

This Document can be made available in alternative formats upon request

State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 2717

03/08/2023 Authored by Kraft, Brand, O'Neill, Hornstein and Hudella
The bill was read for the first time and referred to the Committee on Transportation Finance and Policy

1.1 A bill for an act
1.2 relating to utilities; modifying provisions governing the excavation notice system;
1.3 amending Minnesota Statutes 2022, sections 216D.01, subdivision 12, by adding
1.4 a subdivision; 216D.03, subdivision 2, by adding a subdivision; 216D.04,
1.5 subdivisions 1a, 3, 4; 216D.05; 216D.06, subdivisions 2, 3.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2022, section 216D.01, is amended by adding a subdivision
1.8 to read:

1.9 Subd. 7a. **Locate.** "Locate" means the marking of an approximate horizontal location
1.10 of an underground facility, as defined in subdivision 11, including the marking of: (1) bends,
1.11 nipples, blowoffs, and structures; and (2) handholes, manholes, pedestals, or other extensions
1.12 of an underground facility within a plus or minus two-foot tolerance requirement.

1.13 Sec. 2. Minnesota Statutes 2022, section 216D.01, subdivision 12, is amended to read:

1.14 Subd. 12. **Utility quality level.** "Utility quality level" means a professional opinion
1.15 about the quality and reliability of utility information. There are four levels of utility quality
1.16 information, ranging from the most precise and reliable, level A, to the least precise and
1.17 reliable, level D. The utility quality level must be determined in accordance with guidelines
1.18 established by the Construction Institute of the American Society of Civil Engineers in
1.19 document CI/ASCE ~~38-02~~ 38-22 entitled "Standard Guidelines for the Collection and
1.20 Depiction of Existing Subsurface Utility Data."

2.1 Sec. 3. Minnesota Statutes 2022, section 216D.03, subdivision 2, is amended to read:

2.2 Subd. 2. **Establishment of notification center; rules.** (a) The notification center services
2.3 must be provided by a nonprofit corporation approved in writing by the commissioner. The
2.4 nonprofit corporation must be governed by a board of directors of up to 20 members, one
2.5 of whom is the director of the Office of Pipeline Safety and one of whom is the executive
2.6 secretary of the Public Utilities Commission. The other board members must ~~represent and~~
2.7 be elected by operators, excavators, and other persons eligible to participate in the center.
2.8 In deciding to approve a nonprofit corporation, the commissioner shall consider whether it
2.9 meets the requirements of this paragraph and whether it demonstrates that it has the ability
2.10 to contract for and implement the notification center service.

2.11 (b) The commissioner shall adopt rules:

2.12 (1) establishing a notification process and competitive bidding procedure for selecting
2.13 a vendor to provide the notification service;

2.14 (2) governing the operating procedures and technology needed for a statewide notification
2.15 center; and

2.16 (3) setting forth the method for assessing the cost of the service among operators.

2.17 (c) The commissioner shall select a vendor to provide the notification center service.
2.18 The commissioner may advertise for bids as provided in section 16C.06, subdivisions 1 and
2.19 2, and base the selection of a vendor on best value as provided in section 16C.06, subdivision
2.20 6. The commissioner shall select and contract with the vendor to provide the notification
2.21 center service, but all costs of the center must be paid by the operators. The commissioner
2.22 may at any time appoint a task force to advise on the renewal of the contract or any other
2.23 matter involving the center's operations.

2.24 (d) An operator may submit a bid and be selected to contract to provide the notification
2.25 center service under paragraph (a) or (c). The commissioner shall annually review the
2.26 services provided by the nonprofit corporation approved under paragraph (a) or the vendor
2.27 selected under paragraph (c).

2.28 Sec. 4. Minnesota Statutes 2022, section 216D.03, is amended by adding a subdivision to
2.29 read:

2.30 Subd. 5. **Performance reporting.** (a) The notification center must establish and maintain
2.31 an electronic system for stakeholders to report complaints, damages, delays, and other issues
2.32 related to an underground facility.

3.1 (b) The notification center must provide a quarterly report to the commissioner and each
 3.2 utility operator, and make the report available on the notification center's public website.

3.3 The report must include:

3.4 (1) the number of notifications, categorized by type;

3.5 (2) the percentage of normal tickets, with the electronic status marked by the notification's
 3.6 start time;

3.7 (3) the number of damages, categorized by the cause of the damage;

3.8 (4) the number of complaints received related to underground facility locations; and

3.9 (5) any other information determined by the commissioner or notification center board
 3.10 of directors.

3.11 (c) The notification center must publish an annual report that summarizes the operator
 3.12 performance reporting as collected in each quarterly report.

3.13 (d) The notification center's board of directors must make recommendations to the
 3.14 commissioner for stakeholder improvements.

3.15 Sec. 5. Minnesota Statutes 2022, section 216D.04, subdivision 1a, is amended to read:

3.16 Subd. 1a. **Plans for excavation.** (a) Any person, prior to soliciting bids or entering into
 3.17 a contract for excavation, shall provide a proposed notice to the notification center to obtain
 3.18 from the affected operators of underground facilities the type, size, and general location of
 3.19 underground facilities. Affected operators shall provide the information, as established in
 3.20 section 216D.01, subdivision 12, for utility quality level within 15 working days. An operator
 3.21 who provides information to a person who is not a unit of government may indicate any
 3.22 portions of the information which are proprietary and may require the person to provide
 3.23 appropriate confidentiality protection. The information obtained from affected operators
 3.24 must be submitted on the final drawing used for the bid or contract and must depict the
 3.25 utility quality level of that information. This information must be updated not more than 90
 3.26 days before completion of the final drawing used for the bid or contract.

3.27 (b) This subdivision does not apply to bids and contracts for:

3.28 (1) routine maintenance of underground facilities or installation, maintenance, or repair
 3.29 of service lines;

3.30 (2) excavation for operators of underground facilities performed on a unit of work or
 3.31 similar basis; or

4.1 (3) excavation for home construction and projects by home owners.

4.2 (c) A person required by this section to show existing underground facilities on its
4.3 drawings shall conduct one or more preliminary design meetings during the design phase
4.4 to communicate the project design, project scope and timeline, and coordinate utility
4.5 relocation. Affected facility operators shall attend these meetings ~~or make other arrangements~~
4.6 ~~to~~ and provide project start dates, duration information, and scope of work.

4.7 (d) A person required by this section to show existing underground facilities on its
4.8 drawings shall conduct one or more preconstruction meetings to communicate the project
4.9 design, project scope and timeline, and coordinate utility relocation. Affected facility
4.10 operators and contractors ~~shall~~ must attend these meetings ~~or make other arrangements to~~
4.11 ~~provide information.~~

4.12 (e) This subdivision does not affect the obligation to provide a notice of excavation as
4.13 required under subdivision 1.

4.14 Sec. 6. Minnesota Statutes 2022, section 216D.04, subdivision 3, is amended to read:

4.15 Subd. 3. **Locating underground facility; operator.** (a) Prior to the excavation start
4.16 time on the notice, an operator shall locate and mark or otherwise provide the approximate
4.17 horizontal location of the underground facilities of the operator and provide readily available
4.18 information regarding the operator's abandoned and out-of-service underground facilities
4.19 as shown on maps, drawings, diagrams, or other records used in the operator's normal course
4.20 of business, without cost to the excavator. The excavator shall determine the precise location
4.21 of the underground facility, without damage, before excavating within two feet of the marked
4.22 location of the underground facility.

4.23 (b) Within 96 hours or the time specified in the notice, whichever is later, after receiving
4.24 a notice for boundary survey from the notification center, excluding Saturdays, Sundays,
4.25 and holidays, unless otherwise agreed to between the land surveyor and operator, an operator
4.26 shall locate and mark or otherwise provide the approximate horizontal location of the
4.27 underground facilities of the operator, without cost to the land surveyor.

4.28 (c) For the purpose of this section, the approximate horizontal location of the underground
4.29 facilities is a strip of land two feet on either side of the underground facilities.

4.30 (d) Markers used to designate the approximate horizontal location of underground
4.31 facilities must be a flag, or flags that follow the current color code standard used by the
4.32 American Public Works Association, and must indicate the name of the operator. If the

5.1 surface being marked is hard, markers that are not flags may be used but must comply with
5.2 the color code standard.

5.3 (e) If the operator cannot complete marking of the excavation or boundary survey area
5.4 before the excavation or boundary survey start time stated in the notice, the operator shall
5.5 promptly contact the excavator or land surveyor.

5.6 (f) After December 31, 1998, operators shall maintain maps, drawings, diagrams, or
5.7 other records of any underground facility abandoned or out-of-service after December 31,
5.8 1998.

5.9 (g) An operator or other person providing information pursuant to this subdivision is
5.10 not responsible to any person, for any costs, claims, or damages for information provided
5.11 in good faith regarding abandoned, out-of-service, or private or customer-owned underground
5.12 facilities.

5.13 (h) On or after January 1, 2025, operators must use a global positioning system or an
5.14 equivalent technology to develop as-built drawings of newly installed, improved, or repaired
5.15 facilities.

5.16 Sec. 7. Minnesota Statutes 2022, section 216D.04, subdivision 4, is amended to read:

5.17 Subd. 4. **Locating underground facility; excavator or land surveyor.** (a) The excavator
5.18 or land surveyor shall determine the precise location of the underground facility, without
5.19 damage, before excavating within two feet on either side of the marked location of the
5.20 underground facility.

5.21 (b) If the excavator or land surveyor cancels the excavation or boundary survey, the
5.22 excavator or land surveyor shall cancel the notice through the notification center.

5.23 (c) The notice is valid for ~~14~~ 21 calendar days from the start time stated on the notice.
5.24 If the activity will continue after the expiration time, then the person responsible for the
5.25 activity shall serve an additional notice at least 48 hours, excluding Saturdays, Sundays,
5.26 and holidays, before the expiration time of the original notice, unless the excavator makes
5.27 arrangements with the operators affected to periodically verify or refresh the marks, in
5.28 which case the notice is valid for six months from the start time stated on the notice.

5.29 (d) The excavator is responsible for reasonably protecting and preserving the marks until
5.30 no longer required for proper and safe excavation near the underground facility. If the
5.31 excavator has reason to believe the marks are obliterated, obscured, missing, or incorrect,
5.32 the excavator shall notify the facility operator or notification center in order to have an
5.33 operator verify or refresh the marks.

6.1 Sec. 8. Minnesota Statutes 2022, section 216D.05, is amended to read:

6.2 **216D.05 PRECAUTIONS TO AVOID DAMAGE.**

6.3 An excavator shall:

6.4 (1) plan the excavation to avoid damage to and minimize interference with underground
6.5 facilities in and near the construction area;

6.6 (2) use physical or digital white markings for proposed excavations except where it can
6.7 be shown that it is not practical;

6.8 (3) maintain a clearance between an underground facility and the cutting edge or point
6.9 of any mechanized equipment, considering the known limit of control of the cutting edge
6.10 or point to avoid damage to the facility;

6.11 (4) provide support for underground facilities in and near the construction area, including
6.12 during backfill operations, to protect the facilities; and

6.13 (5) conduct the excavation in a careful and prudent manner.

6.14 Sec. 9. Minnesota Statutes 2022, section 216D.06, subdivision 2, is amended to read:

6.15 Subd. 2. **Cost reimbursement.** (a) If an excavator damages an underground facility,
6.16 the excavator shall reimburse the operator for the cost of necessary repairs, and for a pipeline
6.17 the cost of the product that was being carried in the pipeline and was lost as a direct result
6.18 of the damage.

6.19 (b) Reimbursement is not required if the damage to the underground facility was caused
6.20 by the sole negligence of the operator or the operator failed to comply with section 216D.04,
6.21 subdivision 3.

6.22 (c) A person or agency is prohibited from entering into an excavation contract that
6.23 requires an excavator to bear the costs of downtime directly related to utility work when
6.24 the excavator is not at fault for the delays. The utility owner responsible for the delay is
6.25 responsible for the cost of the delay in the amount provided for civil penalties under section
6.26 216D.08, subdivision 1.

6.27 Sec. 10. Minnesota Statutes 2022, section 216D.06, subdivision 3, is amended to read:

6.28 Subd. 3. **Prima facie evidence of negligence.** (a) It is prima facie evidence of the
6.29 excavator's negligence in a civil court action if damage to the underground facilities of an
6.30 operator resulted from excavation, and the excavator failed to give an excavation notice
6.31 under section 216D.04 or provide support as required by section 216D.05.

7.1 (b) It is prima facie evidence of the operator's negligence in a civil court action if damage
7.2 to an operator's underground facilities resulted from the operator's failure to comply with
7.3 section 216D.04, subdivisions 1 to 3.

7.4 (c) It is prima facie evidence of negligence by the person soliciting bids or entering into
7.5 a contract for excavation in a civil court action if damage to an operator's underground
7.6 facilities resulted from the person's failure to comply with section 216D.04, subdivisions 1
7.7 to 3.