

# State of South Dakota

SEVENTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 1997

723A0380

## HOUSE BILL NO. 1022

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 knowingly fails to become a member of the one-call  
14 notification center or who fails to submit the locations of all of the operator's underground  
15 facilities to the center, as required by this chapter and rules of the board, shall be assessed a civil

1 penalty by the board of one hundred dollars per month for each month of noncompliance up to  
2 a maximum of five hundred dollars. In addition, an operator is subject to civil liability for any  
3 damages caused by noncompliance with this chapter. Any penalties which may be assessed by  
4 the board under this chapter shall be collected as provided by law and deposited into the one-call  
5 fund.

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

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

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

22 49-7A-6. The notice shall contain the name, address and telephone number of the person  
23 making the notification; the name, address and telephone number of the excavator; the date and  
24 time when excavation is scheduled to begin; the depth of planned excavation; the type and extent  
25 of excavation being planned including whether the excavation involves tunneling or horizontal

1 boring; and, if applicable, whether the use of explosives is anticipated. Any phone number given  
2 by the excavator shall provide access to the excavator during normal business hours. The notice  
3 shall also contain location of the excavation by any one or more of the following means:

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

8 The notice shall also specifically describe the excavation area within each location to  
9 minimize any unnecessary locating of underground facilities by an operator. In each notice the  
10 excavator shall describe the area to be excavated from landmarks on or near the property, or in  
11 lieu of such description, an excavator may indicate in the notice that the excavator will flag or  
12 mark the site or boundaries of the excavation. All flags or markings shall comply with the  
13 standard colors of the American Public Works Association. If it is impractical to flag, mark, or  
14 describe the excavation, the excavator shall schedule a meeting with the operators to inform  
15 them of the extent of the excavation on the site. Failure by the excavator to comply with this  
16 section renders the notice invalid and the one-call notification center shall inform the excavator  
17 of any insufficiencies.

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

19 49-7A-8. An operator shall, upon receipt of the notice provided for in §§ 49-7A-5 and  
20 49-7A-6, advise the excavator of the location of underground facilities in the proposed  
21 excavation area by marking the location of the facilities with stakes, flags, paint, or other clearly  
22 identifiable marking within eighteen inches horizontally from the exterior sides of the  
23 underground facilities. The location shall be marked using American Public Works Association  
24 color standards. The operator shall respond no later than forty-eight hours after receipt of the  
25 notice, excluding Saturdays, Sundays, and legal holidays of the state or at a time mutually agreed

1 to by the parties. ~~If excavation damage to an underground facility is possible~~ Excavators shall  
2 maintain a minimum horizontal clearance of eighteen inches between a marked and unexposed  
3 underground facility and the cutting edge of any mechanical equipment. If excavation is required  
4 within eighteen inches, horizontally, the excavator shall expose the facility with hand tools and  
5 shall protect and support the facility prior to further excavation with mechanical equipment.

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

7 49-7A-11. If an excavation is being made in a time of emergency, all reasonable precautions  
8 shall be taken to protect the underground facilities. In such a case, the excavator shall give  
9 notification, substantially in compliance with § 49-7A-5 as soon as practical, that an emergency  
10 exists, and each member shall as soon as practical or no longer than within four hours provide  
11 all location information reasonably available to the excavator. Any operator who receives a  
12 notice of an emergency shall locate its facilities as required by this section, or if the operator  
13 determines that its facilities will not be impacted by the notice, shall immediately notify the  
14 excavator that the operator's facilities are clear from the excavation. An excavator requesting an  
15 emergency locate shall provide an accessible contact for the period of the emergency to allow  
16 the operator to request additional information or to allow the operator to inform the excavator  
17 of any circumstances particular to the notice request. Any operator or excavator who violates  
18 this section may be assessed a one hundred dollar civil penalty by the board for each violation.  
19 Any person requesting an emergency locate, when in fact the board determines no emergency  
20 exists, may be assessed a civil penalty of one hundred dollars by the board.

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

22 49-7A-12. If any underground facility is damaged, dislocated, or disturbed in advance of or  
23 during excavation work, the excavator shall immediately notify the operator of the facility, or,  
24 if unknown, the one-call notification center of such damage, dislocation, or disturbance. No  
25 excavator may conceal or attempt to conceal such damage, dislocation, or disturbance, nor may

1 that excavator attempt to make repairs to the facility unless authorized by the operator of the  
2 facility. The board may assess a one hundred dollar civil penalty against any excavator who  
3 knowingly fails to immediately notify the operator or one-call center of any damage, dislocation,  
4 or disturbance or makes unauthorized repairs for each violation.

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

6 ~~—49-7A-16. The provisions of §§ 49-7-5 to 49-7-10, inclusive, do not apply to any person~~  
7 ~~who is a member of the one-call notification center.~~

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

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

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

22 ~~—49-7-6. The register of deeds of each county where the facilities described in § 49-7-5 are~~  
23 ~~buried shall establish and maintain a uniform file system containing the information furnished by~~  
24 ~~the owner or person having control of these facilities. This file shall contain listings of buried~~  
25 ~~facilities located by section, range, township, and, where applicable, by municipality.~~

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

2 ~~—49-7-7. If a notice provided for in § 49-7-5 has been filed in the office of the register of~~  
3 ~~deeds, any person intending to conduct any digging, grading, leveling, excavating, blasting, or~~  
4 ~~similar activities upon the lands described in the notice shall request the person owning or~~  
5 ~~controlling the facilities to accurately locate them upon the land where they are situated, at least~~  
6 ~~two days per location, not counting Saturdays, Sundays, and legal holidays, before the~~  
7 ~~commencement of the activity. Within the two days, the owner or person controlling the facilities~~  
8 ~~shall accurately locate them and provide this information to the person requesting it. The two day~~  
9 ~~notice requirement shall not apply in the case of an emergency.~~

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

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

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

24 ~~—49-7-9. All notices filed under this chapter shall be filed on a standard white five inch by eight~~  
25 ~~inch card of the following form:~~

1 \_\_\_\_\_ County

2 Twp. Name \_\_\_\_\_ Twp. No. \_\_\_\_\_ Range No. \_\_\_\_\_

3 \_\_\_\_\_

4 \_\_\_\_\_

5 Name of City \_\_\_\_\_ Date Information Submitted \_\_\_\_\_

6 Name of Facilities Controller \_\_\_\_\_

7 Address & Zip \_\_\_\_\_, \_\_\_\_\_ Phone No. \_\_\_\_\_

8 Description of Underground Facilities (check one) Electric \_\_\_\_\_

9 Telephone \_\_\_\_\_ Water \_\_\_\_\_ Gas \_\_\_\_\_ Oil \_\_\_\_\_ Irrigation \_\_\_\_\_ Sewer \_\_\_\_\_ Other \_\_\_\_\_

10 This information was sub- 6 5 4 3 2 1

11 mitted on this card by the

12 owner or controller of the 7 8 9 10 11 12 ("X" the appropriate

13 buried facility in ques-

14 tion. The County Register of 18 17 16 15 14 13 section(s) involved

15 Deeds assumes no responsi-

16 bility for the accuracy of 19 20 21 22 23 24

17 the information contained

18 on this card. 30 29 28 27 26 25

19 31 32 33 34 35 36

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

21 Section 13. That § 49-7-10 be repealed.

22 49-7-10. There is hereby imposed a filing fee of one dollar for each card filed to be paid

23 to the register of deeds in each county by each person who files notice therein. There is

24 hereby imposed a fee of fifty cents per copy for all copies furnished by the register of deeds

25 to any person.