



Energy and Telecommunications Interim Committee

62nd Montana Legislature

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December 28, 2011

TO: ETIC members
FR Sonja Nowakowski, ETIC staff
RE: One-call stakeholders bill draft

Attached is the bill draft that one-call stakeholders have put together for your review and discussion during the January meeting. The stakeholders continue to circulate the bill among the various interested parties and to work toward a consensus.

Stakeholders have indicated that they will bring forward a final consensus bill in May. It will then be up to the committee to determine whether it would like to accept the bill as potential committee legislation and move forward with a formal public comment period.

At this time, the committee is seeking your feedback on the general concepts they are currently moving forward with. I'll try to summarize my understanding of the proposal, and as noted, the actual draft is attached for your review. Stakeholders also will be attending the meeting and providing you with an overview.

Based on the draft, there would be a two-track system in the Montana one call law: keep the status quo for underground facilities but provide for enforcement for underground facilities that are natural gas or hazardous liquids pipelines. It is assumed that all underground facilities would abide by the existing law, but underground facilities that are natural gas or hazardous liquids pipelines would face a new level of fines and enforcement. A newly created board would enforce the law for incidents involving underground facilities that are natural gas or hazardous liquids pipelines.

The bill establishes a quasi-judicial underground pipeline protection board appointed by the governor. It has five members and is administratively attached to the Department of Public Service Regulation (the PSC). The board is funded by a fee paid by underground facility owners who own natural gas or hazardous liquids pipeline. The fee is kept in a special revenue account. It is not statutorily appropriated.

The board's work would strictly be limited to matters related to underground facilities that are natural gas or hazardous liquids pipelines. The board would meet quarterly. Their duties include:

- Collecting fines for violations of the one-call law by excavators and facility owners related to incidents involving natural gas or hazardous liquids pipelines; (Violations are limited to existing law. i.e. excavators who damage a facility after neglecting to call the

one-call center and facility owners who incur damage because they fail to appropriately locate a line for an excavator); and

- Establishing a fee that is paid only by underground facility owners who own natural gas or hazardous liquids pipelines to fund activities of the board.

Disputes about repair costs or fines would proceed directly to court, as they do now. Stakeholders also continue to discuss whether the board would collect incident reports for natural gas and hazardous liquids pipelines and keep track of those incidents.

An example of how the board would operate, based on my understanding of the draft, is as follows: An excavator fails to get a locate ticket. The excavator damages a natural gas line. The excavator pays repair costs to the natural gas line owner and a \$250 fine to the board. Depending on the seriousness of the incident, the board can increase the fee up to \$25,000. Unless the event involved a natural gas or hazardous liquids pipeline, the existing law would apply -- exactly as it exists today.

Based on the draft, the changes to existing law are limited. In terms of definitions in 69-4-501, MCA, "damages", "notification center" and "underground facility owner" are clarified. The definition of "locates" is limited to horizontal locations. Exclusions to an excavation are also now expanded to include agricultural activities that do not exceed a depth of 10 inches.

If you have additional questions, I'm happy to try to answer them, based on my understanding of the draft. A number of stakeholders also plan to attend the meeting and should be able to address any questions you have.

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Be it enacted by the Legislature of the State of Montana:

NEW SECTION. Section 1. Underground pipeline protection board created -- quasi-judicial. (1) There is an underground pipeline protection board.

(2) The board is composed of five members appointed by the governor as follows:

(a) one member representing owners or operators of a natural gas or hazardous liquids pipeline in Montana that is not a public utility as defined in 69-3-101;

(b) one member representing a public utility, as defined in 69-3-101 that owns a natural gas or hazardous liquids pipeline in Montana;

(c) one member representing excavators;

(d) one member ~~who is actively engaged in agricultural production~~ representing local government; and

(e) one member representing the general public.

(3) The board is a quasi-judicial board for the purposes of 2-15-124, and its members must be compensated and receive travel expenses as provided for in 2-15-124.

(4) The board is allocated to the department for administrative purposes only as provided in 2-15-121.

(5) Members shall serve staggered 3-year terms.

NEW SECTION. Section 2. Duties of board. (1) Upon receiving ~~a request pursuant to [section 4]~~notification that an incident involving natural gas or hazardous liquids pipeline has occurred, the board shall ~~review disputed~~assess the responsible person fines ~~assessed under [section 5]~~as provided in [section __].

(2) The board shall meet at least quarterly for the purpose of ~~reviewing disputed~~assessing fines ~~and~~ conducting other business as necessary.

~~(3) After reviewing disputed fines, the board shall determine whether the amount of the disputed fine is appropriate. If the board determines that a disputed fine is not appropriate, the board shall recommend the amount of the fine assessed under [section 5].~~

~~(4)~~ (3) The board shall issue its determination in writing and provide a copy to all parties named in the dispute.

(4) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business necessary to administer its responsibilities under this part.

~~(5)~~ (5) The board shall annually:

(a) review damage fines established in [section 5] and recommend changes, if necessary; and

(b) receive incident reports pursuant to 69-4-514.

NEW SECTION. Section 3. Rulemaking authority. (1) The board may adopt rules:

(a) providing for the assessment and collection of fines provided for in [section 5];

~~(b) establishing application procedures and filing requirements for the review of disputed fines;~~

(~~e~~b) providing for the reporting and collection of incident reports pursuant to 69-4-514(1);

(~~d~~c) requiring a fee of no more than \$ ~~???~~ annually to be paid by the owner of a natural gas or hazardous liquids pipeline to administer the board's responsibilities, if necessary, under this part; and

(~~f~~d) implementing and enforcing the provisions of this part as they apply to a natural gas or hazardous liquids pipeline.

(2) Rules must be adopted pursuant to the Montana Administrative Procedure Act.

NEW SECTION. Section 4. ~~Board Judicial review of disputes~~
~~—statute of limitations. (1) An excavator who damages an underground facility that is a natural gas or hazardous liquids pipeline or an underground facility owner who owns a natural gas or hazardous liquids pipeline and is disputing a fine issued pursuant to [section 5] shall request that the board review the disputed fine prior to requesting judicial review pursuant to 69-4-512.~~

~~(2) The running of the applicable limitation period related to a claim for a fine under 69-4-505 is tolled upon receipt by the board of a request for a review. The running of the~~

~~applicable limitation period does not begin again until 30 days after the board makes a written determination pursuant to [section 2(4)].~~ (1) An excavator or underground facility owner who disputes a fine for damaging a natural gas or hazardous liquids pipeline assessed by the board may appeal the board's decision to district court for trial de novo.

(2) An excavator or underground facility owner appealing a decision by the board must file the appeal within 30 calendar days after the board issues a written determination pursuant to [section 2(3)].

NEW SECTION. Section 5. Damage fines for noncompliance. ~~(1)~~

~~Except as provided in [section 2(3)] and subject to subsections (2) and (3) of this section, an excavator who damages an underground facility that is a natural gas or hazardous liquids pipeline or an underground facility owner who owns a natural gas or hazardous liquids pipeline fails to comply with this part or is liable for damages under 69-4-505, fines for damages must be assessed by the board as follows:~~

~~—— (a) \$250 for the first incident within a 2-year period involving a natural gas or hazardous liquids pipeline and \$500 for the second incident within a 2-year period; and~~

~~—— (d) \$250 to \$10,000, for the third incident and each subsequent incident within a 2-year period involving a natural gas or hazardous liquids pipeline, as determined by the board.~~

~~(2) (a) The fine for an incident that results in death, injury, or disability or in damage to real or personal property may be tripled if determined appropriate by the board.~~

~~(b) If an incident results in damage to more than one underground facility and a natural gas or hazardous liquids pipeline, the fine is determined by adding the fines for each type of damaged facility in accordance with subsection (1) and 69-4-505(2)(b).~~

~~(3) The number of incidents must be determined using reports collected pursuant to 69-4-514.~~

(1) An excavator or underground facility owner who has had an incident involving a natural gas or hazardous liquids pipeline may be assessed a fine by the board as follows:

(a) \$250 for each incident caused by an underground facility owner not complying with 69-4-503(2).

(b) \$250 for each incident caused by an excavator or underground facility owner not complying with 69-4-503(1) and an additional fine assessed under (c).

(c) Subject to subsection (2), up to \$25,000 for each incident resulting in real or personal property damage to a third party, or injury, disability or death to any person.

(2) In assessing a fine for an incident involving a natural gas or hazardous liquids pipeline, as provided in (2)(c), the board shall consider:

(a) whether the excavator or underground facility owner obtained a locate prior to commencing excavation;

(b) whether the locate was correctly established and clearly marked on the ground surface;

(c) whether the excavator initiated excavation prior to the termination of the locate period as provided in 69-4-503(2);

(d) the type and amount of damage to real and personal property owned by a third party;

(e) the type and extent of injury or disability suffered by any person;

(f) resulting in the death of any person;

(g) any other factors or information considered relevant by the board.

(3) If an incident also results in damage to other types of underground facilities other than natural gas or hazardous liquids pipelines, the excavator may be assessed a damage fee and repair costs by the underground facility owner as provided in 69-4-505.

(4) The board may use any means provided by law for the collection of fines assessed under this section.

NEW SECTION. Section 6. Underground pipeline protection account. (1) There is an underground pipeline protection account in the state special revenue fund.

(2) There must be deposited in the account:

(a) all revenue from fines collected pursuant to [section 5];

(b) any fees established pursuant to [section 3(1)(e)] that are paid by the owners of a natural gas or hazardous liquids pipeline;

(c) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any source, intended to be used for the purposes of [sections 1 through 7]; and

(d) all interest earned on money in the account.

(3) Money in the account must be used to fund the board and to fund training and educational programs and materials for excavators, underground facility owners, and the general public regarding notification centers.

Section 7. Section 69-4-501, MCA, is amended to read:

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

(1) "Board" means the underground pipeline protection board provided for in [section 1].

~~(1)~~(2) "Business day" means any day other than Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(3) "Damages" means any impact upon or removal of support from an underground facility as a result of excavation or demolition that, according to the operating practices of the underground facility owner, would necessitate the repair of the facility.

(4) "Department" means the department of public service regulation provided for in 2-15-2601.

~~(2)~~(5) "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)~~(6) "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)~~(7) (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 or agricultural cultivation not exceeding a depth of 10 inches.

~~(5)~~(8) "Excavator" means a person conducting the excavation activities defined in subsection (4).

~~(6)~~(9) "Identified but unlocatable underground facility" means an underground facility that has been identified but cannot be located with reasonable accuracy.

~~(7)~~(10) "Incident" ~~means~~~~(a) for a facility which is not a natural gas or hazardous liquids pipeline, 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.~~

~~(b) for a natural gas or hazardous liquids pipeline, means a violation of 69-4-503(1) or 69-4-503(2) or results in damage to an underground facility or to the property of a third party or in bodily injury or death to any person.~~

~~(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)~~(11) "Locatable underground facility" means an underground facility that can be field-located and field-marked with reasonable accuracy.

~~(10)~~(12) "Locate" means to use specialized equipment to identify the horizontal location of underground facilities or the actual horizontal location of underground facilities identified by the use of specialized equipment.

~~(11)~~(13) "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.

(14) "Notification center" means an entity whose membership is open to all underground facility owners with underground facilities located within the notification center's designated service area.

~~(12)~~(15) "One-call notification center" means a service through which a person may request a locating and marking of underground facilities.

~~(13)~~(16) "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)~~(17) "Reasonably accurate" means location within 18 inches of the outside lateral dimensions of both sides of an underground facility.

(18) "Third party" means a person that is not an excavator or owner of a natural gas or hazardous liquids pipeline.

~~(15)~~(1819) (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.

(1920) "Underground facility owner" means a person owning, controlling, or having the responsibility to maintain an underground facility."