

2013 HOUSE INDUSTRY, BUSINESS, AND LABOR

HB 1359

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1359
February 5, 2013, morning
Job 18271

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

One-call notice system

Minutes:

Attachments 1-8

Committee called to order. Roll call taken.

Hearing opened.

0:48 **Carlee McLeod, president of the Utility Shareholders of North Dakota:** Provided written testimony, attachment 1. Provided background to the bill, and referred to it as a consensus bill. Most of the things within the bill are agreed upon within our group. There are a couple of areas where I anticipate people will ask some amendments. What we care about is the policy behind this bill. Introduced the bill, section by section, with breaks for questions from committee members. Drew attention to proposed amendments within her written testimony.

5:38 **Representative Kasper:** How many violations are you seeing per year of the area where you want the fines increased?

Carlee McLeod: We do not have good data on this. The PSC attended a meeting with us recently and had a few statistics. People are not calling in violations as they should.

Representative Kasper: If they're not being reported, how do you know there's a violation?

Carlee McLeod: Our people are the ones who have to do the repairs. Some people think the reporting process is onerous and are not reporting.

Representative Kasper: How many repairs are you seeing? If your repairmen are not reporting numbers, that is not a good process.

Carlee McLeod: Part of the purpose of raising the fine limit is not necessary to have to assess the fine but to at least get people to stop and look before they dig. We would like better data, but we would really like a deterrent in the law.

7:38 **Representative M. Nelson:** You mentioned the collation that your formed to work on this bill. Did you include the soil testers and the agricultural community?

Carlee McLeod: We did not include them in our initial rounds when we drafted this. I did speak with someone involved with soil conservation.

Representative M. Nelson: Under the law, do you understand how many excavations are being done every day involving soil testing?

Carlee McLeod: I don't. I think there is an exemption for agricultural purposes in this law.

Representative M. Nelson: Up to eighteen inches. The standard practice in the profession is twenty-four inches, and in some cases four feet. There are several thousand fields tested each day, and if you add in the number of holes, it would be in the range of sixty thousand per day. We tried to work with your system and found it unworkable, that it would take more time to do than what the soil testing would take. That's why I'm wondering if you included them in revising this law.

Carlee McLeod: We did not. We worked with the industry, as excavators, who do many, many digs throughout the year. While I understand that the testing with agriculture is large, we have a large problem throughout the whole industry, and that's what we're trying to solve right now.

Representative M. Nelson: With this \$25,000 penalty, what is the penalty for failing to mark or for the utility failing to do anything?

Carlee McLeod: Any violation under the law would be subject to a fine up to \$25,000.

Representative M. Nelson: So not marking is a violation under the law?

Carlee McLeod: Yes.

9:57 **Chairman Keiser:** Run through how this penalty would work. Please give concrete examples.

Carlee McLeod: Say that someone was working on an excavation had asked for it to be marked but it was marked improperly, and they cut through a line. The should then report that to the PSC, and the PSC would investigate and decide how to proceed.

Chairman Keiser: Who would be fined in that case?

Carlee McLeod: If it was something that had been marked incorrectly, they would find the company responsible for marking. If it was a case where they decided to dig without waiting for it to be marked, then they would look at the company that cut through the wire.

Chairman Keiser: Who would file the complaint? How would the PSC know that there was some action to be taken?

Carlee McLeod: Anyone can file a complaint though the website of the PSC, but typically it is the company whose line had been cut. At that point, the PSC initiate their process. From what I understand, there are genuine mistakes that happen, and the PSC takes that into consideration.

11:55 Chairman Keiser: 11:55 Does this civil penalty in place, does this limit in any way any party from initiating a separate civil action?

Carlee McLeod: No, it does not.

12:11 Carlee McLeod: Resumed introduction of the bill with explanation of page 2, line 17 through bottom of page.

14:40 Representative N. Johnson: Do they have to document that they had the meeting?

Carlee McLeod: That is something we did not discuss in our meeting. I would think that there would be documentation because these requests go through the one-call vendor.

Chairman Keiser: That is an important point. What is a meeting?

Carlee McLeod: People from the industry could fill in that information for you.

15:25 Carlee McLeod: Resumed explanation of the bill, page 2, line 28, through page 3, line 2.

17:13 Representative N. Johnson: Is the notice already required at some point?

Carlee McLeod: No, it is not.

17:23 Carlee McLeod: Resumed explanation of changes in the bill, beginning with page 4, line 14. Explained changes shown on page 4, lines 17-27, and on page 5, line 8.

21:48 Chairman Keiser: If a facility fails to notify us of a new line, then are they subject to the \$25,000 fine?

Carlee McLeod: If they fail to make it locatable, I would anticipate yes. If they put in a new line and they fail to make it locatable and then someone hits it...

Chairman Keiser: How do you define locatable? Why shouldn't they be required to notify that they're putting the line in?

Carlee McLeod: Locatable means that they can find it by whatever means that industry uses to locate it and mark it. Usually it has to have some sort of metal in it or GPS component. I do not think that right now anyone is required to report it when they put things into the ground. We're saying that when someone calls in a request for marking, someone needs to know how to tell the excavator that something is there.

23:13 **Carlee McLeod:** Introduced the last change in the bill, page 5, line 26-27.

25:24 **Representative N. Johnson:** On page 5 regarding new facilities. That means identify where it is, but there is no master plan of where things are located?

Carlee McLeod: There is no master plan or map where all underground facilities have been mapped or cataloged.

25:55 **Representative Gruchalla:** So the excavator is responsible for picking up the flags after the project?

Support:

26:30 **Ron Ness, North Dakota Petroleum Council:** This is really a safety issue. Locators are being forced to locate tremendously large areas. If the locate is not done properly, death can result. Regarding the penalty, the issue is that the current \$5000 does not matter how many times you may be a violator. The PSC needs the ability to escalate the penalty for people who are repeatedly violating the law. This time, the groups have primarily all agreed on the key provisions that were not agreeable last time. Gave an example of providing specific information to the locators.

29:42 **Tony Straquadine, manager of Government Affairs for Alliance Pipeline Inc.:** Provided written testimony, attachment 2. Elaborated on written testimony. If you look at the minutes from the North Dakota One Call Board, you can see statistics. Going back to the second quarter of last year, there were 145,174 locate requests in the state of North Dakota. The prior quarter, the first quarter of 2012, 139,267 locates. That is a significant number of locates overall. In the second quarter of 2012, the underground facilities or operators called in 15% of those; excavators made 70% of those calls; homeowners made 15% of the calls. It is a system that works, and it is enforced by the PSC. We support this bill. As far as the penalty, we support it as deterrent. We are not interested in punishing people; we want them to pay attention to the law and follow it. We want people to call in. The portion is that it must be fairly and consistently applied. We support the notion of calling out in the complex dig areas, whether it is white lining or other techniques. We support the extension of the period of time the one-call is valid for. Reminder for all attendees to use the 811 number.

33:12 **Chairman Keiser:** What is your definition of locatable?

Tony Straquadine: Whether it's a locate wire, whether the ability to measure steel using a metal detector, or whether it's the ability to take the GPS coordinates within exacting tolerances. There are a variety of ways to do that. I think of the One Call Board and the One Call Center can provide that best guidance on what is the state of the art within the industry. There is a Common Ground Alliance, focused on what are the best practices in excavation, protection, and damage prevention. Those would be the groups that would help define what that is.

34:00 **Chairman Keiser:** If it is a PVC line, that's not metal.

Tony Straquadine: It's not metal. There you can do a locate wire associated with that. But if they had a GPS location, that would be acceptable. Again, the utility or the underground operator has to be able to go out and locate that.

Chairman Keiser: So it is the responsibility of the owner to provide some mechanism by which it is locatable, but if they don't and we fine them, it remains non-locatable?

Tony Straquadine: That is correct. The owner would have to provide that information overall, and it's their obligation to locate.

Representative Sukut: Are we making any progress, especially with gas and oil lines, in seeing that the locations are filed in a common place, such as the county courthouse?

35:28 **Tony Straquadine:** I can only speak to the Alliance pipeline system. We have filed what is called a shape file or GPS coordinates with North Dakota One Call and with the federal mapping system that the Department of Transportation has available. To us, we have been providing that information to the One Call Center, which to us is where the information needs to be for damage prevention.

36:40 **Shane Hart, Reservation Telephone Cooperative:** Provided written testimony, attachment 3, which includes a map of the area served by the cooperative. Elaborated on written testimony. In 2012, we spent \$1.3 million locating cable. We had 30,639 locates in 2012. In 2009, we spent only \$400,000 locating cable and had only 10,900 locates. So they have tripled in the last three years. Provided examples and additional elaboration pertaining to re-spots and the deliberate digging through cables rather than waiting for the locate.

40:36 **Representative M. Nelson:** When you are burying a cable, how deep do you go?

Shane Hart: Usually within the 36-inch range. A backyard drop might be 24 inches. If it's a mainline cable in a road ditch or field and it's a more robust cable, we are in the 36 inch to 48 inch range.

Representative M. Nelson: You mentioned a road ditch. How does that affect road construction when they need soil for building an approach?

41:34 **Shane Hart:** We are obligated to locate that cable and move that cable.

Representative N. Johnson: Have you had to add staff to do the locates?

Shane Hart: Yes. We have six full-time locators, and we contract with a contracting company that just does locates for us, and they provide two additional people who are employed full time. In 2009, we had one contractor who supplied one full-time person, and we had two of our own.

42:35 **Chairman Keiser:** What are you finding with the soil groups in your area?

42:59 **Shane Hart:** I don't see where we have a big issue with the soil sampling. I defer to others in the room.

43:29 **Jason Hill, Northwest Communications Cooperative:** Provided written testimony, attachment 4. Highlighted specific elements of written testimony, including the increased number of locates between 2007 and 2012. Gave specific example of cost incurred when called multiple times to re-spot a long distance.

44:55 **Jason Hill:** In regard to the previous question about soil conservation. When soil conservation comes through our area, they call in, and we will give them a map of our cabling, and they just stay away from the road enough feet to get by it.

45:30 **Harlan Fuglesten, North Dakota Association of Rural Electric Cooperatives:** Provided written testimony, attachment 5. Highlighted specific parts of written testimony pertaining to the number of locates and the associated costs.

47:05 **Jack McDonald, on behalf of the North Dakota Cable Television Association:** Provided written testimony, attachment 6. Written testimony contains proposed amendment regarding the length of time a ticket remains open. Highlighted specific concern about proposed twenty-one day window; requested a fourteen-day window instead. We do not object to the other provisions of the law, and we support the increased penalty and the inclusion of a charge for the third call.

48:44 **Representative M. Nelson:** How does the marking work during the winter with the snow?

Jack McDonald: We generally use flags or other things which would protrude out of the snow.

Chairman Keiser: On the can of paint, what is the time limit the product is supposed to be good for?

Jack McDonald: I do not know, but I can get back to you.

50:11 **Steve Schmatlz, Enbridge Pipeline:** Provided attachment 8. We support HB 1359, the amendment. We get approximately 15,000 call locates a year. We have five full-time locators and are in the process of hiring three more. We install a lot of pipeline, so we are on the contractors' side as well as the utilities' side. Explained examples of call locate tickets to show the very unspecific information often provided about a location for which a locate has been requested. Locate requests with only general locations add considerable time, work, and expense. That is why we really support the white lining provision.

Representative N. Johnson: Why would they have put all of that in if they know where they want to do the excavation?

Steve Schmatlz: They know it in their mind but they don't know the directions or the coordinates. Sometimes these are contractors from out of state, and they don't take the extra time or effort to make a more precise determination. The One Call Center only puts

down what they are given; they cannot add to it or anything else. They can question the caller, but if the caller does not know the specifics, all they can put down is *unknown*.

53:13 Doreen Riedman, representing the North Dakota Association of Builders and the six Homebuilders Associations across the state: Provided written testimony, attachment 7. Requests amendment at the end of page 2, line 27, as shown on her written testimony. We believe this make it more workable for excavators who are working on residential lots. We would support the bill with that amendment.

55:07 Mark Dougherty, Associated General Contractors of North Dakota: I am in support of this bill and the amendments which have been proposed to this point. I was part of the group that worked on this, and I think it was a good process, and we came up with something that I think is going help in a lot of these situations. There were some other things we wanted, such as something dealing with the abandoned lines out there, but enough is enough with as busy as this whole system is right now. You had asked about mapping and who is required. All people that have underground facilities and come under the definition of an operator in North Dakota are required by statute to participate in the one-call system and to provide mapping of where their utilities are. This isn't specific mapping; it can be as general as a street or area. If there is excavating going on in an area, then One Call notifies the utilities that have underground facilities in that area. Basically, an operator is anyone who has an underground facility that leaves their property. Example.

57:13 Chairman Keiser: You said you're in support of the bill and the amendments. All amendments? The fourteen days?

Mark Dougherty: The two amendments proposed today. We like the twenty-one days rather than the fourteen.

57:38 Shane Goettle, Enbridge Pipeline and MDU Resources: MDU Resources has WI as well as Knife River, an excavating company. They wanted to go on record as in support of this, too. I was a part of the working group. Regarding the penalties, on page 1, you'll note that the PSC is to develop policies. There is no expectation that the Commission goes to any high level of fine immediately, but they are to develop policies which will be done publicly. We would expect that this would result in some guidance or matrix that would have different levels of penalties based on various factors. That is the expectation as far as the PSC taking this further.

58:38 Representative Kreun: What is the penalty for a Class A misdemeanor?

Shane Goettle: I don't know offhand.

Representative Kreun: The reason I ask is that if we're going to raise the fine to \$25,000 and later on in 49-23-06, a Class A misdemeanor is if you damage it, cover it up, and take, off, that more or less than the \$25,000 fine? Are we creating a problem that will make offenders hurry up and cover it up?

Shane Goettle: That is a good question.

59:30 **Representative M. Nelson:** The question I have is on developing policies. That is a bit unclear to me if they are then expected to enforce policy as law. Or is this talking that they shall develop administrative rules?

Shane Goettle: The group thought that the administrative rule making process would take too long, and we really want to get this matrix developed so that there is some guidance coming from the Commission fairly soon so that when this law is implemented, we can hit the ground running and there would not be any uncertainty as to the factors the PSC will be looking at..

Opposition:

Neutral:

Hearing closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1359

February 5, 2013, afternoon

Job 18324, 27:25 to 45:10

Recording contains committee action on various bills

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

One-call notice system

Minutes:

You may make reference to "attached testimony."

Begins on recording at minute 27:25.

27:36 **Chairman Keiser:** Reviewed proposed amendments which were introduced during the hearing. Carlee McLeod from the Utility Shareholders had a set of amendments in her written testimony; Jack McDonald had an amendment to move it from twenty-one days to fourteen days. The Homebuilders had an amendment presented by Doreen Riedman.

28:00 **Representative Ruby:** Motion to adopt the amendments from this morning from the Homebuilders and from the Utility Shareholders.

Representative Vigesaa seconds the motion.

Voice vote on the adoption of the amendments offered by the Homebuilders and by the Utility Shareholders. **Motion carries;** those two sets of amendments are on the bill.

Chairman Keiser: What about the amendment offered by Jack McDonald regarding fourteen days? Okay, we're taking him off. So we have HB 1359 as amended before us. What are your wishes?

29:26 **Representative Becker:** Addressing a comment made earlier regarding fines. For a Class A misdemeanor for an individual, it's up to a year in jail and \$2000. For an organization, it's \$15,000 and no jail time. So I am wondering if there's something a little odd about there being a discrepancy. A misdemeanor is \$15,000, but this other part says \$25,000. Should those coincide?

30:00 **Chairman Keiser:** We don't get into too many criminal penalties; we get into civil. I'm not an expert on these areas.

Representative Becker: Is there anything regarding Class A misdemeanor currently in this bill? No? So that was just a point of inquiry?

Chairman Keiser: This is civil, not criminal. So it's just a fine.

Representative Kreun: The other is a criminal offense?

Chairman Keiser: Yes, there are two different segments.

31:04 **Representative Ruby:** That is quite a bit, and they're jumping from \$5000 to \$25,000.

31:14 **Representative Ruby** makes a **motion for an amendment** to take the amount on page 1, line 13, from \$25,000 to \$15,000.

Representative Kasper seconds the motion.

31:34 **Representative Gruchalla:** The idea of having the \$25,000 in there is that they could go up to that amount after they adopt their policies. So maybe it would start at \$1000 and work its way up. But if you get multiple offenses and they keep offending, you could go to \$25,000. It doesn't mean you have to.

Representative Ruby: I understand that. But if you have multiple violations, you're going to have multiple fines. If you have multiple fines up to \$15,000, if they determine that you're avoiding any compliance with the law, I think that is plenty high enough to get up to. I hate to see them get too exuberant in setting the fines. Basically, all they said was that it wouldn't be in rules and it wouldn't be set by us, but they'd like to be at the table of the Public Service Commission. I don't know how well that would work or how much input they would have into setting tiers to the different levels. It's fairly subjective as to what level they want to apply as a penalty. I thought \$25,000 was too high. A fine of \$15,000 is still sufficient, especially if applied repeatedly to a repeat offender. They'll probably have to pay restitution for the cost to repair as well.

33:29 **Representative N. Johnson:** I am going to resist that motion. In the testimony, we heard that the group that worked on this settled on \$25,000 as a middle-of-the-road, reasonable number to allow the PSC to vary it depending on the severity of the infraction or damage. They're in agreement that amount is okay.

34:00 **Representative Sukut:** The amount of \$25,000 is peanuts. If a company wants to lay pipe or put in a gas line and they're having trouble getting things marked, they'll just go ahead. I think the \$25,000 was put there for a reason, and I think it is the right amount.

34:43 **Representative Ruby:** When she was asked about that, she said that some thought it should be higher and others thought lower. I don't think they really came to something that was agreed upon, just something in the middle. It seemed arbitrary and subjective to me.

35:48 **Chairman Keiser:** If I'm out there with a piece of my equipment and it's not marked correctly, I am following the law, so I'm not in violation. Someone has put in a piece of pipe and didn't notify anyone, and I hit it and it causes damage to my piece of equipment. Don't I have the right to recover the damage? This is the penalty in addition to any damage that I would recover. Is that correct? So they are liable to pay any damages and a penalty. Representative N. Johnson is right about the testimony.

Roll call vote on motion to amend the penalty amount on page 1, line 13, from \$25,000 to \$15,000. **Motion fails.**

Yes = 5

No = 9

Absent = 1

38:04 Representative Kreun **moves for a do pass as amended**, amendment 13.8218.02002. Representative N. Johnson **seconds the motion**.

Chairman Keiser: I was amazed at their statistics about the increase in the numbers of one-calls that they're servicing.

Representative N. Johnson: That is why I asked the question about staff. Examples from Dickinson and Reeder.

39:00 **Representative Ruby:** Example from a man with a sign company. There is nothing that reimburses a company for their expenses when they followed the proper steps yet they hit something which had not been marked.

40:34 **Representative Kasper:** We're not hearing about what happens when these lines are put in and a property owner's property is damaged. Example.

41:48 **Representative Kreun:** Was their conversation about those who did the damage being held responsible? If they mismarked it, wasn't that the responsibility of the marking company?

Roll call vote on motion to do pass as amended. Motion carries.

Yes = 14

No = 0

Absent = 1

Carrier: Representative Gruchalla

February 6, 2013

V/K
2/6/13

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1359

Page 1, line 22, remove the overstrike over "beginning"

Page 1, line 22, remove "the planned"

Page 1, line 23, remove "commencement of"

Page 2, line 21, replace "planned excavation site" with "location of the excavation"

Page 2, line 26, remove "and the affected operators"

Page 2, replace line 27 with "plans a meeting with the affected operators at the location of the 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."

Renumber accordingly

Date: 2-5-2013
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1359

House Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13-8218.02002

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Ruby Seconded By Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser			Rep. Bill Amerman		
Vice Chairman Gary Sukut			Rep. Joshua Boschee		
Rep. Thomas Beadle			Rep. Edmund Gruchalla		
Rep. Rick Becker			Rep. Marvin Nelson		
Rep. Robert Frantsvog					
Rep. Nancy Johnson					
Rep. Jim Kasper					
Rep. Curtiss Kreun					
Rep. Scott Louser					
Rep. Dan Ruby					
Rep. Don Vigessaa					

Total Yes No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

-homebuilders amendment -Doreen attach
-Carlee's - utilities - attachment 1

Date: 2-5-2013
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1359

House Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Ruby Seconded By Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman		✓
Vice Chairman Gary Sukut		✓	Rep. Joshua Boschee		✓
Rep. Thomas Beadle		✓	Rep. Edmund Gruchalla		✓
Rep. Rick Becker	✓		Rep. Marvin Nelson	ab	
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson		✓			
Rep. Jim Kasper	✓				
Rep. Curtiss Kreun		✓			
Rep. Scott Louser		✓			
Rep. Dan Ruby	✓				
Rep. Don Vigesaa		✓			

Total Yes 5 No 9

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

page 1, line 13 change to
25 → B 15

Date: 2-5-2013pm
Roll Call Vote #: 3

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1359

House Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 13.8218.02002

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Kreun Seconded By Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschée	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker	✓		Rep. Marvin Nelson		ab
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper	✓				
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 14 No 0

Absent 1

Floor Assignment Gruchalla

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1359: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1359 was placed on the Sixth order on the calendar.

Page 1, line 22, remove the overstrike over "~~beginning~~"

Page 1, line 22, remove "the planned"

Page 1, line 23, remove "commencement of"

Page 2, line 21, replace "planned excavation site" with "location of the excavation"

Page 2, line 26, remove "and the affected operators"

Page 2, replace line 27 with "plans a meeting with the affected operators at the location of the 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."

Renumber accordingly

2013 SENATE POLITICAL SUBDIVISIONS

HB 1359

2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee Red River Room, State Capitol

HB 1359
March 8, 2013
19644

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to the one-call notice system; and to provide a penalty

Minutes:

You may make reference to "attached testimony."

Chairman Andrist opened the hearing on HB 1359. All senators were present.

Rep. Nancy Johnson District 37 introduced the HB 1359. This deals with the one-call notice system. Generally there is some disagreement among the parties about what we're going to do, and who it impacts and how it is going to work. During the interim a group of interested and effected parties took the initiative to meet and hammer out an agreement on how to handle some of the one-call issues. HB 1359 is a result of their work. There are representatives from that group here today to inform the committee about the specifics of the bill, but I wanted to come in and just introduce it and say how pleased I am that they actually took the time during the interim to work on the issue and try to find something that would be workable for all. I ask for your do pass recommendation on HB 1359.

Carlee McLeod President of the Utility Shareholders of North Dakota (USND) **Written testimony #1**, (1:45-19:38). Carlee McLeod also brought written testimony from Mr. Harlan Fuglesten who is unable to attend the hearing but is in support of HB 1339; **written testimony #2**.

Chairman Andrist Carlee, when you say consensus, are you confining it to your utility shareholders and electric utility companies or who's involved in that consensus? **Carlee McLeod** replied it's more than just the utilities, its utilities, contractors, telephone providers, home builders, people from all around the one-call issue. **Chairman Andrist** Thank you.

Vice Chairman Ronald Sorvaag not on the fine, but as you go along you said there was amendments in the House and what they were. Could you point them out? **Carlee** replied sure. We originally had language in this next section about excavation that talked about when you could start excavation but it wasn't as clear as a provision in the law that we have included further along in the bill. So we took out all of that language. However the actual policy behind it still remains and when we get to it I will explain that. The amendments that came into the House side (Sect. 8) to this section was to make it clear at the bottom saying to give a street address, platted lot number, that is not overly large or complex.

Chairman Andrist Who's responsible for doing the marking? **Carlee McLeod** replied there are locators at any company that has a facility within that area. So it would be in town, cable television, internet, telephone or any of the electricity, gas. **Chairman Andrist** So the word goes out to all of the people who work in that area and if they have a line going through whether it be a television, cable, or whatever, they have the authority or are responsible for going out and doing the markings. **Carlee McLeod** replied yes.

Senator Howard Anderson Who's ultimately responsible when something gets damaged? Is it the property owner, the contractor, the sub-contractor, or who is at fault? **Carlee McLeod** replied I think the PSC determines who is at fault. If it's your facility that was cut, the person doing the cut, is responsible for the damage. If you have not marked something properly and someone cuts through your line, if you're the facility owner and you haven't marked it, then you are responsible because you have not marked it correctly. I can't imagine a property owner would be responsible if they aren't involved in the excavating or the marking, but it would be whose ever responsibility is to locate that line and not cut through it. Whoever violates that would be responsible.

Todd Kranda Attorney with Kelsch Law Firm, representing the N.D. Petroleum Council for Ron Ness The North Dakota Petroleum Council is in support of HB 1339. We do have Bob Steede from Enbridge Pipeline.

Bob Steede General Manager of Enbridge Pipelines North Dakota We have hundreds of miles of underground oil pipelines in the state of North Dakota. We have been here for 50 years and intend to be here for another 50 years. One of the key jobs that we have is to make sure that we operate our pipeline safely. We need to make sure that the public is safe, our workers are safe, the environment is protected and our pipelines themselves are protected. So the 811 system and the line locating process is really a cornerstone to our ability to do that in the sense of 3rd party excavators doing work in proximity of our pipelines. Without it we would not be able to prevent third party damage to our pipelines. So, we are very much in support of this bill as presented. Some of the things I do really like about it, it doesn't change the integrity of the locating process as it exists right now; but it does create some additional efficiencies for us. So, there is reference to on page 2 some of the additional items in there. We have 5 full time employees that do nothing but mark our pipelines when an 811 is received. We are actually in the process of recruiting 3 additional employees because that's the level of calls that we're getting these days. (Referenced **written testimony #3.**) Do not consider additional exemptions to the bill. With an oil pipeline, we are in a high stakes business. There is not a lot of room for mistakes to be made when our lines are contacted, it puts our ability to protect the public and our employees and the environment in jeopardy. So even a small damage to our pipeline over time could result in a failure and if we don't know about it when because there has never been a one-call made, a company doesn't let us know that our lines has been struck; then we don't have the ability to take the mitigation measures that we need to take to ensure that we can maintain the protection of everybody.

Senator Howard Anderson I was wondering if Highland Crude was a member of your coalition and that they realize that they might have to mark their own pipelines eventually.

Bob Steede replied they would be somebody that would have to mark their own pipelines, yes.

Senator John Grabinger We just talked earlier on a different bill about a GIS system throughout the state and marking and locating all of these pipelines and stuff that are going in especially out in the west. You're obviously by your testimony sounds like in support of something like that. How effective is what we have already in place? You've talked about GIS maps and so forth already can you elaborate on that just a little bit?

Bob Steede replied some of the challenge right now is that there is not a real great linkage between the 811 system and the GIS system to connect the dots. We would be taking a risk if we're going to the GIS system and trying to guess what somebody is asking to be marked. The pipeline company is a complex one if that was on the GIS system just on the state's website we would be taking a significant risk in us not going out and investigating it and marking it. So if there is the additional component of send in the GIS information specific to the markings, then we have the ability to link the two and two together and not take that additional risk. So it is good additional information that is out there were supportive of that as well but we need those two things linked together a little bit better.

David Crothers North Dakota Association of Telephone Cooperatives. The association represents some 96% of the states geographic territory and we have a tremendous interest in this bill. Instead of me testifying on behalf of those members today, we have asked two our members from Parshall and Ray, Shane Hart and Mike Stephan to be with us today. They have a more direct understanding and knowledge of the one call issues.

Shane Hart Assistant General Manager for Reservation Telephone Cooperative in Parshall, N.D. Written testimony #4. (29:09- 35:08) Strongly recommend a do pass to this.

Chairman Andrist Shane of all these cable cuts, how many of them are just, what percentage are just accidents, and which ones are people who just took shortcuts? **Shane Hart** replied out of the 160, I didn't do an actual study on that, I would guess accidents are less than half. So, that means more than half are negligent or just again not obeying with the one-call system out there.

Mike Steffan Northwest Communications (35:32-38:20) we are located in Ray, North Dakota. All of our exchanges, we have 16 exchanges all of which lie within the footprint of the Bakken Formation. **Written testimony # 5** Recommend a do pass on this bill.

Chairman Andrist you said the average locator marking cost is how much money? The cost for a typical project, how much does it cost you to mark it? **Mike Steffen** replied for a simple project we pay our locator a \$220 fee. So, if they go out and it's just locating in somebody's yard it costs us \$220 for that spot. This example that you're talking about \$5500, that was a 25 mile route for a pipeline and we had to limit that to what they can do physically do in construction so, we had to locate the whole 25 miles instead of the only 2 or 3 miles that they were actually going to get done in that 10 day period. Stretching that out to 21 days would significantly help us on relocates.

Senator Jim Dotzenrod When someone calls to report an area to be located, what is the process you go through to make sure it gets done?

Mike Steffan replied, generally speaking, the first contact goes to the 811 call center and then we have employees that are responsible to take those calls from the call center. **Senator Jim Dotzenrod** When you get that phone number of this person whose requesting to have this located, and they keep asking for the same long route to be located for every 10 days, doesn't someone in your company get on the telephone and call then up to say you know this is really a problem. We would like to do the locating but can't you tell us specifically for the next 10 days where you're going to be so we don't have to. Is this just a one way communication where you get this order and you just go out and do it without any communication? You would think that there would be someone you could talk to there that could answer some questions for you and not have to assume that the whole length which is an expensive project. I would think there would be some attempt to contact that person through these numbers that are provided to you so that wouldn't happen. Do you attempt to call them and it just doesn't work, and they don't want to deal with it?

Mike Steffan replied the law as its written right now, we are required to locate whatever is requested on the locator request. Certainly we could talk to them but there response is generally going to be well the law says you have to do it. That is why we're asking for that portion of the law to be changed so obviously there not going to get the 25 miles done. It took them months, so if we can point to the law and say you can only do that and the second time when we come back if they've done that and haven't started on the project, we can charge them that \$5500. So it takes the onerous off of us and puts it on them.

Chairman Andrist is it reasonable to assume Mike, that on a long pipeline like this they might or would they be permitted to be filed in pieces where they do 4 to 5 miles at a time?

Mike Steffan replied that is what we are asking to be done through one call, rather than asking us to locate the whole 25 miles. Tell us what you can reasonably get done in the next 21 days. I am not picking on the pipeline companies but that is one instance.

Todd Kranda Testimony for Alliance Pipeline that I handed out so, I am appearing on behalf of Alliance Pipeline and Tony Straquadine who is the Manager **Written testimony # 6.** (42:29- 43:44)

Chairman Andrist I suppose it's reasonable to assume that the pipeline companies have a real concern because all of us out west tend to think that before we have an environmental disaster like a ticking bomb, that someday it's going to happen no matter what we do. **Todd Kranda** replied, it is a very serious matter and I think that this bill helps assist everybody that has been involved in it. It is a nice piece of product that Carlee and her working group put together for you and we strongly support the effort.

Senator Jim Dotzenrod When the utility goes out and marks their line is there a standard color coding for what they do? Do they use like orange flags and blue ones and white ones as I've seen different colored markings. I don't know is that a standard in the industry? Also sometimes they will paint and other times they will use flags, with 21 days you'd think that they would be using flags instead of paint. Can I assume that?

Todd Kanda replied I don't know what the process is for each entity, but my personal experience has been that there are different colors for different types of underground facilities. I know that we do have a one call representative here and perhaps he could address this question for you. I agree there are different marking colors that I've noticed in my own projects that I've called in.

Chad Olson (45:35-46:23) Director of Education and Public Relations for North Dakota One Call and I am here on behalf of the North Dakota One Call Board to testify against any proposed amendments that might be brought to change this existing law or existing information. We do not want any more exemptions added to the law; we need more compliance. We've gotten by with the agricultural exemption of 18 inches and gardening and landscaping exemption of 12 inches; but to be honest a large number of damages occur because of these exemptions. So I would hope that you would vote to remove any additions to this proposed amendment.

Senator Jim Dotzenrod Maybe I could pursue the question I asked earlier. If we go from 10 days to 21 days can I assume that it will be flags instead of paint?

Chad Olson replied the locators will use both flags and paint if it's requested. In most instances flags over time will lose the flag part in the wind. Cattle will sometimes chew on that and remove that, and yes there is a color code a national color code for all of the utilities, red is for electric; yellow is for gas.

Shane Goettle, Enbridge Pipeline as well as the MDU Resources. MDU resources asked Shane to appear on their behalf today. They are on both sides of this as an excavator as well as a utility company and gas and electric. One thing I wanted to also highlight for your work on this bill, on the first page lines 13-15, which you can expect the PSC to do if you pass that provision is it will develop policies, kind of a matrix regarding the penalties. So it will publish in a policy what factors it will look at in determining the level of fine that it would assess for violations of this provision and we welcome that. We think that is a responsible way to move forward.

Mark Dougherty Membership Services Representative for the Associated General Contractors in North Dakota and I also represent the excavators on the North Dakota one call. I am here in support of HB 1359. I was one that worked with Carlee and the group that helped put this together and I think it is a good compromise for everybody. It's nice that we're all in agreement on this. I would also like to say that the AJC of North Dakota is against any exemptions made to this law at any time. We don't think if you have a law that's worth having that there should be exemptions to it. There are a couple of exemptions in the law right now for home owners as long as they don't dig over 12 inches deep; and there are some agricultural exemptions down to 18 inches for normal agricultural functions.

Doreen Redmond Represents the North Dakota Association of Builders. We looked at this to from a point of excavators. Rory Schlosser, excavator from Mandan was a part of the group that we bounced ideas off of and this information to make sure it would be workable for residential excavators and one of the amendments on the House side that was put in, was dealing with the white markings. We added in that if a residential address is provided,

then white marking is not required. This testimony was presented in reference to Sr. Sorvaag's previous question. We wanted to make sure that requirement was not placed as a burden on residential excavators.

Rep. Marvin Nelson from District 9. I am opposed to House bill 1359; **Written testimony #7.** (51:57-59:00) we have never been included as agriculture and specifically soil testing because they thought that 18 inches somehow excluded agriculture. It is almost a unique North Dakota problem. In North Dakota we test for residual nitrogen as that is how we base our fertility recommendations on and that's what we've been basing our fertility recommendations on since back into the 1960's. We don't have data on shallower soil testing. The problem with this is that this service is provided by a variety of people farm suppliers, grain elevators, agricultural consultants. Very seldom farmers do it themselves, whereas in other parts of the country it would be pretty common.

I would support the bill if you simply put the soil testing exemption in there, you could just as well exempt it because there is not a single soil tester in the state that is called. We can't make the system work. If the system could be made to work with soil testing we would not oppose being in one call. We do not want to damage phone lines, pipe lines. I don't think the one call system as its' done really can be changed. But there probably is ways that we could work with utilities with the shape files and stuff and where we could protect this as it really needs to be done. The fortunate fact of nature is that the heaviest soil testing is in the eastern part of the state and the heaviest oil field activity is in the western part of the state.

Senator Jim Dotzenrod In your testimony it appears that there are phone lines or other utilities that are buried shallower than 24 inches or 30 inches. I am kind of surprised to hear that anyone would bury anything of any value at that shallow a depth. Is that a pretty common thing to have it that shallow?

Rep. Marvin Nelson replied its' not common in most areas. It is common enough in our area and we called them Lenny lines because a phone contractor called Lenny really way back when, wasn't very careful about what he did with anything. When you hook a shallow one it is usually something that Mr. Lenny installed. It is not the new fiber optic or anything like that. It's an old copper. Honestly a couple of guys that have hooked them that I know of and what they said what happened was they realized they cored it, and it wasn't long the phone company started driving back and forth on the highway and when the soil tester could them to the actual spot of the break they were so happy that they never did charge them. Optic fibers are buried deeper and we don't want to be in that trench; but we have no sure way of locating them just at the end of every section they won't give us the GPS lines because all terrorist might blow it up, but at the end where it crosses this road with be signage saying there is an optic fiber cable right here. It hasn't been very satisfactory.

Senator Judy Lee Could Ms. McLeod explain why the soil testers wouldn't have been included or how the group working on it viewed that profession? I would like to be able to hear a little more about that issue.

Carlee McLeod replied I can speak to what the makeup of the group was but there are several others who could respond to it. When I put together the group I looked at the

people who had been opposed to the past and in favor in the past and that's who I pulled together. They were the excavators, utility providers, people who had things there or were digging there. It simply hadn't occurred to me to look at the soil testers. From the comments that we've had from the group during that process we didn't talk a lot about exemptions but we were so focused on safety that I believe that is where some of the comments against the additional exemptions have come from. We didn't mean to exclude them in the discussion and yet we don't want to exempt them from the safety protections that one call does provide. That is my knowledge but I am happy to bring some others up who could speak more to that.

Chairman Andrist Shane, was this amendment presented to the House committee when they heard it, do you know? **Carlee McLeod** replied no, it was not.

Senator Judy Lee It just a cut whether it's a soil tester or somebody else who does it. My neighbor was digging a hole for a shrub and cut my cable line and it sure wasn't 24 inches deep that was the cable company as well as the neighbors and my problem at the time. But what can we do then to provide the soil testing businesses with the information that is provided because I am not anxious to eliminate anybody who is digging holes into the ground. But everybody has got to have access to the information about where the stuff is located.

Carlee McLeod replied I can't speak on behalf of everyone who has something buried in the ground. As to what information they are willing or are able to share about where their facilities are located. What I can say is that whatever we can do to work with the one call center to make it easier to get that information back and forth, we would be all for it, whether that's helping the soil tester groups, cement. I know that Rep. Nelson said that you don't always know until you're out in the field where you are going to go; but if we could help them to be able to submit maps, drawings, plans for where they are and then try to get the facility owners to map things out accordingly, I am sure we would be in favor of that. Not being a person out in the field I think I would feel better having some of the experts come up and address that and the one-call representative as well.

Bob Steede Enbridge Depth changes over time, if there is additional grading at a location the depth may decrease, it may increase, erosion happens that can change the depth. So just because something is installed 24 inches or 36 or 48 inches it doesn't mean 20 years from now that it is still at that same depth. So, that is where a depth exemption becomes a bit of a challenge because of that change over time. The challenge in my industry anytime somebody is doing work in proximity to our pipeline, we just don't mark it and walk away; we mark it and we watch it. I can't let anybody hit my line. So we will physically be there the whole time the work is being done in reasonable proximity to our pipeline to make sure they don't get anywhere close to it. If they had to get real close we may actually open up the trench for those people. We're in a very high stakes business, so our ability to just give out our maps and say please avoid our pipeline that is something that we can't do. It removes that protection away from us.

Vice Chairman Ronald Sorvaag Your pipelines are much deeper than two feet though?

Bob Steede replied our pipelines are typically installed right now at 48 inches. If you go with older ones, they were installed at least 36 inches. But again realize that doesn't mean that a farmer hasn't stripped an area, something happened, ditching, all that kind of stuff, so I don't have the ability to say that a 24 inch exemption guarantees that you won't hit my pipe.

Chairman Andrist closed the hearing on HB 1359.

Senator Judy Lee asked the stakeholder group to visit with Rep. Nelson to find some way to figure out how to work together. Do not disregard the impact to those people the soil testers. These people should chat and come back to us next week.

Chairman Andrist Carlee please visit with Rep. Nelson about including the soil testers in this bill.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee Red River Room, State Capitol

HB 1359-2
March 19, 2013
19906

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the one-call notice system; and to provide a penalty

Minutes:

You may make reference to "attached testimony."

Chairman Andrist opened the hearing on HB 1359

Senator Judy Lee I asked Carlee if she would they would talk with Rep. Nelson again which they did. They spent a fair amount of time chatting with him. After having my cable line cut by my neighbor who was just trying to do landscaping, I think the one-call stuff is pretty important and I think maybe the soil testers just have to get with the program.

Chairman Andrist Apparently they didn't have any middle ground where they could accommodate soil testers?

Senator Judy Lee replied not really because your either going to get it or not get it. Either you're notifying or you are not notifying, I think they will figure it out. But he was the only person and he's not the only soil tester, who came in and objected to it. So I realize were not discussing 1359, I just wanted to make sure when we decide so that we had all that information available.

Senator Jim Dotzenrod I don't know if we are into the discussion on that bill or not, but, the thing that bothers me from what we heard as the committee, they are going to increase the dollar amount of the fines. It is going to get to be as high as \$25,000, and I was wondering if these assets that they have underground and their expensive and their cables and pipelines, and it appears that there fairly willing to bury this stuff fairly shallow. They expect other people to pay for any damages if they don't get their stuff down into the ground. I guess my question if you own that utility and that pipeline and you care about why wouldn't you put it down in the ground pretty deep? Because we run into this a lot where the 24 inches in the ground that is not adequate protection for something that is valuable. There is a lot of work going on out in the country. Tiling systems being put in, digging and ditching, lot of work being done, the rippers that are pulled behind big tractors that go down deep into the ground. They don't seem to feel that there is any obligation upon them or any fines that they should pay or any obligation for them to be held to some standard where they have to achieve a certain depth in the ground. They are just saying it's other peoples

responsibility and if we don't put it very deep into the ground you have to pay us for the damage you do. I wish they would've set a standard for themselves of a depth that they have to be down too and fine themselves if they can't keep their stuff down at a certain depth. They don't even want to talk about that.

Chairman Andrist, I thought I was hearing all of the new stuff there going down 4 feet but the reason they would have reluctance for something like this is the old stuff that is not down that far.

Senator Jim Dotzenrod I don't recall that and it might have been part of the testimony that I missed. If that is true then that's a big help because as this stuff gets more and more expensive and optical lines are really expensive and a lot of this stuff; if their willing to get it down to 4 ft. and will hold themselves to that requirement; that's really good to hear. I might have missed that.

Vice Chairman Ronald Sorvaag to add on that though, they won't guarantee it stays at 4 ft, because they said with soil excavating, it can move so they didn't want to be held to 4 ft.

Chairman Andrist commented that's true I heard that too. **Vice Chairman Ronald Sorvaag** Because they said it can vary or ditches are dug. There is just a lot of things that happen over time.

Senator John Grabinger But yet at the same time, they are not willing to hold it at that, but there willing to hold the soil testers at a depth, that's where I struggle. I come from a rural area and we having farming all the way around us where soil testing is part of farming these days. I think we're putting the emphasis on them and I would agree with Senator Dotzenrod in that the emphasis should be on those who own the utilities and want to protect their utilities. They can go out and test and find out how deep their stuff is and if they have a problem, they probably should lower it. The utilities need to take the steps necessary to protect their utilities. I don't think they should count on everybody else to do that for them.

Chairman Andrist The question is if anybody feels strong enough so they want to work on any kind of amendments.

Senator Judy Lee That group had worked together except for the soil testing person who came in towards the end. Everything that is in there has been worked out among the people that are there. I think there are enormous investments that are put in with these various facilities and the problem is that some of the entities that are coming in particularly out west with the big projects, it's cheaper to do the repair than it is to do the work to notify. Not everything is to a depth of four feet because some things it's just not practical to trench that far although it depends what your putting in. There are a lot of varying interests that were here. I don't think it's unreasonable to expect people to use a one call system and soil boring goes deep. That is really a rub with the soil boring people. Everybody else is in agreement, there is no issue with anybody else there; but the soil testing people that is not a 32 inch core, that's a deeper core than that that is going into the ground. Rep. Nelson was talking about the kind of depth he's going to in some cases and what kind of torque it really puts on the vehicle that he's punching the hole into the ground. I just think there's got to be a way for the soil testers to figure out a way to just plan. It can't be quite as random as it's always been. It just

isn't that kind of world anymore. I think it's not unreasonable to expect some responsible behavior on the part of all the parties in this and it seems like everybody else was up for that.

Chairman Andrist So I think I am hearing you say you would like to pass the bill as is.

Senator Judy Lee I am leaning in that direction, but I am always easily swayed by committee testimony.

Vice Chairman Ronald Sorvaag The only thing that isn't relevant to this or not, but the soil tester sat on the committee that heard it over there. He had opportunities to put amendments in and to deal with this and chose not to. He objected so much, but chose to come back here again, but my question is how hard do we need to work amendments when he is presuming to be representing that industry, which I think he is, because he does it for a living and I respect that? I can understand his objections but if there needs to be amendment to address this, I am curious why he didn't do it when it was in his own committee and had adequate time to do it.

Senator Jim Dotzenrod One of the things I've thought about is that so far we've only one person object, one soil tester and this is a business that is engaged in by 100's. I am wondering too, is there something we are missing here where it's just an issue for this one person because of some run-ins that he's had in some past history we don't know about. I would like to have a little time and asked some of the agriculture people I know to find out more about this for me. Is this going to be a problem, because there are 39 Million farm acres in the state and if 1/3 of them get tested every year that is 13 million acres, and I think that runs into about 100,000 quarters of land which if you have to do locate 100,000 pieces every year its seems to me that's a lot that is going to have to be done. I don't who will pay for all of that, the soil tester to get billed for that, but I think it's something I would like to know. If we're going to have a little time to work on it, I would like to see if I could get more information from the people in that industry and find out maybe for them it is not an issue for most of the people I would contact then I would say its' probably not a problem.

Senator Judy Lee I don't know if the rest of you got a message, probably not, because this is from someone whose business, Magellan Pipeline Company is in West Fargo. The mendment exempts soil collectors from calling in. My job with the company is to ensure there is no damage to our pipeline systems. I understand where they are coming from but all we really need to have is just one accident to happen. These soil probers may not be able to penetrate steel pipelines, but the damage they could do to coatings could result in corrosion and a leak. If they do hit it, and cause a dent in our line, it also could to lead to weakening of our line and create a failure in the future. Please know that we take safety to the fullest and would appreciate a no vote in this case on an amendment to protect the public. I hadn't even thought about that part before.

Vice Chairman Ronald Sorvaag If they are that dangerous, why are they only putting them so short, they should be down 4-6 feet? That's what doesn't make sense to me because the soil guys are only going to 2 ft. That is a deep core. We all know phone lines, cable lines, that is an inconvenience. Optic is a different deal but if that's valuable why are you laying it up a foot or two? Even if it moves I can't believe a pipeline moves 2-3 feet vertically. What are we missing here? Why is this really an issue because everything except the old phone lines get hit all the

time. The cost of that is minimal to come out and the disruption is usually not to major unless you hit the optic lines.

Senator Howard Anderson I agree with Senator Dotzenrod that it is appropriate to check with some other soil industry people that do this, because either Senator Nelson is right and there just ignoring it and there not calling; or they don't think it is a problem. I suspect it's a former but I don't know.

Chairman Andrist let's find time to take it up tomorrow.

2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee Red River Room, State Capitol

HB 1359-3
March 20, 2013
19927

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to one-call notice system; and to provide a penalty.

Minutes:

You may make reference to "attached testimony."

Chairman Andrist opened the committee for discussion on HB 1359. All senators were present.

Senator John Grabinger I would appreciate that opportunity. I did make a phone call and I think there is going to be response from some people.

Chairman Andrist so we won't take action on it today.

Senator Judy Lee I wasn't suggesting that we take action on it, it is just that when somebody shows up in the room and we might have a question rather than asking them to return if they choose to.

Chairman Andrist Does anybody have any questions on it? I didn't think that we did other than and I think the only issue was soil testing.

Senator Judy Lee Whomever might like to respond, could you let us know about the depth of lines whether its pipelines or fiber optics or whatever. Could you refresh our memories a little bit or give some additional information about the depth of lines and soil testing interfering with depth of lines.

David Crothers, Ex. Vice President with North Dakota Association of Telephone Cooperatives. Each can test by us to the depth of their lines. One of the great dangers in something that I learned during your original hearing was there are so many things that change the depth regardless of what depth it was put in at. Some of these lines carrying gas and oil, they were put in in the 1950's and erosion might've brought the surface much closer to the line itself. Someone else testified that just normal farming practices have shaved literally feet off of some of the depths that they originally put them at. I don't mean to be evasive, because in and on top of that it has been an evolving standard. The telephone companies that I represent are generally in the 36-42 inch range. Now for the backbone lines there much lower in the yards but that wasn't always the standard.

Technology has made it far easier to get down to that depth than it used to be. We have great state strata if you will, of where those lines are today. But, some of these have been in there for 50-70 years and they are all over right now.

Senator John Grabinger has there been a problem with soil testers cutting your phone lines before and do you know of any incidences? How rare is it?

David Crothers replied I don't know the answers specifically. One of the things that I learned when Rep. Nelson testified was that they are trying to stay in a 100-150 feet from the fence line. That solves a lot of our problems. For the water people, the oil and gas for the most dangerous of them all, it isn't quite as good. Rep. Nelson also testified that they used to have a person up there Lonnie Lines, where they were all just digging these things up, so apparently they do get over to the sides and it does happen.

Senator Judy Lee Tell me again what you said about the depth is they are burying now? **David Crothers** replied we are going 36 to 42 inches for the fiber cables. It would get lower near a house, where they are not 3.5 ft. deep. But, the ones out in the right of way typically are.

Senator John Grabinger So, if there staying in within 100 feet, would you have an objection to an amendment to allow them to go do their job without calling one-call.

David Crothers replied we received a communication this week, and may defer to Ms. McLeod here, but number one we've had some indication that the federal government will no longer make grants to states that have exemptions for entities within their one-call bill. The number two is even Rep. Nelson testified that they were picking things up at the going in at 100-150 feet. Number three, we had testimony earlier from the oil and gas companies that they are in the middle of those fields and it presents a real danger. Another danger is when they just nick those lines and we don't find out there damaged until some subsequent date. I think an exemption is a bad idea.

Chairman Andrist if I wanted to soil test a ¼ section of land, and called one-call, how much does it cost me? **David Caruthers** replied if you're a soil tester I think the fee is \$1.25 per call. **Chairman Andrist** \$1.25 per call. **David Crothers** replied and you could get ¼ or 160 acres with that call. **Chairman Andrist** so it's not really onerous? **David Crothers** replied in my judgment no sir it is not.

Senator John Grabinger you were saying the federal government wouldn't fund one-call to the grant program if they allow another exemption. They already allow exemptions for farmers and gardening and so forth. So, I am not following why all of a sudden there is no more exemptions.

David Crothers replied number one I would like to confirm that we just got that email. Number two, is that there exempt down to a certain depth. Farmers are exempt to 18 inches; homeowners the same.

Senator Jim Dotzenrod I visited with a pipeline person here. He talked about a circumstance where they had a line that when they put the line in several years ago, it was

wet, but that they had a hard time keeping the line down because of the line had air in it and they couldn't get it to stay down. They had to put concrete and weight on it to hold it down, they found later even at that, it wasn't quite sufficient and the line had come up some. They went back later when it had dried out- years later- but they went back and reburied that. What I find short in this bill is that, there is really no requirement or no obligation on the people that have these resources that are buried to keep them down below a certain depth. If you have something that is valuable and you find because of changing conditions its now less than 24 inches in the ground, I would think that there would be some obligation somehow that the person who owns that resource would feel that is at risk to have that less than 24 inches from the surface. If you care about it and consider it to be valuable, it seems to me you would want to go back and get that reburied.

Senator Judy Lee What is the obligation if any person who owns the property, who has drained or done something that alters the depth of the soil? The farmer in many cases who owns the property, what obligation for that person who has altered the property the surface in any way to inform the owner of the pipeline that there has been an alteration that will affect the depth at which that line is buried? Is there any?

David Crothers replied I don't believe there is any obligation. I think that is something that each of the facility owners would ask the ones giving the easement to do is to let them know, but I am unaware of any obligation they have. You also mentioned Senator Dotzenrod and some of his comment is reflected in yours. The facility owners number one, it's difficult to know when it's moved up when its gone from 36 to 26 inches, number two is facility owners incur a tremendous expense in locating these so that they don't get damage. We know what corridor there in, that's what we go out and mark regardless of the depth of that facility.

Carlee McLeod replied other comments regarding some of the questions. The fee that you asked about, the \$1.25 you should also note that everyone who goes and locates something on that land pays the same fee. So, it's a collective fee that is paid for the vendor for the service for each ticket. If we were to waive the fee from the soil testers all of the other utilities we're out locating are still paying that \$1.25. We're paying it even when it is just to go out and mark something because someone else wants to dig. We believe in protecting our facilities. So that is something to consider.

Regarding the 100 feet or the perimeter, from where we think the lines might be from where the soil testers are actually testing, when I spoke with Rep. Nelson, he said he tries to stay within 100 feet from those lines, but that is not always occurring because each field is different and his needs are different. When a person does call in, a ticket they can easily say here's where I am going to be digging and that will tell the people who are listed as having facilities in that area if they facilities or not. It is a quick process, it's an easy process that shouldn't slow the soil testers down in any way to be able to do that.

Senator Judy Lee Do you know anything more about that federal notification that Mr. Crothers mentioned?

Carlee McLeod replied I don't know a lot more about it. I did receive an email that the feds were considering taking away any sort of grant eligibility to people with these sorts of

exemptions. I did not dig much into it because my particular company said we're not in favor of the exemptions but they don't have a whole lot to do with the federal program from what I understand. I can do more research and report back to the committee.

Senator John Grabinger Were going to take this up tomorrow and I think that is pertinent information. If you could find something on it, to justify what was said, I would appreciate it.

Chairman John Andrist further discussion will be held.

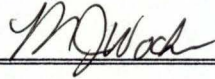
2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee Red River Room, State Capitol

HB1359-4
March 19, 2013
19983

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the one-call notice; and to provide a penalty

Minutes:

You may make reference to "attached testimony."

Chairman Andrist reconvened the committee for discussion on HB 1359. All senators were present.

Senator Jim Dotzenrod I contacted a person who does this and they wanted him to talk to his supervisor in Minnesota. This is what he sent me. (Dennis Berglund).

Chairman Andrist that implemented on all field soils sampling price increases to 40%-70% could be feasible. This wasn't the information I was hearing.

Senator Judy Lee I think that \$1.25 per tag is for each call and so there could be more. But as was said yesterday there are many places if they call, they will find out there is none at all. I did visit with a farmer in Cass County because we had heard that there would be differences in depth which was my understanding as well. He said that a 4 ft. bore is not an unusual thing in the valley. It is an issue. In this it talks about 42 inches which is pretty darn close if you're getting within 6 inches of a 4 ft. deep line.

Chairman Andrist Your saying that it is not unusual. **Senator Judy Lee** replied that soil testing is done to 4 ft. He said 4 feet and my understanding it's a little deeper in the valley than it is in the western or central part of the state. He said that 4 ft. would not be an unusual thing. Dennis Berglund who Sr. Dotzenrod contacted talks about when their going for nitrogen and sulfur testing that they go 24-42 inches. Sugar beets are often sampled to a 42 inch depth. The depth issue I think is a big deal. I understood that Rep. Nelson is on the committee that heard this on the House. If he was, he had opportunities then to make changes and the changes were not done.

Chairman Andrist Well what colors my view is if they really are going down 42 inches or more, it seems to me that it becomes even more appropriate that they notify one-call.

Senator Jim Dotzenrod The particular person I talked too first was one of the people that goes out and does the testing. This is from the management level and this company's headquartered in Twin Valley, Minnesota. They cover a pretty big area with many outlets

around the three states. But he told me that most of their work is routinely down to 24 inches; but when they have the sugar beet field where they want to go deeper than they do the one-call. They have to go below 24 and they do one-call. Anytime there near the outside of a city like Wahpeton, but they get within a few miles of Wahpeton they do one-calls on those. But most of their fields that they do are out in the country and they do them year after year and they know the history of the county. They don't do the borders and they won't put the probe in to disturb ground. So even where that pipeline is there not going to be probing on that dirt anyway. I think the issue is still the 24 inches. Is there an expectation that they are going to do one-calls on every field they sample? We could pass this but we're going to have to understand this that they are not going to be able to comply. Actually this bill doesn't change anything except the penalty. 1359, all it does is makes the penalty higher. I don't think it changes operationally.

Chairman Andrist Does a violation occur for doing it or does the violation occur for doing it and damaging something?

Senator Jim Dotzenrod I am not sure. **Vice Chairman Ronald Sorvaag** I did want to make one point. One of the requests is that it is longer than ten days. This bill extends it 21 days. It is only a \$1.25 ticket charge to call them in, and then the utilities pay the charges over that so it is not costing the soil samplers and again we're giving them a 21 day window. That gives them opportunities.

Senator Jim Dotzenrod He wasn't aware that the ten days going to 21 days, so I think that works in his favor and also when he was talking about the increase cost, he was talking about from a standpoint of them insuring and the liability exposure to go to something whether it is a \$25,000 fine. Now that he thought that they would probably have to be looking at a exposure to a liability they currently don't have at that level, they would have to factor in something for that.

Chairman Andrist There is an interesting story in the paper that the local telephone cooperative in his area is incurring horrendous costs because there is so many calls from the one line and they have to mark so much area. But, they still testified in support of the bill.

Senator Howard Anderson It seems to me to that once soil testing companies adopted this as part of their regular practice, this ticket is standard every year. They could fax the thing in to one call or they could say were going to do this within the next 21 days. Right now they are exempt down to 18 inches, if they go below that, then there in the mix here.

Chairman Andrist Would a company which soil tested a field and submitted a ticket and they could fax the same ticket in the year if they wanted to test it? Would the electric cooperative who didn't have a record also of it, a year ago, so they could just reference that and say we haven't done any work there so we don't have to mark anything?

Senator Howard Anderson That I don't know.

Senator John Grabinger Senator Dotzenrod brought this information that shows that some are actually doing the one-call. I don't think there is an exemption for soil testers even

to 18 inches, but regardless, it's apparently going to have to be the practice that they are going to have to just bite the bullet. **Chairman Andrist** and learn to do it. **Senator John Grabinger** But giving them the 21 days also, I was concerned with the weather changes and so forth if they can go back out there to do what they got to do in the time frame we had 10 days so, I guess we may have to review this in two years, but for now, I guess I'll support it. I would like to have some skin in the game for those utility companies though to make that that they have their utilities deep enough. The idea that they can just put them out there and if they come up to the surface whoever hits it is there fault. I think they have a responsibility too make sure their utilities are protected and I don't think there is anything in this for them.

Vice Chairman Ronald Sorvaag I think the important thing too, is the ticket charge is minimal to nearly nothing at \$1.25. The cost is upon the utility. This cost isn't going to the soil samplers. After reading the code, I don't think there is a penalty unless you damage something. If you damage it because you didn't get it marked, then you'll be in trouble, but just go out and not damage anything, but someone else would have to determine that.

Senator Jim Dotzenrod I think we do have some questions that I would like to have someone from the industry be able to answer. But one of the questions that came up are they currently exempt down to 18 inches. I assume they are. But when that comment was made someone was over here shaking their head saying no, no, that's not true. They are not exempt. Are the soil testers exempt down to 18 inches under current law and in this bill?

Todd Kranda, Kelsch Law Firm. I represent both Alliance pipeline and also Trans- Canada Keystone Pipeline, so I have the pipeline interest. But to answer the questions, and Mr. Dougherty is over here he's ADC but also on the one-call board itself. No exemption currently exists for soil, it is an agricultural exemption so even 18. In terms of penalties, technically failure to call is a penalty, failure to mark is a penalty, so the fact of damage could significantly increase the penalty because of consequences but short of that soil testers are in violation now, and have been for however many years they've been doing whatever they've doing and that's the way they do business. But the penalty is if someone complains and files a report. The PSC has the jurisdiction to do the investigation; the penalty of \$25,000 is not an automatic it's up to \$25,000. I think the testimony previously suggested their standards, and Shane Goettle suggested there will be criteria depending upon the severity so if you hit a line and it blows up and you kill somebody I would assume the \$25,000 is in play. If you nick a line, it corrodes over years and blows up and kills someone I think the penalty is in play for \$25,000 that's the concern that we have.

Chairman Andrist Todd do you say there is an exemption for agriculture. Isn't soil testing for agricultural purpose?

Todd Kranda replied it's for the farmer themselves. The agriculture activity of the farmer.

Chairman Andrist But the soil tester is the agent of the farmer isn't he? **Todd Kranda** replied I am not sure what the contractual relationship is. I assume that is true. But I don't know if that stretches that far in terms of exemption. Perhaps Mr. Dougherty can answer that. I can look at the language but I don't believe it does. You can contract a construction

company to do something and you're the agent for that farmer if you come out there and build something I don't think that protects that construction company from not complying with the law to call and make sure facilities are safe and to preserve those facilities that are buried and have moved around. That's why we have the one-call system and its \$1.25 was kind of a misunderstanding. My understanding is that both the person calling in the ticket pays \$1.25 and the utilities pay \$1.25. Now over and above that the utilities have their marking fees so it could cost them several hundred dollars to actually have it located, but, its \$1.25 each.

Chairman Andrist So, the soil tester has no liability beyond the \$1.25. **Todd Kranda** replied not for calling in the ticket. That would be their expense or fee for calling in their call ticket to have the field marked. **Chairman Andrist** But he doesn't have any liability for marking either? **Todd Kranda** replied he has no responsibility to mark unless he has a utility there somewhere that he's one of the utilities responding. That is not their business.

Vice Chairman Ronald Sorvaag the utility looks to have nothing they do not go and mark, so they can just tell one-call this quarter has nothing. **Todd Kranda** replied in fact that is part of the positive response aspect. There is a little portion in there that allows that we can respond. Also to my recollections, I received a message from the one-call individual representative saying the \$1.25 is going to be reviewed and most likely reduced because of some cost savings through their provider of the service. They reevaluate that annually or every period they contract so, that \$1.25 is actually going down.

Senator Judy Lee That person who is working like a soil sampler does for a farmer to a well driller who obviously is going deeper than 4 ft. They also would be contracting with the farmer to provide the service and we would certainly want the well driller to find out whether or not there is something moving. I think we've got to be careful not to broaden that. But I am wondering if either Mr. Kranda or Mr. Doughtry knows anymore about that memo that came out yesterday from the feds about exemptions eliminating the access to grants.

Todd Kranda replied I think I've see some of those and I've also talked to Commissioner Kalk because I think pipeline safety is his portfolio at the PSC. My understanding if there is exemptions that are created the PSC is reviewed by the FENZA and pipeline safety because they implement the federal program in the state. They've authorized the PSC to do that. As part of their program they audit or review what their process is. Your guys recently passed a pipeline penalty provision. The PSC had inadequate penalties and have always been dinged or their report card back from the FEMZA saying your program that you're implementing for us is not appropriate at this level or this thing, so they get a B or a C on their report card. Their grant funds that they receive are negatively impacted or not completely in jeopardy but could be reduced and likewise with an exemption; granting additional exemptions; there's a push toward less exemptions; than more and if North Dakota went the wrong direction my understanding from the conversation that I had that will also play badly on the report card that goes back into the grants funds negatively impacted.

Senator Jim Dotzenrod Where did that 18 inch number come from? It seemed like we had that in our committee discussion. I don't see it in the bill and was that just something we assumed and it never really was there?

Todd Kranda replied part of the bill doesn't contain that actual exemption, and it is a separate section of law. There is like 3 or 4 exemptions. **Senator Jim Dotzenrod** it's not in the bill but it is somewhere in the law. **Todd Kranda** replied correct and we can find that for you. **Senator Jim Dotzenrod** The reason that is in there is so that someone who's pursuing normal agricultural practices is fined, unless they get below that 18 inch depth. Is this what that is about?

Todd Kranda replied yes. **Senator Jim Dotzenrod** As I understand what this bill does, I don't think it changes any of who's included and who isn't included and just a penalty. It changes the penalty provisions from \$5,000 to \$25,000, and it changes the 10 days to 21 days; and you're saying that if a soil tester goes out and he's done this field many times over the 10 years he knows that he's had no trouble there in the past; but if he doesn't do the one-call that he is technically violated the law by going out there and doing soil testing without doing a one-call.

Todd Kranda replied that every time you excavate and whether it's this year or next year, one-call is a requirement for safety. Some things could occur and yes your right technically that is a violation, technically soil testers from the testimony apparently have been violating the law. Whether they've been enforcing it apparently not; they are taking that risk and liability by not calling. The exceptions are in 49:23:01 so those and what they are is an exception to the definition of excavation (ex. cited).

Senator Jim Dotzenrod In the process of developing this bill you had a coalition of utility providers that went together. Was there any thought of having some member on that panel be from the agriculture community or NDSU Soils Department or the Soil Testing profession or to have them included in the developing the bill? **Todd Kranda** replied that Carlee McLeod contacted the individuals that showed up last session and were an active participant in that legislation and so that's who she contacted. Even if the soil testers would've presented this her concept and the understanding of the group was if there wasn't a unanimous consensus to the changes that are in the one-call bill, it would get in there.

Senator Jim Dotzenrod I do think that technically and honestly speaking we have a law here that just to manage it physically I don't see how it's possible to locate every field that is going to be soil tested. I just don't think it's possible to get done. I think we need to pass the law and they are going to have to in order to get their work done to do as many one-calls as they can. I don't see how they can get the work done in the period and the amount of time they have to do it and have every field that they are going to be on, tested.

Todd Kranda replied that is why some of these changes are done. It's not only just in the soil testers, there is other areas where a lot of activity is going on, pipelines are being dug everywhere and that's why the 21 day period. You can call far enough ahead of time to preplan. The only problem you have is we don't know. Soil testers are apparently not calling one-call all the time and we've encourage them to do so.

Vice Chairman Ronald Sorvaag We're in a heavy populated area for farmers but there is many quarters I can think of where I know there is no utilities running under there. So, a lot a response to this soil sampling is there's nothing that nobody is going to physically going to go and mark.

Senator Jim Dotzenrod The person I talked to said that last fall they did 1100 fields and a lot of fields are corn. The corn is harvested in early November and they've got to get the testing done before the ground freezes in 10 days; but that all has to be done in a short time. As long as they make the call, to one-call that if one-call doesn't get the work done, there really kind of off the hook. They've complied with one call and the work isn't done their not liable, it provides some protection for them then.

Todd Kranda replied they have the responsibility to make the call. One-call then distributes it too whatever utilities are noted in that area, those utilities are then responsible to come back and respond, after a 48 hours they are presumed to have been marked and can proceed and it could be even earlier than that under this new system of a positive response that is being implemented to make the process easier and more friendly and efficient.

Senator Judy Lee I think it means there has to be a little advance planning so you don't wake up in the morning and say well I think I will go to this spot. Whoever is doing the soil testing, now has 21 days to make the call so there's plenty of time on both sides to get that call in and to have the marking done. I understand about late harvest crops, but they don't have to wait until the corn is off now to make the call because they have got 21 days. So if you anticipate having your quarter section tested that currently has corn on it, you just make sure that the person doing the testing knows about it and shows up. The other thing in response I wanted to make a point about, is that yes there is a responsibility for the pipelines and the fiber optic folks and all of those people who are trenching things in to make sure they are at the proper depth now, and never mind because I believe about all the older lines put in to a shallower depth. But I think that any land owner who changes the terrain in any way, who moves the topsoil at all, maybe they ought to have a responsibility to notify the various utilities that they are making a drain, or creating a levy or digging something up and planting trees. How does the pipeline or fiber optics or the phone company or whoever know that there is significant difference in what's on top of that line because they didn't change the dirt? I think it's a shared responsibility there.

Todd Kranda replied the pipelines are very seriously concerned about what happens to their pipeline and it does move. I think the soil changes, but the safety mechanism that the state has even if there is someone who is negligent and maybe doesn't notify, the one-call system helps everybody. It helps the person excavating and it helps the utility.

Chairman Andrist If Rep. Nelson isn't pleased with what we've come up with at least he can't say we didn't give him a good hearing, can he for his concern?

Senator Judy Lee moved do pass
2nd Vice Chairman Ronald Sorvaag without amendments on HB1359
Role call vote 6 Yea 0 No, 0 Absent
Carrier Senator Sorvaag

Date: 2-19-13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1359

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt
Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By _____ Seconded By _____

Senators	Yes	No	Senator	Yes	No
Chairman John Andrist	✓		Senator Jim Dotzenrod	✓	
Vice- Chairman Ronald Sorvaag	✓		Senator John Grabinger	✓	
Senator Judy Lee	✓				
Senator Howard Anderson, Jr.	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Ron Sorvaag

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1359, as engrossed: Political Subdivisions Committee (Sen. Andrist, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1359 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1359



Utility Shareholders
of North Dakota

① HB 1359
2-5-2013

House Bill 1359

House Industry, Business and Labor
Testimony in Support
February 5, 2013

Chairman Keiser, members of the committee, I am Carlee McLeod, President of the Utility Shareholders of North Dakota (USND), and I come before you to testify in support of this bill. First, I will explain the process by which the bill came to be. Then, I will explain the changes proposed in this bill.

The changes proposed in HB 1359 are the result of a collaborative effort on the part of the affected industries. Mindful of the past one-call legislative discussions, we brought together people on all sides of the issue to look for consensus on meaningful solutions to the challenges locators and excavators are facing with the rapid development throughout the state. We held multiple meetings to outline problems, work through solutions we could all accept, and craft language reflective of our respective positions. With the exception of raising the cap for fines, the group maintained the idea of building consensus: if we couldn't agree on an issue, it didn't make it in the bill.

Today, most of us come before you today to support the bill as a whole. However, as is common when pulling together a large group of people, a few concerns have popped up regarding specific wording. I'll address any I've heard, and I'm sure others will bring any remaining concerns to your attention. The bottom line is that the policy changes proposed by this bill are critical. The underlying policy is what we care about, not semantics. To that end, if anyone proposes amendments to make the policies presented in this bill clearer, we will support them as long as the policy is not eroded.

Section 1 of the bill raises the cap on fines for violating one-call requirements. Currently, fines are capped at \$5,000. This change would raise the cap to \$25,000. At first glance, the increase might raise eyebrows. As I stated earlier, this is the one area where our collaborative group did not agree. Many of us wanted a cap at \$50,000. Others wanted a smaller amount. Ultimately, we settled on \$25,000 for purposes of filing the bill and opening a dialogue with the committee. Philosophically, fines serve to proactively deter bad behavior or reactively punish it. With this proposed change, we hope the increase will proactively deter bad behavior. With a fine capped at the relatively low amount of \$5000, there is little incentive to wait for facilities to be located. With a larger fine in mind, we anticipate people will think twice before digging. We should also note that these limits are

caps, and there is a wide range of latitude to assess fines much lower than the cap. The PSC has discretion to assess a fine appropriate to the situation. Honest, one time mistakes happen. Before assessing a fine, the PSC investigates the circumstances around violations and assesses a fine accordingly. We do not believe that a first time, accidental offender would be assessed a fine anywhere near the limit. In fact, we anticipate that it would take a pretty serious violation to reach the limit. We might never see a fine assessed at the cap. We hope, rather, that a higher limit would make people consider their behavior more carefully. For that reason, we encourage the committee to raise the fine limit to the \$25,000 proposed in this bill.

Section 2 of the bill provides for a variety of changes. It also provides the first offered amendment.

Proposed amendment:

Page 1, line 22, remove the overstrike over "beginning" and remove "the planned"

Page 1, line 23, remove "commencement of"

The purpose of the language on lines 22-23 was to allow excavation sooner than the required 48 hours, and the conditions under which excavation could occur were clarified on page 2, line 30. Upon the concern of part of our group, we believe this proposed amendment should be adopted. Leaving the language as the bill proposes might present a safety risk if not read in conjunction with page 2, line 30, and adopting the amendment would eliminate the risk. The policy is still provided later, so this isn't a substantive change.

Page 2, lines 17-18 allows another way by which the site of excavation can be identified on a location request by adding nearby roadway information.

Page 2, lines 21-29 provide language regarding ways to further identify excavation sites when the site is too large or complex for the options listed on page 2, lines 14-20 to properly identify. In that case, an excavator must provide additional means of identifying the site. Suggested identification techniques include white marking, survey staking, geographic information system shape file, detailed drawing, map, or any other appropriate means. These options are wide enough to allow excavators to provide the information in the least burdensome manner while still accomplishing the task of identifying the site. If the excavator requests a meeting with the locators, none of the additional identification means are necessary.

This provision was included to strike a balance between what locators need and the realities of working with excavators whose primary place of business is not near the excavation site. While it may be cost prohibitive to send an advance crew

to an excavation site to mark it in order to provide additional identification information, excavators can provide maps, drawings, GIS files, etc., with little effort.

We acknowledge that the language is ambiguous regarding when such additional information is needed. As we worked toward consensus on this bill, the phrases often used were “good faith” and “common sense”. We all worked together toward that end, and some language was left acceptably ambiguous by the group. For instance, clearly defining what constitutes “too large or complex to be clearly and adequately identified in a location request” is not practical. No one wants absolutes (certain size, shape, etc.) that trigger the requirement for additional information. And, since we provide so many convenient ways to provide the additional information, if someone doubted whether or not they needed to provide additional information, they could provide it with little burden.

For example, a new housing development might be large, but can be easily identified with lot numbers, street addresses, etc. It would not require additional identifying information. However, I understand that another group will offer an amendment to further clarify this section with language regarding addresses and lot numbers. As long as the amendment doesn't change the policy presented in this bill, we do not oppose the amendment.

Page 2, line 28, provides that a locate request should be limited to the area able to be excavated during the 21 days in which a ticket is valid. Currently, we are seeing locate requests for areas that are so large, no excavation is done during the length of the ticket. This section requires excavators to consider the size they can realistically excavate over a 21 day period, rather than calling in an entire project. We felt this approach was better than limiting the size of a ticket. No one wants to delay a project by limiting the scope.

Page 2, line 30, provides that an excavation may begin after 48 hours of the locate request, or sooner IF the excavator has received notice that all facilities are located or cleared. We are not requiring positive response with this section. However, the one-call vendor has made positive response available, and if people choose to use it, we need this section in law to allow earlier excavation if all facilities are marked or cleared prior to the 48 hour deadline.

Beginning at page 4, line 14, the bill addresses the issue of continual locate requests (respots). Currently, respots are required every 10 days during the duration of a project. Many times, a ticket is renewed every 10 days whether or not work is being done, because excavators want to make sure the area is ready when they are ready to work it. These respots are increasingly burdensome in western ND, and locators are struggling to keep up. We have addressed the issue in 3 ways: lengthening the time a ticket remains valid, providing for location costs paid to the locator if excavators make multiple ticket requests with no actual excavation,

and requiring ticket renewals to reflect the area to be excavated rather than the whole project area.

Line 14 lengthens the time from 10 to 21 days. This is more in line with our surrounding states. SD uses a 21 day timeframe, MT uses 30, and MN uses 14. Our group didn't think 14 days would make much of a difference, but we all felt 21 days would ease the burden. Nothing stops an excavator from calling for a respot sooner than 21 days. Safety always comes first. If markings aren't clear, we encourage them to call right away.

Lines 17-21 address the issue of respots where no excavation has occurred. Basically, this gives two free calls. If no excavation has occurred during either of those tickets, the excavator will pay the costs of the third respot. The costs of respots vary, but it is nominal. Lines 23-27 address the respot area. If a ticket is renewed for an area where no excavation will occur because the project is complete in that area, the excavator will pay the costs of respotting that area. Again, this is nominal.

Page 5, line 8 addresses new facilities. Any new facility will be required to be locatable after the effective date of this bill.

The final change of this bill is found on page 5, lines 26-27. Excavators already assume ownership of the materials used to mark facilities. This new language requires them to use reasonable efforts to maintain them. Obviously, there are many factors beyond the control of excavators. Neighborhood kids, cattle, weather, etc., all can disrupt markings. This language merely emphasizes that, within reason, an excavator should maintain the marks and protect them during the duration of the ticket. The language is ambiguous enough to allow protection while not putting hard lines into law. Again, this is an area where we all encouraged the exercise of good faith and common sense. A reasonable standard is a hard standard with which to find error, if legal action was ever pursued, and yet it is not insurmountable if bad faith behavior occurred. Like the rest of the bill, we felt it was a good balance.

In summary, these changes are needed. We worked diligently with all sides of industry to maintain safety and strike a balance to meet the needs of the excavators while easing the burden on locators. As a group, we urge passage of this bill. The policies are sound, and we need them in law.

With that, I'll stand for any questions.

Thank you.



(2) HB 1359
2-5-2013

Alliance Pipeline Inc.
6385 Old Shady Oak Road
Suite 130
Eden Prairie, MN 55344

Telephone (952) 983-1000
Toll-free 1-800-717-9017

February 5, 2013

**Written Testimony of Tony Straquadine, Manager, Government Affairs
for Alliance Pipeline Inc. – In Support of House Bill 1359**

**Greetings Chairman Keiser, and members of the Industry, Labor and Business
Committee:**

On behalf of Alliance Pipeline Inc. (Alliance) – a federally regulated interstate natural gas pipeline that has been safely operating 323 miles of high pressure natural gas pipeline in the State of North Dakota since 2000, **I offer the following written testimony in support of H.B. 1359** – a bill related to North Dakota's One Call System.

Alliance has consistently supported updating the North Dakota One Call legislation, in the interest of both public safety and damage prevention to underground facilities. As always, please remember to “***Call Before You Dig***” a minimum of 48 business hours before excavating – it's as easy as dialing **811** to connect you with the North Dakota One Call Center.

In addition to facility referenced above, Alliance is currently constructing a new ~~29~~ mile – 12 inch high pressure Natural Gas Transmission Lateral from Tioga to Sherwood ND. This pipeline is scheduled to be in-service in July 2013 – and has the capacity to transport 126.5 MMcf/day of high energy, Bakken Gas. The Construction Contractor building this line has been actively using North Dakota's One Call Center to ensure that underground utilities are properly located before they dig.

Specifically, Alliance is very supportive of the following provisions of this bill:

- (Page 1, Line 12 -13)
 - Increase the penalty levels, as determined by the ND Public Service Commission simply as a deterrent for those subject to the One Call requirements – recognizing the need for fair / consistent enforcement;
- (Page 2, Line 21 – 27)
 - Adds provisions for marking large or complex excavations – to include “White Lining” or other location information to current law. White Lining is a national “Common Ground Alliance” recommended Best Practice
- Page 2, Line 28 – 29
 - Lengthens the period a One Call is valid – from 10 to 21 days. This change will allow Excavators more time complete their project.



I recommend a **Do Pass** vote for this bill. Thank you for the opportunity to present this written testimony in support of H.B. 1359 – I am happy to answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Straquadine".

Tony Straquadine
Manager, Government Affairs
Alliance Pipeline Inc.



**Know what's below.
Call before you dig.**

③ HB 1359
2-5-2013

HOUSE BILL 1359

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

FEBRUARY 5, 2013

SHANE HART

RESERVATION TELEPHONE COOPERATIVE

My name is Shane Hart and I am the Assistant General Manager for Reservation Telephone Cooperative in Parshall. Reservation Telephone Cooperative provides landline telephone, internet and video services to 16 different communities in western ND, many of which are located in the Bakken. Reservation Telephone has in excess of 6,600 miles of buried copper and fiber cable throughout its service territory. The recent explosion of oil related activity has had a direct impact on the daily operations of the cooperative in many areas with the greatest of these being the need to flag and mark (locate) the routes of these underground cables.

In 2012 the Cooperative incurred just over \$1.3 million in cable locating expense compared to \$400,000 just 3 years earlier. In 2012 the cooperative received 30,639 locate orders compared to 10,900 locate orders in 2009. Of the 30,639 locate orders received in 2012 40% (or 12,255) were re-spots. Re-spots are locate orders that have already been called in and the cable has been located but needs to be "re-spotted" or remarked with fresh paint and flags because the initial markings are too old (older than 10 days) or no longer in place due to weather or human intervention. As you can see the cooperative spends a significant amount of time and resources "re-spotting" cable.

We find excavators are calling in a locate order for their entire job which may encompass many, many miles and they do not have the ability to complete the entire excavation job within the 10 days the locate order is valid. When the allotted 10 days

have expired they often call in the entire job again which causes the cooperative's locating staff to spend time and effort unnecessarily for work that has already been completed.

Excavators also call in for re-spots for an excavation job they planned but did not perform at all due to a change in their business plan. It seems unfair that Reservation Telephone should have to incur this expense when the excavator changed their mind.

Another problem we have is excavators (many of which are from out of state) not showing respect for our underground facilities even though they know the facilities are there. At times excavators find it easier to dig through our facilities and cut them and then pay for the repairs because they are in too big of a hurry to get their job completed. We feel larger penalties are needed to be enforced by the ND Public Service Commission (PSC) to stifle this attitude.

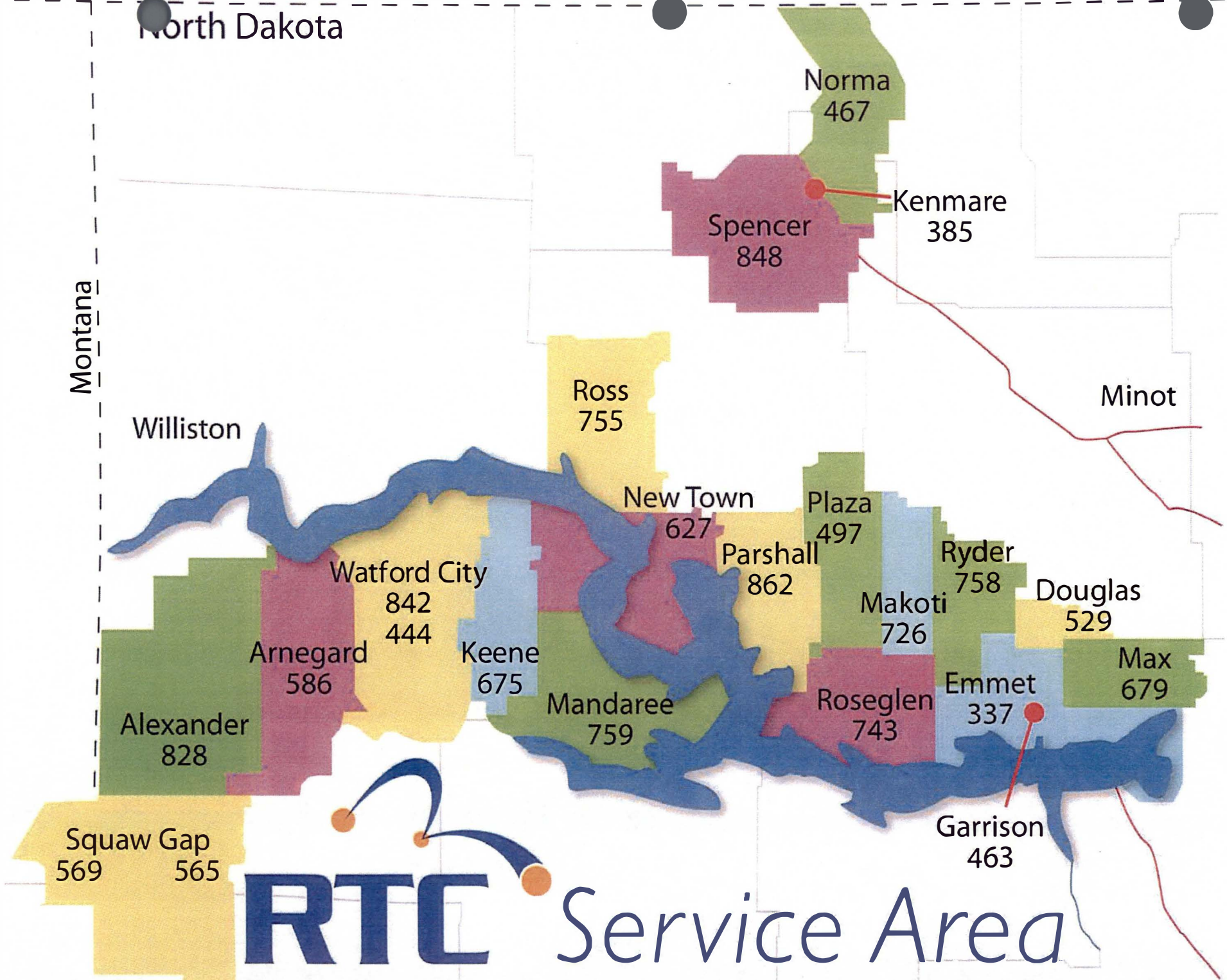
We believe the ND One Call Excavation Notice System is a great system that needs a few minor adjustments for the benefit of all. The changes needed are:

- to allow the locate to be valid up to 21 days vs. 10 days
- the ability of the owner of the infrastructure in the ground to charge the responsible party for multiple re-spots and
- the ability of the ND PSC to levy larger penalties for knowingly and willingly digging through underground infrastructure.

Reservation Telephone Cooperative urges a "Do Pass" recommendation on House Bill 1359.

Canada
North Dakota

Montana



④ HB 1359
2-5-2013

HOUSE BILL 1359

HOUSE INDUSTRY, BUSINESS
AND LABOR COMMITTEE

FEBRUARY 5, 2013

JASON HILL
NORTHWEST COMMUNICATIONS COOPERATIVE

My name is Jason Hill, construction supervisor, from Northwest Communications Cooperative (NCC). NCC provides land line telephone, high speed internet and video services to over 6,000 customers in Burke, and parts of Williams, Divide, and Mountrail counties. As a construction supervisor, I am responsible for not only the installation of communication cabling but also the maintenance and locating of all cable facilities (fiber, twisted pair copper and coaxial). NCC has 3,650 miles of active cable plant and 44 full time employees.

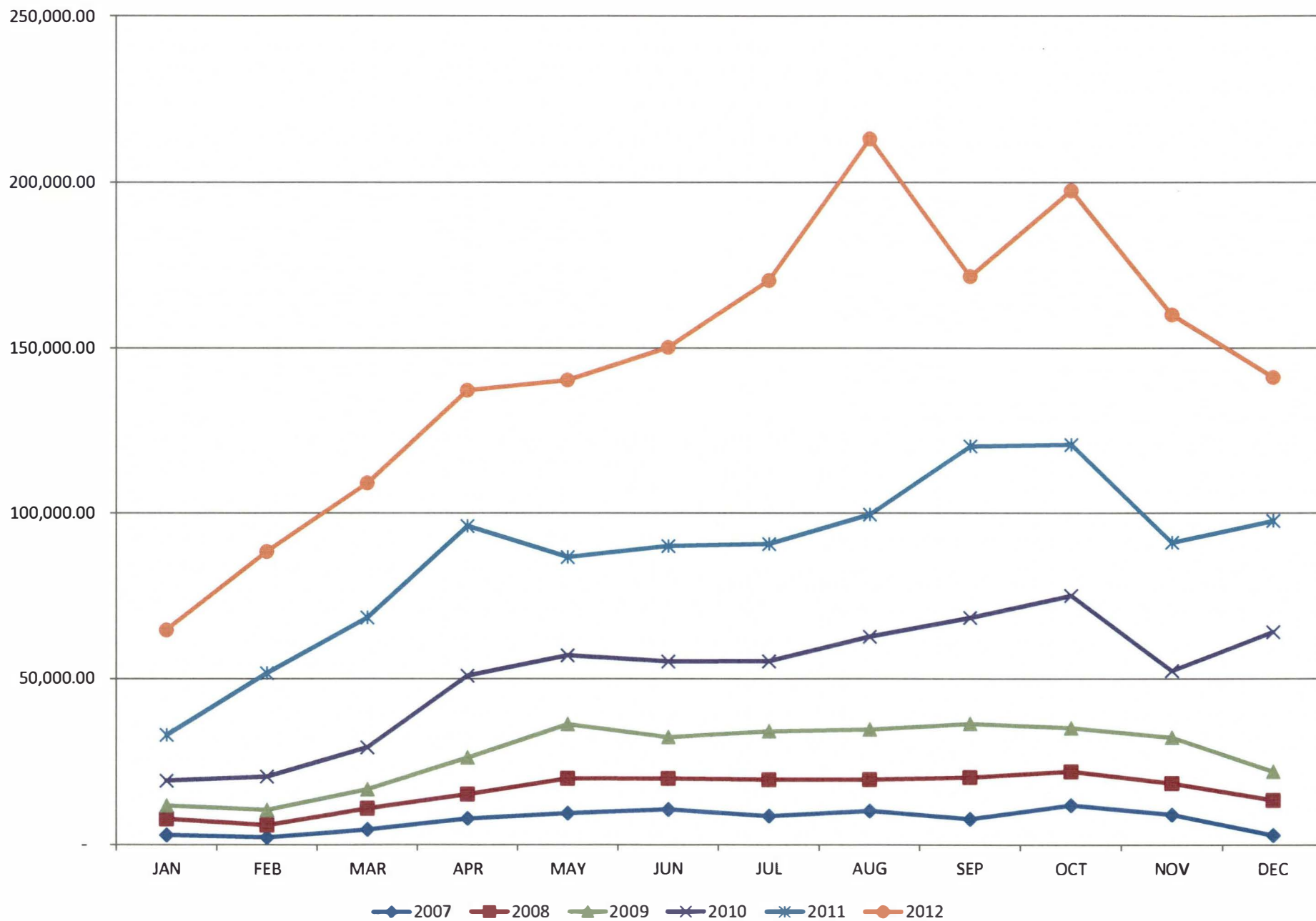
House Bill 1359 is very important to all rural utilities in North Dakota and especially northwest North Dakota because of the increase in excavation construction throughout the Bakken formation. Increased penalties would help protect the communications infrastructure that North Dakota citizens rely on for essential day to day activities. Rural telecommunications cooperatives provide services for local telephone traffic, wireless backhaul, broadband access, and special access for businesses, hospitals, schools, Homeland security, Border patrol, Immigration and other federal, state and local agencies. One cable cut could affect all of these services. With all the activity, multiple cuts on the same day have become common place.

Another issue that has had a major impact on NCC is the expense of locating our underground cables. Before a contractor begins excavation, they call the North Dakota One Call Center and describe the location of the excavation. North Dakota One Call notifies all the entities with underground facilities in that vicinity of the proposed dig. The facility owner then must mark with, flags or paint, the location of the underground facility. The excavator then can safely dig after the location has been marked, usually within 48 hours. In 2007 NCC spent \$88,181.16 on locating expenses. In 2012 we spent \$697,069.34 to locate our cable. This is almost 8 times what we traditionally spend. We have to pass on those costs to our subscribers or cut back on capital investments that are critically needed to provide modern communications to our farming communities as well as new businesses that have come to our region.

On an average month about 40% to 60% of locates are re-spots. Re-spots are required for active construction sites after 10 days for the initial one-call, and then every 10 days thereafter, until the project is complete. In one case a 25 mile project that took months to complete cost NCC \$5,500 every 10 days. In most cases the marking flags were still in place but we were obligated to check the entire route just the same. So moving the re-spot length to 21 days would have an immediately impact for NCC. Also being allowed to charge a reasonable cost for re-spotting after the 2nd locate would help reduce the expense of locating without putting undue burden on the contractor. Keeping the re-spots for sites that are under active construction would also help reduce the time and expense that NCC has incurred to protect our facilities.

House Bill 1359 provides important language changes that would be beneficial to any utility company or company with underground interests and help balance the costs of protecting underground infrastructure. NCC urges a "Do Pass" recommendation on the House Bill 1359.

NORTHWEST COMMUNICATIONS COOPERATIVE LOCATING EXPENSES



⑤ HB 1359
2-5-2013

Testimony of Harlan Fuglesten
North Dakota Association of Rural Electric Cooperatives
Before the House Industry, Business and Labor Committee
On HB 1359
February 5, 2013

Mr. Chairman and members of the committee, my name is Harlan Fuglesten with the North Dakota Association of Rural Electric Cooperatives. We stand in support of HB 1359. Our Association represents 16 distribution cooperatives serving about 250,000 people and thousands of businesses in every corner of the state. Our distribution cooperatives have more than 60,000 miles of power lines across North Dakota, of which nearly 17,000 miles are underground lines.

Our electric cooperatives support the One Call system as an important program to protect underground facilities and the safety of the public. The One Call system can be improved, however, and we view enacting HB 1359 to be one of our most important legislative priorities this session.

With all of the economic activity across the state, and in particular in the Oil Patch, we have had several co-ops that have seen their number of locate requests double over the past year or two. In 2012, North Dakota's electric distribution cooperatives responded to about 120,000 One Call location requests. That's an average of about 15,000 requests each month during an eight month construction season. A couple of our co-ops have reported having to assign five or six full-time workers to respond to One Call locate requests. The personnel and travel expenses to provide these locate requests costs our co-ops millions of dollars each year.

Our members report that some excavators, especially out of state contractors, have abused the system by making repeated requests for locates well in advance of their construction activity. One co-op manager related an instance of a 10 mile long locate request that was repeated every 10 days for three months this past fall without beginning any construction activity. The contractor then decided to delay construction until this spring. Unfortunately, that is not an extreme example. Other problems experienced by our members include requests for locates in areas even after construction has been completed, and requests for locates that fail to adequately identify the location of the project, or require locating facilities over several sections of land, even though construction will be confined to a much smaller area.

Our members believe that HB 1359 will go a long way in addressing the problems our members have been experiencing. We support all the proposed changes to the One Call law and especially the provisions of HB 1359 that extend the time a locate is good from 10 to 21 days, that require that locate requests for large or complex projects be adequately identified, and that allow a facilities operator to charge its reasonable costs for additional locates if it has already provided two locates without any excavation activity.

Mr. Chairman and members of the committee, we respectfully request a "DO PASS" on HB 1359.

6 HB 1359
2-5-2013

Tuesday, February 05, 2013

HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE
HB 1359

CHAIRMAN KEISER AND COMMITTEE MEMBERS:

My name is Jack McDonald. I appear today on behalf of the North Dakota Cable Television Association. We generally support the bill but object to the huge extension of the time the ticket remains open from the current 10 days to 21 days – a doubling of the time period.

Twenty-one days is a long time for a locate to be valid. Even though the contractor is responsible for keeping the marks fresh, this opens a lot of questions as to whether the marks on the ground are still the ones made by the utility. Sometimes our members spend hours marking an area and then a blade wipes out everything in the first half-hour of work in the area. Then the contractor calls for a remark.

Marks fade over time as you can well imagine, depending on what type of surface the mark was made on and of course the weather. Over a 21 day period the marks could be completely gone.

The basic intent of one call is to protect a utility's facilities and to protect the contractor. Increasing the window from 10 to 21 days does not promote this goal.

We respectfully request the Committee consider changing the proposed window from 10 days to 14 days.

Otherwise, we support the bill. We especially appreciate the increased penalty and the charge for the third locate.

If you have any questions, I will be happy to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1359

On page 2, line 28, delete "twenty-one" and insert immediately thereafter "fourteen"

On page 4, line 14, delete "twenty-one" and insert immediately thereafter "fourteen"

On page 4, line 17, delete "twenty-one" and insert immediately thereafter "fourteen"

On page 4, line 26, delete "twenty-one" and insert immediately thereafter "fourteen"

Renumber accordingly



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Testimony on House Bill 1359

House Industry, Business & Labor Committee

February 5, 2013

Doreen Riedman, Executive Officer
North Dakota Association of Builders

Chairman Keiser and members of the House Industry, Business & Labor Committee, the North Dakota Association of Builders (NDAB) encourages your committee to amend this legislation dealing with One-Call Notification.

The NDAB represents 1,941 member companies statewide with employees numbering 51,966. We are in partnership with six local builders associations in Bismarck-Mandan, Dickinson, Fargo-Moorhead, Grand Forks, Minot, and Williston; and are all part of a larger federation, the National Association of Home Builders (NAHB), which has over 150,000 members.

We appreciate the working relationship we have with all the groups involved, and we certainly sympathize with those who are overwhelmed by the locates being requested here in our state. We hope that this legislation will provide some relief and be workable for all parties.

One area that greatly affects excavators in our association is the white lining requirement (page 2, lines 21-27), added to the bill just prior to introduction. This might be a good solution for larger projects, but it adds an extra trip to the jobsite and extra expense that is not necessary on smaller residential projects. To ensure that these small projects are not subjected to the requirements in subsection h. (page 2), we ask that your committee amend the bill to include this at the end of page 2, line 27:

, or if the street address or block and lot numbers are provided.

We respectfully ask this committee to amend House Bill 1359 with the language provided above, and we support this legislation with that amendment.

HB 1359
2-5-2013

NORTH DAKOTA ONE CALL

Ticket No:	12203399	LORG RESPOT	RELOCATE
Update Of:	12201430	Update By:	12207070
Transmit Date:	12/03/2012	Time:	10:40
Original Call Date:	12/03/2012	Op:	mnrkristi
Work to Begin Date:	12/05/2012	Time:	10:45
		Op:	mnrkristi

Caller Information

Company:	WILLBROS	Fax Number:	(701) 842-2708
Contact Name:	MICHA	Contact Phone:	(870) 904-3038 Ext:
Contact Email:	lisa.kurgan@willbros.com		
Alt. Contact Name:	CLAYTON BARMORE CELL	Alt. Contact Phone:	(716) 783-1760

Dig Site Information

Type of Work:	INSTALLATION OF HIGH PRESSURE OIL LINE				
Work Being Done For:	HILAND CRUDE				
Explosives:	N	Depth:	6FT	Tunnelling/Boring:	Y

Dig Site Location

State:	ND	County:	WILLIAMS	Place:	TIOGA CITY
Address:					
Street:	UNKNOWN				
Nearest Intersecting Street:	UNKNOWN				

Extent of Work:
EXCAVATION SITE IS ON AN UNKNOWN SIDE OF THE ROAD. MARK 50FT EITHER SIDE OF THE PINK FLAGGED/STAKED ROUTE LOCATED IN 156N 95W 33.

Remarks:
BEST INFORMATION AVAILABLE CALLER STATES ALL WORK WITHIN TRSQ PROVIDED

Twp: 156N	Rng: 95W	Sect-Qtr: 33-NE,33-SE,33-NW,33-SW	
Twp: *MORE	Rng: 95W	Sect-Qtr: 27-SW,29-SE,28-SW,28-SE,32-SE,32-NE,34-SW,34-NW,33	
ExCoord NW Lat: 48.2990639	Lon: -102.9156704	SE Lat: 48.2838954	Lon: -102.8925199

Members

District Code	Company Name	Marking Concerns	Damage/Repair	Customer Service
AMERDA01	AMERADA HESS CORPORATION NORTH			
AMERDA04	AMERADA HESS TIOGA			
BANNER03	BANNER TRANSPORTATION COMPANY			
DAKGAS01	DAKOTA GASIFICATION COMPANY			
EPNDND01	ENBRIDGE PIPELINES INC.			
MOUNT01	MOUNTRAIL/WILLIAMS ELECTRIC CO			
NWCOMM02	NORTHWEST COMMUNICATIONS COOP			
RANPIP01	RANGELAND PIPELINE, LLC			
TESORO02	TESORO HIGH PLAINS PIPELINE			

NORTH DAKOTA ONE CALL				
Ticket No:	12203959	LORQ ROUTINE		NEW TICKET
Transmit Date:	12/04/2012	Time:	08:31	Op: mnchrisc
Original Call Date:	12/04/2012	Time:	07:32	Op: webusr6
Work to Begin Date:	12/06/2012	Time:	07:45	
Caller Information				
Company:	ELLINGSON PLUMB/HTG/ELECTRIC	Fax Number:	(320) 762-8054	
Contact Name:	JOSH HILLS	Contact Phone:	(320) 762-8645	Ext:
Contact Email:	rhills@ellingsons.com			
Alt. Contact Name:	KRIS HEIDELBERGER	Alt. Contact Phone:	(320) 760-9695	
Dig Site Information				
Type of Work:	INSTALLATION OF FLAG POLE			
Work Being Done For:	JUDSON EXECUTIVE LODGE			
Explosives:	N	Depth:	5 FEET	Tunneling/Boring: N
Dig Site Location				
State:	ND	County:	WILLIAMS	Place: JUDSON TOWNSHIP
Address:	14652			
Street:	HWY 2			
Nearest Intersecting Street:	146TH STREET			
Extent of Work:				
MARK 25 FEET OUT FROM THE BUILDING STARTING AT THE MAIN ENTRANCE ON THE EAST SIDE GOING AROUND THE BUILDING 20 FEET ON THE NORTH SIDE				
Remarks:				
CALLER REQUESTS AREA BE MARKED WITH PAINT AND FLAGS				
Twp:	Rng:	Sect-Qtr:		
Twp: 154N	Rng: 102W	Sect-Qtr: 25-SE,25-NE,24-SE,24-NE,30-NE,30-SE,30-NW,30-SW,29		
ExCoord NW Lat: 48.148213	Lon: -103.8639822	SE Lat: 48.1323536	Lon: -103.7540598	
Members				
District Code	Company Name	Marking Concerns	Damage/Repair	Customer Service
BANNER03	BANNER TRANSPORTATION COMPANY			
BANNER04	BANNER TRANSPORTATION COMPANY			
BEARPW01	ONEOK ROCKIES MIDSTREAM, LLC			
BRIGOG01	BRIGHAM OIL & GAS, LP			
BULLMP01	BULL MOOSE PIPELINE, LLC			
EPNDND01	ENBRIDGE PIPELINES INC.			
MDU12	MONTANA-DAKOTA UTILITIES			
MOUNT01	MOUNTRAIL/WILLIAMS ELECTRIC CO			
MOVLCO01	MISSOURI VALLEY COMM			
NDDOT01	ND DEPT. OF TRANSPORTATION			
NWCOMM02	NORTHWEST COMMUNICATIONS COOP			
PLAINS15	PLAINS ALL AMERICAN LP GP			
WMSRW01	WILLIAMS RURAL WATER ASSOC.			

NORTH DAKOTA ONE CALL					
Ticket No:	12203400	LORG RESPOT	RELOCATE		
Update Of:	12201432		Update By:	12207073	
Transmit Date:	12/03/2012	Time: 10:41	Op:	mnkristi	
Original Call Date:	12/03/2012	Time: 10:40	Op:	mnkristi	
Work to Begin Date:	12/05/2012	Time: 10:45			
Caller Information					
Company:	WILLBROS	Fax Number:	(701) 842-2708		
Contact Name:	MICHA	Contact Phone:	(870) 904-3038	Ext:	
Contact Email:	lisa.kurgan@willbros.com				
Alt. Contact Name:	CLAYTON BARMORE CELL	Alt. Contact Phone:	(716) 783-1760		
Dig Site Information					
Type of Work:	INSTALLATION OF HIGH PRESSURE OIL LINE				
Work Being Done For:	HILAND CRUDE				
Explosives:	N	Depth:	6FT	Tunnelling/Boring: Y	
Dig Site Location					
State:	ND	County:	WILLIAMS	Place:	TIOGA CITY
Address:					
Street:	UNKNOWN				
Nearest Intersecting Street:	UNKNOWN				
Extent of Work:					
EXCAVATION SITE IS ON AN UNKNOWN SIDE OF THE ROAD. MARK 50FT EITHER SIDE OF THE PINK FLAGGED/STAKED ROUTE LOCATED IN 156N 95W34.					
Remarks:					
BEST INFORMATION AVAILABLE CALLER STATES ALL WORK WITHIN TRSQ PROVIDED					
Twp: 156N	Rng: 95W	Sect-Qtr: 34-NE,34-SE,34-NW,34-SW			
Twp: *MORE	Rng: 95W	Sect-Qtr: 26-SW,28-SE,27-SW,27-SE,33-SE,33-NE,35-SW,35-NW,34			
ExCoord NW Lat: 48.2989864	Lon: -102.8939411	SE Lat: 48.2838226	Lon: -102.8711324		
Members					
District Code	Company Name	Marking Concerns	Damage/Repair	Customer Service	
AMERDA01	AMERADA HESS CORPORATION NORTH				
AMERDA04	AMERADA HESS TIOGA				
DAKGAS01	DAKOTA GASIFICATION COMPANY				
EPNDND01	ENBRIDGE PIPELINES INC.				
NWCOMM02	NORTHWEST COMMUNICATIONS COOP				

Folder: Williston; Assigned To: Williston One Call

NORTH DAKOTA ONE-CALL

Request #: 13002774

LORQ ROUTINE

Send To: EPNDND01 Seq No: 6 Map Ref:

Original Call Date: 1/11/13 Time: 2:32 PM CT Op: mnrose

Work to Begin Date: 1/15/13 Time: 2:45 PM CT

Transmit Date: 1/11/13 Time: 2:36 PM CT Op: mnrose

County: WILLIAMS

Place: ALAMO CITY

Address: Street: UNKNOWN

Nearest Intersecting Street: UNKNOWN

Type of Work: NEW OIL WELL PAD CONSTRUCTION

Work Being Done For: CONTINENTAL RESOURCES

Depth: 25FT

Explosives: N Tnling/Boring: N

Extent of Work: MARK THE SW AND SE QUARTERS OF SECTION 33 OF TOWNSHIP 159N
: AND RANGE 101W

Remarks: BEST INFORMATION AVAILABLE

Twp: 159N Rng: 101W Sect-Qtr: 33-SE-SW

Ex. Coord NW Lat: 48.5543330 Lon: -103.7551732 SE Lat: 48.5463721 Lon: -103.7325307

Company : O E CONSTRUCTION

Fax:

Contact Name: WAYNE RATH

(303) 526-0621 Ext.: 1ST

Alt. Contact: CHRIS OLSON/CELL

Phone: (303) 435-8139

Caller Address: 16702 W 56TH DR

Call Back:

GOLDEN, CO 80403

NWCOMM02

720.334.5596

Link To Map for EPNDND01: <http://nd.itic.occinc.com/5692-2J2-62F-439>

1-15-13

Lee, Judy E.

1359

From: Klabunde, Paul <Paul.Klabunde@magellanlp.com>
Sent: Tuesday, March 05, 2013 10:54 AM
To: Lee, Judy E.
Cc: Johnson, Donald (Don); Bronson, Troy
Subject: HB# 1359

~~1359~~

Congresswoman Judy Lee

I am writing to you on behalf of Bill # 1359. The Section 2 Amendment- Subsection- 7-49-23-01 article "f" addition. I am asking you to Vote NO to add this to the Bill. The amendment exempts soil collectors from calling in a One Call (811) above 24". My job with my company is to insure there is no damage to our pipeline systems. I understand where they are coming from, but do we really need to have just one accident to happen. These soil probes may not be able to penetrate steel pipelines but the damage they could do to Coatings could result in Corrosion and a leak. If they do hit it and cause a dent in our line, this also could lead to weakening of our line and create a failure in the future. Please know that we take Safety to the fullest and would appreciate a NO vote to protect the Public. Thanks for your time.

Paul Klabunde
Magellan Pipeline Company L.P.
902 Main Avenue East
West Fargo, ND 58078
701-282-7134-Office
701-793-8377-Cell
paul.klabunde@magellanlp.com



#1
Utility Shareholders of North Dakota

800-981-5132 www.usnd.org

House Bill 1359
Senate Political Subdivisions
Testimony in Support

March 8, 2013

Chairman Andrist, members of the committee, I am Carlee McLeod, President of the Utility Shareholders of North Dakota (USND), and I come before you to testify in support of this bill. First, I will explain the process by which the bill came to be. Then, I will explain the changes proposed in this bill.

The changes proposed in HB 1359 are the result of a collaborative effort on the part of the affected industries. Mindful of the past one-call legislative discussions, we brought together people on all sides of the issue to look for consensus on meaningful solutions to the challenges locators and excavators are facing with the rapid development throughout the state. We held multiple meetings to outline problems, work through solutions we could all accept, and craft language reflective of our respective positions. The group maintained the idea of building consensus: if we couldn't agree on an issue, it didn't make it in the bill.

Today, we come before you today to support the bill as a whole. The underlying policy is what we care about, not semantics. To that end, if anyone proposes amendments to make the policies presented in this bill clearer, we will support them as long as the policy is not eroded. We will not support any amendments that erode the policy presented in this bill.

Section 1 of the bill raises the cap on fines for violating one-call requirements. Currently, fines are capped at \$5,000. This change would raise the cap to \$25,000. At first glance, the increase might raise eyebrows. Originally, this was an area that gave our consensus group pause. Many of us wanted a cap at \$50,000. Others wanted a smaller amount. Ultimately, we settled on \$25,000. Philosophically, fines serve to proactively deter bad behavior or reactively punish it. With this proposed change, we hope the increase will proactively deter bad behavior. With a fine capped at the relatively low amount of \$5000, there is little incentive to wait for facilities to be located. With a larger fine in mind, we anticipate people will think twice before digging. We should also note that these limits are caps, and there is a wide range of latitude to assess fines much lower than the cap. The PSC has discretion to assess a fine appropriate to the situation. Honest, one time mistakes happen. Before assessing a fine, the PSC investigates the circumstances around violations and assesses a fine accordingly. We do not

believe that a first time, accidental offender would be assessed a fine anywhere near the limit. In fact, we anticipate that it would take a pretty serious violation to reach the limit. We might never see a fine assessed at the cap. We hope, rather, that a higher limit would make people consider their behavior more carefully. For that reason, we encourage the committee to raise the fine limit to the \$25,000 proposed in this bill.

Page 2, lines 17-18 allow another way by which the site of excavation can be identified on a location request by adding nearby roadway information.

Page 2, lines 21-30 provide language regarding ways to further identify excavation sites when the site is too large or complex for the options listed on page 2, lines 14-20 to properly identify. In that case, an excavator must provide additional means of identifying the site. Suggested identification techniques include white marking, survey staking, geographic information system shape file, detailed drawing, map, or any other appropriate means. These options are wide enough to allow excavators to provide the information in the least burdensome manner while still accomplishing the task of identifying the site. If the excavator requests a meeting with the locators, none of the additional identification means are necessary.

This provision was included to strike a balance between what locators need and the realities of working with excavators whose primary place of business is not near the excavation site. While it may be cost prohibitive to send an advance crew to an excavation site to mark it in order to provide additional identification information, excavators can provide maps, drawings, GIS files, etc., with little effort.

We acknowledge that the language is ambiguous regarding when such additional information is needed. As we worked toward consensus on this bill, the phrases often used were "good faith" and "common sense". We all worked together toward that end, and some language was left acceptably ambiguous by the group. For instance, clearly defining what constitutes "too large or complex to be clearly and adequately identified in a location request" is not practical. No one wants absolutes (certain size, shape, etc.) that trigger the requirement for additional information. And, since we provide so many convenient ways to provide the additional information, if someone doubted whether or not they needed to provide additional information, they could provide it with little burden.

For example, a new housing development might be large, but can be easily identified with lot numbers, street addresses, etc. It would not require additional identifying information.

Page 3, line 1, provides that a locate request should be limited to the area able to be excavated during the 21 days in which a ticket is valid. Currently, we are seeing locate requests for areas that are so large, no excavation is done during the length of the ticket. This section requires excavators to consider the size they can realistically excavate over a 21 day period, rather than calling in an entire project.

We felt this approach was better than limiting the size of a ticket. No one wants to delay a project by limiting the scope.

Page 3, line 3, provides that an excavation may begin after 48 hours of the locate request, or sooner IF the excavator has received notice that all facilities are located or cleared. We are not requiring positive response with this section. However, the one-call vendor has made positive response available, and if people choose to use it, we need this section in law to allow earlier excavation if all facilities are marked or cleared prior to the 48 hour deadline.

Beginning at page 4, line 19, the bill addresses the issue of continual locate requests (re-spots). Currently, re-spots are required every 10 days during the duration of a project. Many times, a ticket is renewed every 10 days whether or not work is being done, because excavators want to make sure the area is ready when they are ready to work it. These re-spots are increasingly burdensome in western ND, and locators are struggling to keep up. We have addressed the issue in 3 ways: lengthening the time a ticket remains valid, providing for location costs paid to the locator if excavators make multiple ticket requests with no actual excavation, and requiring ticket renewals to reflect the area to be excavated rather than the whole project area.

Line 19 lengthens the time from 10 to 21 days. This is more in line with our surrounding states. SD uses a 21 day timeframe, MT uses 30, and MN uses 14. During the House hearing, a group proposed an amendment lowering the timeframe to 14 days. Our consensus group feels strongly about keeping the timeframe at 21 days, as proposed in this bill. The concerns from those wanting a shorter timeframe aren't compelling—extending the timeframe to 21 days increases the maximum days a locate is valid, not the minimum. Nothing stops an excavator from requesting a re-spot sooner than 21 days. Safety always comes first. If markings aren't clear, the law already requires a contractor to contact the one-call center for a re-spot. (page 4, lines 9-18).

Page 4, lines 22-27 address the issue of re-spots where no excavation has occurred. Basically, this gives two free calls. If no excavation has occurred during either of those tickets, the excavator will pay the costs of the third re-spot. The costs of re-spots vary, but it is nominal. Page 4, lines 28 through page 5, line 2 address the re-spot area. If a ticket is renewed for an area where no excavation will occur because the project is complete in that area, the excavator will pay the costs of re-spotting that area. Again, this is nominal.

Page 5, line 14 addresses new facilities. Any new facility will be required to be locatable after the effective date of this bill.

The final change of this bill is found on page 6, lines 1-2. Excavators already assume ownership of the materials used to mark facilities. This new language requires them to use reasonable efforts to maintain them. Obviously, there are

many factors beyond the control of excavators. Neighborhood kids, cattle, weather, etc., all can disrupt markings. This language merely emphasizes that, within reason, an excavator should maintain the marks and protect them during the duration of the ticket. The language is ambiguous enough to allow protection while not putting hard lines into law. Again, this is an area where we all encouraged the exercise of good faith and common sense. A reasonable standard is a hard standard with which to find error, if legal action was ever pursued, and yet it is not insurmountable if bad faith behavior occurred. Like the rest of the bill, we felt it was a good balance.

In summary, these changes are needed. We worked diligently with all sides of industry to maintain safety and strike a balance to meet the needs of the excavators while easing the burden on locators. As a group, we urge passage of this bill. The policies are sound, and we need them in law.

With that, I'll stand for any questions.

Thank you.

Testimony of Harlan Fuglesten
North Dakota Association of Rural Electric Cooperatives
Before the Senate Political Subdivisions Committee
On HB 1359
March 8, 2013

Mr. Chairman and members of the committee, my name is Harlan Fuglesten with the North Dakota Association of Rural Electric Cooperatives. We stand in support of HB 1359. Our Association represents 16 distribution cooperatives serving about 250,000 people and thousands of businesses in every corner of the state. Our distribution cooperatives have more than 60,000 miles of power lines across North Dakota, of which nearly 17,000 miles are underground lines.

Our electric cooperatives support the One Call system as an important program to protect underground facilities and the safety of the public. The One Call system can be improved, however, and we view enacting HB 1359 to be one of our most important legislative priorities this session.

With all of the economic activity across the state, and in particular in the Oil Patch, we have had several co-ops that have seen their number of locate requests double over the past year or two. In 2012, North Dakota's electric distribution cooperatives responded to about 120,000 One Call location requests. That's an average of about 15,000 requests each month during an eight month construction season. A couple of our co-ops have reported having to assign five or six full-time workers to respond to One Call locate requests. The personnel and travel expenses to provide these locate requests costs our co-ops millions of dollars each year.

Our members report that some excavators, especially out of state contractors, have abused the system by making repeated requests for locates well in advance of their construction activity. One co-op manager related an instance of a 10 mile long locate request that was repeated every 10 days for three months this past fall without beginning any construction activity. The contractor then decided to delay construction until this spring. Unfortunately, that is not an extreme example. Other problems experienced by our members include requests for locates in areas even after construction has been completed, and requests for locates that fail to adequately identify the location of the project, or require locating facilities over several sections of land, even though construction will be confined to a much smaller area.

Our members believe that HB 1359 will go a long way in addressing the problems our members have been experiencing. We support all the proposed changes to the One Call law and especially the provisions of HB 1359 that extend the time a locate is good from 10 to 21 days, that require that locate requests for large or complex projects be adequately identified, and that allow a facilities operator to charge its reasonable costs for additional locates if it has already provided two locates without any excavation activity.

Mr. Chairman and members of the committee, we respectfully request a "DO PASS" on HB 1359.

#3

NORTH DAKOTA ONE CALL

Ticket No:	12203959	LORQ ROUTINE	NEW TICKET
Transmit Date:	12/04/2012	Time: 08:31	Op: mnchrisc
Original Call Date:	12/04/2012	Time: 07:32	Op: webusr6
Work to Begin Date:	12/06/2012	Time: 07:45	

Caller Information

Company:	ELLINGSON PLUMB/HTG/ELECTRIC	Fax Number:	(320) 762-8054
Contact Name:	JOSH HILLS	Contact Phone:	(320) 762-8645 Ext:
Contact Email:	rhills@ellingsons.com		
Alt. Contact Name:	KRIS HEIDELBERGER	Alt. Contact Phone:	(320) 760-9695

Dig Site Information

Type of Work:	INSTALLATION OF FLAG POLE				
Work Being Done For:	JUDSON EXECUTIVE LODGE				
Explosives:	N	Depth:	5 FEET	Tunneling/Boring:	N

Dig Site Location

State:	ND	County:	WILLIAMS	Place:	JUDSON TOWNSHIP
Address:	14652				
Street:	HWY 2				
Nearest Intersecting Street:	146TH STREET				

Extent of Work:
MARK 25 FEET OUT FROM THE BUILDING STARTING AT THE MAIN ENTRANCE ON THE EAST SIDE GOING AROUND THE BUILDING 20 FEET ON THE NORTH SIDE

Remarks:
CALLER REQUESTS AREA BE MARKED WITH PAINT AND FLAGS

Twp:	Rng:	Sect-Qtr:
Twp: 154N	Rng: 102W	Sect-Qtr: 25-SE,25-NE,24-SE,24-NE,30-NE,30-SE,30-NW,30-SW,29
ExCoord NW Lat: 48.148213	Lon: -103.8639822	SE Lat: 48.1323536 Lon: -103.7540598

Members

District Code	Company Name	Marking Concerns	Damage/Repair	Customer Service
BANNER03	BANNER TRANSPORTATION COMPANY			
BANNER04	BANNER TRANSPORTATION COMPANY			
BEARPW01	ONEOK ROCKIES MIDSTREAM, LLC			
BRIGOG01	BRIGHAM OIL & GAS, LP			
BULLMP01	BULL MOOSE PIPELINE, LLC			
EPNDND01	ENBRIDGE PIPELINES INC.			
MDU12	MONTANA-DAKOTA UTILITIES			
MOUNT01	MOUNTRAIL/WILLIAMS ELECTRIC CO			
MOVLCO01	MISSOURI VALLEY COMM			
NDDOT01	ND DEPT. OF TRANSPORTATION			
NWCOMM02	NORTHWEST COMMUNICATIONS COOP			
PLAINS15	PLAINS ALL AMERICAN LP GP			
WMSRW01	WILLIAMS RURAL WATER ASSOC.			

#3

NORTH DAKOTA ONE CALL

Ticket No:	12203399	LORG RESPOT	RELOCATE
Update Of:	12201430	Update By:	12207070
Transmit Date:	12/03/2012	Time:	10:40
Original Call Date:	12/03/2012	Time:	10:40
Work to Begin Date:	12/05/2012	Time:	10:45
		Op:	mnkristi
		Op:	mnkristi

Caller Information

Company:	WILLBROS	Fax Number:	(701) 842-2708
Contact Name:	MICHA	Contact Phone:	(870) 904-3038 Ext:
Contact Email:	lisa.kurgan@willbros.com		
Alt. Contact Name:	CLAYTON BARMORE CELL	Alt. Contact Phone:	(716) 783-1760

Dig Site Information

Type of Work:	INSTALLATION OF HIGH PRESSURE OIL LINE		
Work Being Done For:	HILAND CRUDE		
Explosives:	N	Depth:	6FT
		Tunnelling/Boring:	Y

Dig Site Location

State:	ND	County:	WILLIAMS	Place:	TIOGA CITY
Address:					
Street:	UNKNOWN				
Nearest Intersecting Street:	UNKNOWN				

Extent of Work:

EXCAVATION SITE IS ON AN UNKNOWN SIDE OF THE ROAD. MARK 50FT EITHER SIDE OF THE PINK FLAGGED/STAKED ROUTE LOCATED IN 156N 95W 33.

Remarks:

BEST INFORMATION AVAILABLE CALLER STATES ALL WORK WITHIN TRSQ PROVIDED

Twp: 156N	Rng: 95W	Sect-Qtr: 33-NE,33-SE,33-NW,33-SW
Twp: *MORE	Rng: 95W	Sect-Qtr: 27-SW,29-SE,28-SW,28-SE,32-SE,32-NE,34-SW,34-NW,33
ExCoord NW Lat: 48.2990639	Lon: -102.9156704	SE Lat: 48.2838954
		Lon: -102.8925199

Members

District Code	Company Name	Marking Concerns	Damage/Repair	Customer Service
AMERDA01	AMERADA HESS CORPORATION NORTH			
AMERDA04	AMERADA HESS TIOGA			
BANNER03	BANNER TRANSPORTATION COMPANY			
DAKGAS01	DAKOTA GASIFICATION COMPANY			
EPNDND01	ENBRIDGE PIPELINES INC.			
MOUNT01	MOUNTRAIL/WILLIAMS ELECTRIC CO			
NWCOMM02	NORTHWEST COMMUNICATIONS COOP			
RANPIP01	RANGELAND PIPELINE, LLC			
TESORO02	TESORO HIGH PLAINS PIPELINE			

NORTH DAKOTA ONE CALL			
Ticket No:	12203400	LORG RESPOT	RELOCATE
Update Of:	12201432	Update By:	12207073
Transmit Date:	12/03/2012	Time:	10:41
Original Call Date:	12/03/2012	Time:	10:40
Work to Begln Date:	12/05/2012	Time:	10:45
Op: mnkristi			
Op: mnkristi			
Caller Information			
Company:	WILLBROS	Fax Number:	(701) 842-2708
Contact Name:	MICHA	Contact Phone:	(870) 904-3038 Ext:
Contact Email:	lisa.kurgan@willbros.com		
Alt. Contact Name:	CLAYTON BARMORE CELL	Alt. Contact Phone:	(716) 783-1760
Dig Site Information			
Type of Work:	INSTALLATION OF HIGH PRESSURE OIL LINE		
Work Belng Done For:	HILAND CRUDE		
Explosives:	N	Depth:	6FT
		Tunneling/Boring:	Y
Dig Site Location			
State:	ND	County:	WILLIAMS
Address:		Place:	TIOGA CITY
Street:	UNKNOWN		
Nearest Intersecting Street:	UNKNOWN		
Extent of Work:			
EXCAVATION SITE IS ON AN UNKNOWN SIDE OF THE ROAD. MARK 50FT EITHER SIDE OF THE PINK FLAGGED/STAKED ROUTE LOCATED IN 156N 95W34.			
Remarks:			
BEST INFORMATION AVAILABLE CALLER STATES ALL WORK WITHIN TRSQ PROVIDED			
Twp: 156N	Rng: 95W	Sect-Qtr: 34-NE,34-SE,34-NW,34-SW	
Twp: *MORE	Rng: 95W	Sect-Qtr: 26-SW,28-SE,27-SW,27-SE,33-SE,33-NE,35-SW,35-NW,34	
ExCoord NW Lat: 48.2989864	Lon: -102.8939411	SE Lat: 48.2838226	Lon: -102.8711324
Members			
District Code	Company Name	Marking Concerns	Damage/Repair
AMERDA01	AMERADA HESS CORPORATION NORTH		Customer Service
AMERDA04	AMERADA HESS TIOGA		
DAKGAS01	DAKOTA GASIFICATION COMPANY		
EPNDND01	ENBRIDGE PIPELINES INC.		
NWCOMM02	NORTHWEST COMMUNICATIONS COOP		

#3

NORTH DAKOTA ONE CALL

Ticket No:	12203404	LORG RESPOT	RELOCATE
Update Of:	12199386	Update By:	12207078
Transmit Date:	12/03/2012	Time:	10:42
Original Call Date:	12/03/2012	Time:	10:42
Work to Begin Date:	12/05/2012	Time:	10:45

Caller Information

Company:	WILLBROS	Fax Number:	(701) 842-2708
Contact Name:	MICAH	Contact Phone:	(870) 904-3038
Contact Email:	lisa.kurgan@willbros.com	Ext:	
Alt. Contact Name:	CLAYTON BARMORE	Alt. Contact Phone:	(716) 783-1760

Dig Site Information

Type of Work:	INSTALLATION OF PIPELINE		
Work Being Done For:	HILAND CRUDE		
Explosives:	N	Depth:	6FT
		Tunneling/Boring:	Y

Dig Site Location

State:	ND	County:	WILLIAMS	Place:	TIOGA CITY
Address:					
Street:	101ST				
Nearest Intersecting Street:	UNKNOWN				

Extent of Work:
EXCAVATION SITE IS ON BOTH SIDES OF THE ROAD. MARK ENTIRE TRS

Remarks:
UPDATE PER REMARK

Twp: 156N	Rng: 95W	Sect-Qtr: 36-NE,36-SE,36-NW,36-SW
Twp: 156N	Rng: 95W	Sect-Qtr: 36-NE,36-SE,36-NW,36-SW
ExCoord NW Lat: 48.298618	Lon: -102.849978	SE Lat: 48.284138
		Lon: -102.828158

Members

District Code	Company Name	Marking Concerns	Damage/Repair	Customer Service
AMERDA01	AMERADA HESS CORPORATION NORTH			
AMERDA04	AMERADA HESS TIOGA			
EPNDND01	ENBRIDGE PIPELINES INC.			
NWCOMM02	NORTHWEST COMMUNICATIONS COOP			

#4

HOUSE BILL 1359

SENATE POLITICAL SUBDIVISIONS COMMITTEE

MARCH 8, 2013

SHANE HART

RESERVATION TELEPHONE COOPERATIVE

My name is Shane Hart and I am the Assistant General Manager for Reservation Telephone Cooperative in Parshall. Reservation Telephone Cooperative provides landline telephone, internet and video services to 16 different communities in western ND, many of which are located in the Bakken. Reservation Telephone has in excess of 6,600 miles of buried copper and fiber cable throughout its service territory. The recent explosion of oil related activity has had a direct impact on the daily operations of the cooperative in many areas with the greatest of these being the need to flag and mark (locate) the routes of these underground cables.

In 2012 the Cooperative incurred just over \$1.3 million in cable locating expense compared to \$400,000 just 3 years earlier. In 2012 the cooperative received 30,639 locate orders compared to 10,900 locate orders in 2009. Of the 30,639 locate orders received in 2012 40% (or 12,255) were re-spots. Re-spots are locate orders that have already been called in and the cable has been located but needs to be "re-spotted" or remarked with fresh paint and flags because the initial markings are too old (older than 10 days) or no longer in place due to weather or human intervention. As you can see the cooperative spends a significant amount of time and resources "re-spotting" cable.

We find excavators are calling in a locate order for their entire job which may encompass many, many miles and they do not have the ability to complete the entire excavation job within the 10 days the locate order is valid. When the allotted 10 days

#4

have expired they often call in the entire job again which causes the cooperative's locating staff to spend time and effort unnecessarily for work that has already been completed.

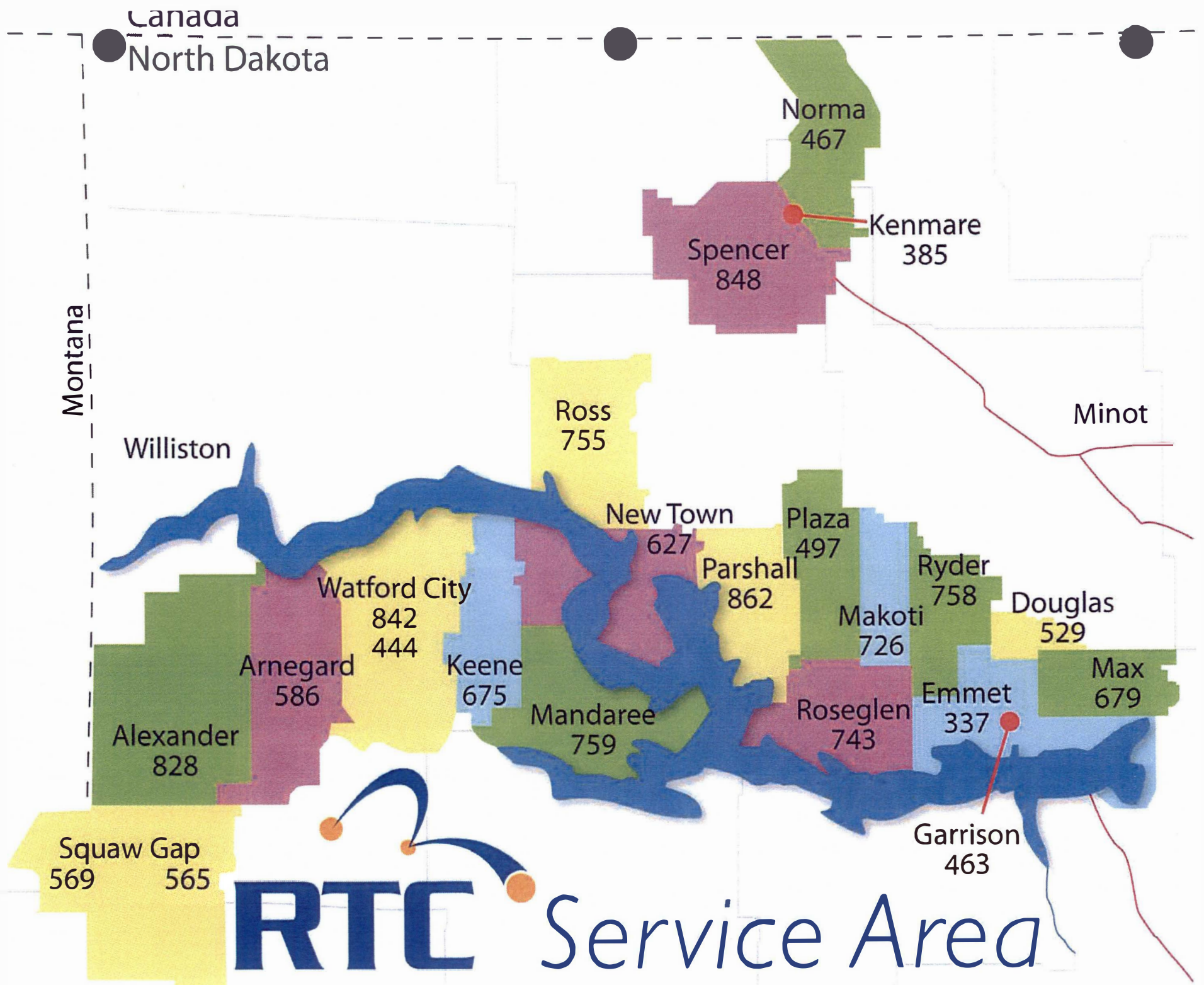
Excavators also call in for re-spots for an excavation job they planned but did not perform at all due to a change in their business plan. It seems unfair that Reservation Telephone should have to incur this expense when the excavator changed their mind.

Another problem we have is excavators (many of which are from out of state) not showing respect for our underground facilities even though they know the facilities are there. At times excavators find it easier to dig through our facilities and cut them and then pay for the repairs because they are in too big of a hurry to get their job completed. We feel larger penalties are needed to be enforced by the ND Public Service Commission (PSC) to stifle this attitude.

We believe the ND One Call Excavation Notice System is a great system that needs a few minor adjustments for the benefit of all. The changes needed are:

- to allow the locate to be valid up to 21 days vs. 10 days
- the ability of the owner of the infrastructure in the ground to charge the responsible party for multiple re-spots and
- the ability of the ND PSC to levy larger penalties for knowingly and willingly digging through underground infrastructure.

Reservation Telephone Cooperative urges a "Do Pass" recommendation on House Bill 1359.



My name is Mike Steffan from Northwest Communications Cooperative (NCC). NCC provides dial tone, high speed internet and video to over 6000 customers in Burke, and parts of Williams, Divide, and Mountrail counties. As a General Manager I oversee not only the installation of communication cabling but also the maintenance which includes locating all cable facilities. (Fiber, twisted pair copper and coaxial) NCC has 3,650 miles of active cable plant and 44 full time employees.

House Bill 1359 is very important to all rural utilities in North Dakota and especially northwest North Dakota because of the increase in excavation construction throughout the Bakken formation. Increased penalties would help protect the communications infrastructure that North Dakota's citizen rely on for essential day to day activities. Rural cooperatives provide services for local telephone traffic, wireless backhaul, and broadband access, special access for businesses, hospitals, schools, Homeland security, Border patrol, Immigration and other federal, state and local agencies. One cable cut could affect all these services and with all the activity, multiple cuts on the same day have become common place.

Another issue that has had a major impact on NCC is the expense of locating our cables. In 2007 NCC spent \$88,181.16 on locating expenses. In 2012 we spent \$697,069.34 to locate our cable. This is almost 8 times what we traditionally spent. We have to pass on those costs to our subscribers or cut back on capital investments that are critically needed to provide modern communications to our farming communities as well as new businesses that have come to our region. On an average month about 40% to 60% of locates are re-spots. Re-spots are required for active construction sites after 10 days for the initial one-call, and then every 10 days thereafter, until the project is complete. In one case a 25 mile project that took months to complete cost NCC \$5,500.00 every 10 days. In most cases the marking flags were still in place but we were obligated to check the entire route just the same. So moving the re-spot length to 21 days would have an immediate impact for NCC. Also being allowed to charge for reasonable costs for re-spotting after the 2nd locate would help reduce the expense of locating without putting undue burden on the contractor. Keeping the re-spots for sites that are under active construction would also help reduce the time and expense that NCC has incurred to protect our facilities.

House Bill 1359 provides important language changes that would be beneficial to any utility company or company with underground interests and help balance the costs of protecting underground infrastructure. NCC urges a "Do Pass" recommendation on the House Bill 1359



#6
Alliance Pipeline Inc.
6385 Old Shady Oak Road
Suite 130
Eden Prairie, MN 55344

Telephone (952) 983-1000
Toll-free 1-800-717-9017

March 8, 2013

**Written Testimony of Tony Straquadine, Manager, Government Affairs
for Alliance Pipeline Inc. – In Support of Engrossed House Bill 1359**

Greetings Chairman Andrist, and members of the Political Subdivisions Committee:

On behalf of Alliance Pipeline Inc. (Alliance) – a federally regulated interstate natural gas pipeline that has been safely operating 323 miles of high pressure natural gas pipeline in the State of North Dakota since 2000, **I offer the following written testimony in support of Engrossed H.B. 1359** – a bill related to North Dakota's One Call System.

Alliance has consistently supported updating the North Dakota One Call legislation, in the interest of both public safety and damage prevention to underground facilities. As always, please remember to “***Call Before You Dig***” a minimum of 48 business hours before excavating – it's as easy as dialing **811** to connect you with the North Dakota One Call Center.

In addition to the facility referenced above, Alliance is currently constructing a new 79 mile – 12 inch high pressure Natural Gas Transmission Lateral from Tioga to Sherwood ND. This lateral pipeline is scheduled to be in-service in July 2013 – and has the capacity to transport 126.5 MMcf/day of high energy, Bakken Gas. The Construction Contractor building this line has been actively using North Dakota's One Call Center to ensure that underground utilities are properly located before they dig.

Specifically, Alliance is very supportive of the following provisions of this bill:

- (Page 1, Line 12 -15)
 - Increases the penalty levels, as determined by the ND Public Service Commission simply as a deterrent for those subject to the One Call requirements – recognizing the need for fair / consistent enforcement;
- (Page 2, Line 21 – 30)
 - Adds provisions for marking large or complex excavations – to include “White Lining” or other location information to current law. White Lining is a national “Common Ground Alliance” recommended Best Practice; and,
- Page 4, Line 19)
 - Lengthens the period a One Call is valid – from 10 to 21 days. This change will allow Excavators more time complete their project.



I recommend a **Do Pass recommendation** for Engrossed HB 1359. Thank you for the opportunity to present this written testimony in support of Engrossed H.B. 1359.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Straquadine".

Tony Straquadine
Manager, Government Affairs
Alliance Pipeline Inc.



Know what's below.
Call before you dig.

Testimony of Representative Marvin E. Nelson Senate Political Subdivisions Committee 3-8-13

It's unfortunate today that I must stand in front of you opposed to HB 1359. The reason being that the system has not and continues to not consider a normal agricultural practice while asking for increased fines.

The practice of soil testing as done today precedes the one-call system. It really started to become common in the 1970's and has continued to grow as a good management practice for farming. While continually growing, the practice is still used on only about a third of fields in the state, with rates being high in the east and dropping as you go west.

This service is provided by a variety of people, farm supply companies, grain elevators and agricultural consultants being the most common. Very seldom do farmers do it themselves.

This is due to the standard recommended soil test in North Dakota consisting of 20 cores taken throughout a sampling area, a field, or a zone in a field. The samples are taken to a depth of 24 inches, 2 ft by pushing a metal probe with a hydraulic ram. Most soil testers mount the hydraulic ram inside a pickup, but some systems use and outside mount.

The number of cores is based on statistics to get the sample to an acceptable level of precision and the depth of sampling was calibrated on a 2 ft sample. It seems the depth originally was done with a desire to cover the soil depth from which nitrogen would consistently be extracted by a crop.

The spots probed would look random if you just looked at a map of the field but really aren't random. The sampler tries to avoid many things like rockpiles, drainage ditches and so on. Really what he is doing is trying to avoid areas that might have received higher or lower amounts of fertilizer or have non-typical soil for the sample.

When one call was started, they did not include people from the ag community, they came up with a number for a depth of exemption from one-call for ag based on their poor knowledge of agriculture. The practice of soil testing was already happening, but they were unaware of it.

A few years after they started the system, they came to the ND Agricultural Consultant's Assn. at a time when I was the President and asked us to participate. We tried. It was a horrible failure. Their system was not and is not designed to deal with farmer fields. I tried for about two weeks, I never got better than taking the entire morning to get the locates in for one vehicle for one day. Several other consultant's had similar experiences. Never was a single flag placed into a field to mark the location of underground facilities. The only responses received from utilities were either nasty phone calls complaining of the impossibility of doing the marking and how it would take adding multiple personnel to mark from management and employees who wanted to drive around and tell you that they have a line on the east side of this field and the west of that field but no actually location for even how far the line was from the road.

The thing was, their response was really correct. The whole one call system doesn't work for one call. All that would happen today is an already overloaded system would be more overloaded with soil testing. In the months of September and Octobers, daily samples, with each sample representing roughly 20 cores in an average of 80 acres, would number from 2000 to 3000 daily.

The risk is rather minimal. The soil testing has been going on for years already and we are not seeing big problems. I do know of a couple of cases where shallow phone lines were damaged. The thing is the cost of putting soil testing into the system is millions of dollars a year, there are the fees, the added employees of utilities and soil testing companies. The cost of excluding it as it should have been as a normal agricultural practice is less than the cost of compliance.

I am asking you today to accept an amendment to exclude the normal 2 ft depth of soil testing from one call. If they would include and work with ag to make a system that would be workable. It could be put back under the system in the future but as it's been, it's so unimportant to the system they haven't made any real effort to allow soil testers to comply. If it really is important to them, then excluding soil testers will give them the impetus to do so. If it's actually not important to them, then we can quit arguing about it. The current system which doesn't allow a tester to comply while potentially making him liable for fines and costs is unfair and untenable.

Thank you,

Rep. Marvin E. Nelson

Written Testimony – Dennis Berglund, Centrol Crop Consulting

I would like to offer this written testimony for House Bill 1359.

CENTROL is a crop consulting company working in ND, SD and MN.

- We provide a service to farmers for the purpose of maximizing their profitability.
- Our service is non-biased and not tied to the sale of a product.
- We use science, technology and experience to provide a full-service consulting service on all crops.
- Our services include:
 - Soil sampling
 - Precision agriculture
 - Field monitoring
 - Record keeping
 - Crop planning
 - Fertility and pest recommendations
- We have 46 full-time agronomists
 - They average 14 years of experience.
 - They all have college degrees.
 - Most are Certified.
 - They are members of the National and State Crop Consultant Organizations.

Here is a brief description of the soil sampling process for fertilizer recommendations:

- 1) The best samples are taken in the fall, before the field is worked, so the soil sampling season is very compressed.
 - a) We have about 2-3 months to do about 15,000 fields.
- 2) For Phosphorus and Potassium we only need to go 6-8" deep.
 - a) We go 24-42" deep for our Nitrogen and Sulfur tests.
- 3) A "normal" soil sample in ND goes to a depth of 24".
 - a) Sugarbeets are often sampled to a 42" depth.
- 4) We will take about 20 cores of soil on an 80 acre field and 30 cores of soil on a 150 acre field.
 - a) The core of soil is about 3/4 inches in diameter and 24-42" in length.
 - i) This requires the steel probe to pass vertically into the soil to a depth of 24-42".
 - ii) After the probe is removed from the ground, there is a 1" diameter hole in the ground that is 24-42" deep.
- 5) We seldom sample within 100 feet of the field border.

This law could increase soil sampling costs.

- a) North Dakota One-Call increases our liability, decreases our efficiency and increases our labor needs.
- b) If implemented on all fields, soil sampling price increases of 40-70% could be feasible.

Soil testing in North Dakota should be encouraged.

- a) Soil testing is the best method of determining the nutrient status of the soil, yet a majority of ND fields are not soil sampled.
- b) If there was more soil sampling:
 - i) There would be an economic benefit, through better crop yields.
 - ii) There would also be an environmental benefit, due to more efficient fertilizer use and applying only the needed fertilizers.
- c) If sampling costs are increased, then that could discourage soil sampling.

We have thought about making 18" our standard soil sampling depth.

- a) However, all university recommendations have been based on a sample depth of 24-42".
 - i) Long term research has shown that the Nitrogen in the top 24" of soil is usually available to our ND crops.
 - (1) Sugarbeets usually use the Nitrogen down to 42".
- b) If we sample to an 18" depth and send it in as an 18" sample, it will under-estimate the Nitrogen and Sulfur tests by about 75%.
- c) If we sample to 18" and send it in as a 24" sample, it can give a good estimate of the Nitrogen and Sulfur test, as long as the 18-24" depth has the same texture, moisture, structure, etc as the 6-18" depth.
 - i) In many cases, that could be assuming a lot!

Here are some requests that would help us comply with North Dakota One-Call:

- a) Can we get an exemption in agricultural fields, if we stay 100 feet from the field edge, so that a call is required only if disturbing the soil deeper than 42"?
 - i) I don't know of any incidents where damage was caused by soil sampling.
- b) If that 42" exemption is not possible, can we get the law changed to require a call only if we disturb the soil deeper than 24"?
- c) Could a ticket on farmland be valid for more than 10 days?
 - i) If we get a large rain event in one area, and it is dry in another area, our plans can change quickly.
- d) Could we map out the entire farm to see where any potential issues are, so that we can minimize phone calls to North Dakota One-Call?
 - i) This would be more efficient than requiring a separate call for each quarter section.

Thank-you.

Dennis Berglund
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