

HOUSE BILL NO. 365

INTRODUCED BY R. SHAW, D. ANKNEY, B. BROWN, S. FITZPATRICK, B. GRUBBS, L. JONES, D. LOGE,
W. MCKAMEY, W. SALES, F. THOMAS, J. WELBORN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING EXCAVATIONS NEAR UNDERGROUND FACILITIES; CREATING AN UNDERGROUND FACILITY PROTECTION ADVISORY COUNCIL; ALLOCATING THE COUNCIL TO THE DEPARTMENT OF LABOR AND INDUSTRY; ESTABLISHING THE COUNCIL'S DUTIES AND RESPONSIBILITIES; ESTABLISHING THE DEPARTMENT'S DUTIES AND RESPONSIBILITIES; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; REQUIRING THE DEPARTMENT TO AWARD GRANTS TO NOTIFICATION CENTERS; ESTABLISHING A GRANT PROGRAM; ALLOWING FOR THE COLLECTION OF FEES, FINES, AND CIVIL PENALTIES BY THE DEPARTMENT; PROVIDING DIRECTION ON THE COLLECTION OF FEES, FINES, AND CIVIL PENALTIES; ESTABLISHING CIVIL PENALTIES; ESTABLISHING DAMAGE LIABILITY REQUIREMENTS; PROVIDING FOR MEDIATION OF CIVIL PENALTIES; ALLOWING THE DEPARTMENT TO REVIEW CIVIL PENALTIES IN A CONTESTED CASE; ESTABLISHING AN ANNUAL FEE PAID BY UNDERGROUND FACILITY OWNERS; REQUIRING THE REPORTING OF INCIDENTS; ESTABLISHING SAFE EXCAVATION REQUIREMENTS PERTAINING TO UNDERGROUND FACILITIES; ESTABLISHING AN UNDERGROUND FACILITY PROTECTION ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 69-4-501, 69-4-502, 69-4-503, 69-4-504, 69-4-508, AND 69-4-512, MCA; REPEALING SECTIONS 69-4-505, 69-4-513, AND 69-4-514, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Underground facility protection advisory council. (1) There is an underground facility protection advisory council consisting of 11 members.

(2) Members must be appointed by the governor as follows:

(a) one member representing owners or operators of an underground facility that is a jurisdictional pipeline in Montana that is not a public utility as defined in 69-3-101;

(b) one member representing a public utility, as defined in 69-3-101, that owns an underground facility that is a jurisdictional pipeline in Montana;



1 (c) one member representing a public utility, as defined in 69-3-101, that owns an underground facility
2 that is an electric distribution or transmission line in Montana;

3 (d) one member representing a rural electric cooperative operating in Montana;

4 (e) one member representing a telecommunications provider with more than 50,000 subscriber lines in
5 Montana;

6 (f) one member representing a telecommunications provider with less than 50,000 subscriber lines in
7 Montana;

8 (g) one member representing a municipal sewer or water system or a municipal water supply system
9 established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44;

10 (h) one member representing a local government utility that is a county or consolidated city and county
11 water or sewer district as defined in Title 7, chapter 13, parts 22 and 23;

12 (i) one member representing an authority as defined in 75-6-304; and

13 (j) two members representing excavators.

14 (3) The council's membership may not include more than one representative from the same partnership,
15 firm, joint venture, corporation, association, municipality, governmental unit, department, or agency, including
16 corporate subsidiaries or affiliates.

17 (4) The council is allocated to the department of labor and industry for administrative purposes only as
18 prescribed in 2-15-121.

19 (5) The appointed members serve staggered terms of 3 years. The initial appointments are as follows:
20 two members for 1-year terms, four members for 2-year terms, and five members for 3-year terms.

21 (6) Members of the council are not entitled to compensation for their services.

22

23 **NEW SECTION. Section 2. Duties of the council.** (1) The council shall meet at least annually to advise
24 the department in its administration of this part.

25 (2) To promote efficiency, cost-effectiveness, and safety, the council shall work cooperatively with:

26 (a) the department;

27 (b) underground facility owners and their representatives;

28 (c) excavators;

29 (d) property owners; and

30 (e) interested members of the public.

- 1 (3) The council shall:
- 2 (a) advise the department in its duty to collect civil penalties in accordance with [sections 5 and 6];
- 3 (b) provide recommendations to the department in determining grants awarded in accordance with
- 4 [section 9];
- 5 (c) assist the department in the mediation and resolution of disputed civil penalties in accordance with
- 6 [section 7]; and
- 7 (d) advise the department on other significant matters concerning the administration and enforcement
- 8 of this part, including rulemaking.

9

10 **NEW SECTION. Section 3. Duties of the department -- rulemaking.** (1) The department shall:

- 11 (a) assess civil penalties pursuant to [sections 5 and 6];
- 12 (b) maintain incident reports;
- 13 (c) collect fees from underground facility owners in accordance with rules adopted pursuant to
- 14 69-4-502(4)(a) and subsection (2)(c) of this section;
- 15 (d) collect fines for failures to file incident reports in accordance with [section 10];
- 16 (e) award grants in accordance with [section 9]; and
- 17 (f) conduct mediation and contested cases regarding disputed civil penalties in accordance with [section
- 18 7].

19 (2) The department shall adopt rules to implement this part. Rules must provide for the:

- 20 (a) assessment and collection of civil penalties provided for in [sections 5 and 6];
- 21 (b) reporting and collection of incident reports pursuant to [section 10];
- 22 (c) collection of annual fees of up to \$0.10 per outgoing locate request issued to each individual
- 23 underground facility owner by a notification center. The fee must be based on the number of outgoing locate
- 24 requests that an underground facility owner received in the previous 12-month period.
- 25 (d) procedures, including but not limited to application and filing requirements for mediation and the
- 26 review of disputed penalties; and
- 27 (e) procedures for grant funding authorized in [section 9]. The rules for grant funding must include but
- 28 are not limited to:
- 29 (i) eligibility requirements for notification centers applying for grants;
- 30 (ii) criteria for awarding grants; and

1 (iii) reporting procedures for grant recipients.

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

3 (4) The department may take into account and rely on findings made by a notification center or other
4 nonprofit entities to assist in making determinations necessary for the assessment of a civil penalty.

5
6 **NEW SECTION. Section 4. Tort liability for underground facility damage.** (1) (a) Except as provided
7 in subsection (1)(b), an excavator who damages an underground facility is liable for the entire cost of the repair
8 of the underground facility.

9 (b) If an underground facility is damaged because an underground facility owner failed to complete a
10 locate in accordance with 69-4-503 or provided an inaccurate locate or marks, the underground facility owner who
11 failed to complete the locate or provided an inaccurate locate or marks is responsible for the entire cost of the
12 repair of the underground facility.

13 (c) Liability in accordance with this subsection (1) is not a bar to other appropriate civil remedies for
14 damages.

15 (2) Paying a civil penalty in accordance with this part is not:

16 (a) an admission of liability; or

17 (b) a bar to other appropriate civil remedies.

18 (3) If a person damages an underground facility and there is a release of gas or a hazardous liquid, the
19 person shall call 9-1-1 immediately and request emergency services.

20 (4) If an excavator damages an underground facility, the excavator shall:

21 (a) immediately make a 9-1-1 call and request emergency services, if the underground facility is a
22 jurisdictional pipeline and there is a release of gas or a hazardous liquid; and

23 (b) as soon as practicable, contact the owner of the underground facility. If the excavator is unable to
24 reach the underground facility owner, the excavator shall contact the proper notification center.

25 (5) This section may not be construed to require the involvement of the department in civil remedies for
26 damages.

27
28 **NEW SECTION. Section 5. Underground facilities damage -- excavator civil penalties.** (1) Except
29 as provided in [section 10(3)], within 14 days of receiving an incident report in accordance with [section 10], the
30 department shall issue a civil penalty in accordance with this section.

1 (2) Except as provided in subsection (4), if an excavator damages an underground facility that is not a
2 jurisdictional pipeline, the civil penalty is the greater of \$50 or twice the amount of the last civil penalty issued to
3 the excavator, not to exceed \$10,000.

4 (3) Except as provided in subsection (4), if an excavator damages an underground facility that is a
5 jurisdictional pipeline, the civil penalty is the greater of \$100 or three times the last civil penalty issued to the
6 excavator, not to exceed \$25,000.

7 (4) If the excavator is also the property owner, the penalties are half the amount established in
8 subsections (2) and (3).

9 (5) (a) For the purposes of this section and subject to subsections (5)(b) and (5)(c), the last civil penalty
10 is the dollar amount of the civil penalty that would have been issued to the excavator under this part based on
11 incidents occurring in the lesser of:

12 (i) the last 100 requests for a locate made by the excavator; or

13 (ii) a rolling 12-month period based on the incident date.

14 (b) If an incident is subject to subsection (2), the civil penalty must be calculated as if all previous
15 incidents were subject to subsection (2).

16 (c) If an incident is subject to subsection (3), the civil penalty must be calculated as if all previous
17 incidents were subject to subsection (3).

18
19 **NEW SECTION. Section 6. Underground facilities damage -- underground facility owner civil**

20 **penalties.** (1) Except as provided in [section 10(3)], within 14 days of receiving an incident report in accordance
21 with subsection (2), the department shall issue a civil penalty in accordance with this section.

22 (2) If an incident is reported because a locate and mark was not properly completed or if the locate and
23 marks provided were not REASONABLY accurate FOR LOCATABLE UNDERGROUND FACILITIES, the underground facility
24 owner shall be assessed a civil penalty in accordance with subsections (3) and (4).

25 (3) Except as provided in subsection (5), if the incident involves an underground facility that is not a
26 jurisdictional pipeline, the civil penalty is the greater of \$50 or twice the last civil penalty issued to the underground
27 facility owner, not to exceed \$10,000.

28 (4) Except as provided in subsection (5), if the incident involves an underground facility that is a
29 jurisdictional pipeline, the civil penalty is the greater of \$100 or three times the last civil penalty issued to the
30 underground facility owner, not to exceed \$25,000.

1 (5) If an underground facility owner is not a member of a notification center pursuant to 69-4-502(3), the
2 penalties included in subsections (3) and (4) double.

3 (6) (a) For the purposes of this section and subject to subsections (6)(b) and (6)(c), the last civil penalty
4 is the dollar amount of the civil penalty that would have been issued to the underground facility owner under this
5 part based on incidents occurring in the lesser of:

6 (i) the last 100 outgoing locate requests made to the underground facility owner; or

7 (ii) a rolling 12-month period based on the incident date.

8 (b) If an incident is subject to subsection (3), the civil penalty must be calculated as if all previous
9 incidents were subject to subsection (3).

10 (c) If an incident is subject to subsection (4), the civil penalty must be calculated as if all previous
11 incidents were subject to subsection (4).

12

13 **NEW SECTION. Section 7. Civil penalty -- mediation -- contested case hearing -- procedures.** (1)

14 An excavator or underground facility owner who receives a civil penalty in accordance with [section 5 or 6] may
15 request a review of the penalty in accordance with this section.

16 (2) (a) If an excavator or underground facility owner disputes a civil penalty, prior to a contested case
17 the department, in consultation with the advisory council, shall conduct mediation of the disputed penalty in
18 accordance with rules established by the department.

19 (b) The request must be filed within 20 days after the department issues a civil penalty.

20 (3) (a) If mediation in accordance with subsection (2) does not resolve the dispute, the request must
21 proceed through the contested case process before the department pursuant to the Montana Administrative
22 Procedure Act.

23 (b) The request must be filed within 20 days after the mediation report is mailed by the department.

24 (c) The department shall issue a final decision within 90 days from the close of the contested case.

25 (4) The department shall issue determinations in writing and provide a copy to all parties named in the
26 dispute.

27

28 **NEW SECTION. Section 8. Underground facility protection account -- statutory appropriation.**

29 (1) There is an underground facility protection account in the state special revenue fund. The account is statutorily
30 appropriated, as provided in 17-7-502, to the department.

- 1 (2) There must be deposited in the account all revenue from:
- 2 (a) civil penalties collected pursuant to [sections 5 and 6];
- 3 (b) fines collected pursuant to [section 10 or 11];
- 4 (c) fees collected pursuant to 69-4-502(4); and
- 5 (d) any gifts, grants, donations, or bequests to the department.
- 6 (3) Funds are allocated as follows:
- 7 (a) fees collected pursuant to 69-4-502(4) and paid by underground facility owners and any gifts, grants,
- 8 donations, or bequests must be deposited in an account for the administration of this part by the department in
- 9 accordance with this part; and
- 10 (b) all revenue from civil penalties collected pursuant to [sections 5 and 6] and fines collected pursuant
- 11 to [sections 10 or 11] must be deposited in an account for distribution in the form of grants to notification centers
- 12 to be used in accordance with [section 9].
- 13 (4) The accounts established in subsection (3) retain interest earned from the investment of money in
- 14 the accounts.

15

16 **NEW SECTION. Section 9. Notification center grants.** (1) The department, in consultation with the

17 council, shall award grants annually to notification centers using the account established pursuant to [section

18 8(3)(b)]. Beginning January 1, 2018, grants must be awarded to notification centers in accordance with this

19 section and rules adopted by the department in accordance with [section 3].

20 (2) Grants must be awarded to notification centers to fund training and educational programs and

21 materials for excavators, underground facility owners, and the general public.

22 (3) Nothing in this section prevents a notification center from:

23 (a) transferring grant money received to another entity for nonprofit underground facility education

24 programs; or

25 (b) collaborating with another notification center on a joint grant application.

26

27 **NEW SECTION. Section 10. Incident reports -- notification of damage -- fines.** (1) (a) Within 30

28 days of an incident, an underground facility owner who owns an underground facility that is damaged shall:

29 (i) report the incident to the appropriate notification center; and

30 (ii) notify the excavator involved in the incident that the incident has been reported in accordance with

1 subsection (1)(a)(i).

2 (b) A notification center that receives a report in accordance with subsection (1)(a) shall notify the
3 department.

4 (2) When the information is available, the incident report must include:

5 (a) the name, address, and telephone number of the excavator responsible for the incident or the
6 underground facility owner responsible for the damage;

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

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

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

11 (e) a description of any damage incurred by the excavator, including personal injury or death.

12 (3) After an incident is reported in accordance with subsection (1) and if the underground facility that is
13 damaged is not a jurisdictional pipeline, if an underground facility owner determines that a civil penalty is not
14 required, the underground facility owner shall provide notice of the determination to the department within 30 days
15 of the date that the incident report was filed.

16 (4) (a) Except as provided in subsection (4)(b), the incident report must be available for public inquiry.

17 (b) The department may not make public any personal information protected by an individual privacy
18 interest.

19 (5) If an underground facility owner fails to file an incident report in accordance with this section, the
20 department shall assess a \$100 fine.

21 (6) If an underground facility owner determines that damage ~~by a property owner~~ to an underground
22 facility that is not a jurisdictional pipeline is an event and not an incident, reporting and notification in accordance
23 with subsection (1) is not required.

24 (7) An underground facility owner who receives a fine may contest the fine by requesting, within 20 days
25 of the fine being levied, a hearing from the department.

26 (8) Beginning July 1, 2017, the department shall maintain a database of incident reports. Incident reports
27 must be maintained for a minimum of 5 years.

28

29 **NEW SECTION. Section 11. Collection of penalties, fines, and fees.** (1) If the department is unable
30 to collect civil penalties, fees, or fines assessed pursuant to this part, the department may ~~assign the debt to a~~

1 ~~collection service~~ or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

2 (2) (a) The ~~reasonable collection costs of a collection service~~ or assistance costs charged the
3 department by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection
4 is being sought.

5 (b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

6 ~~(ii) All money collected by a collection service must be paid to the department and deposited in the~~
7 ~~accounts specified in this part, except that the collection service may retain those collection costs or, if the total~~
8 ~~debt is not collected, that portion of collection costs that are approved by the department.~~

9

10 **Section 12.** Section 17-7-502, MCA, is amended to read:

11 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
12 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
13 need for a biennial legislative appropriation or budget amendment.

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

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

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

19 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;
20 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;
21 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101;
22 15-70-433; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215;
23 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;
24 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905; 20-26-617;
25 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301;
26 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213;
27 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870;
28 [section 8]; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222;
29 80-4-416; 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603;
30 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

1 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 2 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 3 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
 4 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
 5 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
 6 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
 7 of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded
 8 liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and
 9 sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L.
 10 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under
 11 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion
 12 of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004
 13 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30,
 14 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017;
 15 pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency;
 16 pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch.
 17 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec.
 18 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015,
 19 the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of
 20 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of
 21 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117
 22 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates
 23 September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December
 24 31, 2023.)"

25

26 **Section 13.** Section 69-4-501, MCA, is amended to read:

27 **"69-4-501. Definitions.** The following definitions apply to this part:

28 (1) "Agricultural locate request" means a request for a locate and mark that is requested based on the
 29 perimeter boundary of an agricultural field:

30 (a) by a property owner or excavator prior to agricultural activity; or

1 (b) by a property owner or excavator prior to conducting soil probing or testing.

2 ~~(1)~~(2) (a) "Business day" means any day beginning at midnight and ending 24 hours later, other than
3 Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and
4 Christmas Day.

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

8 (3) "Civil penalty" means a penalty levied by the department in accordance with [sections 5 and 6].

9 (4) "Council" means the underground facility protection advisory council provided for in [section 1].

10 (5) "Damage" or "damages" means any impact upon or removal of support from an underground facility
11 as a result of excavation or demolition that, according to the operating practices of the underground facility owner,
12 would necessitate the repair of the facility.

13 (6) "Department" means the department of labor and industry provided for in 2-15-1701.

14 (7) "Designated service area" means a geographic area defined using state and county boundaries or
15 further defined by the members of a notification center in operation on [the effective date of this act]. There may
16 not be more than two designated service areas in Montana.

17 ~~(2)~~(8) "Emergency excavation" means an excavation in response to an emergency locate request that
18 is necessary to:

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

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

21 ~~(3)~~(9) "Emergency locate request" means a request for a locate and mark that is requested for:

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

23 (b) a customer outage for which repairs on a previously installed utility-owned facility are required.

24 (10) "Engineering locate request" means a request for a locate and mark to identify underground facilities
25 for planning and design purposes.

26 (11) "Event" means damages to an underground facility, if:

27 (a) the underground facility is not a jurisdictional pipeline; and

28 (b) the underground facility owner determines the damages are not an incident.

29 ~~(4)~~(12) (a) "Excavation" means an operation in which earth, rock, or other material in the ground is
30 moved, removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term

1 includes but is not limited to grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable
2 or pipe plowing and driving.

3 (b) Excavation does not include:

4 (i) surface road grading maintenance or road or ditch maintenance that does not change the original road
5 or ditch grade or flow line;

6 (ii) plowing, cultivating, planting, harvesting, or similar agricultural activities in areas cultivated:

7 (A) within the last 10 years, unless the activities disturb the soil to a depth of 18 inches or more; or

8 (B) within the last 14 months, to a depth greater than 18 inches, unless the activities disturb the soil to
9 a depth of more than 24 inches;

10 (iii) gardening by homeowners or occupants in a previously established garden area unless the gardening
11 disturbs the soil to a depth of 12 inches or more; or

12 (iv) landscaping by homeowners or occupants unless using mechanized equipment or disturbing soil to
13 a depth of 12 inches or more.

14 ~~(5)(13)~~ "Excavator" means a person conducting the excavation activities defined in subsection ~~(4)~~ (12).

15 ~~(6)(14)~~ "Identified but unlocatable underground facility" means an underground facility that has been
16 identified but cannot be located with reasonable accuracy.

17 ~~(7)(15)~~ "Incident" means:

18 (a) NOTWITHSTANDING [SECTION 10(6)], unless the underground facility is owned by the excavator, a
19 violation of the provisions of 69-4-502 or 69-4-503(1) by an excavator that, at a single location on a single day,
20 results in damage to an underground facility or the property of a third party or in bodily injury or death to any
21 person other than the excavator; or

22 (b) a violation of the provisions of 69-4-503(3) by an underground facility owner that, at a single location
23 on a single day, results in damage to an underground facility.

24 ~~(8)~~ "Incident history" means the total number of incidents experienced by an excavator in the 5 years
25 preceding the most recent incident. The incident history must be used to determine damage fees for violation of
26 ~~69-4-503(1).~~

27 (16) "Jurisdictional pipeline" means a pipeline subject to regulation by the U.S. department of
28 transportation pipeline and hazardous materials safety administration in accordance with 49 CFR 190-199, the
29 Montana public service commission, or both.

30 ~~(9)(17)~~ "Locatable underground facility" means an underground facility that can be field-located and

1 field-marked with reasonable accuracy.

2 ~~(10)~~(18) "Locate" means to the use of specialized equipment to identify the location of underground
3 facilities or the actual location of underground facilities identified by the use of specialized equipment.

4 ~~(14)~~(19) "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field
5 location or absence of underground facilities, in accordance with the current color code standard of the American
6 public works association. Marking must include identification letters indicating the specific type of underground
7 facility and the width of the facility if it is greater than 6 inches.

8 ~~(12)~~(20) ~~"One-call notification"~~ "Notification center" means a service through which a person may request
9 a locating and marking of underground facilities an entity whose membership is open to and is contracting with
10 underground facility owners with underground facilities within a notification center's designated service area.

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

13 (22) "Outgoing locate request" means an electronic or other document transmitted from a notification
14 center to all member underground facility owners affected by a request for a locate.

15 ~~(13)~~(23) "Person" means an individual, partnership, firm, joint venture, corporation, association,
16 municipality, governmental unit, department, or agency and includes a trustee, receiver, assignee, or personal
17 representative of the listed entities.

18 (24) "Positive response" means notification through an electronic system provided by a notification center
19 that is available to underground facility owners and excavators and is used for communicating and documenting
20 the status of a request for a locate.

21 (25) "Property owner" means a person owning real property in Montana, its agents, and employees. The
22 term does not include the owner of an easement.

23 ~~(14)~~(26) "Reasonably accurate" means location within 18 inches of the outside lateral dimensions of both
24 sides of an underground facility.

25 (27) "Request for a locate" means the process by which an excavator communicates with a notification
26 center a request for underground facilities to be located and marked in an area where an excavation is planned.
27 A request for a locate that is not an agricultural locate request and is not within city limits or within an area of an
28 authority as defined in 75-6-304 may not exceed 2 miles long by 1,000 feet wide. A request for a locate that is
29 not an agricultural locate request and is within city limits or within an area of an authority as defined in 75-6-304
30 may not exceed 2,000 feet long by 300 feet wide.

1 (28) "Third party" means a person who is not an excavator or an underground facility owner.

2 ~~(15)(29)~~ (a) "Underground facility" means a facility buried or placed below ground for use in connection
3 with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications,
4 cablevision, fiber optics, electrical energy, oil, gas, or other substances. The term includes but is not limited to
5 pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the listed items.

6 (b) The term does not include:

7 (i) shallow underground water systems designed to irrigate lawns, gardens, or other landscaping;

8 (ii) privately owned water and sewer lines from private property extending into public rights-of-way to
9 interconnect with public water and sewer; or

10 (iii) an underground facility used solely to furnish services or commodities to real property, if no part of
11 the underground facility is located in a public street, alley, or right-of-way dedicated to the public use.

12 (30) "Underground facility owner" means a person owning, controlling, or having the responsibility to
13 maintain an underground facility."

14

15 **Section 14.** Section 69-4-502, MCA, is amended to read:

16 **"69-4-502. Information to be sought before excavation -- notification -- exceptions.** (1) (a) Except
17 as provided in subsection ~~(1)(b)~~ (2), an excavator may not make or begin an excavation without first obtaining
18 information concerning the possible location of an underground facility from each ~~public utility, municipal~~
19 ~~corporation, underground facility owner, or other person~~ having the right to bury underground facilities that is a
20 member of a ~~one-call~~ notification center pursuant to subsection ~~(2)(a)~~ (3).

21 (b) Information concerning the possible location of underground facilities in accordance with subsection
22 (1)(a) is obtained when:

23 (i) underground facilities are located and marked in accordance with 69-4-503; or

24 (ii) underground facility owners notified by a notification center respond through the notification center
25 that their underground facilities are located and marked, or that locating or marking is not necessary, and the
26 excavator receives a positive response that locates and marks are either complete or unneeded.

27 ~~(b) (i)~~ (2) (a) A registered land surveyor or a person under the supervision of a registered land surveyor
28 may hand dig for shallow survey monuments at a depth of 12 inches or less below the road surface of a highway
29 or at the intersection of the center lines of public streets.

30 ~~(ii)~~ (b) The registered land surveyor, prior to hand digging, shall obtain proper approval from the

1 appropriate governing authority regarding safety and pavement repair and, when appropriate, shall reference the
2 monument upon exposure.

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

5 ~~(iv)(d)~~ The registered land surveyor is liable for damages incurred regarding facility destruction.

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

9 ~~(2)(3)~~ ~~(a)~~ A public utility, municipal corporation, An underground facility owner, ~~or person having the right~~
10 ~~to bury underground facilities~~ must be a member of a one-call notification center covering the service area in
11 which the entity or person has underground facilities.

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

15 (4) (a) Beginning October 1, 2017, an underground facility owner shall pay an annual fee pursuant to
16 [section 3(2)(c)] to the department.

17 (b) Beginning July 1, 2017, to facilitate the collection of annual fees and to assist with the proper
18 assessment of civil penalties, a notification center that serves underground facilities located in Montana shall
19 annually, on a date determined by the department, provide the department with:

20 (i) a list of all its underground facility owners who are members;

21 (ii) a list of the outgoing locate requests for each underground facility owner and the requests for a locate
22 and mark from each excavator over the past 12-month period; and

23 (iii) a list of all incident reports received over the past 12-month period."
24

25 **Section 15.** Section 69-4-503, MCA, is amended to read:

26 **"69-4-503. Notification -- locating and marking.** (1) Before beginning an excavation, the excavator
27 shall notify, through a one-call notification center, all owners of underground facilities in the area of the proposed
28 excavation. Except as provided in subsection (9), notifications are limited to excavation work intended to
29 commence within 10 days and completed within 30 days of the notification.

30 (2) An excavator shall provide adequate information to the owners of underground facilities in order to

1 locate and mark the location of underground facilities.

2 (a) Adequate information must allow the person completing the locate to determine the area where the
 3 proposed excavation will occur. The information may include but is not limited to marking the path of the proposed
 4 excavation with white paint, marking the path of the proposed excavation with white flagging, or other clear
 5 marking that allows a person to determine the path of the proposed excavation.

6 (b) If the person completing the locate is unable to determine the path of the proposed excavation based
 7 on markings or other communications with the excavator, the excavator shall meet with the person completing
 8 the locate at the site where the excavation is proposed.

9 ~~(2)(3)~~ After an excavator has notified the appropriate ~~one-call~~ notification center of a proposed
 10 excavation, an owner of an underground facility shall:

11 (a) except as provided in subsection (3)(b) and in accordance with subsection (5), provide the locates
 12 locate and mark the location within 2 business days; or

13 (b) locate and mark the location within 5 business days or within 5 business days of a date agreed to after
 14 a meeting between the person conducting the locate and the excavator at the site where the excavation is
 15 proposed, if the locate is required for an engineering locate request; or

16 ~~(b)(c)~~ respond ~~immediately~~ as soon as practicable if the excavator notifies the ~~one-call~~ notification center
 17 that an emergency exists.

18 ~~(3)(4)~~ (a) After an ~~owner of an~~ underground facility ~~owner has located and marked~~ locates and marks
 19 the location of underground facilities, the excavator shall determine if weather, time, or other factors may have
 20 affected location marks, warranting relocation of the facilities.

21 (b) If Except as provided in subsection (9), if excavation has not occurred within 30 days of the locate
 22 and mark location and marking being completed, the excavator shall request that the underground facility be
 23 relocated located and remarked marked again before excavating unless other arrangements have been made
 24 with the underground facility owner. The excavator is responsible for costs associated with relocating and
 25 remarking a facility that is not excavated within 30 days of the locate and mark.

26 (c) (i) If an excavation has not occurred at a site within 30 days of the locate and mark being completed
 27 on two occasions and an excavator makes a third request for locate, the excavator is responsible for costs
 28 associated with the subsequent location and marking of the underground facility.

29 (ii) If an excavator disputes the costs required in subsection (4)(c)(i), the excavator has the burden of
 30 proof or must demonstrate circumstances beyond the excavator's control delayed the excavation.

1 ~~(4)~~(5) Upon receipt of the notice provided for in this section, the ~~owner of the~~ underground facility owner
 2 shall provide the excavator with reasonably accurate information as to the owner's locatable underground facilities
 3 by surface locating and marking the location of the facilities. If there are identified but unlocatable underground
 4 facilities, the underground facility owner ~~of the facilities~~ shall provide the excavator with the best available
 5 information as to their locations. ~~An excavator may not excavate until all known facilities have been located and~~
 6 ~~marked. If an underground facility owner has knowledge of prior existing oil and gas development, an~~
 7 underground facility owner shall advise the excavator of the activity, and an excavator shall proceed in
 8 accordance with subsection (8). An excavator who proceeds in accordance with subsection (8) is not responsible
 9 for damages to an underground facility that cannot be located by ~~its~~ the underground facility owner. ~~Once the~~
 10 ~~facilities are located and marked by the facility owner~~ After a locate is complete, the excavator is responsible for
 11 maintaining preserving the markings.

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

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

20 (7) An underground facility owner may attempt to identify the location of a private underground facility
 21 connected to the owner's facility, but the underground facility owner is not liable for the accuracy of the locate.

22 (8) The act of obtaining information as required by this part does not excuse an excavator making any
 23 excavation from doing so in a careful and prudent manner or excuse the excavator from liability for any damage
 24 or injury resulting from the excavator's negligence.

25 (9) If an excavator makes an agricultural locate request for soil probing or testing, new underground
 26 facilities have not been buried or placed in the area encompassed by the locate, and the request duplicates a
 27 locate and mark completed in the last 12 months, the excavation work limitations in subsection (1) do not apply.
 28 The excavator shall provide the duplicate locate and mark information to the notification center prior to excavation,
 29 and a new locate and mark may be required."

30

1 **Section 16.** 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 owners of~~ underground ~~facilities~~ facility owners
5 and then make the information a part of the plan by which the contractors operate. The ~~owners of the~~
6 underground ~~facilities~~ facility owners shall make available all records showing the locations of underground
7 facilities and shall provide ~~locates~~ engineering locate requests, if requested, pursuant to 69-4-503.

8 (2) This section does not excuse a person from the obligation imposed by 69-4-502~~(4)~~ when excavating."

9
10 **Section 17.** Section 69-4-508, MCA, is amended to read:

11 **"69-4-508. Emergency location and excavation.** (1) When an emergency excavation is required, the
12 excavator shall notify the ~~one-call~~ notification center. An underground facility owner shall respond as soon as is
13 practical after notification.

14 (2) ~~Requesting an~~ Making an emergency locate request or an emergency excavation that is not an
15 emergency locate request or an emergency excavation as those terms are defined constitutes a false alarm
16 pursuant to 45-7-204 and is subject to the penalties under 45-7-204."

17
18 **Section 18.** Section 69-4-512, MCA, is amended to read:

19 **"69-4-512. Judicial review.** (1) An excavator subject to repair costs ~~charges and damage fees~~
20 ~~described in 69-4-505~~ may have ~~these~~ repair costs reviewed by a court of competent jurisdiction.

21 (2) An excavator or underground facility owner subject to a civil penalty in accordance with [section 5
22 or 6] may have the civil penalty reviewed by a court of competent jurisdiction as provided in 2-4-702."

23
24 NEW SECTION. **Section 19. Repealer.** The following sections of the Montana Code Annotated are
25 repealed:

26 69-4-505. Liability for damages to underground facilities.

27 69-4-513. Disposition of damage fees collected.

28 69-4-514. Incident histories.

29
30 NEW SECTION. **Section 20. Notification to tribal governments.** The secretary of state shall send

1 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
2 Chippewa tribe.

3
4 **NEW SECTION. Section 21. Codification instruction.** [Sections 1 through 11] are intended to be
5 codified as an integral part of Title 69, chapter 4, part 5, and the provisions of Title 69, chapter 4, part 5, apply
6 to [sections 1 through 11].

7
8 **NEW SECTION. Section 22. Saving clause.** [This act] does not affect rights and duties that matured,
9 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

10
11 **NEW SECTION. Section 23. Severability.** If a part of [this act] is invalid, all valid parts that are
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
13 the part remains in effect in all valid applications that are severable from the invalid applications.

14
15 **NEW SECTION. Section 24. Effective date.** [This act] is effective July 1, 2017.

16
17 **NEW SECTION. Section 25. Applicability.** [This act] applies to incidents and events occurring on or
18 after October 1, 2017.

19 - END -