

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1314

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10/3/03
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2003 HOUSE POLITICAL SUBDIVISIONS

HB 1314

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1314

House Political Subdivisions Committee

Conference Committee

Hearing Date: January 24, 2003

Tape Number	Side A	Side B	Meter #
1		X	16.2-53.5
2	X		0.0-21
Committee Clerk Signature <i>Micki Schmidt</i>			2-5-03

Minutes:

(TAPE 1; SIDE B:)

(16.2) REP. GLEN FROSETH: We will open the hearing on HB 1314.

(16.6) REP. GERRY UGLEM: Testimony in support of HB 1314. (See attachment #1)

18.5) REP. GIL HERBEL: Is there any problem related to ditching and draining?

(18.7) REP. GERRY UGLEM: Not that I'm aware of.

(19.3) PATRICK FEIST; OWNER OF FEIST SOIL TESTING: Testimony in support of HB 1314. When we do our samples, we make a point, because of necessity, not because of being worried about a power line being in the way, but rather what goes on around borders and fields, next to ditches, roadways, things of that nature. We try to identify the accurate utility level. In the 22 years I've done this, I've never hit anything. What would be accomplished by the utilities. Because if they are going to mark the areas for the most part, they will be putting on a lot of miles.

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House Political Subdivisions Committee
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(23.7) REP. GLEN FROSETH: Most of your work is done in agricultural areas, in the fields. How about right aways? The second sentence of this should be public right aways or problem road or highways. Do you do much work in that area?

(24.0) PATRICK FEIST: No, I work solely for the Agricultural sector.

(25.1) JOHN LEE; AGUSE LABORATORIES: We provide testing services for the testing portion. We test about 100,000 soil samples a year. Of those samples, well over 90% of them are taking to a depth of 24 inches.

(26.7) REP. BRUCE ECKRE: You said you do this in Minnesota, South Dakota and across the upper Midwest? What are those states?

(26.9) JOHN LEE: We checked that out and the law is very similar to what the law is here.

(27.5) REP. DALE SEVERSON: When they do the soil testing, it's usually away from any areas where there are cables. If we don't do samples there, what's the need to make them 24 inches?

(27.9) JOHN LEE: In the rest of the field we need to go 24 inches deep to represent the nutrient levels of these fields.

(28.4) REP. NANCY JOHNSON: We're talking about One Call having to call the utilities to come out and mark these even when they're not doing samples in that area?

(28.7) JOHN LEE: Right now the law allows to 18 inches no matter where you are in the field. The problem is that the 18 inch depth isn't appropriate for what we're actually going to be collecting in the heart of that field. We're sampling to a deeper depth than 18 inches.

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House Political Subdivisions Committee
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(29.0) REP. NANCY JOHNSON: The problem is doing the samples for agricultural use, you need to go 24 inches. The utilities don't bury cable more than 18 or 20 inches. Is that the problem?

(29.3) JOHN LEE: You would have to talk to the utilities about that because we're never in those areas.

(30.0) REP. DALE SEVERSON: Would we be better off to maybe just exempt your people from having to call One Call?

(30.1) JOHN LEE: No.

(30.7) REP. GLEN FROSETH: The provision in lines 15 & 16 are actually the cause of the problem.

(31.4) DAN MOSER; CENTRAL AGRICULTURAL CONSULTING: Testimony in support of HB 1314. I do about 1,200 fields per year. We really need to change this to a depth of 24 inches. The biggest problem is calling One Call, it takes a lot of time. With this Bill, I will have to hire a new employee and the cost will go to the growers.

(34.1) STEVE STREGE; ND GRAIN DEALERS ASSOCIATION: Testimony in support of HB 1314. Many of our elevator members do soil sampling or sell fertilizers based on the cap. You have to get down to a depth of 24 inches to do an accurate test.

(35.8) ROBERT BAHM; AGRICULTURAL SOIL SCIENCE INC.: Testimony in support of HB 1314. To get 1 call done, it took 45 minutes for a call to One Call. One Call has 48 hours to flag it, and then we have 2 days to sample it. If it rains for over the 48 hour period, do you have to call back in again? There are problems in the logistics of this. We sample 3,000 to 3,500 fields a year.

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House Political Subdivisions Committee
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(40.7) REP. GLEN FROSETH: Presumably, there would be more chance of finding buried cable in parcels of land closest to the city because of the services. When you work in an area like that, do you use One Call more often when it is questionable? You are liable for the cost of repairing anything that you do damage in your service or work. You take a big risk there.

(41.8) ROBERT BAHM: What we feel from talking to some of the utility people, is most of them with power lines and things like that are in the right of way or the edge of the field. We do not take samples. We usually don't get within 100 to 150 feet of the edge. If there's an abandoned farmstead in that field, then again, we're staying away from that field.

(43.0) REP. BRUCE ECKRE: What kind of training do these people have?

(45.4) REP. NANCY JOHNSON: You stated that you generally go in at about 100 to 150 feet.

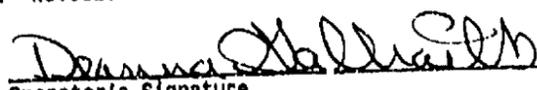
Can we create an additional line to say that protesting will be done more to the center of the private land that you are trusting, would that be an accessible exception perhaps?

(46.0) ROBERT BAHM: I don't know if we want the language to state the center of that, because there may be some other feature that may dig deep but that's not where we should be taking the sample to get the results for our customers. There could be some language in there to work from either the right a way or the edge.

(47.8) JACK McDONALD; #305; FOR ND CABLE TV ASSOCIATION: Testimony in opposition of HB 1314. (See attachment #2) It was a difficult process to get the One Call into ND. It took a couple sessions and a lot of negotiation and cooperation between a lot of different industries.

(51.8) REP. BRUCE ECKRE: When this no call went into effect, was the soil people involved in this decision?

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(52.1) JACK McDONALD: I don't know. The water people were involved, they weren't all necessarily all in favor of this Bill, because they have trouble locating.

(53.0) REP. GIL HERBEL: Are you required by law to put these lines at a certain depth and if so, what is it?

(53.2) JACK McDONALD: I don't believe we are in a rural area but I'm not an expert on this.

(53.5) REP. GIL HERBEL: I know in the valley area, particularly when we get heavy rains, I see the farmers out there with the big hook that they drag through their fields so they can get the water off of the sugar beets and potatoes. Some of those tools are down a long ways, so they get the water to flow faster. Have they presented these problems to you?

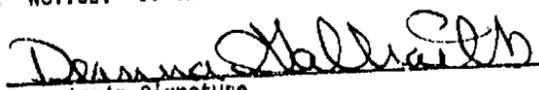
(TAPE 2; SIDE A:)

(0.0) JACK McDONALD: You're using a machine, not manual methods anymore, and there's just that much more of a chance they're not checking locations of the machines. I'm not aware of anything from cable.

(0.2) REP. ALON WIELAND: You stated in your testimony that many of your companies do not give exact depth readings. Is it because they don't know what these exact readings are or just policy?

(0.4) JACK McDONALD: We are required to get the location of the depth. I've indicated that for many of our operators, we don't have that sophisticated equipment. We know where it is. We know that 2 or 3 years ago, we put those lines in at a certain place and a certain depth. But, we don't know if they're still at that exact depth or not, if they've moved up or down, so to determine the exact location and depth is a difficult situation.

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(1.0) REP. DALE SEVERSON: When they put a cable in a field, about how far out from the right away do they usually go?

(1.2) JACK McDONALD: I know it depends upon where they get the easements. You have to get the easement from the landowner and where he gets that is up to the landowner. Often times we share utilities that are in for other utility calls.

(1.7) DENNIS BOYD; MDU RESOURCES GROUP: Testimony in opposition of HB 1314. He complimented the Soil Testers for meeting with the One Call board, there have been some discussions. The One Call board may have offered some suggestions to them and at least there's some dialog between the two organizations. One of the big problems for us is the pipelines. All you have to do is "nick" the pipeline and it destroys the protective coating. If you would take out the public right away section, then it would be OK.

(5.1) REP. GIL HERBEL: Is there a specific depth that you would have to put your lines in?

(5.2) DENNIS BOYD: There is a specific depth on the electric facilities. For secondary electric fees, my understanding is that it is 24 inches. Most of our facilities are between 24 and 48 inches.

(5.7) REP. GIL HERBEL: What about the rancher who wants to put in a corner post?

If they're going to put in a corner post, they got to go down deeper, and then every time they do that they're going to have to make telephone calls too.

(6.2) DENNIS BOYD: Chances are on private land, that landowner knows where that pipeline is at. He knows where his electrical, cable or water is at.

(6.6) REP. NANCY JOHNSON: Who pays for the One Call?

(7.1) KEVIN ALISHOUSE; ND ONE-CALL BOARD: The excavating community within the state and the utilities both pay for the use of One-Call.

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(7.3) REP. GLEN FROSETH: But, there is a charge for the person that calls?

(7.4) KEVIN ALISHOUSE: Yes. There is a third per ticket call.

(7.8) REP. GLEN FROSETH: I was on the committee that helped work out details on this One-Call system way back in 1995 or 1997. There is a charge, one dollar per call?

(8.0) KEVIN ALISHOUSE: That's correct, it's just over a dollar. Home and land owners are not charged for calls. The law reads, "if you're licensed to do business in the state, under the state code you are a member of the excavating community and will be charged for each what we call a ticket, for each excavation request. There are no further charges for flagging.

(8.8) REP. ALON WIELAND: Will you explain the term "ticket"?

(9.0) KEVIN ALISHOUSE: The jargon industry is per ticket and that ticket is basically just a request.

(9.2) REP. ANDREW MARAGOS: When a soil tester wants to test a certain crop of land, he's required to call. Then do all companies come out and mark everything on that particular tract of land. Are there perimeters for each crop? When we call and say we're going to do a section, or a quarter, how does this work?

(10.1) KEVIN ALISHOUSE: The notification goes out to individual based on who would be in the area they described when they call for that location spot. As far as the scope of that locate, they are limited to a one-square mile per request.

(10.9) REP. ANDREW MARAGOS: If you say they're not charged, why would they want to pass along the \$15 fee to their customers for doing a soil test?

(11.4) KEVIN ALISHOUSE: I can't speak for them.

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(11.7) REP. ANDREW MARAGOS: Is it possible that they have such a high volume of testing to do. Has there been discussion on alternative methods of communicating in One-Call. When they say they have to call every time, can they provide a list to the One-Call council?

(12.4) KEVIN ALISHOUSE: This was discussed in a meeting with the One-Call board earlier in the year. It can be more than just an individual request. We heard that it's a 40 hour advance notice and only a two day window to use that. We have a ten day working period beyond that.

(15.9) REP. BRUCE ECKRE: When you have a 24 hour window, and when it starts to rain, and the farmer wants it tested the next day, they can't lay out a whole season because of weather. They don't have that time period.

(16.4) REP. GLEN FROSETH: I understand the importance of soil testing. The committee is going to have to do some work here with all of the entities to make this a workable. Soil testing is a very important procedure for our agricultural community. I understand that the soil has to be tested below the level of 18 inches to get a proper soil test. We don't want to fail that industry and that benefit to the farmers, but still we have to be concerned with the safety issues. We'd like to strike a compromise where we could satisfy the concerns of both parties. Do you have a representative from the soil samplers group who could meet with the committee?

(17.7) KEVIN ALISHOUSE: We have a group called Agricultural Consultants of ND or the Certified Crop Advisors of ND. Allen Ness is here in Bismarck.

(18.4) KATHY AAS; XCEL ENERGY: Testimony in opposition of the Bill. Xcel Energy opposes the One Call law. One Call Law has been put into place to protect people from the hidden dangers of underground utilities. We need to insure that we don't begin to unravel the process the representatives put into place to protect the state citizens. We have recorded more

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than 200 incidents of damage to our electric and natural gas lines. 195 of those were against our gas system. (Explains an instance.)

(20.7) REP. GLEN FROSETH: We've heard all of our Bills today. I will hold HB 1280. We'll wait on 1278. #1314, who will work on this? Rep. Herbel and Rep. Niemeier will.

We will adjourn for the day.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1314

House Political Subdivisions Committee

Conference Committee

Hearing Date: January 30, 2003

Tape Number	Side A	Side B	Meter #
2	X		0.0-4.1
Committee Clerk Signature <i>Mickie Schmidt</i>			2-11-03

Minutes:

(TAPE 2; SIDE A:)

(0.0) REP. GLEN FROSETH: We will call the committee back to order. We will open the hearing on HB 1314.

(0.5) REP. GIL HERBEL: Rep. Neimeier, our Chairman, Rep. Kretschmar and myself sat in and visited with the Soil Samplers, One Call and members of the Soil Testers. We spent about an hour and a half to come to some sort of a resolution. In essence, we couldn't work without the liability problem of changing the 18 to 24. One of the options we gave the Soil Testers was to move the distance away and they didn't want that. Liability is the real issue here. We would recommend a "DO NOT PASS" on HB 1314. They were going to work on this but they haven't gotten back to me so maybe decided not to.

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House Political Subdivisions Committee

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(1.8) REP. GLEN FROSETH: One of the things we came away from the meeting with a feeling that putting this into the Century Code might cause a few problems in the way of liability.

The general feeling of the committee was to leave it the way it is.

(3.2) REP. GIL HERBEL: I MOVE A DO NOT PASS.

(3.4) REP. MARY EKSTROM: I SECOND IT.

(3.4) REP. GLEN FROSETH: Any other committee discussion? I'll have the clerk call the Roll Call Vote for a Do Not Pass. (4.1) 12-y; 1-n; 1-absent; Carrier: Rep. Herbel

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Date: 1-30-03

Roll Call Vote #: |

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1314

House "POLITICAL SUBDIVISION" Committee

Check here for Conference Committee

Legislative Council Amendment Number 30422.0200

Action Taken Do Not Pass

Motion Made By Rep. Herbel Seconded By Rep. Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓				
Vice-Chairman Nancy Johnson	✓				
Mike Grosz	✓				
Gil Herbel	✓				
Ron Iverson	✓				
William E. Kretschmar	✓				
Andrew Maragos		✓			
Dale Severson	✓				
Alon Wieland	✓				
Bruce Eckre	✓				
Mary Ekstrom	✓				
Carol A. Niemeler	0				
Sally M. Sandvig	✓				
Vonnie Pletsch	✓				

Total (Yes) 12 No 1

Absent 0

Floor Assignment Rep Herbel

If the vote is on an amendment, briefly indicate intent:

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REPORT OF STANDING COMMITTEE (410)
February 4, 2003 3:58 p.m.

Module No: HR-21-1651
Carrier: Herbel
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1314: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **DO NOT PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1314 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-21-1651

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2003 TESTIMONY

HB 1314

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#1 1-24-03

HB 1314

Chairman Froseth, Committee Members

I am Rep Gerry Uglem from Dist19 (Rural Grand Forks County)

I introduced this bill (HB #1314) at the request of a crop consultant in my area, who climbed into the combine cab with me last fall, and said he had 1200 fields to soil test and he could not possibly comply with the One-call requirements. To the best of my knowledge, no soil testing service is complying. The standard soil test is 24"

Before drafting this bill I talked to George Berg CEO of Nodak Electric REC and David Crothers with ND Assn of Telephone Coops and a One-call board member. They could see no conflict as long as 24" was the limit.

HB 1314 amends Subsection 7 of Section 42-23-01 of the ND Century Code to increase the depth to "more than 24 inches" when doing agricultural activities on agricultural land outside of road right-of-ways. *Referring a call* *this allows*
It remains at 18 inches for agricultural activities inside highway right-of-ways, where most utilities are located.

Some concern has been expressed about the 18" inside highway right-of-ways. This bill did not change that, but I can see where the utilities may like to see a change there.

I believe the One-call system would be overloaded if it were to enforce the existing law. Making this change will benefit the soil testing industry, the utilities, and the one-call system, by eliminating the requirement for a large number of unnecessary calls.

Thank you for your attention.

Chairman Froseth, I believe we have industry experts here, but I will attempt to answer any questions you may have.

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#1 HB 1314 1-24-03
#2

Friday, January 24, 2003

HOUSE POLITICAL SUBDIVISIONS COMMITTEE
HB 1314

CHAIRMAN FROSETH AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing here today on behalf of the North Dakota Cable Television Association. We oppose this bill and urge that you give it a do not pass.

This is a bill that just invites problems. The exact depth of buried cable shifts with the land, particularly in rural areas. Lines that were 24 inches deep might be higher...or lower. Once a line or cable has been cut, the damage is done. They are much more difficult to repair in rural areas where it takes time to get personnel to the position.

These days, a cut cable television line interrupts high speed internet access, teaching tools and telephone service, in some areas, as well as television.

Additionally, many of our companies' locating equipment do not give exact depth readings.

Therefore, we respectfully urge a do not pass.

If you have any questions, I will be happy to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

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#3



"Roy Sheppard"
<roy@csicable.com>
01/23/2003 01:44 PM

To: <gfroseth@state.nd.us>
cc:
Subject: HB 1314 -

Dear Representative Froseth,

Re: HB 1314

My name is Roy Sheppard. I am owner of Cable Services, a ND cable television/communications company serving 8 ND communities. I am also the current President of the North Dakota Cable Television Association.

I oppose HB 1314, a bill that could put cable, telephone, electric, gas, and other underground facilities and excavators into harms way.

Currently agricultural activities on agricultural land up to a depth of 18" are exempted from the definition of excavation - which relates to obtaining to locations prior to excavation work.

This bill seeks to extend that depth by 6" to a depth of 24". It is my position that this exemption could create dangerous situations in which underground facilities are damaged and people operating equipment harmed. There are lots of facilities that have been placed 10-30 or more years ago. No one can say for sure that grades have not been altered. It is not unusual to find facilities at 20-24" deep. The present exemption depth of 18" does not seem to have cause a hardship on anyone.

The most dangerous wording is the inclusion of an "agricultural exemption" up to 18" for digging in the right of way. No one should have an exemption, as the right of way is a common area where facilities get placed, and is an area where the grade routinely gets changed. We have facilities that due to grading in the ditch went from 30" deep to 16" and from 30" deep to 72". All work over and across the right of way must be located, to keep the facility and the excavator safe. In theory, landowners are not farming the right of way.

Please oppose this bill.

Thank you,

Sincerely,

Roy

Roy A. Sheppard
President/General Manager
Cable Services, inc.
PO Box 608

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