

Energy Development and Transmission Committee

August 30, 2016

Testimony of Carlee McLeod

Chairman Wardner, members of the committee, my name is Carlee McLeod and I am president of the Utility Shareholders of North Dakota. Thank you for providing an opportunity to appear on behalf of the one-call stakeholders who have worked throughout the interim on a variety of one-call issues. Through a study assigned to the Economic Impact Committee, stakeholders met multiple times, over 40 hours in total, to provide a comprehensive review of one-call along with recommendations to the committee. The committee approved the recommendations and passed a bill supported by our coalition. That draft is attached to this testimony. Since one-call issues often appear before this committee, we thought it might be helpful to share the recommendations with you. No action is requested by the committee at this time. However, we ask you to support the bill when it is introduced during the 2017 legislative session.

Stakeholder Group Information

Composition. The stakeholder meetings started with the people present or mentioned during the first interim hearing who wanted to work on the issues discussed at that meeting. We expanded to the larger stakeholder group started in 2012, and grew as others expressed interest or issues expanded. The group was open to any who expressed interest, and each meeting was held in Bismarck with conference call capabilities. Approximately 20-30 people attended each meeting in person, with many others joining on the phone each time. Each meeting lasted 3-6 hours. We made it clear each time that our meetings were NOT a substitute for legislative hearings, and while we tried to work toward consensus with the group assembled, any other points of view could still be shared with the legislative committee at any time.

Goal. Our goal was to discuss one-call issues and reach consensus from the people who work with underground facilities and the one-call system: regulators, utilities, pipeline operators, telecommunications, excavators, builders, surveyors and planners. As the group expanded, we included one-call board members, representatives of One Call Concepts (the contract provider of services in ND), North Dakota Association of Counties, landowner representatives, and members of the agriculture community in our notices, updates, and meetings.

Procedure. We began by issue spotting. Our first meeting was dedicated entirely to listing concerns with the current system, either as experienced by the stakeholders or as conveyed to them from others. At the conclusion of the meeting, I arranged my notes on those issues into non-legislative issues and possible legislative issues and emailed them to the list of known stakeholders. At the second meeting, we reviewed those notes, discussed each issue and whether it was properly categorized, and began the discussion of potential solutions. After that meeting, my notes regarding the legislative issues were arranged into a table which was shared with the group by email and was

updated after each subsequent meeting as our discussion progressed. It is the intention of our group to continue to work on these or any new issues through the 2017 legislative session.

RECOMMENDATIONS

There are 20 areas in which we reached consensus. Of those 20 areas, we agree to recommend specific change in 11 areas and to recommend no change in 9 areas. We discussed 4 areas on which we did not reach consensus. Additionally, we discussed the soil tester exemption, which all but the soil-tester representative opposed. Technically, that would mean there was no consensus, but to classify it as such give a false impression of the group, so it will be explained separately.

The one-call laws are complex and interconnected. We looked at the chapter comprehensively, and our recommendations come as a whole as a means to protect the safety of anyone encountering underground facilities while minimizing the burden the system causes those who encounter it. Where possible, I will try to provide cross references to other areas each might affect.

1. Board composition

NDCC provides that North Dakota One-Call be organized as a non-profit corporation. While the law specifies the groups that would form the corporation and set up the board, the law provided that those 17 incorporators establish a board of 8 by August of 1996, but the law does not specify anything else about the nature of the board or selection of members. Current board composition includes a gas/pipeline member, but that member is and traditionally has been a distribution pipeline representative. There is a desire from the oil and gas industry to have a pipeline representative on the board for oil/gas pipeline to represent industry knowledge on transmission and gathering lines. Like large and small communities, which have separate representation on the board, there is a vast difference in gas distribution lines, gathering lines, and transmission lines. Adding a position for oil and gas pipelines separate from the current gas pipeline position would better represent the composition of underground facilities. The recommendation occurs on page 4, lines 26-31, page 5, and page 6, lines 1-26.

DAMAGE PREVENTION AND ENFORCEMENT

The purpose of one-call laws is to prevent damage to people, equipment, and facilities. In order to prevent damage, the laws must define careful digging practices and provide for clear enforcement practices. The following recommendations reflect those goals.

2. Prudent digging practice—change recommended

Within a certain zone of a facility, careful and prudent digging must occur. However, the law regarding this issue is worded in a way that confuses many. Most of us understand the wording to mean an excavator must hand dig within 2 feet of the centerline indicated for any facility. However, current law doesn't adequately reflect that understanding. The wording of the statute needs to be clarified. Page 1, lines 14-19 of bill draft 17.0115.05000 represents the recommendation of the group.

Cross reference: cost of location for abusive location requests

3. Culpability Language—change recommended

NDCC 49-23-06(1)(c) provides that damaging an underground facility without notifying the operator a class A misdemeanor, but only if the action is done "knowingly". "Knowingly" is an extremely high standard to prove, as it requires knowing someone's thoughts. Language on page 14, lines 21-27 of

the draft represents the recommended changes. The changes require that an excavator damaged an underground facility or its protective covering and “knew or reasonably should have known” the damage occurred, and fails to notify as soon as possible or tries to hide the damage.

4. License Revocation—recommend no change

Currently, the PSC has tools to fine violators. If fines are not paid, the PSC can pursue collection actions. There is a general feeling that violators who refuse to pay fines should not be considered in good standing with the state for purposes of retaining a business license. However, after further discussion with representatives of the office of Attorney General and Secretary of State about the legal and procedural matters involved with license revocation, the stakeholder group agreed that this avenue probably isn't the best option.

5. Escalating Fines—recommend no change

The PSC has the authority to issue fines for one-call violations. During the 2013 session, the maximum fine amount was raised to \$25,000 per offense. The goal of these fines is to deter bad actions. The fines do not go to the aggrieved party—they are merely a penalty on the violator. PSC action does not substitute for any other civil or criminal proceeding arising out of one-call violations. Violators often continue to violate the law, even after complaints have been filed. The discussion around this idea was that each subsequent violation, after a violator has received notice of a complaint, should hold a higher fine. It takes time to resolve complaints, and there was a desire to provide greater disincentive to deter people from continued bad actions. However, the PSC has escalators in its penalty matrix, and it may consider all offenses, not just those in each complaint, in order to assess the severity of conduct. So the stakeholders agreed that no change in the law is needed.

A. Minimum fines—no consensus to change

Some of our stakeholders would like to see a minimum fine set in law. Others would prefer to let the PSC review the issues and circumstances, as the current law allows. It was reiterated during our meetings that the 2012-2013 stakeholder group urged flexibility during the 2013 session when the maximum fine was raised from \$5,000 to \$25,000, and many in the group agreed setting a minimum fine regardless of circumstances was contrary to the flexibility we urged.

ONE-CALL PROCESS

The next group of recommendations addresses issues within the one-call process, like location time, cost, ticket length, etc. Each recommendation aims to make the process safer and less burdensome. We believe these recommendations, if enacted, will reach those goals and address many of the recurring issues.

Positive Response

Positive response is a service provided by One-Call Concepts (OCC) by which the ticket holder is notified when facilities are located or cleared. Current law allows an excavator to dig after 48 hours of issuing a ticket, or after receiving notice that all facilities are cleared or located. Many states require positive response, but ND stakeholders were not ready to embrace positive response previously.

6. Positive Response—Location—change recommended

Positive response would benefit the excavator by allowing excavation to proceed as soon as possible. OCC has the capability to facilitate positive response, and it has been tested and used for enough

time to make parties comfortable with making its use mandatory. With other suggested changes regarding the window for locates, positive response makes excavators to accommodate flexibility for locators with the knowledge they'll be notified of their ability to work sooner than letting the clock run on each ticket. Changes are reflected in the draft on page 3, lines 22-24; page 8, lines 15-19; page 9, lines 1-3; and page 11, lines 18-22.

Cross reference: window for locates

B. Positive Response—Excavation—no consensus to change

This was a novel idea by a couple members of the group. This concept would require excavators to positively "close out" their tickets, at which time they would affirm their markings have been removed.

There are often multiple groups excavating at a site under separate locate tickets. Respot tickets continue to occur, sometimes when excavation is finished. Forcing each ticket holder to close out a ticket rather than letting it expire could alleviate some of those issues. However, there wasn't much appetite for this concept among stakeholders. Since no consensus was reached, no recommendation was made.

Cross reference: flag management, long term project management

7. Site identification—change recommended

For many people, the term "white-lining" is a lightning rod for negativity. More importantly, it's a misnomer. "White-lining" is a phrase used to mean site identification, often because laws in various states require use of white paint, flags, or stakes to identify excavation zones. Our stakeholder group chose precision over common use, and we will refer to site identification by its proper term.

Language was added in 2013 to recommend providing additional site identification when a project was large or overly burdensome. Meetings have worked to provide clarity, as well. However, there is no requirement that sites are marked physically or electronically to narrow the scope of excavation for location purposes. There are many electronic options to use to provide more information, so site identification would not have to be "white-lined". We believe mandating more precise site identification is the appropriate action at this time. Language was discussed by the group, and the language acceptable to the stakeholders can be found in the draft on page 7, lines 23-31, and page 8, lines 1-10.

Cross reference: ticket size, locate window, flag management

C. Standardized Communication Forms—no consensus to change

More meets and phone calls are happening within one-call tickets, and our group views increased communication as a good thing. However, sometimes parties leave meets thinking they agreed on different things. There was discussion about a standard form that could be used after meets/phone calls to capture meeting details, which could be attached to the original ticket. OCC said they wouldn't have the capacity to house additional data. Some suggested this idea should be used to develop a best practice rather than state policy/law.

8. Survey Ticket Creation-- change recommended

Many people use the one-call system to help plan projects. While it is a good thing to consider underground facilities when planning, these requests take the same priority of all others coming into the system. Additionally, if planners do not capture data as intended, there are often respots requested. Further, flags used to locate aren't often removed if planners don't get to the site and realize their responsibility to remove flags. Creation of a survey or information gathering ticket could

alleviate a few issues. First, data could be exchanged electronically when possible. Second, flag management could be enforced. Third, the location window could be adjusted in order to allow digging requests to remain the primary focus. The provisions agreed to by the stakeholders are as found in the draft on page 11, lines 28-29, page 12, and page 13, lines 1-15. Language includes the following concepts: 1) A survey ticket option made available with OCC; 2) Ticket holder will be provided list of facilities and contact information of each; 3) Facility owners will have 5 days to locate, hold meeting, or send information; 4) Sharing of maps is at the discretion of facility owner; 5) Meeting/locate at discretion of ticket holder; 6) Reiterate requirement that ticket holder remove flags/stakes.

D. Notification to landowners—no consensus to change

This would extend notice to landowners of record for each piece of property a ticket addresses. Last session, landowners were upset about flags not removed after the expiration of a ticket. They often don't know who is working on their land. This would give them notice and a contact for the person filing the ticket. Some stakeholders didn't think this was necessary. Currently, this is not a viable option. OCC doesn't have a way to integrate property owner info into its system. Tax databases are not uniform, so there are 53 separate county systems from which to pull data. However, OCC has updated its website to help landowners who search its site find information about a ticket tied to the land. This is an issue that deserves more thought, but without an integrated county land database, it will not be possible for OCC to administer a notification process.

Flag Management

9. Protection and maintenance— recommend no change

Current law requires "reasonable efforts" to be used by excavators to protect markers. The group looked at a variety of options from other states as guidance for stronger language, but we could not strike a better balance between protecting existing marks and not discouraging people from calling if marks were obscured. Rather than set specific measures in law, stakeholders suggest best practices be developed.

10. Enforcement— recommend no change

While the general belief of stakeholders is that removal of flags by people not associated with excavation is a violation, the law does not provide criminal culpability. We have heard of people removing flags on their property to mow or because they are upset by the excavation. This poses serious safety risks, and if an incident occurs, blame is often placed on the operator or excavator rather than the person who caused the risk by removing flags. There was no desire by the stakeholder group to place harsh penalties on ignorant but otherwise innocent people who pull flags. Education and community outreach is the preferred route at this time.

Collection of fees

11. Definition of excavation— recommend no change

NDCC allows collection of location fees if 3 tickets are called in and no excavation has occurred in the first 2 ticket periods. Often, those being billed say "prove it" rather than pay the bills. One idea discussed by the group was to better define the word "excavation" for collection of fees. However, that poses issues with consistency for the definition to cover both the need to call for a ticket and

when the bill could be valid. Stakeholders declined to create this inconsistency, instead opting for burden of proof language as suggested in recommendation 12.

12. Burden of proof--change recommended

The law is silent on the placement of burden for purposes of showing excavation. Stakeholders discussed the idea and recommend that the burden fall on excavators (or requestors of the locate ticket) to show excavation has occurred when disputing a bill for 3rd and subsequent location fees if there is a belief no excavation has occurred in the two tickets immediately prior to the 3rd request. For most ongoing excavation projects, there would be little question. This provision would cover the instances where the excavation is less clear. Language representing this recommendation can be found in the draft on page 10, lines 23-24.

Cost of location

13. Reportable offense—recommend no change

Initial discussion among stakeholders identified a project where a spill caused remediation which required continual one-call tickets. The group discussed whether the law might be changed to allow cost of allocation to be billed to the entity responsible for the reportable offense. However, the group acknowledged there are many variables to consider with "reportable offense", and likely agencies with jurisdiction over those offenses have the ability to assign the costs as appropriate. The stakeholder group thought education would be a better option than unnecessarily amending the law.

14. Non-locatable— change recommended

There are instances where facilities are non-locatable. Prior to the 2013 law change, many facilities were not required to be locatable. However, for those facilities required to be locatable, some are not properly located. The stakeholder group discussed this issue and suggested that cost of locating facilities not locatable within a certain range or marking should be billable to the facility owner. Range: 2 ft from out edge on either side. Language representing this recommendation can be found in the draft on page 9, lines 14-23. The language affords the locator a chance to correct the issue before any billable costs occur.

Cross reference: prudent digging practices

15. When excavation has occurred—change recommended

Last session, there was an effort to shift the costs of location to the ticket holder rather than the facility owner. Stakeholders identified abuse of the one-call process as the real driver for this issue, so we worked to find a way to place the costs of abusive locations on the perpetrators rather than shifting the whole cost structure. Stakeholders recommend language to allow facility owners to bill for reasonable costs if a violation is found by the PSC for ticket abuse. Recommendation found in the draft on page 10, lines 30-31 and page 11, lines 1-5.

16. Window for locates— change recommended

The law is inconsistent on when the window begins. Stakeholder recommend clarifying that the ticket is valid at the time of planned excavation or as otherwise agreed. Also, the group revisited the 48 hour locate window and recommends changing the law to start the 48 hour location window at midnight the day the ticket is entered, unless otherwise specified. We discussed lengthening the locate time to 72 hours, but excavator stakeholders did not agree. The concern was whether more

extension would be requested in the future. Argument in favor focused on greater accuracy with longer response time. NDCC 49-23-04(3)(a) Recommendation can be found in the draft on page 3, lines 4-10, page 6, lines 30-31, page 7, lines 1-5, page 9, lines 4-11.

Tickets

17. Size of ticket— change recommended

There is no limit in the size of a ticket. The law provides that a ticket should be no larger than the area to be worked in a 21 day period. However, there is a contingency who would like limits to be listed in order to better manage large projects. The recommendation is to have separate sizes for urban and rural projects. The following limits are recommended for inclusion in NDCC 49-23-04(1)(i): Urban limit: 3 blocks; Rural limits: 5 miles linear or one quarter section in total area if not linear. Recommended language can be found in the draft on page 8, lines 11-14.

18. Ticket length— recommend no change

NDCC provides a 21 day ticket length. After discussion with stakeholders, there was agreement to leave the length of the ticket as is.

19. Long term project management— recommend no change

Projects may take a long time to complete, with multiple contractors placing tickets over months or years for a single project. The group discussed the possibility of developing a process for handling long term, complex projects, but at this time, there were no suggestions other than the recommendations included under other headings.

20. New facilities— recommend no change

The law doesn't provide a timeline for submitting facility information to OCC. This is not an issue at this time, as each facility owner submits information as required.

Soil testing one-call utilization

There has been much dialogue on this issue over the past few years with no resolution. One of the concerns from soil testers deals with the difficulty of using the one-call center which requires street addresses not commonly used by soil testers. A group of soil testers, agricultural software and data providers, one-call center technical personnel, and others met to help develop a way for ag data to "talk" with the one-call center in an effort to streamline the ticket process. One ag software group has programmed a potential fix. Testing has occurred, and we are working through any necessary tech changes. It is possible that the perceived burden of compliance will be eased by this effort. In addition, impact on locators will likely be less than perceived with proper site identification and avoidance of common right of way areas.



Introduced by

1 A BILL for an Act to create and enact section 49-23-04.1 of the North Dakota Century Code,
2 relating to survey of areas having underground facilities; to amend and reenact sections
3 49-23-01, 49-23-03, 49-23-04, 49-23-05, and 49-23-06 of the North Dakota Century Code,
4 relating to location of underground facilities before excavation; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 49-23-01 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **49-23-01. Definitions.**

9 As used in this chapter, unless the context otherwise requires:

- 10 1. "Abandoned" means no longer in service and physically disconnected from a portion
11 of the facility or from any other facility that is in use or still carries services.
- 12 2. "Board" means the board of directors of the nonprofit corporation governing the
13 notification center under section 49-23-03.
- 14 3. "Careful and prudent manner" means:
- 15 a. Manually excavating within twenty-four inches [60.96 centimeters] of the outer
16 edges of ~~any~~ underground facility on a horizontal plane as located manually
17 and marked by the owner or operator ~~by stakes, paint, or other customary~~
18 ~~manner;~~ and supporting
- 19 b. Supporting and protecting the uncovered facility.
- 20 4. "Damage" means:
- 21 a. Substantial weakening of structural or lateral support of an underground facility;
- 22 b. Penetration, impairment, or destruction of any underground protective coating,
23 housing, or other protective device; or

- 1 11. "Locate" means an operator's markings of an underground facility showing the
2 approximate horizontal location, including all lines, line direction, intersections, tees,
3 and lateral facilities.
- 4 12. "Locate period" means the later of:
5 a. The forty-eight hour period beginning at 12:01 a.m. of the day after the location
6 request was submitted to the notification center; excluding any Saturday, Sunday,
7 or holiday; and any twenty-four hour extension provided through the notification
8 center; or
9 b. The period between the submission of a location request to the notification center
10 and the noted date and time of excavation.
- 11 13. "Nonprofit corporation" means a corporation established under chapter 10-33.
- 12 ~~13-14.~~ "Notification center" means a center that receives notice from an excavator of planned
13 excavation or any other request for location and transmits this notice to a participating
14 operator.
- 15 ~~14-15.~~ "Operator" means a person who owns or operates an underground facility, including a
16 master meter operator with underground facilities, or a state or local governmental
17 entity. The department of transportation is considered an operator for the department's
18 facilities buried on the department's rights of way. A person is not considered an
19 operator solely because the person is an owner or tenant of real property where
20 underground facilities are located if the underground facilities are used exclusively to
21 furnish services or commodities on that property.
- 22 16. "Positive response" means notification by the operator to the notification center that
23 underground facilities within the area covered by a location request have been marked
24 or cleared.
- 25 ~~15-17.~~ "Tangible marking materials" means any material perceptible by touch used to mark
26 the location of an underground facility, including flags, stakes, poles, or other materials
27 inserted into or affixed to the ground. The term does not include paint, chalk, or other
28 liquid ink-based materials applied to the ground.
- 29 ~~16-18.~~ "Underground facility" means an underground line, pipeline, cable, facility, system, and
30 its appurtenances used to produce, store, convey, gather, transmit, or distribute
31 communications, data, electricity, power, television signals, heat, gas, oil, petroleum

1 products, carbon dioxide, water, steam, sewage, hazardous liquids, and other similar
2 substances. Privately owned and operated underground facilities which do not extend
3 beyond the boundary of the private property are excluded.

4 ~~17-19.~~ "Unexpected occurrence" includes a fire, flood, earthquake or other soil or geologic
5 movement, riot, accident, damage to a subsurface installation requiring immediate
6 repair, or sabotage.

7 ~~18-20.~~ "Water" includes potable water, wastewater, and storm water.

8 **SECTION 2. AMENDMENT.** Section 49-23-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **49-23-03. Notification center - Participation - Establishment.**

11 1. An operator shall participate in and share in the costs of the statewide notification
12 center operated by a vendor selected under this section.

13 2. ~~A~~ A person doing business as an excavator licensed or operator under this chapter
14 shall participate in and share in the costs of a statewide notification center on a
15 per-call basis. An operator, installing the operator's own facilities, may not be charged
16 as an excavator.

17 3. An operator shall participate in and share the costs of the one-call excavation notice
18 system by:

19 a. Submitting the information required by the notification center to allow the center
20 to notify the operator of excavation activity;

21 b. Updating the information provided to the notification center on a timely basis;

22 c. Installing and paying for equipment reasonably requested by the notification
23 center to facilitate receipt of notice of excavation from the center;

24 d. Paying the costs charged by the notification center on a timely basis; and

25 e. Receiving and responding to excavation notices, including emergency notices.

26 4. A nonprofit corporation, North Dakota one-call, incorporated, shall govern the
27 notification center. ~~The initial incorporators of the corporation may solicit bids for any~~
28 ~~services provided for the operation of the center. The corporation shall provide~~
29 ~~advance notice of the first organizational meeting by publication in qualified legal~~
30 ~~newspapers and in appropriate trade journals and by written notice to all appropriate~~
31 ~~trade associations.~~

1 a. ~~The nonprofit corporation must be incorporated by seventeen initial incorporators,~~
2 ~~with one member representing the house of representatives and one member~~
3 ~~representing the senate appointed by the legislative management, one member~~
4 ~~representing telecommunications companies offering local exchange service to~~
5 ~~fewer than fifty thousand subscribers, one member representing~~
6 ~~telecommunications companies offering local exchange service to fifty thousand~~
7 ~~or more subscribers, one member representing rural water systems, one member~~
8 ~~representing rural electric cooperatives, one member representing~~
9 ~~investor owned electric utilities, one member representing investor owned natural~~
10 ~~gas utilities, one member representing cable television systems, one member~~
11 ~~representing cities with a population of fewer than five thousand, one member~~
12 ~~representing cities with a population of at least five thousand, one member~~
13 ~~representing counties, one member representing underground interstate carriers~~
14 ~~of gas, one member representing interstate carriers of petroleum, one member~~
15 ~~representing interstate carriers of telecommunications services, one member~~
16 ~~representing contractors who perform excavation services, and one member~~
17 ~~representing the production sector of the American petroleum institute. The initial~~
18 ~~incorporators must represent and be designated by operators, excavators, and~~
19 ~~other persons eligible to participate in the center. The legislative members are~~
20 ~~entitled to the same compensation and expenses as provided for members of~~
21 ~~committees of the legislative management. The legislative council shall pay the~~
22 ~~compensation for the legislative members.~~

23 b. ~~The initial incorporators shall establish, before August 1, 1996, a~~The board of
24 ~~directors of the nonprofit corporation which consists~~North Dakota one-call,
25 ~~incorporated must consist~~ of eight~~nine~~ members representing the participants in
26 the center. The members of the board of directors must be chosen and serve for
27 terms as provided in the bylaws of the corporation. One member of the board of
28 directors must be chosen by representatives of each of the following participant
29 groups:

30 (1) Telecommunications service providers.

31 (2) Gas distribution lines operators.

1 (3) Oil or gas transmission or gathering lines operators.

2 (4) Electrical transmission and distribution operators.

3 (5) Rural water systems.

4 (6) Cities of five thousand or more population.

5 (7) Cities of fewer than five thousand population.

6 (8) Cable television service providers.

7 (9) Excavators.

8 b. The board shall establish a competitive bidding procedure to select a vendor to
9 provide the notification service, establish a procedure by which members of the
10 center share the costs of the center on a fair, reasonable, and nondiscriminatory
11 basis, and do all other things necessary to implement the purpose of the center.
12 Any agreement between the center and a vendor for the notification service may
13 be modified from time to time by the board, and any agreement shall be reviewed
14 by the board at least once every three years, with an opportunity to receive new
15 bids, if desired, by the board. An operator may submit a bid and be selected to
16 contract to provide the notification center service.

17 c. Members of the board and any of its agents are immune from any liability of any
18 kind based on any acts or omissions in the course of the performance of
19 responsibilities in an official capacity except for bodily injury arising out of
20 accidents caused by or contributed to by the negligence of the board member or
21 agent.

22 d. The board shall aid the state's attorneys of the various counties in the
23 enforcement of this chapter and the prosecution of any violations. The board may
24 institute a civil action for an injunction to enjoin violations of this chapter without
25 proof that anyone suffered actual damages.

26 e. ~~The notification center must be in operation by March 1, 1998.~~

27 **SECTION 3. AMENDMENT.** Section 49-23-04 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **49-23-04. Excavation.**

30 1. Except in an emergency, an excavator shall contact the notification center and provide
31 an excavation or location notice ~~at least forty-eight hours~~ before beginning any

1 excavation, ~~excluding Saturdays, Sundays, and holidays, unless otherwise agreed to~~
2 ~~between the excavator and operator. If an operator determines more time is necessary~~
3 ~~for location, the operator may request a twenty-four-hour extension of the excavation~~
4 ~~or location notice by notifying the notification center. The notification center shall notify~~
5 ~~the excavator of the extension.~~ An excavation begins the first time excavation occurs
6 in an area that was not previously identified by the excavator in an excavation notice.

7 The notice must contain:

- 8 a. The name, address, and telephone number of the person making the notification;
9 b. The name, address, and telephone number of the excavator;
10 c. The date and time when excavation is scheduled to begin;
11 d. The depth of planned excavation;
12 e. The type and extent of excavation being planned, including whether the
13 excavation involves tunneling or horizontal boring;
14 f. Whether the use of explosives is anticipated and any other information as may be
15 required by the notification center; and
16 g. The location of the excavation by any one or more of the following means:
17 (1) A specific street address;
18 (2) A reference to a platted lot number of record;
19 (3) An identifiable roadway or roadway intersection; or
20 (4) A specific quarter section by section number, range, township, and county.

21 In this case, the location shall be further described by coordinates measured
22 in feet from the nearest one-fourth corner or section corner.

- 23 h. ~~If the location of the excavation is too large or complex to be clearly and~~
24 ~~adequately identified by description in the location request~~

- 25 2. Unless otherwise exempted, the excavator shall provide additional location ticket
26 request must include site identification information by one or more of the following
27 means: white marking, digital white lining, project staking, geographic information
28 system shape file, detailed drawing, map, or other appropriate means agreed upon by
29 the parties to the ticket. ~~An excavator may not be required to provide additional~~
30 ~~location information if the excavator plans a meeting with the affected operators at the~~
31 ~~location of the excavation before beginning any excavation, or if the notice given under~~

- 1 ~~this section includes a specific street address or reference to a platted lot number of~~
2 ~~record of the location of the excavation~~Site identification under this subsection is not
3 ~~required if:~~
- 4 a. The precise location of excavation can be clearly and adequately identified on the
5 location notice and is limited to a single street address or a platted lot number of
6 record;
- 7 b. The precise location of excavation can be clearly and adequately identified on the
8 location notice and the excavation is an emergency excavation; or
- 9 c. Prior to any excavation, the excavator requests and conducts a meeting with the
10 affected operators at the location of the excavation.
- 11 ~~i.3.~~ A request for location is limited to ~~the area to be excavated during the twenty-one-day~~
12 ~~period following the location request~~an area not exceeding three city blocks in
13 ~~an area not exceeding three city blocks in~~
14 ~~diameter within an urban area or an area of one hundred sixty contiguous acres or five~~
15 ~~linear miles in a rural area.~~
- 16 ~~j.4.~~ An excavator may begin excavation in a location if ~~the location period has passed~~
17 ~~without notification of a requested extension or prior to the expiration of the location~~
18 ~~period~~if when the excavator has received notice that all facilities have been located or
19 ~~if when~~ the excavator has received notice that all facilities have been located or
20 ~~or at the expiration of the location period or extension of the location period.~~
- 21 ~~2-5.~~ The notification center shall:
- 22 a. Provide a toll-free telephone number and assign an inquiry identification number
23 to each excavation notice and retain a record of all excavation notices received
24 for at least six years.
- 25 b. Immediately transmit the information contained in an excavation notice to every
26 operator that has an underground facility in the area of the proposed excavation.
- 27 c. Inform the persons giving notice of an intent to engage in an excavation activity
28 the names of participating operators of underground facilities to whom the notice
29 will be given.
- d. Establish procedures for assuring positive response from the affected operator in
 all emergency excavation notices.

- 1 e. Establish procedures to receive from operators and convey to ticket holders
2 positive response when operators have located or cleared underground facilities
3 identified within the area of a location request.
- 4 3-6. a. ~~An operator, within forty-eight hours, or any extension of that period, after~~
5 ~~receiving an excavation notice from the center, excluding Saturdays, Sundays,~~
6 ~~and holidays, unless otherwise agreed to between the excavator and operator,~~
7 ~~shall locate and mark or otherwise provide the approximate horizontal location of~~
8 ~~the underground facilities of the operator~~ with underground facilities within the
9 area of a location request shall locate and mark or otherwise provide the
10 approximate horizontal location of the underground facilities of the operator within
11 the location period or as agreed by the parties.
- 12 b. For purposes of this section, the approximate horizontal location of the
13 underground facilities is a strip of land two feet [60.96 centimeters] on either side
14 of the underground facilities. An operator of a facility required to be locatable is
15 responsible for the costs of location. If an excavator is unable to locate a facility
16 within two feet on either side of the operator's facility location markings and
17 requests assistance from the operator to locate the facility, but the operator fails
18 to provide the requested assistance within a reasonable time, the operator is
19 responsible for the excavator's reasonable costs incurred to locate the facility.
20 This subdivision does not apply to an underground facility to convey water
21 installed before August 1, 2013.
- 22 c. When an operator cannot establish the exact location of the underground facility
23 to convey water, the operator shall mark the location as accurately as possible
24 and the excavator may proceed with caution. When excavation operations
25 approach the estimated location of the underground facility to convey water, the
26 exact location of the facility must be determined by safe and acceptable means.
27 The uncovered facility must be supported and protected to prevent damage.
- 28 d. Markers used to designate the approximate location of underground facilities
29 must follow the current color code standard used by the American public works
30 association.

- 1 e. If the operator cannot complete marking of the excavation area before the
2 excavation commencement time stated in the excavation notice, the operator
3 shall promptly contact the excavator.
- 4 f. After facilities are located by an operator, an excavator shall notify the notification
5 center if:
- 6 (1) The excavator postpones the excavation commencement time stated in the
7 excavation notice by more than forty-eight hours, or any extension of that
8 period, or cancels the excavation;
- 9 (2) The markings have been obliterated or obscured;
- 10 (3) Weather conditions have impeded visibility of the markings;
- 11 (4) The site shows evidence of recent excavation; or
- 12 (5) The excavator has other reason to believe the markings are incorrect or
13 missing.
- 14 g. An excavator may not use a location more than twenty-one days, or any
15 extension of that period, after the planned excavation date unless the excavator
16 has made previous arrangements with the operators affected.
- 17 h. If excavation has not occurred within the initial twenty-one days of the locate, the
18 excavator shall request that the facility be relocated before excavating unless
19 other arrangements have been made with the underground facility owner. Upon
20 the third locate request at the same excavation site where no excavation has
21 occurred after the initial two locates, the excavator is responsible for reasonable
22 costs associated with relocating facilities in that location. If the issue of whether
23 excavation has occurred is disputed for purposes of this section, the excavator
24 bears the burden of proof that excavation has occurred.
- 25 i. If a relocate request is made for an area which includes areas where excavation
26 has been completed, a request for relocate must be modified from the original
27 locate request to reflect only the area to be excavated during each subsequent
28 twenty-one-day period, otherwise the excavator is responsible for reasonable
29 costs associated with relocating facilities in the location.
- 30 j. An excavator that makes repeated location requests within the area of a
31 previously made location request due to the excavator's failure to reasonably

1 maintain and remove markings under subsection 3 of section 49-23-05 or failure
2 to follow prudent and careful digging practices required by subsection 5 of
3 section 49-23-05 is responsible for reasonable costs of location and removal if
4 the public service commission determines the additional location request was
5 caused by the excavator's failure described in this subdivision.

6 k. If in the course of excavation the excavator is unable to locate the underground
7 facility or discovers that the operator of the underground facility has incorrectly
8 located the underground facility, the excavator shall promptly notify the operator
9 or, if unknown, the one-call notification center.

10 k.l. A facility owner, excavator, or other person may not present or presume that an
11 underground facility is abandoned, or treat an underground facility as abandoned,
12 unless the facility has been verified as abandoned by reference to installation
13 records or by testing. The notification center shall establish a method of providing
14 personnel from a facility owner qualified to safely inspect and verify whether a
15 facility is abandoned or inactive if necessary. An inactive facility must be
16 considered active for purposes of this section.

17 l.m. An underground facility owner shall make all new facilities locatable.

18 n. An operator that has completed marking of the excavation area or has
19 determined there are no facilities in the area identified in the ticket shall provide
20 positive response to the notification center in compliance with the notification
21 center's procedures established under subsection 5 for assuring positive
22 response from operators.

23 4.7. If an excavation is being made in a time of emergency, all reasonable precautions
24 must be taken to protect the underground facilities. In an emergency, the excavator
25 shall give notification in compliance with this chapter, as soon as practical, that an
26 emergency exists. As soon as practical, each operator shall provide all location
27 information that is reasonably available to the excavator.

28 **SECTION 4.** Section 49-23-04.1 of the North Dakota Century Code is created and enacted
29 as follows:

1 **49-23-04.1. Survey.**

2 1. An individual making a request for location for information, design, or purposes other
3 than excavation shall contact the notification center for a survey location. The survey
4 notice must contain:

5 a. The name, address, and telephone number of the person making the notification;

6 b. The name, address, and telephone number of the surveyor;

7 c. The date and time information will be captured;

8 d. The depth of any planned future excavation;

9 e. The type and extent of any planned future excavation, including whether it
10 involves tunneling or horizontal boring;

11 f. Whether the use of explosives is anticipated;

12 g. Any other information the notification center requires;

13 h. The location of the area to be surveyed by one of the following means:

14 (1) A specific street address;

15 (2) A reference to a platted lot number of record;

16 (3) An identifiable roadway or roadway intersection; or

17 (4) A specific quarter section by section number, range, township, and county.

18 In this case, the location must be further described by coordinates

19 measured in feet from the nearest quarter section corner or section corner.

20 2. Unless otherwise exempted, the ticket request must include site identification
21 information by one or more of the following means: white marking, digital white lining,
22 project staking, geographic information system shape file, detailed drawing, map, or
23 other means agreed upon by the parties to the ticket. Site identification under this
24 subsection is not required if:

25 a. The precise location of planned future excavation can be clearly and adequately
26 identified on the location notice and is limited to a single street address or a
27 platted lot number of record; or

28 b. Prior to any survey, the excavator requests and conducts a meeting with the
29 affected operators at the location of the survey.

30 3. The notification center shall:

- 1 a. Immediately transmit the information contained in a survey notice to every
- 2 operator that has an underground facility in the survey area; and
- 3 b. Inform the individual who made the survey location request of the names of
- 4 participating operators of underground facilities to whom the notice will be given.
- 5 4. Within five days; excluding Saturdays, Sundays, and holidays; an operator with a
- 6 facility within the survey area shall locate or mark the facilities physically, provide
- 7 location information electronically, or meet with the ticket holder.
- 8 5. Meetings may be held at the discretion of the ticket holder.
- 9 6. Electronic information may be exchanged at the discretion of the operator.
- 10 7. The survey ticket holder shall assume ownership of materials used to mark the facility,
- 11 use reasonable efforts to maintain markings until the survey information has been
- 12 captured, and remove all tangible marking materials used to mark the facility and the
- 13 site area upon completion of the capture.
- 14 8. The survey ticket holder is responsible for the reasonable costs of any relocate after a
- 15 survey location has been properly located and marked.

16 **SECTION 5. AMENDMENT.** Section 49-23-05 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **49-23-05. Precautions to avoid damage.**

19 To avoid damage to and minimize interference with underground facilities in and near the
20 ~~construction~~excavation area, ~~an excavator~~a ticket holder shall:

- 21 1. Maintain a clearance between an underground facility and the cutting edge or point of
- 22 any mechanized equipment, considering the known limit of control of the cutting edge
- 23 or point to avoid damage to the facility.
- 24 2. Provide support in a manner approved by the operator for underground facilities in and
- 25 near the construction area, including backfill operations to protect the facilities. Backfill
- 26 must be of a material equal to or better in both quality and quantity to the existing
- 27 backfill.
- 28 3. Assume ownership of materials used to mark the facility, use reasonable efforts to
- 29 maintain markings during excavation, and remove all tangible marking materials used
- 30 to mark the underground facility and site area upon completion of the excavation.

1 4. Assume the cost of excavation to expose the facility unless otherwise indicated by
2 owner of facility.

3 5. Conduct the excavation in a careful and prudent manner.

4 6. Properly manage spoil material to prevent shifting or falling material that could
5 damage belowground facilities.

6 **SECTION 6. AMENDMENT.** Section 49-23-06 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **49-23-06. Damage to facilities - Penalty.**

- 9 1. a. If any damage occurs to an underground facility or its protective covering, the
10 excavator shall notify the operator as soon as reasonably possible. When the
11 operator receives a damage notice, the operator shall dispatch, as soon as
12 reasonably possible, personnel to the damage area to investigate. If the damage
13 endangers life, health, or property, the excavator responsible for the work shall
14 take immediate action to protect the public and property and to minimize the
15 hazard until arrival of the operator's personnel or until emergency responders
16 have arrived and taken charge of the damaged area.
- 17 b. An excavator shall delay backfilling in the immediate area of the damaged
18 underground facilities until the damage has been investigated by the operator,
19 unless the operator authorizes otherwise. The repair of damage must be
20 performed by the operator or by qualified personnel authorized by the operator.
- 21 c. An excavator ~~who knowingly is guilty of a class A misdemeanor if the excavator~~
22 damages an underground facility or its protective covering and knew or
23 reasonably should have known the damage occurred and who;
- 24 (1) The excavator does not notify the operator as soon as reasonably possible;
25 or ~~who~~
- 26 (2) The excavator backfills in violation of subdivision b ~~is guilty of a class A~~
27 misdemeanor.
- 28 2. a. If an excavator fails to comply with this chapter or damages an underground
29 facility, the excavator is liable for all damages caused by the failure to comply
30 with this chapter and for all damages to the facilities and must reimburse the
31 operator for the cost of location, repair and restoration, loss of product, and

- 1 interruption of service occurring because of the damage or injury to the facilities,
2 together with reasonable costs and expenses of suit, including reasonable
3 attorney's fees.
- 4 b. Reimbursement to the operator under this subsection is not required if the
5 damage to the underground facility was caused by the sole negligence of the
6 operator or the operator failed to comply with sections 49-23-03 and 49-23-04.