



Alaska State Legislature

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House Bill 8 Sponsor Statement

An Act relating to the liability of an excavator for damaging an underground facility

House Bill 8 updates Alaska's statutes relating to an excavator's liability civil damages and fines for damaging underground utilities.

Under Alaska Statutes 40.30.400-42.30.490, an excavator or driller performing subsurface digging or drilling must notify utilities in the proposed excavation area. Signs near some underground utilities warn people to "Call 811 Before You Dig." The underground utility operators, in response, are required to promptly provide the locations of utilities in that area.

In Alaska, however, state and federal laws and regulations have created a patchwork of inaccurate information and inconsistent compliance with those laws and regulations. Even with the "Call 811 Before You Dig" signs, some of the information provided by 811 and by utility operators in Alaska is not accurate and some Alaska utilities—particularly several in rural parts of the state—have "opted out" of the 811 program.

On September 1, 2016, the Federal Pipeline and Hazardous Materials Safety Administration (PHMSA) determined that "Alaska's excavation damage prevention law is INADEQUATE." Based on this determination, the federal PHMSA has been exercising enforcement authority in Alaska. The federal PHMSA confirmed its continued enforcement authority on May 18, 2018 when it found, once again, that Alaska's "excavation damage prevention law is inadequate."

In addition to notifying 811 before an excavation, excavators are required to confirm and notify any non-subscribing utility operators. Excavators who work near underground utilities face risks—including loss of life and equipment—engaging in their work because of the potential to hit unmarked utilities. The inaccuracy of some of the available information from the 811 system and the non-compliance of some underground utilities increases the risks for excavators and drillers who use their best efforts to comply.

On top of the actual damages that may occur when an excavator—despite their best efforts to determine the location through compliance with AS 42.30.400—unintentionally damages an underground utility, the excavator faces state fines and even greater federal fines of up to \$2,000,000. Under current Alaska law, a contractor providing excavation or drilling services may be held liable for civil penalties and civil damages when they damage an unmarked underground utility during an excavation. Even after complying with the statutory requirements and using "all reasonable steps" to locate underground utilities, a contractor who hits an unmarked utility may still face state fines of \$50- \$1000. When combined with the potential federal fines, these fines are prohibitive and may lead to shuttering these small businesses.

Where an excavator can prove that they have taken all reasonable steps to locate underground utilities, including calling 811 and separately contacting every known underground utility in the area, and nevertheless damages an unmarked underground utility, the excavator should not face potential fines from the State of Alaska.

House Bill 8 inserts language into statute that establishes that if a contractor takes all reasonable steps required under Alaska law and follows the best practices for utility locates in their industry, they may not be held liable for civil penalties and property damages for damaging underground utilities.