, a municipality shall have all the powers, obligations and authority granted entities providing telecommunications services under applicable laws of the United States or the state of Tennes-

see. To the extent that such authority and powers do not conflict with the provisions of Tennessee Code Annotated, Title 65, Chapters 4 and 5, and any rules, regulations, or orders issued thereunder, a municipality providing any of the services authorized by section 7-52-401 shall have all the authority and powers with respect to such services as are enumerated in this chapter.

(b) Notwithstanding the authorization granted in subsection (a), a municipal electric system shall not provide any of the services authorized by Section 7-52-401 unrelated to its electric services within the service area of an existing telephone cooperative with fewer than one hundred thousand (100,000) total lines organized and operating under the provisions of Tennessee Code Annotated, section 65-29-101, et seq., and therefore shall adhere to those regulations of the 1995 Tennessee Telecommunications Act and Rules of the Tennessee Regulatory Authority, which are applicable to the telephone cooperatives, and specifically Tennessee Code Annotated, sections 65-4-101 and 65-29-130.

7-52-404. Tax Equivalent Payments.

A municipality providing any of the services authorized by Section 7-52-401 shall make tax equivalent payments with respect to such services in the manner established for electric systems under Tennessee Code Annotated, Title 7, Chapter 52, Part 3. For purposes of the calculation of such tax equivalent payments only, the system, plant, and equipment used to provide such services shall be considered operating revenues. For regulatory purposes, a municipality shall allocate to the costs of any services authorized by section 7-52-401 an amount equal to a reasonable determination of the state, local, and federal taxes which would be required to get paid for each fiscal year by a non-governmental corporation that provides the identical services.

7-52-405. Allocation of costs by Municipalities.

For regulatory purposes, a municipality shall allocate to the costs of providing any of the services authorized by section 7-52-401:

(a) An amount for attachments to poles owned by the municipality equal to the highest rate charged by the municipality to any other person or entity for comparable pole attachments; and

(b) Any applicable rights-of-way fees, rentals, charges, or payments required by state or local law of a non-governmental corporation that provides the identical services.

7-52-406. Licensing Laws not Superseded – Applicability to Cable Services.

(a) Nothing in this part shall be construed to allow a municipality to provide any service for which a license, certification, or registration is required under Tennessee Code Annotated, Title 62, Chapter 32, Part 3.

(b) Nothing in this part or any private act, charter, metropolitan charter, or amendments thereto, shall allow a municipality, county, metropolitan government, department, board or other entity of local government to provide any service for which a license, certification, or registration is required under Title 62, Chapter 32, Part 3 or to provide pager service.

7-52-407. Supersession of Conflicting Laws.

This part supersedes any conflicting provisions of general law, private act, charter or metropolitan charter provisions.

MUNICIPAL ELECTRIC PLANTS – CABLE TELEVISION INTERNET AND RELATED SERVICES

7-52-601. Authority to Operate Services.

(a) Each municipality operating an electric plant described in section 7-52-401 has the power and is authorized within its service area, under the provisions of this act and on behalf of its municipality acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant (herein sometimes referred to as “governing board”), to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant, or equipment for the provision of cable service, two-way video transmission, video programming, internet services, or any other like system, plant, or equipment within and/or without the corporate or county limits of such municipality, and, with the consent of such other municipality, within the corporate or county limits of any other municipality. A municipality may only provide cable service, two-way video transmission, video programming, internet services or other like service through its board or supervisory body having responsibility for the municipality's electric plant. A municipality providing any of the services authorized by this section may not dispose of all or substantially all of the system, plant, and equipment used to provide such services except upon compliance with the procedures set forth in section 7-52-132.

(b) The services permitted by this part do not include telephone, telegraph, and telecommunications services permitted under Part 4 of this chapter.

(c) Notwithstanding the foregoing, a municipality shall not have any power or authority under subsection (a) of this section in any area where a privately-held cable television operator is providing cable service over a cable system and in total serves 6,000 or fewer subscribers over one (1) or more cable systems.

(d) Notwithstanding the foregoing, a municipality shall not have any power or authority under subsection (a) of this section in any area of any existing telephone cooperative that has been providing cable service for not less than ten (10) years under the authority of the federal communications commission.

7-52-602. Business Plan – Public Notice and Hearing-Referendum.

To provide the services authorized under this part, the governing board of the municipal electric system shall comply with the following procedure:

(1) Upon the approval and at the direction of the governing board, the municipal electric system shall file a detailed business plan with the office of the comptroller of the treasury which includes a three-year cost benefit analysis and which identifies and discloses the total projected direct cost and indirect cost of and revenues to be derived from providing the proposed services. The plan shall also include a description of the quality and level of services to be provided, pro forma financial statements, a detailed financing plan, marketing plan, rate structure and any other information requested by the director of the division of local finance.

(2) After review of the plan, the comptroller of the treasury shall provide a written analysis of the feasibility of the proposed business plan to the chief legislative body of the municipality in which the municipal electric system is located and the governing board within sixty (60) days; provided, however, the calculation of the time to file the comptroller's written analysis shall not commence until the business plan is complete. Upon expiration of said sixty-day period, the governing board may proceed without the written analysis of the comptroller.

(3) If the governing board determines to proceed, it shall publish in a newspaper of general circulation within that area a notice of its intent to proceed with the offering of additional services. The notice shall include a general description of the business plan and a summary of the governing board's findings on such plan. The notice shall also specify a date on which the governing board shall conduct a public hearing on the provision of such services.

(4) The governing board shall conduct a public hearing on the provision of such services. No sooner than fourteen (14) days after such public hearing, the governing board may consider authorizing the provision of additional services. A municipal electric system may provide additional services only after approval by a two-thirds (2/3) majority vote of the chief legislative body of the municipality in which the municipal electric system is located or by a public referendum held pursuant to subsection (5) of this section.

(5) Upon a majority vote by the chief legislative body of the municipality in which the municipal electric system is located that a public referendum should be held on the question of whether the municipal electric system may provide additional services, the chief legislative body of such municipality may direct the county election commission to hold a referendum on such question. In order for the question to be placed on the ballot, the chief legislative body shall so direct not less than sixty (60) days before a regular general election. Upon receipt of such direction from the chief legislative body, the county election commission shall place the question on the ballot. The referendum shall only be held in conjunction with a regular general election being held in the municipality and only registered voters of such municipality may participate in the referendum. The question to appear on the ballot shall be "FOR THE MUNICIPAL ELECTRIC SYSTEM PROVIDING ADDITIONAL SERVICES" and "AGAINST THE MUNICIPAL ELECTRIC SYSTEM PROVIDING ADDITIONAL SERVICES".

7-52-603. Separate Division to Provide Services – Costs and Charges.

(a)(1)(A) A municipal electric system shall establish a separate division to deliver any of the services authorized by this part. The division shall maintain its own accounting and record-keeping system. A municipal electric system may not subsidize the operation of the division with revenues from its power or other utility operations.

(B) A municipal electric system may lend funds, at a rate of interest not less than the highest rate then earned by the municipal electric system on invested electric plant funds, to acquire, construct, and provide working capital for the system, plant, and equipment necessary to provide any of the services authorized by this part; provided, however, such interest costs shall be allocated to the cost of such services.

(2) The division shall be subject to the terms and conditions of those types of provisions generally provided in existing or future pole attachment agreements, including without limitation, allocation of costs for rates, insurance, and other related costs, and the responsibility for make ready provisions, that are applicable to private providers of services provided by the division under this part.

(3) In response to facility installation, maintenance, or relocation requests made under a pole attachment agreement by a private provider of services provided by the division under this part, the municipal electric system shall provide the same response times and service quality as the municipal electric system provides for requests of the division for such services and shall provide non-discriminatory access to these facilities. Nothing in this subsection shall impair the rights of a municipal electric system under its pole attachment agreement with the private provider of services.

(b) A municipal electric system providing any of the services authorized by this part shall fully allocate any costs associated with the services provided under this part to the rates for those services.

(c) A municipal electric system providing any of the services authorized by this part shall establish and charge rates that cover all costs related to the provision of such services.

(d) A municipal electric system shall charge or allocate as costs to the division the same pole rate attachment fee as it charges any other franchise holder providing the same service.

(e) Any fee imposed by the municipality on a private provider of cable services, shall also be allocated to the division.

7-52-604. Guidelines for Accounting – Audits – Financial Reports.

(a) The comptroller of the treasury shall adopt, after consideration of written comments submitted by any interested party, guidelines or procedures to establish appropriate accounting principles applicable to the division's affiliated transactions and cost allocation. The development of such guidelines or procedures shall not be deemed a rule-making proceeding under the administrative procedures act, compiled in title 4, chapter 5.

(b) A municipal division providing the services authorized by this part is subject to a finance and compliance audit under the provisions of section 6-56-105, which audit shall be conducted in accordance with enterprise fund accounting principles under generally accepted accounting principles.

(c) On or before June 30, 2005, the office of the comptroller of the treasury shall prepare a report to the general assembly evaluating the operations of municipal electric systems offering services permitted by this part, which shall include a recommendation as to whether the authority to provide such services should be expanded, restricted or terminated.

7-52-605. Powers and Obligations of Service Providers.

To the extent that it provides any of the services authorized by this part, a municipal electric system shall have all the powers, obligations, and authority granted entities providing similar services under applicable laws of the United States or the state of Tennessee or applicable municipal ordinances.

7-52-606. Tax Payments – Payments in Lieu of Taxes.

(a) A municipal electric system providing any of the services authorized by this part shall make tax equivalent payments with respect to such services in the manner established for electric systems under part 3 of this chapter; provided, such payments shall not include amounts based on net system revenues as provided in section 7-52-304(1)(B). For purposes of the calculation of such tax equivalent payments only, the system, plant, and equipment used to provide such services shall be considered an electric plant, and the revenues received from such services shall be considered operating revenues. The amount payable pursuant to this paragraph shall not exceed the amount that would otherwise be due from a municipality were it a private provider of such services paying ad valorem taxes.

(b) In addition to the requirement of subsection (a) and notwithstanding any other provision of law to the contrary, a division of the municipal electric system providing the cable services, internet services, two-way video transmission or video programming services authorized by this part, is subject to payment to the appropriate units of government of an amount in lieu of the following taxes on that part of its revenues, plant and facilities dedicated or allocated to those

services described in section 7- 52-601(a), to the same extent as if it were a private provider of such services:

- (1) Excise and franchise tax law under title 67, chapter 4, parts 20 and 21;
- (2) Sales tax law under title 67, chapter 6; and
- (3) Local privilege tax law under title 67, chapter 4, part 7.

7-52-607. Financing Powers of Service Providers.

Any municipality authorized by this part to provide any of the services described herein shall have the power and is hereby authorized to borrow money, contract debts and issue its bonds or notes to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of a system or systems, or any part thereof, to provide any of such services, including the acquisition of land or rights in land and the acquisition and installation of all equipment necessarily incident to the provision of such services. Any bonds or notes authorized to be issued pursuant to this section shall be issued only in accordance with the procedures, requirements and limitations set forth in chapter 34 of this title, or title 9, chapter 21, as elected by the municipality issuing the bonds or notes. All provisions of chapter 34 of this title, or title 9, chapter 21, relating to the authorization, issuance and sale of bonds or notes, the use and application of revenues of the system or systems being financed, powers to secure such bonds and notes, covenants and remedies for the benefit of bond or note holders with respect to such bonds or notes, validity and tax exemption with respect to such bonds or notes, and powers to refund and refinance such bonds or notes shall apply to any bonds or notes authorized hereunder and the system or systems financed thereby with the same effect as if such system or systems were a "public works", if proceeding under chapter 34 of this title, or a "public works project" if proceeding under title 9, chapter 21.

7-52-608. Conflicting Law or Provisions.

This part supersedes any conflicting provisions of general law, private act, charter or metropolitan charter provisions.

7-52-609. Civil Actions.

A franchisee under chapter 59 of this title operating in the service area of the municipal electric division providing services under this part may bring a civil action for injunctive or declaratory relief for a violation under this part, and may recover actual damages upon a showing of a willful violation under this part. Jurisdiction and venue for such action shall be in the chancery court in the county where the alleged violation is occurring or will occur. Such actions shall be scheduled for hearing as a priority by the court.

7-52-610. Liability of Service Providers.

A division established by a municipal electric system to deliver any of the services authorized by this part shall not be considered a governmental entity for the purposes of the Tennessee Governmental Tort Liability Act, compiled in title 29, chapter 20.

7-52-611. Customer Right to Action for Damages.

A customer of a municipal electric system shall have a right of action to recover damages against such system pursuant to this part.

MUNICIPAL POWERS

7-52-103. Powers of Municipalities.

(c) In addition to the authority granted under otherwise applicable law, each municipality operating an electric plant has the power and is authorized within its service area and on behalf of its municipality acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, may contract to establish a joint venture or other business relationship with one or more third parties to provide the services authorized by section 7-52-601; provided, that with respect to cable services at least one (1) such third party shall be a current franchise holder that has been providing services in any state (either itself or its predecessor(s)) for not less than three (3) years at the time of the establishment of the joint venture or other business relationship. Any such joint venture or other business relationship shall be subject to the provisions of sections 7-52-602 through 7-52-609.

(d) In addition to the authority granted under otherwise applicable law, each municipality operating an electric plant has the power and is authorized on behalf of its municipality, acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, to establish a joint venture or any other business relationship with one or more third parties to provide related services, subject to the provisions of sections 7-52-402 through 7-52-407. No contract or agreement between a municipal electric system and one or more third parties for the provision of related services that provides for the joint ownership or joint control of assets, the sharing of profits and losses, or the sharing of gross revenues shall become effective or enforceable until the Tennessee regulatory authority approves such contract or agreement on petition and after notice and opportunity to be heard has been extended to interested parties. Notwithstanding section 65-4-101(a)(2) or any other provision of this code or of any private act, to the extent that any such joint venture or other business relationship provides related services, such joint venture or business relationship and every member of such joint venture or business relationship shall be subject to regulation by the Tennessee regulatory authority in the same manner and to the same extent as other certified providers of telecommunications services, including, without limitation, rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in Section 65-4-101, but only to the extent necessary to effect such regulation and only with respect to the provision of related services. This provision shall not apply to any related service or transaction which is not subject to regulation by the Tennessee regulatory authority.

(e) For purposes of this Section, "related services" shall mean those services authorized by section 7-52-401.

RELOCATION OF UTILITIES

54-5-801. Declaration of Policy.

(a) The construction of modern highways is necessary to promote public safety, facilitate the movement to present day motor traffic, both interstate and intrastate in character, and to promote the national defense, and in the construction of such highways it is also in the public interest to provide for the orderly and economical relocation of utilities when made necessary by such highway improvements, including extensions thereof within urban areas, without occasioning utility service interruptions or unnecessary hazards to the health, safety and welfare of the traveling or utility consuming public.

(b) Utilities have been authorized by statute or charter provisions for many years to locate their facilities within the boundaries of public roads and streets in this state; because utilities are vital to the health, safety and welfare of the citizens of this state, and further:

(1) The business and activities of utilities involve the rendition of essential public services to large numbers of the general public, and no cessation of utility service is permitted without authority of law;

(2) The financing of utilities involves the investment of large sums of money, obtained from municipal funds and subscribing members of the general public;

(3) The development and extension of utilities directly and vitally affect the development, growth and expansion of the general welfare, business and industry of this state; and

(4) All persons in this state are actual or potential consumers of one (1) or more utility services, and all consumers will be affected by the cost of relocation of their utilities as necessary to accommodate highway improvements.

(c) Public highways and streets are intended principally for public travel and transportation; but they are also intended for proper utility uses in serving the public, as authorized by charter provisions or other applicable laws of this state, and such utility uses are for the benefit of the public served. Without making use of public ways, utility lines could not reach or economically service the adjacent public, particularly in urban areas.

(d) Federal aid highways of the interstate system, including extensions thereof in urban areas, serve the need of nonlocal and long distance traffic.

(e) The municipality that owns and operates its own utilities is a political subdivision of the state and lawfully holds all of its utility properties, real and personal, and other facilities in a proprietary capacity, and owns or has a real property interest in the streets, easements and other public ways in, under, and over which the utility facilities are installed.

(f) The obligation of such utility relocations is a burden on the public in this state, whether initially borne by the state or the municipally or cooperatively owned utility or in part by both, and it is, therefore, in the public interest that such burden be minimized to the extent that same can be done consistently with the principal purpose of such streets and highways for vehicular movement of persons and property; therefore, it is the intent of the general assembly to ensure that the state's police power in requiring relocation of utilities shall be exercised in a reasonable manner.

(g) Utility relocations necessitated by construction of the interstate highway system, extensions thereof, or improvements thereto are a public governmental function, properly a part of such construction, and, to the extent in this part provided, such relocations shall be made at state expense; however, although made in obedience to the commissioner's orders in exercise of the police power under this part, relocations hereunder for which compensation is not provided by this part or otherwise by law are declared to be *damnum absque injuria* and no claim therefor shall be enforceable against the state. Utility relocations to which this part are applicable shall be made only in pursuance of this part.

(h) The statements in this section are legislative determinations and declarations of public policy, and this part shall be liberally construed in conformity with its declarations and purposes to promote the public interest.

54-5-802. Definitions.

As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of transportation;

(2) “Cost of relocation” means and includes the entire amount paid properly attributable to such relocation, after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility;

(3) “Public highway” means and includes any state highway forming a part of the interstate and defense highway system, including extensions thereof within urban area, constructed in part with state aid, and includes any incorporated or related physical facilities for the handling of traffic and the right-of-way;

(4) “Relocation” means and includes any horizontal or vertical movement of utility facilities intact and any protective measures taken or, where found by the commissioner to be necessary, the construction of new or additional facilities (with or without contemporaneous removal and salvage of old facilities) in this state, including in any case adjustment or protection of connecting off-highway utility lines to the extent necessary;

(5) “Urban area” means an area in this state including and adjacent to a municipality or other urban place having a population of five thousand (5,000) or more, as determined by the latest available federal census, within reasonable boundaries fixed by the commissioner; and

(6) “Utility” means and includes publicly and cooperatively owned utilities, for the rendition of water, electric power, sanitary sewer, storm sewer, steam or fuel gas through a system of pipes or wires devoted to public utility service.

54-5-803. Relocation of utility facilities authorized – Obligations of utility – Agreements for relocation and cost.

(a) The commissioner may, after notice and hearing, by order provide for the relocation of utility facilities within a public highway (including, if required, the entire removal therefrom of certain facilities except as necessary to serve abutting premises or as necessary to cross the highway), and may require any utility as defined herein to make or suffer any such specified relocation, upon a finding that the action provided for is necessitated by highway improvement determined by the commissioner as a matter of policy relating to the design, construction, location and maintenance of public highways; and the commissioner shall direct and control the reasonable manner and time of effecting any such relocation so as to promote the public interest in the highway improvement without undue cost or risk and without impairment of utility service, whether the commission undertakes the relocation on behalf of the state or requires the utility to perform such relocation. If undertaken by the commissioner, the commissioner may contract such relocation work.

(b) The obligations of the utility as defined herein shall be to make or suffer relocations as so required by the commissioner, and to do so cooperatively and in the reasonable manner and time as may be prescribed by the commissioner, and to advance and pay all costs incurred in effecting relocation which the state is not authorized to pay hereunder or otherwise by law. It shall not be grounds for delay in relocation that a dispute exists over the cost of relocation or the method of paying or sharing same.

(c) The commissioner is authorized to enter into an agreement with a utility as defined herein with respect to any relocation, the time and manner of its accomplishment and the payment and sharing of the cost incurred in effecting relocation, all upon such reasonable terms and conditions as the commissioner shall approve as necessary or appropriate in the interest of a public highway program in this state; and in such event no notice, hearing or other proceeding under this part shall be required.

54-5-804. State to pay certain relocation costs – Exceptions – Reimbursement payments.

(a)(1) In the following types of utility relocation ordered by the commissioner pursuant to section 54-5-803, the commissioner shall either, as the commissioner elects, undertake the relocation work on behalf of the state, paying the cost of relocation, or reimburse the utility for the cost of relocation:

(A) Relocations necessitated by improvements of public highways in the interstate system, including extensions thereof within urban area;

(B) Relocations and reconstruction of facilities made necessary by complete removal from the public streets and highways; and

(C) Relocations necessitated by route changes of public highways in the interstate system, or in those projects being substituted for the interstate system.

(2) The commissioner is authorized upon notice and opportunity for hearing to find and determine in relocations hereunder the cost of relocation, and the same shall, to the extent authorized herein, be borne by the state as other highway construction costs.

(3) The commissioner is authorized and required to reimburse utilities owned by business organizations that are chartered as not-for-profit where the utility has a customer base of five hundred (500) or less and those utilities owned by local governments where the utility has a customer base of five hundred (500) or less for all reasonable costs associated with utility relocations necessitated by construction on state highways. The utility shall certify to the commissioner, subject to review of the comptroller of the treasury, the number of customers for each utility described above.

(b) EXCEPTIONS. The cost of relocation from which a utility would otherwise be relieved pursuant to subdivision (a)(1)(A) shall nevertheless be borne in full by the utility in any of the following cases, without reimbursement from the state:

(1) In case of relocation of a utility facility for which local municipal or county government authorization, if required by law, had not been granted;

(2) In case the utility shall, after April 1, 1963, agree for a valid consideration to effect the relocation at its expense under the terms of such agreement; or

(3) In case of any required relocation with respect to which the commissioner shall reasonably determine that the utility failed without just cause to make or suffer such relocation in the reasonable manner and time as prescribed by the commissioner.

(c) The commissioner shall make no reimbursement payment to a utility to which it is otherwise entitled pursuant to subdivision (a)(1), unless and until the commissioner is satisfied that relocation has been fully completed in accordance with the commissioner's requirements; and the commissioner shall in no event make reimbursement of any cost otherwise due under subdivision (a)(1) which is found after notice and hearing, to have been unnecessarily, negligently or improvidently incurred by the utility.

(d) To ensure that the state shall never pay any cost of relocation necessitated by improvement in the interstate highway system for which it cannot receive proportionate reimbursement under any federal aid highway act, if upon final determination by the United States department of transportation of the cost of relocation of a utility relocation necessitated by the construction or improvement of a public highway in the interstate system, the department of transportation shall finally determine the cost of relocation to be not reimbursable to the state from federal funds or to be less than the amount reimbursed to the utility by the commissioner, the utility so reimbursed shall repay to the commissioner the difference between the amount so reimbursed to the utility and the cost of relocation finally determined by the department.

54-5-805. Hearing – Notice – Rules and regulation promulgated by commissioner – Appeals.

(a) All hearings held hereunder shall be public and upon not less than fifteen (15) days' written notice of the time, place and purpose of such hearing to each utility whose services or facilities may be affected, and to each municipality in which any part of the proposed highway improvement is to be located. Hearings may be held before the commissioner, or any representative designated by the commissioner, and at such place as shall be designated in the notice.

(b) A record of the testimony shall be taken at such hearing and a transcript thereof furnished to anyone upon request and payment of the cost of such transcript.

(c) The findings and order shall be in writing and a copy thereof served upon the parties to the proceedings.

(d) The commissioner may promulgate rules to govern proceedings under this part.

(e) Any party aggrieved by any order may appeal to the chancery court of Davidson County within thirty (30) days of the entry of the same by filing a petition for review of such order, and upon receiving notice of the same, it shall be the duty of the commissioner or the commissioner's authorized agent to prepare and transmit a transcript of the record of such hearing including all testimony, findings and orders, which shall be the record in the cause. If it be made to appear to the court that the order appealed from is unreasonable or unlawful, the same shall be vacated and annulled and the entire matter remanded to the commissioner for further proceeding consistent with the decision of the court; provided, that such appeal shall not operate as a stay of any order of the commissioner unless the court shall so order.

(f) Any party aggrieved by the order or decision of the chancery court may appeal therefrom to the supreme court in accordance with the rules for appeals in civil cases.

54-5-806. Applicability of this part.

(a) The policy, principles and reimbursement provisions of this part shall apply equally to all other utilities, whether public, private or cooperatively owned, which furnish utility service including, but not limited to, water, electric power, sanitary sewer, storm sewer, steam, fuel gas and telephone or telegraph service through a system of pipes, conduits, cables, or wire devoted to public utility service.

(b) The policy, principles, and reimbursement provisions of this part shall apply to any and all highway projects that have not been completed on April 1, 1963, even though prior to April 1, 1963, the commissioner has required agreements with the affected utilities concerning any such relocation work. The commissioner is authorized and directed to amend any and all such existing agreements so as to conform to the provisions of this part.

54-5-807. Nonapplicability of part.

This part shall not apply to:

(1) Any taking or damaging of property for which the utility is entitled to compensation pursuant to the constitution of this state or the United States or pursuant to any binding agreement inuring to the utility's benefit; and

(2) Any relocation of utility facilities located outside the boundaries of public streets, roads or highways.

54-5-808 – 54-5-850. [Reserved.]

54-5-851. Purpose.

The general assembly hereby declares that it is the purpose of sections 54-5-851 –54-5-856 to regulate the removal, relocation, or adjustment of utility facilities occupying rights-of-way of highways when construction by the department makes such removal, relocation, or adjustment necessary.

54-5-852. Definitions.

As used in sections 54-5-851 – 54-5-856, unless the context otherwise requires:

(1) “Approximate vertical and horizontal locations of underground utility facilities” means the depth below the existing ground line in accordance with the best information available to the owner, and the location on a strip of land at least four feet (4’) wide but not wider than the width of the utility facility plus two feet (2’) on either side of the utility facility;

(2) “Complete project plans” means the plans, including existing topography and proposed grade, which have been developed by the department for use in acquiring rights-of-way and/or negotiating with owners for installation, relocation or adjustment of utility facilities relative to construction. Additions or changes to the plans will be given to the utilities as soon as they are available;

(3) “Construction” means the work required to construct or reconstruct a highway in accordance with the plans and specifications;

(4) “Department” means the Tennessee department of transportation;

(5) “Highway” means a highway, road, or street that will be the subject of construction pursuant to contract to be entered into between the department and a contractor;

(6) “Owner” means owner, operator, user or joint user of utility facilities;

(7) “Utility facility” means lines, pipes or other systems used, available for use, or formerly used to transmit or distribute communications, electricity, gas, liquids, steam, sewerage, or other materials; and

(8) [Deleted by 1999 amendment.]

(9) “Calendar days” means all days shown on the calendar.

54-5-853. Notification of owners – Response – Failure to reply.

(a) Before beginning construction, the department shall identify and notify by certified mail, return receipt requested, addressed to the designated representative of the owners of utility facilities which occupy or may occupy the rights-of-way of all highways described in the notice, on which construction is proposed to be performed. The department shall make every reasonable effort to identify the current and correct mailing address for each such owner in order to give actual notice to the appropriate personnel responsible for planing such relocation or adjustment of utility facilities of each owner.

(b) Within sixty (60) days following the receipt of such notice from the department, the owner shall inform the department, in care of the person sending such notice at the address listed therein, whether or not it is the owner of such utility facilities and if so, the type of utility service, description and general location of each such facility.

(c) For each owner to whom a notice was sent and for whom no response is received by the department within sixty (60) days as to whether or not the owner has utility facilities at the highway location described in the notice, the department shall provide a second notice by certified mail, return receipt requested.

(d) Within ten (10) days following the receipt of such second notice from the department, any owner so notified shall inform the department, in care of the person sending such second

notice at the address listed therein, whether or not it is the owner of such utility facilities and if so, the type of utility service, description and general location of each such facility.

(e) The failure of an owner to comply with the provisions of this section shall create a presumption that it is not such an owner, and the department and its contractor may then undertake construction without liability to such owner for damages to the owner's facilities, and in addition, such owner shall be liable to the department's contractor for damages resulting from such failure.

54-5-854. Project plans – Copies – Marking, approval, and changes – Liability – Civil Penalties.

(a) When the department is informed of the existence of utility facilities pursuant to section 54-5-853, it shall provide each such owner with at least two (2) sets of complete project plans by certified mail or hand delivery.

(b) Within one hundred twenty (120) calendar days following the receipt of such plans, the owner shall mark thereon, or on a copy thereof, the approximate vertical and horizontal locations of underground utility facilities, approximate horizontal location of above-ground utility facilities, a description of each of its existing utility facilities and any proposed new location of such facilities and additional facilities within all rights-of-way shown on the project plans, and prepare a plan and a schedule of calendar days to accomplish the same. The project plans, or a copy thereof, and the plan and schedule of calendar days, shall be returned to the department in care of the person whose name and address are listed on the project plans. Should coordination with other owners be required in order for an owner to prepare a plan and schedule, of calendar days, or should changes to the project plans cause the utility to alter its relocation plan or schedule, then additional time shall be allowed, but in no case shall such additional time exceed the original one hundred twenty (120) calendar days by more than an additional forty-five (45) calendar days.

(c)(1) After the owner has submitted its plan and schedule of calendar days, the department may approve them if reasonable, or the department may otherwise reasonable direct the owner to install, relocate or adjust its utility facilities in accordance with an approved plan and schedule of calendar days. The department shall communicate such approval or direction to the owner via certified mail.

(2) The department shall establish the date on which the owner may begin the installation, relocation or adjustment of its utility facilities, and the owner shall be given reasonable advance notice thereof by certified mail via a notice to proceed. The owner shall be free to order the required materials associated with the proposed utility relocation or adjustment at this time. No owner shall be notified to begin installation, relocation or adjustment until all health, governmental, and environmental regulatory agencies have approved the submitted plan where applicable.

(3) In the event the department and the owner fail to agree on a reasonable plan and schedule of calendar days to install, relocate or adjust the utility, the owner may proceed with the approved schedule under a reservation of rights notice to the department. The notice shall be filed within ten (10) days of the issuance of a notice to proceed by the department. The notice shall contain the owner's objections to the relocation schedule and shall state the reasons for the objections. The reservation of rights shall become a part of the administrative record for any subsequent contested case. If any such subsequent contested case results in a revised plan and schedule of calendar days, then any penalty under section 54-5-854(g) and (h), shall be determined on the basis of the revised schedule.

(d) After the owner has completed the installation, relocation or adjustment, or any part thereof, and the department requires any additional relocation or adjustment, the department shall reimburse the owner for the cost incurred.

(e) The department shall give its contractor and the owner notice of any change in highway construction which would require any additional relocation or adjustment and the owner shall be given an agreed reasonable time to accomplish such work. In addition, the department shall reimburse the owner for the costs of all materials which have been purchased in association with the utility relocation or adjustment which cannot be utilized as a result of the change in the project.

(f) The department's contractor shall be liable for any damages negligently inflicted to the owner's utility facilities occurring during the time provided in the schedule of calendar days for installation, relocation or adjustment, or during the approved time for any additional relocation or adjustment.

(g) If any owner fails to comply with and implement the provisions of this section, the contractor, with the consent of the department, may then undertake construction without liability to such owner for damages to the owner's utility facilities, and in addition, such owner shall be liable to the department's contractor for damages resulting from such failure.

(h)(1)(A) In addition, if the owner fails to complete the required installation, relocation or adjustment of its utility facilities within the approved schedule of calendar days as approved by the department, the commission of transportation shall have the authority to assess and collect from the owner a civil penalty in the amount of five hundred dollars (\$500) for each calendar day after the scheduled completion date that the owner fails to complete the required installation, relocation or adjustment. Owners having less than three thousand (3,000) customers shall be subject to the assessment of a civil penalty not to exceed two hundred fifty dollars (\$250) per calendar day when the owner fails to complete the required installation, relocation or adjustment of its utility facilities within the approved schedule of calendar days.

(B) The failure of another owner to sufficiently complete its required installation, relocation or adjustment of utilities which interferes with the owner's relocation plan shall constitute an affirmative defense to the assessment of a civil penalty pursuant to the provisions of this section.

(2) Notwithstanding any provision of this subsection to the contrary, no civil penalty shall be assessed for delays that result from catastrophic weather events or acts of God.

(3) During the course of the utility relocation phase of the project, the department shall furnish the owner with monthly progress reports regarding the status of the utility relocations. The progress reports shall be provided to the owner via certified mail.

(4) The department shall give the owner written notice of the intent to assess a civil penalty and the opportunity to appear before the commissioner or the commissioner's designee to show cause why such penalty should not be assessed. Upon finding that a civil penalty should be assessed, the commissioner of the commissioner's designee shall issue an appropriate order to the owner. If the civil penalty has not been paid in full within ninety (90) days after the entry of such order, the matter shall be turned over to the attorney general and reporter for collection, and the owner shall be liable for all expenses associated with the enforcement action, including court costs and attorneys' fees.

(5) Appeals of any decision to assess a civil penalty pursuant to this section shall be undertaken pursuant to the normal procedures for appeal of agency decisions in title 4, chapter 5, part 3.

(6) The moneys collected as civil penalties under this subsection shall be paid into the fund set aside for the utility relocation loan program established under section 67-3-2001.

54-5-855. Revised cost estimate – Reimbursement of engineering costs.

(a) In the event the department does not notify the owner by certified mail of the approved plan and schedule of calendar days and date for beginning installation, relocation or adjustment within six (6) months after their submission, then the owner shall be allowed to submit a revised cost estimate, when applicable, which shall be incorporated into the utility relocation contract.

(b) In the event the department does not undertake the proposed project within one (1) year after the final approval of the utility relocation plan, the department shall reimburse the owner for all costs of engineering.

UNDERGROUND UTILITY DAMAGE PREVENTION**65-31-102. Definitions.**

As used in this chapter, unless the context otherwise requires:

(1) "Damage" includes the substantial weakening of structural or lateral support of an underground utility, penetration or destruction of any protective coating, housing or other protective device of an underground utility, the partial or complete severance of an underground utility and rendering any underground utility inaccessible;

(2) "Demolish" or "demolition" means any operation by which a structure or mass of material is wrecked, razed, rendered, moved or removed by means of any tools, equipment, or discharge of explosives;

(3) "Excavate" or "excavation" means an operation for the purpose of the movement, placement, or removal of earth, rock, or other materials in or on the ground by use of mechanized equipment or by discharge of explosives, and including augering, backfilling, digging, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling, but not including the tilling of soil for agricultural purposes; or the digging of holes for fence posts on private property. "Agricultural purposes" includes surface activities, such as plowing, planting and combining, but does not include, blasting, setting drainage tiles, subsoiling or other sub-surface activities;

(4) "Location" means the proposed area for which digging or excavating is scheduled within three (3) to ten (10) working days, such area not to exceed two thousand feet (2,000) in length unless an excavator and an operator or an operator's designated representative, such as a one-call service, agree to a larger area;

(5) "Mechanized equipment" means equipment operated by means of mechanical power including trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows and other equipment used for plowing-in or pulling-in cable or pipe;

(6) "One-Call Service" means a telephone notification service described in section 65-31-107 that provides services to its members for the purposes of receiving and distributing notification regarding planned excavations or demolitions that are required under this chapter;

(7) "Operator" means any person who owns or operates a utility,

(8) "Person" means any individual; any corporation, partnership, association, or any other entity organized under the laws of any state; any state; any subdivision or instrumentality of a state; and any employee, agent, or legal representative thereof;

(9) "Proposed area of excavation" means a general surface location which excavators are to furnish to operators of underground utilities or to a one-call service as defined in section 65-31-106. The proposed area of excavation does not constitute a specified depth for the purpose of complying with the provision of this chapter;

(10) "Utility" means any line, system or facility used for producing, storing, conveying, transmitting, or distributing communications, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam, sewerage and other underground facilities;

(11) "Working day" means every day, except Saturday, Sunday, and national and legal state holidays. For purposes of measuring any period of time that requires notice under this chapter, a working day shall commence at the time the written notice or telephone call is received and shall expire at the same time on the next working day;

(12) "Calendar day" means a twenty-four (24) hour period beginning with the date and time that a notification to excavate or demolish is to begin, including Monday through Sunday and all holidays; and

(13) "Impending emergency" means circumstances potentially dangerous to life, health, property, the environment or the repair or restoration of service, which would likely develop into an emergency, as defined in section 65-31-109, if excavation is not initiated within seventy-two (72) hours.

65-31-103. Permits do not relieve liability.

A permit issued pursuant to law authorizing excavation or demolition operations shall not be deemed to relieve a person from the responsibility for complying with the provisions of this chapter.

65-31-104. Excavations without ascertainment of underground utilities prohibited.

Except as provided in section 65-31-109, no person may excavate in a street, highway, public space or a private easement of an operator, or demolish a building, without giving the notice required by section 65-31-106 in the manner prescribed by such section.

65-31-105. Filing requirements for utility operators.

(a) Each operator having underground facilities in a county, including those facilities that have been abandoned in place by the operator but not yet physically removed, shall file a notice with the register of deeds of such county which states that such operator has underground utilities located in that county, the name of the operator and the name, title, address and telephone number of its representative designated to receive the written or telephonic notice of intent required by section 65-31-106. It is only necessary that such notice shall consist of the fact that the operator possesses underground facilities in the listed counties. It is not necessary that the operator list the exact physical location of each and every item of its underground facilities in such counties.

(b) Changes in any of the information contained in the list filed under subsection (a) shall be filed by the operator with the register of deeds of the county, or the register of deeds of each county in which these utilities are located, within thirty (30) working days of the change.

(c) A filing fee as determined by the register of deeds may accompany the filing. These filings shall be filed and an index shall be maintained and kept up to date by the register's office.

(d) The register of deeds shall, within one (1) working day, furnish to the party requesting such information, in writing when requested, a list of all operators having filed notices pursuant to subsection (a) and all other information regarding each such operator that has been filed with the register of deeds in accordance with subsection (a). When submitted in writing by the register of deeds, the information shall also include the name of the requesting party, and the date and time the register of deeds received the request from the requesting party.

(e) After March 27, 1978, operators shall maintain records and drawings of all changes and additions to its underground facilities.

65-31-106. Notice of intent to excavate or demolish.

(a) Except as provided in subsection 65-31-109, before beginning any excavation or demolition operation described in section 65-31-104, other than an impending emergency as defined in section 65-31-102, each person responsible for such excavation or demolition shall serve written or telephonic notice of intent to excavate or demolish at least three (3) working days prior to the actual date of excavation or demolition, but not more than ten (10) full working days prior to such time, unless a different period has been agreed to in writing by the person responsible for the excavation or demolition and the operator or designated representative. Should a period of time of fifteen (15) calendar days from the actual date specified to start excavation or demolition expire without the excavation or demolition being completed, then the person responsible for such excavation or demolition shall serve an additional written or telephonic notice of intent to excavate or demolish at least three (3) working days prior to the expiration of time on the fifteenth calendar day.

(1) If the proposed area of excavation or demolition is not served by the one-call service as provided in subsection 65-31-107, then the notice required by subsection (a) shall be served on each operator which has filed a list required by section 65-31-105 indicating that it has underground utilities located in the county where the excavation or demolition is to occur; or

(2) If the proposed area of excavation or demolition is served by the one-call service, as provided for in section 65-31-107, the notice required by subsection (a) shall be served on such one-call service; provided, that where demolition of a building is proposed, each affected operator shall be given reasonable time to remove or protect its utilities before demolition of the building begins.

(b) The written telephonic notice required by subsection (a) shall contain the name, address and telephone number of the person filing the notice of intent and, if different, the person responsible for the excavation or demolition, the starting date, the anticipated duration of the excavation or demolition, the type of excavation or demolition operation to be conducted, the specific location of the proposed excavation or demolition, and whether or not explosives are anticipated to be used. The location of the proposed area of excavation or demolition should be designated by the person responsible for the excavation or demolition by marking such area with "safety white" color-coded stakes or other marking devices.

(c) If the notification required by this section is made by telephone, an adequate record of such notification shall be maintained by each notified operator or one-call service to document compliance with the requirements of this chapter, and a copy of this record shall be furnished by any operator or one-call service to the person giving notice of intent to excavate or demolish, when so requested by that person.

65-31-107. Operator associations for mutual receipt of notifications.

(a) Operators may form and operate a one-call service providing for mutual receipt of notifications of excavation or demolition operations, pursuant to section 65-31-106, in a defined geographical area. A one-call service that provides such service on behalf of operators having underground utilities in Tennessee shall file with the register of deeds of the county in which those utilities are located, the telephone number and address of the one-call service, a description of the geographical area served by the one-call service, and a list of the names and address of all operators receiving such service from the one-call service. Any operator that suffers damage as a result of not participating in a one-call service providing for receipt of the notification of excavation or demolition operations in a defined geographic area, pursuant to section 65-31-106, waives the right to recover damages to the operator's underground utilities from the excavator; provided, that the provisions of this chapter were met by the excavator.

(b)(1) Natural gas distribution systems are required to belong to a one-call service formed in a geographical area in which such gas distribution systems operate.

(2) Only one (1) one-call service shall be formed and operated within a defined geographical area.

(3) [Deleted by 1999 amendment.]

65-31-108. Response to notice of intent to excavate or demolish.

(a) Each operator notified in accordance with section 65-31-106 shall stake or otherwise mark, prior to the noticed time of the proposed excavation or demolition, the surface of the tract or parcel of land affected by the excavation or demolition to indicate the approximate location of all its underground utilities that may be damaged as a result of the excavation or demolition. The operator shall not be required to indicate the depth of any such utility, but only the approximate ground location under which the utility is located. Such staking or other marking shall utilize the following color code:

(1) SAFETY RED shall be used to mark electric power distribution and transmission facilities;

(2) HIGH VISIBILITY SAFETY YELLOW shall be used to mark gas and oil distribution and transmission facilities;

(3) SAFETY ALERT ORANGE shall be used to mark telephone, telegraph, cable television, video, and other telecommunications facilities;

(4) SAFETY PRECAUTION BLUE shall be used to mark water systems facilities;

(5) SAFETY GREEN shall be used to mark sewer systems facilities; and

(6) SAFETY PURPLE shall be used to mark reclaimed water.

(b) An excavator shall exercise reasonable care to avoid damage caused by an excavation or demolition within the safety zone around the marked location of the underground utilities. For the purpose of this section, "safety zone" means a strip of land at least four feet (4') wide, but not wider than the width of the utility plus two feet (2') on either side of the utility.

(c) If, upon arrival at the site of a proposed excavation, the excavator observes clear evidence of the presence of an unmarked utility in the area of the proposed excavation, the excavator shall not begin excavating until an additional notice is made to the one-call. The excavator may then proceed, exercising reasonable care to avoid damage to the utility which may be caused by such excavation or demolition.

(d) If no facilities exist in the tract or parcel of land, the operator shall make a reasonable effort to so advise the individual who initiated the request, provided the request is received in accordance with section 65-31-106.

(e) The approximate location of underground utilities does not include a designation of location as to depth below the surface of the ground. Excavators must use reasonable care to ascertain for themselves the exact depth of the underground utilities below the surface of the ground. If, after so ascertaining, the excavator learns that its excavation or demolition is likely to interfere with the operation of the underground utility facilities, it must again notify the affected operator of such underground utility facilities and reasonably cooperate with the operator of the underground utility facilities to conduct its excavation or demolition in such a way that the operations of the underground utility facilities are not disturbed or the affected underground utility facilities are placed out of the way of the proposed excavation or demolition.

(f) Each operator notified in accordance with section 65-31-109, shall within two (2) hours stake or otherwise mark, utilizing the color code set forth in subsection (a), the surface of the tract or parcel of land affected by the excavation or demolition to indicate the approximate

location of all its underground utilities that may be damaged as a result of the excavation or demolition.

(g) Each operator notified of an impending emergency, as defined in section 65-31-102, shall stake or otherwise mark, prior to the noticed time of the proposed excavation or demolition, utilizing the color code set forth in subsection (a), the surface of the tract or parcel of land affected by the excavation or demolition to indicate the approximate location of all its underground utilities that may be damaged as a result of the excavation or demolition.

65-31-109. Emergency excavation or demolition.

(a) Compliance with the notice requirements of subsection 65-31-106 is not required of any person responsible for emergency excavation or demolition, for repair or restoration of service or to ameliorate an imminent danger to life, health, or property; provided, that such person gives, as soon as practicable, oral notice of the emergency excavation or demolition to each operator having underground utilities located in the area (or to a on-call service provided for in section 65-31-107, that serves an operator) where such excavation or demolition is to be performed and requests emergency assistance from each operator so identified in locating and providing immediate protection to the operator's underground utilities. "Emergency" means an imminent danger to life, health, or property, whenever there is a substantial likelihood that loss of life, health or property will result before the procedures under sections 65-31-106 and 65-31-108 can be fully complied with.

(b) Any excavator providing a misrepresentation of an emergency excavation as stated in subsection (a), or an "impending emergency", as defined in subsection 65-31-102, shall be subject to the penalties stated in section 65-31-112.

65-31-110. Precautions to avoid damage.

In addition to the notification requirements of section 65-31-106, each person responsible for any excavation or demolition operation designated in section 65-31-104 shall:

- (1) Plan the excavation or demolition to avoid damage to and minimize interference with underground utilities in and near the construction area;
- (2) Maintain a clearance between and underground utility and the cutting edge or point of any mechanized equipment in accordance with section 65-31-108(b) and (d), taking into account the known limit of control of such cutting edge or point, as may be reasonable necessary to avoid damage to such utility; and
- (3) Provide such support and protection of underground utilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such utilities.

65-31-111. Notice of excavation or demolition damage.

(a) Except as provided by subsection (b), each person responsible for any excavation or demolition operation described in section 65-31-104 that results in any damage to an underground utility shall, immediately upon discovery of such damage, notify the operator of such utility of the location and nature of the damage and shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of such utility.

(b) each person responsible for any excavation or demolition operation described in section 65-31-104 that results in damage to an underground utility permitting the escape of any flammable, toxic, or corrosive gas or liquid shall, immediately upon discovery of such damage, notify the operator, police and fire departments, and take any other action as may be reasonably

necessary to protect persons and property and to minimize the hazards until arrival of the operator's personnel or police and fire departments.

(c) During initial excavation, if an underground utility is found to be unsound due to deterioration, the person responsible for excavation shall immediately notify the utility company involved and shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of such utility.

65-31-112. Civil penalties and remedies.

(a) Any person who violates any provision of this chapter commits a Class A misdemeanor, and is subject to a fine not to exceed two thousand five hundred dollars (\$2,500) or a term of imprisonment not to exceed forty-eight (48) hours, or both.

(b)(1) Any excavator who violates the provisions of this chapter may be issued a citation by any local or state law enforcement officer or permitting agency inspector, and the issuer of a citation may require any excavator to cease work on any excavation or not start a proposed excavation until there has been compliance with the provisions of this chapter.

(2) If, after receiving proper notification as required in section 65-31-106, an operator fails to locate its facilities as required in section 65-31-108, an underground facility of such operator is damaged by an excavator who has complied with the provisions of this chapter; and such damage is a proximate result of the operator's failure to discharge such duty, then such excavator shall not be liable for such damage.

(c)(1) Any person who violates any provision of this chapter may be required to appear before the appropriate court as set forth in section 40-1-107. Any person who fails to appear or otherwise properly respond to a citation issued pursuant to this section shall, in addition to the penalties as set forth in the citation, be charged with a misdemeanor offense and, upon conviction, commits a Class B misdemeanor, punishable as provided in section 40-35-111.

(2) Any person cited for a violation of this chapter, unless required to appear before the appropriate court may;

- (A) Post a bond, which shall be equal in the amount to the applicable penalty; or
- (B) Sign and accept a citation promising to appear before the appropriate court.

(3) The issuing officer shall indicate on the citation the time and location of the scheduled hearing and shall indicated the applicable penalty.

(4) Any person charged with a violation of this chapter, unless required to appear before the appropriate court, may:

- (A) Pay the penalty, in lieu of appearance, either by mail or in person, within ten (10) days after the date of receiving the citation; or
- (B) Forfeit the bond, if a bond is posted, by not appearing at the designated time and location.

(5) If the person cited follows either of the procedures of subdivisions (c)(4)(A) or (B), such person shall be deemed to have admitted to committing the infraction and to have waived the right to a hearing on the issue of commission of the infraction. Such admission may be used as evidence in any other proceeding.

(d) Any person who knowingly and willfully removes or otherwise destroys the stakes or other physical markings used to mark the horizontal route of an underground facility commits the offense of vandalism as set forth in section 39-14-408, and shall be subject to the punishment for vandalism as set forth in section 39-14-105.