

LEGISLATIVE BILL 421

Approved by the Governor February 15, 1994

Introduced by Transportation Committee: Kristensen, 37, Chairperson;
Byars, 30; Day, 19; Fisher, 35; Horgan, 4; Pedersen, 39;
Pirsch, 10; Schmitt, 41

AN ACT relating to utility service; to amend section 86-334, Reissue Revised Statutes of Nebraska, 1943; to adopt the One-Call Notification System Act; to change a notification requirement relating to road projects; to provide penalties; to provide operative dates; to repeal the original section; and to declare an emergency.
Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 30 of this act shall be known and may be cited as the One-Call Notification System Act.

Sec. 2. (1) It is the intent of the Legislature to establish a means by which excavators may notify operators of underground facilities in an excavation area so that operators have the opportunity to identify and locate the underground facilities prior to excavation and so that the excavators may then observe proper precautions to safeguard the underground facilities from damage.

(2) It is the purpose of the One-Call Notification System Act to aid the public by preventing injury to persons and damage to property and the interruption of utility services resulting from accidents caused by damage to underground facilities.

Sec. 3. For purposes of the One-Call Notification System Act, the definitions found in sections 4 to 17 of this act shall be used.

Sec. 4. Business day shall mean any day other than a Saturday, Sunday, or state or nationally observed legal holiday.

Sec. 5. Center shall mean the statewide one-call notification center.

Sec. 6. Damage shall mean any impact with, partial or complete severance, destruction, impairment, or penetration of, or removal or weakening of support from an underground facility, including its protective coating, housing, or other protective device.

Sec. 7. Emergency condition shall mean any condition which constitutes a clear and present danger to life, health, or property or which demands immediate action to prevent or repair a major service outage.

Sec. 8. Excavation shall mean any activity in which earth, rock, or other material in or on the ground is moved or otherwise displaced by means of tools, equipment, or explosives and shall include grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing or driving but shall not include (1) normal maintenance of roads if the maintenance does not change the original road grade and does not involve the road ditch, (2) tilling of soil and gardening for seeding and other agricultural purposes, (3) digging of graves or in landfills in planned locations, (4) maintenance or rebuilding of railroad track or facilities located on a railroad right-of-way by the railroad company or its contractors when such maintenance or rebuilding does not change the track grade, or (5) hand digging around the base of a pole for pole inspection as part of routine maintenance or replacement of a pole when the replacement pole is similarly sized and is installed in the existing hole.

Sec. 9. Excavator shall mean a person who engages in excavation in this state.

Sec. 10. Gas or hazardous liquid underground pipeline facility shall mean any underground facility used or intended for use in the transportation of gas or the treatment of gas or used or intended for use in the transportation of hazardous liquids including petroleum or petroleum products.

Sec. 11. Nonpermanent surface shall mean any ground consisting of uncovered dirt or rock or ground that is covered by grass or other plant life, crushed rock, gravel, or other similar natural substance.

Sec. 12. Normal working hours shall mean the hours of 7 a.m. to 5 p.m. on a business day in each time zone in the state.

Sec. 13. Operator shall mean a person who manages or controls the functions of an underground facility but shall not include a person who is an owner or tenant of real property where underground facilities are located if the underground facilities are used exclusively to furnish services or commodities on the real property.

Sec. 14. Permanent surface shall mean any ground that is covered by a hard, artificial, weatherproof material such as concrete, asphalt, or other similar artificial substance.

Sec. 15. Person shall mean an individual, partnership, limited liability company, association, municipality, state, county, political subdivision, utility, joint venture, or corporation and shall include the employer of an individual.

Sec. 16. Statewide one-call notification center shall mean the association certified by the State Fire Marshal, operating on a nonprofit basis, supported by its members, and having as its principal purpose the statewide receipt and dissemination to participating operators of information on a fair and uniform basis concerning intended excavation in an area where the operators have underground facilities.

Sec. 17. Underground facility shall mean any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic communications, telephonic communications, telegraphic communications, cable television, electric energy, oil, gas, hazardous liquids, or other substances, including pipes, trunk lines, fiber optic cables, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such personal property.

Sec. 18. Operators of underground facilities shall become members of and participate in the statewide one-call notification center.

Sec. 19. The center shall be governed by a board of directors who shall establish the operating procedures and the technology needed for the center pursuant to rules and regulations adopted and promulgated by the State Fire Marshal. The rules and regulations adopted and promulgated by the State Fire Marshal shall provide for the qualifications, appointment, retention, and composition of the board of directors. The board of directors shall also establish a competitive bidding procedure to select a vendor to provide the notification service, establish a procedure by which members of the center share the costs of the center on a fair, reasonable, and nondiscriminatory basis, and do all other things necessary to implement the purpose of the center. Any agreement between the center and a vendor for the notification service may be modified from time to time by the board of directors, and any agreement shall be reviewed by the board of directors at least once every three years, with an opportunity to receive new bids if desired by the board of directors.

Sec. 20. Every operator shall furnish the vendor selected by the board of directors with information concerning the location of its underground facilities. Every operator having underground facilities in existence in this state on the operative date of this section shall furnish such information to the vendor by April 3, 1995. The vendor shall have the center operational on October 2, 1995. The center shall be certified by the State Fire Marshal, and the certification shall be reviewed every two years to ensure continued compliance with federal law.

Sec. 21. (1) A person shall not commence any excavation without first giving notice to every operator. An excavator's notice to the center shall be deemed notice to all operators. An excavator's notice to operators shall be ineffective for purposes of this subsection unless given to the center. Notice to the center shall be given at least two full business days, but no more than ten business days, before commencing the excavation, except notice may be given more than ten business days in advance when the excavation is a road construction, widening, repair, or grading project provided for in section 86-334. An excavator may commence work before the elapse of two full business days when (a) notice to the center has been given as provided by this subsection and (b) all the affected operators have notified the excavator that the location of all the affected operator's underground facilities have been marked or that the operators have no underground facilities in the location of the proposed excavation.

(2) The notice required pursuant to subsection (1) of this section shall include (a) the name and telephone number of the person making the notification, (b) the name, address, and telephone number of the excavator, (c) the location of the area of the proposed excavation, including the range, township, section, and quarter section, unless the area is within the corporate limits of a city or village, in which case the location may be by street address, (d) the date and time excavation is scheduled to commence, (e) the depth of excavation, (f) the type and extent of excavation being planned, including whether the excavation involves tunneling or horizontal boring, and (g) whether the use of explosives is anticipated.

Sec. 22. An excavator shall serve notice of intent to excavate upon the center by calling the center's toll-free telephone number. The center shall inform the excavator of all operators to whom such notice will be

transmitted and shall promptly transmit such notice to every operator having an underground facility in the area of intended excavation. The center shall assign an identification number to each notice received.

Sec. 23. (1) Upon receipt of the information contained in the notice pursuant to section 21 of this act, an operator shall advise the excavator of the approximate location of underground facilities in the area of the proposed excavation by marking or identifying the location of the underground facilities with stakes, flags, paint, or any other clearly identifiable marking or reference point. The location of the underground facility given by the operator shall be within a strip of land eighteen inches on either side of the marking or identification plus one-half of the width of the underground facility. If in the opinion of the operator the precise location of a facility cannot be determined and marked as required, the operator shall provide all pertinent information and field locating assistance to the excavator at a mutually agreed to time. The location shall be marked or identified using color standards prescribed by the center. The operator shall respond no later than two business days after receipt of the information in the notice or at a time mutually agreed to by the parties.

(2) The marking or identification shall be done in a manner that will last for a minimum of five business days on any nonpermanent surface and a minimum of ten business days on any permanent surface. If the excavation will continue for longer than five business days, the operator shall remark or reidentify the location of the underground facility upon the request of the excavator. The request for remarking or reidentification shall be made through the center.

(3) An operator who determines that it does not have any underground facility located in the area of the proposed excavation shall notify the excavator of the determination prior to the date of commencement of the excavation.

Sec. 24. An excavator who fails to give notice of an excavation pursuant to section 21 of this act and who damages an underground facility by such excavation shall be strictly liable to the operator of the underground facility for the cost of all repairs to the underground facility. An excavator who gives the notice and who damages an underground facility shall be liable to the operator for the cost of all repairs to the underground facility unless the damage to the underground facility was due to the operator's failure to comply with section 23 of this act. An excavator who fails to give notice of an excavation pursuant to section 21 of this act and who damages an underground facility that is operated by the excavator shall not be in violation of the One-Call Notification System Act.

In addition to any liability provided in this section an operator of a damaged underground facility shall be entitled to any other remedies available at law or in equity provided by statute or otherwise.

Sec. 25. Any person who violates the provisions of section 20, 21, 22, 23, 26, or 30 of this act shall be subject to a civil penalty as follows:

(1) For a violation related to a gas or hazardous liquid underground pipeline facility, an amount not to exceed ten thousand dollars for each violation for each day the violation persists, up to a maximum of five hundred thousand dollars; and

(2) For a violation related to any other underground facility, an amount not to exceed five hundred dollars for each day the violation persists, up to a maximum of five thousand dollars.

An action to recover a civil penalty shall be brought by the Attorney General or a prosecuting attorney on behalf of the State of Nebraska in any court of competent jurisdiction of this state. The trial shall be before the court, which shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the absence or existence of prior violations, whether the violation was a willful act, any good faith attempt to achieve compliance, and such other matters as justice may require in determining the amount of penalty imposed. All penalties shall be handled and distributed pursuant to Article VII, section 5, of the Constitution of Nebraska.

Sec. 26. If any underground facility is damaged, dislocated, or disturbed before or during excavation, the excavator shall immediately notify the center. An excavator shall not conceal or attempt to conceal damage, dislocation, or disturbance of an underground facility and shall not repair or attempt to repair the underground facility unless authorized by the operator of the underground facility.

Sec. 27. If in the course of excavation the excavator discovers that the operator has incorrectly located the underground facility, he or she shall notify the center as soon as practical but no later than seventy-two

hours after discovery.

Sec. 28. The One-Call Notification System Act shall not affect or impair any local ordinances or other provisions of law requiring permits to be obtained before an excavation. A permit issued by a governing body shall not relieve an excavator from complying with the requirements of the act. No claim shall be maintained under the One-Call Notification System Act against a political subdivision or its officers, agents or employees except to the extent, and only to the extent, provided by the Political Subdivisions Tort Claims Act.

Sec. 29. Sections 21 and 23 of this act shall not apply to an excavation made under an emergency condition if all reasonable precautions are taken to protect the underground facilities. If an emergency condition exists, the excavator shall give notification in substantial compliance with section 21 of this act as soon as practical. Upon being notified that an emergency condition exists, each operator shall provide all reasonably available location information to the excavator as soon as possible. If the emergency condition has arisen through no fault of the excavator, sections 24 and 25 of this act shall not apply and the excavator shall be liable for damage to any underground facility located in the area if the damage occurs because of the negligent acts or omissions of the excavator.

Sec. 30. The center shall:

(1) Maintain adequate records documenting compliance with the requirements of the One-Call Notification System Act, including records of all telephone calls and records of all location requests for the preceding five years which will be made available and printed upon request of an operator or excavator;

(2) Provide the notification service during normal working hours at a minimum; and

(3) Provide procedures for emergency notification for calls received at other than normal working hours.

Sec. 31. That section 86-334, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

86-334. Whenever any county or township road construction, widening, repair, or grading project will ~~require~~ requires, or can reasonably be expected to require, the performance of any work within six feet of any telephone, electric transmission, or electric distribution line, ~~or~~ or its poles or anchors, notice to the owner of such line, poles, or anchors shall be given by the respective county or township officers in charge of such projects. Such notice shall be given at 7 as follows: (1) At least thirty days prior to the start of any work when, because of road construction, road widening, repair, or grading, or for any other reason, it shall be is necessary to relocate such line, or any of its poles or anchors, 7 and (2) at least fifteen days prior to the start of any work for any project not included in subdivision (1) of this section.

Sec. 32. Sections 21 to 24, 26, 27, 29, 31, and 33 of this act shall become operative on October 2, 1995. The other sections of this act shall become operative on their effective date.

Sec. 33. That original section 86-334, Reissue Revised Statutes of Nebraska, 1943, is repealed.

Sec. 34. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.