

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.

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

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

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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 potential location of the
15 underground facilities. Any person preparing or designing
16 architectural or engineering design drawings that call for
17 excavation shall make the information and location under this
18 subsection a part of the plan by which the excavators operate.

19
20 (b) Any person preparing or designing architectural or
21 engineering design drawings that call for excavation for a
22 government entity in a public right-of-way with a project
23 cost greater than seven hundred fifty thousand dollars

1 (\$750,000.00) may schedule one (1) or more predesign
2 meetings. The person shall notify the notification center at
3 least thirty (30) calendar days before the first predesign
4 meeting and provide the person's contact information, the
5 name of the government entity, the scheduled predesign
6 meeting dates, the location of the proposed excavation area
7 and the project's scope of work. The notification center
8 shall provide this information to operators with underground
9 facilities in the proposed excavation area. Any operator or
10 the operator's agent receiving notice pursuant to this
11 subsection shall do any one (1) of the following:

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

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

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

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

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16 **37-12-301. Short title; definitions.**

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18 (b) As used in this act:

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

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

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(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;

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

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

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(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 that call for excavation shall determine at their expense the nature and location of the underground facilities. The person~~

1 ~~requiring or designing architectural or engineering drawings~~
2 ~~that call for excavation shall make the information and~~
3 ~~location a part of the plan by which the excavators operate~~
4 comply with W.S. 37-12-307.

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

21
22 (g) Compliance with this section does not excuse an
23 excavator from exercising reasonable care in complying with

1 this act nor does compliance with this section excuse an
2 excavator from liability for damage or injury for failure to
3 so act. When excavating, reasonable care shall require hand
4 digging or soft digging, as necessary, to protect the
5 underground facility.

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7 (h) When any contact with or damage to any underground
8 facility occurs, the excavator shall first immediately call
9 a 911 emergency reporting system as defined by W.S.
10 16-9-102(a)(iv) and request emergency services if the
11 contacted or damaged underground facility releases gas or a
12 hazardous liquid. In all cases the excavator shall
13 immediately notify the operator of the facility and the
14 notification center, of the location of and extent of damage
15 to the underground facility and shall cooperate with the
16 operator of the damaged underground facility to mitigate the
17 damages incurred to the extent reasonably possible, including
18 the provision of in-kind work where technical or special
19 skills are not required according to the nature of the
20 underground facility. An excavator shall not conceal or
21 attempt to conceal any dislocation, disturbance or damage to
22 an underground facility and shall not repair or attempt to
23 repair the underground facility unless authorized by the

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

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15 (m) Except as otherwise specified in this subsection,
16 before contacting the notification center for a locate, an
17 excavator shall premark the location of the area or path of
18 excavation. Markings may include stakes, flags, marking
19 whiskers, white paint, signage, electronic white lining on
20 digital mapping or any other identifiable marking that
21 clearly marks the location of the area or path of excavation,
22 provided that any marking used cannot be confused with the
23 accepted American National Standards Institute Standard

1 Z535.1 safety color code. An excavator need not premark the
2 location as required by this section if any of the following
3 apply:

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

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

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

21
22 (iv) A different method of locating or defining
23 the area or path of excavation has been agreed to by the

1 excavator and all operators within the proposed excavation
2 area.

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4 **37-12-304. Notification centers; formation; duties.**

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6 (b) The notification center shall:

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

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

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19 **37-12-305. Exemptions.**

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

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(i) Snowplowing;

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

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

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

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37-12-306. Civil penalties; applicability.

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(g) With respect to operators:

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(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 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;

23

1 (iii) If any underground facility is damaged as a
2 result of the operator's failure to comply with W.S.
3 37-12-304(a), the operator's failure to mark the location of
4 its underground facilities within the time period specified
5 in W.S. 37-12-302(d) unless the failure is due to
6 circumstances beyond the operator's control or the operator's
7 failure to use reasonable care in the marking of the damaged
8 underground facility, the operator shall be liable for:
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10 (iv) If an operator, after receipt of a notice
11 from an excavator or notification center pursuant to W.S.
12 37-12-302(c), fails to mark the location of its underground
13 facilities within the time period specified in W.S.
14 37-12-302(d), and unless the failure resulted from
15 circumstances beyond the operator's control, the ~~court~~
16 ~~operator~~ shall ~~impose upon the operator~~ be liable for a civil
17 penalty of up to ~~five hundred dollars (\$500.00) for each~~
18 ~~violation. For purposes of this paragraph, each day of delay~~
19 ~~in marking underground facilities shall be a separate~~
20 ~~violation~~ five thousand dollars (\$5,000.00).
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22 (h) With respect to excavators:
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1 (i) Every excavator shall notify the notification
2 center pursuant to W.S. 37-12-302(c) prior to commencing any
3 excavation activity. Any excavator who fails to notify the
4 notification center pursuant to W.S. 37-12-302(c) shall be
5 liable for a civil penalty in the amount of ~~five hundred~~
6 ~~dollars (\$500.00)~~ five thousand dollars (\$5,000.00);

7
8 (ii) If an excavator fails to comply with W.S.
9 37-12-302(c), (g) or (h) and damages an underground facility
10 during excavation, the excavator shall be liable for a civil
11 penalty up to the amount of five thousand dollars (\$5,000.00)
12 for the first offense and up to twenty-five thousand dollars
13 (\$25,000.00) for a second offense within a twelve (12) month
14 period after the date of the first offense. If an excavator
15 fails to comply with W.S. 37-12-302(c), (g) or (h) on more
16 than two (2) separate occasions within a twelve (12) month
17 period from the date of the first failure to comply with ~~W.S.~~
18 ~~37-12-302(e)~~ the appropriate subsection, then the civil
19 penalty shall be up to seventy-five thousand dollars
20 (\$75,000.00). Upon a first offense, the excavator may be
21 required to complete an excavation safety training program
22 with the notification center;

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