

PUBLIC UTILITIES

CHAPTER 444

HOUSE BILL NO. 1373

(Representatives Keiser, Freier, Rydell, Tollefson)
(Senators Goetz, Grindberg)

PUBLIC UTILITY PURCHASES FROM AFFILIATED COMPANY COMPENSATION

AN ACT to amend and reenact sections 49-02-01.1 and 49-02-02 of the North Dakota Century Code, relating to the powers of the public service commission concerning public utilities and the sale of materials or services to a public utility by an affiliated company.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹¹ **SECTION 1. AMENDMENT.** Section 49-02-01.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-02-01.1. Jurisdiction of commission limited as to certain utilities. Nothing in this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, that is not operated for profit, that is operated as a nonprofit, cooperative or mutual telecommunications company or is a telecommunications company having fewer than three thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative or mutual telecommunications company or has fewer than three thousand local exchange subscribers is subject to sections 49-21-01.4 and 49-21-08 and is subject to subsection 7 6 of section 49-02-02 and sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies. Nothing in this section limits the authority of the commission under chapter 49-03.1 or sections 49-04-05 and 49-04-06.

²¹² **SECTION 2. AMENDMENT.** Section 49-02-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-02-02. Powers of public service commission with reference to public utilities. The commission shall have power to:

²¹¹ Section 49-02-01.1 was also amended by section 1 of House Bill No. 1459, chapter 445.

²¹² Section 49-02-02 was also amended by section 3 of Senate Bill No. 2008, chapter 30.

1. Investigate all methods and practices of public utilities or other persons, subject to the provisions of this title.
2. Require public utilities or other persons to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law.
3. Require copies of reports, rates, classifications, schedules, and timetables in effect and used by such utilities or other persons and all other information desired by the commission relating to such investigations and requirements to be filed with the commission.
4. Compel obedience to its lawful orders by proceedings of mandamus or injunction or other proper proceedings, in the name of the state, in any court having jurisdiction of the parties or of the subject matter.
5. Hold hearings on good cause being shown therefor or on its own motion, and to provide notice thereof and to shorten the period for which notice must be given prior to hearing, when good cause exists for such action. Such notice, however, must be reasonable in view of the nature, scope, and importance of the hearing. Whenever it appears to the satisfaction of the commission that all of the interested parties have agreed concerning the matter at hand, or that no interested party has asked for a hearing, the commission may issue its order without a hearing.
6. ~~Require, in its discretion, proof that no unreasonable profit is made in the sale of materials to or services supplied for any public utility by any firm, corporation, or limited liability company owned or controlled directly or indirectly by the public utility or any affiliate, subsidiary, parent company, associate, or any corporation whose controlling stockholders are also controlling stockholders or controlling members of the public utility or any limited liability company whose controlling members are also controlling members or stockholders of the public utility, before permitting the value of said materials or services to be included in valuations or cost of operations for ratemaking purposes. If unreasonable profits have been made in any such transactions, valuations of said materials and services may be reduced accordingly.~~
7. 6. Employ, and fix the compensation of, rate experts, engineers, auditors, attorneys, and all other expert help and assistance for hearings or investigations on rate increase applications filed by gas or electric public utilities. The expense of any hearings or investigations and the actual expenses of any employees of the commission while engaged upon any hearing or investigation must upon the order of the commission be paid by the public utility involved. The commission shall ascertain the costs and expenditures. After giving the public utility notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission shall render a bill and make an order for payment by certified mail or by personal delivery to one of the managing officers of the public utility. The billing and order may be made from time to time during the hearing or investigation or at the conclusion thereof, as the commission determines. Upon receipt of the bill and order for payment, as evidenced by return receipt or other proof, the public utility shall pay to the commission the amount billed. All amounts not paid within thirty days after receipt of the order for payment draw interest at the rate of

six percent per annum from the date of receipt of the order. All costs and expenses collected by the commission under this subsection must be deposited in the general fund in the state treasury.

- ~~8~~ 7. Cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or officer thereof for any purposes relating to federal energy laws that deal with energy conservation, coal conversion, rate reform, and utilities subject to the jurisdiction of the commission. The commission shall also have the authority to file any reports, hold hearings, and promulgate regulations for any such purposes.
- ~~9~~ 8. Cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or officer thereof, and to file such reports and promulgate rules as required by federal law or regulation for any purposes relating to the regulation of safety standards for pipeline facilities and the transportation associated with those pipeline facilities.

Approved March 31, 1995

Filed March 31, 1995

CHAPTER 445**HOUSE BILL NO. 1459**

(Representatives Grosz, Mahoney)
(Senators Christmann, Tomac)

**PUBLIC SERVICE COMMISSION JURISDICTION OVER
TELECOMMUNICATIONS COMPANIES**

AN ACT to amend and reenact section 49-02-01.1 of the North Dakota Century Code, relating to jurisdiction of the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹³ **SECTION 1. AMENDMENT.** Section 49-02-01.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-02-01.1. Jurisdiction of commission limited as to certain utilities. Nothing in this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of any public utility owned and operated by the state or by any city, county, township, or other political subdivision of the state or any public utility, that is not operated for profit, that is operated as a nonprofit, cooperative or mutual telecommunications company or is a telecommunications company having fewer than ~~three~~ eight thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative or mutual telecommunications company or has fewer than ~~three~~ eight thousand local exchange subscribers is subject to sections 49-21-01.4 and 49-21-08 and is subject to subsection 7 of section 49-02-02 and sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or connection between facilities and transfer of telecommunications between two or more telecommunications companies. Nothing in this section limits the authority of the commission under chapter 49-03.1 or sections 49-04-05 and 49-04-06.

Approved April 4, 1995
Filed April 4, 1995

²¹³ Section 49-02-01.1 was also amended by section 1 of House Bill No. 1373, chapter 444.

CHAPTER 446**HOUSE BILL NO. 1312**

(Representatives Berg, Mahoney)
(Senators Freborg, Krauter)

**ENVIRONMENTAL EXTERNALITY VALUE USE
PROHIBITED**

AN ACT to create and enact a new section to chapter 49-02 and a new section to chapter 49-06 of the North Dakota Century Code, relating to environmental externality values and when electric rates may not be increased; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-02 of the North Dakota Century Code is created and enacted as follows:

Consideration of environmental externality values prohibited. The commission may not use, require the use of, or allow electric utilities to use environmental externality values in the planning, selection, or acquisition of electric resources or the setting of rates for providing electric service. Environmental externality values are numerical costs or quantified values that are assigned to represent either:

1. Environmental costs that are not internalized in the cost of production or the market price of electricity from a particular electric resource; or
2. The alleged costs of complying with future environmental laws or regulations that have not yet been enacted.

SECTION 2. A new section to chapter 49-06 of the North Dakota Century Code is created and enacted as follows:

When electric rates not to be increased. The commission may not increase electric rates as a result of actions taken by other states requiring higher cost resources to be built, purchased, or otherwise acquired as a result of the application of quantified environmental externality values, as defined in section 1 of this Act, as part of any resource selection process.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 10, 1995
Filed March 13, 1995

CHAPTER 447**SENATE BILL NO. 2379**

(Senators Nething, Kinnoin, Mutch)
(Representatives Berg, Soukup, Tollefson)

PUBLIC UTILITY RATE FILING TEST YEARS

AN ACT to create and enact a new section to chapter 49-05 of the North Dakota Century Code, relating to test years a public utility may use in rate filings with the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-05 of the North Dakota Century Code is created and enacted as follows:

Test year - Public utility rate filings.

1. A public utility, at its option, may use any one of the following twelve-month periods as its test year for rate filings with the commission:
 - a. A historical test year, which may be either the latest twelve-month period for which actual data is available at the time of filing new schedules or the latest calendar or fiscal year for which actual data is available at the time of filing new schedules.
 - b. A current test year, which is any consecutive twelve-month period ending not later than twelve months after the date new schedules are filed. A public utility selecting a current test year also shall file data for the twelve-month period immediately preceding the current test year selected and that period is the "historical period" for the public utility.
 - c. A future test year, which is any consecutive twelve-month period ending no later than twenty-four months after the date new schedules are filed. A public utility selecting a future test year must file data for the twelve consecutive months immediately preceding the future test year and that period is the "current period" for the public utility.
2. A public utility selecting a current or future test year shall present the following information:
 - a. A comparison of forecast data to historical period data to demonstrate the reliability and accuracy of the utility's forecast including a comparison of the prior years' forecast or budgeted data to actual data for those periods.
 - b. A statement that the public utility's forecast is reasonable, reliable, and was made in good faith and that all basic assumptions used in making or supporting the forecast are reasonable, evaluated, identified, and justified to allow the commission to test the appropriateness of the forecast.

- c. A statement that the accounting treatment that has been applied to anticipated events and transactions in the forecast is the same as the accounting treatment to be applied in recording the events once they have occurred.
3. The public utility may update its filing for material changes as actual data becomes available up to thirty days before the hearing. Except for good cause shown, a public utility may not submit more than one updated filing before the hearing. In the absence of an updated filing by the public utility, the commission may require a public utility to update its filing when the commission staff introduces evidence that a material change has occurred.
4. A public utility may propose estimated or calculated adjustments to the selected historical or current test year for all known and measurable changes in operating results as measured in the test year. The adjustments must be made in the same context and format as the information was provided in the original filing. The adjustments may reflect material changes in plant investment, operating revenues, expenses, and capital structure if the changes occurred during the selected historical or current test year or are reasonably certain to occur subsequent to the selected test year within twelve months from the date of the rate filing.

Approved March 17, 1995

Filed March 17, 1995

CHAPTER 448**SENATE BILL NO. 2456**

(Senators Yockim, Krebsbach, B. Stenehjem, Traynor)
(Representatives Price, Tollefson)

AMTRAK SERVICE RESTORATION AGREEMENTS

AN ACT to amend and reenact section 49-10.1-17 of the North Dakota Century Code, relating to agreements to restore Amtrak service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-10.1-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-10.1-17. Agreements to restore Amtrak service. The governor or the director of the department of transportation may make agreements in accordance with applicable federal law with the state of Montana and relevant federal agencies for the renewal of service on the Amtrak north coast Hiawatha route from Fargo to Spokane, Washington. The governor, the director of the department of transportation, or the director of the department of economic development and finance may enter agreements with any political subdivision, state, and federal agency for the restoration of daily service on the Amtrak Empire Builder route.

Approved March 17, 1995
Filed March 20, 1995

CHAPTER 449**HOUSE BILL NO. 1099****(Representative Belter)****(At the request of the Governor)****INTERMODAL TRANSPORTATION TEAM
ELIMINATED**

AN ACT to amend and reenact subsection 1 of section 49-17.1-02 of the North Dakota Century Code, relating to the state intermodal transportation team.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 49-17.1-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Prepare and recommend a state plan for all rail transportation and local rail services ~~under the direction of an intermodal team appointed by the governor.~~

Approved March 24, 1995

Filed March 27, 1995

CHAPTER 450**SENATE BILL NO. 2258**

(Senator Mutch)
(Representative Timm)

MOTOR CARRIER REGULATION REPEAL

AN ACT to repeal section 39-04-20 and chapter 49-18 of the North Dakota Century Code, relating to motor carriers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁴ **SECTION 1. REPEAL.** Section 39-04-20 and chapter 49-18 of the North Dakota Century Code are repealed.

Approved March 10, 1995

Filed March 13, 1995

²¹⁴ Section 49-18-31 was amended by section 2 of House Bill No. 1058, chapter 243.

CHAPTER 451

SENATE BILL NO. 2078

(Legislative Council)

(Interim Regulatory Reform Review Commission)

(Senators Redlin, Nething)

(Representatives Tollefson, Mahoney)

TELECOMMUNICATIONS REGULATION EXEMPTION

AN ACT to amend and reenact subsection 4 of section 49-21-01.1 of the North Dakota Century Code, relating to services not subject to telecommunications regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 49-21-01.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. ~~Home~~ Except as provided in section 49-21-01.5, home, business, and coinless or coin-operated public or semipublic telephone terminal equipment and the use of such equipment.

Approved March 6, 1995

Filed March 6, 1995

CHAPTER 452

HOUSE BILL NO. 1274 (Representatives Wentz, Martinson) (Senators Scherber, Yockim)

TELEPHONE CALL IDENTIFICATION SERVICES

AN ACT to amend and reenact section 49-21-01.6 of the North Dakota Century Code, relating to telephone call identification services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-01.6 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-01.6. Call identification services - Charges prohibited - Notice - Exceptions.

1. Any telephone call identification service offered in this state by a telecommunications company ~~or rural telephone cooperative~~ must allow a caller; ~~at least on a per-call and a per-line basis;~~ to withhold; ~~at no cost to the caller;~~ display of a caller's telephone number from the telephone instrument of the individual receiving the telephone call placed by the caller.
2. The A telecommunications company or rural telephone cooperative offering call identification services may not charge any caller person who requests that that person's telephone number be withheld from the recipient of any call placed by the caller the call identification services be blocked on a per-call basis. Per-line blocking must be provided without charge for residential customers and business customers with special needs, such as law enforcement and domestic violence agencies.
3. A telecommunications company ~~or rural telephone cooperative~~ offering a call identification service shall notify its subscribers that their calls may be identified to a called party at least thirty days before the service is offered. ~~In the case of a telecommunications company or rural telephone cooperative presently offering a call identification service, notice must be given within thirty days of July 17, 1991.~~
4. This section does not apply to:
 - a. An identification service that is used within the same limited system, including a Centrex, Centron, or private branch exchange (PBX) system, as the recipient telephone.
 - b. An identification service that is used on a public agency's emergency telephone line or on a line that receives the primary emergency telephone number (911).
 - c. An identification service provided in connection with legally sanctioned call tracing or tapping procedures.

- d. An identification service provided in connection with any "700", "800", or "900" access code telecommunications service, or any voice or data store and forward service.
- e. Any other service that, after investigation by the commission, the commission finds that a nondisclosure or similar agreement will protect the privacy interests of a calling party.

Approved March 28, 1995

Filed March 29, 1995

CHAPTER 453**SENATE BILL NO. 2079**

(Legislative Council)

(Interim Regulatory Reform Review Commission)

(Senators Redlin, Nething)

(Representatives Tollefson, Mahoney)

REGULATORY REFORM REVIEW COMMISSION

AN ACT to create and enact a new section to chapter 49-21 of the North Dakota Century Code, relating to the regulatory reform review commission; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Regulatory reform review commission - Appointments - Compensation - Report to legislative council. The regulatory reform review commission shall review the operation and effect of North Dakota telecommunications law on an ongoing basis during the interims between the 1995 and 1999 legislative sessions and shall submit a report regarding its operation and effect to the legislative council in 1996 and 1998. The regulatory reform review commission may review the effect of taxation laws on North Dakota telecommunications law during the interims between the 1995 and 1999 legislative sessions and may include any findings and recommendations with respect to its review of the effect of taxation laws on North Dakota telecommunications law in the report to the legislative council in 1996 and 1998. The regulatory reform review commission consists of one member of the public service commission who has responsibility for telecommunications regulation, two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker. The chairman of the legislative council shall designate the chairman and vice chairman of the regulatory reform review commission from the legislative members of the commission. The public service commission shall provide technical assistance and the legislative council shall provide staff services to the regulatory reform review commission. The legislative members of the regulatory reform review commission are entitled to the same compensation as provided for members of committees of the legislative council under section 54-35-10. The legislative council shall pay the compensation for the legislative members of the regulatory reform review commission. The public service commission shall pay the expenses of the member of the public service commission serving on the regulatory reform review commission and of the public service commission staff providing technical assistance while carrying out their duties.

SECTION 2. EXPIRATION DATE. This Act is effective through December 31, 1998, and after that date is ineffective.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 15, 1995
Filed March 15, 1995

CHAPTER 454

SENATE BILL NO. 2109

(Natural Resources Committee)

(At the request of the Public Service Commission)

ENERGY CONVERSION AND TRANSMISSION
FACILITY INVENTORIES

AN ACT to amend and reenact sections 49-22-04 and 49-22-05.1 of the North Dakota Century Code, relating to energy conversion and transmission facility inventories of exclusion and avoidance areas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-22-04 of the North Dakota Century Code is amended and reenacted as follows:

49-22-04. Ten-year plans - Contents. Every utility ~~which~~ that owns or operates, or plans within the next ten years to own, operate, or start construction on any facility shall annually develop a ten-year plan as specified in this section. On or before July first of each year, ~~every such~~ the utility shall submit its ten-year plan to the commission. The ten-year plan may be appropriate portions of a single regional plan or may be jointly prepared and submitted by two or more utilities and ~~shall~~ must contain the following information:

1. A description of the general location, size, and type of all facilities to be owned or operated by the utility during the ensuing ten years, as well as those facilities to be removed from service during the ten-year period.
2. An identification of the location of the tentative preferred site for all energy conversion facilities and the tentative location of all transmission facilities on which construction is intended to be commenced within the ensuing five years and such other information as may be required by the commission. The site and corridor identification shall be made in compliance with the inventory criteria published by the commission pursuant to section 49-22-05.1.
3. A description of the efforts by the utility to coordinate the plan with other utilities so as to provide a coordinated regional plan for meeting the utility needs of the region.
4. A description of the efforts to involve environmental protection and land-use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process.
5. A statement of the projected demand for the service rendered by the utility for the ensuing ten years and the underlying assumptions for the projection, with ~~such~~ that information being as geographically specific as possible, and a description of the manner and extent to which the utility will meet the projected demands.
6. Any other relevant information as may be requested by the commission.

Upon receipt of the ten-year plans the commission shall proceed to assess the impact of the development proposed within the state of North Dakota; to ensure that energy conversion facilities and transmission facilities will be sited in an orderly manner compatible with environmental preservation and efficient use of resources.

SECTION 2. AMENDMENT. Section 49-22-05.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-22-05.1. ~~Inventory of exclusion~~ Exclusion and avoidance areas - Criteria.

- ~~1. The commission shall assemble and publish an energy conversion and transmission facility inventory of exclusion and avoidance areas. The commission shall have a continuing responsibility to evaluate, update, and publish its inventory.~~
- ~~2. The commission shall develop criteria which shall to be used in identifying exclusion and avoidance areas and which shall to guide the site, corridor, and route suitability evaluation and designation process. Except for transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing. The criteria may also include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.~~

Approved March 17, 1995
Filed March 20, 1995

CHAPTER 455**SENATE BILL NO. 2359**

(Senators St. Aubyn, Tomac)
(Representatives Mahoney, Payne)

ONE-CALL EXCAVATION NOTICE SYSTEM

AN ACT to create a one-call excavation notice system; to repeal sections 11-18-16, 11-18-17, 11-18-18, 11-18-19, and 11-18-20 of the North Dakota Century Code, relating to buried transmission facilities; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Abandoned" means no longer in service and physically disconnected from a portion of the facility or from any other facility that is in use or still carries services.
2. "Board" means the board of directors of the nonprofit corporation governing the notification center under section 3 of this Act.
3. "Careful and prudent manner" means excavating within twenty-four inches [60.96 centimeters] of the outer edges of an underground facility located manually and marked by the owner or operator by stakes, paint, or other customary manner, and supporting and protecting the uncovered facility.
4. "Damage" means:
 - a. Substantial weakening of structural or lateral support of an underground facility;
 - b. Penetration, impairment, or destruction of any underground protective coating, housing, or other protective device; or
 - c. Impact with or the partial or complete severance of an underground facility to the extent that the facility operator determines that repairs are required.
5. "Emergency" means a sudden, unexpected occurrence, involving a clear and imminent danger, and demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.
6. "Emergency responder" means a fire department, a law enforcement officer, or other emergency rescue service.
7. "Excavation" means any operation in which earth, rock, or other materials in or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment, or explosives and

includes grading, trenching, digging, ditching, drilling, augering, tunneling, boring, scraping, and cable or pipe plowing and driving. The term does not include:

- a. Opening a grave in a cemetery.
 - b. Plowing, cultivating, planting, harvesting, and similar operations in connection with agricultural activities, unless any of these activities disturbs the soil to a depth of eighteen inches [45.72 centimeters] or more.
 - c. Gardening and landscaping unless it disturbs the soil to a depth of twelve inches [30.48 centimeters] or more.
 - d. Normal maintenance of roads and streets if the maintenance does not change the original grade and does not involve the road ditch.
 - e. Normal repair and maintenance of track and track bed by a railroad on its own right-of-way.
8. "Excavator" means a person who conducts excavation.
 9. "Holiday" means New Year's Day, Martin Luther King Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. When a holiday falls on a Saturday, it is observed on the preceding Friday as if the Friday were the holiday, and when a holiday falls on a Sunday, it is observed on the following Monday as if the Monday were the actual holiday.
 10. "Local governmental unit" means a county, township, or city.
 11. "Locate" means an operator's markings of an underground facility.
 12. "Nonprofit corporation" means a corporation established under chapters 10-24 through 10-28.
 13. "Notification center" means a center that receives notice from an excavator of planned excavation or any other request for location and transmits this notice to a participating operator.
 14. "Operator" means a person who owns or operates an underground facility, including a master meter operator with underground facilities, or a state or local government entity. The department of transportation is not considered an operator for the department's facilities buried on the department's rights of way. A person is not considered an operator solely because the person is an owner or tenant of real property where underground facilities are located if the underground facilities are used exclusively to furnish services or commodities on that property.
 15. "Underground facility" means an underground line, facility, system, and its appurtenances used to produce, store, convey, transmit, or distribute communications, data, electricity, power, television signals, heat, gas, oil, petroleum products, water, steam, sewage, hazardous liquids, and other similar substances. Privately owned and operated underground facilities

which do not extend beyond the boundary of the private property are excluded.

16. "Unexpected occurrence" includes a fire, flood, earthquake or other soil or geologic movement, riot, accident, damage to a subsurface installation requiring immediate repair, or sabotage.
17. "Water" includes potable water, wastewater, and storm water.

SECTION 2. Notice to excavators and underground facility operators. A local governmental entity that issues permits for an activity involving excavation shall display an excavator's and operator's notice at the location where permits are obtained. An excavator's and operator's notice and a copy of this Act must be furnished to each person obtaining a permit for excavation. The notification center shall prescribe an excavator's and operator's notice. The notice must inform excavators and operators of their obligation to comply with this Act. The center shall furnish to local governmental units:

1. A copy of the notice and this Act;
2. A copy of the display required under this section; and
3. The telephone number and mailing address of the notification center.

SECTION 3. Notification center - Participation - Establishment.

1. An operator shall participate in and share in the costs of the statewide notification center operated by a vendor selected under this section.
2. An excavator licensed under this chapter shall participate in and share in the costs of a statewide notification center on a per call basis. An operator, installing the operator's own facilities, may not be charged as an excavator.
3. An operator shall participate in and share the costs of the one-call excavation notice system by:
 - a. Submitting the information required by the notification center to allow the center to notify the operator of excavation activity;
 - b. Updating the information provided to the notification center on a timely basis;
 - c. Installing and paying for equipment reasonably requested by the notification center to facilitate receipt of notice of excavation from the center;
 - d. Paying the costs charged by the notification center on a timely basis; and
 - e. Receiving and responding to excavation notices, including emergency notices.
4. A nonprofit corporation shall govern the notification center. The initial incorporators of the corporation may solicit bids for any services provided for the operation of the center. The corporation shall provide

advance notice of the first organizational meeting by publication in qualified legal newspapers and in appropriate trade journals and by written notice to all appropriate trade associations.

- a. The nonprofit corporation must be incorporated by seventeen initial incorporators, with one member representing the house of representatives and one member representing the senate appointed by the legislative council, one member representing telecommunications companies offering local exchange service to fewer than fifty thousand subscribers, one member representing telecommunications companies offering local exchange service to fifty thousand or more subscribers, one member representing rural water systems, one member representing rural electric cooperatives, one member representing investor-owned electric utilities, one member representing investor-owned natural gas utilities, one member representing cable television systems, one member representing cities with a population of fewer than five thousand, one member representing cities with a population of at least five thousand, one member representing counties, one member representing underground interstate carriers of gas, one member representing interstate carriers of petroleum, one member representing interstate carriers of telecommunication services, one member representing contractors who perform excavation services, and one member representing the production sector of the American petroleum institute. The initial incorporators must represent and be designated by operators, excavators, and other persons eligible to participate in the center. The legislative members are entitled to the same compensation and expenses as provided for members of committees of the legislative council under section 54-35-10. The legislative council shall pay the compensation for the legislative members.
- b. The initial incorporators shall establish, before August 1, 1996, a board of directors of the nonprofit corporation which consists of eight members representing the participants in the center. The board shall establish a competitive bidding procedure to select a vendor to provide the notification service, establish a procedure by which members of the center share the costs of the center on a fair, reasonable, and nondiscriminatory basis, and do all other things necessary to implement the purpose of the center. Any agreement between the center and a vendor for the notification service may be modified from time to time by the board, and any agreement shall be reviewed by the board at least once every three years, with an opportunity to receive new bids, if desired, by the board. An operator may submit a bid and be selected to contract to provide the notification center service.
- c. Members of the board and any of its agents are immune from any liability of any kind based on any acts or omissions in the course of the performance of responsibilities in an official capacity except for bodily injury arising out of accidents caused by or contributed to the negligence of the board member or agent.
- d. The board shall aid the state's attorneys of the various counties in the enforcement of this chapter and the prosecution of any violations. The board may institute a civil action for an injunction

to enjoin violations of this chapter without proof that anyone suffered actual damages.

- e. The notification center must be in operation by August 1, 1997.

SECTION 4. Excavation.

1. Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice at least forty-eight hours before beginning any excavation, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator. If an operator determines more time is necessary for location, the operator may request a twenty-four-hour extension of the excavation or location notice by notifying the notification center. The notification center shall notify the excavator of the extension. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice. The notice must contain:
 - a. The name, address, and telephone number of the person making the notification;
 - b. The name, address, and telephone number of the excavator;
 - c. The date and time when excavation is scheduled to begin;
 - d. The depth of planned excavation;
 - e. The type and extent of excavation being planned, including whether the excavation involves tunneling or horizontal boring;
 - f. Whether the use of explosives is anticipated and any other information as may be required by the notification center; and
 - g. The location of the excavation by any one or more of the following means:
 - (1) A specific street address;
 - (2) A reference to a platted lot number of record; or
 - (3) A specific quarter section by section number, range, township, and county. In this case, the location shall be further described by coordinates measured in feet from the nearest one-fourth corner or section corner.
2. The notification center shall:
 - a. Provide a toll-free telephone number and assign an inquiry identification number to each excavation notice and retain a record of all excavation notices received for at least six years.
 - b. Immediately transmit the information contained in an excavation notice to every operator that has an underground facility in the area of the proposed excavation.

- c. Inform the persons giving notice of an intent to engage in an excavation activity the names of participating operators of underground facilities to whom the notice will be given.
 - d. Establish procedures for assuring positive response from the affected operator in all emergency excavation notices.
- 3.
- a. An operator, within forty-eight hours, or any extension of that period, after receiving an excavation notice from the center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator, shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator.
 - b. For purposes of this section, the approximate horizontal location of the underground facilities is a strip of land two feet [60.96 centimeters] on either side of the underground facilities. This subdivision does not apply to an underground facility to convey water.
 - c. When an operator cannot establish the exact location of the underground facility to convey water, the operator shall mark the location as accurately as possible and the excavator may proceed with caution. When excavation operations approach the estimated location of the underground facility to convey water, the exact location of the facility must be determined by safe and acceptable means. The uncovered facility must be supported and protected to prevent damage.
 - d. Markers used to designate the approximate location of underground facilities must follow the current color code standard used by the American public works association.
 - e. If the operator cannot complete marking of the excavation area before the excavation commencement time stated in the excavation notice, the operator shall promptly contact the excavator.
 - f. After facilities are located by an operator, an excavator shall notify the notification center if:
 - (1) The excavator postpones the excavation commencement time stated in the excavation notice by more than forty-eight hours, or any extension of that period, or cancels the excavation;
 - (2) The markings have been obliterated or obscured;
 - (3) Weather conditions have impeded visibility of the markings;
 - (4) The site shows evidence of recent excavation; or
 - (5) The excavator has other reason to believe the markings are incorrect or missing.
 - g. An excavator may not use a location more than seventy-two hours, or any extension of that period, after the planned excavation date

unless the excavator has made previous arrangements with the operators affected.

- h. If in the course of excavation the excavator is unable to locate the underground facility or discovers that the operator of the underground facility has incorrectly located the underground facility, the excavator shall promptly notify the operator or, if unknown, the one-call notification center.
 - i. A facility owner, excavator, or other person may not present or presume that an underground facility is abandoned, or treat an underground facility as abandoned, unless the facility has been verified as abandoned by reference to installation records or by testing. The notification center shall establish a method of providing personnel from a facility owner qualified to safely inspect and verify whether a facility is abandoned or inactive if necessary. An inactive facility must be considered active for purposes of this section.
4. If an excavation is being made in a time of emergency, all reasonable precautions must be taken to protect the underground facilities. In an emergency, the excavator shall give notification in compliance with this Act, as soon as practical, that an emergency exists. As soon as practical, each operator shall provide all location information that is reasonably available to the excavator.

SECTION 5. Precautions to avoid damage. To avoid damage to and minimize interference with underground facilities in and near the construction area, an excavator shall:

1. Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility.
2. Provide support in a manner approved by the operator for underground facilities in and near the construction area, including backfill operations to protect the facilities. Backfill must be of a material equal to or better in both quality and quantity to the existing backfill.
3. Assume ownership of materials used to mark the facility and when possible remove all tangible marking materials used to mark the facility.
4. Assume the cost of excavation to expose the facility unless otherwise indicated by owner of facility.
5. Conduct the excavation in a careful and prudent manner.
6. Properly manage spoil material to prevent shifting or falling material that could damage below ground facilities.

SECTION 6. Damage to facilities - Penalty.

1. a. If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible. When the operator receives a damage notice, the operator shall dispatch, as soon as reasonably possible,

personnel to the damage area to investigate. If the damage endangers life, health, or property, the excavator responsible for the work shall take immediate action to protect the public and property and to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and taken charge of the damaged area.

- b. An excavator shall delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. The repair of damage must be performed by the operator or by qualified personnel authorized by the operator.
 - c. An excavator who knowingly damages an underground facility and who does not notify the operator as soon as reasonably possible or who backfills in violation of subdivision b is guilty of a class A misdemeanor.
2.
 - a. If an excavator damages an underground facility, the excavator is liable for all damages to the facilities and must reimburse the operator for the cost of repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees.
 - b. Reimbursement to the operator is not required if the damage to the underground facility was caused by the sole negligence of the operator or the operator failed to comply with sections 3 and 4 of this Act.
 3. It is prima facie evidence of the excavator's negligence in a claim for relief if damage to the underground facilities of an operator resulted from excavation and the excavator failed to give an excavation notice under section 4 or provide support as required by section 5.

SECTION 7. Effect on local ordinances. A person with a permit for excavation from the state or a local governmental unit is subject to this chapter. This chapter does not affect or impair local ordinances, charters, or other provisions of law requiring permits to be obtained before excavating.

SECTION 8. REPEAL. Sections 11-18-17, 11-18-18, and 11-18-19 of the North Dakota Century Code and sections 11-18-16 and 11-18-20 of the 1993 Supplement to the North Dakota Century Code are repealed.

SECTION 9. EFFECTIVE DATE. Sections 2, 4, 6, 7, and 8 of this Act become effective on August 1, 1997. Beginning August 1, 1996, operators and excavators shall plat locations and provide information to the board and the one-call notification center to enable the one-call notification center to begin operating on August 1, 1997.

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