

**COMMENTS ON THE DRAFT WORDING OF SENATE BILL S-233**

BILL S-233 DRAFT WORDING	COMMENTS
<p>Senate Public Bill  <b>S-233</b>  <b>AN ACT ENACTING THE UNDERGROUND INFRASTRUCTURE SAFETY ENHANCEMENT ACT AND MAKING CONSEQUENTIAL AMENDMENTS TO OTHER ACTS</b>  Short Title  <b>Underground Infrastructure Safety Enhancement Act</b>  Sponsor  <b>Sen. Grant Mitchell</b></p>	
<p>FIRST READING, JUNE 17, 2015</p>	
<p>SUMMARY  This enactment creates a federal underground infrastructure notification system. It does so by requiring owners or operators of any underground infrastructure that is federally regulated or that is located on federal land to register the underground infrastructure with a notification system and provide information on the underground infrastructure; requiring persons undertaking work that results in a ground disturbance on federal land to inform of that project the owners or operators of underground infrastructure located on federal land and that can be damaged by the ground disturbance; and requiring owners or operators of underground infrastructure to mark on the ground the location of the underground infrastructure following a locate request. This enactment also makes consequential amendments to other Acts.</p>	
<p>TABLE OF PROVISIONS  AN ACT ENACTING THE UNDERGROUND INFRASTRUCTURE SAFETY ENHANCEMENT ACT AND MAKING CONSEQUENTIAL AMENDMENTS TO OTHER ACTS  SHORT TITLE  1. <i>Underground Infrastructure Safety Enhancement Act</i>  INTERPRETATION  2. Definitions  ESIGNATION  3. Designation of Minister  APPLICATION  4. Application  5. Exclusions  6. Federal statutes  REGISTRATION WITH NOTIFICATION CENTRE  7. Registration  LOCATION AND IDENTIFICATION OF UNDERGROUND INFRASTRUCTURE  8. Communication of information  LOCATE REQUEST</p>	

<p>9. Ground disturbance — locate request  10. Notice to owners of underground infrastructure — project  11. Identification and location of underground infrastructure  12. Damage prevention organization  FUNDING  13. Agreements with provinces regarding funding  REGULATIONS  14. Regulations  CONSEQUENTIAL AMENDMENTS  15. <i>National Energy Board Act</i>  16. <i>Canadian Transportation Accident Investigation and Safety Board Act</i>  17-18. <i>Telecommunications Act</i>  19-20. <i>Canada Transportation Act</i>  COMING INTO FORCE  21. Coming into force</p>	
<p><b>BILL S-233</b>  An Act enacting the Underground Infrastructure Safety Enhancement Act and making consequential amendments to other Acts</p>	
<p>SHORT TITLE  Short title  1. This Act may be cited as the <i>Underground Infrastructure Safety Enhancement Act</i>.</p>	
<p>INTERPRETATION  Definitions  2. The following definitions apply in this Act.</p>	
<p>“damage prevention organization”  « <i>organisation de prévention des dommages</i> »  “<b>damage prevention organization</b>” means a non-profit organization or entity whose primary roles are to prevent damage to underground infrastructure by developing and promoting effective prevention practices, and to promote the safety of workers and the public;</p>	
<p>“ground disturbance”  « <i>perturbation du sol</i> »  “<b>ground disturbance</b>” includes excavating, digging, trenching, plowing, drilling, tunnelling, augering, backfilling, blasting, topsoil stripping, land levelling, peat removing, pushing, quarrying, clearing and grading.</p>	
<p>“federal lands”  « <i>territoire domanial</i> »  “<b>federal lands</b>” means  (a) lands that belong to Her Majesty in right of Canada or that Her Majesty in right of Canada has the power to dispose of; and  (b) reserves, surrendered lands and any other lands that are set apart for the use and benefit of a band and that are subject to the <i>Indian Act</i>.</p>	

<p>“federally regulated” « <i>relève de la compétence fédérale</i> »</p> <p>“<b>federally regulated</b>” means being regulated by any of the following statutes:</p> <p>(a) the <i>Aeronautics Act</i>;</p> <p>(b) the <i>Canadian Transportation Accident Investigation and Safety Board Act</i>;</p> <p>(c) the <i>Canada Transportation Act</i>;</p> <p>(d) the <i>National Energy Board Act</i>;</p> <p>(e) the <i>Railway Safety Act</i>;</p> <p>(f) the <i>Telecommunications Act</i>; or</p> <p>(g) any other federal statute specified by the Minister under section 6.</p>	
<p>“notification centre” « <i>centre de notification</i> »</p> <p>“<b>notification centre</b>” means a non-profit corporation established under the laws of Canada or a province and whose primary goals are to</p> <p>(a) provide a single point of contact in a province between persons undertaking work that results in a ground disturbance and owners or operators of registered underground infrastructure;</p> <p>(b) receive and process requests for the identification and location of underground infrastructure; and</p> <p>(c) notify the owners or operators of registered underground infrastructure of any proposed construction or ground disturbance that could cause damage to any underground infrastructure that they own or operate.</p>	
<p>“owner or operator of underground infrastructure” « <i>propriétaire ou exploitant d’une installation souterraine</i> »</p> <p>“<b>owner or operator of underground infrastructure</b>” means a person or entity or any combination thereof that owns underground infrastructure or that undertakes or has control over one or more of the activities relating to the construction, installation, operation, maintenance or removal of that underground infrastructure;</p>	
<p>“owner or operator of registered underground infrastructure” « <i>propriétaire ou exploitant d’une installation souterraine inscrite</i> »</p> <p>“<b>owner or operator of registered underground infrastructure</b>” means the owner or operator of underground infrastructure that is registered with a notification centre.</p>	
<p>“provincial legislation” « <i>législation provinciale</i> »</p> <p>“<b>provincial legislation</b>” means an Act of a province that creates an underground infrastructure notification system, and any regulations, rules or other similar instruments made under that Act;</p>	
<p>“underground infrastructure” « <i>infrastructure souterraine</i> »</p> <p>“<b>underground infrastructure</b>” means cables, ducts,</p>	

equipment, pipes and vaults that are buried in the ground, and any real or personal property, immovable, movable or work connected to them	
<b>DESIGNATION</b> Designation of Minister <b>3.</b> The Governor in Council may, by order, designate any federal Minister to be the Minister referred to in this Act.	
<b>APPLICATION</b> Application <b>4.</b> This Act does not apply to a ground disturbance that displaces less than 30 centimetres of ground below the initial grade and does not reduce the total cover over any underground infrastructure.	Limiting this ACT to work that goes below 30 cms would render the legislation to be of limited benefit. There may be underground facilities that would be within this described zone – either intentionally placed within 30 cms of the surface or a facility that may be exposed, or close to exposed, due to environmental or other factors.
<b>Exclusions</b> <b>5.</b> For the purposes of this Act, the Minister may, by order, exclude any military base or station, in whole or in part, from the application of paragraph (a) of the definition “federal lands” in section 2.	
<b>Federal Statutes</b> <b>6.</b> The Minister may, by order, specify the federal statutes that are referred to in paragraph (g) of the definition “federally regulated” in section 2.	
<b>REGISTRATION WITH NOTIFICATION CENTRE</b> Registration <b>7.</b> The owner or operator of any underground infrastructure that is federally regulated or that is located on federal land must (a) register the infrastructure with each notification centre that serves a province in which the infrastructure is located, if such a centre exists; and (b) pay the registration fees fixed by a notification centre referred to in paragraph (a) or by the provincial legislation of the province in which the notification centre is located.	Presuming existing lines would be subject to this registration obligation, what is the timing of such registration (e.g. how quickly would the lines have to be identified and registered)? How would the registration fees be calculated or applied (per km? per line?)  How much would the fee be and how often is it payable? How is it determined?
<b>LOCATION AND IDENTIFICATION OF UNDERGROUND INFRASTRUCTURE</b> Communication of information <b>8.</b> (1) The owner or operator of any underground infrastructure that is federally regulated or that is located on federal land must provide the following information to each notification centre that serves a province in which the underground infrastructure is located: (a) a description of the location of the underground infrastructure, such as the digital geospatial data or legal description of the location; (b) the name of any city, town or village in which the underground infrastructure is located in that province; and (c) any other information that the notification centre considers necessary to exercise its functions or that the provincial legislation in which the notification centre is located requires.	8 (1) another pertinent piece of information to consider communicating would be the product carried in the underground infrastructure and the description of the infrastructure. This is pertinent to developing safe Emergency Response Plan and for positive identification during daylighting. The daylight crew would need this information to know how to safely daylight the line without damaging it.  If there are costs associated with communicating this information, who is expected to pay?
Changes	How soon or frequently would changes have to be

<p>(2) The person or entity referred to in subsection (1) shall also inform the notification centre of any change made to the underground infrastructure and its location.</p>	<p>reported? What happens if there is a failure to register?</p>
<p>Period of time</p> <p>(3) The information referred to in subsections (1) and (2) must be provided to the notification centre at the frequency, within the period and in the manner prescribed by the notification centre or the provincial legislation of the province in which the notification centre is located.</p>	
<p><b>LOCATE REQUEST</b></p> <p>Ground disturbance — locate request</p> <p><b>9.</b> (1) Before undertaking work that results in a ground disturbance on federal land, a person or entity must inform each notification centre that serves a province in which the federal land is located of that project</p>	<p>Please include a "Non-ground disturbance - locate request"</p> <p>This is useful information for construction planning and land development planning.</p>
<p>Communication — other information</p> <p>(2) Before undertaking work that results in a ground disturbance on federal land, the person or entity referred to in subsection (1) shall also provide the notification centre with the following information:</p> <p>(a) the type of project they are planning to undertake;</p> <p>(b) the exact location of the anticipated ground disturbance; and</p> <p>(c) any other information that the notification centre considers necessary to exercise its functions or that the provincial legislation in which the notification centre is located requires</p>	
<p>Period of time</p> <p>(3) The information referred to in subsections (1) and (2) must be provided to the notification centre within the period and in the manner prescribed by the notification centre or the provincial legislation of the province in which the notification centre is located.</p>	
<p>Notice to owners or operators of underground infrastructure — project</p> <p><b>10.</b> On receipt of the notification referred to in section 9, the notification centre must, within a reasonable time after receiving it, provide information about the project referred to in that section to all owners or operators of underground infrastructure that is federally regulated or is located on federal land, and that could be damaged by the project</p>	<p>What is a "reasonable time"?</p>
<p>Identification and location of underground infrastructure</p> <p><b>11.</b> (1) Subject to the regulations, if the owner or operator of underground infrastructure receives from a notification centre a notification referred to in section 10, that owner or operator must, within the time and in the manner specified by the notification centre or by the provincial legislation of the province in which the notification centre is located,</p> <p>(a) mark on the ground the location of the underground infrastructure, using the prescribed colour codes, and</p>	<p>Perhaps this legislation can include or grant the right to owners and operators to access the land to perform such marking (those rights should already exist but granting additional rights would be beneficial where the original agreement does not explicitly provide, or where records can no longer be located, etc.).</p> <p>What is to be included in a "written description"?</p> <p>What is the liability associated with providing the</p>

<p>provide to the person undertaking the project referred to in subsection 9(1) a written description of the location of the underground infrastructure; or</p> <p>(b) indicate in writing to the person referred to in paragraph (a) that the project will not cause damage to the underground infrastructure</p>	<p>same? Could there be a good faith protection?</p> <p>9 (1) and a sketch showing the relative location of the Underground infrastructure</p>
<p>(2) Subject to subsections (3) and (4), the owner or operator of underground infrastructure cannot charge a fee to a person planning to undertake a project referred to in subsection 9(1) for marking the location of the underground infrastructure or providing a description or information pursuant to subsection (1).</p>	
<p>(3) If the project referred to in subsection 9(1) requires the owner or operator of underground infrastructure to mark the location of the underground infrastructure or provide the description or information outside of its usual business hours, the owner or operator may charge the person undertaking that project a fee corresponding to the reasonable cost of marking the location or providing the description or information after the owner or operator's usual business hours</p>	
<p>(4) The owner or operator of underground infrastructure may also charge that person a fee fixed or established by regulation if, on several occasions, the owner or operator was required to mark on the ground the location of the underground infrastructure or provide a description or information pursuant to subsection (1), without having the person undertaking the project in question</p>	<p>11 (4) There is a lot of grey area here about when a company could charge a fee for doing locates. "several occasions". It is suggested that this be examined to add some boundaries as far as a time limit or other measure that is clearer.</p>
<p><b>DAMAGE PREVENTION ORGANIZATION</b>  Damage prevention organization</p> <p><b>12.</b> The Minister may assign to a damage prevention organization the functions he or she considers necessary for carrying out the purposes of this Act.</p>	
<p><b>FUNDING</b>  Agreements with provinces regarding funding</p> <p><b>13.</b> (1) The Minister may enter into an agreement regarding funding with the government of a province in order to enable the notification centre or damage prevention organization located in that province to exercise functions assigned to it under this Act.</p>	
<p>Agreements — creation of notification centres</p> <p>(2) The Minister may enter into an agreement regarding funding with the government of a province for the creation of a notification centre that he or she considers necessary for carrying out the purposes of this Act.</p>	
<p>Payments</p> <p>(3) The Minister must pay to the government of the province with which he or she has entered into the</p>	

<p>agreements referred to in subsections (1) and (2) the amounts specified in them.</p>	
<p><b>REGULATIONS</b> Regulations</p> <p><b>14.</b> (1) The Minister may make any regulations that are necessary for carrying out the purposes and provisions of this Act, including regulations</p> <p>(a) prescribing information that the owner or operator of underground infrastructure referred to in section 11 is not required to provide under that section, and the circumstances in which they are not required to provide such information;</p> <p>(b) fixing or establishing the fees that the owner or operator of underground infrastructure referred to in section 11 may charge to a person under subsection 11(3) and (4), and specifying the meaning of “several occasions” in subsection 11(4); and</p> <p>(c) prescribing anything that by this Act is to be prescribed.</p>	
<p>Incorporation by reference</p> <p>(2) A regulation made under this section may incorporate by reference documents produced by an organization established for the purpose of writing standards, including an organization accredited by the Standards Council of Canada.</p>	
<p>Incorporation as amended from time to time</p> <p>(3) Documents may be incorporated by reference as amended from time to time.</p>	
<p>Registration and publication not required</p> <p>(4) For greater certainty, a document that is incorporated by reference in a regulation is not required to be transmitted for registration or published in the <i>Canada Gazette</i> under the <i>Statutory Instruments Act</i> by reason only that it is incorporated by reference.</p>	
<p><b>CONSEQUENTIAL AMENDMENTS</b></p>	
<p><b>NATIONAL ENERGY BOARD ACT</b></p> <p>15. The <i>National Energy Board Act</i> is amended by adding the following after section 12.1:</p>	
<p>Damage prevention — powers and functions</p> <p><b>12.2</b> (1) <u>The Board must develop, implement and promote policies, programs and projects for the purpose of preventing or responding to damage or serious risk of damage to a pipeline or international power line — or any other facility — whose construction or operation is regulated by the Board if such damage is or may be caused by a ground disturbance regulated by the <i>Underground Infrastructure Safety Enhancement Act</i>.</u></p>	
<p>Orders</p> <p><u>(2) The Board may order any of the following persons or entities to take measures that the Board considers necessary in order to prevent or respond to the damage</u></p>	

<p><u>or serious risk of damage referred to in subsection (1):</u></p> <p><u>(a) a company that has been authorized under Part III to construct or operate a pipeline;</u></p> <p><u>(b) a person exporting oil, gas or electricity or importing oil or gas;</u></p> <p><u>(c) a person holding a licence under Part VI or VII; or</u></p> <p><u>(d) a person undertaking work that results in a ground disturbance regulated by the <i>Underground Infrastructure Safety Enhancement Act</i> within thirty metres of a pipeline.</u></p>	
<p>Regulations — damage prevention</p> <p><u>12.3 The Board may, with the approval of the Governor in Council, make regulations for the purpose of preventing or reducing the damage referred to in section 12.2.</u></p>	
<p><b>CANADIAN TRANSPORTATION ACCIDENT INVESTIGATION AND SAFETY BOARD ACT</b></p> <p>16. The <i>Canadian Transportation Accident Investigation and Safety Board Act</i> is amended by adding the following after section 7:</p>	
<p>Damage prevention — powers and functions</p> <p><u>7.1 (1) The Board must develop, implement and promote policies, programs and projects for the purpose of preventing or responding to damage or serious risk of damage to a pipeline or a railway if such damage is or may be caused by a ground disturbance regulated by the <i>Underground Infrastructure Safety Enhancement Act</i>.</u></p>	
<p>Military transportation facilities</p> <p><u>(2) Subsection (1) does not apply to military transportation facilities as defined in subsection 18(1)</u></p>	
<p><b>TELECOMMUNICATIONS ACT</b></p>	
<p>17. The <i>Telecommunications Act</i> is amended by adding the following after section 46.5:</p>	
<p><u>PART III.1</u></p> <p><u>DAMAGE PREVENTION</u></p> <p>Powers and functions</p> <p><u>46.6 (1) The Commission must develop, implement and promote policies, programs and projects for the purpose of preventing or responding to damage or serious risk of damage if such damage is or may be caused by a ground disturbance that is regulated by the <i>Underground Infrastructure Safety Enhancement Act</i> to any of the following:</u></p> <p><u>(a) a transmission facility;</u></p> <p><u>(b) a transmission line referred to in any of sections 43, 44 or 45.</u></p>	
<p>Orders</p> <p><u>(2) The Commission may order any Canadian carrier or telecommunications service provider to take measures that the Commission considers necessary in order to prevent or respond to the damage or serious risk of</u></p>	

<p><u>damage referred to in subsection (1).</u></p>	
<p>18. The portion of section 72.001 of the Act before paragraph (a) is replaced by the following: Commission of violation 72.001 Every contravention of a provision of this Act, other than section 17 or 69.2, and every contravention of a regulation, <u>a decision made by the Commission under this Act or an order made by the Commission under subsection 46.6(2), constitutes a violation and the person who commits the violation is liable</u></p>	
<p><b>CANADA TRANSPORTATION ACT</b></p>	
<p>19. The <i>Canada Transportation Act</i> is amended by adding the following after section 158: <u>Damage Prevention</u> Damage prevention — powers and functions 158.1 (1) <u>The Agency must develop, implement and promote policies, programs and projects for the purpose of preventing or responding to damage or serious risk of damage to a railway within the meaning of section 87 if such damage is or may be caused by a ground disturbance regulated by the <i>Underground Infrastructure Safety Enhancement Act</i>.</u></p>	
<p>Orders <u>(2) The Agency may order any railway company to take measures that the Agency considers necessary in order to prevent or respond to the damage or serious risk of damage referred in subsection (1).</u></p>	
<p>20. Paragraph 177(1.1)(a) of the Act is replaced by the following: (a) designate any requirement imposed on a railway company in an arbitrator's decision made under section 169.37 or in an order made under subsection 158.1(2) as a requirement the contravention of which may be proceeded with as a violation in accordance with sections 179 and 180; and</p>	
<p><b>COMING INTO FORCE</b></p>	
<p>Order of Governor in Council 21. (1) Subject to subsection (2), the provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council.</p>	
<p>Royal recommendation (2) No order may be made under subsection (1) unless the appropriation of moneys for the purposes of this Act has been recommended by the Governor General and such moneys have been appropriated by Parliament</p>	
<p>EXPLANATORY NOTES <i>National Energy Board Act</i> Clause 15: New. <i>Canadian Transportation Accident Investigation and Safety Board Act</i></p>	

Clause 16: New.

*Telecommunications Act*

Clause 17: New.

Clause 18: Existing text of the relevant portion of section 72.001:

72.001 Every contravention of a provision of this Act, other than section 17 or 69.2, and every contravention of a regulation or decision made by the Commission under this Act, other than a prohibition or a requirement of the Commission made under section 41, constitutes a violation and the person who commits the violation is liable

*Canada Transportation Act*

Clause 19: New.

Clause 20: Existing text of the relevant portion of subsection 177(1.1):

**177.** (1.1) The Agency may, by regulation,  
(a) designate any requirement imposed on a railway company in an arbitrator's decision made under section 169.37 as a requirement the contravention of which may be proceeded with as a violation in accordance with sections 179 and 180; and

**General Comments**

The cost for some organizations to meet the mapping requirements could be significant and federal funding would be very beneficial to meet any legislative requirements.

**Submitted By**

<b>Name</b>	Daryl Posehn
<b>Organization</b>	Saskatchewan Common Ground Alliance
<b>Mailing Address</b>	4141 25 <sup>th</sup> Avenue, Regina Saskatchewan S4S 6S8
<b>Phone</b>	306 536 2524
<b>Email</b>	dposehn@scga.ca