

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

1384

2005 HOUSE POLITICAL SUBDIVISIONS

HB 1384

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1384

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date January 27, 2005

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|------------|
| 3 | x | | 0.2 to end |
| 3 | | x | 0.1 to 6.0 |
| | | | |
| Committee Clerk Signature <i>Lauren B. Fife</i> | | | |

Minutes: **Rep. Devlin, Chairman** opened the hearing on HB 1384, A Bill for an Act to create and enact a new section to chapter 47-05 of the North Dakota Century Code, relating to public utility easements.

Rep. Robin Weisz representing District 14 and prime sponsor of HB 1384 explained that the primary reason for the bill was required utilities to identify and define their easements across private property. Rep. Herbal, Vice Chairman cited an example of a pipeline that is about to be built and the constructing company having an old 'blanket' easement dating back to the '40's believes they have right to construct the pipeline today across that land. The old easement does not show entry nor exit points nor the width of the easement as it is for the entire parcel. Often second and third generation owners have no idea of what easements may exist. Rep. Weisz would have the companies survey, define, describe and record there easements including directional changes and widths acreage -- whatever would clearly define the easement. The bill is almost and exact copy of a current Minnesota law which is in use and has been tested. One of

problems with not correcting the present day situation is not only the retroactive use of old easements but the problem will continue to compound. With GPS and better surveying methods the easements can be surveyed quickly and accurately.

Rep. Koppelman (5.6) Inquired whether companies could sell easements without going back to the landowners.

Rep. Weisz : Yes and the new owner must adhere to the terms of the easement.

Further discussion -- question and answers covered a wide range of topics as plats, vacation of easements, filing requirements, etc.

Brian Kramer representing the ND Farm bureau said they support parts of the bill and had questions about other parts of the bill. They saw nothing wrong with define and delineating things like wet lands, various features and the like. They had problems with section 4 of the bill saying that the 30 day default feature didn't allow for vacation, reasons of health, accidents and many other things that maybe valid reasons the landowner couldn't respond within that short time.

Rep. Zaiser (14. 7) Asked several questions about the type of surveys needed , I. E. Metes and bounds and meandering alignments which Brian Kramer responded to.

Brian Kramer testimony end (16.4)

David Crothers representing the North Dakota Association of Telecommunications cooperatives urged a 'Do Not Pass' for the bill. Citing the cost of going back 30, 40 or 50 years and redoing surveys, finding owners, paying for surveys and paying today's prices and filing fee would cost in the hundreds of millions of dollar and not very doable. A copy of his written and prepared

testimony is attached. His testimony and discussion with committee members continued to (34. 4) on the tape.

Dean Anagost a professional Land Surveyor representing Kadrmas lee and Jackson Engineers testified as to their experience and to a lot of the details required of surveys and plats. It is his belief that the landowners share some responsibilities as well. His testimony ended at (45.9).

Larry Bontjes , Construction Supervisor/Engineer for the Red River Rural Telephone Association testified against HB 1384 . While he gave reasons, he also showed that by his calculations it would cost his organization \$240,000 if this bill were to pass. A copy of his written remarks and calculations is attached.

Clifford Kellar appeared to present the testimony of the ND State of Registration for Professional Engineers and Land Surveyors president Dr. Lawrence Woodbury. A copy of these written comments is attached.

Side A Tape 3 ended.

Testimony - HB 1384 continued on Side B Tape 3.

Mick Grosz representing the West River Telephone Co-op stepped forward to state his opposition to the bill.

Larry Smith a registered Professional Land Surveyor appeared to explain several points about easement surveys. One of his points was that a survey monument if a witness to a corner. The following persons wish to testify in opposition to the bill but handed in copies of their statements: A copy of each one is attached. They are:

Donald Franklund, General Manager - Mor-Gran-Sou Electric Co-op

Martin Dahl, Service Area Manager for Verendrye Electric Co-op

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House Political Subdivisions Committee
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Michelle berry - Dakota Valley Electric Cooperative

Kathy Aas, Xcel Energy

Dennis Boyd - - MDU Resources Group Inc.

Jack McDonald, North Dakota Cable Television Association.

There being no further testimony **Rep.Devlin, Chairman** closed the hearing on HB 1384.

End (6.0) .

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1384 b

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 3, 2005

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|------------|
| 1 | x | | 0.3 to 3.1 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Lauren B. Zink</i> | | | |

Minutes: In work session **Rep. Devlin, Chairman** opened the discussion for action on HB 1384.

This bill was held open for the prime sponsor Re. Weisz to contact his constituent for some more information for the committee. Rep. Weisz stated that his constituent was advised that the bill was in trouble without a lot of amendments. Rep. Herbal, Vice Chairman advised dropping the bill rather than continue. **Rep. Herbal, Vice Chairman** moved a 'Do Not Pass' motion for the bill. **Rep. Maragos** seconded the motion. On a roll call vote the motion carried **8 Ayes 0 nays and 4 absent**. **Rep. Herbal, Vice Chairman** was designated to csrry the bill on the floor.

Edn of record (3.1).

Date: February 3, 2005
Roll Call Vote:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1384

House POLITICAL SUBDIVISIONS

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Not Pass

Motion Made By

Rep. Herb

Seconded By

Rep Maragos

| Representatives | Yes | No | Representatives | Yes | No |
|----------------------------|-----|----|-----------------|-----|----|
| Rep. Devlin, Chairman | ✓ | | Rep. Ekstrom | A | |
| Rep. Herbel, Vice Chairman | ✓ | | Rep. Kaldor | ✓ | |
| Rep. Dietrich | A | | Rep. Zaiser | ✓ | |
| Rep. Johnson | ✓ | | | | |
| Rep. Koppelman | A | | | | |
| Rep. Kretschmar | ✓ | | | | |
| Rep. Maragos | ✓ | | | | |
| Rep. Pietsch | ✓ | | | | |
| Rep. Wrangham | A | | | | |
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| | | | | | |
| | | | | | |

Total (Yes) 8 No 0

Absent 4

Floor Assignment

Rep. Herbel

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

REPORT OF STANDING COMMITTEE (410)
February 3, 2005 12:08 p.m.

Module No: HR-23-1764
Carrier: Herbel
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1384: Political Subdivisions Committee (Rep. Devlin, Chairman) recommends DO NOT PASS (8 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). HB 1384 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

HB 1384



NORTH DAKOTA ASSOCIATION OF TELECOMMUNICATIONS COOPERATIVES

P.O. Box 1144 • Mandan, ND 58554
Phone 701-663-1099 • Fax 701-663-0707
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HOUSE BILL 1384

HOUSE POLITICAL SUBDIVISIONS COMMITTEE

JANUARY 27, 2005

DAVID CROTHERS NORTH DAKOTA ASSOCIATION OF TELECOMMUNICATIONS COOPERATIVES

My name is David Crothers from the North Dakota Association of Telecommunications Cooperatives. The Association represents all of the cooperative and independent telephone companies in the State. Those companies serve over 164,000 homes and small businesses and approximately 96 percent of the geographic territory of North Dakota.

House Bill 1384 requires public utilities to "definitely and specifically" describe every single easement the utility has ever received throughout the company's existence or does receive in the future.

There are two options for meeting the requirements of House Bill 1384: A utility may either record the specific legal reference points of the entry, exit, width and change of direction of the easement; or, it may attach a drawing to the document recorded at the courthouse that is drawn to scale. Regardless of the options, the description must be measured from the "corners of the specific property."

Members of the Association believe that House Bill 1384 is unreasonable, unworkable and punitively expensive. Our locally-owned telecommunications companies would face crippling costs if forced to comply with the mandates of House Bill 1384.

House Bill 1384 has been drawn to fix problems that were created 40, 50, 60 years ago and longer. What constitutes a problem today wasn't many, many years ago when landowners were thankful for the new service these utilities provided and descriptions

often only referred to a specific quarter of land. Unlike today, the easements weren't drawn or placed as narrowly as they were when farmers or other landowners asked the telephone company to take the line around a shelter belt or a slough that existed then or even a haystack.

In many cases the easements from yesteryear are not recorded. It was not uncommon for our rural members to prefer a handshake to a contract. In many cases the landowner would not sign a contract. He said his word was good enough.

For example, Consolidated Telcom Cooperative, which serves southwestern and western North Dakota have 635 easements in the Regent exchange. It is their opinion that just 32 are either recorded or recordable under today's standards.

Consolidated Telcom estimates that they have approximately 6,500 easements throughout their service territory and, that under the best scenario, only 1,300 of them are recordable.

The descriptions on easements from that era would not be acceptable to either landowner or utility today. But they are what they are.

To comply with House Bill 1384 by attempting to go back and surveying the land, getting landowner approval, meeting the requirements of a "definite and specific" description would be phenomenally expensive.

Simply adding a "definite and specific" description, as required by House Bill 1384, does not make the document recordable, however. The Association believes that the entire agreement will have to be rewritten and reexecuted by both the landowner and the utility. We believe that this legislation does not contemplate the predicament placed upon utilities when a landowner refuses to sign or wants additional compensation to re-sign what was a legal easement before this bill was passed.

Northwest Communications Cooperative, which serves members in 300 townships in the northwestern part of the State, received an estimate from its attorney that it will cost them approximately \$760,000 if the company has to meet the requirements of House Bill 1384 on just 30 pieces of property in each of their townships. The manager, Dwight Schmitt, believes the \$760,000 figure is extremely conservative. The company only has 4,800 subscribers to pay that three-quarters of a million dollar assessment if House Bill 1384 is passed.

Second, Section 6 of the legislation provides that, "This section does not require a public utility to physically locate, establish, and monument by means of a land survey prepared by a licensed land surveyor the corners of the specific property involved."

The Association has been advised that it is impossible to give the description mandated in this legislation without that exact survey House Bill 1384 absolves the telephone company from completing in Section six.

The plain language in Section 2 requires that each easement must have "specific legal reference points as to the location of the easement in relation to the corners of the specific property." The legislation places the telephone company in an untenable position by requiring it to provide a legal description without the professional surveyor establishing the "corner of the specific property involved." Without a survey our member companies are just estimating or guessing where property corners are. We have no ability to ascertain the "legal corner" of a piece of property without a survey.

Finally, the Association believes that there will be attempts to "fix" House Bill 1384 or to make it prospective...making the provisions of the legislation effective only after a certain date in the future. We urge you to reject those efforts.

There is nothing that can be done about the easements that were acquired by public utilities a generation ago without tremendous expense and the waste of thousands of hours by our company's employees. Those easements are just not recordable by today's standards.

But just as expansive as those easements are from earlier generations, they are specific today. Both landowners and utility companies are acutely aware today of the value of easements, the easement's effect on property values and both parties have a mutual interest in making them as narrow as possible. The problems of the past do not exist today.

Nor do we believe that using a Global Positioning System coordinate will provide the exact location that landowners, utilities and excavators must have to ascertain the location of an easement. GPS models range in price from \$100 to \$150,000 and more. The least expensive models are commonly "off" by 10 to 100 feet from previously established coordinates. Regardless of

the magnitude of the error, we know that it will not be exact and will, therefore, be unreliable for those that want to locate an easement.

Also, there is no reason for a landowner in North Dakota to not know where utility companies have their facilities. Several sessions ago this body adopted the provisions of North Dakota One Call, which obligates utilities to mark their facilities with color-coded flags, which denote the type of facilities beneath the surface, when a landowner or someone working on the property requests it.

Once again, House Bill 1384 is not needed. The problem does not exist for easements acquired today and it will not solve the problem of easements acquired many years ago without the expenditure of millions and millions of dollars.

Members of the Association urge a Do Not Pass recommendation on House Bill 1384.

Penalties for Tax Directors if they violate disclosure of confidential information under HB 1242

The penalty for a public servant refusing to perform a duty is a class A misdemeanor. The maximum sentence is one year in jail and a two thousand dollar fine. The penalty is found at NDCC 12.1-11-06.

Richard Riha, Burleigh County States Attorney

Penalties for Real Estate Licensees if they violate disclosure of confidential information under HB 1242

43-23-11.1 Investigations, grounds for refusal, suspension or revocation of license – Hearing – Appeal

1. The commission upon its own motion may, and upon the verified complaint in writing of any person shall, investigate the activities of any licensee or any person who herself or acquires or intends to acquire any interest in or any option to purchase property which has been listed with the licensee's office for sale or lease.

V. Any other conduct, whether of the same or of a different character then specified in this subsection, which constitutes dishonesty or fraudulent conduct, whether arising within or without the pursuit of that person's licensed privilege.

W. Any conduct which in the determination of the commission does not meet the generally accepted standards of expertise, care, or professional ability expected of real estate brokers or salespersons, provided that any disciplinary measures by the commission under this subdivision must be limited to the issuance of a letter of reprimand to the offending licensee.

Penalties for Appraisers if they Violate disclosure of confidential information under HB1242

ARTICLE 101-03.1

DISCIPLINARY MATTERS

CHAPTER 101-03.1-01

UNPROFESSIONAL CONDUCT

101-03.1-01-01. Unprofessional Conduct. Any of the following acts and omissions constitutes a violation of the standards of professional appraisal practice and are grounds for disciplinary action;

Violation of the confidential nature of individual, business, or governmental records to which a licensee or permittee gained accesses through employment or engagement as an appraiser.

Response to House Bill 1384

The following are comments about the proposed house bill 1384, starting with a little history about the companies and the patrons they work with, who often times were the grantors of the easements in question.

A lot of the Telephone and Power utilities as well as other utilities started as Co-Ops Or Independent companies. Often times new, needed services were provided to rural areas and the need to keep the costs down were very important to the survival or well being of the projects.

The landowners were often patrons of the Co-Ops or independent companies and readily agreed to allow placement of poles and cables to provide the services. Easements were fairly easy to receive, albeit some people were offended by an easement agreement, as they would let you know that there word was good enough and an easement was not necessary as far as they were concerned.

The new easements received at that time were written very non-specific, with little route description. Often time's routes were worked out with the property as they, and the various utilities came to mutual agreements. The drawback to that kind of agreement, it is very difficult to identify as built routes without extensive survey costs. There are few or no easy reference points. Often times parties mutually agreed to go around things such as sloughs, hay stacks, equipment and even went cross-country sometimes.

The route on the easements was maybe non-specific but if there was any other issues such as don't cut the fences, don't go thru the trees or references to crop damages they were often identified on the easements. Those issues were often more important to the property owner than the route itself.

It's one thing to write new easements with the Section 1 subsection 2 a and b rules applied and record the new easements. It's a whole new story to get new specific easements on the same properties of the old existing easements. In the past generation or so, the land that was originally owned by a husband and wife, probably a patron at the time, has been passed along to the siblings or trusted to a specific group. This makes signing new easements a very time consuming and tedious task, let alone very costly, as easements get mailed around the country for notarized signatures. The original easement may have had one or two signatures and a new one now could have many more signatures required. (Very rarely does one individual in a multi party property have the right to sign with power of attorney. They may have power of attorney to take care of day-to-day business, lease agreements, government agreements but can't sign easements).

Page 2 House Bill 1384 Comments

The other issue for the new easements signatures by the sibling, they no longer live here and aren't to interested in signing an agreement unless there are some financial rewards, and that cuts into very thin and growing thinner margins for the rural companies directed to provide the critical services into rural America.

Many of the original easements written 30 to 50 years ago or more probably were recordable then but may not be recordable by today's rules at the various courthouses.

There are other options to help out with the route description and that would be via a partial release. The partial release allows the change to be made and recorded by the utility making the exact location more clear. This is done on occasions for things like trailer courts being sold off as lots instead of being run as a court or plotting or sub division of real estate is another example. This does come with some time and expense but doesn't require a new easement. May require some surveying to be done.

Section 1 Sub section 5 references these rules apply to all easement no matter when acquired or created. The cost to make these changes to all the easements if they were recordable is astronomical. Recording costs alone are in the tens of thousands of dollars even for a small company. Recording costs vary by county from \$17.00 per document and up in our area.(assuming the document is recordable). There also is all the time it takes to locates all the cable and define an accurate route for the document.

Section 1 Sub section 6 does reference it is not required to hire a surveyor to identify the routes. These are commonly done by references to section lines or existing road centerlines. GPS may make that a little easier today.

Comments by

Larry Bontjes
Construction Supv/Engineer
Red River Rural Telephone Assn.

Jeff

More info for HB 1384 and it's cost potential

Following are some quick numbers if all the Telephone easements had to be recorded with a specific route. Note this is only the ND side of the river and only the Telephone portion, a majority of the Telecom easements are recorded and mostly route specific.

In a quick count of easements in the Telephone portion, ND only there are approximately 800 easements. Following are some assumptions:

| | |
|--|----------|
| Drive out to Location, Locate cable ½ mile aprox 1 hour (assumes 1 cable) | \$50.00. |
| Research current property owners | \$30.00 |
| Prepare easements w/ specific route ½ hr | \$25.00 |
| Make phone calls to property owner, line up Appointments, get signatures Est 3-4 hours This will also vary greatly with the number of Signatures Required on the Document | \$175.00 |
| Recording fees assuming an average cost of \$20.00 per document | \$20.00 |

| | |
|-----------------------------|----------|
| Total Est cost per Easement | \$300.00 |
|-----------------------------|----------|

$\$300.00 \times 800 \text{ Easements} = \$240,000.00$

The times used are estimates and may vary depending on the complexity of the easement and the routes.

If you need more info please let me know.

Larry Bontjes



North Dakota State Board of Registration for Professional Engineers and Land Surveyors

721 West Memorial Highway • P.O. Box 1357 • Bismarck, ND 58502
701-258-0786 • FAX 701-258-7471

January 27, 2005

House Political Subdivision Committee

Chairman William R. Devlin
Vice Chairman Gil Herbel
Representative Donald Dietrich
Representative Mary Ekstrom
Representative Nancy Johnson
Representative Lee Kaldor
Representative Kim Koppleman
Representative W. E. Kretschmar
Representative Andrew Margos
Representative Vonnie Pietsch
Representative Dwight Wrangham
Representative Steven Zaiser

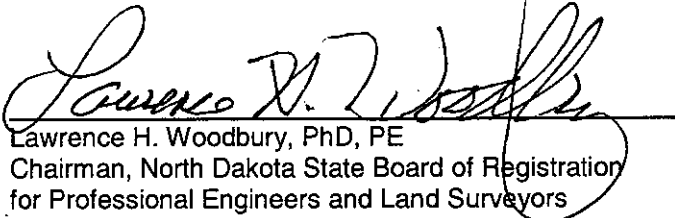
1 The North Dakota State Board of Registration for Professional Engineers and Land Surveyors
2 held a meeting on January 27, 2005 and reviewed the text of House Bill No. 1384. By a
3 unanimous vote of its members the Board congratulates the sponsors of House Bill No. 1384 for
4 proposing legislation that directly moves toward protection of the property interests of the people
5 of North Dakota. The Board believes the concept of this bill will be of benefit to the public as well
6 as the utility companies and other interested parties.

7
8 However, as written, House Bill No. 1384 is in conflict with North Dakota Century Code Ch. 43-
9 19.1-02 (4). This statute defines the practice of Land Surveying. Please note that "Land
10 Surveying" is defined as "...any service comprising the determination of the location of land
11 boundaries and land boundary corners; incidental topography; the preparation of maps showing
12 the shape and area of tracts of land and their subdivision into smaller tracts; the preparation of
13 maps showing the layouts of roads, street, and rights of way of same to give access to smaller
14 tracts; and the preparation of official plats or maps of said land thereof within this state."

15
16 Throughout the entire text of House Bill No. 1384, requirements pertaining to locating and
17 adequately describing certain easements are presented. These activities clearly fall within the
18 already existing statutory definition of Land Surveying. However, item number 6 on page two of
19 House Bill No. 1384 specifically excludes "...a public utility to physically locate, establish, and
20 monument by means of a land survey prepared by a licensed land surveyor the corners of the
21 specific property involved."

1 Land boundaries and accurate legal descriptions are an integral part of the protection of the
2 property interests of the general public as well as business interests. The North Dakota
3 legislature has already determined that the performance of these activities requires an individual
4 who has demonstrated adequate knowledge and is licensed to perform such duties. House Bill
5 No. 1384, as written, circumvents these requirements. Although the North Dakota State Board of
6 Registration for Professional Engineers and Land Surveyors, by unanimous vote of its members,
7 offers firm support for the concept of House Bill No. 1384, it must oppose this bill as written.

Sincerely,


Lawrence H. Woodbury, PhD, PE
Chairman, North Dakota State Board of Registration
for Professional Engineers and Land Surveyors

Testimony of Don Franklund, General Manager

Mor-Gran-Sou Electric Cooperative

In opposition to HB1384

January 27, 2005

Good Afternoon,

My name is Don Franklund, General Manager of Mor-Gran-Sou Electric Cooperative located in Flasher, ND. I am here to speak in opposition to House Bill 1384 relating to public easements.

Mor-Gran-Sou is a medium size, member-owned electric cooperative in North Dakota. We provide electricity to 6,500 consumers in Morton, Grant and Sioux counties. This electricity is delivered through more than 3,800 miles of power line. Within our service area, we have some of the most poverty stricken areas in the state.

House Bill 1384 would create added costs for our consumers with very limited benefits in return. Let me try to explain.

Section 1, paragraph 2 states that a public utility may meet the requirement of definite and specific description on an easement by recording "the specific legal reference points as to the location of the easement in relation to the corners of the specific property involved. . ."

The need for legal reference points creates many questions in my mind.

- Does this mean a Licensed Land Surveyor is needed each time an easement is developed to assure a proper legal description? While the proposed legislation does not specifically require it, the conditions it describes clearly make it a possibility. This would be an added cost to the member at the end of the line.
- What happens if the property corners are not marked in some method? Paragraph 6 in Section 1 clearly stipulates that the public utility is not required to locate, establish and monument by means of a land survey prepared by the licensed land surveyor the corners of the specific property involved. If the corners are not marked, it appears that the landowner will need to have the property corners marked. This would be an added cost to the member at the end of the line.
- Currently, Mor-Gran-Sou has more than 7,000 existing easements on file. How many of these landowners will request a definite and specific description as outlined in paragraph 3 of the proposed legislation? In the past many of our existing easements simply stated a Township, Range, Section and Quarter. From time to time a landowner will request additional information for their records and we provide a description to the best of our ability. By requiring our facilities to be tied to legal reference points, House Bill 1384 could become a method for property owners to have their land surveyed at

someone else's expense. This could create a flood of requests from existing property owners that would be an added cost to our co-op members.

The provisions in House Bill 1384 will adversely impact the members of Mor-Gran-Sou, many of whom are among the lowest income residents in the state. Because of this, I ask that the Committee support a "Do Not Pass" recommendation.

Thank you for the opportunity to present this information.

**TESTIMONY OF MARTIN D. DAHL
MINOT SERVICE AREA MANAGER
VERENDRYE ELECTRIC COOPERATIVE
House Bill 1384
January 27, 2005**

Mr. Chairman and members of the committee, my name is Martin Dahl, Minot Service Area Manager for Verendrye Electric Cooperative, Minot, North Dakota. I offer this testimony on House Bill 1384. Verendrye Electric opposes this bill.

Verendrye is provided easements on nearly 200 properties per year. Requiring a surveyed easement requires hiring a Professional Land Surveyor for each project involving an easement. This step will greatly increase our costs on these properties. Surveys can run from \$300 to several thousand dollars depending on how hard it is to find an existing monument to tie the survey to and how much line needs to be surveyed. At \$300 per easement for 200 easements this would amount to \$60,000 per year in increased costs.

It is Verendrye's view that we should not provide a surveyed easement unless the landowner requires it. Verendrye currently does provide surveyed easements when requested. The Dakota Square mall required a surveyed easement as well as some easements on federal land.

The requirement of a surveyed easement for all easements will slow the process for construction of the project in an already short construction season.

Verendrye Electric respectfully requests a DO NOT PASS on this bill.

**Testimony of Michelle Berry,
Dakota Valley Electric Cooperative
In opposition to
House Bill 1384**

Mr. Chairman and members of the Political Subdivisions Committee, my name is Michelle Berry and I am here on behalf of Dakota Valley Electric Cooperative to oppose HB 1384.

I am currently employed as the Marketing and Member Service Manager at Dakota Valley. Dakota Valley serves 4,500 members in the SE corner of ND. Our service area stretches from Wahpeton to Streeter.

As Marketing and Member Service Manager, my position requires me to work with landowners in order to obtain easements. I would like to explain the process that our cooperative takes in obtaining new easements from landowners and working with existing easements. It is a process that has worked well for the cooperative members for many years and we feel that if HB 1384 passes it will become a time consuming and costly process for the members.

Our cooperative is involved in different types of construction including constructing new lines and rebuilding or modifying existing lines. Each type of construction is handled in a different way when it comes to obtaining an easement or exercising an existing easement.

When dealing with new line construction our lineman establishes a proposed route and meets with me on site to review the route. I then contact the landowners and renters who will be affected by the new line to explain the proposed plan of construction. At this point, if the landowner is in agreement with the plan, we usually ask for a blanket easement for the property we will be crossing. This is the process that takes place in the majority of new construction cases. Occasionally, a landowner may question placement

of the proposed line. In this case, I will arrange an on site meeting between our linemen and the landowner to walk through and review the actual placement of the line. After this meeting, the landowner either approves the plan or Dakota Valley makes changes to the proposed plan in order to accommodate the landowner's wishes. Occasionally, we write a more detailed descriptive easement to satisfy the landowner.

When we are rebuilding existing lines, we already have an easement covering the property. If we are rebuilding an existing line, pole for pole, we exercise the existing easement, but we still contact the landowners and renters to notify them of the work that will occur on their property.

If we are modifying an existing line, such as adding an additional cabinet or pole to the line, we will go through the process of acquiring a new easement from the landowner.

The important point is that in no case do we ever continue with a plan the landowner has not approved and, at any time, if a landowner asks to have a more definite and specific description on the easement, the cooperative will accommodate the landowner's wishes.

If HB 1384 passes, it will require us to obtain a detailed descriptive easement in every case, even though it is only necessary in a small percentage of cases. This means that our cooperative will have to spend greater time and money to obtain easements without any corresponding benefit to our members. In summary, we do not believe that subjecting electric cooperatives to the provisions of this bill is necessary.

Thank you for the opportunity to present this testimony on behalf of Dakota Valley Electric Cooperative.

Xcel Energy Testimony
HB 1384
House Political Subdivisions Committee
January 27, 2005

Good afternoon, Mr. Chairman, Members of the Committee. For the record, my name is Kathy Aas, representing Xcel Energy.

Xcel Energy supports the testimony of Otter Tail Power Company and is opposed to HB 1384 in its present form. I'd like to take just a moment to reiterate some of the key concerns we have with this bill:

- Enacting this legislation with a retroactive date is troublesome. We have always been willing to define an easement upon request and we would be willing to do so with all future easements. To perform the tasks of research, surveying and recording documents for all preexisting easements would be time-consuming and costly, a cost ultimately borne by our customers. Even the broad form easements that exist now do not imply that we are able to do whatever we want. Even these broad form easements have general location descriptions and describe the facility to be placed in the easement.

- Secondly, if the intention of this bill is to correct an existing problem, the legislation needs to apply to all utilities operating in the state, not just public utilities.

For those reasons, Xcel Energy opposes HB 1384.

Testimony on HB 1384
Dennis Boyd
MDU Resources Group, Inc.
January 27, 2005

Good afternoon, Mr. Chairman and members of the Committee. For the record, my name is Dennis Boyd. I am with MDU Resources Group, Inc. appearing this afternoon on behalf of our utility division, Montana-Dakota Utilities Co. Montana-Dakota Utilities is opposed to HB1384.

In general terms, we have several problems with HB1384. First and most obviously in Section 1, subsection 1, the bill applies to public utilities as defined in section 49-01-01. Conspicuously absent are rural electric cooperatives, who probably have as many or perhaps more easements in rural areas than do investor-owned companies. I would hope their omission is an oversight and would ask that they be amended into this bill. If this bill is a good idea, then its provisions should apply universally to all companies who obtain easements and have buried facilities.

Subsection 2 requires an accuracy that is often unnecessary in our opinion and will only add additional costs. In order to comply with this accuracy, it would probably be necessary to hire surveyors. GPS units could provide the accuracy, but they are expensive. In addition, my understanding is in order to be defensible in court, easements require a "surveyor's stamp", which is not provided by a GPS measurement. Maybe this bill could be called the "Surveyor's Employment and Security Act of 2005".

Subsection 3 states "the minimum width necessary for the safe conduct of business of the public utility" (line 9). What is the "minimum width" and who will determine it?

Subsection 5 makes the provisions of this bill retroactive to EVERY easement, regardless of when the easement was acquired or obtained. This provision would be extremely time consuming and expensive for Montana-Dakota Utilities as we have many THOUSANDS of utility easements, a good percentage of which are probably 50 or more years old and do not meet the description in subsection 2. As noted earlier, this would provide a lot of work for surveyors and a heavy expense for a utility.

Subsection 6 "does not require a public utility to physically locate the corners of the property (lines 23 and 24). However, in order to be assured your facilities are properly located within an easement, it is necessary to determine the property corners. We have had landowners ask MDU to locate buried facilities so he could determine where the corners of his property were located. Maybe this bill should be amended to require the landowner to provide the utility with the established corners of his property.

That concludes my testimony, Mr. Chairman and members of the committee. We respectfully ask the committee to give HB1384 a DO NOT PASS recommendation.

Thursday, January 27, 2005

HOUSE POLITICAL SUBDIVISIONS COMMITTEE
HB 1384

CHAIRMAN DEVLIN AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing here today on behalf of the North Dakota Cable Television Association. We understand that this bill only covers public utilities. However, we still oppose this bill because we often share the same easements and trenches as these utilities. We urge a do not pass.

This is a bill that tries to solve a problem that really doesn't exist. Under North Dakota's One-Call Law (attached) utilities must give very specific information about the exact location of their lines or other buried utilities. If they don't, they risk damage and interruption of service. So it is in our own best interests to be as exact and specific as possible in locating our lines when asked to do so.

However, it will be adding a considerable burden, and considerable expense, to record and draw maps to the exact specifications required in this bill when that exactitude may never be needed. For example, the exact depth of buried cable shifts with the land, particularly in rural areas. Lines that were 24 inches deep might be higher...or lower...a few years after they are put in. They may have shifted horizontally. That is why the One Call law requires locating, not just giving numbers.

Therefore, we respectfully urge a do not pass.

If you have any questions, I will be happy to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

CHAPTER 49-23
ONE-CALL EXCAVATION NOTICE SYSTEM

49-23-01. Definitions. As used in this chapter, 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 49-23-03.
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 chapter 10-33.
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 governmental 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.

49-23-02. 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 chapter 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 chapter. The center shall furnish to local governmental units:

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

49-23-03. 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 telecommunications 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. 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 by 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 March 1, 1998.

49-23-04. 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 ten days, 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 chapter, 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.

49-23-05. 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 belowground facilities.

49-23-06. 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 fails to comply with this chapter or damages an underground facility, the excavator is liable for all damages caused by the failure to comply with this chapter and 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 under this subsection 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 49-23-03 and 49-23-04.

49-23-07. 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.