

ONE HUNDRED EIGHTH LEGISLATURE - FIRST SESSION - 2023
COMMITTEE STATEMENT
LB122

Hearing Date: Tuesday January 31, 2023
Committee On: Transportation and Telecommunications
Introducer: Bostelman
One Liner: Change provisions relating to the One-Call Notification System Act

Roll Call Vote - Final Committee Action:

Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Bostelman, Brandt, Cavanaugh, M., DeBoer, DeKay, Fredrickson,
Geist, Moser

Nay:

Absent:

Present Not Voting:

Testimony:

Proponents:

Bruce Bostelman
Brad Wegner
Brent Smoyer

Representing:

Introducer
National Utility Contractors of America- Nebraska Chapter
Northwestern Energy

Opponents:

John Buckley

Representing:

OPPD, NPA

Neutral:

Jill Becker
Ken Yoho
Doug Hohbein
Tip O'Neill
Mike Loeffler

Representing:

Black Hills Energy
Nebraska Attorney General
Interim State Fire Marshal
Nebraska Telecommunication Association
Northern Natural Gas

* ADA Accommodation Written Testimony

Summary of purpose and/or changes:

LB 122 amends the One-Call Notification Act by adding new provisions that create the Underground Excavation Safety Committee (sections 3, and 4). The Underground Excavation Safety Committee (UESC) is a five member committee that consists of the State Fire Marshal (or designee), two operators, and two excavators.

The operator and excavator representatives are to be appointed by the Governor and subject to confirmation by the Legislature and will serve a four-year term. (Two of the members will initially serve a two-year term.) Members are not compensated, but will receive actual

expenses.

The UESC shall meet quarterly and at the call of the chair. The duty of the UESC is to review complaints of One-Call Act violations, determine if violations have occurred, and determine if a civil penalty should be assessed when a violation has occurred. No member shall participate in any matter in which the member possesses a conflict.

The State Fire Marshal on their own, or based upon information provided by another, may initiate an investigation of any violation of the One-Call Act and may refer any complaint and investigative findings to the UESC.

The UESC shall review the complaint and investigation and if a violation is determined to have occurred serve on the violator written findings of fact, conclusions of law, and any civil fine to be imposed. If the proposed civil fine exceeds \$10,000 the matter shall be referred to the Attorney General for prosecution.

For violations in which the proposed civil penalty is less than \$10,000 the violator shall have thirty days following service to have a hearing on the matter before the UESC. If no hearing is requested the party shall pay the civil penalty within 30 days of receiving the notice of violation.

The UESC shall employ a hearing officer who shall have the power to compel the attendance of witnesses, and subpoena documents. Following hearing the hearing officer shall prepare findings of fact and conclusions of law and shall issue a final order affirming, modifying, or reversing the initial determination of the UESC. Any final order may be appealed pursuant to the Administrative Procedures Act.

The UESC may, in lieu of a civil penalty for any violation of the One-Call Notification Act, order a violator to take and complete a continuing education course regarding compliance with the requirements and obligations of the Act.

THE FOLLOWING SECTION IS REPEALED OUTRIGHT

76-2325.02. Attorney General; annual report; contents.

The Attorney General shall make an annual report to the Legislature, the State Fire Marshal, and the board of directors by each March 15 on the number of complaints filed and the number of such complaints prosecuted under section 76-2325 during the previous calendar year. The report to the Legislature shall be made electronically.

Explanation of amendments:

The Committee considered and adopted an amendment which accomplishes the following: The amendment substitutes for the bill and retains the original provisions of LB 122 with the following changes.

The One-Call Notification System Act is amended with the addition of three new sections. The amendment creates the Underground Excavation Safety Committee. The committee consists of the State Fire Marshal, three excavators, 3 facility operators and two alternatives, 1 representing excavators, and 1 representing operators. The alternatives participate in the event of conflicts of interest. Decisions of the committee shall be by majority vote. The members shall be appointed by the Governor. The Committee is to meet monthly and no member shall participate in the hearing on a matter in which the member's business is a party to the hearing. The Committee shall take effect and function beginning on September 1, 2024.

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conflict.

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The UESC may in lieu of a civil penalty for any violation of the One-Call Notification Act order a violator to take and complete a continuing education course regarding compliance with the requirements and obligations of the Act.

It is a violation of the act for an excavator to request facility location for a location where excavation cannot be commenced within 17 days of the notice. Additionally, it is a violation of the act to request a marking refresh when excavation cannot be reasonably commenced or continued within 14 days of the date remarking is completed.

Suzanne Geist, Chairperson