

2015 SENATE POLITICAL SUBDIVISIONS

SB 2167

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB 2167
1/22/2015
Job number 22352

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill for an act to provide for a pilot program for oil and gas development impact funding for one-call locates; and to provide an appropriation.

Minutes:

Attachments #1,2,3,3.6

Chairman Burckhard opened the hearing on SB 2167. Senators Burckhard, Anderson, Bekkedahl, Dotzenrod, Grabinger were present. Senator Judy Lee was absent.

Senator Rust introduced SB 2167. Written testimony #1, #2 (1:23-4:28)

Senator Anderson It seems to me that last session we passed an extension of the time which would say that a-locate was good for a longer period of time and also that we increased the penalties if they didn't comply. I am not necessarily asking you to answer that question if you don't know, but then somebody else in the room maybe could answer that.

Senator Rust replied it is my understanding that is true. We did increase that time period and there were some things about penalties as well. One of the problems that they have is a few legislators met from the representatives from the telco companies in Tioga, and they talked to us and had statistics and had pictures to show us. You sometimes have a 40 mile area and you do a-locate. A time period goes by and all of a sudden you're asked to do a re-locate, and you've got to do the whole 40 mile area again. In all honesty they are only going to be working on a few miles of it. Sometimes, it appears to telco's that is a process that really could be somewhat streamlined so that you don't have to do the whole thing when you're working on a part of it. But as I recall the increase in time did help. In fact, the original bill looked at changing that again, but I believe the telco's can tell you this, There are some situations with that they may not be good.

Senator John Warner stands in favor of this bill.(7:06-10:00)In the interest of full disclosure, I need to disclose that I am the member of the Board of Directors of Verendye Electric, which is a rural electric and my wife is employed at Reservation Telephone. I am speaking from those contexts as well. From Verendrye's standpoint we are a little bit outside of the oil field but most of our development has to do with the infrastructure, the commercial infrastructure relative to the development. Most of our problems have come in

the urban areas around Minot. Examples cited. Some of the impacts we see are from getting our lines cut. More examples cited. I know there is some objection because these co-ops are seen as private companies but they are almost quasi-governmental in some ways that they are required to serve the entire population of the geographical area in which they serve without exception. I wasn't aware of the 'hog house' amendment for a study and so I don't really have a comment or thought on that. My comments were relative to the original bill.

Chairman Burckhard asked Senator Warner did you make reference to West Acres? **Senator Warner** replied yes I did. **Chairman Burckhard** said Dakota Square in Minot.

Senator Anderson perhaps I should have asked this to Senator Rust, but during the development of this bill, was there any consideration of using the Oil and Gas Impact Fund for this purpose? **Senator Warner** replied I think that is what the original bill does, doesn't it because they are private companies not municipalities? Under the current law they are not eligible. **Chairman Burckhard** replied it does say something as he's reading from the original bill. **Senator Anderson** replied it looks to me like it's a General Fund appropriation rather than accessing the Oil and Gas Impact Fund which is for reclamation and so forth, oil and gas impact. So, I thought it might be more appropriate if we were to take money out of it. But if we change it to a study they can look at that. **Senator Warner** replied I was looking at the title, where it says the Oil and Gas Impact Funding for one-call locates. I don't know if there is enough consistency within the bill or if it's going to be sent to a study that then becomes a mute issue.

Mr. David Crothers (11:44- 19:27). North Dakota Association of Telephone Cooperatives
Written testimony #3.

Senator Anderson asked Mr. Crothers. Maybe we need to have someone from the Public Service Commission talk about why they don't have the power to enforce it. It seems to me if somebody is doing something in violation then we ought to pull their contractor's license or something. Maybe that is in a different agency. It may not cross over very well.

David Crothers replied that is an option that was discussed. I am not so sure that option does exist without going through the Secretary of State's office and what the mechanics are from one agency enforcing another's decisions. We have not crossed that bridge but there is no specific authority today to do that.

Senator Grabinger asked in that circumstance where a guy cuts three lines was one call called prior to that? **David Crothers** replied I believe one-call was called. Once again the Public Service Commission has that case before them today. It is the case I referred to in testimony which they will hear next month. My belief is the answer is yes.

Senator Bekkedahl asked Mr. Crothers about his requests from the rural telephone cooperatives for easements. It is my understanding that most if not all of those do not grant any payments for the easements. Is that correct? **Mr. Crothers** replied most do not grant easements, pay easements. **Senator Bekkedahl** then asked they don't pay for any of the easements that they request? **Mr. Crothers** replied the rural telephone companies. Traditionally, no one paid for easements. None of the utilities paid for easements, the

cooperatives have been in existence in North Dakota since 1950. They are member owned companies and so it was just passing more expenses on to literally the owners of the company. The west of course has changed and were giving easements was just a matter of course and no one ever thought about charging for them. That is a different world they operate into today. The rural telephone companies I think in some instances are paying for easements out in oil country. I don't know specifically about where the property you've been located at but because it's individuals. We've had requests for compensation for easements that have ranged from a handful of dollars to free service for life; to \$10,000 a mile. There is every possible idea manageable has been floated for easement.

Senator Bekkedahl I wasn't beating you up on that. I was going to make a point on that and my point is that's making your jobs even more difficult out there. Examples cited. I am fully in support of the concept that you've been doing, but I know it's creating problems for you out there above and beyond.

Mr. Crothers replied you've identified a critical problem out there for us especially when people want in our judgment exorbitant amounts for easement. We can't cross there and it's particularly the out of state land owners that we are running into it. They want substantial fees to cross their property and we literally cannot afford it.

Kent Blickensderfer Represents Century Link Telecommunications. (25:18-25:50) I don't have any prepared testimony but I stand here to echo the comments of my friend and colleague David Crothers. Although we don't have the extent of 811 requests in western North Dakota and re-spot requests in western North Dakota we do, have them throughout our exchanges in North Dakota and our budget has gone way over what we ever expected they would be the last two years and the re-spots have been substantial. So, we supported the bill in its original form and we support the bill as it is proposed to be amended.

Alana Jeffcoat-Sacco from the Public Service Commission (26:53-35:42). **Senator Anderson** asked Ms. Jeffcoat-Sacco I would like to hear some comments from the Department on how the changes, that we made two years ago has effected things. If you could explain a little bit for us the process when somebody cuts a line; somebody requests a complaint or a hearing and so forth. Explain that to us and also get into how these are enforced and whether we think we should go to the Secretary of State office and proceed against their contractors' license if you're free to do that?

Alana Jeffcoat-Sacco, General Council with the Public Service Commission. I am not authorized by the commission to speak for the commission today, because we have thought about making some comments on the original bill but when we learned it was going to be converted to a study we had no commission, testimony or comments. So I am just speaking for myself, but I can give you a few answers I think to some of the things that you were hearing and asking about. First of all, the one-call chapter which is 49:23 has a penalty section that talks about the reimbursement for damages between the violator and the damaged utility infrastructure. The general penalties of the commission are found in Chapter 49:07 and it covers pretty much everything the commission does except for citing and except for gas safety and one-call. They apply there; I think the first section in 49:07 is a criminal violation. That applies to pretty much everything the commission does. But it only a Class A misdemeanor, so if you're thinking about criminal penalties I'm thinking you'll

need to look at and a study would need to look to something stronger for perhaps the one-call violator. But you can decide that as policy makers and you would either put it there as a special line, or you would put it 49:23. When you get to the next section in 49:07 the civil penalty section is the place where the general limit for most of what we do is \$5,000 and you raised the limit for one-call I believe to \$25,000 last session. I want to respond to one more thing before I get to the general process in the commission. The Commission would have the same authority to enforce a penalty that any other agency has or we would for any other type of penalty. When a penalty is assessed and it is not paid you can bring a civil action to recover the penalty. The criminal violations would be referred to the State's Attorney and then the state's attorney in that county would determine along with all the other work they have to do, whether to pursue it or not. Again, if there was going to be a, or if the policy makers wanted to prioritize the cases somehow, then that's where you would do that, as far as criminal penalties for violators. I don't know that the Commission has routinely referred violations to the State's Attorney's. That is something when I report on what went on at this hearing that I will mention. Do they want to think about doing that routinely? But I think in the oil patch you're going to run into the same resource problem at the State's Attorney level that I am going to bring up next.

We do have a form developed so that a utility that is damaged can file a form with the PSC to report the damage and the violation. If they believe there is a violation. After we get that the staff investigates to determine if there's any merit and it's sent to alleged violator for that persons' side of the story and then when it comes back, staff determines from that information and perhaps some calls over to one-call and whatever else they need to do. Staff concluded whether or not they think a violation has occurred. If they do think that there is a violation the next step for staff formally would be to file a formal complaint because that is the process you use to fine a violation formally by the commission, and recover a penalty. In the commission's office, when we are taking an advocacy role like that and filing a complaint against somebody, that is an administrative complaint in front of the commission, we appoint advocacy staff that is like the litigator or the prosecutor, an attorney and a staff person. We have an attorney to prosecute that complaint, in front of the Commission because if that goes to hearing it will be like a mini trial about whether there is a violation and what should the penalty be. When staff has reached a determination in its own mind that is the next step they often do talk to the violator about a consent order. They say these are your rights, this is what we're going to do next, this is what we think and this is how it will work but if you kind of agree you violated, we think a penalty is appropriate of this much. If you want to waive your rights we'll take your money and it will go to the Commission as a consent order. It's not a great process, it's not the most efficient process, but it does work and many, many cases have been processed that way. A few have gone to hearing. One is the one that Mr. Crothers talked about, but it's not one case, it's one violator but I think there's ten or so cases involved. I think there is a package of 6 to be heard in the morning on February 3, and then there are two hearings in the afternoon of two and three cases. We had to hire outside counsel to handle that so we have to use General Fund Resources, we don't have a fee or any other source of money, to hire someone to prosecute those cases because we had trouble serving them. Those are just complicated, they are all the same violator but it's sort of a complicated batch of cases. It brings me to the point about the resource problem because there are only so many people in our agency to do all of this. You do need people to prosecute more or bring more cases you do need people to do it. The outside council again is a full staff of attorneys which we

did not have since April. Our new attorney and new temporary attorney are both in the audience and one of the tasks for the new attorney is the damage prevention enforcement cases. But, the Commission then has only has one or two that have gone to hearing, so far, and there has been only one in my recollection that didn't pay. We did investigate looking at what we have to do to take away that person's contractor license. I think whatever we discovered seemed like not worth doing. I think the person quit doing business and was a Minnesota company and it was a minor kind of violation that wasn't paid. But I did notice a bill this session for being a contractor without a license that looked like a faster way of enforcing that particular law. We should look at something similar when that bill comes before you too.

Senator Anderson It sounds like you don't have any trouble collecting the penalties that you assess now. The problem is that when somebody likes this company that is cutting lines every other day, you don't have a way to stop them so that in the public protection aspect there is no way to get to them and stop them right now.

Alana Jeffcoat Sacco replied no we don't license them in any way. So we don't have that particular clout. Now we could try to get an injunction in District Court but so could like Reservation Telephone or anyone else who is impacted and thinks this is a bad thing happening and we need to do something quickly. So we have the same right as anyone else but that is the way it would have to be to go to court for an injunction.

Senator Bekkedahl asked Alana Jeffcoat-Sacco if they pay the penalty for the violation whether it's negotiated or goes through an Administrative hearing at what point does the company gain restitution for the damages incurred. I don't know if you have any input into that. That would be helpful?

Alana Jeffcoat Sacco replied the staff and the Commissioners are concerned when their looking at those cases that restitution which is a requirement in one-call is made. That is a concern of the Commission and there have been some times when their might have been a consent order ready to go, but the restitution wasn't made and the staff wanted to know that was done before they would like or agree to the consent order. But the restitution is like for the damage to the infrastructure and I think a lot of what Dave was talking about was not just the restitution for the damage to the infrastructure, but the cost of these locates which we are not involved in any way at this point in time and that is kind of what I would've said.

Chairman Burckhard closed the hearing on SB 2167.

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee
Red River Room, State Capitol

SB 2167
1/23/2015
Job Number 22434

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill for an act to provide a pilot program for oil and gas development impact funding for one-call locates; and to provide an appropriation.

Minutes:

"Click to enter attachment information."

Chairman Burckhard and committee discussed SB 2167. It was a hog-house amendment as I recall.

Senator Anderson I will move that we adopt the amendment 15.0612.01001 presented by Senator Rust.

Senator Grabinger asked if this would remain open for Senator Dotzenrod. **Chairman Burckhard** agreed. Senator Dotzenrod voted yea on this bill January 29, 2015.

Chairman Burckhard asked for any discussion on this amendment.

Roll call vote 6 Yea, 0, 0

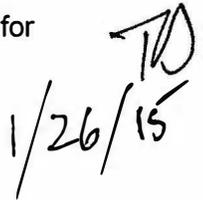
Senator Anderson move that we give a do pass to 2167 as amended

Senator Grabinger 2nd

Roll call vote 6-0-0

Carrier: Senator Anderson

January 20, 2015

1/26/15 

PROPOSED AMENDMENTS TO SENATE BILL NO. 2167

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of the one-call system."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ONE-CALL EXCAVATION NOTICE SYSTEM. During the 2015-16 interim, the legislative management shall consider studying the one-call excavation notice system. The study must include the financial and operational impact on the underground facilities owners from the tremendous increase in the number of locates, a review of who should be responsible for the expenses associated with locating underground facilities in certain situations, the appropriateness of penalties for one-call excavation notice system violators, and the enforcement of penalties by the appropriate state agencies. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations to the sixty-fifth legislative assembly."

Renumber accordingly

Date: 1.23.15
Roll Call Vote: /

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2167

Senate Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: 15-0612.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Anderson Seconded By Sen Grabinger

Senators	Yes	No	Senators	Yes	No
Chairman Burckhard	✓				
Senator Anderson	✓		Senator Dotzenrod	✓	
Senator Bekkedahl	✓		Senator Grabinger	✓	
Senator Judy Lee	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

SB 2167: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2167 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative management study of the one-call system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - ONE-CALL EXCAVATION NOTICE SYSTEM. During the 2015-16 interim, the legislative management shall consider studying the one-call excavation notice system. The study must include the financial and operational impact on the underground facilities owners from the tremendous increase in the number of locates, a review of who should be responsible for the expenses associated with locating underground facilities in certain situations, the appropriateness of penalties for one-call excavation notice system violators, and the enforcement of penalties by the appropriate state agencies. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations to the sixty-fifth legislative assembly."

Renumber accordingly

2015 HOUSE POLITICAL SUBDIVISIONS

SB 2167

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

SB 2167
3/6/2015
24447

- Subcommittee
 Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

To provide for a legislative management study of the one-call system

Minutes:

Testimony 1, 2, 3, 4

Chairman Klemin: Opened hearing in SB 2167

Senator Rust: Introduced the bill- testimony 1

Representative Klein: I believe at the last session we changed the fine and it had good results. Are you looking to change it again?

Senator Rust: We are looking for a study to look at all aspects of it including the fines. It doesn't ask for greater fines but it could be looked at. The telephone companies are saying they are willing to give them 2 relocates but after that they should start paying.

Representative Koppelman: Is there any limit on the number of calls for locate that a person or business can make?

Senator Rust: No.

Representative Koppelman: There's no charge depending on how many?

Senator Rust: There is really but if you word it right you can get away with it which is part of the problem. It is worded vaguely so the person who calls gets away with it. This is a study to see what we can do with it.

Representative Zubke: We have focused this on telephone and you mentioned underground facilities and water facilities are constantly going through this problem.

Senator Rust: We know that it is just not telephones.

Kent Blickensderfer: Testimony 2

Representative Hatlestad: I understand the financial obligations. If it is that serious why not bring a bill instead of a study?

Kent Blickensderfer: That is also being done in another bill.

Representative Kretschmar: Under current law are the phone companies required to go out and locate their lines?

Kent Blickensderfer: Yes.

Representative Kretschmar: Well then I suppose they would rather have them located then cut.

Kent Blickensderfer: That is also correct. Under current law we go and mark our facilities and those markings are good for a 21 day period per ticket.

Shane Hart: Testimony 3

Representative Koppelman: You have touched on this a bit, but it seems to me that this is a complex issue in some areas and in others not at all. How do you see the legislature being able to respond because a one size fits all will not work?

Shane Hart: I would think there is something that could be done differently in the Bokken, because you are right it is different everywhere. We used to have that situation too.

Representative Kelsh: You said you have 7 settlements that the RTC has ruled in your favor and you have never collected anything from them?

Shane Hart: We had a contractor that we filed damage complaints. They did damage 7 times. We afforded a hearing and they have yet to rule on it. They have penalties imposed and to my knowledge they haven't been truly levied yet or collected. That doesn't help RTC financially. It may get a bad contractor out of the mix but RTC has 25,000 in damage in bills to them to repair the cables and they haven't paid that either and we have to deal with it through a legal process. The public service commission has fining capability as it goes to the state of North Dakota.

Representative Kelsh: Over what period of times is this? When did the 7 incidents happen and how long have you been waiting?

Shane Hart: They happened in the summer of 2013 and we reported them in November 2013 and we just had the hearing in February 2015 and are waiting on the decision.

Mike Steffan: Testimony 4

Carlee Cloud: My organization represents shareholders of MDU, Ottertail, and Excel and we have facilities under the entire state and we support this. We came together and looked at the increased burden from development in North Dakota on the facility owners as well as the time constraints of excavators and we came up with some good changes to the existing law that included raising the penalty. We support the study because every time you try to ease the financial burden you may put safety at risk. The one-call system is there to protect human safety, to protect the facilities, and to protect the state and communities from the inconveniences that cut out radar, telephone, and ATM services. Those are serious safety concerns and every time you make a change to the system it affects safety.

Russ Hanson: I represent the association of contractors but we want to be on record as we support this.

Representative Klein: Part of what I understand in regard to some of the electric coops is that we get some of these out of state contractors that go ahead and proceed without calling in and then breaking the power line and breaking the system. I did understand in one case where they had to pay for the repair and the loss of revenue involved.

Russ Hanson: I am not familiar with that but it is possible. There are some that do things not the way they should be.

Representative Kelsh: I move a do pass

Representative Zubke: Second

A Rolle Call Vote Was Taken: Yes 12, No 0, Absent 2 (Koppelman, Oversen)

Motion Carries

Representative Becker will carry the bill

Date: 3/6/2015
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2167

House Political Subdivisions Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Kelsh Seconded By Zubke

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	X	
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh	X	
Rep. Thomas Beadle	X		Rep. Kylie Oversen		
Rep. Rich S. Becker	X		Rep. Marie Strinden	X	
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman					
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman	X				
Rep. Denton Zubke	X				

Total (Yes) 13 No 0

Absent 2 (Koppelman, Oversen)

Floor Assignment Becker

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

Motion carried

REPORT OF STANDING COMMITTEE

SB 2167, as engrossed: Political Subdivisions Committee (Rep. Klemin, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed SB 2167 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2167

Mr. Chairman and Members of the Senate Political Subdivisions Committee:

For the record I am David Rust, Senator from District 2 in NW ND.

I am introducing SB 2167 at the request of telephone cooperatives from my legislative district and those west of Highway 83. Those rural telephone cooperatives have been inundated with 8-1-1 locates due in large part to the impact of oil and gas development in their service areas.

They have had to hire numerous individuals to do those locates, are frequently called back for re-locates, and spend hundreds of thousands of dollars in the process. For small telephone cooperatives it is creating financial issues that are passed on to their customers and is affecting their bottom line.

The original bill called for a "pilot grant program" conducted by the Public Service Commission to reimburse some of the costs of one-call locates. The bill contained an appropriation of \$2,000,000.

Upon further conferring with stakeholders and telephone cooperatives, I am submitted to you a "hog-house" amendment to replace the bill with a Legislative Management Study of the one-call excavation notice system.

SB2167
1.22.15
1.2

The study shall include:

- 1) the financial and operational impact on the owners from the tremendous increase in the number of locates,
- 2) a review of who should be responsible for the expense of the locates,
- 3) the appropriateness of penalties for one-call violators,
- 4) the enforcement of those penalties, and
- 5) a report of findings and recommendations along with required legislation for the next legislative session.

Following my introduction representatives from telephone cooperatives will delineate the problems so you can get a better understanding of their issues and the resulting financial stress on their businesses.

I urge you to adopt the amendment and give a "Do Pass" to the bill as amended.

Should you have any questions, I will try to answer them.

Thank you.

January 20, 2015

SB2167
1-22-15
#2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2167

Page 1, line 1, after "A BILL" replace the remainder of the bill with "to provide for a legislative management study of the one-call system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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Renumber accordingly

SB 2167
1-22-2015



NORTH DAKOTA ASSOCIATION OF
TELECOMMUNICATIONS COOPERATIVES #3

P.O. Box 1144 • Mandan, ND 58554
Phone 701-663-1099 • Fax 701-663-0707
www.ndatc.com

SENATE BILL 2167

SENATE POLITICAL SUBDIVISIONS COMMITTEE

JANUARY 22, 2015

DAVID CROTHERS
NORTH DAKOTA ASSOCIATION OF
TELECOMMUNICATINS COOPERATIVES

My name is David Crothers from the North Dakota Association of Telecommunications Cooperatives. The Association represents all of the cooperative and independent telephone companies in the State. Those companies serve over 150,000 homes and small businesses and approximately 96 percent of the geographic territory of the State.

Members of the association strongly support passage of Senate Bill 2167, as amended. North Dakota, particularly the western part of the State, has seen dramatic increases in population, infrastructure, construction and building in the last 6 years. Whether it is residential or commercial building, road construction, pipelines or virtually any other project, underground facility owners are required by law to evaluate the site and mark where their facilities are buried.

Senate Bill 2167 asks four questions:

First: What is the financial and operational impact on underground facilities owners because of the dramatic increase in construction in North Dakota?

Second: Who should be responsible for the expense of locating underground facilities?

Third: Are existing penalties appropriate for violations of the State's One Call statutes?

Fourth: Do State agencies have sufficient authority to enforce the penalties they assess?

The rural telephone company's obligation to locate our underground facilities has completely transformed the way those companies do business. It has been a tremendous burden...both financially and operationally...to meet those obligations. To illustrate, the telecom company in Williston was spending approximately \$44,000 to do 2,600 locates annually in the city in 2009. In 2014, they were required to perform 16,680 locates at a cost of \$711,000. In six years they have seen a 1600 percent increase in costs and a 1500 percent increase in the number of locates they are mandated to do.

Another rural telephone company with fewer than 5,000 subscribers has seen locate requests increase from fewer than 10,000 in 2008 to 42,000 calls in 2014. Their expenses to perform those locates have matched the new workload and have increased to \$1.4 million annually after spending just \$300,000 seven years ago.

It is important to also note that underground facility owners have no place to recover these costs. We are unable to bill the excavator. We are unable to bill the property owner. Through custom, and by law, there has always been a belief that underground facilities owners have an overriding self interest in protecting their infrastructure and should perform the task for free. The Association does not necessarily disagree with this principal. In fact, North Dakota law requires underground facility owners to perform this task for free on a minimum of two separate occasions. We don't disagree with that law. However, the sheer magnitude of locating requests that rural telephone companies are being asked to perform are in some cases threatening the solvency of those companies. At the very minimum, the dollars we spend locating are resources that we are not able to devote to bringing increased speed, increased capacity and next generation broadband services to rural North Dakotans.

The Association also supports the amendment's directive to determine the adequacy of penalties for violations of North Dakota's One Call statutes. We question whether those penalties are sufficient and whether they are assessed in a timely manner.

Violations run the spectrum from excavators failing to call the One Call Center and request any sort of locate to multiple cuts of underground facilities. Thirteen months ago an excavator in McKenzie County cut through a fiber optic ring in three separate spots and rendered the redundant capacity we had built into the network useless. The financial damage that we incurred was significant. But the public safety danger was greater. There was no 911 service available for several hours. Individuals could not use their credit cards at gas stations. ATM machines did not work. The City of Ross had no communication whatsoever. The Federal Aviation Administration lost their radar and could not see planes in in eastern Montana, western North Dakota and southern Saskatchewan.

Despite that occurrence over a year ago there still has not been any hearing...although one will take place next month...or resolution of that incident. The excavator involved in the incident has not paid any penalty and is free to work in North Dakota today.

The Association also supports the interim study to further determine whether there is sufficient enforcement of One Call statutes and if State agencies are able to effectively deter future violations. Two years ago the code was revised to allow the Public Service Commission to assess higher fines. We believe the change is beneficial, but the agency has no ability to enforce their decisions.

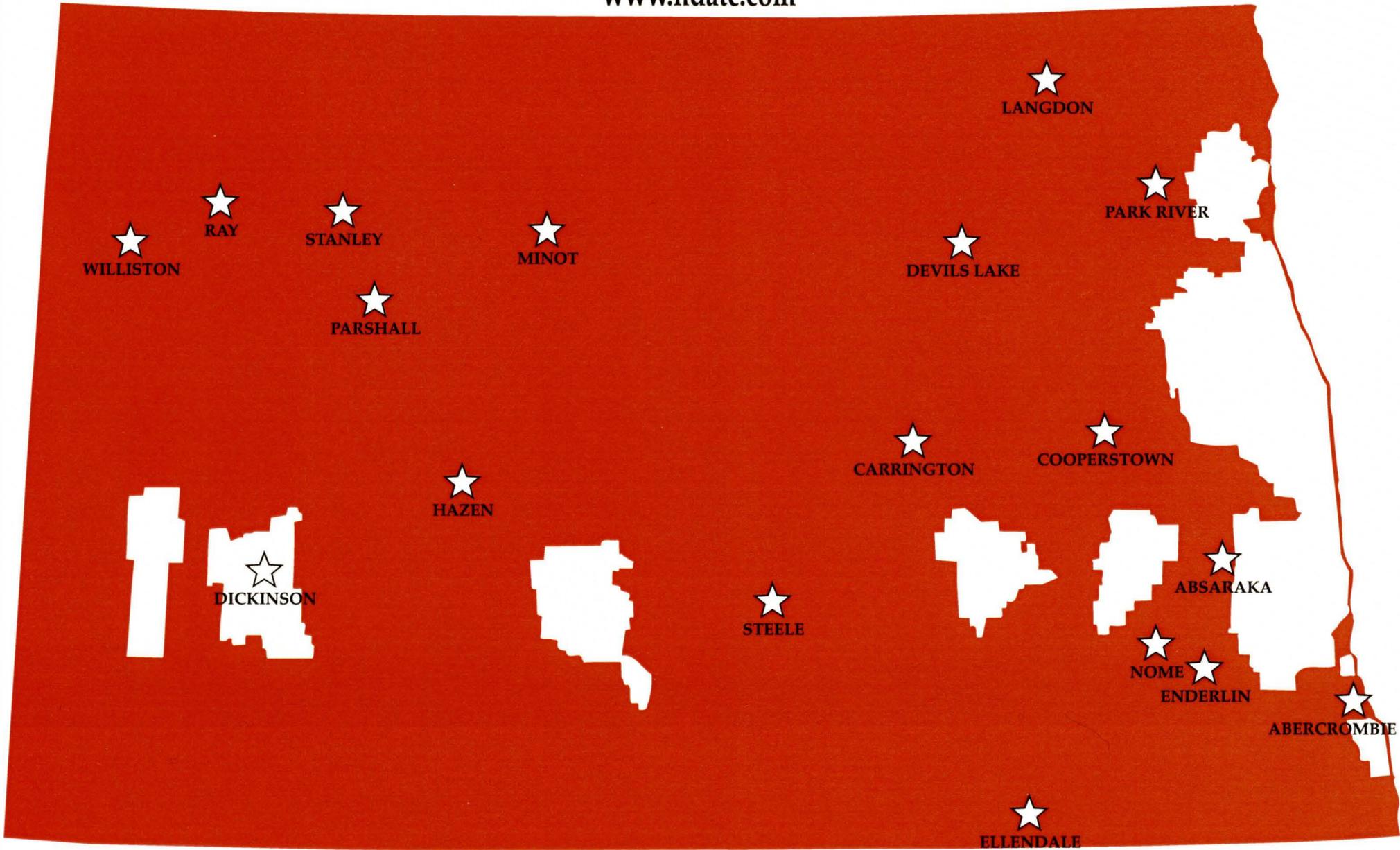
Separately, existing law directs the One Call board of directors to assist individual states attorneys in North Dakota's counties with prosecuting violations and gives the board the ability to bring civil suites. The Association is unaware of either provision ever being exercised.

SB 2167
1-22-2015
3.4

In conclusion, the rural independent telephone companies strongly believe that changes need to be made to North Dakota's current law. We believe there is a fundamental question of fairness that must be answered for determining the proper apportionment of expenses. More so, however, there are critical public safety issues that are being neither addressed, nor resolved, in a timely manner.

The North Dakota Association of Telecommunications Cooperatives asks for a "Do Pass" recommendation for Senate Bill 2167, as amended.

NORTH DAKOTA
ASSOCIATION OF TELECOMMUNICATIONS COOPERATIVES
www.ndatc.com



INDEPENDENT TELEPHONE COMPANY TERRITORY IN NORTH DAKOTA

SB2167
1-28-2005
35

582/67
1-22-15
3.6



NORTH DAKOTA ASSOCIATION OF TELECOMMUNICATIONS COOPERATIVES

www.ndatc.com

ABSARAKA TELEPHONE COMPANY

Absaraka, ND 58002
Mgr: Ann Faught
Phone: 701-896-3404

BEK COMMUNICATIONS

Steele, ND 58482
Mgr: Derrick Bulawa
Phone: 701-475-2361
Website: www.bektel.com

CONSOLIDATED TELCOM

Dickinson, ND 58602
Mgr: Paul Schuetzler
Phone: 701-483-4000
Website: www.ctctel.com

DAKOTA CENTRAL TELECOMMUNICATIONS

Carrington, ND 58421
Mgr: Keith Larson
Phone: 701-652-3184
Website: www.daktel.com

DICKEY RURAL TELEPHONE

Ellendale, ND 58436
Mgr: Bob Johnson
Phone: 701-344-5000
Website: www.drtdel.net

INTER-COMMUNITY TELEPHONE COMPANY

Nome, ND 58062
Mgr: Keith Andersen
Phone: 701-924-8815
Website: www.ictc.com

MIDSTATE TELEPHONE COMPANY

Stanley, ND 58784
Mgr: Ryan Wilhelmi
Phone: 701-628-2522
Website: www.midstatetel.com

MISSOURI VALLEY COMMUNICATIONS

Scobey, MT 59263
Mgr: Mike Kilgore
Phone: 406-783-5654
Website: www.nemontel.net

THE NORTH DAKOTA RURAL TELEPHONE INDUSTRY

- **High-Speed Internet in 278 North Dakota rural communities.**
- **Independent telcos serve 96 percent of North Dakota's geographic territory.**
- **Over \$1.3 billion total investment in local telecom infrastructure.**
- **Over \$72 million in payroll for rural residents in 2013.**
- **Over 39,000 miles of fiber optic cable.**
- **\$298 million in 2010-2012 construction spending on rural telecom infrastructure.**
- **1100 highly trained and educated employees in rural North Dakota communities.**

MLGC

Enderlin, ND 58027
Mgr: Tyler Kilde
Phone: 701-437-3300
Website: www.mlgc.com

NEMONT TELEPHONE COOPERATIVE

Scobey, MT 59263
Mgr: Mike Kilgore
Phone: 406-783-5654
Website: www.nemontel.net

NORTH DAKOTA TELEPHONE COMPANY

Devils Lake, ND 58301
Mgr: Dave Dircks
Phone: 701-662-1100
Website: www.gondtc.com

NORTHWEST COMMUNICATIONS

Ray, ND 58849
Mgr: Mike Steffan
Phone: 701-568-3331
Website: www.nccray.com

POLAR COMMUNICATIONS

Park River, ND 58270
Mgr: David Dunning
701-284-7221
Website: www.polarcomm.com

RED RIVER COMMUNICATIONS

Abercrombie, ND 58001
Mgr: Jeff Olson
Phone: 701-553-8309
Website: www.rrt.net

RESERVATION TELEPHONE

Parshall, ND 58770
Mgr: Royce Aslakson
Phone: 701-862-3115
Website: www.rtc.coop

SRT COMMUNICATIONS

Minot, ND 58702
Mgr: Steve Lysne
Phone: 701-858-1200
Website: www.srt.com

UNITED TELEPHONE COOPERATIVE

Langdon, ND 58249
Mgr: Perry Oster
Phone: 701-256-5156
Website: www.utma.com

WEST RIVER TELECOMMUNICATIONS

Hazen, ND 58545
Mgr: Bonnie Krause
Phone: 701-748-2211
Website: www.westriv.com

SB 2167
3/6/2015
1.1

Mr. Chairman and Members of the House Political Subdivisions Committee:

For the record I am David Rust, Senator from District 2 in NW ND.

I am introducing SB 2167 at the request of telephone cooperatives from my legislative district and those west of Highway 83. Those rural telephone cooperatives have been inundated with 8-1-1 locates and relocates due in large part to the impact of oil and gas development in their service areas.

They have had to hire numerous individuals to do those locates, are frequently called back for re-locates, and spend hundreds of thousands of dollars in the process. For small telephone cooperatives it is creating financial issues that are passed on to their customers and is affecting their bottom line.

The local telephone company which serves me personally spent \$718,622 on locates and relocates in 2014. Their total expenses for that same time period was \$7,112,012; so they are spending over 10% on locates and relocates.

The original bill called for a "pilot grant program" conducted by the Public Service Commission to

reimburse some of the costs of one-call locates. The bill contained an appropriation of \$2,000,000.

Upon further conferring with stakeholders and telephone cooperatives, I submitted a "hog-house" amendment to replace the bill with a Legislative Management Study of the one-call excavation notice system.

The study shall include:

- 1) the financial and operational impact on the owners from the tremendous increase in the number of locates,
- 2) a review of who should be responsible for the expense of the locates,
- 3) the appropriateness of penalties for one-call violators,
- 4) the enforcement of those penalties, and
- 5) a report of findings and recommendations along with required legislation for the next legislative session.

Following my introduction representatives from telephone cooperatives will delineate the problems so you can get a better understanding of their issues and the resulting financial stress on their businesses.

I urge you to adopt the amendment and give a "Do Pass" to the bill.

Should you have any questions, I will try to answer them.

Thank you.

SB 2167

3/6/2015

2.1

Senate Bill 2147

Testimony of Kent Blickensderfer

Presented to Chairman Lawrence Klemin House Political Subdivisions Committee

March 6, 2015

Mr. Chairman and committee members my name is Kent Blickensderfer. I represent CenturyLink in North Dakota. CenturyLink is the successor company to the former Qwest, US West Communications and Northwestern Bell Telephone Company. CenturyLink today has a worldwide network with local telecom operations in 37 US states.

CenturyLink joins members of the rural telecommunications association in their strong support of Senate Bill 2167. My testimony today includes some specific examples that have been provided by David Crothers, executive vice president of the North Dakota Association of Rural Telecommunications Cooperatives. Mr. Crothers was unable to be present for this hearing today.

North Dakota, particularly in the west, has seen dramatic increases in population, infrastructure, construction and building in the last 6 years. Whether it is residential or commercial building, road construction, pipelines or virtually any other project, underground facility owners are required by law to evaluate the site and mark where their facilities are buried.

Senate Bill 2167 asks four questions:

1. What is the financial and operational impact on underground facilities owners because of the dramatic increase in construction in North Dakota?
2. Who should be responsible for the expense of locating underground facilities?
3. Are existing penalties appropriate for violations of the State's One Call statutes?
4. Do State agencies have sufficient authority to enforce the penalties they assess?

Obligations to locate our underground facilities have transformed the way many telecom companies do business. It has been a financial and logistical burden to meet those obligations. To illustrate, the telecom company in Williston was spending approximately \$44,000 to do 2,600 locates annually in the city in 2009. In 2014, they were required to perform 16,680 locates at a cost of \$711,000. In six years they have seen a 1600 percent increase in costs and a 1500 percent increase in the number of locates they are mandated to do.

Another rural telephone company with fewer than 5,000 subscribers has seen locate requests increase from fewer than 10,000 in 2008 to 42,000 calls in 2014. Their expenses to perform those locates have matched the new workload and have increased to \$1.4 million annually after spending just \$300,000 seven years ago.

It's also important to note that underground facility owners have no place to recover these costs. We are unable to bill the excavator or property owner. Through custom, and by law, there has always been a belief that underground facilities owners have an overriding self interest in protecting their infrastructure and should perform the task for free. And we don't disagree with this principal. In fact, North Dakota law requires underground facility owners to perform this task for free on a minimum of two separate occasions. We don't disagree with that law. However, the sheer magnitude of locating requests that telephone companies are being asked to perform are in some cases threatening the solvency of those companies. At the very minimum, the dollars we spend locating are resources that we are not able to devote to bringing increased speed, increased capacity and next generation broadband services to our North Dakota customers.

CenturyLink and the Association also support the directive to determine the adequacy of penalties for violations of North Dakota's One Call statutes. We question whether those penalties are sufficient and whether they are assessed in a timely manner.

Violations run the spectrum from excavators failing to call the One Call Center and request any sort of locate to multiple cuts of underground facilities. Thirteen months ago an

excavator in McKenzie County cut through a fiber optic ring in three separate spots and rendered the redundant capacity we had built into the network useless. The financial damage incurred was significant. But the public safety danger was greater. There was no 911 service available for several hours. Individuals could not use their credit cards at gas stations. ATM machines did not work. The City of Ross had no communication whatsoever. The Federal Aviation Administration lost their radar and could not see planes in eastern Montana, western North Dakota and southern Saskatchewan. We believe that it would benefit all North Dakotans to study more effective penalties to deter these kinds of violations.

CenturyLink and the Association also support the interim study to further determine whether there is sufficient enforcement of One Call statutes and if State agencies are able to effectively deter future violations. Two years ago the code was revised to allow the Public Service Commission to assess higher fines. We believe the change is beneficial, but the agency really has no specifically enumerated authority to enforce their decisions on excavators.

Separately, existing law directs the One Call board of directors to assist individual states attorneys in North Dakota's counties with prosecuting violations and gives the board the ability to bring civil suits. We are unaware of either provision ever being exercised.

CenturyLink and the rural telcos believe that changes need to be made to North Dakota's current law. We believe there is a fundamental question of fairness that must be answered for determining the proper apportionment of expenses. But more importantly there are critical public safety issues that aren't necessarily being addressed or resolved in a timely manner.

For these reasons, we ask for a "Do Pass" recommendation for Senate Bill 2167.

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3.1

SENATE BILL 2167

HOUSE POLITICAL SUBDIVISIONS COMMITTEE

MARCH 6, 2015

SHANE HART

RESERVATION TELEPHONE COOPERATIVE

My name is Shane Hart and I am the Assistant General Manager for Reservation Telephone Cooperative (RTC) in Parshall. RTC provides landline telephone, internet and video services to 16 different communities in western ND, many of which are located in the Bakken. RTC has in excess of 6,600 miles of buried copper and fiber cable throughout its service territory. The explosion of oil related activity has had a direct impact on the daily operations of the cooperative in many areas with the greatest of these being the need to flag and mark (locate) the routes of our underground cables.

In 2014 the Cooperative incurred just over \$1.5 million in cable locating expense compared to \$400,000 just 5 years earlier. In 2014 the cooperative received 42,340 locate orders compared to 10,911 locate orders in 2009. Our costs have increased over 275% in a 5 year period!

The One Call law states that locate services need to be performed within 48 hours of when received and with the volume of locate orders received by RTC we have had to hire contractors to help us keep up. We currently have 9 full time employees that do cable locating in addition to contract labor.

RTC recognizes its obligation to perform these locates according to the ND One Call law and is not questioning that obligation. Our concern stems from the extreme capital cost that it takes to perform this function under state law. When cable locating takes \$1.5M out of our annual budget that prohibits us from

building out fiber infrastructure to provide broadband service to the many new developments in our serving area.

We do believe a study would be beneficial to fully understand the financial and operational impact this increased volume of locate orders is having on companies with underground facilities.

RTC has also experienced many cut cables as a result of negligence by excavators. The most extreme case was reported to the ND Public Service Commission. It took over a year for the case to be heard by the PSC because of the tremendous workload they are under. We are still awaiting their decision.

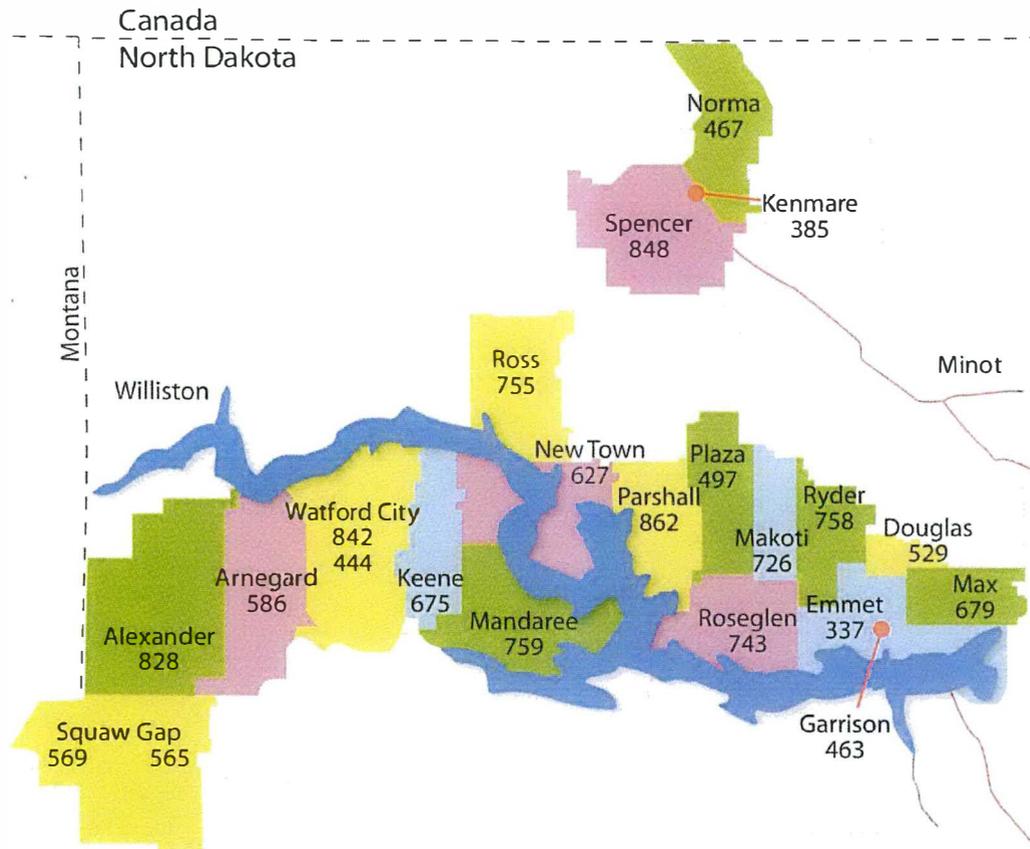
We do believe the appropriateness of penalties and the enforcement of penalties needs to be studied as well.

Reservation Telephone Cooperative strongly urges a "Do Pass" recommendation on Senate Bill 2167.



Stats

3.3



- 5,698 square miles
- 10,679 access lines
- 6,629 high speed internet customers
- 3,518 TV customers

Smarter. Better. Faster.



Cable Locating (ND One Call)

3.4

- RTC spent \$5.7M on cable locating since 2009
 - 2009: \$400K (10,911 tickets)
 - 2010: \$550K (15,496 tickets)
 - 2011: \$650K (26,416 tickets)
 - 2012: \$1.3M (32,381 tickets)
 - 2013: \$1.3M (38,558 tickets)
 - 2014: \$1.5M (42,340 tickets)

Smarter. Better. Faster.

SB 2167
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4.1

ENGROSSED SENATE BILL NO. 2167

HOUSE POLITICAL SUBDIVISIONS COMMITTEE

MARCH 6, 2015

MIKE STEFFAN

NORTHWEST COMMUNICATIONS COOPERATIVE

House Committee Members:

My name is Mike Steffan and I am the General Manager of Northwest Communications Cooperative from Ray, North Dakota. We serve all or portions of the Oil & Gas Producing Counties of Williams, Mountrail, Divide and Burke counties. Our service area is about 5100 square miles and we serve approximately 6,000 locations with landline phone, internet services and video services.

I wish to concur with the testimony you have heard from Shane Hart of Reservation Telephone. In our case, our locating costs have increased during the boom from about \$100,000 to over \$700,000 per year. That cost places a heavy burden on our financial ability to serve our members with the high speed internet that they deserve. It has consumed several million dollars that could have been spent on providing improved service to our members.

The study proposed of the one-call excavation notice system has great merit and will allow all parties to have input in the process. The areas to be studied include:

1. The financial and operational impact on the underground facilities owners from the increase in the number of locates
2. A review of the responsible parties for the expenses of locating underground facilities in certain situations
3. The appropriateness of penalties for one-call notice system violators
4. And the enforcement of penalties by the appropriate state agencies.

All of these study issues are of great concern to Northwest Communications Cooperative and our member/owners.

Northwest Communications Cooperative and our members ask for a "Do Pass" recommendation for Engrossed Senate Bill No. 2167.