MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2227

2001 SENATE POLITICAL SUBDIVISIONS

SB 2227

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2227

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date January 26,2001

Tape Number	Side A	Side B	Meter #
1	x		20.0-30.5

Committee Clerk Signature Mary Jo Wocken

Minutes:

The hearing was opened on SB2227, relating to damages to underground facilities.

SENATOR HEITKAMP: Prime sponsor of SB2227. Spoke in favor of this bill. Fours year ago we put together a thing called "North Dakota One Call", which was a huge step. One call center was something that we were cautiously optimistic about, we didn't know where that might go, and yes there are some things that need to be worked out, in one call and how that service is delivered. But when it comes to the statute and codes about who's is liable for certain damages and when the industry comes to me with concerns, and will speaking to the committee soon, and this is one of the considerations we need to look at.

SENATOR COOK: A week ago I read this bill, if this bill passes, there would be less times in which the excavator was held responsible for damage. Is that correct? SENATOR HEITKAMP: Less times in which the excavator would be held? It depends upon who is at fault. Right! That's' what were really getting at here. I think its probably more times. That's kind of how I read it, but

take a look at it and see what you do. What it does, is clearly defines in law. I do think when you speak to the industry, I hope we have a good understanding. Certain basic things that need to be worked out and this bill does address this issue. If you goof up, who's paying.

DAN KUNTZ, Qwest Corporation. Spoke in support of this bill. See attached testimony. Gave explanation of handout.

SENATOR MATHERN: I am familiar with ' one call' from last session, but how are the markings done? Is it a marker, paint, what? DAN KUNTZ: There are people here much more expertise than I do, I think it depends on the circumstances and the company may have different preferences depending where there at. Sidewalk or street, paint. Out in a field, perhaps wire.

Hearing Closed on SB2227.

February 1, 2001 (Tape 1, Side B Meter # 8.0-10.1)

Senator Cook resumed the committee to discuss SB 2227. SENATOR MATHERN: There was no opposition to the bill. It seemed to make a lot of sense that the person who do diligence with one call center would be liable for damages. Senator Cook, further comments?

Senator Flakoll moved for a Do Pass on SB2227

Senator Mathern 2nd

Any Discussion. Roll call vote: 8 Yea, 0 No, 0 Ab

Carrier: Senator Flakoll

Date: February 1, 2001
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2227

Senate Political Subdivisions Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Flakoll Seconded By Sen. Mathern

Senators	Yes	No	Senators	Yes	No
Senator Cook	✓		Senator Christenson	✓	
Senator Lyson	✓		Senator Mathern	✓	
Senator Flakoll	✓		Senator Polovitz	✓	
Senator Lee	✓				
Senator Watne	✓				

Total (Yes) 8 No 0

Absent 0

Floor Assignment Senator Flakoll

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

REPORT OF STANDING COMMITTEE (410)
February 1, 2001 12:55 p.m.

Module No: SR-19-2101
Carrier: Flakoll
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2227: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **DO PASS** (8 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2227 was placed on the Eleventh order on the calendar.

2001 HOUSE POLITICAL SUBDIVISIONS

SB 2227

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2227

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date 3-9-01

Tape Number	Side A	Side B	Meter #
1	xx		1800--3020
Committee Clerk Signature			

Minutes: Chair Froseth opened the hearing on SB2227 relating to damages to underground facilities.

Sen. Joel Heitkamp, Dist 27 : prime sponsor of bill. I work in the water industry. We put in hundreds of mile of pipes per year. How the one call works for us is a major issue. This bill is here to address a liability issue and to define who is responsible. To get rural water places, there is lots of digging involved. We have had good legislation prior that has helped this issue. This bill will just make the one call legislation better.

Chair Froseth : Like any new program, it takes awhile for people to get use to it. The industry has done a good job getting the numbers out for the one call to work.

Dan Kuntz, Qwest Corp. : (2125) testified in support. **(SEE ATTACHED)** This bill makes the burden on the excavator liable to prove if utilities were wrong in marking or not marking. If they can't show this, they are in the wrong. If you don't dig within 10 days of the area marked, you have to call and get it marked again.

Rep. Delmore : (2609) Does a job have to be completed within the 10 days?

Dan : No, just the excavation must begin before the 10 days. If they haven't used the markings be then, they have to be remarked.

Rep. Kretschmar : Under current law, is it necessary for the court to determine which parties is negligent? Are they both or is there a percentage.?

Dan : I'm not sure how this will be interpreted. Might be a problem between section 2 and 3.

Chair Froseth : Any further testimony for or against? Hearing none, SB2227 is closed. What does committee wish?

Rep. Maragos : **I move a DO PASS.**

Rep. Ekstrom : **I second.**

VOTE: 13 YES and 1 NO with 1 absent. PASSED. Rep. Maragos will carry the bill.

Date: 3-9-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2227

House POLITICAL SUBDIVISIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Maragos Seconded By Rep. Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓		Rep. Wayne W. Tieman	✓	
Vice-Chair Dale C. Severson	✓				
Rep. Lois Delmore	✓				
Rep. Rachael Disrud	✓				
Rep. Bruce Eckre	✓				
Rep. Mary Ekstrom	✓				
Rep. April Fairfield	AB				
Rep. Michael Grosz	✓				
Rep. Jane Gunter	✓				
Rep. Gil Herbel	✓				
Rep. Nancy Johnson	✓				
Rep. William E. Kretschmar	✓				
Rep. Carol A.Niemeier	✓				
Rep. Andrew G. Maragos					

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep. Maragos

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

REPORT OF STANDING COMMITTEE

SB 2227: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2227 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

SB 2227

Before the
Senate Political
Subdivisions Committee
Presented by Dan Kuntz

TESTIMONY OF QWEST CORPORATION ON SENATE BILL NO. 2227

Qwest Corporation supports Senate Bill No. 2227. This Bill will clarify an inconsistency in the current one-call excavation laws regarding the legal standard for recovering repair costs when an underground utility is damaged by an excavator.

Prior to the one-call excavation laws that became effective in 1998, a utility could recover the cost of repairing its facilities if the facilities had been located and marked accurately. (See Section 11-18-19 attached). Subsection 2 of section 49-23-06 of the current one-call excavation laws also makes the excavator strictly liable for damages to underground facilities that were properly located by the utility unless the utility was negligent or failed to comply with the one-call laws. In other words, the burden is on the excavator to prove the utility was at fault.

Unfortunately, subsection 3 of section 49-23-06, provides that "it is prima facie evidence of the excavator's negligence" in a claim for damage to the underground facilities, if the excavator failed to give an excavation notice or provide support for the facilities as required by the one-call laws. This reference to "negligence" implies that the utility owner is required to prove the contractor was negligent. Consequently, while subsection 2 of the law puts the burden on the excavator to prove the utility was at fault, subsection 3 puts the same burden on the utility. Subsection 3 also implies that even if the excavator doesn't follow the one-call laws, the utility owner can't recover without proving negligence.

Although violation of the one-call statutes is prima facie evidence of negligence, it does not conclusively establish negligence. Therefore, even though the excavator may have violated the one-call statutes, it can argue that it should not be liable for all or part of the cost of repair because it acted reasonably or that someone else contributed to cause the damages.

For example, the one-call statute prohibits an excavator from relying upon a locate marking that's more than 10 days old. Therefore, if the excavator delays the excavation it must have the utility owner come back and remark the facilities after 10 days. If the excavator ignores this requirement and instead relies upon old markings and the facilities are damaged , the excavator can argue that even though the markings were old, it was not negligent because it didn't see the markings or they were incorrect. Of course, after the excavation has occurred it is difficult for the utility to prove the markings were correct. Even though the excavator violated the one-call statutes, the utility could be forced to prove negligence which is more complicated and expensive because it may require the use of expert witnesses and evidence that has usually been destroyed.

Senate Bill 2227 corrects this confusion by making the excavator liable for any damages caused by the failure to comply with the one-call notice system and for damages to the underground facilities unless, as provided under the prior law, the damage is caused by the sole negligence of the utility in failing to comply with the requirements of the one-call excavation system. Qwest believes this was the original intent of the one-call excavation law and requests the Committee's favorable consideration of Senate Bill 2227.

Marking facilities correctly

locations and provide information to the board and the one-call notification center to enable the one-call notification center to begin operating on March 1, 1998."

11-18-19. (Repealed effective March 1, 1998) Injury or damage to the facility — Civil cause of action. When the notice required by section 11-18-16 has been filed, any person conducting any digging, grading, leveling, excavating, blasting, or similar operations on the lands described in the notice who fails to request the accurate location of the facilities as herein provided, or who, having had such facilities accurately located for the person, injures or damages the facilities, shall be civilly liable for all damages to the facilities and for all damages for 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. **(Repealed by S.L. 1995, ch. 455, § 8, effective March 1, 1998.)**

Source: S.L. 1973, ch. 98, § 4; 1983, ch. 155, § 1; 1997, ch. 402, § 2.

Note.

Section 9 of chapter 455, S.L. 1995, as amended by section 2 of chapter 402, S.L. 1997, provides: **"EFFECTIVE DATE.** Sections 2, 4, 6, 7, and 8 of this Act become effective on March 1, 1998. 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 March 1, 1998."

11-18-20. (Repealed effective March 1, 1998) Card to be used in submitting information to county registers of deeds. The written notice of the location of buried transmission facilities required in section 11-18-16 to be given to the county register of deeds' office in the county wherein the facilities are located shall be submitted on a white, eight-inch by five-inch [20.32-centimeter by 12.7-centimeter] card suitable for use in a file maintained for the same by the county register of deeds. The card shall contain labeled spaces for: the name, address, and telephone number of the person, firm, association, corporation, or limited liability company owning or controlling the buried facility; the date the card is submitted; a description of the type of buried facility; the township number, township name if any, quarter section location, section number, range number, and city name; a grid showing the thirty-six sections within that particular township, each section having a separate quarter square within the grid; and the phrase, "This information was submitted on this card by the owners or controllers of the buried facility in question. The county register of deeds assumes no responsibility for the accuracy of the information contained on this card." The location of the facilities will be indicated on these cards by the owners or controllers of the facilities by placing an "X" through the appropriate quarter section on the grid mentioned above. These cards shall be furnished by the owners and controllers of the buried facilities. Questions concerning the uniformity of these cards shall be decided by the secretary of state. **(Repealed by S.L. 1995, ch. 455, § 8, effective March 1, 1998.)**

Source: S.L. 1973, ch. 98, § 5; 1979, ch. 169, § 3; 1993, ch. 54, § 106; 1997, ch. 402, § 2.

Note.

Section 9 of chapter 455, S.L. 1995, as amended by section 2 of chapter 402, S.L. 1997, provides: **"EFFECTIVE DATE.** Sections 2, 4, 6, 7, and 8 of this Act become effective on March 1, 1998. 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 March 1, 1998."

3-9-01

Before the
House Political
Subdivisions Committee
Presented by Dan Kuntz

TESTIMONY OF QWEST CORPORATION ON SENATE BILL NO. 2227

Qwest Corporation supports Senate Bill No. 2227. This Bill will clarify an inconsistency in the current one-call excavation laws regarding the legal standard for recovering repair costs when an underground utility is damaged by an excavator.

Prior to the one-call excavation laws that became effective in 1998, a utility could recover the cost of repairing its facilities if the facilities had been located and marked accurately. (See Section 11-18-19 attached). Subsection 2 of section 49-23-06 of the current one-call excavation laws also makes the excavator strictly liable for damages to underground facilities that were properly located by the utility unless the utility was solely negligent or failed to comply with the one-call laws. In other words, the burden is on the excavator to prove the utility was at fault.

Unfortunately, subsection 3 of section 49-23-06, provides that "it is prima facie evidence of the excavator's negligence" in a claim for damage to the underground facilities, if the excavator failed to give an excavation notice or provide support for the facilities as required by the one-call laws. This reference to "negligence" implies that the utility owner is required to prove the contractor was negligent. Consequently, while subsection 2 of the law puts the burden on the excavator to prove the utility was at fault, subsection 3 puts the same burden on the utility. Subsection 3 also implies that even if the excavator doesn't follow the one-call laws, the utility owner can't recover without proving negligence.

Although violation of the one-call statutes is prima facie evidence of negligence, it does not conclusively establish negligence. Therefore, even though the excavator may have violated the one-call statutes, it can argue that it should not be liable for all or part of the cost of repair because it acted reasonably or that someone else contributed to cause the damages.

For example, the one-call statute prohibits an excavator from relying upon a locate marking that's more than 10 days old. Therefore, if the excavator delays the excavation it must have the utility owner come back and remark the facilities after 10 days. If the excavator ignores this requirement and relies upon old markings and the facilities are damaged , the excavator can argue that even though the markings were old, it was not negligent because it didn't see the markings or they were incorrect. Of course, after the excavation has occurred it is difficult for the utility to prove the markings were correct. Even though the excavator violated the one-call statutes, the utility could be forced to prove negligence which is more complicated and expensive because it may require the use of expert witnesses and evidence that has usually been destroyed.

Senate Bill 2227 corrects this confusion by making the excavator liable for any damages caused by the failure to comply with the one-call notice system and for damages to the underground facilities unless, as provided under the prior law, the damage is caused by the sole negligence of the utility in failing to comply with the requirements of the one-call excavation system. Qwest believes this was the original intent of the one-call excavation law and requests the Committee's favorable consideration of Senate Bill 2227.