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House BILL NO. *375*
INTRODUCED BY *Rep Ryan* *Sen Steve Hunsicker* *Sen Ron HART*
Sen Steve Hunsicker *Sen Steve Hunsicker* *Sen Steve Hunsicker*

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REGULATIONS GOVERNING EXCAVATIONS NEAR UNDERGROUND UTILITIES; CLARIFYING CERTAIN DEFINITIONS; DEFINING "EMERGENCY EXCAVATION", "EMERGENCY LOCATE", "EXCAVATOR", AND "LOCATE"; ELIMINATING THE REQUIREMENT THAT A PUBLIC UTILITY FILE UNDERGROUND FACILITY INFORMATION WITH THE COUNTY CLERK AND RECORDER; CLARIFYING GENERAL AND EMERGENCY EXCAVATION AND LOCATION REQUIREMENTS; AMENDING SECTIONS 69-4-501, 69-4-502, 69-4-503, AND 69-4-504, MCA; AND REPEALING SECTIONS 69-4-506 AND 69-4-511, 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~~ New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(2) ~~"Emergency"~~ "Emergency excavation" means an excavation in response to an emergency locate that is necessary to:

- (a) ~~any~~ alleviate a condition that constitutes a clear and present danger to life or property; or
- (b) repair a customer outage involving a previously installed utility-owned facility.
- (3) "Emergency locate" means a locate and mark that is requested for:
 - (a) a condition that constitutes a clear and present danger to life or property; or
 - (b) a customer outage for which repairs on a previously installed utility-owned facility are required.

~~(3)(4)~~ (4) "Excavation" means ~~any~~ an 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.

- 1 (5) "Excavator" means a person conducting the excavation activities defined in subsection (4).
- 2 ~~(4)(6)~~ "Identified but unlocatable underground facility" means an underground facility that has been
3 identified but cannot be located with reasonable accuracy.
- 4 ~~(6)(7)~~ "Locatable underground facility" means an underground facility that can be field-located and
5 field-marked with reasonable accuracy.
- 6 (8) "Locate" means to use specialized equipment to identify the location of underground facilities
7 or the actual location of underground facilities identified by the use of specialized equipment.
- 8 ~~(6)(9)~~ "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field
9 location, or absence, of underground facilities, in accordance with the current color code standard of the
10 American public works association. Marking must include identification letters indicating the specific type
11 of underground facility, and the width of the facility if it is greater than 6 inches.
- 12 ~~(7)(10)~~ "One-call notification center" means a service through which a person may request a
13 locating and marking of underground facilities.
- 14 ~~(8)(11)~~ "Person" means an individual, partnership, firm, joint venture, corporation, association,
15 municipality, governmental unit, department, or agency, and includes ~~any~~ a trustee, receiver, assignee, or
16 a personal representative ~~thereof~~ of the listed entities.
- 17 ~~(9)(12)~~ "Reasonably accurate" means location within 18 inches of the outside lateral dimensions
18 of both sides of an underground facility.
- 19 ~~(10)(13)~~ "Underground facility" means ~~any~~ a facility buried or placed below ground for use in
20 connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic
21 communications, cablevision, fiber optics, electric energy, oil, gas, or other substances. The term includes
22 but is not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the
23 listed items."

24

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

26 "**69-4-502. Information to be sought before excavation -- notification -- exceptions.** (1) (a) Except
27 as provided in subsection (1)(b), ~~a person~~ an excavator may not make or begin ~~any~~ an excavation ~~in a~~
28 ~~public street, alley, right of way dedicated to the public use, or utility easement~~ without first obtaining
29 information concerning the possible location of ~~any~~ an underground facility from each public utility,
30 municipal corporation, underground facility owner, or other person having the right to bury underground

1 facilities ~~that is a member of a one-call notification center pursuant to subsection (2)(a) within the public~~
 2 ~~street, alley, right of way, or utility easement.~~

3 (b) (i) A registered land surveyor or a person under the supervision of a registered land surveyor
 4 may hand dig for shallow survey monuments at a depth of 12 inches or less below the road surface of a
 5 highway or at the intersection of the center lines of public streets.

6 (ii) The registered land surveyor, prior to hand digging, shall obtain proper approval from the
 7 appropriate governing authority regarding safety and pavement repair and, when appropriate, shall reference
 8 the monument upon exposure.

9 (iii) The governing authority is not liable for any damages caused or suffered by the registered land
 10 surveyor or any person under the supervision of the registered land surveyor.

11 (iv) The registered land surveyor is liable for damages incurred regarding utility facility destruction,
 12 ~~and any~~

13 (v) A public utility, municipal corporation, underground facility owner, or other person having the
 14 right to bury underground facilities ~~within the public street, alley, right of way, or utility easement~~ is not
 15 liable for any damages suffered by the registered land surveyor or any person under the control of the
 16 registered land surveyor.

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

21 ~~(3)(2)~~ (a) A public utility, municipal corporation, underground facility owner, or person having the
 22 right to bury underground facilities must be a member of a one-call notification center covering the service
 23 area in which the entity or person has underground facilities.

24 (b) Subsection ~~(3)(a)~~ (2)(a) does not apply to an owner or occupant of real property where
 25 underground facilities are buried if the facilities are used solely to furnish services or commodities to that
 26 property and no part of the facilities ~~are~~ is located in a public street, alley, or right-of-way dedicated to the
 27 public use."
 28

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

30 **"69-4-503. Notification -- locating and marking.** (1) ~~At least 2 but not more than 10 business days~~

1 ~~before~~ Before beginning ~~any~~ an excavation, the excavator shall notify, through a one-call notification center,
 2 all owners of underground facilities in the area of the proposed excavation ~~of the scheduled commencement~~
 3 ~~of the excavation. If a one-call notification center service is not available, notice must be provided~~
 4 ~~individually to the owners of underground facilities within the area of the proposed excavation.~~

5 (2) After an excavator has notified the appropriate one-call notification center of a proposed
 6 excavation, an owner of an underground facility shall:

7 (a) provide the locates and mark the location within 2 business days; or

8 (b) respond immediately if the excavator notifies the one-call notification center that an emergency
 9 exists.

10 (3) (a) After an owner of an underground facility has located and marked the underground facilities,
 11 the excavator shall determine if weather, time, or other factors may have affected location marks,
 12 warranting relocation of the facilities.

13 (b) If excavation has not occurred within 30 days of the locate and mark, the excavator shall
 14 request that the facility be relocated and remarked before excavating unless other arrangements have been
 15 made with the underground facility owner. The excavator is responsible for costs associated with relocating
 16 and remarking a facility that is not excavated within 30 days of the locate and mark.

17 ~~(2)(4)~~ Upon receipt of the notice provided for in this section, the owner of the underground facility
 18 shall provide the excavator with reasonably accurate information as to the owner's locatable underground
 19 facilities by surface locating and marking the location of the facilities. If there are identified but unlocatable
 20 underground facilities, the owner of the facilities shall provide the excavator with the best available
 21 information as to their locations. ~~Excavators~~ An excavator may not excavate until all known facilities have
 22 been located and marked. An excavator is not responsible for damages to an underground facility that
 23 cannot be located by its owner. Once the facilities are located and marked by the facility owner, the
 24 excavator is responsible for maintaining the markings.

25 ~~(3)(5)~~ Upon receipt of notice from the excavator, the facility owner shall respond within 2 business
 26 days by locating and marking the facility or by notifying the excavator that locating and marking is
 27 unnecessary. An excavator may not begin excavating before the locating and marking is complete or before
 28 he the excavator is notified that locating and marking is unnecessary.

29 ~~(4)(6)~~ A facility owner may request the excavator to mark the area to be excavated An excavator
 30 shall locate and mark the area to be excavated if requested by the facility owner or the owner's

1 representative. If an excavator discovers an ~~unmarked~~ underground facility that has not been located and
 2 marked, the excavator shall stop excavating in the vicinity of the facility and notify the facility owner or
 3 the one-call notification center.

4 (7) An underground facility owner may attempt to identify the location of a private underground
 5 facility connected to the owner's facility, but the facility owner is not liable for the accuracy of the locate."
 6

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

8 **"69-4-504. Information to be part of architects' and engineers' plans.** (1) Architects and engineers
 9 designing projects requiring excavation in or adjacent to any public street, alley, or right-of-way dedicated
 10 to public use or utility easement shall obtain information from the owners of underground facilities and then
 11 make the information a part of the plan by which the contractors operate. The owners of the underground
 12 facilities shall ~~provide substantially the same information as required by 69-4-503~~ make available all records
 13 showing the locations of underground facilities and shall provide locates, if requested, pursuant to
 14 69-4-503.

15 (2) ~~Nothing in this~~ This section shall does not excuse ~~any~~ a person from the obligation imposed
 16 by 69-4-502(1)."
 17

18 **NEW SECTION. Section 5. Emergency location and excavation.** (1) When an emergency
 19 excavation is required, the excavator shall notify the one-call notification center. An underground facility
 20 owner shall respond as soon as is practical after notification.

21 (2) Requesting an emergency locate or an emergency excavation that is not an emergency locate
 22 or an emergency excavation as those terms are defined constitutes a false alarm pursuant to 45-7-204 and
 23 is subject to the penalties under 45-7-204.
 24

25 **NEW SECTION. Section 6. Repealer.** Sections 69-4-506 and 69-4-511, MCA, are repealed.
 26

27 **NEW SECTION. Section 7. Codification instruction.** [Section 5] is intended to be codified as an
 28 integral part of Title 69, chapter 4, part 5, and the provisions of Title 69, chapter 4, part 5, apply to
 29 [section 5].
 30

-END-

1 *House* BILL NO. *375*
 2 INTRODUCED BY *Wm Ryan* *Paul Lynch* *Ron HART*
 3 *Spears* *Steve Hamstra* *Kenny* *Mike* *Bruce Swanson*

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REGULATIONS GOVERNING EXCAVATIONS NEAR
 5 UNDERGROUND UTILITIES; CLARIFYING CERTAIN DEFINITIONS; DEFINING "EMERGENCY EXCAVATION",
 6 "EMERGENCY LOCATE", "EXCAVATOR", AND "LOCATE"; ELIMINATING THE REQUIREMENT THAT A
 7 PUBLIC UTILITY FILE UNDERGROUND FACILITY INFORMATION WITH THE COUNTY CLERK AND
 8 RECORDER; CLARIFYING GENERAL AND EMERGENCY EXCAVATION AND LOCATION REQUIREMENTS;
 9 AMENDING SECTIONS 69-4-501, 69-4-502, 69-4-503, AND 69-4-504, MCA; AND REPEALING SECTIONS
 10 69-4-506 AND 69-4-511, MCA."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
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15 **"69-4-501. Definitions.** The following definitions ~~shall~~ apply to this part:

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 17 ~~holiday~~ New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas
 18 Day.

19 (2) ~~"Emergency"~~ "Emergency excavation" means an excavation in response to an emergency locate
 20 that is necessary to:

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

22 (b) repair a customer outage involving a previously installed utility-owned facility.

23 (3) "Emergency locate" means a locate and mark that is requested for:

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

25 (b) a customer outage for which repairs on a previously installed utility-owned facility are required.

26 ~~(3)(4)~~ (4) "Excavation" means ~~any~~ an operation in which earth, rock, or other material in the ground
 27 is moved, removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The
 28 term includes but is not limited to grading, trenching, digging, ditching, drilling, augering, tunneling,
 29 scraping, and cable or pipe plowing and driving. Excavation does not include surface road grading
 30 maintenance or road or ditch maintenance that does not change the original road or ditch grade or flow line.

1 (5) "Excavator" means a person conducting the excavation activities defined in subsection (4).

2 ~~(4)(6)~~ "Identified but unlocatable underground facility" means an underground facility that has been
3 identified but cannot be located with reasonable accuracy.

4 ~~(6)(7)~~ "Locatable underground facility" means an underground facility that can be field-located and
5 field-marked with reasonable accuracy.

6 (8) "Locate" means to use specialized equipment to identify the location of underground facilities
7 or the actual location of underground facilities identified by the use of specialized equipment.

8 ~~(6)(9)~~ "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field
9 location, or absence, of underground facilities, in accordance with the current color code standard of the
10 American public works association. Marking must include identification letters indicating the specific type
11 of underground facility, and the width of the facility if it is greater than 6 inches.

12 ~~(7)(10)~~ "One-call notification center" means a service through which a person may request a
13 locating and marking of underground facilities.

14 ~~(9)(11)~~ "Person" means an individual, partnership, firm, joint venture, corporation, association,
15 municipality, governmental unit, department, or agency, and includes ~~any~~ a trustee, receiver, assignee, or
16 a personal representative ~~thereof~~ of the listed entities.

17 ~~(9)(12)~~ "Reasonably accurate" means location within 18 inches of the outside lateral dimensions
18 of both sides of an underground facility.

19 ~~(10)(13)~~ "Underground facility" means ~~any~~ a facility buried or placed below ground for use in
20 connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic
21 communications, cablevision, fiber optics, electric energy, oil, gas, or other substances. The term includes
22 but is not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the
23 listed items."

24

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

26 **"69-4-502. Information to be sought before excavation -- notification -- exceptions.** (1) (a) Except
27 as provided in subsection (1)(b), ~~a person~~ an excavator may not make or begin ~~any~~ an excavation ~~in a~~
28 ~~public street, alley, right of way dedicated to the public use, or utility easement~~ without first obtaining
29 information concerning the possible location of ~~any~~ an underground facility from each public utility,
30 municipal corporation, underground facility owner, or other person having the right to bury underground

1 facilities that is a member of a one-call notification center pursuant to subsection (2)(a) ~~within the public~~
 2 ~~street, alley, right-of-way, or utility easement.~~

3 (b) (i) A registered land surveyor or a person under the supervision of a registered land surveyor
 4 may hand dig for shallow survey monuments at a depth of 12 inches or less below the road surface of a
 5 highway or at the intersection of the center lines of public streets.

6 (ii) The registered land surveyor, prior to hand digging, shall obtain proper approval from the
 7 appropriate governing authority regarding safety and pavement repair and, when appropriate, shall reference
 8 the monument upon exposure.

9 (iii) The governing authority is not liable for any damages caused or suffered by the registered land
 10 surveyor or any person under the supervision of the registered land surveyor.

11 (iv) The registered land surveyor is liable for damages incurred regarding utility facility ~~destruction,~~
 12 ~~and any~~

13 (v) A public utility, municipal corporation, underground facility owner, or other person having the
 14 right to bury underground facilities ~~within the public street, alley, right-of-way, or utility easement~~ is not
 15 liable for any damages suffered by the registered land surveyor or any person under the control of the
 16 registered land surveyor.

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

21 ~~(3)~~(2) (a) A public utility, municipal corporation, underground facility owner, or person having the
 22 right to bury underground facilities must be a member of a one-call notification center covering the service
 23 area in which the entity or person has underground facilities.

24 (b) Subsection ~~(3)(a)~~ (2)(a) does not apply to an owner or occupant of real property where
 25 underground facilities are buried if the facilities are used solely to furnish services or commodities to that
 26 property and no part of the facilities ~~are~~ is located in a public street, alley, or right-of-way dedicated to the
 27 public use."
 28

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

30 "**69-4-503. Notification -- locating and marking.** (1) ~~At least 2 but not more than 10 business days~~

1 ~~before~~ Before beginning ~~any an~~ excavation, the excavator shall notify, through a one-call notification center,
 2 all owners of underground facilities in the area of the proposed excavation ~~of the scheduled commencement~~
 3 ~~of the excavation. If a one-call notification center service is not available, notice must be provided~~
 4 ~~individually to the owners of underground facilities within the area of the proposed excavation.~~

5 (2) After an excavator has notified the appropriate one-call notification center of a proposed
 6 excavation, an owner of an underground facility shall:

7 (a) provide the locates and mark the location within 2 business days; or

8 (b) respond immediately if the excavator notifies the one-call notification center that an emergency
 9 exists.

10 (3) (a) After an owner of an underground facility has located and marked the underground facilities,
 11 the excavator shall determine if weather, time, or other factors may have affected location marks,
 12 warranting relocation of the facilities.

13 (b) If excavation has not occurred within 30 days of the locate and mark, the excavator shall
 14 request that the facility be relocated and remarked before excavating unless other arrangements have been
 15 made with the underground facility owner. The excavator is responsible for costs associated with relocating
 16 and remarking a facility that is not excavated within 30 days of the locate and mark.

17 ~~(2)(4)~~ (4) Upon receipt of the notice provided for in this section, the owner of the underground facility
 18 shall provide the excavator with reasonably accurate information as to the owner's locatable underground
 19 facilities by surface locating and marking the location of the facilities. If there are identified but unlocatable
 20 underground facilities, the owner of the facilities shall provide the excavator with the best available
 21 information as to their locations. ~~Excavators~~ An excavator may not excavate until all known facilities have
 22 been located and marked. An excavator is not responsible for damages to an underground facility that
 23 cannot be located by its owner. Once the facilities are located and marked by the facility owner, the
 24 excavator is responsible for maintaining the markings.

25 ~~(3)(5)~~ (5) Upon receipt of notice from the excavator, the facility owner shall respond within 2 business
 26 days by locating and marking the facility or by notifying the excavator that locating and marking is
 27 unnecessary. An excavator may not begin excavating before the locating and marking is complete or before
 28 ~~he~~ the excavator is notified that locating and marking is unnecessary.

29 ~~(4)(6)~~ (6) A facility owner may request the excavator to mark the area to be excavated. An excavator
 30 shall locate and mark the area to be excavated if requested by the facility owner or the owner's

1 representative. If an excavator discovers an ~~unmarked~~ underground facility that has not been located and
 2 marked, the excavator shall stop excavating in the vicinity of the facility and notify the facility owner or
 3 the one-call notification center.

4 (7) An underground facility owner may attempt to identify the location of a private underground
 5 facility connected to the owner's facility, but the facility owner is not liable for the accuracy of the locate."

6
 7 **Section 4.** Section 69-4-504, MCA, is amended to read:

8 **"69-4-504. Information to be part of architects' and engineers' plans.** (1) Architects and engineers
 9 designing projects requiring excavation in or adjacent to any public street, alley, or right-of-way dedicated
 10 to public use or utility easement shall obtain information from the owners of underground facilities and then
 11 make the information a part of the plan by which the contractors operate. The owners of the underground
 12 facilities shall ~~provide substantially the same information as required by 69-4-503~~ make available all records
 13 showing the locations of underground facilities and shall provide locates, if requested, pursuant to
 14 69-4-503.

15 (2) ~~Nothing in this~~ This section shall ~~does not~~ excuse any a person from the obligation imposed
 16 by 69-4-502(1)."

17
 18 **NEW SECTION. Section 5. Emergency location and excavation.** (1) When an emergency
 19 excavation is required, the excavator shall notify the one-call notification center. An underground facility
 20 owner shall respond as soon as is practical after notification.

21 (2) Requesting an emergency locate or an emergency excavation that is not an emergency locate
 22 or an emergency excavation as those terms are defined constitutes a false alarm pursuant to 45-7-204 and
 23 is subject to the penalties under 45-7-204.

24
 25 **NEW SECTION. Section 6. Repealer.** Sections 69-4-506 and 69-4-511, MCA, are repealed.

26
 27 **NEW SECTION. Section 7. Codification instruction.** [Section 5] is intended to be codified as an
 28 integral part of Title 69, chapter 4, part 5, and the provisions of Title 69, chapter 4, part 5, apply to
 29 [section 5].

30 -END-

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House BILL NO. 375
INTRODUCED BY Wm Ryan Ross Lynch Rose HART
Aguiar State House Kenya Shia Bundy Swanson

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REGULATIONS GOVERNING EXCAVATIONS NEAR UNDERGROUND UTILITIES; CLARIFYING CERTAIN DEFINITIONS; DEFINING "EMERGENCY EXCAVATION", "EMERGENCY LOCATE", "EXCAVATOR", AND "LOCATE"; ELIMINATING THE REQUIREMENT THAT A PUBLIC UTILITY FILE UNDERGROUND FACILITY INFORMATION WITH THE COUNTY CLERK AND RECORDER; CLARIFYING GENERAL AND EMERGENCY EXCAVATION AND LOCATION REQUIREMENTS; AMENDING SECTIONS 69-4-501, 69-4-502, 69-4-503, AND 69-4-504, MCA; AND REPEALING SECTIONS 69-4-506 AND 69-4-511, MCA."

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

1 *House* BILL NO. *375*
 2 INTRODUCED BY *Rep. Ryan* *Sen. Jack* *Rep. HART*
 3 *Sen. State* *House* *Sen. Kelly* *Sen. Pannone*

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REGULATIONS GOVERNING EXCAVATIONS NEAR
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 18 Day.

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 20 that is necessary to:

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11 of underground facility, and the width of the facility if it is greater than 6 inches.

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16 a personal representative ~~thereof~~ of the listed entities.

17 ~~(9)(12)~~ "Reasonably accurate" means location within 18 inches of the outside lateral dimensions
18 of both sides of an underground facility.

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 2 ~~street, alley, right of way, or utility easement.~~

3 (b) (i) A registered land surveyor or a person under the supervision of a registered land surveyor
 4 may hand dig for shallow survey monuments at a depth of 12 inches or less below the road surface of a
 5 highway or at the intersection of the center lines of public streets.

6 (ii) The registered land surveyor, prior to hand digging, shall obtain proper approval from the
 7 appropriate governing authority regarding safety and pavement repair and, when appropriate, shall reference
 8 the monument upon exposure.

9 (iii) The governing authority is not liable for any damages caused or suffered by the registered land
 10 surveyor or any person under the supervision of the registered land surveyor.

11 (iv) The registered land surveyor is liable for damages incurred regarding utility facility destruction,
 12 ~~and any~~

13 (v) A public utility, municipal corporation, underground facility owner, or other person having the
 14 right to bury underground facilities ~~within the public street, alley, right of way, or utility easement~~ is not
 15 liable for any damages suffered by the registered land surveyor or any person under the control of the
 16 registered land surveyor.

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

21 ~~(3)(2)~~ (a) A public utility, municipal corporation, underground facility owner, or person having the
 22 right to bury underground facilities must be a member of a one-call notification center covering the service
 23 area in which the entity or person has underground facilities.

24 (b) Subsection ~~(3)(a)~~ (2)(a) does not apply to an owner or occupant of real property where
 25 underground facilities are buried if the facilities are used solely to furnish services or commodities to that
 26 property and no part of the facilities ~~are~~ is located in a public street, alley, or right-of-way dedicated to the
 27 public use."
 28

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

30 **"69-4-503. Notification -- locating and marking.** (1) ~~At least 2 but not more than 10 business days~~

1 ~~before~~ Before beginning ~~any~~ an excavation, the excavator shall notify, through a one-call notification center,
 2 all owners of underground facilities in the area of the proposed excavation ~~of the scheduled commencement~~
 3 ~~of the excavation. If a one-call notification center service is not available, notice must be provided~~
 4 ~~individually to the owners of underground facilities within the area of the proposed excavation.~~

5 (2) After an excavator has notified the appropriate one-call notification center of a proposed
 6 excavation, an owner of an underground facility shall:

7 (a) provide the locates and mark the location within 2 business days; or

8 (b) respond immediately if the excavator notifies the one-call notification center that an emergency
 9 exists.

10 (3) (a) After an owner of an underground facility has located and marked the underground facilities,
 11 the excavator shall determine if weather, time, or other factors may have affected location marks,
 12 warranting relocation of the facilities.

13 (b) If excavation has not occurred within 30 days of the locate and mark, the excavator shall
 14 request that the facility be relocated and remarked before excavating unless other arrangements have been
 15 made with the underground facility owner. The excavator is responsible for costs associated with relocating
 16 and remarking a facility that is not excavated within 30 days of the locate and mark.

17 ~~(3)(4)~~ (4) Upon receipt of the notice provided for in this section, the owner of the underground facility
 18 shall provide the excavator with reasonably accurate information as to the owner's locatable underground
 19 facilities by surface locating and marking the location of the facilities. If there are identified but unlocatable
 20 underground facilities, the owner of the facilities shall provide the excavator with the best available
 21 information as to their locations. ~~Excavators~~ An excavator may not excavate until all known facilities have
 22 been located and marked. An excavator is not responsible for damages to an underground facility that
 23 cannot be located by its owner. Once the facilities are located and marked by the facility owner, the
 24 excavator is responsible for maintaining the markings.

25 ~~(3)(5)~~ (5) Upon receipt of notice from the excavator, the facility owner shall respond within 2 business
 26 days by locating and marking the facility or by notifying the excavator that locating and marking is
 27 unnecessary. An excavator may not begin excavating before the locating and marking is complete or before
 28 ~~to~~ the excavator is notified that locating and marking is unnecessary.

29 ~~(4)(6)~~ (6) ~~A facility owner may request the excavator to mark the area to be excavated~~ An excavator
 30 shall locate and mark the area to be excavated if requested by the facility owner or the owner's

1 representative. If an excavator discovers an ~~unmarked~~ underground facility that has not been located and
 2 marked, the excavator shall stop excavating in the vicinity of the facility and notify the facility owner or
 3 the one-call notification center.

4 (7) An underground facility owner may attempt to identify the location of a private underground
 5 facility connected to the owner's facility, but the facility owner is not liable for the accuracy of the locate."
 6

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

8 **"69-4-504. Information to be part of architects' and engineers' plans.** (1) Architects and engineers
 9 designing projects requiring excavation in or adjacent to any public street, alley, or right-of-way dedicated
 10 to public use or utility easement shall obtain information from the owners of underground facilities and then
 11 make the information a part of the plan by which the contractors operate. The owners of the underground
 12 facilities shall ~~provide substantially the same information as required by 69-4-503~~ make available all records
 13 showing the locations of underground facilities and shall provide locates, if requested, pursuant to
 14 69-4-503.

15 (2) ~~Nothing in this~~ This section shall does not excuse ~~any~~ a person from the obligation imposed
 16 by 69-4-502(1)."
 17

18 **NEW SECTION. Section 5. Emergency location and excavation.** (1) When an emergency
 19 excavation is required, the excavator shall notify the one-call notification center. An underground facility
 20 owner shall respond as soon as is practical after notification.

21 (2) Requesting an emergency locate or an emergency excavation that is not an emergency locate
 22 or an emergency excavation as those terms are defined constitutes a false alarm pursuant to 45-7-204 and
 23 is subject to the penalties under 45-7-204.
 24

25 **NEW SECTION. Section 6. Repealer.** Sections 69-4-506 and 69-4-511, MCA, are repealed.
 26

27 **NEW SECTION. Section 7. Codification instruction.** [Section 5] is intended to be codified as an
 28 integral part of Title 69, chapter 4, part 5, and the provisions of Title 69, chapter 4, part 5, apply to
 29 [section 5].
 30

-END-

HOUSE BILL NO. 375

INTRODUCED BY RYAN, PROUSE, LYNCH, ROSE, HARP, SQUIRES, SLITER, HARRINGTON,
KRENZLER, SHEA, GRADY, SWANSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REGULATIONS GOVERNING EXCAVATIONS NEAR UNDERGROUND UTILITIES; CLARIFYING CERTAIN DEFINITIONS; DEFINING "EMERGENCY EXCAVATION", "EMERGENCY LOCATE", "EXCAVATOR", AND "LOCATE"; ELIMINATING THE REQUIREMENT THAT A PUBLIC UTILITY FILE UNDERGROUND FACILITY INFORMATION WITH THE COUNTY CLERK AND RECORDER; CLARIFYING GENERAL AND EMERGENCY EXCAVATION AND LOCATION REQUIREMENTS; AMENDING SECTIONS 69-4-501, 69-4-502, 69-4-503, AND 69-4-504, MCA; AND REPEALING SECTIONS 69-4-506 AND 69-4-511, 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~~ New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(2) ~~"Emergency"~~ "Emergency excavation" means an excavation in response to an emergency locate that is necessary to:

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

(b) repair a customer outage involving a previously installed utility-owned facility.

(3) "Emergency locate" means a locate and mark that is requested for:

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

(b) a customer outage for which repairs on a previously installed utility-owned facility are required.

~~(3)(4)~~ (4) "Excavation" means ~~any~~ an 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

1 maintenance or road or ditch maintenance that does not change the original road or ditch grade or flow line.

2 (5) "Excavator" means a person conducting the excavation activities defined in subsection (4).

3 ~~(4)(6)~~ "Identified but unlocatable underground facility" means an underground facility that has been
4 identified but cannot be located with reasonable accuracy.

5 ~~(5)(7)~~ "Locatable underground facility" means an underground facility that can be field-located and
6 field-marked with reasonable accuracy.

7 (8) "Locate" means to use specialized equipment to identify the location of underground facilities
8 or the actual location of underground facilities identified by the use of specialized equipment.

9 ~~(6)(9)~~ "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field
10 location, or absence, of underground facilities, in accordance with the current color code standard of the
11 American public works association. Marking must include identification letters indicating the specific type
12 of underground facility, and the width of the facility if it is greater than 6 inches.

13 ~~(7)(10)~~ "One-call notification center" means a service through which a person may request a
14 locating and marking of underground facilities.

15 ~~(8)(11)~~ "Person" means an individual, partnership, firm, joint venture, corporation, association,
16 municipality, governmental unit, department, or agency, and includes ~~any~~ a trustee, receiver, assignee, or
17 a personal representative ~~thereof~~ of the listed entities.

18 ~~(9)(12)~~ "Reasonably accurate" means location within 18 inches of the outside lateral dimensions
19 of both sides of an underground facility.

20 ~~(10)(13)~~ "Underground facility" means ~~any~~ a facility buried or placed below ground for use in
21 connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic
22 communications, cablevision, fiber optics, electric energy, oil, gas, or other substances. The term includes
23 but is not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the
24 listed items."

25
26 **Section 2.** Section 69-4-502, MCA, is amended to read:

27 **"69-4-502. Information to be sought before excavation -- notification -- exceptions.** (1) (a) Except
28 as provided in subsection (1)(b), ~~a person~~ an excavator may not make or begin ~~any~~ an excavation ~~in a~~
29 ~~public street, alley, right-of-way dedicated to the public use, or utility easement~~ without first obtaining
30 information concerning the possible location of ~~any~~ an underground facility from each public utility,

1 municipal corporation, underground facility owner, or other person having the right to bury underground
 2 facilities ~~that is a member of a one-call notification center pursuant to subsection (2)(a) within the public~~
 3 ~~street, alley, right of way, or utility easement.~~

4 (b) (i) A registered land surveyor or a person under the supervision of a registered land surveyor
 5 may hand dig for shallow survey monuments at a depth of 12 inches or less below the road surface of a
 6 highway or at the intersection of the center lines of public streets.

7 (ii) The registered land surveyor, prior to hand digging, shall obtain proper approval from the
 8 appropriate governing authority regarding safety and pavement repair and, when appropriate, shall reference
 9 the monument upon exposure.

10 (iii) The governing authority is not liable for any damages caused or suffered by the registered land
 11 surveyor or any person under the supervision of the registered land surveyor.

12 (iv) The registered land surveyor is liable for damages incurred regarding utility facility destruction,
 13 ~~and any~~

14 (v) A public utility, municipal corporation, underground facility owner, or other person having the
 15 right to bury underground facilities ~~within the public street, alley, right of way, or utility easement~~ is not
 16 liable for any damages suffered by the registered land surveyor or any person under the control of the
 17 registered land surveyor.

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

22 ~~(3)(2)~~ (a) A public utility, municipal corporation, underground facility owner, or person having the
 23 right to bury underground facilities must be a member of a one-call notification center covering the service
 24 area in which the entity or person has underground facilities.

25 (b) Subsection ~~(3)(a)~~ (2)(a) does not apply to an owner or occupant of real property where
 26 underground facilities are buried if the facilities are used solely to furnish services or commodities to that
 27 property and no part of the facilities ~~are~~ is located in a public street, alley, or right-of-way dedicated to the
 28 public use."

29
 30 **Section 3.** Section 69-4-503, MCA, is amended to read:

1 **"69-4-503. Notification -- locating and marking.** (1) ~~At least 2 but not more than 10 business days~~
 2 ~~before~~ Before beginning ~~any~~ an excavation, the excavator shall notify, through a one-call notification center,
 3 all owners of underground facilities in the area of the proposed excavation ~~of the scheduled commencement~~
 4 ~~of the excavation. If a one-call notification center service is not available, notice must be provided~~
 5 ~~individually to the owners of underground facilities within the area of the proposed excavation.~~

6 (2) After an excavator has notified the appropriate one-call notification center of a proposed
 7 excavation, an owner of an underground facility shall:

8 (a) provide the locates and mark the location within 2 business days; or

9 (b) respond immediately if the excavator notifies the one-call notification center that an emergency
 10 exists.

11 (3) (a) After an owner of an underground facility has located and marked the underground facilities,
 12 the excavator shall determine if weather, time, or other factors may have affected location marks,
 13 warranting relocation of the facilities.

14 (b) If excavation has not occurred within 30 days of the locate and mark, the excavator shall
 15 request that the facility be relocated and remarked before excavating unless other arrangements have been
 16 made with the underground facility owner. The excavator is responsible for costs associated with relocating
 17 and remarking a facility that is not excavated within 30 days of the locate and mark.

18 ~~(2)(4)~~ (4) Upon receipt of the notice provided for in this section, the owner of the underground facility
 19 shall provide the excavator with reasonably accurate information as to the owner's locatable underground
 20 facilities by surface locating and marking the location of the facilities. If there are identified but unlocatable
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 25 excavator is responsible for maintaining the markings.

26 ~~(3)(5)~~ (5) Upon receipt of notice from the excavator, the facility owner shall respond within 2 business
 27 days by locating and marking the facility or by notifying the excavator that locating and marking is
 28 unnecessary. An excavator may not begin excavating before the locating and marking is complete or before
 29 ~~he~~ the excavator is notified that locating and marking is unnecessary.

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 2 representative. If an excavator discovers an ~~unmarked~~ underground facility that has not been located and
 3 marked, the excavator shall stop excavating in the vicinity of the facility and notify the facility owner or
 4 the one-call notification center.

5 (7) An underground facility owner may attempt to identify the location of a private underground
 6 facility connected to the owner's facility, but the facility owner is not liable for the accuracy of the locate."

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

9 **"69-4-504. Information to be part of architects' and engineers' plans.** (1) Architects and engineers
 10 designing projects requiring excavation in or adjacent to any public street, alley, or right-of-way dedicated
 11 to public use or utility easement shall obtain information from the owners of underground facilities and then
 12 make the information a part of the plan by which the contractors operate. The owners of the underground
 13 facilities shall ~~provide substantially the same information as required by 69-4-503~~ make available all records
 14 showing the locations of underground facilities and shall provide locates, if requested, pursuant to
 15 69-4-503.

16 (2) ~~Nothing in this~~ This section shall ~~shall~~ does not excuse ~~any~~ a person from the obligation imposed
 17 by 69-4-502(1)."

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 19 **NEW SECTION. Section 5. Emergency location and excavation.** (1) When an emergency
 20 excavation is required, the excavator shall notify the one-call notification center. An underground facility
 21 owner shall respond as soon as is practical after notification.

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 23 or an emergency excavation as those terms are defined constitutes a false alarm pursuant to 45-7-204 and
 24 is subject to the penalties under 45-7-204.

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27
 28 **NEW SECTION. Section 7. Codification instruction.** [Section 5] is intended to be codified as an
 29 integral part of Title 69, chapter 4, part 5, and the provisions of Title 69, chapter 4, part 5, apply to
 30 [section 5].

-END-