

1 HOUSE BILL NO. 503

2 INTRODUCED BY F. WILMER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING EXCAVATIONS NEAR
5 UNDERGROUND FACILITIES; CREATING AN UNDERGROUND UTILITY SAFETY BOARD; ALLOCATING
6 THE BOARD TO THE DEPARTMENT OF LABOR AND INDUSTRY; ESTABLISHING THE BOARD'S DUTIES
7 AND RESPONSIBILITIES; REQUIRING BOARD REVIEW OF DISPUTED CLAIMS; REQUIRING NOTIFICATION
8 CENTERS TO PROVIDE REPORTS; GRANTING THE BOARD RULEMAKING AUTHORITY; ALLOWING FOR
9 THE COLLECTION OF A FEE; ESTABLISHING FINES; AMENDING SECTIONS 17-7-502, 69-4-501, 69-4-502,
10 69-4-503, 69-4-504, 69-4-505, 69-4-512, AND 69-4-514, MCA; REPEALING SECTIONS 69-4-508 AND 69-4-513,
11 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 NEW SECTION. **Section 1. Underground utility safety board created -- quasi-judicial.** (1) There
16 is an underground utility safety board.

17 (2) The board is composed of five members appointed by the governor as follows:

18 (a) one member representing a local government entity, as defined in 7-6-602, that operates a water or
19 sewer system;

20 (b) one member representing a public utility, as defined in 69-3-101, or one member representing
21 underground pipeline owners;

22 (c) one member representing excavators; and

23 (d) two members representing the public at large.

24 (3) The board is a quasi-judicial board for the purposes of 2-15-124, and its members must be
25 compensated and receive travel expenses as provided for in 2-15-124.

26 (4) The board is allocated to the department for administrative purposes only as provided in 2-15-121.

27 (5) Members shall serve staggered 3-year terms.

28
29 NEW SECTION. **Section 2. Duties of board.** (1) Upon receiving a request pursuant to [section 4], the
30 board shall review disputed claims for damages under 69-4-505 and disputed fines assessed under [section 5].

1 (2) The board shall meet at least quarterly for the purpose of reviewing disputed claims and fines and
2 conducting other business as necessary.

3 (3) After reviewing disputed claims and fines, the board shall determine whether the amount of the
4 disputed claim or fine is appropriate. If the board determines that a disputed claim or fine is not appropriate, the
5 board shall recommend:

6 (a) the amount of damages due to either party under 69-4-505; and

7 (b) the amount of the fine assessed under [section 5].

8 (4) The board shall issue its determination in writing and provide a copy to all parties named in the
9 dispute.

10 (5) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business
11 necessary to administer its responsibilities under this part.

12 (6) The board shall annually:

13 (a) review damage fines established in [section 5] and recommend changes, if necessary; and

14 (b) receive reports pursuant to [section 7] from notification centers operating in Montana.

15

16 **NEW SECTION. Section 3. Rulemaking authority.** (1) The board may adopt rules:

17 (a) providing for the collection of fines provided for in [section 5];

18 (b) establishing application procedures and filing requirements for the review of disputed claims for
19 damages and fines;

20 (c) establishing reporting requirements for notification centers pursuant to [section 7];

21 (d) providing for the reporting and collection of incident reports pursuant to 69-4-514;

22 (e) requiring a fee to be paid by each underground facility owner to administer the board's
23 responsibilities, if necessary, under this part; and

24 (f) implementing and enforcing the provisions of this part.

25 (2) Rules must be adopted pursuant to the Montana Administrative Procedure Act.

26

27 **NEW SECTION. Section 4. Board review of disputes -- statute of limitations.** (1) An excavator or
28 an underground facility owner disputing a claim for damages under 69-4-505 or a fine issued pursuant to [section
29 5] shall request that the board review the disputed claim or fine prior to requesting judicial review pursuant to
30 69-4-512.

1 (2) The running of the applicable limitation period related to a claim under 69-4-505 is tolled upon receipt
2 by the board of a request for a review. The running of the applicable limitation period does not begin again until
3 30 days after the board makes a written determination pursuant to [section 2(4)].

4
5 **NEW SECTION. Section 5. Damage fines for noncompliance.** (1) Except as provided in [section 2(3)]
6 and subject to subsections (2) and (3) of this section, if an excavator or underground facility owner fails to comply
7 with this part or is liable for damages under 69-4-505, fines for damages must be assessed by the board as
8 follows:

9 (a) \$50 for the first incident within a 2-year period involving low-voltage, telephone, or sewer facilities
10 and \$100 for the second incident within a 2-year period;

11 (b) \$125 for the first incident within a 2-year period involving electric facilities, water mains, or fiber optics
12 and \$250 for the second incident within a 2-year period;

13 (c) \$250 for the first incident within a 2-year period involving natural gas or petroleum pipelines and \$500
14 for the second incident within a 2-year period; and

15 (d) \$250 to \$10,000, for the third incident and each subsequent incident within a 2-year period involving
16 any facility, as determined by the board.

17 (2) (a) The fine for an incident that results in death, injury, or disability or in damage to real or personal
18 property may be tripled if determined appropriate by the board.

19 (b) If an incident results in damage to more than one underground facility, the fine is determined by
20 adding the fines for each type of damaged facility in accordance with subsection (1).

21 (3) The number of incidents must be determined using reports collected pursuant to 69-4-514.

22 (4) The board may use any means provided by law for the collection of fines assessed under this section.

23
24 **NEW SECTION. Section 6. Underground utility safety account -- statutory appropriation.** (1) There
25 is an underground utility safety account in the state special revenue fund. The account is statutorily appropriated,
26 as provided in 17-7-502, to the board.

27 (2) There must be deposited in the account:

28 (a) all revenue from fines collected pursuant to [section 5] and 69-4-514(4);

29 (b) any fees established pursuant to [section 3(1)(e)] that are paid by underground facility owners;

30 (c) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any

1 source, intended to be used for the purposes of [sections 1 through 7]; and

2 (d) all interest earned on money in the account.

3 (3) Money in the account must be used to fund the board and to fund training and educational programs
4 and materials for excavators, underground facility owners, and the general public regarding notification centers.

5
6 **NEW SECTION. Section 7. Notification center requirements.** (1) Beginning on July 1, 2013, a
7 notification center serving underground facility owners shall file an annual report with the board.

8 (2) The report must include:

9 (a) a list of the notification center's members;

10 (b) a description of the service area served by the notification center;

11 (c) the number of calls received in the previous 12-month period;

12 (d) a brief description of the nature of the calls received in the previous 12-month period; and

13 (e) recommendations, if any, for the improved enforcement of this part.

14

15 **Section 8.** Section 17-7-502, MCA, is amended to read:

16 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
17 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
18 need for a biennial legislative appropriation or budget amendment.

19 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
20 of the following provisions:

21 (a) The law containing the statutory authority must be listed in subsection (3).

22 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
23 appropriation is made as provided in this section.

24 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;
25 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312;
26 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;
27 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101;
28 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;
29 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306;
30 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101;

1 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870;
 2 [section 6], 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518;
 3 81-10-103; 82-11-161; 87-1-230; 87-1-603; 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and
 4 90-9-306.

5 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 6 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 7 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
 8 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
 9 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
 10 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
 11 of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is
 12 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch.
 13 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and
 14 sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L.
 15 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the
 16 supplemental benefit provided by 19-6-709; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113
 17 terminates June 30, 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30,
 18 2013; and pursuant to sec. 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019.)"

19

20 **Section 9.** Section 69-4-501, MCA, is amended to read:

21 **"69-4-501. Definitions.** The following definitions apply to this part:

22 (1) "Board" means the underground utility safety board provided for in [section 1].

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

25 (b) When a holiday listed in subsection (2)(a) occurs on a Saturday, the preceding Friday is not
 26 considered a business day. When a holiday listed in subsection (2)(a) occurs on a Sunday, the following Monday
 27 is not considered a business day.

28 (3) "Business hours" means the 24 hours of a business day.

29 (4) "Contract locator" means any person contracted with by an underground facility owner to determine
 30 the approximate horizontal location of underground facilities that may exist within the area specified by a notice

1 served to a notification center.

2 (5) "Damages" means any impact upon or removal of support from an underground facility as a result
 3 of excavation or demolition that, according to the operating practices of the underground facility owner, would
 4 necessitate the repair of the facility.

5 (6) "Department" means the department of labor and industry established in 2-15-1701.

6 ~~(2)~~(7) "Emergency excavation" means an excavation in response to an emergency locate request that
 7 is necessary to:

8 (a) alleviate a condition that constitutes a clear and present danger to life or property; or

9 (b) repair a customer outage involving a previously installed utility-owned facility.

10 ~~(3)~~(8) "Emergency locate request" means a locate and mark that is requested for:

11 ~~—— (a) a condition that constitutes a clear and present danger to life or property; or~~

12 ~~—— (b) a customer outage for which repairs on a previously installed utility-owned facility are required an~~
 13 emergency excavation.

14 ~~(4)~~(9) (a) "Excavation" means an operation in which earth, rock, or other material in the ground is moved,
 15 removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term includes but
 16 is not limited to grading, trenching, digging, ditching, drilling, dredging, augering, tunneling, scraping, and cable
 17 or pipe plowing, and post or pole driving.

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

20 ~~(5)~~(10) "Excavator" means a person conducting the an excavation activities defined in subsection (4).

21 (11) "Extraordinary circumstances" means floods, snow, ice storms, tornadoes, earthquakes, or other
 22 natural disasters.

23 (12) "Hand digging" means any excavation involving nonmechanized tools or equipment that when used
 24 properly will not damage underground facilities. Hand digging includes but is not limited to shovel digging, manual
 25 post hole digging, vacuum excavation, or soft digging.

26 ~~(6)~~(13) "Identified but unlocatable underground facility" means an underground facility that has been
 27 identified but cannot be located with reasonable accuracy.

28 ~~(7)~~(14) "Incident" means:

29 (a) a violation of the provisions of 69-4-503(1) by an excavator that, at a single location on a single day,
 30 results in damage to an underground facility or the property of a third party or in bodily injury or death to any

1 person ~~other than the excavator;~~ or

2 (b) a violation of the provisions of 69-4-503(2) by an underground facility owner or contract locator that,
3 at a single location on a single day, results in damage to an underground facility or the property of a third party
4 or in bodily injury or death to any person.

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 of~~
7 ~~69-4-503(1).~~

8 ~~(9)(15)~~ "Locatable underground facility" means an underground facility that can be field-located and
9 field-marked with reasonable accuracy.

10 ~~(10)(16)~~ "Locate" means to use specialized equipment to identify the horizontal location of underground
11 facilities or the actual horizontal location through physical exposure of underground facilities identified by the use
12 of specialized equipment.

13 (17) "Locate ticket" means a uniquely coded notice of excavation issued by a notification center to an
14 underground facility owner specifically identifying a geographic range and timeline in which an excavation will
15 occur.

16 ~~(14)(18)~~ "Mark" means the use of stakes, flags, paint, or other clearly identifiable material to show the
17 reasonably accurate field location or absence of underground facilities, in accordance with the current color code
18 standard of the American public works association. Marking must include identification letters indicating the
19 specific type of underground facility and the width of the facility if it is greater than 6 inches.

20 (19) "Notify", "notice", or "notification" means the completed delivery of information to a person. The
21 delivery of information includes but is not limited to the use of electronic data transfer.

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

24 (20) "Notification center" means an entity whose membership is open to all underground facility owners
25 with underground facilities located within the notification center's designated service area.

26 ~~(13)(21)~~ "Person" means an individual, partnership, firm, joint venture, corporation, association,
27 municipality, governmental unit, department, or agency and includes a trustee, receiver, assignee, or personal
28 representative of the listed entities.

29 ~~(14)(22)~~ "Reasonably accurate" means location within 18 inches of the outside lateral dimensions of both
30 sides of an underground facility.

1 (23) "Soft digging" means any excavation using tools or equipment that utilize air or water pressure as
 2 the direct means to break up soil or earth for removal by vacuum excavation.

3 ~~(15)(24)~~ (a) "Underground facility" means a facility buried or placed below ground for use in connection
 4 with the storage or conveyance of water, sewage, electronic, ~~telephonic or telegraphic~~ or digital communications,
 5 cablevision, ~~fiber optics~~, electrical energy, oil, gas, or other substances. The term includes but is not limited to
 6 pipes, sewers, conduits, cables, valves, lines, wires, fiber optics, manholes, and attachments to the listed items.

7 (b) The term does not include shallow underground water systems designed to irrigate lawns, gardens,
 8 or other landscaping.

9 (25) "Underground facility owner" means a person owning, controlling, or having the responsibility to
 10 maintain an underground facility."

11
 12 **Section 10.** Section 69-4-502, MCA, is amended to read:

13 **"69-4-502. Information to be sought before excavation -- notification -- exceptions.** (1) (a) Except
 14 as provided in subsection (1)(b), an excavator may not make or begin an excavation without first obtaining
 15 information concerning the possible location of an underground facility from ~~each public utility, municipal~~
 16 ~~corporation, underground facility owner, or other person having the right to bury underground facilities that is a~~
 17 ~~member of a one-call~~ a notification center pursuant to subsection (2)(a).

18 (b) (i) A registered land surveyor or a person under the supervision of a registered land surveyor may
 19 hand dig for shallow survey monuments at a depth of 12 inches or less below the road surface of a highway or
 20 at the intersection of the center lines of public streets.

21 (ii) The registered land surveyor, prior to hand digging, shall obtain proper approval from the appropriate
 22 governing authority regarding safety and pavement repair and, when appropriate, shall reference the monument
 23 upon exposure.

24 (iii) The governing authority is not liable for any damages caused or suffered by the registered land
 25 surveyor or any person under the supervision of the registered land surveyor.

26 (iv) The registered land surveyor is liable to the underground facility owner for damages ~~incurred~~
 27 ~~regarding facility destruction~~ to an underground facility caused by the registered land surveyor.

28 (v) ~~A public utility, municipal corporation, An~~ an underground facility owner, ~~or other person having the right~~
 29 ~~to bury underground facilities~~ is not liable for any damages suffered by the registered land surveyor or any person
 30 under the control of the registered land surveyor.

1 (2) (a) ~~A public utility, municipal corporation, An~~ underground facility owner, ~~or person having the right~~
 2 ~~to bury underground facilities~~ must be a member of a ~~one-call~~ notification center covering the service area in
 3 which the ~~entity or person~~ underground facility owner has underground facilities. The underground facility owner
 4 shall provide records of the geographic location of its underground facilities to the notification center that are
 5 sufficient and complete enough to allow the notification center to issue a locate ticket.

6 (b) Subsection (2)(a) does not apply to an owner or occupant of real property where underground
 7 facilities are buried if the facilities are used solely to furnish services or commodities to that property and no part
 8 of the facilities is located in a public street, alley, or right-of-way dedicated to the public use."

9

10 **Section 11.** Section 69-4-503, MCA, is amended to read:

11 **"69-4-503. Notification -- locating and marking.** (1) (a) Before beginning an excavation, the excavator
 12 shall notify, through a ~~one-call~~ notification center, all ~~owners of underground facilities~~ facility owners in the area
 13 of the proposed excavation. Notifications are limited to excavation work commenced within 10 days and
 14 completed within 30 days of the notification.

15 (b) An excavator may not begin excavating until the excavator receives the response required by
 16 subsection (3)(a).

17 (c) Requesting an emergency locate or an emergency excavation that is not an emergency locate or an
 18 emergency excavation is a false alarm and is subject to the penalties under 45-7-204.

19 (2) After an excavator has notified the appropriate ~~one-call~~ notification center of a proposed excavation,
 20 an ~~owner of an~~ underground facility owner shall:

21 (a) provide the locates and mark the location ~~within 2 business days~~ of underground facilities within 48
 22 business hours of the locate ticket unless the underground facility owner notifies the excavator through a
 23 response system maintained or authorized by the notification center that extraordinary circumstances will delay
 24 the locate request. In that event, the underground facility owner shall notify the excavator of the anticipated date
 25 and time of completion of the locate request. ~~or~~

26 (b) respond immediately if the excavator ~~notifies the one-call notification center that an emergency exists~~
 27 requests an emergency locate.

28 (3) (a) ~~After an owner of an underground facility has located and marked the underground facilities,~~ The
 29 underground facility owner shall notify the excavator that the locate request is complete or that a locate is not
 30 required because the underground facility owner has no underground facilities in the excavation location.

1 ~~(b) the~~ The excavator shall maintain the locate marks and determine if weather, time, or other factors may
 2 have affected location marks, warranting relocation of the facilities.

3 ~~(b)(c)~~ If the excavation has not occurred within 30 days of the locate and mark, the excavator shall
 4 request that the underground facility be relocated and remarked before excavating unless other arrangements
 5 have been made with the underground facility owner. The excavator is responsible for costs associated with
 6 relocating and remarking ~~a~~ an underground facility that is not excavated within 30 days of the locate and mark.

7 (4) (a) Upon receipt of the notice provided for in this section, the ~~owner of the~~ underground facility owner
 8 shall provide the excavator with reasonably accurate information as to the underground facility owner's locatable
 9 underground facilities by surface locating and marking the location of the facilities.

10 (b) If there are identified but unlocatable underground facilities, the ~~owner of the facilities~~ underground
 11 facility owner shall provide the excavator with the best available information as to their locations. ~~An excavator~~
 12 ~~may not excavate until all known facilities have been located and marked.~~ An excavator is not responsible for
 13 damages to an underground facility that cannot be located by ~~its owner~~ the underground facility owner.

14 (c) If the excavator discovers an underground facility that has not been located and marked, knows of
 15 unmarked underground facilities, or recognizes aboveground facilities that would indicate that unmarked
 16 underground facilities exist, the excavator shall stop excavating in the vicinity of the underground facility and notify
 17 the underground facility owner or the notification center. ~~Once the facilities are located and marked by the facility~~
 18 ~~owner, the excavator is responsible for maintaining the markings.~~

19 ~~(5)~~ Upon receipt of notice from the excavator, the facility owner shall respond within 2 business days by
 20 locating and marking the facility or by notifying the excavator that locating and marking is unnecessary. An
 21 excavator may not begin excavating before the locating and marking is complete or before the excavator is
 22 notified that locating and marking is unnecessary.

23 ~~(6)~~ An excavator shall locate and mark the area to be excavated if requested by the facility owner or the
 24 owner's representative. If an excavator discovers an underground facility that has not been located and marked,
 25 the excavator shall stop excavating in the vicinity of the facility and notify the facility owner or the one-call
 26 notification center.

27 ~~(7)~~(5) An underground facility owner may attempt to identify the location of a private underground facility
 28 connected to the underground facility owner's facility, but the underground facility owner is not liable for the
 29 accuracy of the locate."
 30

1 **Section 12.** Section 69-4-504, MCA, is amended to read:

2 **"69-4-504. Information to be part of architects' and engineers' plans.** (1) Architects and engineers
3 designing projects requiring excavation in or adjacent to any public street, alley, or right-of-way dedicated to
4 public use or utility easement shall obtain information from the underground facility owners ~~of underground~~
5 ~~facilities~~ and then make the information a part of the plan by which the contractors operate. The underground
6 facility owners ~~of the underground facilities~~ shall make available all records showing the locations of underground
7 facilities and shall provide locates, if requested, pursuant to ~~69-4-503~~ 69-4-503(2) within 15 business days of the
8 request.

9 (2) This section does not excuse a person from the obligation imposed by 69-4-502(1)."

10

11 **Section 13.** Section 69-4-505, MCA, is amended to read:

12 **"69-4-505. Liability for damages to underground facilities.** (1) ~~(a) If~~ Except as provided in subsection
13 (2) and subject to a board review of damages pursuant to [section 4], if any underground facility is damaged by
14 an excavator, ~~who has failed to obtain information as to its location as provided in 69-4-503,~~ then the excavator
15 is liable to the underground facility owner ~~of the underground facility~~ for the ~~entire cost of the repair of damages~~
16 to the underground facility. ~~The excavator is also subject to a fine as provided in [section 5]. The excavator is also~~
17 ~~liable to the underground facility owner that is a member of a one-call notification center pursuant to~~
18 ~~69-4-502(2)(a) for a damage fee. Damage fees must be assessed as follows:~~

19 ~~—— (i) 25% of the total cost of repairing the underground facility not to exceed \$125 for the first incident;~~

20 ~~—— (ii) 50% of the total cost of repairing the underground facility not to exceed \$500 for the second incident;~~

21 ~~and~~

22 ~~—— (iii) \$1,000 for the third and each subsequent incident.~~

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

24 ~~—— (c) If there is more than one underground facility affected by an incident, then each underground facility~~
25 ~~owner that is a member of a one-call notification center pursuant to 69-4-502(2)(a) may levy one damage fee for~~
26 ~~that incident.~~

27 (2) If the underground facility owner fails to comply with 69-4-502(2)(a) or 69-4-503, excavators
28 damaging underground facilities are not:

29 (a) liable for that damage unless caused by their own negligence; and

30 (b) subject to the fines provided for in [section 5].

1 (3) An underground facility owner is liable to the excavator for the direct costs arising from the
 2 underground facility owner's failure to comply with 69-4-503, including the mobilization costs. The underground
 3 facility owner is also subject to fines as provided in [section 5].

4 ~~(2)(4) Payment~~ Except as provided in [section 4(2)], payment of costs and fees described in this section
 5 is due within 30 days of billing by the ~~owner of the~~ underground facility owner or the excavator. The underground
 6 facility owner or the excavator may enforce collection in a court of competent jurisdiction.

7 ~~(3) If information requested pursuant to 69-4-503 is not provided within the time specified in that section,~~
 8 ~~excavators damaging or injuring underground facilities are not liable for that damage or injury, unless caused by~~
 9 ~~their negligence, and are not liable for the damage fees assessed under subsection (1).~~

10 ~~(4) The act of obtaining information as required by this part does not excuse an excavator making any~~
 11 ~~excavation from doing so in a careful and prudent manner, nor does it excuse the excavator from liability for any~~
 12 ~~damage or injury resulting from the excavator's negligence."~~

13

14 **Section 14.** Section 69-4-512, MCA, is amended to read:

15 **"69-4-512. Judicial review.** ~~An excavator~~ Except as provided in [section 4(1)], a person subject to repair
 16 charges responsible for damages pursuant to 69-4-505 or subject to fines pursuant to [section 5] and damage
 17 fees described in 69-4-505 may have these ~~costs~~ damages and fines reviewed by a court of competent
 18 jurisdiction."

19

20 **Section 15.** Section 69-4-514, MCA, is amended to read:

21 **"69-4-514. Incident histories reports.** ~~(1) Owners of underground facilities~~ Underground facility owners
 22 shall report incidents to the ~~appropriate one-call notification center that is responsible for maintaining incident~~
 23 ~~histories of violators:~~ the board within 10 days of an incident.

24 (2) The report must include:

25 (a) the name, address, and telephone number of the excavator responsible for an incident;

26 (b) a description of the damage to an underground facility;

27 (c) a description of the incident, including whether it resulted in real or personal property damage,
 28 personal injury, or death;

29 (d) the real or estimated cost of repairing the underground facility;

30 (e) the name, address, and telephone number of any third party involved in the incident; and

1 (f) a description of any damage incurred by the excavator, including personal injury or death.
 2 (3) (a) These Except as provided in subsection (3)(b), the incident histories report must be available for
 3 public inquiry.
 4 (b) The board may not make public any personal information protected by an individual privacy interest.
 5 (4) If an underground facility owner fails to file an incident report in accordance with this section, the board
 6 shall assess fines as follows:
 7 (a) \$100 per incident for the first 10 incidents; and
 8 (b) \$500 per incident for each subsequent incident.
 9 (5) The board may use any means provided by law for the collection of fines assessed under this
 10 section."

11
 12 **NEW SECTION. Section 16. Repealer.** The following sections of the Montana Code Annotated are
 13 repealed:

14 69-4-508. Emergency location and excavation.
 15 69-4-513. Disposition of damage fees collected.

16
 17 **NEW SECTION. Section 17. Notification to tribal governments.** The secretary of state shall send
 18 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
 19 Chippewa tribe.

20
 21 **NEW SECTION. Section 18. Codification instruction.** [Sections 1 through 7] are intended to be
 22 codified as an integral part of Title 69, chapter 4, part 5, and the provisions of Title 69, chapter 4, part 5, apply
 23 to [sections 1 through 7].

24
 25 **NEW SECTION. Section 19. Saving clause.** [This act] does not affect rights and duties that matured,
 26 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

27
 28 **NEW SECTION. Section 20. Severability.** If a part of [this act] is invalid, all valid parts that are
 29 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
 30 the part remains in effect in all valid applications that are severable from the invalid applications.

1

2 NEW SECTION. **Section 21. Effective date.** [This act] is effective on passage and approval.

3

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