

2/27/96 Referred to Local Gov

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COMMERCE AND REGULATION

HOUSE FILE 2348
BY KLEMME

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

A BILL FOR

1 An Act relating to the statewide underground facilities
2 notification program and establishing certain duties and
3 responsibilities of the board of directors, operators, and
4 excavators, establishing a civil penalty, and providing for
5 related matters.

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

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HF 2348

1 Section 1. Section 480.1, subsection 4, unnumbered
2 paragraph 2, Code 1995, is amended to read as follows:

3 "Excavation" does not include normal farming operations,
4 residential, or commercial, or similar gardening, ~~the opening~~
5 ~~of a grave site in a cemetery,~~ normal activities involved in
6 land surveying pursuant to chapter 542B, operations in a solid
7 waste disposal site, or the opening of a grave site in a
8 cemetery, which has planned for underground facilities, the
9 replacement of an existing traffic sign at its current
10 location and at no more than its current depth, and normal
11 road or highway maintenance which does not change the original
12 ~~grade of the roadway or~~ elevation of the road or does not
13 involve excavation of the ditch.

14 Sec. 2. Section 480.1, Code 1995, is amended by adding the
15 following new subsection:

16 NEW SUBSECTION. 11. "Utilities board" means the utilities
17 board established in section 474.1.

18 Sec. 3. Section 480.3, subsection 1, paragraph a, Code
19 Supplement 1995, is amended to read as follows:

20 a. A statewide notification center is established and
21 shall be organized as a nonprofit corporation pursuant to
22 chapter 504A. The center shall be governed by a board of
23 directors which shall represent and be elected by operators,
24 excavators, and other persons who participate in the center.
25 The board shall, with input from all interested parties,
26 ~~determine the~~ implement appropriate operating procedures and
27 technology for rural and incorporated areas, individually or
28 jointly, as needed for a single statewide notification center,
29 and establish a notification process and competitive bidding
30 procedure to select a vendor to provide the notification
31 service. The terms of the agreement for the notification
32 service may be modified from time to time by the board, and
33 the agreement shall be reviewed, with an opportunity to
34 receive new bids, no less frequently than every three years.

35 Sec. 4. Section 480.3, subsections 2 and 3, Code

1 Supplement 1995, are amended to read as follows:

2 2. The board shall implement and maintain the latest-and
3 most cost-effective and efficient technological improvements
4 and administrative procedures for the center in order to
5 provide operators and excavators with the most accurate data
6 available ~~and-in-a-timely-manner~~ to allow operators and
7 excavators to perform their responsibilities in a timely
8 manner with the minimum amount of interruptions and with a
9 maximum amount of safety, accuracy, and efficiency.

10 3. Every operator shall participate in and share in the
11 costs of the notification center. The financial condition and
12 the administrative and service transactions of the
13 notification center shall be audited at least once each year
14 by a certified public accountant. The notification center
15 shall not provide any form of aid or make a contribution to a
16 political party or to the campaign of a candidate for
17 political or public office. In addition to any applicable
18 civil penalty, as provided in section 480.6, a violation of
19 this section constitutes a simple misdemeanor.

20 Sec. 5. Section 480.4, Code 1995, is amended to read as
21 follows:

22 480.4 REQUIRED NOTICE -- LOCATION AND MARKING OF
23 UNDERGROUND FACILITIES -- EXCEPTION.

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

32 A notice provided pursuant to this subsection shall be
33 ~~verbal-and-include-the-following-information:~~ made to the
34 notification center in a form and manner specified by the
35 board by rule and shall be complete and accurate in describing

1 the precise area of excavation. The rules of the board shall
2 specifically provide for data or information necessary to
3 provide timely, accurate, and comprehensive communication
4 between the excavator, notification center, and operator.

5 a.--~~The name of the person providing the notice.~~

6 b.--~~The precise location of the proposed area of~~
7 ~~excavation, including the range, township, section, and~~
8 ~~quarter section, if known.~~

9 c.--~~The name and address of the excavator.~~

10 d.--~~The excavator's telephone number.~~

11 e.--~~The type and extent of the proposed excavation.~~

12 f.--~~Whether the discharge of explosives is anticipated.~~

13 g.--~~The date and time when excavation is scheduled to~~
14 ~~begin.~~

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

19 2. The notification center, upon receiving notice from an
20 excavator, shall immediately transmit the information
21 contained in the notice to each operator in the area of the
22 proposed excavation and provide the names of all operators in
23 that area to the excavator. The notification center shall
24 assign an inquiry identification number to each notice and
25 shall maintain a record of each notice for at least six years
26 from the date the notice is received. The notification center
27 shall not assess an operator who requests in writing not to
28 receive a notification of its own excavations for any portion
29 of the costs associated with such excavations.

30 3. a. (1) An operator who receives notice from the
31 notification center shall mark the horizontal location of the
32 operator's underground facility and the excavator shall use
33 due care in excavating in the marked area to avoid damaging
34 the underground facility. The operator shall complete such
35 locating and marking within forty-eight hours after receiving

1 the notice, excluding Saturdays, Sundays, and legal holidays,
2 unless otherwise agreed by the operator and the excavator.
3 The locating and marking of the underground facilities shall
4 be completed at no cost to the excavator. If, in the opinion
5 of the operator, the planned excavation requires that the
6 precise location of the underground facilities be determined,
7 the excavator, unless otherwise agreed upon between the
8 excavator and the operator, shall hand dig test holes to
9 determine the location of the facilities unless the operator
10 specifies an alternate method.

11 (2) The marking required under this subsection shall be
12 done in a manner that will last for a minimum of five working
13 days on any nonpermanent surface, or a minimum of ten working
14 days on any permanent surface. If the excavation will
15 continue for any period longer than such periods, the
16 excavator shall remark the area of excavation and the operator
17 shall remark the location of the underground facility and
18 areas of excavation upon the request of the excavator or
19 operator, as applicable. The request shall be made through
20 the notification center.

21 b. An operator who receives notice from the notification
22 center and who determines that the operator does not have any
23 underground facility located within the proposed area of
24 excavation shall notify the excavator concerning this
25 determination prior to the indicated date of commencement of
26 excavation. The excavator may waive its right of notification
27 at the time of its call to the notification center; however,
28 the waiver must be for all operators of a facility at the
29 excavation site. The notification center shall develop a rule
30 to facilitate the communication of such waiver.

31 c. For purposes of this chapter, the "horizontal location
32 of any underground facility" is defined as including an area
33 eighteen inches on either side of the underground facility.
34 If there are facilities that are identified but cannot be
35 located with reasonable accuracy, the operator of such

1 facilities shall provide the excavator with the best available
2 information as to their location.

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

9 5. The excavator shall mark the bounds of the area of
10 excavation and the operator shall mark the location of any
11 underground facility within the marked area of excavation to
12 conform with the uniform color code established by the
13 American public works association's utility location and
14 coordination council.

15 ~~6. The only exception to this section shall be when an~~
16 ~~emergency exists.--Under such conditions, excavation~~
17 ~~operations can begin immediately, provided reasonable~~
18 ~~precautions are taken to protect the underground facilities.~~
19 ~~The excavator shall notify the notification center of the~~
20 ~~excavation as soon as practical.~~ Prior to commencing an
21 excavation, an excavator shall evaluate the excavation site
22 for evidence of any underground facilities including private
23 facilities, which have not been located and marked.

24 7. a. This section does not apply when an emergency
25 exists which requires excavation. If such emergency occurs,
26 all of the following apply:

27 (1) The excavator shall immediately give notice to the
28 notification center.

29 (2) The notification center shall immediately notify
30 affected operators.

31 (3) The operators shall immediately respond as necessary.

32 (4) The excavator shall take other precautions as
33 reasonably necessary.

34 b. An excavator shall not excavate in any nonemergency
35 situation without complying with this chapter, and an operator

1 does not have a duty to accelerate compliance with this
2 chapter in any nonemergency situation.

3 8. The board shall develop and implement an excavator
4 education program for the purpose of providing training and
5 information to excavators to assist excavators in the
6 operations and procedures of the notification center,
7 statutory requirements, proper techniques to locate
8 underground facilities, utilization of available technologies,
9 construction marking requirements, excavation safety, and
10 other excavator activities.

11 Sec. 6. Section 480.5, Code 1995, is amended to read as
12 follows:

13 480.5 DAMAGE TO UNDERGROUND FACILITY -- REPORT TO
14 OPERATOR.

15 An excavator shall ~~as-soon-as-practical~~ immediately notify
16 the operator when any damage occurs to an underground facility
17 as a result of an excavation or related activities. The
18 notice shall include the type of facility damaged, and the
19 extent of the damage, and the precise location of the
20 excavation and damage. If damage occurs, an excavator shall
21 refrain from backfilling in the ~~immediate~~ area of the
22 underground facilities until the damage has been investigated
23 by the operator, unless the operator authorizes otherwise.

24 If the damage results in an emergency, the excavator shall
25 take all reasonable actions to alleviate the emergency
26 including, but not limited to, the evacuation of the affected
27 area. The excavator shall leave all equipment situated where
28 the equipment was at the time the emergency was created and
29 immediately contact the operator, and telephone 911 or
30 appropriate authorities, and contact necessary emergency
31 response agencies.

32 Sec. 7. NEW SECTION. 480.5A DUTIES OF UTILITIES BOARD --
33 OVERSIGHT.

34 The utilities board shall have oversight authority over the
35 board of directors and the notification center, and shall

1 provide assistance to the board and the notification center in
2 adopting rules related to the operation of the notification
3 center. The utilities board shall also consult with the
4 attorney general regarding enforcement of this chapter.

5 Sec. 8. Section 480.6, Code 1995, is amended to read as
6 follows:

7 480.6 CIVIL PENALTIES.

8 1. a. Except as provided in paragraph "b", a person who
9 violates a provision of this chapter is subject to a civil
10 penalty ~~as follows:~~ not to exceed one thousand dollars for
11 each violation for each day the violation continues, up to a
12 maximum of twenty thousand dollars.

13 ~~a. b.~~ For a violation related to natural gas and
14 hazardous liquid pipelines, ~~an~~ the amount shall not to exceed
15 ten thousand dollars for each violation for each day the
16 violation continues, up to a maximum of five hundred thousand
17 dollars.

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

22 2. The attorney general, upon the receipt of a complaint,
23 shall conduct an investigation of the complaint and may
24 institute any legal proceedings necessary to enforce the
25 penalty provisions of this chapter.

26 3. A person subject to a civil penalty for a violation
27 under this chapter, in addition to any other penalty, is
28 liable for reasonable attorney's fees, costs, and expenses,
29 and any investigation costs incurred by the state, the
30 operator, and the excavator relating to the violation.

31 4. Failure of an excavator to provide notification as
32 required in this chapter is prima facie evidence of
33 negligence.

34 5. All amounts collected pursuant to this section shall be
35 remitted to the ~~treasurer of state~~ appropriate public

1 official, who shall deposit the amount ~~in-the-general-fund-of~~
2 ~~the-state~~ as provided by law.

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EXPLANATION

4 This bill amends provisions relating to the statewide one-
5 call underground facility notification program.

6 The definition of normal road or highway maintenance
7 contained in the exclusions to the definition of "excavation"
8 in section 480.1 is amended to provide that such maintenance
9 is not included if it does not change the original elevation
10 of the road or does not involve excavation of the ditch.

11 Currently, such maintenance is excluded if it does not change
12 the original grade of the roadway or ditch. Section 480.1 is
13 also amended to add a definition of the "utilities board".

14 Section 480.3 is amended to provide that the notification
15 center board of directors is to implement appropriate
16 operating procedures and technology for rural and incorporated
17 areas, individually or jointly, as necessary for the statewide
18 notification system. Currently, no distinction is made
19 between rural and incorporated areas. Section 480.3 is also
20 amended to require that the technological improvements to be
21 implemented by the board be the most efficient, as well as the
22 most cost-effective. The board is also directed to implement
23 the most cost-effective and efficient administrative
24 procedures. The board is to ensure that the information
25 provided permits operators and excavators to perform their
26 responsibilities with a maximum amount of safety, accuracy,
27 and efficiency.

28 Section 480.4 is amended to provide that notification of
29 the center is to be made as specified by the board. The board is
30 to specify what information is to be provided in the
31 notification. Currently, the notification is required to be
32 verbal and the specific information to be included in the
33 notification is set forth in the section. The section is
34 amended to require the excavator to mark the location of the
35 excavation, and to remark in the same instances where the

1 facility operator is required to remark the location of the
2 facility. The excavator is given the ability to waive its
3 right of notification with respect to all facility operators
4 at the excavation site at the time of the excavator's call to
5 the notification center. The section is amended to provide
6 that an operator of a facility which is identified, but which
7 cannot be located with reasonable accuracy, is to provide the
8 best available information. The section is amended to provide
9 that the section does not apply when an emergency exists which
10 requires excavation. The section is also amended by directing
11 the notification center board of directors to develop and
12 implement an excavator education program to provide training
13 and information to excavators concerning the operations of the
14 notification center and excavator duties and activities.

15 Section 480.5 is amended to provide that an excavator is to
16 immediately notify the facility operator when any damage
17 occurs to such facility, and provide the precise location of
18 the excavation and damage. The excavator is to call 911 and
19 report the damage or other appropriate authorities.
20 Currently, such notification must be made as soon as
21 practical.

22 New section 480.5A is created and provides that the
23 utilities board is to have oversight authority over the board
24 of directors of the notification center.

25 Section 480.6, which relates to civil penalties, is amended
26 to authorize the attorney general to conduct an investigation
27 of any complaint and to provide that a person who is subject
28 to a civil penalty under this chapter is also liable for
29 reasonable attorney's fees, costs, and expenses, and any
30 investigation costs incurred by the state, the operator, or
31 the excavator, as applicable, related to the violation.
32 Failure of an excavator to provide notification as required is
33 deemed to be prima facie evidence of negligence.

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