

DRAFT DAMAGE PREVENTION LEGISLATION FOR ALBERTA

SUMMARY

This enactment creates a provincial energy and utility infrastructure notification system that requires, among other things,

- a) operators of underground and aboveground infrastructure that is provincially regulated, located on provincial land or within a public right of way, to register that infrastructure with Alberta One-Call Corporation, now operating under its legal tradename, Utility Safety Partners, and provide information on it;
- b) persons planning to undertake a ground disturbance or work in the vicinity of an overhead powerline to make a locate request to Utility Safety Partners; and
- c) operators of registered underground and aboveground infrastructure or their agents to respond to the notification of proposed activity as follows:

For underground infrastructure

1. mark the location of the underground infrastructure on the ground within 5 working days;
2. provide in writing an accurate and clear description of the location of the underground infrastructure within 3 working days; or,
3. indicate that the ground disturbance is not likely to cause damage to the underground infrastructure within 3 working days.

For aboveground infrastructure

1. provide in writing an alert to the requester of the presence of aboveground infrastructure in the work area;
2. provide in writing the safe work precautions to follow when working in proximity to the aboveground infrastructure; and
3. provide contact information to the requester should additional information or action from the aboveground utility owner or operator be required.

Definitions

The following definitions apply in this Act.

Alberta One-Call Corporation / Utility Safety Partners means the non-profit Notification Centre for Alberta that since October 1st 1984 has provided a communication service between the digging community and the owners of buried facilities to arrange for the marking of the location of buried facilities prior to a ground disturbance.

Board of Directors means the governing body of a company that meets regularly to determine the organization's guiding principles, select top management positions, and oversee policies for the business.

Damage Prevention Advisory Council means a blend of damage prevention stakeholders and subject matter experts authorized to resolve non-compliances and non-conformances, which are not suitable to be addressed by civil penalties or Orders of the Court, by mediation.

Emergency means any situation where there is an immediate threat to human health or the safety of persons, property or underground or aboveground infrastructure or to prevent damage to the environment.

Entity means a body corporate, a partnership, a trust, a joint venture or an unincorporated association or organization.

Ground disturbance means any work, operation or activity that results in a disturbance of the earth, including excavating, digging, trenching, plowing, drilling, tunneling, augering, backfilling, blasting, pulverizing, post pounding, scarifying, topsoil stripping, land levelling, peat harvesting, quarrying, deforestation and earthworks. It does not include a disturbance of the earth caused by any of the following:

- a) cultivation to a depth of less than 45 cm below the surface of the ground;
- b) routine, minor road maintenance; or
- c) any other activity to a depth of less than 30 cm that does not result in a reduction of the cover over any underground infrastructure to a depth that is less than the cover provided when the underground infrastructure was constructed.

Locate request means a request referred to in 5.

Members means a person or entity is a member of the Corporation if the person or entity owns or operates underground infrastructure or aboveground powerlines:

- 1) Every municipality in Alberta;
- 2) Every gas distributor and every gas transmitter;
- 3) Every operator of a distribution system;
- 4) Every person or entity that owns or operates underground infrastructure within a public right of way or that crosses a public right of way;
- 5) Every person or entity that owns or operates aboveground energy or utility infrastructure within a public right of way or that crosses a public right of way; and
- 6) Every electricity distributor and every electricity transmitter

in the province of Alberta.

Members of the Board On the day this Act comes into force, the members of the Board of the Corporation shall be the members of the Board who held office immediately before that day.
Non-profit Corporation The business and affairs of the Corporation shall be carried on without the purpose of financial gain and any profits shall be used by the Corporation for the purpose of carrying out its objects.

Notification Centre means the non-profit corporation called Alberta One-Call Corporation, operating under its legal tradename, Utility Safety Partners, which transmits a notification to registered members with underground infrastructure and aboveground infrastructure in the vicinity of proposed ground disturbance(s) or aboveground activity(ies) following receipt of a locate request.

Objects The following are the objects of the Corporation:

- a) To operate a system and service capable of receiving requests for the location of registered underground and aboveground infrastructure within Alberta 24hrs/day, 7 days/wk.
- b) To identify whether underground and aboveground infrastructure are located in the vicinity of a proposed ground disturbance or aboveground activity.
- c) To notify registered members of the Corporation of proposed ground disturbances or aboveground activities that may affect registered underground infrastructure or aboveground energy and utility assets
- d) To promote public awareness of the Corporation and the need for safe work (example: ClickBeforeYouDig, Where's the LINE?).

Operator means a person or a group of persons that operates underground or aboveground infrastructure.

Overhead powerline, Overhead Energy and Utility Asset; or Aboveground Infrastructure means real and personal property, immovable and movable, and works connected to them, carrying electrical power or telecommunications services supported by pylons or poles.
Person means an individual or an entity.

Pipeline means a line that is used or to be used for the transmission of oil, gas or any other commodity in the province of Alberta, and includes all branches, extensions, tanks, reservoirs, storage facilities, pumps, racks, compressors, loading facilities, interstation systems of communication by telephone, telegraph or radio and real and personal property, or immovable and movable, and works connected to them, but does not include a sewer or water pipeline that is used or proposed to be used solely for municipal purposes.

Positive response means notification to an excavator either by a completed locate or written / electronic notice indicating there is no underground or aboveground infrastructure affected by the ground disturbance.

Powers The Corporation has the capacity and the rights, powers and privileges of a natural person, subject to the limitations set out in this Act.

Province means Alberta

Provincial lands means land of the Crown in right of Alberta.

Underground infrastructure means cables, ducts, equipment, pipes, pipelines, power lines, energy and utility lines and networks and vaults that are buried in the ground and that are located on provincial lands or regulated by any of the following:

- Alberta Energy Regulator
- Alberta Utilities Commission
- Canada Energy Regulator
- Canadian Radio-Television and Telecommunications Commission
- Alberta Electric System Operator
- Irrigation Council
- Ministry of Transportation

Working day means a day other than a Saturday, Sunday or a statutory holiday in the province of Alberta.

Working hours means 8am to 4:30pm Monday to Friday.

Application

Exclusion — This Act does not apply to underground or aboveground infrastructure that are privately owned and do not operate on a commercial basis.

Registration with Notification Centre

1. Registration

The operator of any underground or aboveground infrastructure must register it with, and pay the service fees fixed by, Utility Safety Partners.

2. Communication of information

The operator of any underground or aboveground infrastructure must provide the following information to Utility Safety Partners and at minimum, update it annually:

- a) the geographical location of the underground or aboveground infrastructure such as the digital geospatial data / shape files or legal description of the location; and
- b) any other information that Utility Safety Partners considers necessary to exercise its functions or that legislation requires.

3. Modifications

The operator must also inform Utility Safety Partners, in writing, of any modification to the information provided to the centre under 2 (above).

In the case of insolvency or bankruptcy resulting in abandonment of underground infrastructure or defunct pipeline status, the notification centre will maintain the registered data and label the defunct pipeline as “defunct”. Any person who has been notified of a defunct pipeline in the vicinity of their proposed ground disturbance will secure locating and marking services to identify its location prior to disturbing the ground.

Location and Identification of Underground and Aboveground Infrastructure

4. Locate request

Before a person undertakes a ground disturbance or aboveground activity within 15 metres of aboveground infrastructure, that person must submit a locate request to the notification centre.

5. Communication — other information

Before undertaking the ground disturbance, the person must also provide the notification centre with the following information:

- a) the type of ground disturbance they are planning to undertake;
- b) the exact location of the anticipated ground disturbance; and
- c) any other information that the notification centre considers necessary to exercise its functions.

6. Provision of information — period of time and manner

The information referred to in section 5 must be provided to the notification centre at least three working days' notice in advance of the day on which the ground disturbance is to start — or as soon as possible before the ground disturbance is to start in the case of an emergency described in section 9 — and in the manner specified by the notification centre.

7. Notification to operators of registered underground infrastructure — ground disturbance

Immediately after receiving a locate request, the notification centre must provide notification of the ground disturbance, in writing, to all operators of registered underground infrastructure that could be damaged by that ground disturbance.

8. Notification to person undertaking a ground disturbance

Immediately after receiving a locate request, the notification centre must also indicate, in writing, to the person that made the locate request:

- a) whether or not any registered underground and aboveground infrastructure is located in the area in which the ground disturbance is anticipated to take place; and
- b) the name of the operator of any registered underground or aboveground infrastructure in that area.

9. Emergency locate

An operator of registered underground or aboveground infrastructure may be required to respond without delay to a notification referred to in section 6 — including outside normal business hours — if the notification centre considers that a person must undertake a ground disturbance or conduct an aboveground activity in order to respond to an emergency.

10. Positive Response

All underground and aboveground infrastructure locate requests shall result in a positive response from the owner or authorized representative of the owner to the person who submitted the locate request and the notification centre.

11. Response — location of registered underground infrastructure

The operator of registered underground infrastructure that receives a notification referred to in section 7 must, within the period of time specified in section 14, do any of the following:

- a) by using the prescribed colour codes, mark on the ground the location of the underground infrastructure and provide a written description of that location to the person planning to undertake a ground disturbance;
- b) provide to that person, in writing, an accurate and clear description of the location of the underground infrastructure that could be damaged by the ground disturbance;
- c) provide to that person a written confirmation that the ground disturbance is not likely to cause damage to the underground infrastructure; or
- d) request additional information about the proposed ground disturbance to determine the impact on existing underground infrastructure.

12. Response – Aboveground infrastructure

Following receipt of a locate request that intersects with the registered location of aboveground infrastructure, the notification centre shall:

- a) provide in writing an alert to the requester of the presence of aboveground infrastructure in the work area;
- b) provide in writing the safe work precautions to follow when working in proximity to the above ground infrastructure; and
- c) provide contact information to the requester should additional information or action from the above ground utility owner or operator be required.

13. Period of time

The operator of registered underground and aboveground infrastructure must provide the response referred to in section 10 within three working days prior to the proposed excavation start date unless the operator of the registered underground or aboveground infrastructure and the person planning to undertake the ground disturbance agree in writing to an alternate period of time.

14. Fees

a) No Fees

The operator of registered underground or aboveground infrastructure must not charge the person planning to undertake a ground disturbance a fee for responding to the notification in a manner described in any of sections 9, 10, 11 and 12.

b) Fees — outside normal business hours

If, at the request of the person planning to undertake the ground disturbance or aboveground activity, and with the exception of response in accordance with section 9, the operator of registered underground or aboveground infrastructure responds to the notification outside normal business hours the operator may charge that person a fee corresponding to the reasonable cost of responding to the notification.

- c) Fees — ground disturbance not undertaken
The operator of registered underground or aboveground infrastructure may charge the person planning to undertake a ground disturbance a fee fixed by regulation if the operator was required to respond to multiple notifications related to the same ground disturbance.

15. Separate responses

An operator of registered underground or aboveground infrastructure must provide a separate response for each notification they receive.

16. Duration

The response is valid for thirty (30) days unless otherwise indicated by the operator of the underground or aboveground infrastructure.

17. Response not valid

A response is not valid if it does not comply with section 11 or 12.

18. Restrictions

Subject to the regulations, a person planning to undertake a ground disturbance or activity within 15/X metres of aboveground infrastructure must not undertake it before:

- a) the person has received a notification from a notification centre under section 11 and 12; and
- b) the operators of registered underground or aboveground infrastructure mentioned in that notification have provided the person with a response in accordance with section 11 or 12, as the case may be.

19. Damage Prevention Advisory Council

The Minister may assign to the Damage Prevention Advisory Council the functions — other than those assigned by this Act to Notification Centres — that the Minister considers necessary for carrying out the enforcement of and the penalties associated with this Act.

20. Obligation to Report Damages

Any party associated with a ground disturbance that damages underground or aboveground infrastructure must report the damage to:

- a) the owner; and
- b) the Damage Information Reporting Tool database.

21. Enforcement Agency

See Guidance Notes – Enforcement Agency

22. Orders of court

See Guidance Notes – Orders of the Court

23. Agreements with Other Provinces

The Notification Centre may provide services to other provinces in accordance with the Board of Directors.

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GUIDANCE NOTES

1. *Enforcement Agency*

Legislation should include:

- an escalating penalty scale with provisions for meaningful enforcement of non-compliance with damage prevention process;
- larger penalties for repeat offenders and violations of increased risk and consequence;
- provisions for public awareness and education imposed at every level of enforcement;
- the ability for legislation to allow for creative penalties that would increase public awareness and education
- consideration of a graduated Administrative Monetary Penalty System (AMPS);
- provisions for regulatory authorities to invoice for attendance at incidents for emergency response and investigative purposes and to bill a party for punitive purposes; and
- annual statistics on investigations, enforcement actions, and proposed and collected penalties to be made available by the agency to interested parties.

Non-compliance includes, but may not be limited to, failure to conform to damage prevention governance, failure to accurately locate buried infrastructure, and disturbing the ground without proof of a valid notification ticket or permit

2. *Orders of court*

If an offender has been convicted of an offence under this Act, in addition to any other punishment that may be imposed under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects:

- a) prohibiting the offender from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- b) directing the offender to pay The Notification Centre an amount of money that the court considers appropriate for the purpose of promoting the prevention of damage to underground infrastructure;
- c) directing the offender to post any bond or pay any amount of money into court that will ensure compliance with any order made under this section;
- d) directing the offender to compensate any person, monetarily or otherwise, in whole or in part, for the cost of any remedial or preventive action taken, caused to be taken or to be taken as a result of the act or omission that constituted the offence, including the costs of assessing appropriate remedial or preventive action;
- e) directing the offender to pay, in the manner prescribed by the court, an amount for the purposes of promoting public awareness of safe ground disturbance practices;

- f) requiring the offender to comply with any other conditions that the court considers appropriate in the circumstances for securing the offender's good conduct and for deterring the offender and any other person from committing offences under this Act; and
- g) prohibiting the offender from making any locate request during any period that the court considers appropriate.