

Introduced by

Legislative Management

(Economic Impact Committee)

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30           (1) Telecommunications service providers.

31           (2) Gas distribution lines operators.

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

2           (4) Electrical transmission and distribution operators.

3           (5) Rural water systems.

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

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

6           (8) Cable television service providers.

7           (9) Excavators.

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

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

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

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

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

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

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

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

7 The notice must contain:

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

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

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

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

1 this section includes a specific street address or reference to a platted lot number of  
2 record of the location of the excavation. Site identification under this subsection is not  
3 required if:

4 a. The precise location of excavation can be clearly and adequately identified on the  
5 location notice and is limited to a single street address or a platted lot number of  
6 record;

7 b. The precise location of excavation can be clearly and adequately identified on the  
8 location notice and the excavation is an emergency excavation; or

9 c. Prior to any excavation, the excavator requests and conducts a meeting with the  
10 affected operators at the location of the excavation.

11 i.3. ~~A request for location is limited to the area to be excavated during the twenty-one-day~~  
12 ~~period following the location request an area not exceeding three contiguous city~~  
13 ~~blocks in diameter within an urban area or an area of one hundred sixtyfour~~  
14 ~~contiguous acres quarter sections or five linear miles [8.05 kilometers] in a rural area.~~

15 j.4. ~~An excavator may begin excavation in a location if the location period has passed~~  
16 ~~without notification of a requested extension or prior to the expiration of the location~~  
17 ~~period if when the excavator has received notice that all facilities have been located or~~  
18 ~~cleared or at the expiration of the location period or extension of the location period.~~

19 2-5. The notification center shall:

20 a. Provide a toll-free telephone number and assign an inquiry identification number  
21 to each excavation notice and retain a record of all excavation notices received  
22 for at least six years.

23 b. Immediately transmit the information contained in an excavation notice to every  
24 operator that has an underground facility in the area of the proposed excavation.

25 c. Inform the persons giving notice of an intent to engage in an excavation activity  
26 the names of participating operators of underground facilities to whom the notice  
27 will be given.

28 d. Establish procedures for assuring positive response from the affected operator in  
29 all emergency excavation notices.



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

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

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

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

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

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

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

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

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

1       **49-23-04.1. Survey.**

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

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

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

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

8       d. The depth of any planned future excavation;

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

11       f. Whether the use of explosives is anticipated;

12       g. Any other information the notification center requires;

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

14             (1) A specific street address;

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

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

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

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

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

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

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

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

30       3. The notification center shall:

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

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

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

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

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

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

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

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

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

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

9           1. a. If any damage occurs to an underground facility or its protective covering, the  
10           excavator shall notify the operator as soon as reasonably possible. When the  
11           operator receives a damage notice, the operator shall dispatch, as soon as  
12           reasonably possible, personnel to the damage area to investigate. If the damage  
13           endangers life, health, or property, the excavator responsible for the work shall  
14           take immediate action to protect the public and property and to minimize the  
15           hazard until arrival of the operator's personnel or until emergency responders  
16           have arrived and taken charge of the damaged area.

17           b. An excavator shall delay backfilling in the immediate area of the damaged  
18           underground facilities until the damage has been investigated by the operator,  
19           unless the operator authorizes otherwise. The repair of damage must be  
20           performed by the operator or by qualified personnel authorized by the operator.

21           c. An excavator ~~who knowingly is guilty of a class A misdemeanor if the excavator~~  
22           damages an underground facility or its protective covering and knew or  
23           reasonably should have known the damage occurred and who;

24           (1) The excavator does not notify the operator as soon as reasonably possible;  
25           or ~~who~~

26           (2) The excavator backfills in violation of subdivision b ~~is guilty of a class A~~  
27           misdemeanor.

28           2. a. If an excavator fails to comply with this chapter or damages an underground  
29           facility, the excavator is liable for all damages caused by the failure to comply  
30           with this chapter and for all damages to the facilities and must reimburse the  
31           operator for the cost of location, repair and restoration, loss of product, and

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