

SENATE BILL NO. 330

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced: 2/24/98

Referred: Labor and Commerce, Resources

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to underground facilities."**

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

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

4 **Article 6. Locating Underground Facilities.**

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

13 (b) Except in the case of an emergency locate request or a request to locate
14 in a remote, unstaffed, or inaccessible location, the excavator shall notify an
15 underground facility operator who may have a facility in the area of a proposed

1 excavation at least two but not more than 15 working days before the date scheduled
2 for beginning the excavation. In the case of a request to locate in a remote or
3 unstaffed location, the excavator shall notify the operator at least 10 but not more than
4 20 working days before the scheduled date for beginning excavation.

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

8 **Sec. 42.30.410. Operator's response to request to locate.** (a) An
9 underground facility operator shall accept requests to locate underground facilities
10 during the operator's regular business hours. An operator who receives a request to
11 locate shall maintain for at least three years an accurate record of the request and
12 responses to the request.

13 (b) When an underground facility operator receives a request to locate, it shall
14 notify the excavator of the location of the underground facilities that the operator is
15 able to field mark with reasonable accuracy and field mark those facilities. If the
16 operator owns, uses, or operates an underground facility that is identified as being in
17 the area of the proposed excavation but that the operator cannot field mark with
18 reasonable accuracy, the operator shall provide the excavator with the best information
19 available to the operator about its location.

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

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

1 the beginning of the excavation. For an underground facility in an accessible remote
 2 or unstaffed location, the operator shall respond within 10 working days after the
 3 operator receives the request or at a later time so long as the response occurs before
 4 the beginning of excavation.

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

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

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

14 (h) If an excavator discovers an underground facility that was not field marked
 15 or was inaccurately field marked, the excavator shall immediately stop excavating in
 16 the vicinity of the facility and shall notify the operator of the discovery. The
 17 excavator may notify the operator by means of a notification center. The operator
 18 shall treat the notification as a request to locate in an emergency and shall respond
 19 accordingly.

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

26 **Sec. 42.30.420. Responsibility of construction project owners.** The owner
 27 of a construction project that will require excavation shall indicate in bid documents
 28 or contracts for construction the existence of underground facilities that the project
 29 owner knows are located inside of the proposed area of excavation. This requirement
 30 does not release the excavator from the excavator's responsibility under AS 42.30.400
 31 - 42.30.490.

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

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

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

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

11 (b) If an underground facility is damaged by failure to fulfill an obligation
 12 under AS 42.30.400 - 42.30.490, the party failing to perform the obligation is liable
 13 to the other party for damages resulting from the failure to perform. Damages may
 14 include the normal overhead charges that can be allocated to having to respond to the
 15 party's failure to perform.

16 (c) 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.** (a) A person who violates a provision of
 24 AS 42.30.400 - 42.30.490 is subject to a civil penalty of not less than \$50 nor more
 25 than \$1,000 for each offense if the violation results in or significantly contributes to
 26 damage to an underground facility.

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

31 (c) An excavator is liable to the operator of an underground facility for three

1 times the operator's cost in repairing and relocating the facility if the excavator

2 (1) knowingly or intentionally damages a field marked underground
3 facility; or

4 (2) knows of an underground facility that is near a planned excavation
5 and the excavator fails to notify the underground facility operator as required by
6 AS 42.30.400; notification under this paragraph may be made directly to the operator
7 or, if appropriate, through a notification center.

8 **Sec. 42.30.450. Waiver of requirements by written agreement.** An operator
9 and an excavator may, by written agreement, waive the requirements of AS 42.30.400
10 - 42.30.490 that the excavator notify the operator of planned excavations and that the
11 operator locate underground facilities. The agreement must identify the geographic
12 areas to which the waiver applies and the time period for which the waiver is valid.

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

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

20 (1) "damage" means

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

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

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

28 (2) "emergency" means

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

31 (B) an unplanned service interruption;

- 1 (3) "excavation" means
- 2 (A) an activity in which earth, rock, or other material on or
- 3 below the ground is moved or otherwise displaced by any means;
- 4 (B) road maintenance that changes the original road grade;
- 5 (C) demolition or movement of earth by equipment, tools, or
- 6 explosive device except tilling of the soil less than 12 inches in depth for
- 7 agricultural purposes;
- 8 (4) "excavator" means a person who conducts excavation in the state;
- 9 (5) "inaccessible" means impossible or unreasonably difficult to reach
- 10 due to conditions beyond the control of the underground facility operator;
- 11 (6) "intentionally" has the meaning given in AS 11.81.900(a);
- 12 (7) "knowingly" has the meaning given in AS 11.81.900(a);
- 13 (8) "notification center" or "center" means a service through which a
- 14 person is able to call one number to notify member operators of underground facilities
- 15 that an excavation is proposed and to request the operators to mark facilities located
- 16 inside of the proposed excavation area;
- 17 (9) "operator" means a person who supplies a service for commercial
- 18 or public use by means of an underground facility;
- 19 (10) "person" means any individual, public or private corporation,
- 20 political subdivision, government agency, municipality, industry, partnership,
- 21 copartnership, association, firm, trust, estate, or any other entity whatsoever;
- 22 (11) "remote" means not accessible by road;
- 23 (12) "underground facility" means a pipe, sewer, conduit, cable, valve,
- 24 line, or wire, including attachments and those parts of poles or anchors that are below
- 25 ground, for use in connection with the storage or conveyance of water, sewage,
- 26 telecommunications, cable television, electricity, petroleum, petroleum products,
- 27 hazardous liquids, or flammable, toxic, or corrosive gas;
- 28 (13) "unstaffed" means not normally staffed with employees;
- 29 (14) "utility" has the meaning given in AS 42.05.990;
- 30 (15) "working day" means a day on which an underground facility
- 31 operator is open for regular business.