Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

SENATE BILL NO. 2347
(Senators Bowman, Dever, O'Connell)
(Representatives Fehr, Onstad, Steiner)

AN ACT to amend and reenact section 49-23-01 and subsection 3 of section 49-23-05 of the North Dakota Century Code, relating to the removal of marking materials at excavation sites.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-23-01 of the North Dakota Century Code is amended and reenacted as follows:

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 showing the approximate horizontal location, including all lines, line direction, intersections, tees, and lateral facilities.

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. "Tangible marking materials" means any material perceptible by touch used to mark the location of an underground facility, including flags, stakes, poles, or other materials inserted into or affixed to the ground. The term does not include paint, chalk, or other liquid ink-based materials applied to the ground.

15. "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 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.~~16. "Underground facility" means an underground line, pipeline, cable, facility, system, and its appurtenances used to produce, store, convey, gather, transmit, or distribute communications, data, electricity, power, television signals, heat, gas, oil, petroleum products, carbon dioxide, 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.~~17. "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.~~18. "Water" includes potable water, wastewater, and storm water.

SECTION 2. AMENDMENT. Subsection 3 of section 49-23-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Assume ownership of materials used to mark the facility, use reasonable efforts to maintain markings during excavation, and ~~when possible~~ remove all tangible marking materials used to mark the facility upon completion of the excavation.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2347.

Senate Vote:	Yeas 44	Nays 2	Absent 1
House Vote:	Yeas 86	Nays 4	Absent 4

Secretary of the Senate

Received by the Governor at 4:12 P.M. on April 13, 2015.

Approved at 11:18 A.M. on April 15, 2015.

Governor

Filed in this office this 15th day of April, 2015,

at 249 o'clock P M.

Secretary of State