

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

723A0380

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB1022** - 1/31/97

Introduced by: The Committee on Commerce at the request of the One-Call Notification Board

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the one-call
2 notification system.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 49-7A-2 be amended to read as follows:

5 49-7A-2. The Statewide One-Call Notification Board is established as an agency of state
6 government administered by the Public Utilities Commission and funded solely by revenue
7 generated by the one-call notification center. Any interest earned on money in the state one-call
8 fund shall be deposited in the fund. The money is continuously appropriated to the board to
9 implement and administer the provisions of this chapter. The one-call notification center may be
10 organized as a nonprofit corporation. The one-call notification center shall provide a service
11 through which a person can notify the operators of underground facilities of plans to excavate
12 and to request the marking of the facilities. All operators are subject to this chapter and the rules
13 promulgated thereto. Any operator who fails to become a member of the one-call notification
14 center or who fails to submit the locations of the operator's underground facilities to the center
15 when known, as required by this chapter and rules of the board, shall be assessed a civil penalty

1 by the board of one hundred dollars per month for each month of noncompliance up to a
2 maximum of five hundred dollars. Any penalties which may be assessed by the board under this
3 chapter shall be collected as provided by law and deposited into the one-call fund.

4 Section 2. That § 49-7A-5 be amended to read as follows:

5 49-7A-5. No excavator may begin any excavation without first notifying the one-call
6 notification center of the proposed excavation. The excavator shall give notice by telephone ~~or~~,
7 facsimile, in person, or by other methods approved by the board pursuant to rules promulgated
8 pursuant to chapter 1-26 to the one-call notification center at least forty-eight hours prior to the
9 commencement of the excavation, excluding Saturdays, Sundays, and legal holidays of the state,
10 but not more than ten business days prior to any excavation. Notice to the one-call notification
11 center is notice to each member of the one-call notification center, except in instances when an
12 operator directs the one-call notification center to require the excavator to personally contact
13 the operator. In such instance the center shall furnish the excavator with information necessary
14 to contact the operator. No member is required to accept notification more than ten business
15 days prior to the excavation unless it is ~~by an engineer~~ for planning purposes for projects that
16 may affect the underground facilities. Once notice is given it is effective for the duration of the
17 excavation. However, if the markings made by the operator pursuant to § 49-7A-8 disappear the
18 excavator shall provide notice again as required by this chapter.

19 Section 3. That § 49-7A-6 be amended to read as follows:

20 49-7A-6. The notice shall contain the name, address and telephone number of the person
21 making the notification; the name, address and telephone number of the excavator; the date and
22 time when excavation is scheduled to begin; the depth of planned excavation; the type and extent
23 of excavation being planned including whether the excavation involves tunneling or horizontal
24 boring; and, if applicable, whether the use of explosives is anticipated. Any phone number given
25 by the excavator shall provide access to the excavator during normal business hours. The notice

1 shall also contain location of the excavation by any one or more of the following means:

- 2 (1) A specific street or rural address, which has a numbered address on a marked street
- 3 or avenue that is publicly recorded;
- 4 (2) A reference to a platted lot number of record; or
- 5 (3) A specific quarter section by section, range, township and county.

6 The notice shall also describe the excavation area within each location to minimize any
7 unnecessary locating of underground facilities by an operator. In each notice the excavator shall
8 describe the area to be excavated from landmarks on or near the property, or in lieu of such
9 description, an excavator may indicate in the notice that the excavator will flag or mark the site
10 or boundaries of the excavation. If it is impractical to flag, mark, or describe the excavation, the
11 excavator shall schedule a meeting with the operators to inform them of the extent of the
12 excavation on the site. The one-call notification center may not transmit a notice until the
13 excavator complies with this section.

14 Section 4. That § 49-7A-8 be amended to read as follows:

15 49-7A-8. An operator shall, upon receipt of the notice provided for in §§ 49-7A-5 and
16 49-7A-6, advise the excavator of the location of underground facilities in the proposed
17 excavation area by marking the location of the facilities with stakes, flags, paint, or other clearly
18 identifiable marking within eighteen inches horizontally from the exterior sides of the
19 underground facilities. ~~The location shall be marked using American Public Works Association~~
20 ~~color standards.~~ The operator shall respond no later than forty-eight hours after receipt of the
21 notice, excluding Saturdays, Sundays, and legal holidays of the state or at a time mutually agreed
22 to by the parties. ~~If excavation damage to an underground facility is possible~~ Excavators shall
23 maintain a minimum horizontal clearance of eighteen inches between a marked underground
24 facility and the cutting edge of any mechanical equipment. If excavation is required within
25 eighteen inches, horizontally, the excavator shall expose the facility with hand tools and shall

1 protect and support the facility prior to further excavation with mechanical equipment.

2 Section 5. That § 49-7A-11 be amended to read as follows:

3 49-7A-11. If an excavation is being made in a time of emergency, all reasonable precautions
4 shall be taken to protect the underground facilities. In such a case, the excavator shall give
5 notification, substantially in compliance with § 49-7A-5 as soon as practical, that an emergency
6 exists, and each member shall as soon as practical or no longer than within four hours provide
7 to the excavator all location information reasonably available to the excavator. Any operator who
8 determines that its facilities will not be impacted by the notice, shall immediately notify the
9 excavator that the operator's facilities are clear from the excavation. An excavator requesting a
10 location due to an emergency shall provide the name and the phone number of a person who has
11 knowledge regarding the excavation. Any operator or excavator who violates this section may
12 be assessed a one hundred dollar civil penalty by the board for each violation. Any person
13 requesting a location due to an emergency and the board determines no emergency exists, may
14 be assessed a civil penalty of one hundred dollars by the board.

15 Section 6. That § 49-7A-12 be amended to read as follows:

16 49-7A-12. If any underground facility is damaged, dislocated, or disturbed in advance of or
17 during excavation work, the excavator shall immediately notify the operator of the facility, or,
18 if unknown, the one-call notification center of such damage, dislocation, or disturbance. No
19 excavator may conceal or attempt to conceal such damage, dislocation, or disturbance, nor may
20 that excavator attempt to make repairs to the facility unless authorized by the operator of the
21 facility. The board may assess a one hundred dollar civil penalty against any excavator who
22 violates this section.

23 Section 7. That § 49-7A-16 be repealed.

24 ~~49-7A-16. The provisions of §§ 49-7-5 to 49-7-10, inclusive, do not apply to any person~~
25 ~~who is a member of the one-call notification center.~~

1 Section 8. That § 49-7-5 be repealed.

2 ~~—49-7-5. Any person owning or having control of any pipes, wires, cables or other facilities~~
3 ~~for the transmission of gas, oil, electricity, water, communications or other products or services,~~
4 ~~which are buried beneath the surface of the ground, including areas within the limits of any~~
5 ~~political subdivision, shall give written notice thereof to the office of the register of deeds in the~~
6 ~~county where the facilities are located. This notice shall be submitted on a standard white five~~
7 ~~inch by eight inch card as provided in § 49-7-9. The card shall state the name, address and~~
8 ~~telephone number of the owner or person having control of the facilities, and shall contain a~~
9 ~~description of the location of these facilities by section number, township number, township~~
10 ~~name, if there is one, range number, and name of municipality. Railroads and the state~~
11 ~~department of transportation are not required to file this notice for their facilities buried on their~~
12 ~~rights-of-way, nor are the owners of real property required to file this notice for their facilities~~
13 ~~buried entirely on their property.~~

14 Section 9. That § 49-7-6 be repealed.

15 ~~—49-7-6. The register of deeds of each county where the facilities described in § 49-7-5 are~~
16 ~~buried shall establish and maintain a uniform file system containing the information furnished by~~
17 ~~the owner or person having control of these facilities. This file shall contain listings of buried~~
18 ~~facilities located by section, range, township, and, where applicable, by municipality.~~

19 Section 10. That § 49-7-7 be repealed.

20 ~~—49-7-7. If a notice provided for in § 49-7-5 has been filed in the office of the register of~~
21 ~~deeds, any person intending to conduct any digging, grading, leveling, excavating, blasting, or~~
22 ~~similar activities upon the lands described in the notice shall request the person owning or~~
23 ~~controlling the facilities to accurately locate them upon the land where they are situated, at least~~
24 ~~two days per location, not counting Saturdays, Sundays, and legal holidays, before the~~
25 ~~commencement of the activity. Within the two days, the owner or person controlling the facilities~~

1 shall accurately locate them and provide this information to the person requesting it. The two day
2 notice requirement shall not apply in the case of an emergency.

3 Section 11. That § 49-7-8 be repealed.

4 ~~49-7-8. The written notice of the location of buried transmission facilities required in this~~
5 ~~chapter to be given to the county register of deeds' office in the county wherein the facilities are~~
6 ~~located shall contain the name, address, and telephone number of the person owning or~~
7 ~~controlling the buried facility; the date the card is submitted; a description of the type of buried~~
8 ~~facility; the township number, township name if any; section number, range number, and name~~
9 ~~of municipality; a grid showing the thirty-six sections within that particular township, each~~
10 ~~section having a separate square within the grid; and the phrase, "This information was submitted~~
11 ~~by the owners or controllers of the buried facility in question. The county register of deeds~~
12 ~~assumes no responsibility for the accuracy of the information." The location of the facilities shall~~
13 ~~be indicated by the owners or controllers of the facilities by placing an "X" through the~~
14 ~~appropriate section or sections on the grid. It shall be the responsibility of the owner or~~
15 ~~controller of the facility to keep the file current.~~

16 Section 12. That § 49-7-9 be repealed.

17 ~~49-7-9. All notices filed under this chapter shall be filed on a standard white five inch by eight~~
18 ~~inch card of the following form:~~

19 _____ County
20 Twp. Name _____ Twp. No. _____ Range No. _____
21 _____
22 _____
23 Name of City _____ Date Information Submitted _____
24 Name of Facilities Controller _____
25 Address & Zip _____, _____ Phone No. _____

1 Description of Underground Facilities (check one) Electric _____
 2 Telephone _____ Water _____ Gas _____ Oil _____ Irrigation _____ Sewer _____ Other _____
 3 This information was sub- 6 5 4 3 2 1
 4 mitted on this card by the
 5 owner or controller of the 7 8 9 10 11 12 ("X" the appropriate
 6 buried facility in ques-
 7 tion. The County Register of 18 17 16 15 14 13 section(s) involved
 8 Deeds assumes no responsi-
 9 bility for the accuracy of 19 20 21 22 23 24
 10 the information contained
 11 on this card. 30 29 28 27 26 25
 12 _____ 31 32 33 34 35 36

13 This card form to be filed with Register of Deeds in County (statewide form) applicable.

14 Section 13. That § 49-7-10 be repealed.
 15 49-7-10. There is hereby imposed a filing fee of one dollar for each card filed to be paid
 16 to the register of deeds in each county by each person who files notice therein. There is
 17 hereby imposed a fee of fifty cents per copy for all copies furnished by the register of deeds
 18 to any person.

19 Section 14. That § 49-7A-4 be amended to read as follows:
 20 49-7A-4. The One-Call Notification Board shall by rules, promulgated pursuant to
 21 chapter 1-26, establish the operating procedures and technology needed for to operate a
 22 nonprofit one-call notification center, establish a notification process, establish a system of
 23 standard colors for marking, establish a competitive bidding procedure to select a vendor to
 24 provide the notification service, and establish a procedure whereby members of the one-call
 25 notification center share in the costs of the one-call notification center. ~~The rules shall~~

- 1 ~~provide that any agreement for the notification service entered into by the board may be~~
- 2 ~~modified from time to time by the board and that any agreement shall be reviewed, with an~~
- 3 ~~opportunity to receive new bids.~~

1 **BILL HISTORY**

2 January 14 - First read in House and referred to Commerce. H.J. 26

3 January 30 - Scheduled for hearing.

4 January 30 - Passed as amended, AYES 12, NAYS 1. H.J. 212