

AMENDMENTS TO LB122

Introduced by Transportation and Telecommunications.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 76-2301, Revised Statutes Cumulative Supplement,
4 2022, is amended to read:

5 76-2301 Sections 76-2301 to 76-2332 and sections 3, 5, and 7 of this
6 act shall be known and may be cited as the One-Call Notification System
7 Act.

8 Sec. 2. Section 76-2303, Revised Statutes Cumulative Supplement,
9 2022, is amended to read:

10 76-2303 For purposes of the One-Call Notification System Act, the
11 definitions found in sections 76-2303.01 to 76-2317 and section 3 of this
12 act shall be used.

13 Sec. 3. Committee means the Underground Excavation Safety
14 Committee.

15 Sec. 4. Section 76-2323, Revised Statutes Cumulative Supplement,
16 2022, is amended to read:

17 76-2323 (1) Upon receipt of the information contained in the notice
18 pursuant to section 76-2321, an operator shall advise the excavator of
19 the approximate location of underground facilities in the area of the
20 proposed excavation by marking or identifying the location of the
21 underground facilities with stakes, flags, paint, or any other clearly
22 identifiable marking or reference point and shall indicate if the
23 underground facilities are subject to section 76-2331. The location of
24 the underground facility given by the operator shall be within a strip of
25 land eighteen inches on either side of the marking or identification plus
26 one-half of the width of the underground facility. If in the opinion of
27 the operator the precise location of a facility cannot be determined and

1 marked as required, the operator shall provide all pertinent information
2 and field locating assistance to the excavator at a mutually agreed to
3 time. The location shall be marked or identified using color standards
4 prescribed by the center. The operator shall respond no later than two
5 business days after receipt of the information in the notice or at a time
6 mutually agreed to by the parties.

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

14 (3)(a) Beginning September 1, 2024, it shall be a violation of the
15 One-Call Notification System Act for an excavator to (i) serve notice of
16 intent to excavate upon the center for an area in which the excavation
17 cannot be reasonably commenced within seventeen calendar days after the
18 excavation start date indicated pursuant to section 76-2321 or (ii)
19 request remarking or reidentification for any area in which the
20 excavation cannot be reasonably commenced or continued within fourteen
21 calendar days after the date remarking or reidentification is completed.

22 (b) After receiving notice of any alleged violation of this
23 subsection pursuant to subsection (2) of section 76-2325, the excavator
24 shall in its answer describe the circumstances which prevented the
25 commencement or continuation of excavation within the timeframes set
26 forth in this subsection.

27 (4) ~~(3)~~ An operator who determines that such operator does not have
28 any underground facility located in the area of the proposed excavation
29 shall notify the center of the determination prior to the date of
30 commencement of the excavation, or prior to two full business days after
31 transmittal of the ticket, whichever occurs sooner. All ticket responses

1 made under this subsection shall be transmitted to the operator and
2 excavator by the center.

3 Sec. 5. (1) Beginning September 1, 2024, the Underground Excavation
4 Safety Committee is created. The committee shall consist of the following
5 members: (a) The State Fire Marshal or the State Fire Marshal's designee,
6 (b) three representatives of operators, (c) three representatives of
7 excavators, and (d) one alternate representative of operators and one
8 alternate representative of excavators. An alternate representative
9 described in subdivision (d) of this subsection shall only participate in
10 a committee meeting if a corresponding representative described in
11 subdivision (b) or (c) of this subsection has declared a conflict of
12 interest and recused himself or herself from participation in a matter
13 before the committee or is otherwise unavailable for a committee meeting.
14 In such instance, the chairperson shall notify the alternate
15 representative to serve in the place of the recused or absent
16 representative for any meeting related to such particular conflict or for
17 the duration of such absence.

18 (2) The representative members shall be appointed by the Governor.
19 The Governor shall appoint one of the three initial representatives of
20 operators described in subdivision (1)(b) of this section, one of the
21 three initial representatives of excavators described in subdivision (1)
22 (c) of this section, and both alternate representatives described in
23 subdivision (1)(d) of this section for two-year terms. The other initial
24 representatives shall be appointed for four-year terms. All succeeding
25 terms shall be for four years. A representative member may be reappointed
26 at the end of such member's term. If there is a vacancy on the committee,
27 the Governor shall appoint a member to serve the remainder of the
28 unexpired term of the vacating member. All representative members shall
29 be subject to approval by the Legislature.

30 (3) The committee shall select from among its members a chairperson.
31 The committee shall not select an alternate representative to serve as

1 chairperson. The committee shall govern its procedures pursuant to rules
2 and regulations adopted and promulgated by the State Fire Marshal. No
3 representative member shall receive any compensation for services
4 rendered as a member of the committee but may be reimbursed for expenses
5 as provided in sections 81-1174 to 81-1177.

6 (4) The committee shall meet not less than monthly and also at such
7 other times and at such places as may be established by the chairperson.
8 The committee may meet by videoconference with approval of a majority of
9 the committee members. Any action taken by the committee shall require a
10 majority vote of the members.

11 (5)(a) The committee shall (i) review investigations completed
12 pursuant to subdivision (2)(a) of section 76-2325, (ii) determine based
13 on such review whether any person has committed any violation described
14 in subdivision (2)(b) of section 76-2325, and (iii) determine the
15 appropriate civil penalty, if any, to be assessed for such violation
16 consistent with subdivision (2)(b)(ii) of section 76-2325.

17 (b) No member of the committee who participated in an investigation
18 conducted under subdivision (2)(a) of section 76-2325 shall participate
19 in a hearing upon any question in which such member or any business with
20 which such member is associated is a party.

21 Sec. 6. Section 76-2325, Revised Statutes Cumulative Supplement,
22 2022, is amended to read:

23 76-2325 (1) Until September 1, 2024:

24 (a) Any person who violates section 76-2320, 76-2320.01, 76-2320.02,
25 76-2321, 76-2322, 76-2323, 76-2326, 76-2330, or 76-2331 shall be subject
26 to a civil penalty as follows:

27 (i) ~~(a)~~ For a violation by an excavator or an operator related to a
28 gas or hazardous liquid underground pipeline facility or a fiber optic
29 telecommunications facility, an amount not to exceed ten thousand dollars
30 for each violation for each day the violation persists, up to a maximum
31 of five hundred thousand dollars; and

1 (ii) ~~(b)~~ For a violation by an excavator or an operator related to
2 any other underground facility, an amount not to exceed five thousand
3 dollars for each day the violation persists, up to a maximum of fifty
4 thousand dollars; and -

5 **(b) (2)** An action to recover a civil penalty shall be brought by the
6 Attorney General or a prosecuting attorney on behalf of the State of
7 Nebraska in any court of competent jurisdiction of this state. The trial
8 shall be before the court, which shall consider the nature,
9 circumstances, and gravity of the violation and, with respect to the
10 person found to have committed the violation, the degree of culpability,
11 the absence or existence of prior violations, whether the violation was a
12 willful act, any good faith attempt to achieve compliance, and such other
13 matters as justice may require in determining the amount of penalty
14 imposed. All penalties shall be remitted to the State Treasurer for
15 distribution in accordance with Article VII, section 5, of the
16 Constitution of Nebraska.

17 **(2) Beginning September 1, 2024:**

18 **(a)(i) When the State Fire Marshal has reason to believe that any**
19 **person has committed any violation described in subdivision (b) of this**
20 **subsection, the State Fire Marshal may conduct an investigation to**
21 **determine the facts and circumstances of such alleged violation and, if**
22 **conducted, shall give prior notice of such investigation by first-class**
23 **mail or electronic mail to such person.**

24 **(ii) When any person other than the State Fire Marshal has reason to**
25 **believe that any violation described in subdivision (b) of this**
26 **subsection has occurred, such person may submit information to the State**
27 **Fire Marshal regarding such violation on a form prescribed by the State**
28 **Fire Marshal. Upon receipt of such information, the State Fire Marshal**
29 **may conduct an investigation to determine the facts and circumstances of**
30 **such alleged violation and, if conducted, shall give prior notice of such**
31 **investigation by first-class mail or electronic mail to both the person**

1 being investigated and the person who submitted the information to the
2 State Fire Marshal.

3 (iii) The State Fire Marshal shall refer the findings of the
4 investigation to the committee for its determination. Except as otherwise
5 provided in subdivision (2)(a)(iv) of this section, the committee shall
6 issue a written determination stating findings of fact, conclusions of
7 law, and the civil penalty, if any, to be assessed for such violation and
8 serve a copy of the written determination by personal service or by
9 certified mail, return receipt requested, upon such person. If the State
10 Fire Marshal's investigation was commenced based on information provided
11 pursuant to subdivision (2)(a)(ii) of this section, a copy of the written
12 determination shall also be delivered by first-class mail to the person
13 providing such information.

14 (iv) If the committee determines that the civil penalty to be
15 assessed for any violation exceeds the amount described in subdivision
16 (2)(b)(iv) of this section, the committee shall refer the matter,
17 together with the State Fire Marshal's findings and the committee's
18 written determination, to the Attorney General for prosecution pursuant
19 to subdivision (2)(b)(v) of this section.

20 (v) Not later than thirty days after receipt of the committee's
21 written determination, any party may submit a written request to the
22 State Fire Marshal for a hearing on the matter. The committee shall then
23 appoint a hearing officer to conduct such hearing and set a hearing date
24 and provide written notice of hearing to the parties at least thirty days
25 prior to the date of the hearing. Such notice shall contain the name,
26 address, and telephone number of the hearing officer, a copy of the
27 written determination upon which the hearing shall be held, and the date,
28 time, and place of hearing. The notice of hearing may be served by
29 personal service or by certified mail. If no hearing is requested in
30 answer to the written determination by the person found to have committed
31 any violation as described in subdivision (b) of this subsection, or if a

1 request for a hearing is withdrawn, such person shall pay any civil
2 penalty assessed within thirty days after receipt of the written
3 determination or within thirty days after cancellation of the hearing,
4 whichever is applicable.

5 (vi) In the preparation and conduct of the hearing, the hearing
6 officer shall have the power, on the hearing officer's own motion or upon
7 the request of any party, to compel the attendance of any witness and the
8 production of any documents by subpoena to ensure a fair hearing. The
9 hearing officer may administer oaths and examine witnesses and receive
10 any evidence pertinent to the determination of the matter. Any witnesses
11 so subpoenaed shall be entitled to the same fees as prescribed by law in
12 judicial proceedings in the district court of this state in a civil
13 action and mileage at the same rate provided in section 81-1176 for state
14 employees.

15 (vii) A party may appear at the hearing with or without the
16 assistance of counsel to present testimony, examine witnesses, and offer
17 evidence. A stenographic record of all testimony and other evidence
18 received at the hearing shall be made and preserved pending final
19 disposition of the matter.

20 (viii) Unless all requests for hearing are withdrawn prior to the
21 hearing, following the hearing the hearing officer shall prepare written
22 findings of fact and conclusions of law, and based on such findings of
23 fact and conclusions of law, the committee shall affirm, modify, or
24 reverse the written determination issued under subdivision (2)(a)(iii) of
25 this section and issue a final order. The committee's final order may
26 include an assessment of costs incurred in conducting the hearing,
27 including the costs of the hearing officer and compelling the attendance
28 of witnesses, and assess such costs against the parties. Any party
29 aggrieved by the final order of the committee may appeal the decision,
30 and such appeal shall be in accordance with the Administrative Procedure
31 Act; and

1 (b)(i) Except as provided in subdivision (ii) of this subsection,
2 any person who violates section 76-2320, 76-2320.01, 76-2320.02, 76-2321,
3 76-2322, 76-2323, 76-2326, 76-2330, or 76-2331 or any rule or regulation
4 adopted and promulgated by the State Fire Marshal pursuant to section
5 76-2319 shall be subject to a civil penalty as follows:

6 (A) For a violation by an excavator or an operator related to a gas
7 or hazardous liquid underground pipeline facility or a fiber optic
8 telecommunications facility, an amount not to exceed ten thousand dollars
9 for each violation for each day the violation persists, up to a maximum
10 of five hundred thousand dollars; and

11 (B) For a violation by an excavator or an operator related to any
12 other underground facility, an amount not to exceed five thousand dollars
13 for each day the violation persists, up to a maximum of fifty thousand
14 dollars.

15 (ii) In addition to or in lieu of assessing a civil penalty as
16 provided in subdivision (i) of this subsection, the committee may order
17 that a violator take and complete continuing education regarding
18 compliance with the One-Call Notification System Act. Such continuing
19 education shall be approved by the State Fire Marshal.

20 (iii) When imposing a civil penalty, the committee shall consider
21 the nature, circumstances, and gravity of the violation and, with respect
22 to the person found to have committed the violation, the degree of
23 culpability, the absence or existence of prior violations, whether the
24 violation was a willful act, any good faith attempt to achieve
25 compliance, and such other matters as justice may require.

26 (iv) The committee shall not assess a civil penalty that is more
27 than ten thousand dollars per violation. The violator shall pay the costs
28 of the investigation as billed by the State Fire Marshal. The State Fire
29 Marshal shall remit such paid costs to the State Treasurer for credit to
30 the fund from which the costs were expended.

31 (v) As provided in subdivision (2)(a)(iv) of this section, for any

1 investigation in which a civil penalty in excess of the amount described
2 in subdivision (2)(b)(iv) of this section is deemed justified by the
3 committee, the committee shall refer such matter to the Attorney General
4 or a prosecuting attorney who shall bring an action on behalf of the
5 State of Nebraska to recover such penalty in any court of competent
6 jurisdiction of this state. The trial shall be before the court, which
7 shall consider the nature, circumstances, and gravity of the violation
8 and, with respect to the person found to have committed the violation,
9 the degree of culpability, the absence or existence of prior violations,
10 whether the violation was a willful act, any good faith attempt to
11 achieve compliance, and such other matters as justice may require in
12 determining the amount of penalty imposed.

13 (vi) Costs incurred by the investigation conducted pursuant to
14 subdivision (2)(a) of this section may be sought as part of any judgment
15 against a violator. The State Fire Marshal shall remit any such recovered
16 costs to the State Treasurer for credit to the fund from which the costs
17 were expended.

18 (vii) All civil penalties collected pursuant to this subsection
19 shall be remitted to the State Treasurer for distribution in accordance
20 with Article VII, section 5, of the Constitution of Nebraska.

21 Sec. 7. The State Fire Marshal shall adopt and promulgate rules and
22 regulations to carry out section 5 of this act and subsection (2) of
23 section 76-2325, including general rules of practice and procedure
24 relating to the Underground Excavation Safety Committee, training
25 requirements for investigators, and rules governing the investigation
26 process.

27 Sec. 8. Section 81-502.03, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 81-502.03 (1) In case of disagreement concerning the propriety of
30 any action taken or proposed to be taken by the State Fire Marshal or the
31 application of any statute, rule, or regulation under the jurisdiction of

1 ~~the of his or her~~ office with respect to any establishment or
2 installation, the State Fire Marshal may, and upon application of any
3 party in interest, shall provide for a hearing before the Nebraska Fire
4 Safety Appeals Board in the county of the establishment or installation
5 which is the subject of the disagreement. At least ten days' written
6 notice shall be given to the governing body responsible for the
7 establishment or installation involved and to any public official having
8 jurisdiction. The board shall make a decision based upon the evidence
9 brought forth in the hearing and issue its order accordingly. Prior to
10 ordering any political or governmental subdivision of the State of
11 Nebraska to make any modification in the design or construction of any
12 public building or any modification in the location, installation, or
13 operation of any existing equipment in any public building or to replace
14 such equipment, the State Fire Marshal, his or her first assistant, or
15 one of his or her deputies shall personally appear at a regular meeting
16 of the governing board of such subdivision and present a written report
17 stating the condition of such building or equipment and the reason why
18 such building should be modified or such equipment should be modified or
19 replaced, and a copy of such report shall be attached to the order.
20 Nothing in this section shall prevent the State Fire Marshal from
21 ordering necessary repairs, and nothing in sections 81-502.01 to
22 81-502.03 shall prevent the State Fire Marshal, when actual and immediate
23 danger to life exists, from ordering and requiring the occupants to
24 vacate a building or structure subject to his or her jurisdiction.

25 (2) This section shall not apply to any decision, determination, or
26 other action taken or made by the State Fire Marshal or the Underground
27 Excavation Safety Committee under the One-Call Notification System Act.

28 Sec. 9. Original section 81-502.03, Reissue Revised Statutes of
29 Nebraska, and sections 76-2301, 76-2303, 76-2323, and 76-2325, Revised
30 Statutes Cumulative Supplement, 2022, are repealed.

31 Sec. 10. The following section is outright repealed: Section

1 76-2325.02, Revised Statutes Cumulative Supplement, 2022.