

MONTANA STATE LAW

TITLE 69 PUBLIC UTILITIES AND CARRIERS

CHAPTER 4 UTILITY LINES AND FACILITIES

Part 5 -- Excavations Near Underground Facilities

- 69-4-501. Definitions.
- 69-4-502. Information to be sought before excavation – notification - exceptions.
- 69-4-503. Notification - locating and marking.
- 69-4-504. Information to be part of architects' and engineers' plans.
- 69-4-505. Liability for damages to underground facilities.
- 69-4-506. Repealed.
- 69-4-507. Public authority - liability.
- 69-4-508. Emergency location and excavation.
- 69-4-509. Reserved.
- 69-4-510. Reserved.
- 69-4-511. Repealed.
- 69-4-512. Judicial review.
- 69-4-513. Disposition of damage fees collected.
- 69-4-514. Incident histories.

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

(1) "Business day" means any day other than Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

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

(a) 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.

(4) (a) "Excavation" means 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.

(b) 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.

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

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

(7) "Incident" means a violation of the provisions of 69-4-503(1) by an excavator that, at a single location on a single day, results in damage to an underground facility or the property of a third party or in bodily injury or death to any person other than the excavator.

(8) "Incident history" means the total number of incidents experienced by an excavator in the 5 years preceding the most recent incident. The incident history must be used to determine damage fees for violation of 69-4-503(1).

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

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

(11) "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.

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

(13) "Person" means an individual, partnership, firm, joint venture, corporation, association, municipality, governmental unit, department, or agency and includes a trustee, receiver, assignee, or personal representative of the listed entities.

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

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

(b) The term does not include shallow underground water systems designed to irrigate lawns, gardens, or other landscaping.

History: En. Sec. 1, Ch. 180, L. 1971; R.C.M. 1947, 32-4801; amd. Sec. 1, Ch. 286, L. 1991; amd. Sec. 1, Ch. 179, L. 1997; amd. Sec. 61, Ch. 7, L. 2001; amd. Sec. 1, Ch. 544, L. 2005.

69-4-502. Information to be sought before excavation -- notification -- exceptions.

(1) (a) Except as provided in subsection (1)(b), an excavator may not make or begin an excavation without first obtaining information concerning the possible location of an underground facility from each public utility, municipal corporation, underground facility owner, or other person having the right to bury underground facilities that is a member of a one-call notification center pursuant to subsection (2)(a).

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

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

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

(iv) The registered land surveyor is liable for damages incurred regarding facility destruction.

(v) A public utility, municipal corporation, underground facility owner, or other person having the right to bury underground facilities is not liable for any damages suffered by the registered land surveyor or any person under the control of the registered land surveyor.

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

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

History: (1)En. Sec. 2, Ch. 180, L. 1971; Sec. 32-4802, R.C.M. 1947; (2)En. Sec. 3, Ch. 180, L. 1971; Sec. 32-4803, R.C.M. 1947; R.C.M. 1947, 32-4802, 32-4803(part); amd. Sec. 2, Ch. 286, L. 1991; amd. Sec. 1, Ch. 393, L. 1993; amd. Sec. 2, Ch. 179, L. 1997.

69-4-503. Notification -- locating and marking.

(1) Before beginning an excavation, the excavator shall notify, through a one-call notification center, all owners of underground facilities in the area of the proposed excavation.

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

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

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

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

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

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

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

(6) An excavator shall locate and mark the area to be excavated if requested by the facility owner or the owner's representative. If an excavator discovers an underground facility that has not been located and marked, the excavator shall stop excavating in the vicinity of the facility and notify the facility owner or the one-call notification center.

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

History: En. Sec. 3, Ch. 180, L. 1971; R.C.M. 1947, 32-4803(part); amd. Sec. 1, Ch. 43, L. 1983; amd. Sec. 3, Ch. 286, L. 1991; amd. Sec. 3, Ch. 179, L. 1997.

69-4-504. Information to be part of architects' and engineers' plans.

(1) Architects and engineers designing projects requiring excavation in or adjacent to any public street, alley, or right-of-way dedicated to public use or utility easement shall obtain information from the owners of underground facilities and then make the information a part of the plan by which the contractors operate. The owners of the underground facilities shall make available all records showing the locations of underground facilities and shall provide locates, if requested, pursuant to 69-4-503.

(2) This section does not excuse a person from the obligation imposed by 69-4-502(1).

History: En. Sec. 8, Ch. 180, L. 1971; R.C.M. 1947, 32-4808; amd. Sec. 2, Ch. 43, L. 1983; amd. Sec. 4, Ch. 286, L. 1991; amd. Sec. 4, Ch. 179, L. 1997.

69-4-505. Liability for damages to underground facilities.

(1) (a) If any underground facility is damaged by an excavator who has failed to obtain information as to its location as provided in 69-4-503, then the excavator is liable to the owner of the underground facility for the entire cost of the repair of the facility. The excavator is also liable to the underground facility owner that is a member of a one-call notification center pursuant to 69-4-502(2)(a) for a damage fee. Damage fees must be assessed as follows:

(i) 25% of the total cost of repairing the underground facility not to exceed \$125 for the first incident;

(ii) 50% of the total cost of repairing the underground facility not to exceed \$500 for the second incident; and

(iii) \$1,000 for the third and each subsequent incident.

(b) An underground facility owner may levy only one fee for each incident.

(c) If there is more than one underground facility affected by an incident, then each underground facility owner that is a member of a one-call notification center pursuant to 69-4-502(2)(a) may levy one damage fee for that incident.

(2) Payment of costs and fees described in this section is due within 30 days of billing by the owner of the underground facility. The underground facility owner may enforce collection in a court of competent jurisdiction.

(3) If information requested pursuant to 69-4-503 is not provided within the time specified in that section, excavators damaging or injuring underground facilities are not liable for that damage or injury, unless caused by their negligence, and are not liable for the damage fees assessed under subsection (1).

(4) The act of obtaining information as required by this part does not excuse an excavator making any excavation from doing so in a careful and prudent manner, nor does it excuse the excavator from liability for any damage or injury resulting from the excavator's negligence.

History: (1)En. Sec. 4, Ch. 180, L. 1971; Sec. 32-4804, R.C.M. 1947; (2)En. Sec. 5, Ch. 180, L. 1971; Sec. 32-4805, R.C.M. 1947; (3)En. Sec. 6, Ch. 180, L. 1971; Sec. 32-4806, R.C.M. 1947; R.C.M. 1947, 32-4804, 32-4805, 32-4806; amd. Sec. 2, Ch. 544, L. 2005.

69-4-506. Repealed. Sec. 6, Ch. 179, L. 1997.

History: En. Sec. 7, Ch. 180, L. 1971; R.C.M. 1947, 32-4807.

69-4-507. Public authority -- liability.

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

History: En. Sec. 5, Ch. 286, L. 1991.

69-4-508. Emergency location and excavation.

(1) When an emergency excavation is required, the excavator shall notify the one-call notification center. An underground facility owner shall respond as soon as is practical after notification.

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

History: En. Sec. 5, Ch. 179, L. 1997.

69-4-509 and 69-4-510 reserved.

69-4-511. Repealed. Sec. 6, Ch. 179, L. 1997.

History: En. Sec. 1, Ch. 184, L. 1987.

69-4-512. Judicial review.

An excavator subject to repair charges and damage fees described in 69-4-505 may have these costs reviewed by a court of competent jurisdiction.

History: En. Sec. 3, Ch. 544, L. 2005.

69-4-513. Disposition of damage fees collected.

(1) Except as provided in subsection (2), damage fees collected by owners of underground facilities must be distributed to the appropriate one-call notification center. The damage fee must be used to fund training and educational programs and materials for excavators and the general public regarding the one-call notification system.

(2) The underground facility owner is not liable for the distribution of damage fees to the one-call notification center in the event that those fees are not collected from the excavator.

History: En. Sec. 4, Ch. 544, L. 2005.

69-4-514. Incident histories.

Owners of underground facilities shall report incidents to the appropriate one-call notification center that is responsible for maintaining incident histories of violators. These incident histories must be available for public inquiry.

History: En. Sec. 5, Ch. 544, L. 2005.