

HOUSE CS FOR CS FOR SENATE BILL NO. 330(RES) am H

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Amended: 5/6/98

Offered: 4/24/98

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to locations of underground facilities and excavations in the area**
2 **of underground facilities."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 42.30 is amended by adding new sections to read:

5 **Article 6. Locating Underground Facilities.**

6 **Sec. 42.30.400. Excavator's notice of proposed excavation.** (a) Before
7 beginning an excavation, an excavator shall give notice of the proposed excavation to
8 each underground facility operator who has an underground facility in the area of the
9 proposed excavation and request the operator to field mark the location of its
10 underground facility. The excavator shall notify an underground facility operator who
11 subscribes to a notification center by giving notice to the center. The excavator shall
12 notify an underground facility operator listed in the applicable telephone directory who
13 is not a subscriber to a notification center by giving notice directly to the operator.
14 (b) Except in the case of an emergency locate request or a request to locate

in a remote, unstaffed, or inaccessible location, the excavator shall notify an underground facility operator who may have a facility in the area of a proposed excavation at least two but not more than 15 working days before the date scheduled for beginning the excavation. In the case of a request to locate in a remote or unstaffed location, the excavator shall notify the operator at least 10 but not more than 20 working days before the scheduled date for beginning excavation.

(c) In an emergency, the excavator shall immediately notify each underground facility operator in the area of the emergency and of the need for the excavation and request prompt location of underground facilities.

Sec. 42.30.410. Operator's response to request to locate; immunity related to unmarked or inaccurately marked facilities. (a) An underground facility operator shall accept requests to locate underground facilities during the operator's regular business hours. An operator who receives a request to locate shall maintain for at least one year an accurate record of the request and responses to the request.

(b) When an underground facility operator receives a request to locate, it shall notify the excavator of the location of the underground facilities that the operator is able to field mark with reasonable accuracy and field mark those facilities. If the operator owns, uses, or operates an underground facility that is identified as being in the area of the proposed excavation but that the operator cannot field mark with reasonable accuracy, the operator shall provide the excavator with the best information available to the operator about its location and shall provide on-site assistance until the facility is located or until the excavator no longer needs assistance in locating that facility.

(c) The field marks for an underground facility buried 10 feet deep or less must be located within 24 horizontal inches of the outside dimensions of the facility. For a facility buried deeper than 10 feet, the operator shall locate the field marks within 30 horizontal inches of the outside dimensions of the facility. The operator shall use stakes, paint, or other clearly identifiable material to show the field location of the underground facility. The marker used to designate the approximate location of an underground facility must follow the current color code standard used by the American Public Works Association.

(d) Except for an underground facility in a remote, unstaffed, or inaccessible location, an underground facility operator shall respond to a request to locate promptly. A response is considered to be prompt if it is made within two working days after the operator receives the request or at a later time so long as the response occurs before the beginning of the excavation. For an underground facility in an accessible remote or unstaffed location, the operator shall respond within 10 working days after the operator receives the request or at a later time so long as the response occurs before the beginning of excavation.

(e) After an operator has field marked an underground facility, the excavator is responsible for maintaining the markings.

(f) An excavator may not begin to excavate until each underground facility has been field marked.

(g) When an operator has field marked an underground facility once at the request of an excavator, the operator has the right to receive compensation from the excavator for costs incurred in responding to subsequent requests to locate the same underground facility during the same excavation project if the excavator failed to maintain the original marking.

(h) If an excavator discovers an underground facility that was not field marked or was inaccurately field marked, the excavator shall immediately stop excavating in the vicinity of the facility and shall notify the operator of the discovery. The excavator may notify the operator by means of a notification center. The operator shall treat the notification as a request to locate in an emergency and shall respond accordingly. An excavator may not be held liable for inadvertent damage caused to an unmarked or an inaccurately marked underground facility.

(i) Unless the request to locate is made in response to an emergency, an underground facility operator has the right to receive compensation for costs incurred in responding to a request to locate that gives the operator less notice than the minimum notice required by this section. This subsection may not be interpreted to require the operator to respond to the request to locate within the time requested in the notice.

Sec. 42.30.420. Responsibility of construction project owners. The owner

1 of a construction project that will require excavation shall indicate in bid documents
 2 or contracts for construction the existence of underground facilities that the project
 3 owner knows are located inside of the proposed area of excavation. This requirement
 4 does not release the excavator from the excavator's responsibility under AS 42.30.400
 5 - 42.30.490.

6 **Sec. 42.30.430. Obligations concerning the conduct of excavations.** (a) An
 7 excavator shall use reasonable care to avoid damaging an underground facility. The
 8 excavator shall

9 (1) determine, without damage to the facility, the precise location of
 10 an underground facility whose location has been marked;

11 (2) plan the excavation to avoid damage to and minimize interference
 12 with an underground facility in or near the excavation area; and

13 (3) to the extent necessary to protect a facility from damage, provide
 14 support for an underground facility in and near the construction area during the
 15 excavation.

16 (b) An excavator who, in the course of excavation, contacts or damages an
 17 underground facility shall notify the operator. If the damage causes an emergency, the
 18 excavator shall also alert appropriate local public safety agencies and take reasonable
 19 steps to ensure public safety. A damaged underground facility may not be reburied
 20 until it is repaired or relocated to the satisfaction of the operator. The operator of an
 21 underground facility that was damaged during excavation shall arrange for repair or
 22 relocation of the facility as soon as practical.

23 **Sec. 42.30.440. Penalties; injunctive relief.** (a) In addition to all other
 24 remedies provided by law, a person who violates a provision of AS 42.30.400 -
 25 42.30.490 is subject to a civil penalty of not less than \$50 nor more than \$1,000 for
 26 each offense if the violation results in or significantly contributes to damage to an
 27 underground facility.

28 (b) If the court finds that an excavator is violating or threatening to violate a
 29 provision of AS 42.30.400 - 42.30.490 and the violation may result in damage to an
 30 underground facility, the court may grant injunctive relief to the underground facility
 31 operator.

Sec. 42.30.450. Waiver of requirements by written agreement. An operator and an excavator may, by written agreement, waive the requirements of AS 42.30.400 - 42.30.490 that the excavator notify the operator of planned excavations and that the operator locate underground facilities. The agreement must identify the geographic areas to which the waiver applies and the time period for which the waiver is valid.

Sec. 42.30.460. Underground facility owner. If the operator of an underground facility is not the owner of the facility and if the operator cannot be identified or has been identified but cannot be reached in a reasonable amount of time, the excavator may give the notice required by AS 42.30.400 - 42.30.490 to the owner of the underground facility and the owner shall assume the duties and responsibilities of the operator under AS 42.30.400 - 42.30.490.

Sec. 42.30.490. Definitions. In AS 42.30.400 - 42.30.490,

(1) "damage" means

(A) the substantial weakening of structural or lateral support of an underground facility;

(B) penetration, impairment, or destruction of any underground protective coating, housing, or other protective device; and

(C) the partial or complete severance of an underground facility to the extent that the project owner or facility operator determines that repairs are required;

(2) "emergency" means

(A) a condition that constitutes a clear and present danger to life, health, or property; or

(B) an unplanned service interruption;

(3) "excavation" means

(A) an activity in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means;

(B) road maintenance that changes the original road grade;

(C) demolition or movement of earth by equipment, tools, or explosive device except tilling of the soil less than 12 inches in depth for agricultural purposes;

- 1 (4) "excavator" means a person who conducts excavation in the state;
- 2 (5) "inaccessible" means impossible or unreasonably difficult to reach
- 3 due to conditions beyond the control of the underground facility operator;
- 4 (6) "notification center" or "center" means a service through which a
- 5 person is able to call one number to notify member operators of underground facilities
- 6 that an excavation is proposed and to request the operators to mark facilities located
- 7 inside of the proposed excavation area;
- 8 (7) "operator" means a person who supplies a service for commercial
- 9 or public use by means of an underground facility;
- 10 (8) "person" means any individual, public or private corporation,
- 11 political subdivision, government agency, municipality, industry, partnership,
- 12 copartnership, association, firm, trust, estate, or any other entity whatsoever;
- 13 (9) "remote" means not accessible by road;
- 14 (10) "underground facility" means a pipe, sewer, conduit, cable, valve,
- 15 line, or wire, including attachments and those parts of poles or anchors that are below
- 16 ground, for use in connection with the storage or conveyance of water, sewage,
- 17 telecommunications, cable television, electricity, petroleum, petroleum products,
- 18 hazardous liquids, or flammable, toxic, or corrosive gas;
- 19 (11) "unstaffed" means not normally staffed with employees;
- 20 (12) "working day" means a day on which an underground facility
- 21 operator is open for regular business.