

**CS FOR SENATE BILL NO. 330(L&C)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE SENATE LABOR AND COMMERCE COMMITTEE**

**Offered: 2/23/98**  
**Referred: Resources**

**Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE**

**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 and shall provide on-site assistance until the  
20 facility is located or until the excavator no longer needs assistance in locating that  
21 facility.

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

30 (d) Except for an underground facility in a remote, unstaffed, or inaccessible  
31 location, an underground facility operator shall respond to a request to locate promptly.

1 A response is considered to be prompt if it is made within two working days after the  
2 operator receives the request or at a later time so long as the response occurs before  
3 the beginning of the excavation. For an underground facility in an accessible remote  
4 or unstaffed location, the operator shall respond within 10 working days after the  
5 operator receives the request or at a later time so long as the response occurs before  
6 the beginning of excavation.

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

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

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

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

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

28 **Sec. 42.30.420. Responsibility of construction project owners.** The owner  
29 of a construction project that will require excavation shall indicate in bid documents  
30 or contracts for construction the existence of underground facilities that the project  
31 owner knows are located inside of the proposed area of excavation. This requirement

1 does not release the excavator from the excavator's responsibility under AS 42.30.400  
2 - 42.30.490.

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

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

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

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

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

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

25 **Sec. 42.30.440. Penalties.** (a) A person who violates a provision of  
26 AS 42.30.400 - 42.30.490 is subject to a civil penalty of not less than \$50 nor more  
27 than \$1,000 for each offense if the violation results in or significantly contributes to  
28 damage to an underground facility.

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

1 operator.

2 (c) An excavator is liable to the operator of an underground facility for three  
3 times the operator's cost in repairing and relocating the facility if the excavator

4 (1) knowingly or intentionally damages a field marked underground  
5 facility; or

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

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

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

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

22 (1) "damage" means

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

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

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

30 (2) "emergency" means

31 (A) a condition that constitutes a clear and present danger to

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

- 1 (15) "working day" means a day on which an underground facility  
2 operator is open for regular business.