

Senate Bill 480 alters the liability rules between contractors and the owners of underground facilities who do not register with the "one call" system known as Miss Utility. Specifically, the bill excuses contractors who comply with the one-call law from liability to unregistered owners and makes those owners liable to other parties for restoration and repairs of property damaged by the excavation or demolition. Additionally, the bill removes the presumption of negligence on the part of a contractor in the case of damage to an underground facility of an unregistered owner.

The "one-call" system known as Miss Utility is designed to protect underground facilities from inadvertent damage caused by demolition and excavation. The program requires owners of underground facilities, such as water and sewer mains, and telephone, cable and electric lines to register as members of the one-call system. The system provides contractors with a single point of contact, so that one notification suffices to mark the location of all known underground facilities in the vicinity of proposed demolition or excavation. Despite the mandate that owners register with Miss Utility, some owners still do not belong to the one-call system.

The intention behind Senate Bill 480 is to encourage the owners of underground facilities to register with the one-call system by imposing greater liability on them for damages from demolition and excavation if they do not. I support this goal. Unless owners fully participate in the one-call system, it cannot function as designed and will be unreliable. To this end, the bill takes away the current presumption of negligence on the part of a contractor who damages an underground facility if the utility owner failed to register with the one-call system. While I support this provision, I am concerned that the bill goes a great deal farther in protecting contractors and may have unintended consequences.

Senate Bill 480 states that if the utility owner fails participate in the one call system, the contractor is not liable to the utility owner for repairing the underground facility and for "any repairs or restoration of property damaged by the excavation or demolition." Rather than just taking away the presumption of negligence, the bill arguably shields a negligent contractor for property damages caused to third parties such as homeowners and businesses. In such cases, if the owner of the underground facility is unknown, bankrupt or otherwise unreachable, an injured third party may have difficulty obtaining compensation for property damaged by the excavation or demolition. While I do not believe that is the intention of the bill, the proposed language lacks sufficient clarity on this important issue.

Given the potential unintended consequences of Senate Bill 480, I cannot support the legislation in its current form and recommend this issue be carefully studied during the 2000 interim. It is worth noting that the Public Service Commission is currently undertaking a comprehensive review of the entire underground facilities law to determine what changes may be necessary to improve the one-call system. I recommend that the Commission include Senate Bill 480 in its study and that any proposed liability protections for contractors be narrowly tailored to protect the public interest.

For the above reasons, I have vetoed Senate Bill 480.

Sincerely,