

HB 725

Rep. Harry Klock

"Revise law on underground facility location and notification"

Hearing: February 18, 2005

House Federal Relations Energy and Telecommunications Committee

**Background: Current law**

Current law requires all excavators to call a One-Call Notification Center before performing any excavations. The intent is to reduce (preferably eliminate) the possibility of digging up buried gas, water, electricity, or telecom utility facilities.

The consequences of digging up such facilities can be disastrous. People have lost their lives, or have been seriously injured, and communities have suffered significant economic damage from lost utilities.

Once called, utilities have 2 days in which to respond by locating or marking their underground facilities for the excavator. If a utility fails to respond within two days, the excavator may dig and is not liable for damages from hitting an unidentified underground facility. If the excavator does not call ahead and digs up an underground facility, the excavator is liable for damages.

Current law also requires the excavator to maintain the marks and locations of underground facilities once located by the utility or one-call locator. And further, current law says that the excavator is responsible for the costs associated with relocating and remarking underground facilities.

**The Problem**

Despite the statutory requirement that excavators maintain markings, utilities frequently are called back to the same work site to relocate facilities already located. The law is not clear that responsibility for the costs of relocating facilities is limited to just one excavator (the one who first called One-Call) or to subsequent excavators.

In fact, the law appears to allow multiple excavations within a 30-day period of the first locate, and multiple excavators can request "first locates."

The result is that utilities are called back to the same work site for multiple relocates either for the same or multiple excavators. The law needs to be clarified.

The cost of locates and relocates add up to tens of thousands of dollars and more. Some telcos spend as much as \$1.50 per customer per month on locating underground facilities. Under current law, these costs are borne by utility ratepayers.

A second problem is when excavators call for "emergency locates" which turn out to be false alarms. "Emergencies" are already defined in current law. (69-4-501(2) and (3))

Sometimes, to expedite a locate, excavators might call an emergency locate to get a utility to respond immediately. Once on site, utility personnel see that there in fact is no emergency; but since they're already on site, they'll usually locate facilities as long as they are there. However, the cost of this emergency locate can be significant, especially when company resources are diverted from other projects.

Current law provides that parties responsible for "false alarms" must pay up to a \$500 fine or face up to 6 months in prison, as provided under the false alarm provisions of 45-7-204 (criminal offenses against public administration.) Trouble is, sometimes it's cheaper for an excavator to call a false alarm and risk a potential (but by no means guaranteed) penalty than it is to wait for 2 days until a utility comes to locate an underground facility.

### **The Solution**

Telephone companies have brought this problem to the Legislature in an attempt to balance the costs of re-locating (not "first locating) underground facilities.

There is no argument or problem with the current law provision that utilities locate underground facilities the first time.

Telcos argue that once a facility is located, the costs of any subsequent locates should be paid by the parties responsible for the relocation, and not by utility ratepayers. In short, the entity causing the costs should pay for the costs.

To address the multiple excavator issue, the bill would hold "project owners" responsible for costs associated with calling a utility back to the same site to relocate the facilities that have already been located.

To address the false alarm situation, the bill would hold the excavator that called a false alarm responsible for paying for the costs associated with the locate. These costs would be in addition to any penalties under current law.

### **Arguments**

#### **Pro:**

The bill places responsibility for paying for costs associated with relocating facilities on the parties responsible for causing the costs, rather than imposing such costs on all ratepayers. In this regard, the bill is a pro-consumer bill because consumers (ratepayers) won't have to foot the bill for multiple relocates.

Project owners are in the best position to ensure that locates are preserved and maintained and to coordinate relocations if necessary. Current law encourages the use of "other arrangements." (69-4-503(3)(b). Such arrangements can include pre-excavation meetings, advance billing arrangements, contractual obligations, etc.



The bill does not change existing-law obligations of the utility to locate facilities, or of the excavator to call ahead before digging.

Project owners will be in a better position to coordinate locates and to use current-law provisions to make arrangements that best meet the needs of project owners, excavators and utilities alike.

Con:

*"It takes too long for utilities to mark their facilities."*

- RESPONSE: First, this is irrelevant. The bill address relocates, not the 2-day requirement to locate facilities.
- Second, the law already requires that utilities locate within 2 days of notification. Nothing in this bill changes that requirement.
- Further, if the utility takes longer than 2 days, current law allows the excavator to dig and he/she won't be liable for any damages, as long as he/she notified one-call and the utility did not show up in time.

*"Markings 'disappear.'"*

- RESPONSE: Current law already requires the excavator to maintain markings.

*"It would cost too much if relocations must be paid by excavators/project owners."*

- RESPONSE: That's the point. It costs utilities too much to pay for relocating the same facilities over and over again. Under HB725, the person causing the costs to be incurred is the same person who pays. The incentives and responsibilities are better aligned under this bill.
- Also, HB725 applies current-law language to say that the project owner is responsible for the costs associated with relocates, *"unless other arrangements have been made with the utility."* Such arrangements can include pre-excavation meetings and billing arrangements.
- The project owner also is free to issue contracts or subcontracts with billing arrangements included whereby subsequent excavators know ahead of time who is responsible for what costs.

The point here is that the ratepayer is protected from incurring the costs of relocates.

Contact: Geoff Feiss, General Manager  
Montana Telecommunications Association  
406.442.4316 (office)  
406.594.0424 (mobile)  
[gfeiss@telecomassn.org](mailto:gfeiss@telecomassn.org)

