

HB 725
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I have reviewed HB 725 and I believe that it may cause some problems for contractors. General comments are as follows. On the surface it attempts to entice us by stating that re-locations would be charged to project owners, not contractors. The problem is that this could be very expensive for owners such as MDT and I'm sure that most of these owners would eventually take steps to pass these costs along to the contractor. In the meantime, this bill should contain a large fiscal note for MDT, DNRC, DEQ, EPA, Forest Service, Local Governments, and any other public agency that does work or hires contractors to do work that includes underground locations.

The reality of the situation is that re-locations are often necessary, sometimes because of the contractor, sometimes because of the locators themselves, and often due to the design or staging of a project. For example, On numerous occasions I have seen One Call Locators painting marks on the ground when it was raining or snowing; these people had to know full well that the marks would be useless within 5 minutes. There are also occasions where One Call shows up and paints marks late in the day, it snows a half inch that night, and the contractor has to call for re-locates the next day. When adverse weather is present or expected, we try to get locators to mark with stakes or flags, rather than paint, but they are very reluctant to do this because of time & cost so they mostly claim that they don't have the necessary supplies with them. When they do mark with flags or stakes, kids like to pull them out and vehicles run them over, just like with survey stakes.

Another scenario is that on a highway project you often have separate subcontractors for traffic control (temporary signs), guardrail, culvert installation, electrical (underground conduit), water line installation, and permanent signs, etc.. Each of these subcontractors makes a separate request for locates, as they are required to do. These locate requests are for different work and are made at different times, but they could be in the same location. I don't believe that it could work to get one locate at the beginning of a project and accurately maintain the marks through different operations and different subcontractors over the life of a project. Under the proposed revisions, the owner would be billed for numerous re-locates even though each sub requested only one locate for its work. It seems that the utilities have spent several years educating and requiring contractors to "call before you dig" and they are now unhappy that we are doing so.

My specific comments are as follows. Section 2(3)a states that the "excavator" is responsible for maintaining the markings. My question is which excavator? In the example about the highway job, there are numerous excavators working in the same place at different times. The marks may have been in place for the first sub to work in an area, but what about the 2nd or 5th? Which of the excavators would be responsible for maintaining the marks?

Section 2(3)b gives no time limit after which re-locates can be requested without charge. Does this mean that once an area has been located, the owner will be charged for additional locates in the area forever? If this is the case, there would eventually be a charge for almost all locates because they would be classified as re-locates even if the last request was 5 years prior.

Regarding section 3(3), I believe that some excavators have abused the emergency locate requests because it is the only way they can get a response in less than three days. While I don't condone this approach, making this change wouldn't help because it does not define "emergency". Maybe it was an emergency for the excavator because he was going to lose his job if he didn't get the work done that day. I believe that One Call has contributed to this problem because they won't commit to do locates within 2 working days as the law requires. They have added their own interpretation that says

the time doesn't start until the next business day after notification. They effectively give themselves 3 days to do the locates. This can be a long time to wait in many cases and it undermines the 2 days that was the compromise agreement between industry and utilities when this law was originally passed.

In summary, I see serious problems for our industry in this bill.