

**NORTH ONE DAKOTA CALL**



# EXCAVATOR RESPONSIBILITY

- Call at least 48 hours before you start your excavation.
- Each excavator must have their own locate request.
- Maintain a minimum 2 foot hand-dig area from the marked facility
- Protect the marks! Ticket is good for 21 days.
- The cost associated with exposing facility if it falls within the excavation area
- Remove the flags when excavations are complete

# Operator responsibility

- Keep underground facilities updated in the one-call database (iMap, shape date, etc.).
- All new facilities must be locatable
- Locate within 48 hours.
- The excavator shall assume the cost of excavation (within the construction area) to expose the facility unless otherwise indicated by the owner of the facility.
- Upon the third locate request at the same excavation site where no excavation has occurred after the initial two locates, the excavator is responsible for reasonable costs associated with relocating facilities in that location. (PG 29)

# Legislative update

SB 2167 – Provide for a legislative management study of the one-call system



# Legislative update – HB 1026

## 11 Changes

- Board Composition
- Prudent digging practice
- Culpability language
- Positive response
- Site identification
- Survey tickets
- Burden of proof
- Cost of non-locatable facilities
- Cost for location when excavation has occurred
- Window for locates
- Size of ticket



# 1. Board Composition

**Currently:**

8 board members representing industries and cities in North Dakota.

**Change:**

Splitting Gas/ Pipeline position into 2 positions:

1) Gas distribution

2) Oil or gas transmission or gathering



# 2 Prudent digging practice

## LAW:

3. "Careful and prudent manner" means:

a. Manually excavating within twenty-four inches [60.96 centimeters] of the outer edges of ~~an~~ any underground facility on a horizontal plane as located ~~manually~~ and marked by the owner or operator ~~by stakes, paint, or other customary manner,; and supporting~~

## Reasoning:

Current law was confusing when defining careful and prudent digging. Change adds clarification.

# 3. Cul pabil it y l anguage

## LAW:

c. An excavator ~~who knowingly~~ is guilty of a class A misdemeanor if the excavator damages an underground facility or its protective covering and knew or reasonably should have known the damage occurred and who:

- (1) The excavator does not notify the operator as soon as reasonably possible or ~~who~~
- (2) The excavator backfills in violation of subdivision b is guilty of a class A misdemeanor.

## Reasoning:

Language. "Knowingly" is a high standard to prove. New language makes it easier to prove an underground facility was damaged on purpose.



# 4. Positive response

## LAW:

16. "Positive response" means notification by the operator to the notification center that underground facilities within the area covered by a location request have been marked or cleared.

n. An operator that has completed marking of the excavation area or has determined there are no facilities in the area identified in the ticket shall provide positive response to the notification center in compliance with the notification center's procedures established under subsection 5 for assuring positive response from operators.

## Explanation:

Makes positive response mandatory. Also allows the excavator to begin excavating when he has received notice that all facilities have been located.

# 5. Site identification

## LAW:

...by one or more of the following means: white marking, digital white lining, project staking, geographic information system shape file, detailed drawing, map, or other means agreed upon by the parties to the ticket.

~~excavation before beginning any excavation, or if the notice given under this section includes a specific street address or reference to a platted lot number of record of the location of the excavation.~~ Site identification under this subsection is not required if:

- Precise location at a single street address
- Emergency excavation request
- Meet request

[meeting with the affected operators at the location of the excavation.](#)

# 6. Survey ticket creation

## Explanation:

- 1) For individuals making a request for location for information, design, of purposes other than excavating.
- 2) Ticket must follow the site identification guidelines (white-lining, precise description, detailed drawing, etc.)
- 3) Give the utilities 5 business days to physically mark, provide electronic location information, or meet with the ticket holder.

## Notes:

- 1) Survey ticket holder assumes the ownership of the materials used to mark the underground facility, meaning they need to protect the marks and remove all tangible marking materials upon completion of the capture.
- 2) Survey ticket holder is responsible for the reasonable costs of any relocate after a location has been properly marked.



# 7. Burden of proof

## Explanation:

Currently, the NDOC law allows a utility to charge an excavator for the reasonable costs associated with relocating underground facilities IF the excavator has called in a location more than twice without any excavation taking place. The law will now require the excavator to prove the excavation has occurred during the two initial location requests.

## LAW:

“If the issue of whether excavation has occurred is disputed for purposes of this section, the excavator bears the burden of proof that excavation has occurred.”



# 8. Cost of non-locatable facilities

## LAW:

An operator, ~~within forty-eight hours, or any extension of that period, after receiving an excavation notice from the center, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator, shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator~~ with underground facilities within the area of a location request shall locate and mark or otherwise provide the approximate horizontal location of the underground facilities of the operator within the location period or as agreed by the parties.

**Continued...**



## 8. Cost of non-locatable facilities (cont)

...requests assistance from the operator to locate the facility, but operator fails to provide assistance within a reasonable amount of time, operator is responsible for the excavator's reasonable costs incurred to locate the facility.

### Explanation:

Holds operators with non-locatable facilities more accountable. Allows the excavator to try and recoup some of the costs associated with trying to find non-locatable facilities.

## 9. Cost of Location when excavation has occurred

### **LAW:**

An excavator that makes repeated location requests within the area of a previously made location request due to the excavator's failure to reasonably maintain and remove markings under subsection 3 of section 49 - 23 - 05 or failure to follow prudent and careful digging practices required by subsection 5 of section 49 - 23 - 05 is responsible for reasonable costs of location and removal if the public service commission determines the additional location request was caused by the excavator's failure described in this subdivision.

### **Explanation:**

Makes it easier for the ND PSC to hand out violations due to abusive location requests. Ex – not protecting the marks.

# 10. Window for Locates

## LAW:

"Locate period" means the later of:

- a. The forty - eight hour period beginning at 12:01 a.m. of the day after the location request was submitted to the notification center; excluding any Saturday, Sunday, or holiday; and any twenty - four hour extension provided through the notification center; or
- b. The period between the submission of a location request to the notification center and the noted date and time of excavation.

## Explanation:

Changes the locate period from 48 hours, thus giving utilities a little more time to locate underground facilities.





# 11. Size of ticket

## Currently:

There is no limit for how much work can be placed on a locate request.

## Change:

Would limit it to:

- 1) Urban Area - Three contiguous (sharing a common border) city blocks.
- 2) Rural Area – 4 contiguous quarter sections or five linear miles.



# Nd state fair parade



# 811 Day at the nd state fair



A collection of architectural and engineering tools is arranged on a surface. In the center is a silver laptop with a red keyboard, displaying architectural drawings on its screen. To the right of the laptop is a bright yellow hard hat. Below the hard hat is a silver calculator with a digital display showing '0'. In the foreground, there is a yellow ruler and an orange pencil. The background consists of various architectural blueprints and drawings, including one labeled 'CONCRETE 1:2 with 10% glue' and another labeled 'ROOF PLAN'. A dark grey horizontal bar is overlaid across the middle of the image, containing the text 'SUGGESTIONS AND QUESTIONS' in white, bold, uppercase letters.

# SUGGESTIONS AND QUESTIONS