

ENROLLED ACT NO. 42, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2019 GENERAL SESSION

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

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

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

37-12-307. Architectural or engineering design drawings notice.

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

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

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

(ii) Notify the person that the operator has already or will, within fourteen (14) business days of receipt of the notice, mark the location of the operator's underground facilities within the proposed excavation area in accordance with the standards set forth in W.S. 37-12-302(d);

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

Section 2. W.S. 37-12-301(b) by creating new paragraphs (xii) through (xiv) and by amending and renumbering (xii) as (xv), 37-12-302(b), (c)(intro), (g), (h) and by creating a

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new subsection (m), 37-12-304(b) by creating new paragraphs (x) and (xi), 37-12-305 by creating a new subsection (h) and 37-12-306(g)(i), (iii)(intro) and (iv), (h)(i) through (iii) and (iv)(intro) and by creating a new subsection (j) are amended to read:

37-12-301. Short title; definitions.

(b) As used in this act:

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

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

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

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

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

(b) Any person ~~requiring~~ preparing or designing architectural or engineering design drawings that call for excavation shall ~~obtain information from operators, as to the nature, location, and depth if known, of underground facilities. If the information is not available, the person requiring or designing architectural or engineering drawings~~

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~~that call for excavation shall determine at their expense the nature and location of the underground facilities. The person requiring or designing architectural or engineering drawings that call for excavation shall make the information and location a part of the plan by which the excavators operate~~
comply with W.S. 37-12-307.

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

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

(h) When any contact with or damage to any underground facility occurs, the excavator shall first immediately call a 911 emergency reporting system as defined by W.S. 16-9-102(a)(iv) and request emergency services if the

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contacted or damaged underground facility releases gas or a hazardous liquid. In all cases the excavator shall immediately notify the operator of the facility and the notification center, of the location of and extent of damage to the underground facility and shall cooperate with the operator of the damaged underground facility to mitigate the damages incurred to the extent reasonably possible, including the provision of in-kind work where technical or special skills are not required according to the nature of the underground facility. An excavator shall not conceal or attempt to conceal any dislocation, disturbance or damage to an underground facility and shall not repair or attempt to repair the underground facility unless authorized by the operator of the underground facility. Upon notification of damage to an underground facility from an excavator, the operator of the underground facility shall respond to the notification in a manner reasonably appropriate to the circumstances. The operator shall file a report with the notification center describing the response within seventy-two (72) hours of the initial notification. This requirement of notification shall not relieve the excavator and the operator from compliance with any other state or federal notification obligation. In any dispute concerning the liability for damages to any underground facility, the excavator shall bear the burden of proof concerning its use of reasonable care in conducting the excavation.

(m) Unless an exception in this subsection is applicable, an excavator shall mark the location of the area or path of excavation before the arrival of an operator or agent of an operator to locate their underground facility. The obligations of an operator specified by W.S. 37-12-302(d) shall not apply until an excavator has complied with the requirements of this subsection. Markings may include stakes, flags, marking whiskers, white paint, signage,

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electronic white lining on digital mapping or any other identifiable marking that clearly marks the location of the area or path of excavation, provided that any marking used cannot be confused with the accepted American National Standards Institute Standard Z535.1 safety color code. An excavator need not premark the location as required by this section if any of the following apply:

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

(ii) The excavator and operator had a meeting at the proposed excavation area before beginning the proposed excavation and exchanged the information on the location of the area or path of excavation as specified in paragraph (i) of this subsection;

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

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

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

(b) The notification center shall:

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

(xi) Provide a monthly report to the Wyoming attorney general on recent complaints alleging noncompliance with this act, including the contact information of any person or entity alleged to be in noncompliance with this act.

37-12-305. Exemptions.

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

(i) Snowplowing;

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

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

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

37-12-306. Civil penalties; applicability.

(g) With respect to operators:

(i) Every operator in Wyoming shall join and participate in the notification center pursuant to W.S. 37-12-304(a). Any operator who does not join or participate

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in the notification center shall be liable for a fine of ~~five hundred dollars (\$500.00)~~ five thousand dollars (\$5,000.00) each year it is not in compliance with this subsection;

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

(iv) If an operator, after receipt of a notice from an excavator or notification center pursuant to W.S. 37-12-302(c), fails to mark the location of its underground facilities within the time period specified in W.S. 37-12-302(d), and unless the failure resulted from circumstances beyond the operator's control, the ~~court operator~~ shall ~~impose upon the operator~~ be liable for a civil penalty of up to ~~five hundred dollars (\$500.00)~~ for each violation. For purposes of this paragraph, each day of delay in marking underground facilities shall be a separate violation five thousand dollars (\$5,000.00).

(h) With respect to excavators:

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

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(ii) If an excavator fails to comply with W.S. 37-12-302(c), (g) or (h) and damages an underground facility during excavation, the excavator shall be liable for a civil penalty up to the amount of five thousand dollars (\$5,000.00) for the first offense and up to twenty-five thousand dollars (\$25,000.00) for a second offense within a twelve (12) month period after the date of the first offense. If an excavator fails to comply with W.S. 37-12-302(c), (g) or (h) on more than two (2) separate occasions within a twelve (12) month period from the date of the first failure to comply with ~~W.S. 37-12-302(e)~~ the appropriate subsection, then the civil penalty shall be up to seventy-five thousand dollars (\$75,000.00). Upon a first offense, the excavator may be required to complete an excavation safety training program with the notification center;

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

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

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

ORIGINAL HOUSE
BILL NO. HB0152

ENGROSSED

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk