

SENATE BILL NO. 326

INTRODUCED BY LASLOVICH, VILLA, MATTHEWS, WELLS, KEANE

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW ON EXCAVATION NEAR UNDERGROUND FACILITIES; PROVIDING FOR SPECIFIC DAMAGE FEES; SETTING A DEADLINE FOR PAYMENT OF FEES; ALLOWING FOR JUDICIAL REVIEW OF FEES LEVIED; DESIGNATING THE USE OF FEES COLLECTED; PROVIDING FOR THE MAINTENANCE OF DAMAGE INCIDENT HISTORIES; AND AMENDING SECTIONS 69-4-501 AND 69-4-505, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-4-501, MCA, is amended to read:

"69-4-501. Definitions. The following definitions apply to this part:

(1) "Business day" means any day other than Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(2) "Emergency excavation" means an excavation in response to an emergency locate that is necessary to:

- (a) alleviate a condition that constitutes a clear and present danger to life or property; or
- (b) repair a customer outage involving a previously installed utility-owned facility.

(3) "Emergency locate" means a locate and mark that is requested for:

- (a) a condition that constitutes a clear and present danger to life or property; or
- (b) a customer outage for which repairs on a previously installed utility-owned facility are required.

(4) (a) "Excavation" means an operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term includes but is not limited to grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing and driving.

(b) Excavation does not include surface road grading maintenance or road or ditch maintenance that does not change the original road or ditch grade or flow line.

(5) "Excavator" means a person conducting the excavation activities defined in subsection (4).

(6) "Identified but unlocatable underground facility" means an underground facility that has been

1 identified but cannot be located with reasonable accuracy.

2 (7) "Incident" means a violation of the provisions of 69-4-503(1) by an excavator that, at a single location
 3 on a single day, results in damage to an underground facility or the property of a third party or in bodily injury
 4 or death to any person other than the excavator.

5 (8) "Incident history" means the total number of incidents experienced by an excavator in the 5 years
 6 preceding the most recent incident. The incident history must be used to determine damage fees for violation
 7 of 69-4-503(1).

8 ~~(7)~~(9) "Locatable underground facility" means an underground facility that can be field-located and
 9 field-marked with reasonable accuracy.

10 ~~(8)~~(10) "Locate" means to use specialized equipment to identify the location of underground facilities
 11 or the actual location of underground facilities identified by the use of specialized equipment.

12 ~~(9)~~(11) "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field
 13 location or absence of underground facilities, in accordance with the current color code standard of the American
 14 public works association. Marking must include identification letters indicating the specific type of underground
 15 facility and the width of the facility if it is greater than 6 inches.

16 ~~(10)~~(12) "One-call notification center" means a service through which a person may request a locating
 17 and marking of underground facilities.

18 ~~(11)~~(13) "Person" means an individual, partnership, firm, joint venture, corporation, association,
 19 municipality, governmental unit, department, or agency and includes a trustee, receiver, assignee, or personal
 20 representative of the listed entities.

21 ~~(12)~~(14) "Reasonably accurate" means location within 18 inches of the outside lateral dimensions of both
 22 sides of an underground facility.

23 ~~(13)~~(15) (A) "Underground facility" means a facility buried or placed below ground for use in connection
 24 with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications,
 25 cablevision, fiber optics, electrical energy, oil, gas, or other substances. The term includes but is not limited to
 26 pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the listed items.

27 (B) THE TERM DOES NOT INCLUDE SHALLOW UNDERGROUND WATER SYSTEMS DESIGNED TO IRRIGATE LAWNS,
 28 GARDENS, OR OTHER LANDSCAPING."

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30 **Section 2.** Section 69-4-505, MCA, is amended to read:

1 **"69-4-505. Liability for damages to underground facilities.** (1) (a) If any underground facility is
 2 damaged by ~~any a person~~ AN EXCAVATOR who has failed to obtain information as to its location as provided in
 3 69-4-503, then ~~such the person~~ EXCAVATOR shall be is liable to the owner of the underground facility for the entire
 4 cost of the repair of ~~such the~~ facility. The person EXCAVATOR is also liable to the UNDERGROUND FACILITY owner
 5 of the underground facility THAT IS A MEMBER OF A ONE-CALL NOTIFICATION CENTER PURSUANT TO 69-4-502(2)(A) for
 6 a damage fee. Damage fees must be assessed as follows:

7 (i) \$500 25% OF THE TOTAL COST OF REPAIRING THE UNDERGROUND FACILITY NOT TO EXCEED \$250 \$125 for
 8 the first incident;

9 (ii) \$2,500 50% OF THE TOTAL COST OF REPAIRING THE UNDERGROUND FACILITY NOT TO EXCEED \$1,000 \$500
 10 for the second incident; and

11 (iii) \$5,000 \$2,500 \$1,000 for the third and each subsequent incident.

12 (b) An underground facility owner may levy only one fee for each incident.

13 (c) If there is more than one underground facility affected by an incident, then each underground facility
 14 owner THAT IS A MEMBER OF A ONE-CALL NOTIFICATION CENTER PURSUANT TO 69-4-502(2)(A) may levy one damage
 15 fee for that incident.

16 (2) Payment of costs and fees described in this section is due within 30 days of billing by the owner of
 17 the underground facility. The underground facility owner may enforce collection in a court of competent
 18 jurisdiction.

19 ~~(2)~~(3) If information requested pursuant to 69-4-503 is not provided within the time specified ~~therein in~~
 20 that section, any person persons EXCAVATORS damaging or injuring underground facilities ~~shall are not be~~ are liable
 21 for such that damage or injury, unless caused by his their negligence, AND ARE NOT LIABLE FOR THE DAMAGE FEES
 22 ASSESSED UNDER SUBSECTION (1).

23 ~~(3)~~(4) The act of obtaining information as required by this part ~~shall does~~ does not excuse ~~any a person AN~~
 24 EXCAVATOR making any excavation from doing so in a careful and prudent manner, nor ~~shall does~~ does it excuse ~~such~~
 25 the person EXCAVATOR from liability for any damage or injury resulting from ~~his the person's~~ the person's EXCAVATOR'S
 26 negligence."

27
 28 NEW SECTION. Section 3. Judicial review. An excavator subject to repair charges and damage fees
 29 described in 69-4-505 may have these costs reviewed by a court of competent jurisdiction.

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