

HOUSE BILL NO. HB0152

Wyoming Underground Facilities Notification Act-amendments.

Sponsored by: Representative(s) Laursen, Blackburn, Blake, Hallinan, Lindholm, Miller, Pelkey, Simpson, Styvar and Zwonitzer and Senator(s) Bebout, Case, Gierau, Landen and Perkins

A BILL

for

1 AN ACT relating to underground public utility facilities;
 2 modifying requirements for architectural and engineering
 3 plans that call for excavation; requiring premarking of an
 4 area or path of excavation as specified; requiring emergency
 5 services for contact with or damage to underground facilities
 6 as specified; providing exemptions from notice requirements
 7 as specified; modifying penalties; providing for definitions;
 8 requiring reports; and providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 37-12-307 is created to read:

13

1 **37-12-307. Architectural or engineering design**
2 **drawings notice.**

3
4 (a) Any person preparing or designing architectural or
5 engineering design drawings that call for excavation shall
6 make reasonable efforts to determine at no expense to the
7 operator the nature, location, and depth if known, of
8 underground facilities. If the location of an operator's
9 underground facilities within the proposed excavation area
10 are restricted as classified by the federal or state
11 government, a contacted operator shall disclose to the person
12 the potential presence of the underground facilities in the
13 proposed excavation area and any known disclosable
14 information about the nature and location of the underground
15 facilities, as well as the contact information, if known, of
16 the federal or state government official who may be able to
17 provide further information. Any person preparing or
18 designing architectural or engineering design drawings that
19 call for excavation shall make the information and location
20 under this subsection a part of the plan by which the
21 excavators operate.

22

1 (b) Any person preparing or designing architectural or
2 engineering design drawings that call for excavation for a
3 government entity in a public right-of-way with a project
4 cost greater than seven hundred fifty thousand dollars
5 (\$750,000.00) may schedule one (1) or more predesign
6 meetings. The person shall notify the notification center at
7 least thirty (30) calendar days before the first predesign
8 meeting and provide the person's contact information, the
9 name of the government entity, the scheduled predesign
10 meeting dates, the location of the proposed excavation area
11 and the project's scope of work. The notification center
12 shall provide this information to operators with underground
13 facilities in the proposed excavation area. Any operator or
14 the operator's agent receiving notice pursuant to this
15 subsection shall do any one (1) of the following:

16

17 (i) Attend the predesign meeting and provide
18 information on the location of the operator's underground
19 facilities within the proposed excavation area;

20

21 (ii) Notify the person that the operator has
22 already or will, within fourteen (14) business days of receipt
23 of the notice, mark the location of the operator's underground

1 facilities within the proposed excavation area in accordance
2 with the standards set forth in W.S. 37-12-302(d);

3

4 (iii) Contact the person for conceptual drawings
5 and then mark the location of the operator's underground
6 facilities on the drawings. The operator shall return the
7 marked drawings to the person within thirty (30) calendar
8 days of receipt of the drawings.

9

10 **Section 2.** W.S. 37-12-301(b) by creating new paragraphs
11 (xii) through (xiv) and by amending and renumbering (xii) as
12 (xv), 37-12-302(b), (c)(intro), (g), (h) and by creating a
13 new subsection (m), 37-12-304(b) by creating new paragraphs
14 (x) and (xi), 37-12-305 by creating a new subsection (h) and
15 37-12-306(g)(i), (iii)(intro) and (iv), (h)(i) through (iii)
16 and (iv)(intro) and by creating a new subsection (j) are
17 amended to read:

18

19 **37-12-301. Short title; definitions.**

20

21 (b) As used in this act:

22

1 (xii) "Government entity" means any agency,
2 department, board, commission, authority, institution or
3 instrumentality of the state and any county, municipality or
4 other political subdivision of the state;

5
6 (xiii) "Public right-of-way" means any public
7 street, road, highway or sidewalk;

8
9 (xiv) "Soft digging" means any excavation using
10 tools or equipment that utilize air or water pressure as the
11 direct means to break up soil or earth for removal by vacuum
12 excavation;

13
14 ~~(xii)~~(xv) "This act" means W.S. 37-12-301 through
15 ~~37-12-306~~37-12-307.

16
17 **37-12-302. Notice of excavation by excavator;**
18 **information to be supplied upon notice; exceptions; penalty.**

19
20 (b) Any person ~~requiring~~preparing or designing
21 architectural or engineering design drawings that call for
22 excavation shall ~~obtain information from operators, as to the~~
23 ~~nature, location, and depth if known, of underground~~

1 ~~facilities. If the information is not available, the person~~
2 ~~requiring or designing architectural or engineering drawings~~
3 ~~that call for excavation shall determine at their expense the~~
4 ~~nature and location of the underground facilities. The person~~
5 ~~requiring or designing architectural or engineering drawings~~
6 ~~that call for excavation shall make the information and~~
7 ~~location a part of the plan by which the excavators operate~~
8 comply with W.S. 37-12-307.

9
10 (c) Except as hereafter provided, no excavator shall
11 make or begin excavation without first notifying the
12 notification center of the proposed excavation. Notice shall
13 be given by telephone, e-mail, fax or other electronic medium
14 approved by the notification center at least two (2) full
15 business days, but not more than fourteen (14) business days
16 prior to any excavation to the notification center pursuant
17 to W.S. 37-12-304. ~~Unless the location marks are still~~
18 ~~visible,~~ If an excavation on a single project lasts more than
19 fourteen (14) business days, the excavator shall give notice
20 at least once each succeeding fourteen (14) business day
21 period. Notice to the notification center is notice to each
22 member thereof in the area. Notification of the following

1 information to the notification center shall be required and
2 shall include the following:

3

4 (g) Compliance with this section does not excuse an
5 excavator from exercising reasonable care in complying with
6 this act nor does compliance with this section excuse an
7 excavator from liability for damage or injury for failure to
8 so act. When excavating, reasonable care shall require hand
9 digging or soft digging, as necessary, to protect the
10 underground facility.

11

12 (h) When any contact with or damage to any underground
13 facility occurs, the excavator shall first immediately call
14 a 911 emergency reporting system as defined by W.S.
15 16-9-102(a)(iv) and request emergency services if the
16 contacted or damaged underground facility releases gas or a
17 hazardous liquid. In all cases the excavator shall
18 immediately notify the operator of the facility and the
19 notification center, of the location of and extent of damage
20 to the underground facility and shall cooperate with the
21 operator of the damaged underground facility to mitigate the
22 damages incurred to the extent reasonably possible, including
23 the provision of in-kind work where technical or special

1 skills are not required according to the nature of the
2 underground facility. An excavator shall not conceal or
3 attempt to conceal any dislocation, disturbance or damage to
4 an underground facility and shall not repair or attempt to
5 repair the underground facility unless authorized by the
6 operator of the underground facility. Upon notification of
7 damage to an underground facility from an excavator, the
8 operator of the underground facility shall respond to the
9 notification in a manner reasonably appropriate to the
10 circumstances. The operator shall file a report with the
11 notification center describing the response within
12 seventy-two (72) hours of the initial notification. This
13 requirement of notification shall not relieve the excavator
14 and the operator from compliance with any other state or
15 federal notification obligation. In any dispute concerning
16 the liability for damages to any underground facility, the
17 excavator shall bear the burden of proof concerning its use
18 of reasonable care in conducting the excavation.

19

20 (m) Unless an exception in this subsection is
21 applicable, an excavator shall mark the location of the area
22 or path of excavation before the arrival of an operator or
23 agent of an operator to locate their underground facility.

1 The obligations of an operator specified by W.S. 37-12-302(d)
2 shall not apply until an excavator has complied with the
3 requirements of this subsection. Markings may include
4 stakes, flags, marking whiskers, white paint, signage,
5 electronic white lining on digital mapping or any other
6 identifiable marking that clearly marks the location of the
7 area or path of excavation, provided that any marking used
8 cannot be confused with the accepted American National
9 Standards Institute Standard Z535.1 safety color code. An
10 excavator need not premark the location as required by this
11 section if any of the following apply:

12

13 (i) There is only one (1) operator with
14 underground facilities in the proposed excavation area and
15 the operator or the operator's agent can determine the
16 location of the area or path of excavation by street address,
17 lot number, global positioning system, latitude and longitude
18 coordinates, mapping or other method agreed to by the
19 excavator and operator;

20

21 (ii) The excavator and operator had a meeting at
22 the proposed excavation area before beginning the proposed
23 excavation and exchanged the information on the location of

1 the area or path of excavation as specified in paragraph (i)
2 of this subsection;

3
4 (iii) The proposed excavation is of an emergency
5 nature;

6
7 (iv) A different method of locating or defining
8 the area or path of excavation has been agreed to by the
9 excavator and all operators within the proposed excavation
10 area.

11
12 **37-12-304. Notification centers; formation; duties.**

13
14 (b) The notification center shall:

15
16 (x) Upon request, provide to any person preparing
17 or designing architectural or engineering design drawings
18 that call for excavation the names and contact information of
19 operators of underground facilities within the proposed
20 excavation area;

21
22 (xi) Provide a monthly report to the Wyoming
23 attorney general on recent complaints alleging noncompliance

1 with this act, including the contact information of any person
2 or entity alleged to be in noncompliance with this act.

3

4 **37-12-305. Exemptions.**

5

6 (h) The following routine maintenance activities in a
7 government entity's public right-of-way are exempt from the
8 provisions of this act:

9

10 (i) Snowplowing;

11

12 (ii) Adding of granular material to unpaved roads
13 and road shoulders;

14

15 (iii) Removal and application of patches to the
16 surface of pavement;

17

18 (iv) Cleaning and sealing of road or pavement
19 cracks or joints.

20

21 **37-12-306. Civil penalties; applicability.**

22

23 (g) With respect to operators:

1

2 (i) Every operator in Wyoming shall join and
3 participate in the notification center pursuant to W.S.
4 37-12-304(a). Any operator who does not join or participate
5 in the notification center shall be liable for a fine of ~~five~~
6 ~~hundred dollars (\$500.00)~~ five thousand dollars (\$5,000.00)
7 each year it is not in compliance with this subsection;

8

9 (iii) If any underground facility is damaged as a
10 result of the operator's failure to comply with W.S.
11 37-12-304(a), the operator's failure to mark the location of
12 its underground facilities within the time period specified
13 in W.S. 37-12-302(d) unless the failure is due to
14 circumstances beyond the operator's control or the operator's
15 failure to use reasonable care in the marking of the damaged
16 underground facility, the operator shall be liable for:

17

18 (iv) If an operator, after receipt of a notice
19 from an excavator or notification center pursuant to W.S.
20 37-12-302(c), fails to mark the location of its underground
21 facilities within the time period specified in W.S.
22 37-12-302(d), and unless the failure resulted from
23 circumstances beyond the operator's control, the ~~court~~

1 operator shall ~~impose upon the operator~~ be liable for a civil
2 penalty of up to ~~five hundred dollars (\$500.00)~~ for each
3 ~~violation. For purposes of this paragraph, each day of delay~~
4 ~~in marking underground facilities shall be a separate~~
5 ~~violation~~ five thousand dollars (\$5,000.00).

6

7 (h) With respect to excavators:

8

9 (i) Every excavator shall notify the notification
10 center pursuant to W.S. 37-12-302(c) prior to commencing any
11 excavation activity. Any excavator who fails to notify the
12 notification center pursuant to W.S. 37-12-302(c) shall be
13 liable for a civil penalty in the amount of ~~five hundred~~
14 ~~dollars (\$500.00)~~ five thousand dollars (\$5,000.00);

15

16 (ii) If an excavator fails to comply with W.S.
17 37-12-302(c), (g) or (h) and damages an underground facility
18 during excavation, the excavator shall be liable for a civil
19 penalty up to the amount of five thousand dollars (\$5,000.00)
20 for the first offense and up to twenty-five thousand dollars
21 (\$25,000.00) for a second offense within a twelve (12) month
22 period after the date of the first offense. If an excavator
23 fails to comply with W.S. 37-12-302(c), (g) or (h) on more

1 than two (2) separate occasions within a twelve (12) month
2 period from the date of the first failure to comply with ~~W.S.~~
3 ~~37-12-302(e)~~ the appropriate subsection, then the civil
4 penalty shall be up to seventy-five thousand dollars
5 (\$75,000.00). Upon a first offense, the excavator may be
6 required to complete an excavation safety training program
7 with the notification center;

8

9 (iii) If an excavator requests a facilities locate
10 on an expedited basis (less than two (2) full business days)
11 for an emergency excavation and the excavation at issue was
12 not an emergency and did not require a locate on an expedited
13 basis, the excavator shall be liable for a civil penalty of
14 up to ~~five hundred dollars (\$500.00)~~ five thousand dollars
15 (\$5,000.00) for each false emergency locate incident;

16

17 (iv) If an excavator fails to comply with W.S.
18 37-12-302(c), (g) or (h) and damages an underground facility
19 during an excavation, or fails to exercise reasonable care in
20 excavating and damages a located underground facility during
21 an excavation, the excavator shall be liable for:

22

1 (j) Any provision of an agreement or release that
2 requires an excavator or an operator who has suffered damage
3 or loss due to a violation of this act to indemnify the
4 violator for penalties is unenforceable with respect to any
5 obligation to indemnify the violator for the penalties.

6

7 **Section 3.** This act is effective July 1, 2019.

8

9

(END)