

**2017 HOUSE INDUSTRY, BUSINESS, AND LABOR**

**HB 1026**

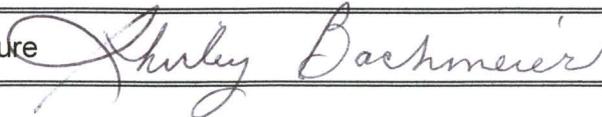
# 2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

HB 1026  
1/4/2017  
26536

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Survey of areas having underground facilities.

## Minutes:

Attachments 1-4

**Chairman Keiser:** Opened the hearing on HB 1026. Anyone here to testify in favor of HB 1026.

**Carlee McLeod-President of the Utility Shareholders of ND:** (Attachment 1).

**Chairman Keiser:** Any questions from the committee?

**Representative Ruby:** If you remove manually located, why do you need to add it to the excavating? It is not defined in the code.

**Carlee McLeod:** They didn't write the language correctly.

**Chairman Keiser:** You say manually, but it's not defined in the code. So the courts don't know what it means.

**Carlee McLeod:** That's true, it is important that we choose the word that best represents the practice that we all understand to be true.

7:45

**Chairman Keiser:** The Class A misdemeanor is new language. It is somewhere in the log that it is being struck?

**Carlee McLeod:** Yes, it's being struck on lines 26 and 27 and it is put into line 21.

**Chairman Keiser:** What is the implication of being charged and convicted of a Class A misdemeanor?

**Carlee McLeod:** I don't have the criminal code with me.

**Chris Joseph LC:** A Class A misdemeanor in North Dakota has a penalty of up to 1 year in jail – 264 days and below.

**Chairman Keiser:** Are there any questions?

**Representative Becker:** In the finality class in misdemeanor class, I believe the penalty is \$500.

**Chairman Keiser:** Thank you Chris.

12:00

**Carlee McLeod:** Continues testimony.

**Representative Laning:** Who's responsibility is it to remove the flags?

**Carlee McLeod:** That lies in the responsibility of the excavator; they are the ones doing the excavating and they are the ones that know when they are done.

**Chairman Keiser:** That liability will become effective.

**Carlee McLeod:** Continues testimony.

19:40

**Chairman Keiser:** What will that cost be?

**Carlee McLeod:** It varies.

26:16

**Chairman Keiser:** Your amendment doesn't fit.

**Carlee McLeod:** It should be lines 12 and 13, page 913.

**Chairman Keiser:** Thank you Carlee very much.

**Brian Kalk - Public Service Commissioner:** (See Attachment 2)

29:25

**Chairman Keiser:** Asks Carlee to return to podium to answer one more question. This language that you are so fluent with is not easily understood. Is it a rural ticket? Is it a

electronic ticket? Walk me through it.

**Carlee McLeod:** If you are ready to do excavation, there are two ways to ask for a locate of the facilities in the area. You may call 811 which will get you into the Call Center and they will ask you for the address and what you are planning on doing. Within 48 hours you will see flags and paint marks. You don't get a physical ticket; you will have an email giving you your ticket number. You can also file online – "I Tic". This is the method used as a homeowner, not a professional excavator.

**Chairman Keiser:** It is a real or electronic ticket. Walk me through my 1<sup>st</sup> ticket. Once I get my ticket electronically, then One Call Concepts all will notify the locator group?

**Carlee McLeod:** Yes. Once you found that ticket, our One Call Contracted Center will notify all the facility owners in that area. They are required to give all the information to the One Call Center. After they get the ticket that is their call to go out and locate. After the locate is done, it is good those locate marks are good for 21 days. If those marks are obliterated, you can call and get that relocated.

**Chairman Keiser:** When you don't have those limits but are still gamed to do it, what is involved?

**Carlee McLeod:** Everyone has to call One Call if you are digging in the ground. The homeowner has a 12" exemption...i.e. pansies for the season. The agricultural person has an 18" exemption. You would be held responsible for any damage done in those areas. You will not be fined for not calling in these cases.

**Chairman Keiser:** Thank you, Carlee. Is there anyone else to testify in support of HB1026?

**Steve M. Langlie - ND Society of Professional Land Surveyors Board Member:** (See Attachment 3)

36:21

**Chairman Keiser:** Do you do the signing yourself?

**Steve M. Langlie - ND Society of Professional Land Surveyors Board Member:** I locate about half of the stuff in the field and survey crews that also do a lot of this.

**Chairman Keiser:** Can you locate all the lines, the gas, the electric, the cable?

**Steve M. Langlie - ND Society of Professional Land Surveyors Board Member:** we actually call into One Call to get it located; then we go out to locate and put it on paper.

**Chairman Keiser:** Is there anyone to testify in support of HB1026?

**Todd Kranda - Attorney with Kelsch Kelsch Ruff & Kranda Law Firm in Mandan on behalf of ND Petroleum Counsel:** (See Attachment 4)

**Brooks Goodall, CEO for Reservation Telephone Cooperative:** Gave testimony about the multiple situations that have occurred when a fiber line is cut affecting many areas including aerial disconnect of communication across the whole state as well as increased expense. We feel the changes are necessary and ask you to support and pass this bill HB1026.

**Chairman Keiser:** If it cost you a million or so to install these lines with the growth, but you also got more revenue didn't you?

**B. Goodall: CEO for Reservation:** Yes.

**Chairman Keiser:** That's the good thing. Is anyone else here testifying in support of HB1026? Is there anyone else here to appear in opposition of HB1026? Now, we will take neutral testimony to HB1026. The committee will vote at the end of the presentation.

**Pete Hannebutt – ND Farm Bureau:** We like the new amendments and will be neutral as the process satisfied our concerns.

**Chairman Keiser:** Any questions?

**Sara Lovus: Agronomist Farmer from Hillsboro, ND:** I'm neutral (explains the view of soil sampling). With soil testing for nitrogen purposes in the state of ND is done on depths of 0" to 6" and 6' to 24" and it's important to us. All research is done according to these depths on the majority of all of our crops. If this bill passes or doesn't pass, the threshold will remain as currently written. We are interested in getting soil samples of the middle of the field rather than the edge of the field which we feel the advances in technology and language of HB1026 supports our concerns and is a step in the right direction.

**Chairman Keiser:** Are there any questions from the committee?

**Representative R. Becker:** Asking for further testimony from Carlee McLeod. Does the language in this bill only apply to professional excavators: you had mentioned the 12" residential and more for the other. Last year I planted an apple tree digging down 18". If I had hit something, would I be facing a year in prison?

**Carlee McLeod:** You would not be facing a year in prison unless you hit something and elected to covered it up without telling anyone if I knew or should have known.

**Representative R. Becker:** Hit something and if I knew or should have known. To have dug deeper than 12" means I should have known.

**Carlee McLeod:** The legal language says if damage is done to underground facility or its protective covering is reasonably should have known when the damage occurred, not that the facility was there but the damage occurred. The criminal aspect involves damage that is covered up and not reported.

**Representative R. Becker:** There is no penalty involved in damage done except in the case of not notifying the authorities. There is a penalty if you dig without calling beyond the 12" that you are attempting; but this is a civil penalty which the complaint would go through the PSC and they would consider all the circumstances but it is not a criminal offense.

**Representative Ruby:** Regarding GEO fencing, is that available now or in the future because with today's technology, a lot of that will be very easy to do.

**Carlee McLeod:** That is an option; they can specify where they are or not going. That's an option for the sight identification. It would be mandatory that they identify that site.

**Chairman Keiser:** Thank you very much. Committee, what are your wishes on HB1026? Is there a motion to adopt the amendment?

**Representative Ruby:** Made a motion to adopt the amendment that changes page 8, line 12 and 13 to HB1026.

**Representative Sukut:** seconded.

**Chairman Keiser:** all those in favor in saying aye. Those saying nay. The amendment is adopted and is on the bill. We have HB1026 as amended before us.

**Representative Boschee:** I move to pass HB1026 as amended.

**Representative Sukut:** Seconded.

**Chairman Keiser:** Is there further discussion by the committee? None was noted.

**Roll call vote on do pass as amended on HB1026. Yes – 14; No – 0; Absent 0.**

**Motion carried.**

**Representative Laning will carry the bill.**

**Chairman Keiser: Closed the meeting.**

January 4, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1026

Page 8, line 12, after "three" insert "contiguous"

Page 8, line 12, remove "in"

Page 8, line 13, remove "diameter"

Page 8, line 13, replace "one hundred sixty" with "four"

Page 8, line 13, replace "acres" with "quarter sections"

Page 8, line 14, after "miles" insert "[8.05 kilometers]"

Renumber accordingly

Date: 1/4/2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1026

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee

Subcommittee

Amendment LC# or Description: 17.0115.05001 \_\_\_\_\_

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 Rep. Ruby \_\_\_\_\_ Seconded By Rep. Sukut \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Rep Laning		
Vice Chairman Sukut			Rep Lefor		
Rep Beadle			Rep Louser		
Rep R Becker			Rep O'Brien		
Rep Bosch			Rep Ruby		
Rep C Johnson			Rep Boschee		
Rep Kasper			Rep Dobervich		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent: change page 8 – line 12 and 13.

Voice vote on Amendment. Motion carried.

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1026

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee

Subcommittee

Amendment LC# or  
Description:

17.0115.05001

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 Rep. Boschee                      Seconded By Rep. Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle	X		Rep Louser	X	
Rep R Becker	X		Rep O'Brien	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Boschee	X	
Rep Kasper	X		Rep Dobervich	X	

Total (Yes) 14                      No 0

0

Absent \_\_\_\_\_

Floor Assignment Rep. Laning

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

**REPORT OF STANDING COMMITTEE**

**HB 1026: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1026 was placed  
on the Sixth order on the calendar.

Page 8, line 12, after "three" insert "contiguous"

Page 8, line 12, remove "in"

Page 8, line 13, remove "diameter"

Page 8, line 13, replace "one hundred sixty" with "four"

Page 8, line 13, replace "acres" with "quarter sections"

Page 8, line 14, after "miles" insert "[8.05 kilometers]"

Renumber accordingly

**2017 SENATE INDUSTRY, BUSINESS AND LABOR**

**HB 1026**

# 2017 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

HB 1026  
3/1/2017  
Job Number 28550

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Eva Liebelt*

## Explanation or reason for introduction of bill/resolution:

Relating to location of underground facilities before excavation

## Minutes:

1 Attachment

**Chairman Klein:** Opened the hearing.

**Carlee McLeod, President of the Utility Shareholders of North Dakota:** In support. Written testimony, see attachment #1. (:23-9:35)

**Chairman Klein:** Does that get fuzzy, knowing or should have known? I am sure you worked that out.

**Carlee McLeod:** We are comfortable with it. Obviously it can be fuzzy but if it is a reasonable person standard, a reasonable person should have known but having to prove that they actually did is kind of tough.

**Senator Campbell:** Most excavators are going to be nervous and do exactly what they are not supposed to do and it is a misdemeanor. How often does that happen?

**Carlee McLeod:** It is rare because mostly the excavators in our state our good actors, they follow the rules but there are instances where it does happen. It would be pretty rare that we would have to use this law but it does allow us that opportunity for when that happens. I would say maybe 95% of the cuts are because people have not called or have violated the one-call process.

**Chairman Klein:** How do we treat the operator that cut the line?

**Carlee McLeod:** There are two ways that you can go after a one-call violation. The first is the civil complaint and there is also a criminal penalty that is only if you hit something and don't report it or cover it up.

**Chairman Klein:** As the years have gone by we have become more interested in one-call. Every session we have had an issue somewhere or in some part of the state but now we have something that will work out for everyone?

**Carlee McLeod:** That is our hope and that is why we worked so hard over the eighteen-month interim.

**Senator Campbell:** Could you brief me on how this affects the soil samplers, does this apply to them as well?

**Carlee McLeod:** Yes, it does. We worked over the interim with them to try to get their technology to work with one-call. They were neutral on the House side. She continues going over testimony @ (20:00-25:32)

**Chairman Klein:** With technology we have a lot that we can do that we couldn't do back in 2013, so as things move ahead is it going to get better?

**Carlee McLeod:** I sure hope so, I would think so. She continues @ (26:36-34:47)

**Senator Roers:** When you were talking about the timing for doing the surveys for contractors, do you have different sets of regulations for the surveys you conduct for architects and engineers when they are doing planning for a particular project?

**Carlee McLeod:** No, there are two tickets if this passes. One is for, if you are digging and one is if you're planning and that is the survey ticket that you would use.

**David Crothers, Executive Vice President and General Manager, North Dakota Association of the Telecommunication Cooperatives:** I will not be testifying but Brooks Goodall will be testifying on our behalf. He has an expertise in the field and was instrumental in developing language and participated throughout this process where this language was created. He also serves on the North Dakota One-Call Board. (36:35-37:15)

**Brooks Goodall, Chief Operations Officer at Reservation Telephone Cooperative:** RTC provides internet, voice and video to over twelve thousand customers and over six thousand square miles in western North Dakota. During the past years, especially in the Bakken Region several issues have come up with the North Dakota one-call law, which is why we are here today. RTC was heavily impacted financially and operationally during this time. We have been very involved with the stakeholder group and support the law changes in House Bill 1026. (37:28-40:45)

**Chairman Klein:** You like this bill and what we are doing here would it help you?

**Brooks Goodall:** I meet with this group because it is very important to us.

**Senator Marcellais:** Do these incidences happen on tribal lands?

**Brooks Goodall:** Some of them do and some of them don't.

**Mark Dougherty, Associated General Contractors of America:** I am also a board member of the North Dakota One-Call Board and I represent excavators. I am in support and I feel these are good changes.

**Chairman Klein:** That is an issue being a contractor and some of the providers, we want to make sure we are all singing the same song.

**Mark Dougherty:** We are worried on our side about the digital white lining and the process because they are having a little more trouble rolling it out then they thought but they are still saying by the end of July or the first of August it should be ready to roll.

**Victor Schock, North Dakota Public Service Commission:** In support of the bill. We participated in the stakeholder's session and we are the ones that process the complaints that come in.

**Chairman Klein:** So when a major power line gets cut why do you only fine them ten thousand dollars?

**Victor Schock:** It really depends on the circumstances.

**Chairman Klein:** We heard you never do the twenty-five thousand.

**Victor Schock:** We probably would reserve that for a loss of life type of event. I think that is why the limit was raised because there was a loss of life event prior to that limit, it was five thousand prior to that. We do try to take into account all the circumstances around a situation.

**Senator Marcellais:** How many instances do you have a year?

**Victor Schock:** We receive between thirty and fifty complaints a year and they are everything from someone not calling in a one-call ticket to an operator didn't locate their facilities as they should have.

**Chairman Klein:** So it is on both sides?

**Victor Schock:** Absolutely, more so on the excavator violation side but we do get them the other way.

**Todd Kranda, North Dakota Petroleum Council:** In support. We participated in the process and I also have on my resume a couple of other companies that have interest in this.

**Chairman Klein:** Closed the hearing.

**Senator Roers** moved a do pass.

**Senator Burckhard** seconded the motion.

Roll Call Vote: Yes-5 No-0 Absent-2

Senate Industry, Business and Labor Committee

HB 1026

March 1, 2017

Page 4

**Senator Roers will carry the bill.**

**2017 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO.1026**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

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 Roers Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell	A				
Senator Roers	x				
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	A				

Total (Yes) 5 No 0

Absent 2

Floor Assignment Senator Roers

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

**REPORT OF STANDING COMMITTEE**

**HB 1026, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).** Engrossed HB 1026 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

HB 1026

**House Bill 1026—Testimony in Support  
House Industry, Business, and Labor Committee  
January 4, 2017  
Testimony of Carlee McLeod**

Chairman Keiser, members of the committee, my name is Carlee McLeod and I am president of the Utility Shareholders of North Dakota. USND is an organization comprised of the shareholders of investor-owned utilities MDU Resources Group, Otter Tail Corporation, and Xcel Energy. I'm here to support HB 1026 which was the result of a comprehensive study by the Economic Impact Interim Committee in collaboration with one-call stakeholders.

**Stakeholder Group Information**

Before I walk through the bill, it is important for you to understand that this bill represents the work of a wide variety of stakeholders. 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. HB 1026 represents the recommendations that were carefully vetted and unanimously approved by those stakeholders, presented to the interim committee through regular reporting, and approved by the interim committee. Should the committee suggest different ideas during its consideration of this proposed legislation, I'm confident our group has already discussed them and could readily explain why they have not been included in this bill.

**RECOMMENDATIONS**

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. Industry has understood the wording to mean an excavator must hand dig within 2 feet of the centerline indicated for any facility. Without delving into grammatical terms like 'misplaced modifiers,' the wording of the statute needs to be clarified. Page 1, lines 14-19 represents the recommendation of the group. The recommendation includes language from the national Common Ground Alliance (CGA) best practices 5-19 and 5-20. (The Common Ground Alliance began as a DOT-sponsored group in 1999 with the task of studying one-call systems and damage prevention best practices. It was grown to having over 1,700 members and various state charters who work collaboratively for damage prevention and safety).

*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.

## **ONE-CALL PROCESS**

The next group of recommendations addresses issues within the one-call process, like location time, cost, ticket size, 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.

### **4. Positive Response—Location—change recommended**

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. 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*

#### **5. 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*

#### **6. 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.

#### **7. Burden of proof--change recommended**

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. 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.

#### **8. Cost of non-locatable facilities— 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

#### **9. Cost for location 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.

#### **10. 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.

#### **11. 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 bill represents the following limit recommendations: 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. However, the stakeholder group would like to offer an amendment of these limits based on information that was not available to us at the time the interim committee took action. The

amendment proposes to expand the rural limit to 4 contiguous quarter sections and change the wording for the urban limit to clarify the limit as 3 contiguous blocks.

The proposed amendment is as follows:

Page 8, line 12, after three insert contiguous and remove in

Page 8, line 9, remove diameter and replace one hundred sixty with four and acres with quarter sections

The new limit would read: "A request for location is limited to an area not exceeding three contiguous city blocks within an urban area or an area of four contiguous quarter sections or five linear miles in a rural area."

### **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 is the difficulty of using the one-call center which requires street addresses not commonly used by soil testers. Over the interim, a group of soil testers, agricultural software and data providers, one-call center technical personnel, and others met to help develop a way for agricultural data to "talk" with the one-call center in an effort to streamline the ticket process. One agricultural software group has programmed a potential fix. Testing has occurred, and while working through any necessary tech changes, we realized that many fields exceed the previously proposed quarter section limit. Many fields cross quarter sections. The suggested size limit was never intended to burden any user. Our stakeholder group has met since the soil testing software has been tested, and when we realized the potential issues the smaller ticket limit could cause, we agreed to offer this amendment. It is possible that the perceived burden of compliance will be eased by this newly available technology, if the bill is amended to accommodate realistic field size. In addition, impact on locators will likely be less than perceived with proper site identification and avoidance of common right of way areas.

In closing, let me emphasize that this is a good bill. We've worked diligently to understand concerns across industries and provide you with our collective proposal to protect underground facilities, the workers who may encounter them, and the environment through which they pass without placing a heavier burden on those who need to work around the facilities. I urge you to adopt our proposed amendment and pass this bill.

Thank you.

January 4, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1026

Page 8, line 12, after "three" insert "contiguous"

Page 8, line 12, remove "in"

Page 8, line 13, remove "diameter"

Page 8, line 13, replace "one hundred sixty" with "four"

Page 8, line 13, replace "acres" with "quarter sections"

Page 8, line 14, after "miles" insert "[8.05 kilometers]"

Re-number accordingly

## House Bill 1026

**Presented by:** Brian P. Kalk, Commissioner  
Public Service Commission

**Before:** House Industry, Business and Labor Committee  
The Honorable George Keiser, Chairman

**Date:** January 4, 2017

### TESTIMONY

Mister Chairman and committee members, I am Brian Kalk, Public Service Commissioner. The Public Service Commission supports House Bill 1026.

The PSC initiates enforcement actions and assesses civil penalties for violations of Chapter 49-23. These enforcement actions are generally resolved through a consent agreement or litigated through administrative hearings. Here is a brief summary of Commission enforcement actions since the PSC began processing them:

Biennium	New Cases	Processed Cases	Penalties Assessed
2009-11	5	1	\$500
2011-13	24	18	\$23,000
2013-15	97	58	\$53,000
2015-17	36	47	\$70,400

The PSC anticipates the bill will result in a slight increase in enforcement actions due to the additional provisions to enforce.

PSC Staff participated in the stakeholder sessions that resulted in the HB 1026. The participation was largely neutral and the PSC's primary objective was to advise the stakeholders as to current enforcement issues and to ensure the enforceability of any changes.

Mister Chairman, this concludes my testimony. I will be happy to answer any questions.

HB 1026 #3  
1/4/17



NDSPLS ADMINISTRATIVE OFFICE  
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Proposed House Bill No. 1026 – an Act to create and enact section 49-23-04.1 of the North Dakota Century Code relating to survey of areas having underground facilities; to amend and reenact sections 49-23-01, 49-23-03, 49-23-04, 49-23-05, and 49-23-06.  
January 3, 2017

Chairman Keiser and Committee Members:

My name is Steve Langlie, I am a licensed and registered Professional Land Surveyor in North Dakota and have been for over 40 years. I am writing this letter as a representative and on behalf of the North Dakota Society of Professional Land Surveyors (NDSPLS) to support this House Bill as written. NDSPLS is made up of over 300 members, of which some 185 are Registered Professional Land Surveyors, who live and practice in this state. There are approximately 500 Registered Land Surveyors who are licensed to practice in ND. We are licensed and regulated by the North Dakota State Board of Registration for Professional Engineers and Professional Land Surveyors. Our Mission and objective is: to unite all of the Professional Land Surveyors in the State of North Dakota; to elevate the standards of the surveying profession; to establish basic minimum standards and requirements for surveys; to assist in promoting legislative and educational programs to improve the professional status of the Land Surveyor; to work in cooperation with local, county, state, federal and tribal governments in our field of endeavor; to uphold a rigid code of ethics; to strive to improve our relations with our clients and the public by doing our work with precision and integrity; and to maintain a good relationship between Land Surveyors and Engineers.

Some of the reasons NDSPLS is in favor of HB 1026 is Land surveyors are called upon to prepare topographic maps prior to the design of public and private infrastructure projects. The locations of underground utilities needs to be identified on these maps so that the utilities can be avoided or so that any potential conflicts with the utilities can be identified and accounted for during the design and planning phases of a project. Furthermore, land surveyors are called upon to prepare surveys showing these locations prior to the purchase of property. Often times, prospective buyers need to know the location of these utilities so that they know that the site they wish to purchase and develop is well suited for their intended use of the property. In most cases, getting a utility locate is the only reliable method by which the public and surveyors can identify encumbrances on these lands. Most importantly, knowing the location of the utilities during the design process helps to avoid any potential hazards and liabilities. Currently, the requirements are sometimes being construed that a utility locate is only required prior to excavation. This has the potential to cause damage to both public and private entities by incurring unplanned costs to relocate utilities and/or costs to re-design the proposed project to avoid utilities. This proposed legislation gives the public access to critical information regarding underground utilities during the conceptual phases of a project so that most costs and safety considerations can be taken into account.

Thank you for your time and consideration of this testimony on behalf of the NDSPLS.

Steven M. Langlie, PLS North Dakota LS-5476  
North Dakota Society of Professional Land Surveyors board member

**Testimony in Support of  
HOUSE BILL NO. 2123  
House Industry Business and Labor Committee  
January 4, 2017**

Chairman Keiser, House Industry Business and Labor Committee members, for the record my name is Todd D. Kranda. I am an attorney with the Kelsch Kelsch Ruff & Kranda Law Firm in Mandan. I appear before you today as a lobbyist on behalf of the North Dakota Petroleum Council (NDPC) to support HB 1026. NDPC represents more than 500 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipelines, transportation, mineral leasing, consulting, legal work, and oilfield service activities, and has been representing the industry since 1952.

The testimony by the Utility Shareholders of North Dakota (USND) provided you with the background and a detailed summary of the specific changes being proposed along with the reasons for those changes to the ND One Call Excavation Notice System (NDCC Chapter 49-23) within HB 1026. Accordingly I will not repeat and discuss any of the specifics of HB 1026. HB 1026 makes reasonable improvements to the existing notification system. NDPC was involved with the one call stakeholder working group during the interim period and is in support of the changes that are being proposed within HB 1026.

In conclusion, NDPC urges your support of HB 1026 and respectfully requests a favorable Do Pass recommendation with the proposed amendment as suggested by USND. Thank you and I would be happy to try to answer any questions.



HB1026

3/1/17

#1

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**House Bill 1026—Testimony in Support  
Senate Industry, Business, and Labor Committee  
March 1, 2017  
Testimony of Carlee McLeod**

Chairman Klein, members of the committee, my name is Carlee McLeod and I am president of the Utility Shareholders of North Dakota. USND is an organization comprised of the shareholders of investor-owned utilities MDU Resources Group, Otter Tail Corporation, and Xcel Energy. I'm here to support HB 1026 which was the result of a comprehensive study by the Economic Impact Interim Committee in collaboration with one-call stakeholders.

For those of you who are new to the concept of one-call, ND One-Call is the system excavators must call before excavation to have underground facilities marked. Underground facilities owners (operators) must participate in one-call by reporting their facilities to ND One-Call and locating those facilities when a request is made to ND One-Call. One-Call Concepts (OCC) is the contracted group providing the technology for online and phone requests (tickets).

**Stakeholder Group Information**

Before I walk through the bill, it is important for you to understand that this bill represents the work of a wide variety of stakeholders. 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. HB 1026 represents the recommendations that were carefully vetted and unanimously approved by those stakeholders, presented to the interim committee through regular reporting, and approved by the interim committee. Should the committee suggest different ideas during its consideration of this proposed legislation, I'm confident our group has already discussed them and could readily explain why they have not been included in this bill.

**RECOMMENDATIONS**

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.

## 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.

### Prudent digging practice

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. Industry understands the wording to mean an excavator must manually excavate within 2 feet of the centerline indicated for any facility. Without delving into grammatical terms like 'misplaced modifiers,' the wording of the statute needs to be clarified. Page 1, lines 14-19 represents the recommendation of the group. The recommendation includes language from the national Common Ground Alliance (CGA) best practices 5-19 and 5-20. (The Common Ground Alliance began as a DOT-sponsored group in 1999 with the task of studying one-call systems and damage prevention best practices. It was grown to having over 1,700 members and various state charters who work collaboratively for damage prevention and safety).

This clarification is important to 1) reflect best practices understood by the good actors in the industry; and 2) to help curb abusive practices by bad actors. There have been instances of excavators bulldozing through locations marks before the locator has left the premises, multiple ticket requests per day for the same sight, and damage incurred by the underground facilities because bad actors are following the sloppy language in the law rather than the understood industry best practice. This proposed language is necessary, and it doesn't place a new burden on any excavator who read the law with the understanding of the best practice.

*Cross reference: cost of location for abusive location requests*

### Culpability Language

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 bill 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. For reference, a class A misdemeanor carries maximum penalty of one year's imprisonment and a fine up to \$3,000. (NDCC 12.1-32-01(5))

## ONE-CALL PROCESS

The next group of recommendations addresses issues within the one-call process, like location time, cost, ticket size, 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—Location

Positive response is a service provided by 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. 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*

### **Site identification**

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*

### **Survey Ticket Creation**

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.

### **Burden of proof**

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. 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 non-locatable facilities**

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

### **Cost for location when excavation has occurred**

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.

### **Window for locates**

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.

### **Size of ticket**

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 bill represents the following limit recommendations: Urban limit: 3 blocks; Rural limits: 5 miles linear or four contiguous quarter sections in total area if not linear. Recommended language can be found in the draft on page 8, lines 11-14.

## 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.

## 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 is the difficulty of using the one-call center which requires street addresses not commonly used by soil testers. Over the interim, a group of soil testers, agricultural software and data providers, one-call center technical personnel, and others met to help develop a way for agricultural data to "talk" with the one-call center in an effort to streamline the ticket process. One agricultural software group has programmed a potential fix. Testing has occurred. It is possible that the perceived burden of compliance will be eased by this newly available technology. In addition, impact on locators will likely be less than perceived with proper site identification and avoidance of common right of way areas.

In closing, let me emphasize that this is a good bill. We've worked diligently to understand concerns across industries and provide you with our collective proposal to protect underground facilities, the workers who may encounter them, and the environment through which they pass without placing a heavier burden on those who need to work around the facilities. I urge you to pass this bill.

Thank you.