

Sixty-fourth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2347

Introduced by

Senators Bowman, Dever, O'Connell

Representatives Fehr, Onstad, Steiner

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

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

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

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

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

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

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

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

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

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