

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1382

Introduced by

Representatives Conklin, Hatlestad, Onstad

1 A BILL for an Act to amend and reenact subsections 11 and 15 of section 49-23-01,
2 subdivision a of subsection 3 of section 49-23-03, and section 49-23-04 of the North Dakota
3 Century Code, relating to the one-call excavation notice system.

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

5 **SECTION 1. AMENDMENT.** Subsections 11 and 15 of section 49-23-01 of the North
6 Dakota Century Code are amended and reenacted as follows:

7 11. "Locate" means an operator's markings of an underground facility showing the
8 approximate horizontal location, including all lines, line direction, intersections, tees,
9 and lateral facilities.

10 15. "Underground facility" means an underground line, pipeline, cable, facility, system, and
11 its appurtenances used to produce, store, convey, gather, transmit, or distribute
12 communications, data, electricity, power, television signals, heat, gas, oil, petroleum
13 products, carbon dioxide, water, steam, sewage, hazardous liquids, and other similar
14 substances. Privately owned and operated underground facilities which do not extend
15 beyond the boundary of the private property are excluded.

16 **SECTION 2. AMENDMENT.** Subdivision a of subsection 3 of section 49-23-03 of the North
17 Dakota Century Code is amended and reenacted as follows:

18 a. Submitting the information required by the notification center before an
19 underground facility is put into service to allow the center to notify the operator of
20 excavation activity;

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

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

24 1. Except in an emergency, an excavator shall ~~contact~~:

- 1 a. White mark the excavation as required by the notification center.
- 2 b. Contact the notification center and provide an excavation or location notice at
- 3 least forty-eight hours before beginning any excavation, excluding Saturdays,
- 4 Sundays, and holidays, unless otherwise agreed to between the excavator and
- 5 operator. If an operator determines more time is necessary for location, the
- 6 operator may request a twenty-four-hour extension of the excavation or location
- 7 notice by notifying the notification center. The notification center shall notify the
- 8 excavator of the extension. An excavation begins the first time excavation occurs
- 9 in an area that was not previously identified by the excavator in an excavation
- 10 notice. ~~The~~
- 11 c. Include in the notice must contain:
- 12 a. (1) The name, address, and telephone number of the person making the
- 13 notification;
- 14 b. (2) The name, address, and telephone number of the excavator;
- 15 c. (3) The date and time when excavation is scheduled to begin;
- 16 d. (4) The depth of planned excavation;
- 17 e. (5) The type and extent of excavation being planned, including whether the
- 18 excavation involves tunneling or horizontal boring;
- 19 f. (6) Whether the use of explosives is anticipated and any other information as
- 20 may be required by the notification center; and
- 21 g. (7) The location of the excavation by any one or more of the following means:
- 22 ~~(1)~~(a) A specific street address;
- 23 ~~(2)~~(b) A reference to a platted lot number of record; or
- 24 ~~(3)~~(c) A specific quarter section by section number, range, township, and
- 25 county. In this case, the location shall be further described by
- 26 coordinates measured in feet from the nearest one-fourth corner or
- 27 section corner.
- 28 2. The notification center shall:
- 29 a. Provide a toll-free telephone number and assign an inquiry identification number
- 30 to each excavation notice and retain a record of all excavation notices received
- 31 for at least six years.

- 1 b. Immediately transmit the information contained in an excavation notice to every
- 2 operator that has an underground facility in the area of the proposed excavation.
- 3 c. Inform the persons giving notice of an intent to engage in an excavation activity
- 4 the names of participating operators of underground facilities to whom the notice
- 5 will be given.
- 6 d. Establish procedures for assuring positive response from the affected operator in
- 7 all emergency excavation notices.
- 8 3. a. An operator, within forty-eight hours, or any extension of that period, after
- 9 receiving an excavation notice from the center, excluding Saturdays, Sundays,
- 10 and holidays, unless otherwise agreed to between the excavator and operator,
- 11 shall locate and mark or otherwise provide the approximate horizontal location of
- 12 the underground facilities of the operator.
- 13 b. For purposes of this section, the approximate horizontal location of the
- 14 underground facilities is a strip of land two feet [60.96 centimeters] on either side
- 15 of the underground facilities. This subdivision does not apply to an underground
- 16 facility to convey water.
- 17 c. When an operator cannot establish the exact location of the underground facility
- 18 to convey water, the operator shall mark the location as accurately as possible
- 19 and the excavator may proceed with caution. When excavation operations
- 20 approach the estimated location of the underground facility to convey water, the
- 21 exact location of the facility must be determined by safe and acceptable means.
- 22 The uncovered facility must be supported and protected to prevent damage.
- 23 d. Markers used to designate the approximate location of underground facilities
- 24 must follow the current color code standard used by the American public works
- 25 association.
- 26 e. If the operator cannot complete marking of the excavation area before the
- 27 excavation commencement time stated in the excavation notice, the operator
- 28 shall promptly contact the excavator.
- 29 f. After facilities are located by an operator, an excavator shall notify the notification
- 30 center if:

- 1 (1) The excavator postpones the excavation commencement time stated in the
2 excavation notice by more than forty-eight hours, or any extension of that
3 period, or cancels the excavation;
- 4 (2) The markings have been obliterated or obscured;
- 5 (3) Weather conditions have impeded visibility of the markings;
- 6 (4) The site shows evidence of recent excavation; or
- 7 (5) The excavator has other reason to believe the markings are incorrect or
8 missing.
- 9 g. An excavator may not use a location more than ten days, or any extension of that
10 period, after the planned excavation date unless the excavator has made
11 previous arrangements with the operators affected.
- 12 h. If in the course of excavation the excavator is unable to locate the underground
13 facility or discovers that the operator of the underground facility has incorrectly
14 located the underground facility, or discovers a previously unidentified
15 underground facility, the excavator shall promptly notify the operator or, if
16 unknown, the one-call notification center.
- 17 i. A facility owner, excavator, or other person may not present or presume that an
18 underground facility is abandoned, or treat an underground facility as abandoned,
19 unless the facility has been verified as abandoned by reference to installation
20 records or by testing. The notification center shall establish a method of providing
21 personnel from a facility owner qualified to safely inspect and verify whether a
22 facility is abandoned or inactive if necessary. An inactive facility must be
23 considered active for purposes of this section.
- 24 4. If an excavation is being made in a time of emergency, all reasonable precautions
25 must be taken to protect the underground facilities. In an emergency, the excavator
26 shall give notification in compliance with this chapter, as soon as practical, that an
27 emergency exists. As soon as practical, each operator shall provide all location
28 information that is reasonably available to the excavator.