

CS FOR SENATE BILL NO. 330(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 4/7/98
Referred: Rules

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

1 in a remote, unstaffed, or inaccessible location, the excavator shall notify an
2 underground facility operator who may have a facility in the area of a proposed
3 excavation at least two but not more than 15 working days before the date scheduled
4 for beginning the excavation. In the case of a request to locate in a remote or
5 unstaffed location, the excavator shall notify the operator at least 10 but not more than
6 20 working days before the scheduled date for beginning excavation.

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

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

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

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

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

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

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

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

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

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

31 **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; liability.**

7 (a) An excavator shall use reasonable care to avoid damaging an underground facility.
 8 The 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) If an underground facility is damaged by failure to fulfill an obligation
 17 under AS 42.30.400 - 42.30.490, the party failing to perform the obligation is liable
 18 to the other party for damages resulting from the failure to perform. Damages may
 19 include

20 (1) costs incurred by an excavator if an operator has not field marked
 21 or has inaccurately field marked an underground facility; and

22 (2) the normal overhead charges that can be allocated to having to
 23 respond to the party's failure to perform.

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

31 **Sec. 42.30.440. Penalties; civil actions.** (a) A person who violates a

1 provision of AS 42.30.400 - 42.30.490 is subject to a civil penalty of not less than \$50
 2 nor more than \$1,000 for each offense if the violation results in or significantly
 3 contributes to damage to an underground facility.

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

8 (c) An excavator is liable to the operator of an underground facility for the
 9 operator's cost in repairing and relocating the facility if the excavator

10 (1) intentionally damages a field marked underground facility; or

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

15 **Sec. 42.30.450. Waiver of requirements by written agreement.** An operator
 16 and an excavator may, by written agreement, waive the requirements of AS 42.30.400
 17 - 42.30.490 that the excavator notify the operator of planned excavations and that the
 18 operator locate underground facilities. The agreement must identify the geographic
 19 areas to which the waiver applies and the time period for which the waiver is valid.

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

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

27 (1) "damage" means

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

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

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

4 (2) "emergency" means

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

7 (B) an unplanned service interruption;

8 (3) "excavation" means

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

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

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

15 (4) "excavator" means a person who conducts excavation in the state;

16 (5) "inaccessible" means impossible or unreasonably difficult to reach
17 due to conditions beyond the control of the underground facility operator;

18 (6) "intentionally" has the meaning given in AS 11.81.900(a);

19 (7) "notification center" or "center" means a service through which a
20 person is able to call one number to notify member operators of underground facilities
21 that an excavation is proposed and to request the operators to mark facilities located
22 inside of the proposed excavation area;

23 (8) "operator" means a person who supplies a service for commercial
24 or public use by means of an underground facility;

25 (9) "person" means any individual, public or private corporation,
26 political subdivision, government agency, municipality, industry, partnership,
27 copartnership, association, firm, trust, estate, or any other entity whatsoever;

28 (10) "remote" means not accessible by road;

29 (11) "underground facility" means a pipe, sewer, conduit, cable, valve,
30 line, or wire, including attachments and those parts of poles or anchors that are below
31 ground, for use in connection with the storage or conveyance of water, sewage,

1 telecommunications, cable television, electricity, petroleum, petroleum products,
2 hazardous liquids, or flammable, toxic, or corrosive gas;

3 (12) "unstaffed" means not normally staffed with employees;

4 (13) "working day" means a day on which an underground facility
5 operator is open for regular business.