

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2347

Introduced by

Senators Bowman, Dever, O'Connell

Representatives Fehr, Onstad, Steiner

1 A BILL for an Act to amend and reenact section 49-23-01 and subsection 3 of section 49-23-05
2 of the North Dakota Century Code, relating to the removal of marking materials at excavation
3 sites.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

7 **49-23-01. Definitions.**

8 As used in this chapter, unless the context otherwise requires:

- 9 1. "Abandoned" means no longer in service and physically disconnected from a portion
10 of the facility or from any other facility that is in use or still carries services.
- 11 2. "Board" means the board of directors of the nonprofit corporation governing the
12 notification center under section 49-23-03.
- 13 3. "Careful and prudent manner" means excavating within twenty-four inches [60.96
14 centimeters] of the outer edges of an underground facility located manually and
15 marked by the owner or operator by stakes, paint, or other customary manner, and
16 supporting and protecting the uncovered facility.
- 17 4. "Damage" means:
 - 18 a. Substantial weakening of structural or lateral support of an underground facility;
 - 19 b. Penetration, impairment, or destruction of any underground protective coating,
20 housing, or other protective device; or
 - 21 c. Impact with or the partial or complete severance of an underground facility to the
22 extent that the facility operator determines that repairs are required.

- 1 5. "Emergency" means a sudden, unexpected occurrence, involving a clear and
2 imminent danger, and demanding immediate action to prevent or mitigate loss of, or
3 damage to, life, health, property, or essential public services.
- 4 6. "Emergency responder" means a fire department, a law enforcement officer, or other
5 emergency rescue service.
- 6 7. "Excavation" means any operation in which earth, rock, or other materials in or below
7 the ground is moved or otherwise displaced by means of hand or power tools, power
8 equipment, or explosives and includes grading, trenching, digging, ditching, drilling,
9 augering, tunneling, boring, scraping, and cable or pipe plowing and driving. The term
10 does not include:
- 11 a. Opening a grave in a cemetery.
- 12 b. Plowing, cultivating, planting, harvesting, and similar operations in connection
13 with agricultural activities, unless any of these activities disturbs the soil to a
14 depth of eighteen inches [45.72 centimeters] or more.
- 15 c. Gardening and landscaping unless it disturbs the soil to a depth of twelve inches
16 [30.48 centimeters] or more.
- 17 d. Normal maintenance of roads and streets if the maintenance does not change
18 the original grade and does not involve the road ditch.
- 19 e. Normal repair and maintenance of track and track bed by a railroad on its own
20 right of way.
- 21 8. "Excavator" means a person who conducts excavation.
- 22 9. "Holiday" means New Year's Day, Martin Luther King Day, Presidents' Day, Good
23 Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day,
24 Thanksgiving Day, and Christmas Day. When a holiday falls on a Saturday, it is
25 observed on the preceding Friday as if the Friday were the holiday, and when a
26 holiday falls on a Sunday, it is observed on the following Monday as if the Monday
27 were the actual holiday.
- 28 10. "Local governmental unit" means a county, township, or city.
- 29 11. "Locate" means an operator's markings of an underground facility showing the
30 approximate horizontal location, including all lines, line direction, intersections, tees,
31 and lateral facilities.

- 1 12. "Nonprofit corporation" means a corporation established under chapter 10-33.
- 2 13. "Notification center" means a center that receives notice from an excavator of planned
3 excavation or any other request for location and transmits this notice to a participating
4 operator.
- 5 14. "Tangible marking materials" means any material perceptible by touch used to mark
6 the location of an underground facility, including flags, stakes, poles, or other materials
7 inserted into or affixed to the ground. The term does not include paint, chalk, or other
8 liquid ink-based materials applied to the ground.
- 9 15. "Operator" means a person who owns or operates an underground facility, including a
10 master meter operator with underground facilities, or a state or local governmental
11 entity. The department of transportation is considered an operator for the department's
12 facilities buried on the department's rights of way. A person is not considered an
13 operator solely because the person is an owner or tenant of real property where
14 underground facilities are located if the underground facilities are used exclusively to
15 furnish services or commodities on that property.
- 16 ~~15-16.~~ "Underground facility" means an underground line, pipeline, cable, facility, system, and
17 its appurtenances used to produce, store, convey, gather, transmit, or distribute
18 communications, data, electricity, power, television signals, heat, gas, oil, petroleum
19 products, carbon dioxide, water, steam, sewage, hazardous liquids, and other similar
20 substances. Privately owned and operated underground facilities which do not extend
21 beyond the boundary of the private property are excluded.
- 22 ~~16-17.~~ "Unexpected occurrence" includes a fire, flood, earthquake or other soil or geologic
23 movement, riot, accident, damage to a subsurface installation requiring immediate
24 repair, or sabotage.
- 25 ~~17-18.~~ "Water" includes potable water, wastewater, and storm water.

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

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