

What you need to know about Bill S-229



The federal government's proposed national call-or-click before you dig bill is a good start, says multiVIEW's Kevin Vine, but it's not without room for improvement.

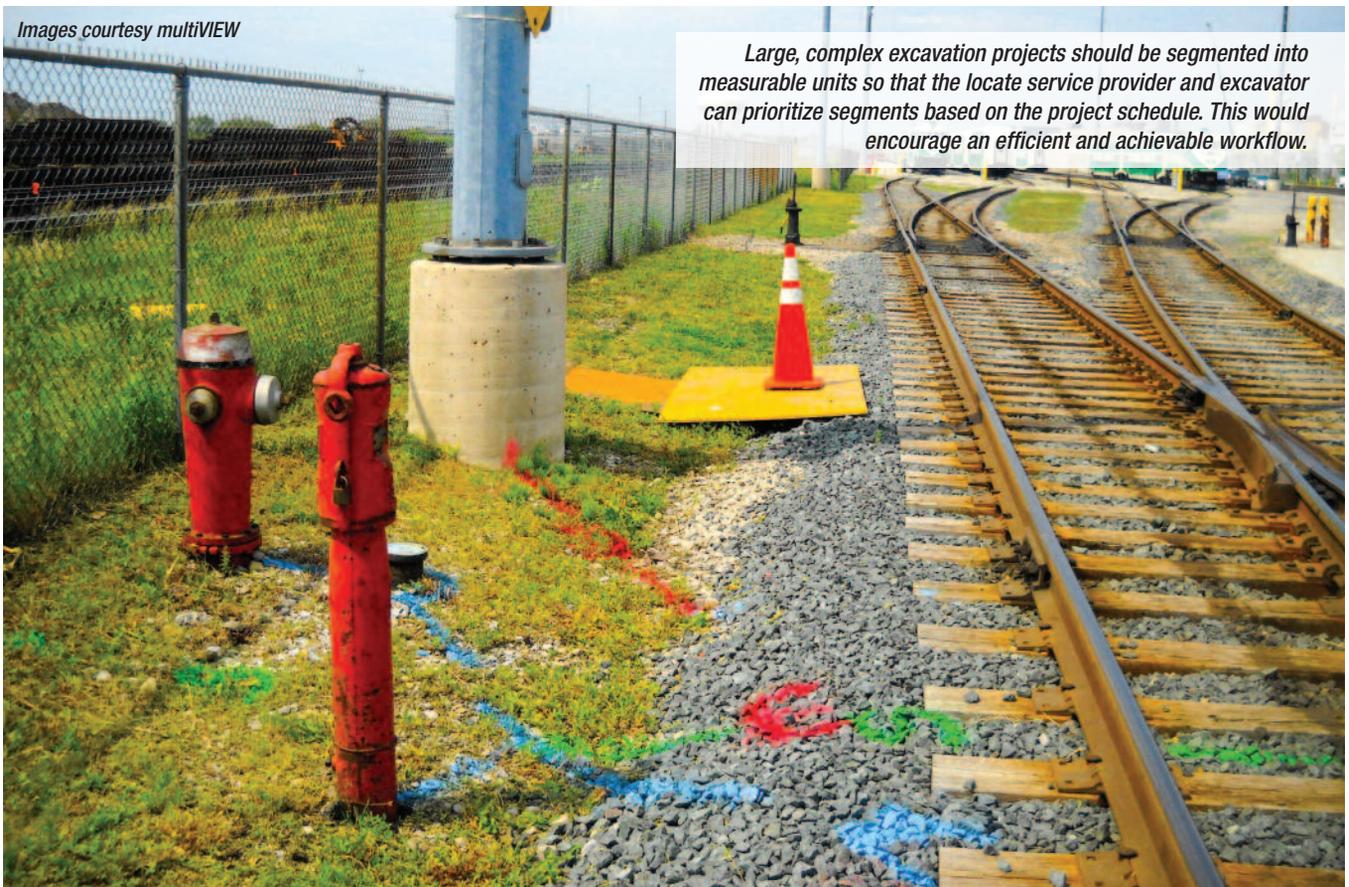
In May of last year, Bill S-229, *An Act Respecting Underground Infrastructure Safety* received its third reading before the Senate of Canada. Introduced by Senator Grant Mitchell, the bill seeks to reduce damages to underground infrastructure by implementing a nationwide call-or-click before you dig system. While the bill fills an important legislative gap and aims to better protect Canadians, it misses some important opportunities to capitalize on lessons learned from existing one-call notification systems. Here is what you need to know.

A backgrounder on Bill S-229

Despite growing awareness, damage to underground infrastructure is still a major problem in Canada. In 2016 it was estimated that nearly \$975 million was spent on societal costs related to damage to underground plant. This figure refers to costs associated with emergency response, evacuation, environmental contamination, interruption to service, and the use of safety services such as 9-1-1. According to the Canadian Common Ground Alliance (CCGA) DIRT Report, 43 percent of the damages that occurred in 2016 were a result of not securing locates prior to digging or not providing sufficient information to provincial one-call centres.

Bill S-229 seeks to remedy this problem by mandating that all levels of government adopt a one-call type notification system. It stemmed from a December 2014 report by the Standing Senate Committee on Energy, the Environment and

Images courtesy multiVIEW



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Natural Resources, and then evolved over a number of years of consultation with industry stakeholders including utility owner/operators, contractors and the CCGA.

Although one-call organizations exist in all 10 provinces, Ontario is the only jurisdiction that has comprehensive legislation governing the system. Alberta has limited legislation covering pipelines only. Bill S-229 would make it mandatory for all owners/operators of underground infrastructure to register with provincial one-call centres. Furthermore, excavators planning to dig would be mandated to alert one call and provide details of the location and type of excavation so that the owner/operator could be notified and arrange to have their buried infrastructure located.

Capitalizing on lessons learned

Conceptually, the main thrust behind Bill S-229 is critical to improving safety and reducing costs related to unsafe excavation. There is little doubt that locating utilities beneath the earth prior to digging should be a mandatory activity—not something that is engaged in on a voluntary basis. The creation of the bill has encouraged an important dialogue around damage prevention at a national level, bringing to light a very serious issue that can have expensive, and sometimes deadly, consequences.

Many provisions within the bill are also intended to prevent abuse of the one-call system which has proven to be a challenge with the existing provincial notification process. As an added benefit, the bill includes a provision for the federal government to provide grants to provinces and territories in support of the development of a legislated call-or-click before you dig system.

Without question, these are positive changes. Yet the bill misses an opportunity to capitalize on lessons learned and best practices from existing one-call systems that have been refined over years. As an example, the bill supports a three-day turnaround time for locates to be completed once the excavator has entered a one-call request. It does so without considering the size and complexity of the project. This is a challenge. When it comes to utility locating, a 10-metre residential project site covered in a single one-call request differs vastly from a project requiring locates along a 1,000-metre stretch of urban roadway, also covered in a single request.

Based on lessons learned, larger and more complex projects should be segmented into measurable units defined by industry standards. The locate service provider and excavator could then communicate regarding prioritization of the segments based on the project schedule. This would encourage a much more efficient and achievable workflow while reducing punitive risks to utility owner/operators if notification timelines are not met.

Furthermore, Bill S-229 states that an excavator is only required to provide three days' notice before excavation is planned despite the size and complexity of the project. This puts organizations such as municipalities at risk. For example, if a city tenders a large watermain replacement project and awards the project with ample planning time, the excavator is not required to request locates earlier than three days prior



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to digging. Requesting locates at the final hour like this can adversely affect project stakeholders and create unrealistic expectations. For example, it can take a significant amount of time to float equipment to a project site and secure permits. Projects would therefore benefit from locates completed well in advance of three days prior to the planned excavation.

As an added challenge, several sections of Bill S-229 use vague language that would benefit from clarification. For example, it mandates that utility owner/operators must alert one call to any modifications related to information on their buried infrastructure. However, it does not define what constitutes a modification, nor does it prescribe a time frame for when these modifications are to be communicated.

Heavy on penalties, light on procedure

Bill S-229 is heavily punitive regarding non-compliance without defining the procedures and protocols necessary to make the system plausible and transparent. Clearly, the intention is to deter abuse of the one-call system, which is a progressive change, however more thought needs to be given to the framework required to support this change.

Bill S-229 states that if an owner/operator of registered underground infrastructure is required to respond to multiple notifications related to the same excavation, and then the excavator doesn't actually dig, the operator is able to charge a fee to the excavator. However, the bill does not define how the fee would be administered and collected.

Some thought also needs to be given to the mechanisms by which the existence of this fee would be communicated to excavators so that they can willingly agree to incur the risk. What is the protocol for warnings? Without knowledge of this fee, the ability to legally collect would be limited. Furthermore, how would it be proven that the excavator did not dig within the required timeframe? These are all questions that should be clarified before hefty penalties are introduced.

And we are talking about hefty penalties. Bill S-229 declares that a person who contravenes the act could be subject to a fine of up to \$10,000 on a first offence and \$25,000 for subsequent offences. If an offence continues for more than one day, it will be considered a separate offence. In other words, each day that the notification response is delayed would incur an additional fee.

This means that an excavator could essentially “ticket dump” for a number of large projects and if all of the locates for these projects are not completed within the prescribed three days, the utility owner/operators could be fined up to \$10,000 plus \$25,000 for any additional days that the locates are not completed. This would create undesirable effects including placing the burden on utility owner/operators to audit excavation timelines, and apply fees for locate ticket non-compliance.

Not to mention the fact these fines, as currently written in Bill S-229, could apply to a homeowner who doesn't meet the prescribed timeframe for excavation on his or her own property. Many homeowners may not even be aware of these timeframes. If they risk facing these types of penalties, they could become deterred from using the one-call notification system in the first place.

A final thought

The introduction of Bill S-229 could provide a significant opportunity to correct flaws in the current one-call notification process. For example, deter ticket dumping by requiring large-scale projects to be entered as segments and attached to reasonable timelines. Improve the “one-size-fits-all” approach to response times by factoring in key infor-

mation such as the size and nature of the project. For complex municipal infrastructure projects, mandate that excavators request locates further in advance of the three-day window.

Focus on communication at the outset and ensure that all ground disturbance stakeholders are aware of their roles, responsibilities and associated costs of non-compliance. Build better information sharing protocols into the notification stage and records management process, and implement a warning system for minor infractions.

Bill S-229 is certainly underscored by the right idea: prevent damage to underground infrastructure through a mandatory notification system while simultaneously deterring abuse of that very system. By adding more precise language to the bill and minimizing room for interpretation; shifting the focus away from crippling penalties and onto education; and capitalizing on vital lessons learned from existing one call notification systems, Bill S-229 could achieve its intended purpose and represent a giant leap forward in damage prevention for Canada.

This article was written by Kevin Vine, president of multiVIEW. He can be reached at 800-363-3116 and www.multiview.ca

Bobcat de Gatineau

Daniel Rivard - President
240, boul. de l' Aéroport
Gatineau, QC J8R 3X4
T: (819) 669-4660 F: (819) 669-9021
Section: MSS
daniel.rivard@agritibirh.com

Business Development Bank of Canada

Scott Pedlar
700 Silver Seven, Suite 100
Kanata ON K2V 1C3
T: 613-592-5898 F: 613-592-5053
Section: MSS
scott.pedlar@bdc.ca

Cana Windows & Doors

Angela Zic - Office Manager
28 Cleopatra Drive
Nepean, ON K2G 0B8
T: 613-225-6999 F: 613-225-0733
Section: MSS
angie.zic@canawindows.com

Div 6 Millwork and Contracting

Chris Wilson - Owner
58 Redpath Drive
Nepean, ON K2G 6E4
T: 613-406-0683
Section: TRA
ChrisofDiv6@gmail.com

Dumoulin & Associates Concrete Repairs Limited

Adam Webber - President
58 Antares Drive, Unit 6
Nepean, ON K2E 7W6
T: 613-727-9783
Section: TRA
info@dumoulinetassocies.com

FJ Construction

Philip McAuley - Partner
PO Box 549, 112 Fowler St., South
Richmond, ON K0A 2Z0
T: 613-762-0655 F: 866-398-3789
Section: GEN
info@fjconstruction.ca

Kelso Abrasives and Coatings

Lloyd Schwantz - Manager
8011 Hwy 15
Carleton Place, ON K7C 3P2
T: 343-540-6772 F: 905-864-7389
Section: MSS
lloyd@kelsoindustrial.com

More on page 39

OCA training schedule

SPRING 2018

March 15	Working at Heights - Fundamentals of Fall Protection	8:30 a.m. - 4:30 p.m.
March 16	Construction Tendering & Contracts	9:00 a.m. - 12:00 p.m.
March 16	Working at Heights - Fundamentals of Fall Protection	8:30 a.m. - 4:30 p.m.
March 16	Working at Heights - Refresher Training - Afternoon Session	12:30 p.m. - 4:30 p.m.
March 19	Standard First Aid, CPR C Basic Rescuer and Automated External Defibrillation (AED) recertification	9:00 a.m. - 4:30 p.m.
March 21	WHMIS 2015 & GHS Certification	8:30 a.m. - 12:00 p.m.
March 22	Working at Heights - Fundamentals of Fall Protection	8:30 a.m. - 4:30 p.m.
March 23	Working at Heights - Refresher Training - Afternoon Session	12:30 p.m. - 4:30 p.m.
March 27	Construction Leadership 101	8:30 a.m. - 4:30 p.m.
March 28	Standard First Aid, CPR C Basic Rescuer and Automated External Defibrillation (AED) Certification	9:00 a.m. - 4:30 p.m.
13 April	Working at Heights - Refresher Training - Morning Session	7:30 a.m. - 11:30 a.m.
13 April	Working at Heights - Refresher Training - Afternoon Session	12:30 p.m. - 4:30 p.m.
18 April	Mental Health First Aid at The Royal - 2 Day Course	8:30 a.m. - 4:30 p.m.
19 April	Marijuana and the Workplace - Managing the Impact of Legalization	9:00 a.m. - 11:30 a.m.
19 April	Fit for Duty: The Truth about Drug & Alcohol Testing	1:00 p.m. - 2:30 p.m.
20 April	WSIB and Construction Safety Liability	9:00 a.m. - 12:00 p.m.
20 April	Working at Heights - Refresher Training - Afternoon Session	12:30 p.m. - 4:30 p.m.
23 April	Developing the Next Generation of Leaders	8:30 a.m. - 4:30 p.m.
26 April	Working at Heights - Fundamentals of Fall Protection	8:30 a.m. - 4:30 p.m.
26 April	Dispatcher Training - 2 day program	8:30 a.m. - 4:30 p.m.
27 April	Working at Heights - Refresher Training - Morning Session	7:30 a.m. - 11:30 a.m.
30 April	Working at Heights - Fundamentals of Fall Protection	8:30 a.m. - 4:30 p.m.