

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1031

Introduced by Friesen, 34.

Read first time January 16, 2018

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to the One-Call Notification System Act; to
2 amend sections 76-2308 and 76-2321, Reissue Revised Statutes of
3 Nebraska, and sections 76-2301, 76-2303, 76-2303.01, 76-2322, and
4 76-2323, Revised Statutes Cumulative Supplement, 2016; to define and
5 redefine terms; to change provisions relating to excavation notice
6 and marking of underground facilities; to provide for mandatory
7 large project planning meeting notification; to provide rulemaking
8 duties for the State Fire Marshal; to allocate locate costs; to
9 harmonize provisions; to repeal the original sections; and to
10 declare an emergency.

11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 76-2301, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 76-2301 Sections 76-2301 to 76-2331 and sections 3, 4, 5, and 6 of
4 this act shall be known and may be cited as the One-Call Notification
5 System Act.

6 Sec. 2. Section 76-2303, Revised Statutes Cumulative Supplement,
7 2016, is amended to read:

8 76-2303 For purposes of the One-Call Notification System Act, the
9 definitions found in sections 76-2304 ~~76-2303.01~~ to 76-2317 and sections
10 3 to 6 of this act shall be used.

11 Sec. 3. Approximate location means:

12 (1) For metallic underground facilities and nonmetallic underground
13 facilities with metallic tracer wire, a distance not to exceed the
14 combined width of the underground facility plus eighteen inches measured
15 from the outer edge of each side of the underground facility; or

16 (2) For nonmetallic underground facilities without metallic tracer
17 wire, the underground facility shall be located as accurately as possible
18 from field location records and shall require notification from the
19 operator of the inability to accurately locate the facility.

20 Sec. 4. Large project means an excavation in a city of the
21 metropolitan class, city of the primary class, or city of the first class
22 measuring more than one mile in length and taking more than ninety days
23 to complete. Multiple excavation notifications in a particular area may
24 be considered together in determining if such excavations constitute a
25 large project.

26 Sec. 5. Mechanical equipment means mechanical power equipment
27 including trenchers, bulldozers, power shovels, augers, backhoes,
28 scrapers, drills, cable and pipe plows, skidders, and yarders.

29 Sec. 6. Nonintrusive excavating means excavation using hand tools
30 or equipment that uses air or water pressure as the direct means by which
31 to break up soil for removal by hand tools or vacuum excavation.

1 Sec. 7. Section 76-2303.01, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 ~~76-2303.01~~ Bar test survey means a leakage survey completed with a
4 nonconductive piece of equipment made by manually driving small holes in
5 the ground at regular intervals along the route of an underground gas
6 pipe for the purpose of extracting a sample of the ground atmosphere and
7 testing the atmosphere in the holes with a combustible gas detector or
8 other suitable device.

9 Sec. 8. Section 76-2308, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 76-2308 Excavation means ~~shall mean~~ any activity in which earth,
12 rock, or other material in or on the ground is moved or otherwise
13 displaced by means of tools, equipment, or explosives and includes ~~shall~~
14 ~~include~~ grading, trenching, digging, ditching, drilling, augering,
15 tunneling, scraping, demolition, and cable or pipe plowing or driving but
16 does ~~shall~~ not include (1) normal maintenance of roads if the maintenance
17 does not change the original road grade and does not involve the road
18 ditch, (2) tilling of soil and gardening for seeding and other
19 agricultural purposes, (3) digging of graves or in landfills in planned
20 locations, (4) maintenance or rebuilding of railroad track or facilities
21 located on a railroad right-of-way by the railroad company or its
22 contractors when such maintenance or rebuilding does not change the track
23 grade, or (5) hand digging around the base of a pole for pole inspection
24 as part of routine maintenance or replacement of a pole when the
25 replacement pole is similarly sized and is installed in the existing
26 hole.

27 Sec. 9. Section 76-2321, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 76-2321 (1) A person shall not commence any excavation without first
30 giving notice to every operator. A permit issued pursuant to law
31 authorizing an excavation does not preclude compliance with this section.

1 An excavator's notice to the center shall be deemed notice to all
2 operators. An excavator's notice to operators shall be ineffective for
3 purposes of this subsection unless given to the center. Notice to the
4 center shall be given at least two full business days, but no more than
5 ten business days, before commencing the excavation, except notice may be
6 given more than ten business days in advance when the excavation is a
7 road construction, widening, repair, or grading project provided for in
8 sections 70-311 to 70-313 and 86-708 to 86-710. An excavator may commence
9 work before the elapse of two full business days when (a) notice to the
10 center has been given as provided by this subsection and (b) all the
11 affected operators have notified the excavator that the location of all
12 the affected operator's underground facilities have been marked or that
13 the operators have no underground facilities in the location of the
14 proposed excavation.

15 (2) The notice required pursuant to subsection (1) of this section
16 ~~includes shall include~~ (a) the name, email address, and telephone number
17 of the person making the notification, (b) the name, email address,
18 address, and telephone number of the excavator, (c) the location of the
19 area of the proposed excavation, including the range, township, section,
20 and quarter section, unless the area is within the corporate limits of a
21 city or village, in which case the location may be by street address, (d)
22 the date and time excavation is scheduled to commence, (e) the depth of
23 excavation, (f) the type and extent of excavation being planned,
24 including whether the excavation involves tunneling or horizontal boring,
25 and (g) whether the use of explosives is anticipated.

26 Sec. 10. Section 76-2322, Revised Statutes Cumulative Supplement,
27 2016, is amended to read:

28 76-2322 (1) An excavator shall serve notice of intent to excavate
29 upon the center by submitting a locate request using a method provided by
30 the center. The center shall inform the excavator of all operators to
31 whom such notice will be transmitted and shall promptly transmit such

1 notice to every operator having an underground facility in the area of
2 intended excavation. The center shall assign an identification number to
3 each notice received.

4 (2) For large projects, a mandatory large project planning meeting
5 notification shall be issued by the center to all operators with
6 facilities in the large project area sixty days prior to excavation
7 beginning. If an excavator does not believe a project meets the
8 definition of a large project, the excavator shall indicate such belief
9 in the notice, but any operator with facilities in the project area may
10 request a meeting with the excavator. The State Fire Marshal shall adopt
11 and promulgate rules and regulations for large projects. The rules and
12 regulations shall include, but not be limited to, the establishment of
13 detailed processes for large project planning meetings, complaint
14 procedures, cost allocation, and reimbursement procedures.

15 (3) The locate costs of large projects, including the locate costs
16 incurred by other operators as part of an excavator's large project,
17 shall be paid by the excavator.

18 (4) For an excavation that is not a large project, the excavator
19 shall pay the locate costs after three locate costs are incurred in the
20 same excavation area.

21 Sec. 11. Section 76-2323, Revised Statutes Cumulative Supplement,
22 2016, is amended to read:

23 76-2323 (1) Upon receipt of the information contained in the notice
24 pursuant to section 76-2321, an operator shall advise the excavator of
25 the approximate location of underground facilities in the area of the
26 proposed excavation by marking or identifying the location of the
27 underground facilities with stakes, flags, paint, or any other clearly
28 identifiable marking or reference point and shall indicate if the
29 underground facilities are subject to section 76-2331. The location of
30 the underground facility given by the operator shall be within a strip of
31 land eighteen inches on either side of the marking or identification plus

1 one-half of the width of the underground facility. If in the opinion of
2 the operator the precise location of a facility cannot be determined and
3 marked as required, the operator shall provide all pertinent information
4 and field locating assistance to the excavator at a mutually agreed to
5 time. The location shall be marked or identified using color standards
6 prescribed by the center. The operator shall respond no later than two
7 business days after receipt of the information in the notice or at a time
8 mutually agreed to by the parties.

9 (2) The marking or identification shall be done in a manner that
10 will last for a minimum of five business days on any nonpermanent surface
11 and a minimum of ten business days on any permanent surface. If the
12 excavation will continue for longer than five business days, the operator
13 shall remark or reidentify the location of the underground facility upon
14 the request of the excavator. The request for remarking or
15 reidentification shall be made through the center.

16 (3) An operator who determines that it does not have any underground
17 facility located in the area of the proposed excavation shall notify the
18 excavator of the determination prior to the date of commencement of the
19 excavation.

20 (4) An excavator shall not use mechanical equipment for trenchless
21 excavation, including directional drilling, within the marked approximate
22 location of such underground facilities until the excavator has made
23 careful and prudent efforts to confirm the horizontal and vertical
24 location thereof. An excavator shall use methods appropriate to the
25 geologic and weather conditions and the nature of the facility, such as
26 the use of nonintrusive excavating, electronic locating devices, hand
27 digging, pot holing when practical, soft digging, vacuum methods, or
28 other nonintrusive methods as such methods may be developed.

29 (5) For excavations paralleling an underground facility, the
30 excavator shall make reasonable and prudent efforts to confirm the
31 location of the facility and the horizontal and vertical location of the

1 boring device at careful and prudent intervals during boring operations.

2 (6) When excavation is necessary within the approximate location of
3 the underground facility, the excavator shall hand-dig or use
4 nonintrusive means to avoid damage to the underground facility. An
5 excavator may not use mechanical equipment to excavate within eighteen
6 inches of an exposed underground facility.

7 Sec. 12. Original sections 76-2308 and 76-2321, Reissue Revised
8 Statutes of Nebraska, and sections 76-2301, 76-2303, 76-2303.01, 76-2322,
9 and 76-2323, Revised Statutes Cumulative Supplement, 2016, are repealed.

10 Sec. 13. Since an emergency exists, this act takes effect when
11 passed and approved according to law.