

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

723A0380

SENATE ENGROSSED NO. **HB1022** - 3/5/97

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 as required by this chapter and rules of the board, is subject to civil liability for any damages

1 caused by noncompliance with this chapter. Any penalties which may be assessed by the board
2 under this chapter shall be collected as provided by law and deposited into the one-call fund.

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

4 49-7A-5. No excavator may begin any excavation without first notifying the one-call
5 notification center of the proposed excavation. The excavator shall give notice by telephone ~~or,~~
6 facsimile, in person, or by other methods approved by the board pursuant to rules promulgated
7 pursuant to chapter 1-26 to the one-call notification center at least forty-eight hours prior to the
8 commencement of the excavation, excluding Saturdays, Sundays, and legal holidays of the state,
9 but not more than ten business days prior to any excavation. Notice to the one-call notification
10 center is notice to each member of the one-call notification center, except in instances when an
11 operator directs the one-call notification center to require the excavator to personally contact
12 the operator. In such instance the center shall furnish the excavator with information necessary
13 to contact the operator. No member is required to accept notification more than ten business
14 days prior to the excavation unless it is ~~by an engineer~~ for planning purposes for projects that
15 may affect the underground facilities. Once notice is given it is effective for the duration of the
16 excavation. However, if the markings made by the operator pursuant to § 49-7A-8 disappear the
17 excavator shall provide notice again as required by this chapter.

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

19 49-7A-6. The notice shall contain the name, address and telephone number of the person
20 making the notification; the name, address and telephone number of the excavator; the date and
21 time when excavation is scheduled to begin; the depth of planned excavation; the type and extent
22 of excavation being planned including whether the excavation involves tunneling or horizontal
23 boring; and, if applicable, whether the use of explosives is anticipated. Any phone number given
24 by the excavator shall provide access to the excavator during normal business hours. The notice
25 shall also contain location of the excavation by any one or more of the following means:

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

5 The notice shall also describe the excavation area within each location. In each notice the

6 excavator shall describe the area to be excavated from structures or roads or other known points

7 of reference on or near the property, or in lieu of such description, an excavator may indicate in

8 the notice that the excavator will flag or mark the site or boundaries of the excavation. If it is

9 impractical to flag, mark, or describe the excavation, the excavator shall schedule a meeting with

10 the operators to inform them of the extent of the excavation on the site. The one-call notification

11 center may not confirm the notice until the excavator complies with this section.

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

13 49-7A-8. An operator shall, upon receipt of the notice provided for in §§ 49-7A-5 and

14 49-7A-6, advise the excavator of the location of underground facilities in the proposed

15 excavation area by marking the location of the facilities with stakes, flags, paint, or other clearly

16 identifiable marking within eighteen inches horizontally from the exterior sides of the

17 underground facilities. ~~The location shall be marked using American Public Works Association~~

18 ~~color standards.~~ The operator shall respond no later than forty-eight hours after receipt of the

19 notice, excluding Saturdays, Sundays, and legal holidays of the state or at a time mutually agreed

20 to by the parties. ~~If excavation damage to an underground facility is possible~~ Excavators shall

21 maintain a minimum horizontal clearance of eighteen inches between a marked underground

22 facility and the cutting edge of any mechanical equipment. If excavation is required within

23 eighteen inches, horizontally, the excavator shall expose the facility with hand tools and shall

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

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

1 49-7A-11. If an excavation is being made in a time of emergency, all reasonable precautions
2 shall be taken to protect the underground facilities. In such a case, the excavator shall give
3 notification, substantially in compliance with § 49-7A-5 as soon as practical, that an emergency
4 exists, and each member shall as soon as practical or no longer than within four hours provide
5 to the excavator all location information reasonably available to the excavator. Any operator who
6 determines that its facilities will not be impacted by the notice, shall immediately notify the
7 excavator that the operator's facilities are clear from the excavation. An excavator requesting a
8 location due to an emergency shall provide the name and the phone number of a person who has
9 knowledge regarding the excavation. Any operator or excavator who violates this section is
10 liable for any damages incurred.

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

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

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

20 ~~49-7A-16. The provisions of §§ 49-7-5 to 49-7-10, inclusive, do not apply to any person~~
21 ~~who is a member of the one-call notification center.~~

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

23 ~~49-7-5. Any person owning or having control of any pipes, wires, cables or other facilities~~
24 ~~for the transmission of gas, oil, electricity, water, communications or other products or services,~~
25 ~~which are buried beneath the surface of the ground, including areas within the limits of any~~

1 ~~political subdivision, shall give written notice thereof to the office of the register of deeds in the~~
2 ~~county where the facilities are located. This notice shall be submitted on a standard white five~~
3 ~~inch by eight inch card as provided in § 49-7-9. The card shall state the name, address and~~
4 ~~telephone number of the owner or person having control of the facilities, and shall contain a~~
5 ~~description of the location of these facilities by section number; township number; township~~
6 ~~name, if there is one; range number; and name of municipality. Railroads and the state~~
7 ~~department of transportation are not required to file this notice for their facilities buried on their~~
8 ~~rights-of-way, nor are the owners of real property required to file this notice for their facilities~~
9 ~~buried entirely on their property.~~

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

11 ~~—49-7-6. The register of deeds of each county where the facilities described in § 49-7-5 are~~
12 ~~buried shall establish and maintain a uniform file system containing the information furnished by~~
13 ~~the owner or person having control of these facilities. This file shall contain listings of buried~~
14 ~~facilities located by section, range, township, and, where applicable, by municipality.~~

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

16 ~~—49-7-7. If a notice provided for in § 49-7-5 has been filed in the office of the register of~~
17 ~~deeds, any person intending to conduct any digging, grading, leveling, excavating, blasting, or~~
18 ~~similar activities upon the lands described in the notice shall request the person owning or~~
19 ~~controlling the facilities to accurately locate them upon the land where they are situated, at least~~
20 ~~two days per location, not counting Saturdays, Sundays, and legal holidays, before the~~
21 ~~commencement of the activity. Within the two days, the owner or person controlling the facilities~~
22 ~~shall accurately locate them and provide this information to the person requesting it. The two day~~
23 ~~notice requirement shall not apply in the case of an emergency.~~

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

25 ~~—49-7-8. The written notice of the location of buried transmission facilities required in this~~

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

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

13 ~~49-7-9. All notices filed under this chapter shall be filed on a standard white five inch by eight~~
 14 ~~inch card of the following form:~~

15 _____ County

16 Twp. Name _____ Twp. No. _____ Range No. _____

17 _____

18 _____

19 Name of City _____ Date Information Submitted _____

20 Name of Facilities Controller _____

21 Address & Zip _____, _____ Phone No. _____

22 Description of Underground Facilities (check one) Electric _____

23 Telephone _____ Water _____ Gas _____ Oil _____ Irrigation _____ Sewer _____ Other _____

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

25 mitted on this card by the

1 owner or controller of the ~~7 8 9 10 11 12~~ ("X" the appropriate
 2 buried facility in ques=
 3 tion. The County Register of ~~18 17 16 15 14 13~~ section(s) involved
 4 Deeds assumes no responsi=
 5 bility for the accuracy of ~~19 20 21 22 23 24~~
 6 the information contained
 7 on this card. ~~30 29 28 27 26 25~~

8 ~~31 32 33 34 35 36~~

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

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

11 ~~49-7-10. There is hereby imposed a filing fee of one dollar for each card filed to be paid~~
 12 ~~to the register of deeds in each county by each person who files notice therein. There is~~
 13 ~~hereby imposed a fee of fifty cents per copy for all copies furnished by the register of deeds~~
 14 ~~to any person.~~

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

16 49-7A-4. The One-Call Notification Board shall by rules, promulgated pursuant to
 17 chapter 1-26, establish the ~~operating procedures and technology needed for~~ to operate a
 18 nonprofit one-call notification center, establish a notification process, establish a system of
 19 standard colors for marking, establish a competitive bidding procedure to select a vendor to
 20 provide the notification service, and establish a procedure whereby members of the one-call
 21 notification center share in the costs of the one-call notification center. ~~The rules shall~~
 22 ~~provide that any agreement for the notification service entered into by the board may be~~
 23 ~~modified from time to time by the board and that any agreement shall be reviewed, with an~~
 24 ~~opportunity to receive new bids.~~

25 Section 15. That § 49-7A-3 be amended to read as follows:

1 49-7A-3. The one-call notification center shall be governed by an eleven member board who
2 shall serve without pay. The board shall consist of one member representing telecommunication
3 companies offering local exchange service to less than fifty thousand subscribers; one member
4 representing telecommunication companies offering local exchange service to fifty thousand or
5 more subscribers; one member representing rural water systems; one member representing rural
6 electric cooperatives; one member representing investor-owned electric utilities; one member
7 representing investor-owned natural gas utilities; one member representing community antenna
8 television systems; one member representing municipalities; one member representing
9 underground interstate carriers of gas or petroleum; ~~one member representing interstate carriers~~
10 ~~of telecommunication services~~; and ~~one member~~ two members representing contractors who
11 perform excavation services. The board shall be appointed by the Governor and shall serve
12 staggered three-year terms.

1 **BILL HISTORY**

2 1/14/97 First read in House and referred to Commerce. H.J. 26

3 1/30/97 Scheduled for Committee hearing on this date.

4 1/30/97 Commerce Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 212

5 2/3/97 Motion to Amend, Passed. H.J. 275

6 2/3/97 House of Representatives Do Pass Amended, Passed, AYES 70, NAYS 0. H.J. 276

7 2/4/97 First read in Senate and referred to Commerce. S.J. 313

8 2/25/97 Scheduled for Committee hearing on this date.

9 2/25/97 Commerce Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 623

10 2/27/97 Senate Deferred to another day. S.J. 689

11 3/3/97 Motion to Amend,. S.J. 736

12 3/3/97 Motion to Amend, Passed. S.J. 745

13 3/3/97 Motion to Amend,. S.J. 745

14 3/3/97 Senate Deferred to another day. S.J. 745

15 3/4/97 Motion to Amend,. S.J. 767

16 3/4/97 Tabled amendment. S.J. 767

17 3/4/97 Senate Do Pass Amended, Passed, AYES 34, NAYS 1. S.J. 767