

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Wyoming Underground Facilities Notification Act-amendments.

Sponsored by: Joint Transportation, Highways & Military
Affairs Interim Committee

A BILL

for

1 AN ACT relating to public utilities; amending the Wyoming
2 Underground Facilities Notification Act; authorizing the
3 Wyoming public service commission to administer and enforce
4 civil penalties; modifying civil penalties; authorizing
5 civil penalties against governmental entities; amending
6 duties of the notification center; establishing complaint
7 procedures; amending exemptions related to agriculture and
8 landscaping; requiring telecommunications companies to
9 comply with the act; removing a burden of proof provision
10 relating to damages; repealing provisions relating to the
11 recovery of damages arising from violations of the act;
12 preserving causes of action and remedies otherwise

1 available under law; providing definitions; repealing
2 obsolete provisions; authorizing a position; providing an
3 appropriation; making conforming amendments; requiring
4 rulemaking; specifying applicability; and providing for
5 effective dates.

6
7 *Be It Enacted by the Legislature of the State of Wyoming:*

8
9 **Section 1.** W.S. 37-12-308 is created to read:

10
11 **37-12-308. Construction.**

12
13 Nothing in this act shall be construed to limit any cause
14 of action or remedy otherwise available under law.

15
16 **Section 2.** W.S. 37-12-301(b)(iii), (xviii) and by
17 creating a new paragraph (xix), 37-12-302(f) and (h), 37-
18 12-304(b) by creating a new paragraph (xi) and by amending
19 and renumbering (xi) as (xii) and by creating a new
20 subsection (d), 37-12-305 by creating new subsections (k)
21 and (m), 37-12-306(b), (e), (g)(i), (ii) and (iv) and
22 (h)(i) through (iii) and 37-15-408 are amended to read:

1 **37-12-301. Short title; definitions.**

2

3 (b) As used in this act:

4

5 (iii) "Excavation" or "excavates" means any
6 operation by a person in which earth, rock or other
7 materials ~~on or~~ below the surface of the ground is moved or
8 otherwise displaced; ~~by means of hand or power tools, power~~
9 ~~equipment or explosives or other means, and includes~~
10 ~~grading, trenching, digging, ditching, drilling, augering,~~
11 ~~tunneling, boring, plowing-in, pulling-in, ripping,~~
12 ~~seraping and cable or pipe installing, except tilling of~~
13 ~~soil and gardening or agricultural purposes;~~

14

15 (xviii) "This act" means W.S. 37-12-301 through
16 ~~37-12-307~~ 37-12-308.

17

18 (xix) "Commission" means the Wyoming public
19 service commission.

20

21 **37-12-302. Notices; exceptions; penalty.**

22

1 (f) If information required pursuant to subsection
2 (d) of this section is not provided within the time
3 specified therein, or if the information provided fails to
4 identify the location of the underground facilities in
5 accordance with subsection (d) of this section or when
6 engaging in an emergency excavation, then any excavator
7 damaging ~~or injuring~~ underground facilities shall not be
8 liable for ~~such~~ the damage ~~or injury~~ except when failing to
9 utilize reasonable care. However, if information required
10 pursuant to subsection (d) of this section is provided
11 within the time specified therein, and if the information
12 provided sufficiently identifies the location of the
13 underground facilities in accordance with subsection (d) of
14 this section, then any excavator damaging ~~or injuring~~ the
15 underground facilities shall be liable for all damage ~~or~~
16 ~~injury to persons or property~~ to the underground
17 facilities.

18

19 (h) When any contact with or damage to any
20 underground facility occurs, the excavator shall first
21 immediately call a 911 emergency reporting system as
22 defined by W.S. 16-9-102(a)(iv) and request emergency
23 services if the contacted or damaged underground facility

1 releases gas or a hazardous liquid. In all cases the
2 excavator shall immediately notify the operator of the
3 facility and the notification center, of the location of
4 and extent of damage to the underground facility and shall
5 cooperate with the operator of the damaged underground
6 facility to mitigate the damages incurred to the extent
7 reasonably possible, including the provision of in-kind
8 work where technical or special skills are not required
9 according to the nature of the underground facility. An
10 excavator shall not conceal or attempt to conceal any
11 dislocation, disturbance or damage to an underground
12 facility and shall not repair or attempt to repair the
13 underground facility unless authorized by the operator of
14 the underground facility. Upon notification of damage to an
15 underground facility from an excavator, the operator of the
16 underground facility shall respond to the notification in a
17 manner reasonably appropriate to the circumstances. The
18 operator shall file a report with the notification center
19 describing the response ~~within~~not later than seventy-two
20 (72) hours ~~of~~after the initial notification. This
21 requirement of notification shall not relieve the excavator
22 and the operator from compliance with any other state or
23 federal notification obligation. ~~In any dispute concerning~~

1 ~~the liability for damages to any underground facility, the~~
2 ~~excavator shall bear the burden of proof concerning its use~~
3 ~~of reasonable care in conducting the excavation.~~

4
5 **37-12-304. Notification centers; formation; duties.**

6
7 (b) The notification center shall:

8
9 (xi) Receive complaints filed with the
10 notification center pursuant to subsection (d) of this
11 section;

12
13 ~~(xi)~~ (xii) Provide a monthly report not later
14 than the tenth day of each month to the ~~Wyoming attorney~~
15 ~~general commission~~ on ~~recent~~ complaints received during the
16 preceding month alleging noncompliance with this act,
17 including the contact information of any person or entity
18 alleged to be in noncompliance with this act, the contact
19 information of the person who filed the complaint under
20 subsection (d) of this section and any available supporting
21 documentation submitted with the complaint.

1 (d) All complaints alleging a violation of this act
2 shall be filed with the notification center not later than
3 two (2) business days after discovery of the alleged
4 violation. The complaint shall include the contact
5 information of the person filing the complaint and any
6 available supporting documentation of the alleged
7 violation.

8
9 **37-12-305. Exemptions.**

10
11 (k) The following agricultural activities are exempt
12 from this act:

13
14 (i) Plowing, cultivating, planting, harvesting
15 and similar operations connected to agricultural activities
16 if the activities do not disturb the ground to a depth of
17 more than sixteen (16) inches and are conducted on lands
18 that have been under cultivation at any time in the
19 preceding twenty-four (24) months;

20
21 (ii) Routine maintenance of existing irrigation,
22 stock water storage and delivery systems. This paragraph
23 shall not apply to any portion of an irrigation, stock

1 water storage or delivery system that crosses or encroaches
2 upon a public right-of-way or recorded easement;

3
4 (iii) Routine maintenance of any existing fences
5 or fence structures that have existed for not less than
6 twenty-four (24) months. This paragraph shall not apply to
7 the maintenance, installation or removal of existing fences
8 or fence structures within a public right-of-way or
9 recorded easement.

10
11 (m) Gardening and landscaping activities on private
12 residential property are exempt from this act if the
13 activities are personally performed by the owner or
14 occupant of the property and do not disturb the ground to a
15 depth of more than six (6) inches. This subsection shall
16 not apply to gardening and landscaping activities performed
17 by a contractor or other person hired to perform the
18 activities.

19
20 **37-12-306. Civil penalties; applicability.**

21
22 (b) Upon receipt of the monthly report from the
23 notification center under W.S. 37-12-304(b)(xii), the

1 commission shall review the complaints reported by the
2 notification center and may investigate any reported
3 complaint. The commission may, after notice and opportunity
4 for hearing in accordance with the Wyoming Administrative
5 Procedure Act, impose any civil penalties in accordance
6 with this section. In determining the ~~liability for or the~~
7 ~~amount of any damages or~~ civil penalty pursuant to this
8 section, ~~a court~~ the commission shall consider the nature,
9 circumstances and gravity of the alleged violation, the
10 alleged violator's degree of culpability and the alleged
11 violator's history of prior violations. The commission
12 shall provide notice to the person who filed the complaint
13 under W.S. 37-12-304(d) of the disposition of the
14 complaint.

15
16 (e) ~~This section shall not apply to any~~ The
17 commission may impose civil penalties under this section
18 upon a governmental entity as defined by W.S. 1-39-
19 103(a)(i), ~~which participates~~ that is required to
20 participate in the notification center as provided by this
21 act. Nothing in this article shall affect any provision of
22 the Wyoming Governmental Claims Act.

23

1 (g) With respect to operators:

2

3 (i) Every operator in Wyoming shall join and
4 participate in the notification center pursuant to W.S. 37-
5 12-304(a). ~~Any operator who does not join or participate in~~
6 ~~the notification center shall be liable for~~ The commission
7 may impose a ~~fine~~ civil penalty of not more than five
8 thousand dollars (\$5,000.00) for each year ~~it is not in~~
9 ~~compliance with this subsection~~ an operator does not join
10 or participate in the notification center;

11

12 (ii) If any underground facility located in the
13 ~~service~~ operating area of an operator is damaged as a
14 result of the operator's failure to join or participate in
15 the notification center pursuant to W.S. 37-12-304(a), the
16 ~~court shall~~ commission may impose upon ~~such~~ the operator a
17 civil penalty ~~up to the amount of~~ not more than five
18 thousand dollars (\$5,000.00) for the first offense and ~~up~~
19 ~~to~~ not more than twenty-five thousand dollars (\$25,000.00)
20 for a second offense within a twelve (12) month period
21 after the first offense. If any underground facility
22 located in the ~~service~~ operating area of an operator is
23 damaged as a result of the operator's failure to join or

1 participate in the notification center pursuant to W.S. 37-
2 12-304(a) on more than two (2) separate occasions within a
3 twelve (12) month period from the date of the first failure
4 to comply with W.S. 37-12-304(a), then the commission may
5 impose a civil penalty ~~shall be up to~~ of not more than
6 seventy-five thousand dollars (\$75,000.00). Upon a first
7 offense, the operator may be required by the ~~court~~
8 commission to complete an excavation safety training
9 program with the notification center;

10
11 (iv) If an operator, after receipt of a notice
12 from an excavator or notification center pursuant to W.S.
13 37-12-302(c), fails to mark the location of its underground
14 facilities within the time period specified in W.S. 37-12-
15 302(d), and unless the failure resulted from circumstances
16 beyond the operator's control, the ~~operator shall be liable~~
17 ~~for~~ commission may impose a civil penalty of ~~up to~~ not more
18 than five thousand dollars (\$5,000.00).

19
20 (h) With respect to excavators:

21
22 (i) Every excavator shall notify the
23 notification center pursuant to W.S. 37-12-302(c) prior to

1 commencing any excavation activity. The commission may
2 impose a civil penalty of not more than five thousand
3 dollars (\$5,000.00) upon any excavator who fails to notify
4 the notification center pursuant to W.S. 37-12-302(c);
5 ~~shall be liable for a civil penalty in the amount of five~~
6 ~~thousand dollars (\$5,000.00);~~

7
8 (ii) If an excavator fails to comply with W.S.
9 37-12-302(c), (g) or (h) and damages an underground
10 facility during excavation, the ~~excavator shall be liable~~
11 ~~for~~ commission may impose a civil penalty ~~up to the amount~~
12 of not more than five thousand dollars (\$5,000.00) for the
13 first offense and ~~up to~~ not more than twenty-five thousand
14 dollars (\$25,000.00) for a second offense within a twelve
15 (12) month period after the date of the first offense. If
16 an excavator fails to comply with W.S. 37-12-302(c), (g) or
17 (h) on more than two (2) separate occasions within a twelve
18 (12) month period from the date of the first failure to
19 comply with the appropriate subsection, then the commission
20 may impose a civil penalty ~~shall be up to~~ of not more than
21 seventy-five thousand dollars (\$75,000.00). Upon a first
22 offense, the excavator may be required by the commission to

1 complete an excavation safety training program with the
2 notification center;

3
4 (iii) If an excavator requests a facilities
5 locate on an expedited basis (less than two (2) full
6 business days) for an emergency excavation and the
7 excavation at issue was not an emergency and did not
8 require a locate on an expedited basis, the ~~excavator shall~~
9 ~~be liable for~~ commission may impose upon the excavator a
10 civil penalty of ~~up to~~ not more than five thousand dollars
11 (\$5,000.00) for each false emergency locate incident.~~+~~

12
13 **37-15-408. Applicability of existing law.**

14
15 W.S. 37-2-102, 37-2-104, 37-2-106 through 37-2-109, 37-2-
16 113, 37-2-115 through 37-2-118, 37-2-124, 37-2-125, 37-2-
17 130, 37-2-203, 37-2-205(a), 37-2-209, 37-2-214 through 37-
18 2-216, 37-2-218, 37-3-114, 37-4-101 through 37-4-104, 37-
19 12-120 through 37-12-130, 37-12-201, 37-12-202, 37-12-204
20 through 37-12-213, 37-12-301 through ~~37-12-304~~ 37-12-308
21 and 37-13-101 through 37-13-137, inclusive, unless in
22 conflict with other provisions of this chapter, are
23 applicable to telecommunications companies and

telecommunication companies shall be considered public utilities for the purposes of those provisions.

Section 3. W.S. 37-12-305(h)(i) and 37-12-306(a), (g)(iii) and (h)(iv) and (v) are repealed.

STAFF COMMENT

The repealed provisions are provided below for the Committee's reference.

37-12-305. Exemptions.

(h) The following routine maintenance activities in a government entity's public right-of-way are exempt from the provisions of this act:

~~(i) Snowplowing;~~

37-12-306. Civil penalties; applicability.

~~(a) An action to recover a civil penalty under this section may be brought by an operator, excavator, aggrieved party, the notification center, county attorney, district attorney or the attorney general. Venue for an action shall be in the district court for the county in which the operator, excavator, aggrieved party or the notification center resides or maintains a principal place of business in this state or in the county in which the conduct giving rise to a civil penalty occurred. The action provided in this subsection may be by jury trial if a jury is demanded by either party.~~

(g) With respect to operators:

~~(iii) If any underground facility is damaged as a result of the operator's failure to comply with W.S. 37-12-304(a), the operator's failure to use reasonable care in~~

1 ~~the marking of the damaged underground facility or the~~
2 ~~operator's failure to mark the location of its underground~~
3 ~~facilities within the time period specified in W.S. 37-12-~~
4 ~~302(d) unless that failure is due to circumstances beyond~~
5 ~~the operator's control, the operator shall be liable for:~~

6
7 ~~(A) Any cost or damage incurred by the~~
8 ~~excavator as a result of any delay in the excavation~~
9 ~~project while the underground facility is restored,~~
10 ~~repaired or replaced, together with reasonable costs and~~
11 ~~expenses of suit, including reasonable attorney fees; and~~
12

13 ~~(B) Any injury or damage to persons or~~
14 ~~property resulting from the damage to the underground~~
15 ~~facility. The operator shall also indemnify and defend the~~
16 ~~affected excavator against any and all claims or actions,~~
17 ~~if any, for personal injury, death, property damage or~~
18 ~~service interruption resulting from the damage to the~~
19 ~~underground facility.~~
20

21 (h) With respect to excavators:

22
23 ~~(iv) If an excavator fails to comply with W.S.~~
24 ~~37-12-302(c), (g) or (h) and damages an underground~~
25 ~~facility during an excavation, or fails to exercise~~
26 ~~reasonable care in excavating and damages a located~~
27 ~~underground facility during an excavation, the excavator~~
28 ~~shall be liable for:~~
29

30 ~~(A) Any cost or damage incurred by the~~
31 ~~operator in restoring, repairing or replacing its damaged~~
32 ~~underground facility, together with reasonable costs and~~
33 ~~expenses of suit, including reasonable attorney fees; and~~
34

35 ~~(B) Any injury or damage to persons or~~
36 ~~property resulting from the damage to the underground~~
37 ~~facility. The excavator shall also indemnify and defend the~~
38 ~~operator against any and all claims or actions, if any, for~~
39 ~~personal injury, death, property damage or service~~
40 ~~interruption resulting from the damage to the underground~~
41 ~~facility.~~
42

43 ~~(v) Subparagraph (iv) (A) of this subsection~~
44 ~~shall not apply to an excavator if the operator of the~~

~~underground facility has failed to comply with W.S. 37-12-302(d) or 37-12-304(a).~~

Section 4.

(a) The Wyoming public service commission is authorized one (1) full-time position for the period beginning July 1, 2027 and ending June 30, 2028 for purposes of implementing this act.

(b) There is appropriated two hundred thousand eight hundred thirty-two dollars (\$200,832.00) from the public service commission account from assessments under W.S. 37-2-107 to the Wyoming public service commission for purposes of funding the position created by subsection (a) of this section for the period beginning July 1, 2027 and ending June 30, 2028. This appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation on June 30, 2028 shall revert as provided by law. It is the intent of the legislature that three hundred twelve thousand two hundred sixty-four dollars (\$312,264.00) from the public service commission account from assessments under W.S. 37-

1 2-107 be included in the standard budget for the Wyoming
2 public service commission for the immediately succeeding
3 fiscal biennium.

4
5 **Section 5.** This act shall apply to complaints, civil
6 penalty proceedings and actions for damages arising from
7 alleged violations of the Wyoming Underground Facilities
8 Notification Act occurring on and after July 1, 2027.

9
10 **Section 6.** The public service commission shall
11 promulgate all rules necessary to implement this act.

12
13 **Section 7.**

14
15 (a) Except as otherwise provided by subsection (b) of
16 this section, this act is effective July 1, 2027.

17
18 (b) Sections 6 and 7 of this act are effective
19 immediately upon completion of all acts necessary for a
20 bill to become law as provided by Article 4, Section 8 of
21 the Wyoming Constitution.

22
23 (END)