

SENATE BILL NO. 335

INTRODUCED BY NOBLE, MESSMORE, WALLIN, RYE, HARP,  
KILPATRICK, WATERMAN, DRISCOLL

IN THE SENATE

FEBRUARY 8, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & INDUSTRY.

FEBRUARY 9, 1991                   FIRST READING.

FEBRUARY 18, 1991                  COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 19, 1991                  PRINTING REPORT.

FEBRUARY 20, 1991                  SECOND READING, DO PASS.

FEBRUARY 21, 1991                  ENGROSSING REPORT.

THIRD READING, PASSED.  
AYES, 48; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & ECONOMIC DEVELOPMENT.

FIRST READING.

MARCH 14, 1991                   COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

MARCH 16, 1991                   SECOND READING, CONCURRED IN.

MARCH 18, 1991                   THIRD READING, CONCURRED IN.  
AYES, 97; NOES, 1.

RETURNED TO SENATE.

IN THE SENATE

MARCH 19, 1991                   RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

Senate BILL NO. 335

INTRODUCED BY

*John Thomas Williams* - HARP  
*Major Walter D. Smith*

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING EXCAVATION PROCEDURES NEAR UNDERGROUND FACILITIES; REQUIRING THAT ENTITIES AND PERSONS THAT HAVE THE RIGHT TO BURY UNDERGROUND FACILITIES BE MEMBERS OF ONE-CALL NOTIFICATION CENTERS; EXEMPTING PUBLIC AUTHORITIES FROM LIABILITY FOR IMPROPER OR UNAUTHORIZED INSTALLATIONS MADE BY OTHERS; AND AMENDING SECTIONS 69-4-501, 69-4-502, 69-4-503, AND 69-4-504, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-4-501, MCA, is amended to read:

"69-4-501. Definitions. The following definitions shall apply to this part:

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Emergency" means:

(a) any condition that constitutes a clear and present danger to life or property; or

(b) a customer outage.

~~(3)~~ (3) "Excavation" ~~shall mean and include any ditch, trench, cut, hole, or change in grade~~ means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means or use of any

tools, equipment, or explosives. The term includes but is not limited to grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing and driving. Excavation does not include surface road grading maintenance.

(4) "Identified but unlocatable underground facility" means an underground facility that has been identified but cannot be located with reasonable accuracy.

(5) "Locatable underground facility" means an underground facility that can be field-marked with reasonable accuracy.

(6) "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field location, or absence, of underground facilities, in accordance with the current color code standard of the American public works association. Marking must include identification letters indicating the specific type of underground facility, and the width of the facility if it is greater than 6 inches.

(7) "One-call notification center" means a service through which a person may request a marking of underground facilities.

~~(8)~~ (8) "Person" ~~shall mean and include~~ means an individual, partnership, firm, joint venture, or corporation, association, municipality, governmental unit, department, or agency, and includes any trustee, receiver,



1 assignee, or a personal representative thereof the employer  
2 of an individual.

3 (9) "Reasonably accurate" means location within 18  
4 inches of the outside lateral dimensions of both sides of an  
5 underground facility.

6 ~~(9)~~ (10) "Underground facility" shall mean means any item  
7 of personal property facility which shall be buried or  
8 placed below ground for use in connection with the storage  
9 or conveyance of water, sewage, electronic, telephonic or  
10 telegraphic communications, cablevision, fiber optics,  
11 electric energy, oil, gas, or other substances and shall  
12 include. The term includes but is not be limited to pipes,  
13 sewers, conduits, cables, valves, lines, wires, manholes,  
14 and attachments to the aforesaid listed items."

15 **Section 2.** Section 69-4-502, MCA, is amended to read:

16 "69-4-502. Information to be sought before excavation  
17 -- notification -- exception. (1) No person shall make or  
18 begin any excavation in any public street, alley,  
19 right-of-way dedicated to the public use, or utility  
20 easement without first obtaining information concerning the  
21 possible location of any underground facility from each and  
22 every public utility, municipal corporation, or other person  
23 having the right to bury such underground facilities within  
24 the public street, alley, right-of-way, or utility easement.

25 (2) Every public utility, municipal corporation, or

1 other person having the right to bury underground facilities  
2 shall file with the county clerk and recorder in each county  
3 where the underground facilities are located, the name,  
4 address, and telephone number of the person or persons from  
5 whom the necessary information may be obtained unless a  
6 one-call notification center is available.

7 (3) (a) A public utility, municipal corporation,  
8 underground facility owner, or person having the right to  
9 bury underground facilities must be a member of a one-call  
10 notification center, either statewide or serving each county  
11 in which the entity or person has underground facilities.

12 (b) Subsection (3)(a) does not apply to an owner or  
13 occupant of real property where underground facilities are  
14 buried if the facilities are used solely to furnish services  
15 or commodities to that property and no part of the  
16 facilities are located in a public street, alley, or  
17 right-of-way dedicated to the public use."

18 **Section 3.** Section 69-4-503, MCA, is amended to read:

19 "69-4-503. Procedure-to-secure-information Notification  
20 -- marking. (1) Any person seeking information concerning  
21 the location of any underground facility must do so by  
22 request in person, in writing, or by telephone At least 2  
23 but not more than 10 business days before beginning any  
24 excavation, the excavator shall notify, through a one-call  
25 notification center, all owners of underground facilities in

1 the area of the proposed excavation of the scheduled  
 2 commencement of the excavation. If a one-call notification  
 3 center service is not available, notice must be provided  
 4 individually to the owners of underground facilities within  
 5 the area of the proposed excavation.

6 ~~(2) The person from whom such information is sought~~  
 7 ~~must record the nature and the date of the request and~~  
 8 ~~advise the person seeking the information of the location of~~  
 9 ~~any underground facility in writing, if so requested, or by~~  
 10 ~~marking the location with stakes or paint or by other~~  
 11 ~~clearly identifiable markings. The person providing the~~  
 12 ~~information must respond no later than the end of the normal~~  
 13 ~~business hours of the second full business day following the~~  
 14 ~~date of receipt of the request, Saturdays, Sundays, and~~  
 15 ~~holidays excluded~~ Upon receipt of the notice provided for in  
 16 this section, the owner of the underground facility shall  
 17 provide the excavator with reasonably accurate information  
 18 as to the owner's locatable underground facilities by  
 19 surface marking the location of the facilities. If there are  
 20 identified but unlocatable underground facilities, the owner  
 21 of the facilities shall provide the excavator with the best  
 22 available information as to their locations. Excavators may  
 23 not excavate until all known facilities have been marked.  
 24 Once the facilities are marked by the facility owner, the  
 25 excavator is responsible for maintaining the markings.

1 (3) Upon receipt of notice from the excavator, the  
 2 facility owner shall respond within 2 business days by  
 3 marking the facility. An excavator may not begin excavating  
 4 before the marking is complete or before he is notified that  
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6 (4) A facility owner may request the excavator to mark  
 7 the area to be excavated. If an excavator discovers an  
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11 **Section 4.** Section 69-4-504, MCA, is amended to read:

12 **"69-4-504. Information to be part of architects' and**  
 13 **engineers' plans.** (1) Architects and engineers designing  
 14 projects requiring excavation in or adjacent to any public  
 15 street, alley, or right-of-way dedicated to public use or  
 16 utility easement shall obtain information from the owners of  
 17 underground facilities and then make ~~said~~ the information a  
 18 part of the plan by which the contractors operate. The  
 19 owners of the underground facilities shall provide  
 20 substantially the same information as required by 69-4-503.

21 (2) Nothing in this section shall excuse any person  
 22 from the obligation imposed by 69-4-502(1)."

23 **NEW SECTION. Section 5. Public authority -- liability.**  
 24 A public authority, as defined in 18-1-201, that has  
 25 jurisdiction over a right-of-way is not liable for improper

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1 or unauthorized installations made by persons or entities  
2 other than the public authority or those acting at its  
3 discretion.

4 NEW SECTION. **Section 6.** Codification instruction.  
5 [Section 5] is intended to be codified as an integral part  
6 of Title 69, chapter 4, part 5, and the provisions of Title  
7 69, chapter 4, part 5, apply to [section 5].

-End-

APPROVED BY COMM. ON  
BUSINESS & INDUSTRY

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FACILITIES BE MEMBERS OF ONE-CALL NOTIFICATION CENTERS;  
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Sunday, or a legal local, state, or federal holiday.

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 23 easement without first obtaining information concerning the  
 24 possible location of any underground facility from each and  
 25 every public utility, municipal corporation, or other person

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 14 COVERING THE SERVICE AREA in which the entity or person has  
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 25, 1991

MR. PRESIDENT:

We, your committee on Education and Cultural Resources having had under consideration House Bill No. 335 (third reading copy -- blue), respectfully report that House Bill No. 335 be amended and as so amended be concurred in:

1. Page 5, line 9.

Strike: "mills"

Insert: "permissive amount to be"

Following: "levied"

Strike: "in support of the permissive levy of"

Insert: "for"

2. Page 5, line 11.

Strike: "general fund budget"

Insert: "foundation program"

3. Page 5, lines 12 and 13.

Following: "to the" on line 12

Insert: "foundation program"

Following: "programs"

Strike: remainder of line 12 through "district" on line 13

4. Page 20, line 8.

Following: line 7

Insert: "NEW SECTION. Section 12. Coordination instruction. If House Bill No. 470 is passed and approved, then [section 4 of this act] must read as follows:

"Section 4. Tenure protected -- hiring preference for noncertified employees. (1) Whenever an elementary district is attached to a high school district to form a K-12 school district under the provisions of [section 1], a district superintendent, principal, teacher, or other certified employee of the elementary district who has a right of tenure under Montana law continues to have tenure in the K-12 district and the board of trustees of the high school district in which the person will perform duties shall recognize and give effect to the right of tenure.

(2) A noncertified, nonprobationary employee of an elementary district that is attached to a high school district to form a K-12 district must be given preference in hiring for any position with the K-12 district for which the employee has substantially equal qualifications and, upon acceptance of a position, may not be given probationary status."

Renumber: subsequent section

Signed: 

Chet Blaylock, Chairman

~~Amc.~~ 3-25-91  
Amc. Coord.

SB 3-25 12:15  
Sec. of State

SENATE

HB 335

SENATE BILL NO. 335

INTRODUCED BY NOBLE, MESSMORE, WALLIN, RYE, HARP,  
KILPATRICK, WATERMAN, DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING EXCAVATION PROCEDURES NEAR UNDERGROUND FACILITIES; REQUIRING THAT ENTITIES AND PERSONS THAT HAVE THE RIGHT TO BURY UNDERGROUND FACILITIES BE MEMBERS OF ONE-CALL NOTIFICATION CENTERS; EXEMPTING PUBLIC AUTHORITIES FROM LIABILITY FOR IMPROPER OR UNAUTHORIZED INSTALLATIONS MADE BY OTHERS; AND AMENDING SECTIONS 69-4-501, 69-4-502, 69-4-503, AND 69-4-504, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-4-501, MCA, is amended to read:

69-4-501. Definitions. The following definitions shall apply to this part:

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Emergency" means:

(a) any condition that constitutes a clear and present danger to life or property; or

(b) a customer outage.

~~(3)~~ "Excavation" ~~shall mean and include any ditch, trench, cut, hole, or change in grade~~ means any operation in which earth, rock, or other material in the ground is moved,

removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term includes but is not limited to grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing and driving. Excavation does not include surface road grading maintenance OR ROAD OR DITCH MAINTENANCE THAT DOES NOT CHANGE THE ORIGINAL ROAD OR DITCH GRADE OR FLOW LINE.

(4) "Identified but unlocatable underground facility" means an underground facility that has been identified but cannot be located with reasonable accuracy.

(5) "Locatable underground facility" means an underground facility that can be field-marked with reasonable accuracy.

(6) "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field location, or absence, of underground facilities, in accordance with the current color code standard of the American public works association. Marking must include identification letters indicating the specific type of underground facility, and the width of the facility if it is greater than 6 inches.

(7) "One-call notification center" means a service through which a person may request a marking of underground facilities.

~~(8)~~ "Person" ~~shall mean and include~~ means an



1 individual, partnership, firm, joint venture, or  
 2 corporation, association, municipality, governmental unit,  
 3 department, or agency, and includes any trustee, receiver,  
 4 assignee, or a personal representative thereof the-employer  
 5 of-an-individual.

6 (9) "Reasonably accurate" means location within 18  
 7 inches of the outside lateral dimensions of both sides of an  
 8 underground facility.

9 ~~(3)~~(10) "Underground facility" ~~shall-mean~~ means any item  
 10 ~~of-personal-property~~ facility ~~which--shall--be~~ buried or  
 11 placed below ground for use in connection with the storage  
 12 or conveyance of water, sewage, electronic, telephonic or  
 13 telegraphic communications, cablevision, fiber optics,  
 14 electric energy, oil, gas, or other substances ~~and--shall~~  
 15 include. The term includes but is not be limited to pipes,  
 16 sewers, conduits, cables, valves, lines, wires, manholes,  
 17 and attachments to the ~~aforsaid~~ listed items."

18 **Section 2.** Section 69-4-502, MCA, is amended to read:

19 "69-4-502. Information to be sought before excavation  
 20 -- notification -- exception. (1) No person shall make or  
 21 begin any excavation in any public street, alley,  
 22 right-of-way dedicated to the public use, or utility  
 23 easement without first obtaining information concerning the  
 24 possible location of any underground facility from each and  
 25 every public utility, municipal corporation, or other person

1 having the right to bury such underground facilities within  
 2 the public street, alley, right-of-way, or utility easement.

3 (2) Every public utility, municipal corporation, or  
 4 other person having the right to bury underground facilities  
 5 shall file with the county clerk and recorder in each county  
 6 where the underground facilities are located, the name,  
 7 address, and telephone number of the person or persons from  
 8 whom the necessary information may be obtained unless a  
 9 one-call notification center is available.

10 (3) (a) A public utility, municipal corporation,  
 11 underground facility owner, or person having the right to  
 12 bury underground facilities must be a member of a one-call  
 13 notification center, either statewide or serving each county  
 14 COVERING THE SERVICE AREA in which the entity or person has  
 15 underground facilities.

16 (b) Subsection (3)(a) does not apply to an owner or  
 17 occupant of real property where underground facilities are  
 18 buried if the facilities are used solely to furnish services  
 19 or commodities to that property and no part of the  
 20 facilities are located in a public street, alley, or  
 21 right-of-way dedicated to the public use."

22 **Section 3.** Section 69-4-503, MCA, is amended to read:

23 "69-4-503. Procedure-to-secure-information Notification  
 24 -- marking. (1) Any-person-seeking-information-concerning  
 25 the-location-of-any-underground--facility--must--do--so--by



1 ~~request--in--person,--in-writing,--or-by-telephone~~ At least 2  
 2 but not more than 10 business days before beginning any  
 3 excavation, the excavator shall notify, through a one-call  
 4 notification center, all owners of underground facilities in  
 5 the area of the proposed excavation of the scheduled  
 6 commencement of the excavation. If a one-call notification  
 7 center service is not available, notice must be provided  
 8 individually to the owners of underground facilities within  
 9 the area of the proposed excavation.

10 (2) ~~The--person--from--whom--such-information-is-sought~~  
 11 ~~must-record-the-nature-and--the--date--of--the--request--and~~  
 12 ~~advise-the-person-seeking-the-information-of-the-location-of~~  
 13 ~~any--underground-facility-in-writing,--if-so-requested,--or-by~~  
 14 ~~marking-the-location--with--stakes--or--paint--or--by--other~~  
 15 ~~clearly--identifiable--markings.---The--person--providing-the~~  
 16 ~~information-must-respond-no-later-than-the-end-of-the-normal~~  
 17 ~~business-hours-of-the-second-full-business-day-following-the~~  
 18 ~~date-of-receipt-of--the--request,--Saturdays,--Sundays,--and~~  
 19 ~~holidays-excluded~~ Upon receipt of the notice provided for in  
 20 this section, the owner of the underground facility shall  
 21 provide the excavator with reasonably accurate information  
 22 as to the owner's locatable underground facilities by  
 23 surface marking the location of the facilities. If there are  
 24 identified but unlocatable underground facilities, the owner  
 25 of the facilities shall provide the excavator with the best

1 available information as to their locations. Excavators may  
 2 not excavate until all known facilities have been marked.  
 3 Once the facilities are marked by the facility owner, the  
 4 excavator is responsible for maintaining the markings.

5 (3) Upon receipt of notice from the excavator, the  
 6 facility owner shall respond within 2 business days by  
 7 marking the facility. An excavator may not begin excavating  
 8 before the marking is complete or before he is notified that  
 9 marking is unnecessary.

10 (4) A facility owner may request the excavator to mark  
 11 the area to be excavated. If an excavator discovers an  
 12 unmarked underground facility, the excavator shall stop  
 13 excavating in the vicinity of the facility and notify the  
 14 facility owner or the one-call notification center."

15 **Section 4.** Section 69-4-504, MCA, is amended to read:

16 "69-4-504. Information to be part of architects' and  
 17 engineers' plans. (1) Architects and engineers designing  
 18 projects requiring excavation in or adjacent to any public  
 19 street, alley, or right-of-way dedicated to public use or  
 20 utility easement shall obtain information from the owners of  
 21 underground facilities and then make ~~said~~ the information a  
 22 part of the plan by which the contractors operate. The  
 23 owners of the underground facilities shall provide  
 24 substantially the same information as required by 69-4-503.

25 (2) Nothing in this section shall excuse any person

1 from the obligation imposed by 69-4-502(1)."

2 NEW SECTION. **Section 5.** Public authority -- liability.

3 A public authority, as defined in 18-1-201, that has  
4 jurisdiction over a right-of-way is not liable for improper  
5 or unauthorized installations made by persons or entities  
6 other than the public authority or those acting at its  
7 discretion.

8 NEW SECTION. **Section 6.** Codification instruction.

9 [Section 5] is intended to be codified as an integral part  
10 of Title 69, chapter 4, part 5, and the provisions of Title  
11 69, chapter 4, part 5, apply to [section 5].

-End-