

Reprinted

FILED FEB 19 1992

SENATE FILE 2133

BY COMMITTEE ON COMMERCE

Approved by Sec

(SUCCESSOR TO SSB 2082)

Passed Senate, Date 2/20/92 (p 130) Passed House, Date 3/31/92 (P. 962)

Vote: Ayes 42 Nays 9 Vote: Ayes 86 Nays 9

Approved April 21, 1992

A BILL FOR

1 An Act relating to requirements for notice to an underground
2 facility operator by a person planning certain excavation
3 activities near the underground facility, establishing
4 procedures, and providing for civil liability and injunctive
5 relief.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SSB 2133

1 Section 1. Section 480.1, Code 1991, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 480.1 DEFINITIONS.

5 1. "Board" means the board of directors of the
6 notification center.

7 2. "Damage" means any impact with, destruction,
8 impairment, or penetration of, or removal of support from an
9 underground facility, including damage to its protective
10 coating, housing, or device.

11 3. "Emergency" means a condition where there is clear and
12 immediate danger to life or health, or essential services, or
13 a potentially significant loss of property.

14 4. "Excavation" means an operation in which a structure or
15 earth, rock, or other material in or on the ground is moved,
16 removed, or compressed, or otherwise displaced by means of any
17 tools, equipment, or explosives and includes, but is not
18 limited to, grading, trenching, tiling, digging, ditching,
19 drilling, augering, tunneling, scraping, cable or pipe
20 plowing, driving, and demolition of structures.

21 "Excavation" does not include normal farming operations,
22 residential, commercial, or similar gardening, the opening of
23 a grave site in a cemetery, operations in a solid waste
24 disposal site which has planned for underground facilities,
25 and normal road maintenance which does not change the original
26 grade. "Normal road maintenance" does not include maintenance
27 of the ditch.

28 5. "Excavator" means a person proposing to engage or
29 engaging in excavation.

30 6. "Normal farming operations" means plowing, cultivation,
31 planting, harvesting, and similar operations routine to most
32 farms, but excludes using a sub-soiler or ripper, drain tile
33 excavating, terracing, digging for post holes, and similar
34 operations.

35 7. "Notification center" means the statewide notification

1 center established in section 480.3.

2 8. "Operator" means a person owning or operating an
3 underground facility including, but not limited to, public,
4 private, and municipal utilities. An operator does not
5 include a person who owns or otherwise lawfully occupies real
6 property where an underground facility is located only for the
7 use and benefit of the owner or occupant on the property.

8 9. "Person" means a person as defined in section 4.1,
9 subsection 13.

10 10. "Underground facility" means an item of personal
11 property which is buried or placed below ground for use in
12 connection with the storage or conveyance of, or the provision
13 of services supplying water, sewage, electronic, telephonic,
14 or telegraphic communications, electric energy, or petroleum
15 products including natural gas or other substances, and
16 includes, but is not limited to, pipes, sewers, conduits,
17 cables, valves, lines, wires, manholes, and attachments to
18 such property.

19 Sec. 2. NEW SECTION. 480.1A APPLICABILITY --
20 PROHIBITION.

21 This chapter applies to any excavation unless otherwise
22 provided by law. A person shall not engage in any excavation
23 unless the requirements of this chapter have been satisfied.

24 Sec. 3. Section 480.3, Code 1991, is amended by striking
25 the section and inserting in lieu thereof the following:

26 480.3 NOTIFICATION CENTER ESTABLISHED -- PARTICIPATION.

27 1. a. A statewide notification center is established and
28 shall be organized as a nonprofit corporation pursuant to
29 chapter 504A. The center shall be governed by a board of
30 directors which shall represent and be elected by operators,
31 excavators, and other persons who participate in the center.
32 The board shall, with input from all interested parties,
33 determine the operating procedures and technology needed for a
34 single statewide notification center, and establish a
35 notification process and competitive bidding procedure to

1 select a vendor to provide the notification service. The
2 terms of the agreement for the notification service may be
3 modified from time to time by the board, and the agreement
4 shall be reviewed, with an opportunity to receive new bids, no
5 less frequently than every three years.

6 b. Upon the selection of a vendor pursuant to paragraph
7 "a", the board shall notify the chairperson of the utilities
8 board in writing of the selection. The board shall submit an
9 annual report to the chairperson of the utilities board
10 including a review of the services provided by the
11 notification center and the vendor.

12 2. Every operator shall participate in and share in the
13 costs of the notification center.

14 Sec. 4. NEW SECTION. 480.4 REQUIRED NOTICE -- LOCATION
15 AND MARKING OF UNDERGROUND FACILITIES -- EXCEPTION.

16 1. Except as otherwise provided in this section, prior to
17 any excavation, an excavator shall contact the notification
18 center and provide notice of the planned excavation. This
19 notice must be given at least forty-eight hours prior to the
20 commencement of the excavation, excluding Saturdays, Sundays,
21 and legal holidays. The notification center shall establish a
22 toll-free telephone number to allow excavators to provide the
23 notice required pursuant to this subsection.

24 A notice provided pursuant to this subsection shall be
25 verbal and include the following information:

26 a. The name of the person providing the notice.

27 b. The precise location of the proposed area of
28 excavation, including the range, township, section, and
29 quarter section, if known.

30 c. The name and address of the excavator.

31 d. The excavator's telephone number.

32 e. The type and extent of the proposed excavation.

33 f. Whether the discharge of explosives is anticipated.

34 g. The date and time when excavation is scheduled to
35 begin.

1 For purposes of the requirements of this section, an
2 excavation commences the first time excavation occurs in an
3 area that was not previously identified by the excavator in an
4 excavation notice.

5 2. The notification center, upon receiving notice from an
6 excavator, shall immediately transmit the information
7 contained in the notice to each operator in the area of the
8 proposed excavation and provide the names of all operators in
9 that area to the excavator. The notification center shall
10 assign an inquiry identification number to each notice and
11 shall maintain a record of each notice for at least six years
12 from the date the notice is received.

13 3. a. (1) An operator who receives notice from the
14 notification center shall mark the horizontal location of the
15 operator's underground facility and the excavator shall use
16 due care in excavating in the marked area to avoid damaging
17 the underground facility. The operator shall complete such
18 locating and marking within forty-eight hours after receiving
19 the notice, excluding Saturdays, Sundays, and legal holidays,
20 unless otherwise agreed by the operator and the excavator.
21 The locating and marking of the underground facilities shall
22 be completed at no cost to the excavator. If, in the opinion
23 of the operator, the planned excavation requires that the
24 precise location of the underground facilities be determined,
25 the excavator shall hand dig test holes to determine the
26 location of the facilities unless the operator specifies an
27 alternate method.

28 (2) The marking required under this subsection shall be
29 done in a manner that will last for a minimum of five working
30 days on any nonpermanent surface, or a minimum of ten working
31 days on any permanent surface. If the excavation will
32 continue for a period greater than five days from the date and
33 time the excavation is scheduled to begin, the excavator shall
34 notify the operator at least forty-eight hours, excluding
35 Saturdays, Sundays, and legal holidays, before the end of the

1 period, and the operator shall remark the location of the
2 facility.

3 b. An operator who receives notice from the notification
4 center and who determines that the operator does not have any
5 underground facility located within the proposed area of
6 excavation shall notify the excavator concerning this
7 determination prior to the indicated date of commencement of
8 excavation.

9 c. For purposes of this chapter, the "horizontal location
10 of any underground facility" is defined as including an area
11 eighteen inches on either side of the underground facility.

12 4. An excavator is responsible for preserving the markings
13 required in subsection 3 at all times during the excavation.
14 If the markings will be destroyed or otherwise altered during
15 the excavation, the excavator must establish suitable
16 reference points which will enable the excavator to locate the
17 underground facility at all times during the excavation.

18 5. If the excavation is to occur over an extended period
19 of time requiring the location of multiple underground
20 facilities, the excavator and operator shall agree to a
21 schedule concerning the location and marking of the
22 underground facilities during the extended period of
23 excavation.

24 6. The operator shall mark the location of any underground
25 facility to conform with the uniform color code established by
26 the American public works association's utility location and
27 coordination council.

28 7. The only exception to this section shall be when an
29 emergency exists. Under such conditions, excavation
30 operations can begin immediately, provided reasonable
31 precautions are taken to protect the underground facilities.
32 The excavator shall notify the notification center of the
33 excavation as soon as practical.

34 Sec. 5. NEW SECTION. 480.5 DAMAGE TO UNDERGROUND
35 FACILITY -- REPORT TO OPERATOR.

1 An excavator shall as soon as practical notify the operator
2 when any damage occurs to an underground facility as a result
3 of an excavation. The notice shall include the type of
4 facility damaged and the extent of the damage. If damage
5 occurs, an excavator shall refrain from backfilling in the
6 immediate area of the underground facilities until the damage
7 has been investigated by the operator, unless the operator
8 authorizes otherwise.

9 If the damage results in an emergency, the excavator shall
10 take all reasonable actions to alleviate the emergency
11 including, but not limited to, the evacuation of the affected
12 area. The excavator shall leave all equipment situated where
13 the equipment was at the time the emergency was created and
14 immediately contact the operator and appropriate authorities
15 and necessary emergency response agencies.

16 Sec. 6. NEW SECTION. 480.6 CIVIL PENALTIES.

17 1. A person who violates a provision of this chapter is
18 subject to a civil penalty as follows:

19 a. For a violation related to natural gas and hazardous
20 liquid pipelines, an amount not to exceed ten thousand dollars
21 for each violation for each day the violation continues, up to
22 a maximum of five hundred thousand dollars.

23 b. For a violation related to any other underground
24 facility, an amount not to exceed one thousand dollars for
25 each violation for each day the violation continues, up to a
26 maximum of twenty thousand dollars.

27 2. The attorney general, upon the receipt of a complaint,
28 may institute any legal proceedings necessary to enforce the
29 penalty provisions of this chapter.

30 3. All amounts collected pursuant to this section shall be
31 remitted to the treasurer of state, who shall deposit the
32 amount in the general fund of the state.

33 Sec. 7. NEW SECTION. 480.7 INJUNCTION.

34 Any affected person may make application to the district
35 court for injunctive relief from any violation of this

1 chapter.

2 Sec. 8. NEW SECTION. 480.8 LOCAL ORDINANCES AND
3 REGULATIONS UNAFFECTED.

4 This chapter does not affect or impair any local ordinances
5 or other provisions of law requiring permits to be obtained
6 before excavation. However, a permit issued by any governing
7 body does not relieve the excavator from complying with the
8 requirements of this chapter.

9 Sec. 9. Section 480.2, Code 1991, is repealed.

10 EXPLANATION

11 This bill regulates excavations which occur near an
12 underground facility.

13 Section 1 defines terms.

14 Section 2 applies the bill to any excavation unless
15 otherwise provided.

16 Section 3 establishes a statewide notification center in
17 the utilities division of the department of commerce.

18 Section 4 requires that an excavator provide verbal notice
19 to the notification center before any excavation. The
20 notification center is to provide a toll-free number for
21 excavators to use to provide the notice. The notification
22 center is to immediately transmit the notice to operators in
23 the area of the planned excavation and provide the names of
24 affected operators to the excavator. An operator receiving
25 this notice is to locate and mark all affected underground
26 facilities within 48 hours of receiving the notice.

27 If the excavation will destroy or otherwise alter the
28 markings, the excavator is to maintain suitable reference
29 points which will enable the excavator to locate the
30 underground facility. If the excavation is to occur over an
31 extended period of time and require the location and marking
32 of the underground facilities during the extended period, the
33 excavator and the operator are to agree to a schedule for the
34 locating and marking of the underground facilities.

35 Section 5 requires the excavator to notify the operator of

1 any damage caused by the excavation as soon as possible. The
2 excavator is also required to take all reasonable actions to
3 alleviate an emergency caused by the damage.

4 Section 6 establishes a system of civil penalties including
5 \$10,000 for each violation for each day the violation
6 continues up to a maximum of \$500,000 for violations related
7 to natural gas and hazardous liquid pipelines. For all other
8 underground facilities, an amount not to exceed \$1,000 for
9 each violation for each day the violation continues, up to a
10 maximum of \$20,000.

11 Section 7 provides that an injunction may be issued against
12 a person who violates a provision of the chapter.

13 Section 8 provides that local ordinances requiring permits
14 prior to any excavation are not affected and that the issuance
15 of a permit by a governing body does not relieve the excavator
16 from the requirements of this bill.

17 The bill repeals the statutory requirement that an operator
18 of underground facilities provide information about locations
19 through the office of the county recorder or city clerk.

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SENATE FILE 2133

BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 2082)

(AS AMENDED AND PASSED BY THE SENATE FEBRUARY 20, 1992)

 - New Language by the Senate

* - Language Stricken by the Senate

~~Re~~ Passed Senate, Date 4/6/92 (p. 1234) Passed House, Date 2/21/92 (p. 962)

Vote: Ayes 40 Nays 8 Vote: Ayes 86 Nays 9

Approved April 21, 1992 (p. 1526)

A BILL FOR

1 An Act relating to requirements for notice to an underground
2 facility operator by a person planning certain excavation
3 activities near the underground facility, establishing
4 procedures, and providing for civil liability and injunctive
5 relief, and providing an effective date.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

S.F. 2133

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1 Section 1. Section 480.1, Code 1991, is amended by
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3 following:

4 480.1 DEFINITIONS.

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6 notification center.

7 2. "Damage" means any impact with, destruction,
8 impairment, or penetration of, or removal of support from an
9 underground facility, including damage to its protective
10 coating, housing, or device.

11 3. "Emergency" means a condition where there is clear and
12 immediate danger to life or health, or essential services, or
13 a potentially significant loss of property.

14 4. "Excavation" means an operation in which a structure or
15 earth, rock, or other material in or on the ground is moved,
16 removed, or compressed, or otherwise displaced by means of any
17 tools, equipment, or explosives and includes, but is not
18 limited to, grading, trenching, tiling, digging, ditching,
19 drilling, augering, tunneling, scraping, cable or pipe
20 plowing, driving, and demolition of structures.

21 "Excavation" does not include normal farming operations,
22 residential, commercial, or similar gardening, the opening of
23 a grave site in a cemetery, operations in a solid waste
24 disposal site which has planned for underground facilities,
25 and normal road maintenance which does not change the original
26 grade. "Normal road maintenance" does not include maintenance
27 of the ditch.

28 5. "Excavator" means a person proposing to engage or
29 engaging in excavation.

30 6. "Normal farming operations" means plowing, cultivation,
31 planting, harvesting, and similar operations routine to most
32 farms, but excludes using a sub-soiler or ripper, drain tile
33 excavating, terracing, digging for post holes, and similar
34 operations.

35 7. "Notification center" means the statewide notification

1 center established in section 480.3.

2 8. "Operator" means a person owning or operating an
3 underground facility including, but not limited to, public,
4 private, and municipal utilities. An operator does not
5 include a person who owns or otherwise lawfully occupies real
6 property where an underground facility is located only for the
7 use and benefit of the owner or occupant on the property.

8 9. "Person" means a person as defined in section 4.1,
9 subsection 13.

10 10. "Underground facility" means an item of personal
11 property which is buried or placed below ground for use in
12 connection with the storage or conveyance of, or the provision
13 of services supplying water, sewage, electronic, telephonic,
14 or telegraphic communications, electric energy, or petroleum
15 products including natural gas or other substances, and
16 includes, but is not limited to, pipes, sewers, conduits,
17 cables, valves, lines, wires, manholes, and attachments to
18 such property.

19 Sec. 2. NEW SECTION. 480.1A APPLICABILITY --PROHIBITION.

20 This chapter applies to any excavation unless otherwise
21 provided by law. A person shall not engage in any excavation
22 unless the requirements of this chapter have been satisfied.

23 Sec. 3. Section 480.3, Code 1991, is amended by striking
24 the section and inserting in lieu thereof the following:

25 480.3 NOTIFICATION CENTER ESTABLISHED -- PARTICIPATION.

26 1. a. A statewide notification center is established and
27 shall be organized as a nonprofit corporation pursuant to
28 chapter 504A. The center shall be governed by a board of
29 directors which shall represent and be elected by operators,
30 excavators, and other persons who participate in the center.
31 The board shall, with input from all interested parties,
32 determine the operating procedures and technology needed for a
33 single statewide notification center, and establish a
34 notification process and competitive bidding procedure to
35 select a vendor to provide the notification service. The

1 terms of the agreement for the notification service may be
2 modified from time to time by the board, and the agreement
3 shall be reviewed, with an opportunity to receive new bids, no
4 less frequently than every three years.

5 b. Upon the selection of a vendor pursuant to paragraph
6 "a", the board shall notify the chairperson of the utilities
7 board in writing of the selection. The board shall submit an
8 annual report to the chairperson of the utilities board
9 including a review of the services provided by the
10 notification center and the vendor.

11 2. The board shall implement the latest and most cost
12 effective technological improvements for the center in order
13 to provide operators and excavators with the most accurate
14 data available and in a timely manner to allow operators and
15 excavators to perform their responsibilities with the minimum
16 amount of interruptions.

17 3. Every operator shall participate in and share in the
18 costs of the notification center.

19 Sec. 4. NEW SECTION. 480.4 REQUIRED NOTICE -- LOCATION
20 AND MARKING OF UNDERGROUND FACILITIES -- EXCEPTION.

21 1. Except as otherwise provided in this section, prior to
22 any excavation, an excavator shall contact the notification
23 center and provide notice of the planned excavation. This
24 notice must be given at least forty-eight hours prior to the
25 commencement of the excavation, excluding Saturdays, Sundays,
26 and legal holidays. The notification center shall establish a
27 toll-free telephone number to allow excavators to provide the
28 notice required pursuant to this subsection.

29 A notice provided pursuant to this subsection shall be
30 verbal and include the following information:

31 a. The name of the person providing the notice.

32 b. The precise location of the proposed area of
33 excavation, including the range, township, section, and
34 quarter section, if known.

35 c. The name and address of the excavator.

- 1 d. The excavator's telephone number.
- 2 e. The type and extent of the proposed excavation.
- 3 f. Whether the discharge of explosives is anticipated.
- 4 g. The date and time when excavation is scheduled to
- 5 begin.

6 For purposes of the requirements of this section, an
7 excavation commences the first time excavation occurs in an
8 area that was not previously identified by the excavator in an
9 excavation notice.

10 2. The notification center, upon receiving notice from an
11 excavator, shall immediately transmit the information
12 contained in the notice to each operator in the area of the
13 proposed excavation and provide the names of all operators in
14 that area to the excavator. The notification center shall
15 assign an inquiry identification number to each notice and
16 shall maintain a record of each notice for at least six years
17 from the date the notice is received.

18 3. a. (1) An operator who receives notice from the
19 notification center shall mark the horizontal location of the
20 operator's underground facility and the excavator shall use
21 due care in excavating in the marked area to avoid damaging
22 the underground facility. The operator shall complete such
23 locating and marking within forty-eight hours after receiving
24 the notice, excluding Saturdays, Sundays, and legal holidays,
25 unless otherwise agreed by the operator and the excavator.
26 The locating and marking of the underground facilities shall
27 be completed at no cost to the excavator. If, in the opinion
28 of the operator, the planned excavation requires that the
29 precise location of the underground facilities be determined,
30 the excavator, unless otherwise agreed upon between the
31 excavator and the operator, shall hand dig test holes to
32 determine the location of the facilities unless the operator
33 specifies an alternate method.

34 (2) The marking required under this subsection shall be
35 done in a manner that will last for a minimum of five working

1 days on any nonpermanent surface, or a minimum of ten working
2 days on any permanent surface. If the excavation will
3 continue for a period greater than five days from the date and
4 time the excavation is scheduled to begin, the excavator shall
5 notify the operator at least forty-eight hours, excluding
6 Saturdays, Sundays, and legal holidays, before the end of the
7 first excavation period, and the operator shall remark the
8 location of the underground facility in a manner that will
9 last for a second excavation period.

10 (3) If the excavation extends beyond this second
11 excavation period, the excavator shall propose and the
12 operator shall agree to a reasonable schedule for the marking
13 of the underground facility during the extended period of
14 excavation.

15 b. An operator who receives notice from the notification
16 center and who determines that the operator does not have any
17 underground facility located within the proposed area of
18 excavation shall notify the excavator concerning this
19 determination prior to the indicated date of commencement of
20 excavation.

21 c. For purposes of this chapter, the "horizontal location
22 of any underground facility" is defined as including an area
23 eighteen inches on either side of the underground facility.

24 4. An excavator is responsible for preserving the markings
25 required in subsection 3 at all times during the excavation.
26 If the markings will be destroyed or otherwise altered during
27 the excavation, the excavator must establish suitable
28 reference points which will enable the excavator to locate the
29 underground facility at all times during the excavation.

* 30 5. The operator shall mark the location of any underground
31 facility to conform with the uniform color code established by
32 the American public works association's utility location and
33 coordination council.

34 6. The only exception to this section shall be when an
35 emergency exists. Under such conditions, excavation

1 operations can begin immediately, provided reasonable
2 precautions are taken to protect the underground facilities.
3 The excavator shall notify the notification center of the
4 excavation as soon as practical.

5 Sec. 5. NEW SECTION. 480.5 DAMAGE TO UNDERGROUND
6 FACILITY -- REPORT TO OPERATOR.

7 An excavator shall as soon as practical notify the operator
8 when any damage occurs to an underground facility as a result
9 of an excavation. The notice shall include the type of
10 facility damaged and the extent of the damage. If damage
11 occurs, an excavator shall refrain from backfilling in the
12 immediate area of the underground facilities until the damage
13 has been investigated by the operator, unless the operator
14 authorizes otherwise.

15 If the damage results in an emergency, the excavator shall
16 take all reasonable actions to alleviate the emergency
17 including, but not limited to, the evacuation of the affected
18 area. The excavator shall leave all equipment situated where
19 the equipment was at the time the emergency was created and
20 immediately contact the operator and appropriate authorities
21 and necessary emergency response agencies.

22 Sec. 6. NEW SECTION. 480.6 CIVIL PENALTIES.

23 1. A person who violates a provision of this chapter is
24 subject to a civil penalty as follows:

25 a. For a violation related to natural gas and hazardous
26 liquid pipelines, an amount not to exceed ten thousand dollars
27 for each violation for each day the violation continues, up to
28 a maximum of five hundred thousand dollars.

29 b. For a violation related to any other underground
30 facility, an amount not to exceed one thousand dollars for
31 each violation for each day the violation continues, up to a
32 maximum of twenty thousand dollars.

33 2. The attorney general, upon the receipt of a complaint,
34 may institute any legal proceedings necessary to enforce the
35 penalty provisions of this chapter.

1 3. All amounts collected pursuant to this section shall be
2 remitted to the treasurer of state, who shall deposit the
3 amount in the general fund of the state.

4 Sec. 7. NEW SECTION. 480.7 INJUNCTION.

5 Any affected person may make application to the district
6 court for injunctive relief from any violation of this
7 chapter.

8 Sec. 8. NEW SECTION. 480.8 LOCAL ORDINANCES AND
9 REGULATIONS UNAFFECTED.

10 This chapter does not affect or impair any local ordinances
11 or other provisions of law requiring permits to be obtained
12 before excavation. However, a permit issued by any governing
13 body does not relieve the excavator from complying with the
14 requirements of this chapter.

15 Sec. 9. Section 479.47, unnumbered paragraph 2, Code 1991,
16 is amended by striking the paragraph.

17 Sec. 10. Section 479A.26, unnumbered paragraphs 2 and 3,
18 Code 1991, are amended by striking the paragraphs.

19 Sec. 11. Sections 478.36 and 480.2, Code 1991, are
20 repealed.

21 Sec. 12. This Act takes effect on January 1, 1993.

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SENATE FILE 2133

S-5079

1 Amend Senate File 2133 as follows:

2 1. Page 3, by inserting after line 11 the
3 following:

4 "1A. The board shall implement the latest and most
5 cost effective technological improvements for the
6 center in order to provide operators and excavators
7 with the most accurate data available and in a timely
8 manner to allow operators and excavators to perform
9 their responsibilities with the minimum amount of
10 interruptions."

11 2. Page 4, line 25, by inserting after the word
12 "excavator" the following: ", unless otherwise agreed
13 upon between the excavator and the operator,".

14 3. Page 5, by striking lines 1 and 2 and
15 inserting the following: "first excavation period,
16 and the operator shall remark the location of the
17 underground facility in a manner that will last for a
18 second excavation period."

19 (3) If the excavation extends beyond this second
20 excavation period, the excavator shall propose and the
21 operator shall agree to a reasonable schedule for the
22 marking of the underground facility during the
23 extended period of excavation."

24 4. Page 5, by striking lines 18 through 23.

25 5. Page 7, by striking line 9, and inserting the
26 following:

27 "Sec. _____. Section 479.47, unnumbered paragraph 2,
28 Code 1991, is amended by striking the paragraph.

29 Sec. _____. Section 479A.26, unnumbered paragraphs 2
30 and 3, Code 1991, are amended by striking the
31 paragraphs.

32 Sec. _____. Sections 478.36 and 480.2, Code 1991,
33 are repealed.

34 Sec. _____. This Act takes effect on January 1,
35 1993."

36 6. Title page, line 5, by inserting after the
37 word "relief" the following: ", and providing an
38 effective date".

39 7. By renumbering as necessary.

By JOHN W. JENSEN

S-5079 FILED FEBRUARY 18, 1992

Adopted 2/20 (p. 420)

SENATE FILE 2133

H-5204

- 1 Amend Senate File 2133 as amended, passed, and
- 2 reprinted by the Senate as follows:
- 3 1. Page 1, line 32, by striking the words "sub-
- 4 soiler or".
- 5 2. Page 1, line 33, by striking the words
- 6 "digging for post holes,".

By BENNETT of Ida
MERTZ of Kossuth
JOHNSON of Clinton
BRANSTAD of Winnebago

PETERSEN of Muscatine
MUHLBAUER of Crawford
HAHN of Muscatine
DE GROOT of Lyon

H-5204 FILED MARCH 6, 1992

4/12 3/31/92

SENATE FILE 2133

H-5205

- 1 Amend Senate File 2133 as amended, passed, and
- 2 reprinted by the Senate as follows:
- 3 1. Page 6, by inserting after line 21 the fol-
- 4 lowing:
- 5 "Sec. ____ . NEW SECTION. 480.5A NOTIFICATION OF
- 6 CERTAIN INDIVIDUALS REGARDING CERTAIN UNDERGROUND
- 7 FACILITIES.
- 8 A public, private, or municipal utility shall
- 9 notify all individuals who own property on which
- 10 normal farming operations occur in the area served by
- 11 the utility of the presence of any underground
- 12 facility which is buried or placed below ground at a
- 13 depth of eighteen inches or less."
- 14 2. Renumber as necessary.

By BENNETT of Ida
MERTZ of Kossuth
JOHNSON of Clinton
BRANSTAD of Winnebago

PETERSEN of Muscatine
MUHLBAUER of Crawford
HAHN of Muscatine
DE GROOT of Lyon

H-5205 FILED MARCH 6, 1992

4/12 3/31

SENATE FILE 2133

H-5637

- 1 Amend Senate File 2133, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 1, line 24, by inserting after the word
- 4 "facilities," the following: "the replacement of an
- 5 existing traffic sign at its current location and at
- 6 no more than its current depth,".
- 7 2. Page 1, by striking line 32, and inserting the
- 8 following: "farms, but excludes chisel plowing, sub-
- 9 soiling, or ripping more than fifteen inches in depth,
- 10 drain tile".
- 11 3. Page 1, line 33, by striking the words
- 12 "digging for post holes" and inserting the following:
- 13 "digging or driving a post in a new location other
- 14 than replacing a post while repairing a fence in its
- 15 existing location".

By GILL of Woodbury
BENNETT of Ida
RENKEN of Grundy

H-5637 FILED MARCH 31, 1992

ADOPTED (p. 462)

SENATE FILE 2133

H-5348

1 Amend Senate File 2133, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 1, line 23, by inserting after the word
4 "cemetery," the following: "normal activities
5 involved in land surveying pursuant to chapter 114,".
6 2. Page 1, line 25, by inserting after the word
7 "road" the following: "or highway".
8 3. Page 1, by striking lines 26 and 27, and
9 inserting the following: "grade of the roadway or the
10 ditch."
11 4. Page 2, line 14, by inserting after the word
12 "energy," the following: "hazardous liquids,".
13 5. Page 4, line 17, by inserting after the word
14 "received." the following: "The notification center
15 shall not assess an operator who requests in writing
16 not to receive a notification of its own excavations
17 for any portion of the costs associated with such
18 excavations."
19 6. Page 5, by striking lines 3 through 14 and
20 inserting the following: "continue for any period
21 longer than such periods, the operator shall remark
22 the location of the underground facility upon the
23 request of the excavator. The request shall be made
24 through the notification center."
25 7. Page 7, line 7, by inserting after the word
26 "chapter" the following: ", unless the governing body
27 is the excavator and the governing body and the
28 operator have agreed in writing to waive notification
29 under this chapter. However, such an agreement shall
30 not be considered in the issuance of any required
31 permit".

By GILL of Woodbury

H-5348 FILED MARCH 17, 1992

WJL 3/27 (p. 892)

SENATE FILE 2133

H-5433

- 1 Amend Senate File 2133, as amended, passed, and re-
- 2 printed by the Senate, as follows:
- 3 1. Page 1, by striking lines 25 through 27 and
- 4 inserting the following: "and normal road
- 5 maintenance."

By RENKEN of Grundy

H-5433, FILED MARCH 20, 1992

Adopted 3/27/92 (p. 295)

SENATE FILE 2133

H-5443

- 1 Amend Senate File 2133, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 2, line 11, by inserting after the word
- 4 "property" the following: "owned or leased by the
- 5 operator".
- 6 2. Page 2, line 18, by inserting after the word
- 7 "property" the following: "but does not include
- 8 sanitary sewer laterals, storm sewer laterals, and
- 9 water service lines providing service to abutting
- 10 private properties".

By PAVICH of Pottawattamie
GILL of Woodbury

H-5443 FILED MARCH 23, 1992

Adopted 3/21/92 (p. 941)

SENATE FILE 2133

H-5578

- 1 Amend Senate File 2133 as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 2, by striking lines 13 through 15 and
- 4 inserting the following: "of services supplying
- 5 electric energy or petroleum products including
- 6 natural gas or other substances, and".

By RENKEN of Grundy

H-5578 FILED MARCH 27, 1992

Adopted 3/31/92 (p. 941)

SENATE FILE 2133

H-5392

1 Amend Senate File 2133, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, line 23, by inserting after the word
4 "cemetery," the following: "normal activities
5 involved in land surveying pursuant to chapter 114,".

6 2. Page 1, line 25, by inserting after the word
7 "road" the following: "or highway".

8 3. Page 1, by striking lines 26 and 27, and
9 inserting the following: "grade of the roadway or the
10 ditch."

11 4. Page 2, line 14, by inserting after the word
12 "energy," the following: "hazardous liquids,".

13 5. Page 4, line 17, by inserting after the word
14 "received." the following: "The notification center
15 shall not assess an operator who requests in writing
16 not to receive a notification of its own excavations
17 for any portion of the costs associated with such
18 excavations."

19 6. Page 5, by striking lines 3 through 14 and
20 inserting the following: "continue for any period
21 longer than such periods, the operator shall remark
22 the location of the underground facility upon the
23 request of the excavator. The request shall be made
24 through the notification center."

25 7. Page 7, line 14 by inserting after the word
26 "chapter" the following: ", unless the governing body
27 is the excavator and the governing body and the
28 operator have agreed in writing to waive notification
29 under this chapter. However, such an agreement shall
30 not be considered in the issuance of any required
31 permit".

By GILL of Woodbury

H-5392 FILED MARCH 19, 1992

Adopted 3/27 (p. 893)

SENATE FILE 2133

H-5394

1 Amend Senate File 2133 as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 5, by striking lines 18 through 20, and
4 inserting the following: "excavation need not notify
5 the excavator concerning this determination."

By MERTZ of Kossuth

H-5394 FILED MARCH 19, 1992

Lost 3/31

HOUSE AMENDMENT TO
SENATE FILE 2133

S-5498

- 1 Amend Senate File 2133, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 1, line 23, by inserting after the word
- 4 "cemetery," the following: "normal activities
- 5 involved in land surveying pursuant to chapter 114,".
- 6 2. Page 1, line 24, by inserting after the word
- 7 "facilities," the following: "the replacement of an
- 8 existing traffic sign at its current location and at
- 9 no more than its current depth,".
- 10 3. Page 1, line 25, by inserting after the word
- 11 "road" the following: "or highway".
- 12 4. Page 1, by striking lines 26 and 27, and
- 13 inserting the following: "grade of the roadway or the
- 14 ditch."
- 15 5. Page 1, by striking line 32, and inserting the
- 16 following: "farms, but excludes chisel plowing, sub-
- 17 soiling, or ripping more than fifteen inches in depth,
- 18 drain tile".
- 19 6. Page 1, line 33, by striking the words
- 20 "digging for post holes" and inserting the following:
- 21 "digging or driving a post in a new location other
- 22 than replacing a post while repairing a fence in its
- 23 existing location".
- 24 7. Page 2, line 11, by inserting after the word
- 25 "property" the following: "owned or leased by the
- 26 operator".
- 27 8. Page 2, line 14, by inserting after the word
- 28 "energy," the following: "hazardous liquids,".
- 29 9. Page 2, line 18, by inserting after the word
- 30 "property" the following: "but does not include
- 31 sanitary sewer laterals, storm sewer laterals, and
- 32 water service lines providing service to abutting
- 33 private properties".
- 34 10. Page 4, line 17, by inserting after the word
- 35 "received." the following: "The notification center
- 36 shall not assess an operator who requests in writing
- 37 not to receive a notification of its own excavations
- 38 for any portion of the costs associated with such
- 39 excavations."
- 40 11. Page 5, by striking lines 3 through 14 and
- 41 inserting the following: "continue for any period
- 42 longer than such periods, the operator shall remark
- 43 the location of the underground facility upon the
- 44 request of the excavator. The request shall be made
- 45 through the notification center."
- 46 12. Page 7, line 14 by inserting after the word
- 47 "chapter" the following: ", unless the governing body
- 48 is the excavator and the governing body and the
- 49 operator have agreed in writing to waive notification
- 50 under this chapter. However, such an agreement shall

S-5498

-1-

S-5498

Page 2

- 1 not be considered in the issuance of any required
- 2 permit".
- 3 13. By renumbering, relettering, or redesignating
- 4 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

Senate Concurred 4/6 (p. 1234)

S-5498 FILED APRIL 1, 1992

JENSEN CH.
PALMER
KERSTEN 1-29-92

SSB 2082
Commerce Now

SENATE/HOUSE FILE 2133

BY (RECOMMENDED BY

CENTRALIZED COMMUNICATION
BETWEEN EXCAVATORS AND
PIPELINE OPERATORS
STUDY COMMITTEE)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to requirements for notice to an underground
2 facility operator by a person planning certain excavation
3 activities near the underground facility, establishing
4 procedures, and providing for civil liability and injunctive
5 relief.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 480.1, Code 1991, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 480.1 DEFINITIONS.

5 1. "Board" means the board of directors of the
6 notification center.

7 2. "Damage" means any impact with, destruction,
8 impairment, or penetration of, or removal of support from an
9 underground facility, including damage to its protective
10 coating, housing, or device.

11 3. "Emergency" means a condition where there is clear and
12 immediate danger to life or health, or essential services, or
13 a potentially significant loss of property.

14 4. "Excavation" means an operation in which a structure or
15 earth, rock, or other material in or on the ground is moved,
16 removed, or compressed, or otherwise displaced by means of any
17 tools, equipment, or explosives and includes, but is not
18 limited to, grading, trenching, tiling, digging, ditching,
19 drilling, augering, tunneling, scraping, cable or pipe
20 plowing, driving, and demolition of structures.

21 "Excavation" does not include normal farming operations,
22 residential, commercial, or similar gardening, the opening of
23 a grave site in a cemetery, operations in a solid waste
24 disposal site which has planned for underground facilities,
25 and normal road maintenance which does not change the original
26 grade. "Normal road maintenance" does not include maintenance
27 of the ditch.

28 5. "Excavator" means a person proposing to engage or
29 engaging in excavation.

30 6. "Normal farming operations" means plowing, cultivation,
31 planting, harvesting, and similar operations routine to most
32 farms, but excludes using a sub-soiler or ripper, drain tile
33 excavating, terracing, digging for post holes, and similar
34 operations.

35 7. "Notification center" means the statewide notification

1 center established in section 480.3.

2 8. "Operator" means a person owning or operating an
3 underground facility including, but not limited to, public,
4 private, and municipal utilities. An operator does not
5 include a person who owns or otherwise lawfully occupies real
6 property where an underground facility is located only for the
7 use and benefit of the owner or occupant on the property.

8 9. "Person" means a person as defined in section 4.1,
9 subsection 13.

10 10. "Underground facility" means an item of personal
11 property which is buried or placed below ground for use in
12 connection with the storage or conveyance of, or the provision
13 of services supplying water, sewage, electronic, telephonic,
14 or telegraphic communications, electric energy, or petroleum
15 products including natural gas or other substances, and
16 includes, but is not limited to, pipes, sewers, conduits,
17 cables, valves, lines, wires, manholes, and attachments to
18 such property.

19 Sec. 2. NEW SECTION. 480.1A APPLICABILITY --
20 PROHIBITION.

21 This chapter applies to any excavation unless otherwise
22 provided by law. A person shall not engage in any excavation
23 unless the requirements of this chapter have been satisfied.

24 Sec. 3. Section 480.3, Code 1991, is amended by striking
25 the section and inserting in lieu thereof the following:

26 480.3 NOTIFICATION CENTER ESTABLISHED -- PARTICIPATION.

27 1. a. A statewide notification center is established and
28 shall be organized as a nonprofit corporation pursuant to
29 chapter 504A. The center shall be governed by a board of
30 directors who shall represent and be elected by operators,
31 excavators, and other persons who participate in the center.
32 The board shall, with input from all interested parties,
33 determine the operating procedures and technology needed for a
34 single statewide notification center, and establish a
35 notification process and competitive bidding procedure to

1 select a vendor to provide the notification service. The
2 terms of the agreement for the notification service may be
3 modified from time to time by the board, and the agreement
4 shall be reviewed, with an opportunity to receive new bids, no
5 less frequently than every three years.

6 b. Upon the selection of a vendor pursuant to paragraph
7 "a", the board shall notify the chairperson of the utilities
8 board in writing of the selection. The board shall submit an
9 annual report to the chairperson of the utilities board
10 including a review of the services provided by the
11 notification center and the vendor.

12 2. Every operator shall participate in and share in the
13 costs of the notification center.

14 Sec. 4. NEW SECTION. 480.4 REQUIRED NOTICE -- LOCATION
15 AND MARKING OF UNDERGROUND FACILITIES -- EXCEPTION.

16 1. Except as otherwise provided in this section, prior to
17 any excavation, an excavator shall contact the notification
18 center and provide notice of the planned excavation. This
19 notice must be given at least forty-eight hours prior to the
20 commencement of the excavation, excluding Saturdays, Sundays,
21 and legal holidays.

22 A notice provided pursuant to this subsection shall be
23 verbal and include the following information:

24 a. The name of the person providing the notice.

25 b. The precise location of the proposed area of
26 excavation, including the range, township, section, and
27 quarter section, if known.

28 c. The name and address of the excavator.

29 d. The excavator's telephone number.

30 e. The type and extent of the proposed excavation.

31 f. Whether the discharge of explosives is anticipated.

32 g. The date and time when excavation is scheduled to
33 begin.

34 For purposes of the requirements of this section, an
35 excavation commences the first time excavation occurs in an

1 area that was not previously identified by the excavator in an
2 excavation notice.

3 2. The notification center, upon receiving notice from an
4 excavator, shall immediately transmit the information
5 contained in the notice to each operator in the area of the
6 proposed excavation and provide the names of all operations in
7 that area to the excavator. The notification center shall
8 assign an inquiry identification number to each notice and
9 shall maintain a record of each notice for at least six years
10 from the date the notice is received.

11 3. a. (1) An operator who receives notice from the
12 notification center shall mark the horizontal location of the
13 operator's underground facility and the excavator shall use
14 due care in excavating in the marked area to avoid damaging
15 the underground facility. The operator shall complete such
16 locating and marking within forty-eight hours after receiving
17 the notice, excluding Saturdays, Sundays, and legal holidays,
18 unless otherwise agreed by the operator and the excavator.
19 The locating and marking of the underground facilities shall
20 be completed at no cost to the excavator. If, in the opinion
21 of the operator, the planned excavation requires that the
22 precise location of the underground facilities be determined,
23 the excavator shall hand dig test holes to determine the
24 location of the facilities unless the operator specifies an
25 alternate method.

26 (2) The marking required under this subsection shall be
27 done in a manner that will last for a minimum of five working
28 days on any nonpermanent surface, or a minimum of ten working
29 days on any permanent surface. If the excavation will
30 continue for a period greater than five days from the date and
31 time the excavation is scheduled to begin, the excavator shall
32 notify the operator at least forty-eight hours, excluding
33 Saturdays, Sundays, and legal holidays, before the end of the
34 period, and the operator shall remark the location of the
35 facility.

1 b. An operator who receives notice from the notification
2 center and who determines that the operator does not have any
3 underground facility located within the proposed area of
4 excavation shall notify the excavator concerning this
5 determination prior to the indicated date of commencement of
6 excavation.

7 c. For purposes of this chapter, the "horizontal location
8 of any underground facility" is defined as including an area
9 eighteen inches on either side of the underground facility.

10 4. An excavator is responsible for preserving the markings
11 required in subsection 3 at all times during the excavation.
12 If the markings will be destroyed or otherwise altered during
13 the excavation, the excavator must establish suitable
14 reference points which will enable the excavator to locate the
15 underground facility at all times during the excavation.

16 5. If the excavation is to occur over an extended period
17 of time requiring the location of multiple underground
18 facilities, the excavator and operator shall agree to a
19 schedule concerning the location and marking of the
20 underground facilities during the extended period of
21 excavation.

22 6. The operator shall mark the location of any underground
23 facility to conform with the uniform color code established by
24 the American public works association's utility location and
25 coordination council.

26 7. The only exception to this section shall be when an
27 emergency exists. Under such conditions, excavation
28 operations can begin immediately, provided reasonable
29 precautions are taken to protect the underground facilities.
30 The excavator shall notify the notification center of the
31 excavation as soon as practical.

32 Sec. 5. NEW SECTION. 480.5 DAMAGE TO UNDERGROUND
33 FACILITY -- REPORT TO OPERATOR.

34 An excavator shall as soon as practical notify the operator
35 when any damage occurs to an underground facility as a result

1 of an excavation. The notice shall include the type of
2 facility damaged and the extent of the damage. If damage
3 occurs, an excavator shall refrain from backfilling in the
4 immediate area of the underground facilities until the damage
5 has been investigated by the operator, unless the operator
6 authorizes otherwise.

7 If the damage results in an emergency, the excavator shall
8 take all reasonable actions to alleviate the emergency
9 including, but not limited to, the evacuation of the affected
10 area. The excavator shall leave all equipment situated where
11 the equipment was at the time the emergency was created and
12 immediately contact the operator and appropriate authorities
13 and necessary emergency response agencies.

14 Sec. 6. NEW SECTION. 480.6 CIVIL PENALTIES.

15 1. A person who violates a provision of this chapter is
16 subject to a civil penalty as follows:

17 a. For a violation related to natural gas and hazardous
18 liquid pipelines, an amount not to exceed ten thousand dollars
19 for each violation for each day the violation continues, up to
20 a maximum of five hundred thousand dollars.

21 b. For a violation related to any other underground
22 facility, an amount not less than one hundred dollars or more
23 than one thousand dollars for each violation for each day the
24 violation continues, up to a maximum of twenty thousand
25 dollars.

26 2. The attorney general, at the request of the
27 notification center, may institute any legal proceedings
28 necessary to enforce the penalty provisions of this chapter.

29 3. All amounts collected pursuant to this section shall be
30 remitted to the treasurer of state, who shall deposit the
31 amount in the general fund of the state.

32 Sec. 7. NEW SECTION. 480.7 INJUNCTION.

33 Any affected person may make application to the district
34 court for injunctive relief from any violation of this
35 chapter.

1 alleviate an emergency caused by the damage.

2 Section 6 establishes a system of civil penalties including
3 \$10,000 for each violation for each day the violation
4 continues up to a maximum of \$500,000 for violations related
5 to natural gas and hazardous liquid pipelines. For all other
6 underground facilities, an amount not less than \$100 nor more
7 than \$1,000 for each violation for each day the violation
8 continues, up to a maximum of \$20,000.

9 Section 7 provides that an injunction may be issued against
10 a person who violates a provision of the chapter.

11 Section 8 provides that local ordinances requiring permits
12 prior to any excavation are not affected and that the issuance
13 of a permit by a governing body does not relieve the excavator
14 from the requirements of this bill.

15 The bill repeals the statutory requirement that an operator
16 of underground facilities provide information about locations
17 through the office of the county recorder or city clerk.

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SENATE FILE 2133

AN ACT

RELATING TO REQUIREMENTS FOR NOTICE TO AN UNDERGROUND FACILITY OPERATOR BY A PERSON PLANNING CERTAIN EXCAVATION ACTIVITIES NEAR THE UNDERGROUND FACILITY, ESTABLISHING PROCEDURES, AND PROVIDING FOR CIVIL LIABILITY AND INJUNCTIVE RELIEF, AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 480.1, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

480.1 DEFINITIONS.

1. "Board" means the board of directors of the notification center.
 2. "Damage" means any impact with, destruction, impairment, or penetration of, or removal of support from an underground facility, including damage to its protective coating, housing, or device.
 3. "Emergency" means a condition where there is clear and immediate danger to life or health, or essential services, or a potentially significant loss of property.
 4. "Excavation" means an operation in which a structure or earth, rock, or other material in or on the ground is moved, removed, or compressed, or otherwise displaced by means of any tools, equipment, or explosives and includes, but is not limited to, grading, trenching, tiling, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, and demolition of structures.
- "Excavation" does not include normal farming operations, residential, commercial, or similar gardening, the opening of a grave site in a cemetery, normal activities involved in land surveying pursuant to chapter 114, operations in a solid waste

disposal site which has planned for underground facilities, the replacement of an existing traffic sign at its current location and at no more than its current depth, and normal road or highway maintenance which does not change the original grade of the roadway or the ditch.

5. "Excavator" means a person proposing to engage or engaging in excavation.
6. "Normal farming operations" means plowing, cultivation, planting, harvesting, and similar operations routine to most farms, but excludes chisel plowing, sub-soiling, or ripping more than fifteen inches in depth, drain tile excavating, terracing, digging or driving a post in a new location other than replacing a post while repairing a fence in its existing location, and similar operations.
7. "Notification center" means the statewide notification center established in section 480.3.
8. "Operator" means a person owning or operating an underground facility including, but not limited to, public, private, and municipal utilities. An operator does not include a person who owns or otherwise lawfully occupies real property where an underground facility is located only for the use and benefit of the owner or occupant on the property.
9. "Person" means a person as defined in section 4.1, subsection 13.
10. "Underground facility" means an item of personal property owned or leased by the operator which is buried or placed below ground for use in connection with the storage or conveyance of, or the provision of services supplying water, sewage, electronic, telephonic, or telegraphic communications, electric energy, hazardous liquids, or petroleum products including natural gas or other substances, and includes, but is not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such property but does not include sanitary sewer laterals, storm sewer laterals, and water service lines providing service to abutting private properties.

Sec. 2. NEW SECTION. 480.1A APPLICABILITY --
PROHIBITION.

This chapter applies to any excavation unless otherwise provided by law. A person shall not engage in any excavation unless the requirements of this chapter have been satisfied.

Sec. 3. Section 480.3, Code 1991, is amended by striking the section and inserting in lieu thereof the following:

480.3 NOTIFICATION CENTER ESTABLISHED -- PARTICIPATION.

1. a. A statewide notification center is established and shall be organized as a nonprofit corporation pursuant to chapter 504A. The center shall be governed by a board of directors which shall represent and be elected by operators, excavators, and other persons who participate in the center. The board shall, with input from all interested parties, determine the operating procedures and technology needed for a single statewide notification center, and establish a notification process and competitive bidding procedure to select a vendor to provide the notification service. The terms of the agreement for the notification service may be modified from time to time by the board, and the agreement shall be reviewed, with an opportunity to receive new bids, no less frequently than every three years.

b. Upon the selection of a vendor pursuant to paragraph "a", the board shall notify the chairperson of the utilities board in writing of the selection. The board shall submit an annual report to the chairperson of the utilities board including a review of the services provided by the notification center and the vendor.

2. The board shall implement the latest and most cost effective technological improvements for the center in order to provide operators and excavators with the most accurate data available and in a timely manner to allow operators and excavators to perform their responsibilities with the minimum amount of interruptions.

3. Every operator shall participate in and share in the costs of the notification center.

Sec. 4. NEW SECTION. 480.4 REQUIRED NOTICE -- LOCATION AND MARKING OF UNDERGROUND FACILITIES -- EXCEPTION.

1. Except as otherwise provided in this section, prior to any excavation, an excavator shall contact the notification center and provide notice of the planned excavation. This notice must be given at least forty-eight hours prior to the commencement of the excavation, excluding Saturdays, Sundays, and legal holidays. The notification center shall establish a toll-free telephone number to allow excavators to provide the notice required pursuant to this subsection.

A notice provided pursuant to this subsection shall be verbal and include the following information:

- a. The name of the person providing the notice.
- b. The precise location of the proposed area of excavation, including the range, township, section, and quarter section, if known.
- c. The name and address of the excavator.
- d. The excavator's telephone number.
- e. The type and extent of the proposed excavation.
- f. Whether the discharge of explosives is anticipated.
- g. The date and time when excavation is scheduled to begin.

For purposes of the requirements of this section, an excavation commences the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

2. The notification center, upon receiving notice from an excavator, shall immediately transmit the information contained in the notice to each operator in the area of the proposed excavation and provide the names of all operators in that area to the excavator. The notification center shall assign an inquiry identification number to each notice and shall maintain a record of each notice for at least six years.

from the date the notice is received. The notification center shall not assess an operator who requests in writing not to receive a notification of its own excavations for any portion of the costs associated with such excavations.

1. a. (1) An operator who receives notice from the notification center shall mark the horizontal location of the operator's underground facility and the excavator shall use due care in excavating in the marked area to avoid damaging the underground facility. The operator shall complete such locating and marking within forty-eight hours after receiving the notice, excluding Saturdays, Sundays, and legal holidays, unless otherwise agreed by the operator and the excavator. The locating and marking of the underground facilities shall be completed at no cost to the excavator. If, in the opinion of the operator, the planned excavation requires that the precise location of the underground facilities be determined, the excavator, unless otherwise agreed upon between the excavator and the operator, shall hand dig test holes to determine the location of the facilities unless the operator specifies an alternate method.

(2) The marking required under this subsection shall be done in a manner that will last for a minimum of five working days on any nonpermanent surface, or a minimum of ten working days on any permanent surface. If the excavation will continue for any period longer than such periods, the operator shall remark the location of the underground facility upon the request of the excavator. The request shall be made through the notification center.

b. An operator who receives notice from the notification center and who determines that the operator does not have any underground facility located within the proposed area of excavation shall notify the excavator concerning this determination prior to the indicated date of commencement of excavation.

c. For purposes of this chapter, the "horizontal location of any underground facility" is defined as including an area eighteen inches on either side of the underground facility.

4. An excavator is responsible for preserving the markings required in subsection 3 at all times during the excavation. If the markings will be destroyed or otherwise altered during the excavation, the excavator must establish suitable reference points which will enable the excavator to locate the underground facility at all times during the excavation.

5. The operator shall mark the location of any underground facility to conform with the uniform color code established by the American public works association's utility location and coordination council.

6. The only exception to this section shall be when an emergency exists. Under such conditions, excavation operations can begin immediately, provided reasonable precautions are taken to protect the underground facilities. The excavator shall notify the notification center of the excavation as soon as practical.

Sec. 5. NEW SECTION. 480.5 DAMAGE TO UNDERGROUND FACILITY -- REPORT TO OPERATOR.

An excavator shall as soon as practical notify the operator when any damage occurs to an underground facility as a result of an excavation. The notice shall include the type of facility damaged and the extent of the damage. If damage occurs, an excavator shall refrain from backfilling in the immediate area of the underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise.

If the damage results in an emergency, the excavator shall take all reasonable actions to alleviate the emergency including, but not limited to, the evacuation of the affected area. The excavator shall leave all equipment situated where the equipment was at the time the emergency was created and immediately contact the operator and appropriate authorities and necessary emergency response agencies.

Sec. 6. NEW SECTION. 480.6 CIVIL PENALTIES.

1. A person who violates a provision of this chapter is subject to a civil penalty as follows:

a. For a violation related to natural gas and hazardous liquid pipelines, an amount not to exceed ten thousand dollars for each violation for each day the violation continues, up to a maximum of five hundred thousand dollars.

b. For a violation related to any other underground facility, an amount not to exceed one thousand dollars for each violation for each day the violation continues, up to a maximum of twenty thousand dollars.

2. The attorney general, upon the receipt of a complaint, may institute any legal proceedings necessary to enforce the penalty provisions of this chapter.

3. All amounts collected pursuant to this section shall be remitted to the treasurer of state, who shall deposit the amount in the general fund of the state.

Sec. 7. NEW SECTION. 480.7 INJUNCTION.

Any affected person may make application to the district court for injunctive relief from any violation of this chapter.

Sec. 8. NEW SECTION. 480.8 LOCAL ORDINANCES AND REGULATIONS UNAFFECTED.

This chapter does not affect or impair any local ordinances or other provisions of law requiring permits to be obtained before excavation. However, a permit issued by any governing body does not relieve the excavator from complying with the requirements of this chapter, unless the governing body is the excavator and the governing body and the operator have agreed in writing to waive notification under this chapter. However, such an agreement shall not be considered in the issuance of any required permit.

Sec. 9. Section 479.47, unnumbered paragraph 2, Code 1991, is amended by striking the paragraph.

Sec. 10. Section 479A.26, unnumbered paragraphs 2 and 3, Code 1991, are amended by striking the paragraphs.

Sec. 11. Sections 478.36 and 480.2, Code 1991, are repealed.

Sec. 12. This Act takes effect on January 1, 1993.

MICHAEL E. GRONSTAL
President of the Senate

ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2133, Seventy-fourth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved April 21, 1992

TERRY E. BRANSTAD
Governor