

Natural Resources Committee Meeting
 Friday, March 7, 2008
 Roughrider Room, State Capital
 Bismarck, ND

- Ron Ness, Chairman of the NDOC Board and Manager of System Operations at Cass County Electric Cooperative in Fargo.
- The NDOC Board would like to thank the Natural Resources Committee for this opportunity to provide comment on this bill draft and would like to thank the Legislative Council for all their efforts in preparing this bill draft.
- First area of comment is in regard to the proposed removal of the 18" agricultural depth requirement on page # 1, lines 14 & 15; subsection 7 (b) of section 49-23-01. Current State Law requires that agricultural activities that "disturb the soil to a depth of eighteen inches or more" would be subject to One Call notification requirements and the NDOC Board would like to see this 18" requirement retained.
 - The NDOC Board is concerned that removal of the 18" agricultural depth requirement would result in a real safety concern for ND farmers.
 - Definition of "similar operations in connection with agricultural activities", in lines 13 & 14, would be left open to interpretation and therefore is best defined by the 18" depth requirement.
 - Agricultural activities could be interpreted to include such things as, deep subsoil tillage, ditching activities, drain tile installations, fencing, rock and tree removal or burial.
 - Much of the underground facilities throughout the state are located on private right of way and would be at greater risk to damage. There are many locations around the state where underground utilities may not be buried as deep as they should be due to many reasons ranging from shallow installations, erosion and/or man-made removal of topsoil. Underground facilities located along public right of ways can also in the area of routine agricultural activities. Elimination of or any increase in the current 18" agricultural depth requirement would result in greater damage to underground facilities, increased chance of injury or death, and detrimental to the intent of the One-Call Excavation Notice System.
- There are two areas of subsection 7 of section 49-23-01 that the NDOC Board has been wanted to improve.
 - The Board recommends adding "or the crop being planted is not intended to be harvested within 24-months." to the end of line #17 on Page #1, subdivision b of subsection 7. This change is needed to include agricultural tree planting under the One-Call notification requirements.
 - The Board also recommends removing "and landscaping" from line #16 on page # 1, subdivision c of subsection 7. Due to the wide interpretation of landscaping this has been interpreted to include retaining wall installations as well as projects involving significant changes in grade.

- Second area of comment concerns state agency status of the NDOC nonprofit corporation, on page # 2, lines 16, 17, 18 & 19; subsection 4 of section 49-23-03.
 - State agency status is a big change, needed for assessing penalties and for rule making authority.
 - State agency status places the NDOC Board under chapter 28-32 reporting requirements.
 - Board may want to seek legal council to evaluate state agency status and possibly give NDOC enforcement and rule making authority to PSC?
- Third area of comment involves the presumption that only excavators can be subject to penalty and enforcement, as drafted on page # 5, lines 7 & 14; subsection 3 (a) & (b) of section 49-23-06.
 - In addition to the excavator, the NDOC Board recommends the underground facility operator be subject to the penalty and enforcement provisions of this bill.
 - It's true that underground facility operators are also quite often excavators; however, underground facility operators have the added responsibility to comply with the locating requirements in this ND One-Call statute.
- Fourth area of comment is a suggested change on page # 5, line 15; subsection 3 (b) of section 49-23-06.
 - The NDOC Board recommends changing the word "and" to "or" to correct the intent of the language and follow similar language in line 7; subsection 3 (a) of section 49-23-06.
- Fifth area of comment is a suggested change on page # 6, line 8; subsection 4 (a) of section 49-23-06.
 - The NDOC Board recommends adding the language "if any occurred" to the end of line # 8. As currently written there is a presumption of damage to underground facilities; however, damage is not required for a violation.
- Sixth area of comment is a suggested change on page # 7, line 1; subsection 4 (e) of section 49-23-06.
 - This suggested change was missed on the original bill draft presented by the NDOC Board at the Natural Resources Committee Hearing on October 31, 2007.
 - The NDOC Board recommends removing the coma after "amount" and adding the word "of" between the words "amount" and "damage" to correct the intent of this language.
- Seventh area of comment regards a new recommendation by the NDOC Board to add language in subsection 4 (f) of section 49-23-06, on page # 7; that would indicate that if the party requesting a hearing in front of the board is not present at the scheduled hearing, the recommendation of the panel is final.
 - In a recent visit with Larry Englerth, Executive Director of the South Dakota One-Call Board of Directors, the NDOC Board has learned that SD recently added language to their One-Call statute to address a problem SD was having with hearing cancellations, no shows and the added expense of rescheduling.

- Eighth area of comment involves the appropriation of funds addressed on page # 7; subsection 4 (g) of section 49-23-06.
 - The NDOC Board would like to see the appropriation of funds be a continuous appropriation giving the NDOC Board more flexibility in distribution for educational programs, advertisements and penalty recovery expenses.
- Ninth and final area of comment is in regard to the proposed use of collected civil penalties to assist excavators that are unable to pay for damages, on page 7, lines 16, 17 & 18; subsection 4 (g) of section 49-23-06.
 - The NDOC Board recommends the removal of the language proposing the use of collected civil penalties to assist excavators that are unable to pay for damages.
 - The Board feels an excavators inability to pay would be very difficult to determine and create an opportunity for inconsistent and unfair distribution of funds.
 - The Board also feels the use of state funds to financially assist with excavator damage payments may promote an atmosphere detrimental to the one-call excavation system and safe excavation practices.