CCGA
Canadian Common Ground Alliance

Damage Prevention and Safety Partners,

When the CCGA set-out to develop damage prevention legislation governing federally regulated underground infrastructure in Canada, it affirmed to do so transparently. Maintaining this commitment is critical to the CCGA and essential to secure the best legislative language possible to shield Canada's underground infrastructure from uncontrolled ground disturbance activity and protect public, worker and community safety.

Following receipt of comments on the proposed language of Bill S-233, *The Bill Enacting the Underground Infrastructure Safety Enhancement Act*, the Bill S-233 Team comprised of Ms Sarah Gray, Legislative Assistant to Senator Grant Mitchell, Ms Ginette Fortuné, Senate Parliamentary Counsel, and me, reviewed all comments and developed the feedback included in the attached matrix.

The three column matrix includes Version 1 of the legislation in the left-hand column, comments from damage prevention stakeholders across Canada in the middle column; and, the Bill S-233 Team's feedback in the right-hand column.

In the coming weeks, the CCGA will release Version 2 of Bill S-233, post it to the CCGA website and notify its members and damage prevention stakeholders by email and social media. Once released, a 25 day comment period will begin. When the comment period has closed, the Bill S-233 Team will once again review all comments, generate the final version of the Bill and present it to Senator Grant Mitchell (April 2016).

On behalf of the Canadian Common Ground Alliance, I wish to thank the Bill S-233 Team and Senator Grant Mitchell for their dedication to this initiative.

Sincerely,

Mike Sullivan
Executive Director
CANADIAN COMMON GROUND ALLIANCE

COMMENTS ON THE DRAFT WORDING OF THE BILL ENACTING THE UNDERGROUND INFRASTRUCTURE SAFETY ENHANCEMENT ACT (PREVIOUSLY BILL S-233) AND FEEDBACK FROM THE BILL S-233 TEAM

The information provided in this document does not constitute legal advice and should not be used as a substitute for seeking such advice.

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
Senate Public Bill **S-233** AN ACT ENACTING THE UNDERGROUND INFRASTRUCTURE SAFETY ENHANCEMENT ACT AND MAKING CONSEQUENTIAL AMENDMENTS TO OTHER ACTS Short Title Underground Infrastructure Safety Enhancement Act Sponsor **Sen. Grant Mitchell**	**Gaz Metro** The French translation should say "Loi visant à accroître la sécurité sûreté des infrastructures souterraines.....". Sécurité should be used everywhere in the text instead of sûreté.	Senate parliamentary counsel has requested confirmation from translation.
FIRST READING, JUNE 17, 2015		
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.	**Enbridge** Delete the word “and”.	Agreed.
	Canadian Gas Association Can we use similar language to what the 2012 Canadian Common Ground Alliance (“CCGA”) Damage Prevention White Paper states: "Buried infrastructure owners and operators must positively respond to a locate request (e.g. locate and mark, and / or, provide an “all-clear” and / or establish an alternate locate agreement with the person undertaking ground disturbance) within a specified timeframe"?	The Bill S-233 Team (Mike Sullivan, Executive Director of the CCGA, Senator Mitchell’s Legislative Assistant on the policy side, and Senate parliamentary counsel on the legal side) acknowledges the language included in the CCGA’s Damage Prevention White Paper and understands it to mean that an underground infrastructure owner must respond to a locate request by either: • locating and marking its underground infrastructure; • providing an “all-clear” (written) when there is no conflict between the existing underground infrastructure and the proposed ground disturbance; or • establishing an alternate locate agreement process to expose the existing underground infrastructure at the location of the proposed ground disturbance.

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
		With respect to locating and marking, the Bill S-233 Team notes the exhaustive language in CSA Z247, sections 10.1.2.3 and 10.1.11, relative to locating and marking; and, equally notes the exhaustive language in section 3.0, Locating and Marking Best Practices, in the CCGA's Best Practices, Version 1.0., published in October 2014. While neither document is a legislative instrument, both clearly articulate the need to locate and mark underground infrastructure prior to a ground disturbance. With regard to existing regulatory language governing locating and marking, the Bill S-233 Team notes section 9(1) of the *National Energy Board Pipeline Crossing Regulations, Part II,* which states: *9 (1) Subject to subsection (2), when a pipeline company receives a request from a facility owner or an excavator to locate its pipes, the pipeline company shall, within three working days after the date of the request, or any longer period agreed to by the pipeline company and the facility owner or excavator* *a) inform the facility owner or excavator, in writing, of any special safety practices to be followed while working in the vicinity of its pipes;* *b) mark the location of its pipes in the vicinity of the proposed facility or excavation at maximum intervals of 10 m along each pipe using stakes that are clearly visible and distinct from any other stakes or markings that may be in the vicinity of the proposed facility or excavation; and* *c) explain the significance of the stakes to the satisfaction of the facility owner or excavator.* *(2) Where ground conditions preclude the placing of the stakes referred to in subsection (1), paint or other suitable methods of marking may be substituted if the paint or marking is*

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
		a) clearly visible; *b) distinct from all other markings in the vicinity of the proposed facility or excavation; and* *c) compatible with any local standard colour codes used for marking buried pipe.* In general, a subordinate legislation (for example a regulation), cannot conflict with its parent legislation (i.e. the statute pursuant to which it was made). In the present context, since the *National Energy Board Pipeline Crossing Regulations, Part II* was made under the *National Energy Board Act*, the *National Energy Board Pipeline Crossing Regulations, Part II* cannot conflict with the *National Energy Board Act*. Further, just as a subordinate legislation cannot conflict with its parent legislation, so too it cannot conflict with other Acts of Parliament. In the present context, again, this means that the *National Energy Board Pipeline Crossing Regulations, Part II* cannot conflict with the *Underground Infrastructure Bill* (when the Bill comes into force). In the case of a conflict between the Underground Infrastructure Act and the *National Energy Board Pipeline Crossing Regulations, Part II*, i.e. if the *Underground Infrastructure Act* does not include a requirement to mark and provide locates, then the locate and marking requirements found in the *National Energy Board Pipeline Crossing Regulations, Part II* would not apply to pipelines, unless a statute so authorizes.
TABLE OF PROVISIONS AN ACT ENACTING THE UNDERGROUND INFRASTRUCTURE SAFETY ENHANCEMENT ACT AND MAKING CONSEQUENTIAL AMENDMENTS TO OTHER ACTS SHORT TITLE		

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
1. *Underground Infrastructure Safety Enhancement Act* 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 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. *National Energy Board Act* 16. *Canadian Transportation Accident Investigation and Safety Board Act* 17-18. *Telecommunications Act* 19-20. *Canada Transportation Act* COMING INTO FORCE 21. Coming into force		
BILL S-233		

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
An Act enacting the Underground Infrastructure Safety Enhancement Act and making consequential amendments to other Acts		
SHORT TITLE Short title **1.** This Act may be cited as the *Underground Infrastructure Safety Enhancement Act*.		
INTERPRETATION Definitions **2.** The following definitions apply in this Act.		
"damage prevention organization" « *organisation de prévention des dommages* » "**damage prevention organization**" 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;		
"ground disturbance" « *perturbation du sol* » "**ground disturbance**" includes excavating, digging, trenching, plowing, drilling, tunnelling, augering, backfilling, blasting, topsoil stripping, land levelling, peat removing, pushing, quarrying, clearing and grading.	**Info-Excavation** • Info-Excavation proposait d'ajouter "scarification" et "pulvérisation" à la définition de "perturbation de sol", et de remplacer l'expression « labour », en français, par « labourage ». • Tighten up / expand definition of ground disturbance.	• The Bill S-233 Team agrees with the additional language. • The definition is non-exhaustive (i.e.: by using the word "includes" in the definition of "ground disturbance", Bill S-233 currently recognizes that other activities, that are not listed in this definition, could constitute a ground disturbance, depending on the context). This definition would then implicitly refer to activities that, although not listed in this definition, are generally considered to be a ground disturbance by the industry and are of the nature of those already referred to in this definition. As a result, the Bill S-233 Team is comfortable maintaining the existing language.

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
"federal lands" « *territoire domanial* » **"federal lands**" 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 *Indian Act*.		
"federally regulated" « *relève de la compétence fédérale* » "**federally regulated**" means being regulated by any of the following statutes: (*a*) the *Aeronautics Act*; (*b*) the *Canadian Transportation Accident Investigation and Safety Board Act*; (*c*) the *Canada Transportation Act*; (*d*) the *National Energy Board Act*; (*e*) the *Railway Safety Act*; (*f*) the *Telecommunications Act*; or (*g*) any other federal statute specified by the Minister under section 6.		
"notification centre" « *centre de notification* » "**notification centr**e" means a non-profit corporation established under the laws of Canada or a province and whose primary goals are to (*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; (*b*) receive and process requests for the identification and location of underground infrastructure; and (*c*) notify the owners or operators of registered underground infrastructure of any proposed construction or ground	**Enbridge** Can we confirm the goals are broad / generic enough to cover current and future notification centres? Same comment for "damage prevention organization" above. The purposes of non-share capital or statutory entities may be limited; and we want to ensure we are including the right entities.	The Bill S-233 Team is choosing to maintain the legislative language as-is. Bill S-233 contains a definition of "notification centre". As a result, other organizations which meet the criteria found in that definition of "notification centre" will be covered by this legislation. The Bill S-233 Team notes that existing non-profit provincial / regional One-Call centres in Canada provide the best and most efficient means of initiating the damage prevention process for their members. These members represent a wide array of underground infrastructure from transmission and distribution

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
disturbance that could cause damage to any underground infrastructure that they own or operate.		pipelines to water & sewer services, telecom & cable and electricity. It is interesting to note that the Ontario legislation expressly provides that Ontario One Call is a non-profit corporation [please refer to subsection 3(2) of the *Act respecting an underground infrastructure notification system for Ontario*]. The Bill S-233 Team might consider including in the bill a provision allowing the Minister to identify the notification centres to which this legislation applies.
"owner or operator of underground infrastructure" « *propriétaire ou exploitant d'une installation souterraine* » "**owner or operator of underground infrastructure**" 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;		
"owner or operator of registered underground infrastructure" « *propriétaire ou exploitant d'une installation souterraine inscrite* » "**owner or operator of registered underground infrastructure**" means the owner or operator of underground infrastructure that is registered with a notification centre.		
"provincial legislation" « *législation provinciale* » "**provincial legislation**" 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;		
"underground infrastructure" « *infrastructure souterraine* » "**underground infrastructure**" means cables, ducts, equipment, pipes and vaults that are buried in the ground, and any real or		

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
personal property, immovable, movable or work connected to them		
DESIGNATION Designation of Minister **3.** The Governor in Council may, by order, designate any federal Minister to be the Minister referred to in this Act.		
APPLICATION Application **4.** 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.	**Canadian Gas Association** This suggests that anyone would know whether or not they are working directly above underground infrastructure, which in most cases is not likely plus sometimes grade changes after u/g infrastructure is installed & may end up at a depth less than 30 cm without the owner/operators knowledge.	The Bill S-233 Team is in agreement with comments to remove this section.
	Saskatchewan Common Ground Alliance Limiting this ACT to work that goes below 30 cm 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 cm of the surface or a facility that may be exposed or closed to exposed, due to environmental or other factors.	Same as above.
	Manitoba Hydro In Manitoba, the regulation is 17 cm.	Same as above.
	Enbridge Suggest this provision be deleted. The 30 centimetres exclusion is a safety concern as connections and infrastructure can be at shallow depths. Rather is should state that this Act applies to all federally regulated entities that cause ground disturbance and federal lands when ground is disturbed.	Same as above.
	Gaz Metro	

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
	This provision should be for agricultural activities only in order to be in line with the NEB exemption.	Same as above.
Exclusions **5.** 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.	**Canadian Gas Association**	
	There is a general concern as there are NG distribution systems on military bases & exclusion of a base, in whole or in part, could create a major risk of damage if not located.	The Bill S-233 Team has inquired with the Canadian Gas Association about the procedure that currently applies for marking the ground on military bases and will propose language to be added in the next version of the Bill to reflect that procedure.
Federal Statutes **6.** The Minister may, by order, specify the federal statutes that are referred to in paragraph (*g*) of the definition "federally regulated" in section 2.		
REGISTRATION WITH NOTIFICATION CENTRE Registration **7.** 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.	**Manitoba Hydro** If understood correctly, the federal bill concerns federal lands and the "special" requirement to register underground facilities on these lands. However, there would be concern that the requirement that each province have a notification centre and associated legislation could result in a requirement to register all underground infrastructures. Don't know how difficult or costly it would be to register all/entire infrastructure. If this is a concern, we should try to influence the requirements of the provincial "notification centre" legislation to ensure we are limited to an obligation to respond to locate requests in a timely manner but that we don't necessarily have to register all the associated infrastructure.	Comment acknowledged. No further action required.
	Saskatchewan Common Ground Alliance 1. Presuming existing lines would be subject to his registration obligation, what is the timing of such registration (e.g. how quickly would the lines have to be identified and registered)?	1. Senate parliamentary counsel to provide language on the obligation for underground infrastructure's owners or operators to register with a notification centre – and pay the corresponding fees - within a specific period of time.

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
	2. How would the registration fees be calculated or applied (per km?) per line?) 3. How much would the fee be and how often is it payable?	2. Fees would be determined by the notification centre responsible for the province or region, or by the legislation of the province in which the notification centre is located (example: Ontario). 3. See response to 2.
	4. How is it determined?	4. See response to 2.
	Fortis Alberta 7 (a) – Change "each" to "the lone" provincially recognized… My concern is that if the word each was used then that may tell companies it's OK to have their own notification centre and not belong to Alberta One Call. Again this drives confusion for the excavators as they would now need to know who is on one call and who has their own notification centre. Must be one Provincially recognized contact center if they exist.	Senate parliamentary counsel to provide text to this effect.
	Saskatchewan Association of Rural Municipalities How much would the fee be and how often is it payable? How is it determined?	The fees and the frequency at which they are payable would be determined by the notification centre responsible for the province or region, or by the legislation of the province in which the notification centre is located (example: Ontario).
LOCATION AND IDENTIFICATION OF UNDERGROUND INFRASTRUCTURE Communication of information **8.** (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	**Enbridge** Addition; information needs to be provided in a format that is accessible, or in the format required by the notification centre.	Data formatting is determined by the notification centre or the provincial legislation in which it is located, if applicable (example: Ontario).
	Saskatchewan Common Ground Alliance	

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
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?	At this stage, the Bill S-233 Team considers the identification of the product carried to be out-of-scope of the Bill. The Minister responsible for the Bill could decide the manner in which payments could be made to cover the costs associated with communicating this information. However, he or she could do so administratively.
	Alberta Common Ground Association (Group # 2) 8 (1) (a) tighten wording to provide GLS / spatial coordinates for all assets	Reference to 'geospatial data' is included in paragraph 8(1)(a) of the Bill.
Changes (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.	**Saskatchewan Common Ground Alliance** Reported? What happens if there is a failure to register?	The Bill is to include an offence provision.
	Saskatchewan Association of Rural Municipalities If there are costs associated with communicating this information, who is expected to pay?	To be determined by the notification centre or the provincial legislation in which it is located, if applicable (example: Ontario).
Period of time (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.		
	Saskatchewan Common Ground Alliance	

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
LOCATE REQUEST Ground disturbance — locate request **9.** (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	Please include a "Non-ground disturbance – locate request". This is useful information for construction planning and land development planning.	The Bill S-233 Team considers a non-ground disturbance-locate request (for planning purposes) to be out-of-scope of the Bill, as it is an administrative function of the notification centre and the Bill is not to dictate the internal administration of such centre.
Communication — other information (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: (*a*) the type of project they are planning to undertake; (*b*) the exact location of the anticipated ground disturbance; 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	**Manitoba Hydro** Could Sections 9 and 10 have some exclusion for work of an emergent nature? It could be addressed in the associated provincial legislation.	The Bill S-233 Team is contemplating adding language governing emergency locate requests in the Bill.
Period of time (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.		
Notice to owners or operators of underground infrastructure — project **10.** 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	**Enbridge** What is the enforceability of this provision, as notification centres will/may be a provincial entity?	Senate parliamentary counsel to conduct research on this question.
	Saskatchewan Common Ground Alliance	

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
infrastructure that is federally regulated or is located on federal land, and that could be damaged by the project	What is a “reasonable time”?	What constitutes “reasonable time” is left to the discretion of notification centres. We should not oblige by legislation notification centres to comply with the requirements in section 10 within a specific period of time. Indeed, they might not be able to comply with a specific period of time that is too short. Further, a specific period of time that is too long could be disadvantageous to the public. Further still, the concept of “reasonable time” is usually not defined in federal legislation, as it is often a pure question of fact. Finally, “Reasonable time” is left to the discretion of the notification centre and typically referenced in their respective User Agreements with registered members.
Identification and location of underground infrastructure **11.** (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, (*a*) mark on the ground the location of the underground infrastructure, using the prescribed colour codes, and provide to the person undertaking the project referred to in subsection 9(1) a written description of the location of the underground infrastructure; or (*b*) indicate in writing to the person referred to in paragraph (*c*) that the project will not cause damage to the underground infrastructure	**Canadian Gas Association** What part of CGA membership does is send [*sic*] the location information (excluding certain defined exceptions) to the person requesting the location & then follow-up with a physical locate if required. So our suggestion could be to use similar language to what the 2012 CCGA Damage Prevention White Paper stated; "Buried infrastructure owners and operators must positively respond to a locate request (e.g. locate and mark, and / or, provide an “all-clear” and / or establish an alternate locate agreement with the person undertaking ground disturbance) within a specified timeframe". Not all CGA members would be willing to indicate that a project will not cause damage; we’re not sure anyone does & perhaps something like "if all procedures & precautions prescribed by the owner or operator are adhered to” could be added.	As per general discussions on Bill S-233, stakeholders agree with and support the practice of clearly indicating the presence and location of underground infrastructure through ground markings (staking, flagging, paint, etc.). Ground disturbers, such as the members of the BC Roadbuilders and Heavy Construction Association and the Canadian Construction Association, strongly indicated the need for clear ground markings to identify the presence and location of underground infrastructure within the dig site. In addition, the CSA Z247 – Damage Prevention for the Protection of Underground Infrastructure, which Bill S-233 intends to reflect to some extent, advocates ground markings. Further still, the language already exists in regulatory text and procedurally, it is commonly used in underground infrastructure

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
		owner / operator procedures, notification centre communications and industry best practice. As a result, the Bill S-233 Team prefers having the two options found in paragraphs 11(1)*a*) and *b*) of the Bill. With respect to the term "Alternate Locate Agreement", the Bill S-233 Team notes this terminology means that underground infrastructure will be exposed through non-destructive means at the point of crossing / ground disturbance to identify their location. As such, the Bill S-233 Team does not agree with using this language. The Bill S-233 Team does agree, however, that language within the Bill must remain open to the advancement of technology that could someday replace physical locates and markings of underground infrastructure, and will consider some language to address this situation.
	Enbridge Addition; provide that federally regulated entity will comply with locates provided by infrastructure owners.	Comment is acknowledged. The Bill S-233 Team is of the view this is understood.
	Saskatchewan Common Ground Alliance 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.)?	Senate parliamentary counsel to investigate further on the granting of the right to access land to perform markings.
	What is to be included in a "written description"? What is the liability associated with providing the same? Could there be a good faith protection?	Comment acknowledged; however, the Bill S-233 Team is of the view these questions are beyond the scope of the Bill.

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
	9(1) and a sketch showing the relative location of the Underground infrastructure	Comment acknowledged; however, inclusion of a sketch showing the relative location of the underground infrastructure is to be determined by the notification centre or the provincial legislation in which it is located, if applicable (example: Ontario).
	Alberta Common Ground Association (Group # 3) 11.1 – "owner or operator" – the onus should be one or the other	The Ground Disturbance 201 Standard uses the following definition of owner/operator: *"Buried facility operator means any person, utility, municipality, authority, political subdivision or other person or entity that owns, operates or controls the operation of a buried facility."* The origin of this definition is the Canadian Common Ground Alliance's Best Practices. Although the term "operator" is usually broader than "owner", the Bill treats them indistinctly, i.e. they are both covered by the same definition, in section 2 of the Bill. The underlying issue from a damage prevention perspective is the refusal of some "operators" to locate certain buried facilities they "operate" and "control" because they don't own them. For example, some state laws, in the United States, have a "good Samaritan" clause to the effect that the locate is the best that can be done under the circumstances with no liability attached to it. Indeed, in both Canada and the United States, the "operator' has the expertise to locate, the "owner" in many cases does not. The Bill S-233 Team might consider adding in the bill a provision exempting owners or operators from the application of some offence provisions, in the case that they exercised due diligence to prevent the commission of such offences.

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
	1. Remove reference to “non-profit” 2. Current legislation is slanted toward facility owners and big players. 3. What of smaller companies? 4. What is a ground disturbance? **5.** Is there a limit on the life of a locate? Length of project construction or lifetime of the underground infrastructure?	1. Non-profit – already addressed in this document. 2. Comment does not require response. 3. Comment does not require a response. 4. Ground disturbance definition provided in Bill S-233. 5. The lifespan of the locate is determined by the Damage Prevention Organization or the provincial legislation, and applied by the Notification Centre (example: Ontario). The Bill S-233 Team is to consider language to that effect.
(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).		
	Saskatchewan Common Ground Alliance (Group #3)	

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
(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	• Senator Mitchell started a great discussion on 11.3 on whether this section could be seen as controversial. There was a great discussion on the definition of 'emergency'.	The Bill S-233 Team is contemplating adding language governing emergency locate requests in the Bill. Senate parliamentary counsel will revise wording of subsections (3) and (4) and their interaction between each other.
(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	**Enbridge** Please reword to 'the person having undertaken'.	Agreed. Comment incorporated.
	Saskatchewan Common Ground Alliance 11 (4) There is a lot of grey area here about when a company should 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.	This is addressed by paragraph 14(1)(*b*) of the Bill.
	Alberta Common Ground Association (Group # 1) **1.** Prescribed international colour codes. **2.** Define several occasions.	**Response - ABCGA (Group # 1)** 1. The legislation may refer to the *APWA International Colour Code* in regulations made pursuant to paragraph 14(1)(*c*) of the Bill [and by virtue of its subsection 14(2)]. 2. The concept of "several occasions" is addressed by paragraph 14(1)(b) of the Bill.
	3. 11(1)(*b*) – is writing necessary? **4.** How can you confirm intention? 5. How can we prove receipt of information? 6. Whose liability is it to prove it was received? 7. After hours emergency.	3. "In writing" is considered any communication that can be tracked or "date-stamped" (E.g. email, fax transmission, text, tweet). 4. See above response. 5. See above response. 6. See above response. 7. Comment acknowledged. The Bill S-233 Team is contemplating adding in the Bill language governing emergency locate requests.

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
	8. However, some take advantage of emergency.	8. See above, comments about "emergency locate requests."
	Alberta Common Ground Association (Group # 3) 1. Discussion on fees for locates. 2. Digging at night may be due to an 'emergency', but this would need to be proven. 3. Alberta Pipeline Act and Alberta Rules could be the template on the policy of 'emergency'. 4. Fine and penalties from the Alberta Energy Regulator could be a good model for the federal and provincial legislation.	**Response - ABCGA (Group # 3)** 1. Paragraph 14(1)(b) of the Bill gives the Minister responsible for this Bill the power to fix or establish those fees. 2. Comment acknowledged. No action required. 3. Acknowledged. 4. Acknowledged. The Bill could provide that non-compliance with a regulation made under paragraph 14(1)(b) constitutes an offence.
	Alberta Common Ground Association (Group #4) 1. More focus required enforcement is difficult. 2. Focus group proposed to draft language for discussion. 3. Should there be consequences of nuisance locates? 4. Focus group required to develop scenarios for consideration. 5. What is arbitration process?	**Response - Alberta Common Ground Association (Group #4)** 1. Acknowledged. 2. Acknowledged. 3. There are currently no consequences for nuisance requests, other than the possibility for the owner or operator referred to in section 11 of the Bill to impose fees in the circumstances set in a regulation made under paragraph 14(1)b) of the Bill. 4. The Bill S-233 Team is of the view that considering and developing those scenarios, and implementing them, are out-of-scope of the bill. 5. The Bill is silent on arbitration; however, persons contravening certain provisions of the Bill could challenge fines imposed on them in court; they could also challenge penalties imposed on them pursuant to the statutes the Bill amends in its part entitled "Consequential amendments".

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
	6. Penalties for failure to request locate. 7. Consider governance of notification center.	6. The Bill S-233 Team notes that the *Ontario Underground Infrastructure Notification System Act* creates an offence for an excavator to commence an excavation or dig before contacting Ontario One-Call to request locates for all underground infrastructure that may be affected by the excavation or dig. The Act also creates an offence for an excavator to excavate or dig in a manner that he or she knows or reasonably ought to know would damage or otherwise interfere with any underground infrastructure. While this Act creates a regime that is somehow different from the regime currently created by Bill S-233, the Bill S-233 Team will consider if and how an excavator could be subject to a fine if he or she does not request a locate under Bill S-233. 7. Bill S-233 provides in its definition of "notification centre" conditions that entities have to meet in order to be considered notification centres, for example that they have to be non-profit corporations. Bill S-233 does not discuss any further the governance aspect of notification centres in that definition.
DAMAGE PREVENTION ORGANIZATION Damage prevention organization **12.** The Minister may assign to a damage prevention organization the functions he or she considers necessary for carrying out the purposes of this Act.		

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
FUNDING Agreements with provinces regarding funding **13.** (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.		
Agreements — creation of notification centres (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.		
Payments (3) The Minister must pay to the government of the province with which he or she has entered into the agreements referred to in subsections (1) and (2) the amounts specified in them.	**Enbridge** New provisions - Propose the addition of offence provisions, penalties and enforcement. Propose a summary conviction offence with a maximum fine amount (no incarceration penalties).	The Bill is to include an offence provision.
REGULATIONS Regulations **14.** (1) The Minister may make any regulations that are necessary for carrying out the purposes and provisions of this Act, including regulations (*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; (*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 (*c)* prescribing anything that by this Act is to be prescribed.	**Enbridge** We would not support the diminishment of the obligations in Section 11 if there were a negative impact on safety.	Acknowledged.

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
Incorporation by reference (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.		
Incorporation as amended from time to time (3) Documents may be incorporated by reference as amended from time to time.		
Registration and publication not required (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 *Canada Gazette* under the *Statutory Instruments Act* by reason only that it is incorporated by reference.	**Alberta Common Ground Association (Group #4)** * Enforcement is silent. * Need meaningful enforcement. * Bill S-233 perhaps requires more force (may need to use "shall". * Too broad.	The Bill is to include an offence provision. Bills enacting new federal statutes only use the word "must" rather than "shall". It is a new drafting convention.
CONSEQUENTIAL AMENDMENTS		
NATIONAL ENERGY BOARD ACT 15. The *National Energy Board Act* is amended by adding the following after section 12.1:		
Damage prevention — powers and functions **12.2** (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 international power line — or any other facility — whose construction or operation is regulated by the Board if such damage is or may be		

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
caused by a ground disturbance regulated by the *Underground Infrastructure Safety Enhancement Act*.		
Orders (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 or serious risk of damage referred to in subsection (1): (*a*) a company that has been authorized under Part III to construct or operate a pipeline; (*b*) a person exporting oil, gas or electricity or importing oil or gas; (*c*) a person holding a licence under Part VI or VII; or (*d*) a person undertaking work that results in a ground disturbance regulated by the *Underground Infrastructure Safety Enhancement Act* within thirty metres of a pipeline.	**Alberta Common Ground Association (Group #1)** * Why is it "may" not "must or shall". * Not time specific.	The use of "may" in a regulation-making power is a common drafting technique. As the regulation-making power, in the new section 12.3, is drafted in a permissive way, it would be unusual for the legislator to impose a time period in which this power may be exercised. Further, the Bill S-233 Team would not recommend imposing a specific time period for the making of the regulations. The making of regulations under this new section 12.3 does not solely depend on the Board, but also on the Governor in Council. It would be unusual to predict when the Board is expected to receive the approval of the Governor in Council on those regulations.
Regulations — damage prevention 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.		
CANADIAN TRANSPORTATION ACCIDENT INVESTIGATION AND SAFETY BOARD ACT 16. The *Canadian Transportation Accident Investigation and Safety Board Act* is amended by adding the following after section 7:		
Damage prevention — powers and functions 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 *Underground Infrastructure Safety Enhancement Act*.	**Same concern as expressed in 5:** There are NG distribution systems on military bases & exclusion of a base, in whole or in part, could create a major risk of damage if not located.	The Bill S-233 Team has inquired with the Canadian Gas Association about the procedure that currently applies for marking the ground on military bases and will propose language to be added in the next version of the Bill to reflect that procedure.
Military transportation facilities		

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
(2) Subsection (1) does not apply to military transportation facilities as defined in subsection 18(1)		
TELECOMMUNICATIONS ACT		
17. The *Telecommunications Act* is amended by adding the following after section 46.5:		
PART III.1 **DAMAGE PREVENTION** Powers and functions 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 *Underground Infrastructure Safety Enhancement Act* to any of the following: (*a*) a transmission facility; (*b*) a transmission line referred to in any of sections 43, 44 or 45.		
Orders (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 damage referred to in subsection (1).	**Enbridge** Is this sentence complete?	Yes, it is a complete sentence.
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, 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.	**Alberta Common Ground Association (Group # 3)** **1.** Restoring the damaged infrastructure needs to be addressed. **2.** Z247 from the CSA is a great document to work from.	1. Restoring or repairing damaged infrastructure is a civil matter. Senate parliamentary counsel to research this matter further; however, there are arguments to believe this matter is out-of-scope of the Bill. 2. Acknowledged.
CANADA TRANSPORTATION ACT		

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
19. The *Canada Transportation Act* is amended by adding the following after section 158: *Damage Prevention* Damage prevention — powers and functions 158.1 (1) 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 *Underground Infrastructure Safety Enhancement Act*.	**Alberta Common Ground Association (Group # 1)** • May – Must but WHO enforces? • Define penalty and time.	Paragraph 177(1.1)*a*) of the *Canada Transportation Act,* as amended by this Bill, will provide enforcement officers with the possibility to issue notices of violation should a person contravene with an order made by the Agency under paragraph 177(1.1)a) of that Act. Regulations made under the *Canada Transportation Act* would also define the maximum amount of the penalty for each of those violations (see paragraph 177(1)*b*) of that Act). Subsection 178(1) of the Act provides for the designation of the enforcement officers authorized to issue notices of violations under that Act, as seen below: Notices of violation 178. (1) The Agency, in respect of a violation referred to in subsection 177(1) or (1.1), or the Minister, in respect of a violation referred to in subsection 177(2) or (3), may (a) designate persons, or classes of persons, as enforcement officers who are authorized to issue notices of violation, and (*b*) establish the form and content of notices of violation.
Orders (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).		
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		

BILL S-233 DRAFT WORDING	COMMENTS	RESPONSES
with as a violation in accordance with sections 179 and 180; and		
COMING INTO FORCE		
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.		
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		

General Comments	RESPONSES
Manitoba Hydro MBH is supportive of efforts to legislate a one call program based on safety statistics that demonstrate that legislated one call centres have a positive impact on reducing overall damage to buried infrastructure. It should be noted that utilities will incur additional costs associated with changes in processes/standards with respect to registering our underground infrastructure and performing work located on First Nations (and other federal) lands. Certainly these costs and administrative processes will increase with the growth and development of “urban reserves”.	The Bill S-233 Team acknowledges the comments from Manitoba Hydro and adds that societal costs in relation to damages, such as deployment of emergency services, evacuation, loss of service & data, environmental response, etc. equally represent a significant, and perhaps greater, financial cost to taxpayers.
Saskatchewan Common Ground Alliance 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.	The Bill S-233 Team is considering establishing a grace period with respect to some provisions of the Bill.
B.C. Road Builders and Heavy Construction Association - pass the bill (as is) - the current “voluntary” underground facility locating system does not ensure identification or location of underground hazards to constructors	Acknowledged.

General Comments	RESPONSES
Fortis Alberta "I think this legislation is an excellent first step that must drive provincial legislation. Without follow-up Provincial legislation this bill will actually cause confusion. There are non-federal companies in Alberta who have facilities both on federal land and elsewhere that do not belong to Alberta One Call". "If those companies are only forced to register their facilities on Federal land and not the facilities they own off of Federal land then that will cause confusion for the excavating community. It would be great when working on federal lands but excavators would need to know who has facilities that are not registered with Alberta One Call when working off Federal Lands. There should be no room for confusion but that requires Provincial legislation and any help we can get from Ottawa to help drive that forward would be helpful. It's a simple concept; if you have a buried facility in the ground it's registered with a single contact center".	Acknowledged.
Saskatchewan Association of Rural Municipalities "SARM supports the principles of this bill and believes that it will save costs by reducing incidents with underground infrastructure. By reducing incidents it will also increase safety for personnel doing any digging." "The Saskatchewan Association of Rural Municipalities supports the concept of requiring all federally regulated underground infrastructures being registered with a notification system. Saskatchewan does have a one call notification centre however it is not provincially legislated and is not mandatory at this time. SARM has met with the Saskatchewan Common Ground Alliance and has shared its concerns. SARM's concerns are around the costs of mapping the underground infrastructure and the billing for notifications. Not all municipal underground infrastructures has complete mapping and the costs of doing that mapping would be significant. Federal and/or provincial funding would be required to meet any legislative requirements of a one call centre as rural municipalities in Saskatchewan are of varying size and capacity".	Acknowledged. The Bill S-233 Team is considering establishing a grace period with respect to some provisions of the Bill.
Transelec Common inc. – Jean Francois Lemay ing. 1. I am all in favour of such a legislation 2. Make mandatory to utilize existing Provincial notification center and stay away from duplication services;	1. Acknowledged. 2. Acknowledged.

General Comments	RESPONSES
3. Parag 11(4) Expiration of the marking should be to conform to the Provincial regulation in place; 4. Which organization will be given the power to enforce this legislation? 5. What means will be given to the enforcement organization to ensure proper application of the legislation?	3. Regulations governing the prevention of damage to underground infrastructure do not exist in all provinces; and, this provision is silent in those provinces that do have such legislation. 4. The Bill is to include an offence provision. Further, new administrative penalties with respect to damages to underground infrastructure could be imposed pursuant to the administrative regime found in the statutes amended in the "consequential amendments" part of the Bill. 5. See above response.
Canadian Association of Energy and Pipeline Landowner Associations (CAEPLA) **1.** How this affects landowners on the state of provincial legislation. **This legislation only applies to Crown (leaseholders' interests) and Reserve land (First Nations interests) not to private land with facilities under federal jurisdiction.** It does not require federal regulated infrastructure (pipelines, communication lines etc.) to register with the One Call System. **It doesn't require a landowner with an NEB pipeline to call before they dig, however, NEB regulations requires you to call the pipeline company.** It is the provincial legislation that will determine if you have to "Call", a one call service, before you dig. In the end it therefore depends on each province's legislation, but if you use Ontario as an example, everyone has to call the One Call system before they dig, and this Bill ensures that federal regulated pipelines have to register their infrastructure. Again, if the land is not Crown or Reserve it doesn't impose on the landowner with federal pipe to call – that falls to provincial legislation. Other provinces do not require that.	1. Green Highlighted text is inaccurate (CAEPLA). • As per paragraph 7(a) of Bill S-233, the owner or operator of underground infrastructure that is federally regulated, or that is located on federal land, must register with a notification center referred to in that paragraph. Therefore, if underground infrastructure that is federally regulated is on private land, the owner or operator of that infrastructure would still have to register the infrastructure with a notification center, since paragraph 7a) also covers infrastructure federally regulated, irrespective of their location. • The bold language indicating a landowner with a federally regulated pipeline on their land is not required to request a locate (call before they dig) is accurate. As currently worded, subsection 9(1) of Bill S-233 would only require persons or entities who undertake work that results in a ground disturbance on federal land to request a locate. Indeed, subsection 9(1) of the Bill states: *(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.* • The Bill S-233 Team might consider amending subsection 9(1) of the Bill so that it refers to work that results in a ground disturbance that may affect underground infrastructure that is federally regulated or located on federal land. Subsection 9(1)

General Comments	RESPONSES
	would then be more in line with the language found in subsection 6(1) of the *Act respecting an underground infrastructure notification system for Ontario*.
2. Under current Ontario law, federal pipeline landowners do not have to call because they are under provincial legislation, everyone in Ontario has to call before any excavation. **In Ontario the provincial legislation doesn't require the federal infrastructure to register and that's what this Bill would require, that federal infrastructure register their underground infrastructure with One Call.**	2. Federally regulated pipelines would be subject to some requirements imposed by the Ontario legislation, by application of the Bill.
3. But under NEB legislation, even if you make a call to a One Call, to cover yourself you still have to call the pipeline company before you dig. **The Senate bill won't affect the NEB Act and Crossing Regulation.** There might be an argument that if you call the One Call, then you did notify the company, however, **until the NEB regulations are changed you have to call both**.	3. In the strictest legal sense under current legislation, this view is accurate; however, the National Energy Board is amending its regulations which will likely require federally regulated pipelines to register their underground infrastructure with a notification centre, when one exists. In practice, when a pipeline company receives a request for a locate directly from a member of the public, it will accept the request but also instruct the person making the locate request to also contact the notification centre serving the geographic province or region.
4. We realize that this legislation is mainly being proposed to get harmonization between the provinces. The Provincial/Federal jurisdictional issues complicates across the board federal jurisdiction. **The Bill itself is not that controversial, but what comes as a result from the Provinces will be the controversy and challenge to people in those provinces.**	4. Acknowledged.
5. We identified that few people in Ontario are aware of the provincial legislation and just how strict it is. We wonder if perhaps the Ontario Legislation doesn't need some balance. Everyone is required to call before they excavate. In practice do most people follow through? We all know that we need to protect ourselves and infrastructure, but if the legislation goes too far and seems unreasonable it will not be universally accepted. For example, are people going to call to bury a raccoon in their backyard even though the law states they must?	5. Acknowledged. The Bill S-233 Team notes that depending on how CSA Z247 is or will be referenced in existing federal and provincial damage prevention regulations, development of Damage Prevention Programs, including a Public Awareness / Education Program could be mandatory. These programs would, among various damage prevention elements, educate the public on the existence of the legislation and how to apply it.

General Comments	RESPONSES
6. The One Call is a gateway to allow landowners an easy way to provide notification and another opportunity for industry to provide further explanation of their specific regulations regarding digging near federal or other facilities, e.g. NEB regulations. <u>The onus should be that underground facilities be identified and if there are other regulations that need to be respected and followed regarding certain facilities that those regulations are provided in written form by the person/company who comes out to the landowner.</u>	6. Acknowledged. It is the intent of this Bill to introduce greater regulatory harmony and symmetry across jurisdictions.
From Canadian Association of Energy and Pipeline Landowner Associations Memoranda: 1. The purposes of the proposed legislation were discussed by the Senator sponsoring the Bill, the Honourable Grant Mitchell, in his speech to the Senate on June 22, 2015 (Attachment 2). The *Underground Infrastructure Safety Enhancement Act* is intended, if enacted, to bring federal underground infrastructure into existing provincial One-Call systems and to "facilitate and enhance the interest of the construction industry and individuals across the country to work on developing best practices for digging." Sen. Mitchell notes that One-Call systems vary significantly from province to province.	1. Acknowledged.
2. He points to Ontario as having the most comprehensive One-Call legislative regime in the country. The *Ontario Underground Infrastructure Notification System Act, 2012* (Attachment 3) received Royal assent on June 19, 2012 and came into effect on that date. The legislation provides that no person may commence an excavation or dig (terms that are broadly defined) without having contacted the Ontario One-Call system and, where necessary, obtained locates of any affected underground infrastructure. The legislation also prohibits excavating or digging "in a manner that the excavator knows or reasonably ought to know would damage or otherwise interfere with any underground infrastructure."	2. Acknowledged.
3. The Ontario legislation also provides for the creation (or continuing existence) and administration of the One-Call system. Various entities are made members of the One-Call system to the extent that they own or operate underground infrastructure including: every municipality in Ontario; Hydro One; Ontario Power Generation; all OEB-regulated gas distributors and gas transmitters; all electricity distributors; any person or entity regulated under the *Oil, Gas and Salt Resources Act* (e.g. gas storage operators, and oil and gas	3. Acknowledged.

General Comments	RESPONSES
producers); and, any owner or operator of underground infrastructure that crosses a public right-of-way or is in the vicinity of a public right-of-way. Those members must provide information about their underground infrastructure to the One-Call system and must provide locates when a request for a locate is made to the One-Call system by someone proposing to excavate or dig.	
4. One of the things that the Senate Bill S-233 would do is to require various federally regulated entities to register their underground infrastructure with the provincial One-Call systems and to provide locates where required. Using the Ontario example, this would mean that anyone preparing to excavate or dig would be notified by the One-Call system of the presence of any underground infrastructure owned and operated by both the provincial entities named in the provincial legislation and the federal entities covered by the Senate-proposed legislation. At present, the Ontario One-Call system would not be in a position to provide information concerning most, if not all, federally-regulated infrastructure.	4. The Bill S-233 Team considers the highlighted statement inaccurate. Ontario One-Call currently provides information for NEB-regulated pipelines as well as federally regulated telecommunications companies (Bell, TELUS, Rogers, etc.), which voluntarily adhered to the Ontario regime to some extent. The proposed legislation would require the provision of information for any federally regulated infrastructure, as defined in the legislation.
5. Again, using the Ontario example, anyone proposing to excavate or dig is required to contact the One-Call system, and there appears to be no exception or exemption for excavation-like activities such as agricultural cultivation. The new Senate proposed legislation would not change the requirement that excavators contact the One-Call system for excavation or digging anywhere in Ontario; it would simply mean that the One-Call system would now include and would require a locate of federally-regulated underground infrastructure.	5. This statement is accurate. The Ontario legislation applies to all underground infrastructure within a public right of way as understood in that legislation.
6. Outside of Ontario and any other province in which legislation requires an excavator to contact the One-Call system whenever excavation or digging is planned, Senate Bill S-233 would introduce a new obligation to contact the provincial One-Call centre where work is planned that would result in a "ground disturbance"2 on federal land. That is, in any province where there is not already a requirement to contact the province's One-Call system, the Senate Bill creates that requirement. However, it only creates the requirement for work affecting federal land.	6. Acknowledged.
7. Federal land is defined by Bill S-233 as land that belongs to the Federal Crown and/or "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 *Indian Act*." Irrespective of the state of the legislation	7. This is correct – However, the Bill S-233 Team might consider amending subsection 9(1) of the Bill so that it refers to work that results in a ground disturbance that may affect underground infrastructure that is federally regulated or located on federal land.

General Comments	RESPONSES
in place in any province, if there is a One-Call system in place, any person planning a ground disturbance on federal land will need to notify the One-Call system. However, Bill S-233 does not appear to impose any similar obligation with respect to ground disturbances planned on lands that are not federal land as defined by the legislation.	Subsection 9(1) would then be more in line with the language found in subsection 6(1) of the *Act respecting an underground infrastructure notification system for Ontario*.
8. Senate Bill S-233 does not change any excavation requirements and regulations that may already exist in other federal legislation. For instance, the restrictions on excavations set out in Section 112 of the *National Energy Board Act* and its associated regulations are not affected by the proposed Senate legislation. An excavator proposing to dig using mechanical equipment within 30 m of a federally regulated pipeline would still be required seek company permission in accordance with the *Pipeline Crossing Regulations*. But that excavator would not be required to contact the provincial One-Call centre unless the proposed excavation would be located on federal land (thereby engaging Senate Bill S-233) or there was provincial legislation requiring contact with the One-Call centre in any event (such as in Ontario).	8. Bill S-233 requires registration with a Notification Centre to simplify the ability to initiate a damage prevention process. This process includes the requirement to request a locate of underground infrastructure prior to ground disturbance; ie: “obligation to use the system”.
9. Although Senate Bill S-233 does not affect the excavation requirements in the Section 112 of the *National Energy Board Act*, it would amend that legislation to give new powers to the National Energy Board to prevent or reduce damage that is or may be caused by "a ground disturbance regulated by the *Underground Infrastructure Safety Enhancement Act*." On my reading, only a ground disturbance that affects federal land (i.e. land owned by the Federal Crown or land governed by the *Indian Act*) is regulated by the Senate-proposed legislation. Therefore, the new powers to be granted to the National Energy Board (including the development and implementation of policies, the making of prevention orders, and the passing of regulations) would only extend to activities on federal land.	9. An agreement between the Federal government and regional / provincial One-call centres will most likely be required. Bill S-233 would require federally regulated underground infrastructure to be part of a regional / provincial notification centre, but those notification centres must also agree to provide notification services in relation to those facilities – the federal government would not require them to do so without agreement from the province first. As an example, most owners and operators of federally regulated underground infrastructure in the province of Alberta have voluntarily registered their underground infrastructure with Alberta One-Call and this legislation, Bill S-233, would require those that have not registered to do so. There already exist precedents for negotiations between the federal government and provinces about federally regulated entities being registered with provincial notification centres (National Energy Board Damage Prevention Regulations).
10. If enacted, the new legislation would impose additional requirements on the owners and operators of federally-regulated underground infrastructure that would enhance the effectiveness of provincial One-Call systems. Where such systems exist, they would now provide locate information related to federally-regulated infrastructure. However, if the One-Call legislation in a given province does not obligate excavators to use the system (as it	10. Acknowledged. In accordance with subsection 9(1) of Bill S-233, excavators must inform the notification centre serving the region / province of their intent to conduct a ground disturbance on federal land.

General Comments	RESPONSES
does in Ontario), the Senate-proposed legislation would only fill in the gap where the planned excavation will affect federal land. 11. I suspect that the drafters of the proposed legislation could not or would not go any further than that (i.e. beyond excavation taking place on federal land) because to do so would interfere with what would appear to be provincial jurisdiction. That said, I note that Section 10 of Bill S-233, for instance, places a positive obligation on a provincial One-Call centre. I assume that the expectation is that an agreement will be made between the federal and provincial governments allowing for such interplay between jurisdictions. Without an agreement, I question on what authority the Parliament of Canada could require a provincial One-Call centre to participate in the system being proposed by Bill S-233 (just as a provincial legislature could not force a federally-regulated entity to participate in the provincial One-Call system). 12. If the necessary agreements are put into place, then Senate Bill S-233 will enhance provincial One-Call systems and public safety by including federally-regulated underground infrastructure in safety locates. However, the true effectiveness of the One-Call systems will still depend on the underlying provincial legislation, which will not be affected by the Senate-proposed legislation. As set out in his speech, Sen. Mitchell is hoping that his bill will promote further development of provincial One-Call systems where necessary. **13.** In so far as the *National Energy Board Act* is concerned, the changes that are coming by way of the *Pipeline Safety Act* and any associated regulations do not necessarily have to be coordinated with the proposed Senate legislation. One exception may be the regulation of "ground disturbances" on federal land. The *Pipeline Safety Act* says that a "ground disturbance" does not include cultivation to a depth of less than 45 cm. On federal land, it would appear that Bill S-233 would require a call to a One-Call centre and a pipeline locate for cultivation to a depth between 30 cm and 45 cm when the *Pipeline Safety Act* would require no permission or notification. In that situation, the two pieces of legislation seem to be at cross-purposes.	11. It is the very nature of a One-call centre to prevent damage to underground infrastructure. Providing the data received by the One-call centre from an underground infrastructure owner allows the One-call centre to notify the owner of a ground disturbance in the vicinity of their buried plant; the One-call centre will accept any member regardless of jurisdictional governance. 12. Acknowledged. 13. The Bill S-233 Team is considering ways to avoid any conflict between the Bill and the *Pipeline Safety Act*.
Alberta Common Ground Association (General Questions): 1. Does the bill/should the bill invoke punitive measures which could be:	

General Comments	RESPONSES
• Stop work • Fines	1. No. 2. Courts will impose fines under the offence provision that will be included in Bill S-233. Further, new administrative penalties with respect to damages to underground infrastructure could be imposed pursuant to the administrative regime found in the statutes amended in the "consequential amendments" part of the Bill.
2. Who polices it?	2. The Minister referred to in the Bill will be responsible for its administration.
3. Who enforces it?	3. The Minister referred to in Bill will be responsible for its administration.
4. What is the bill's overall impact going to be on one call rates?	4. The Bill S-233 Team does not anticipate One-call rates to be affected by the Bill. Provincial One-call centres in Canada are non-profit organizations. Bill S-233 will increase registration with One-call centres and as a result, the ratio of locate requests to member notifications will also increase; generating more revenue per locate request.
5. Section 8.1 a – where does the new data come from, as-builts, data sharing, data registry?	5. The data will come from the utility owner.
6. Who does the public roll out and how?	6. Legislation roll-out and public awareness of same is under development by the Canadian Common Ground Alliance Education & Marketing Committee.
Alberta Common Ground Association (Group # 1)	
<u>Positives</u>	
1. Lead to provincial legislation	1. Acknowledged.
2. Coworks on federal land	2. Acknowledged.
3. Standardization / consistency	3. Acknowledged.
4. Level the playing field	4. Acknowledged.
5. Use common technology	5. Terminology can be common within regulatory text; however, can't necessarily be referenced.
6. Safety – speed up process provincial and municipal – owned and operated and accountable	6. Acknowledged.
7. Bring to forefront awareness	7. Acknowledged.

General Comments	RESPONSES
8. Standards	8. Acknowledged.
9. Funding for one call centres	9. Acknowledged.
10. Funding for education	10. Acknowledged.
11. Drive harmonization	11. Acknowledged.
Negatives	
1. Reporting actual and near misses not there and who keeps that	1. All damages should be reported into a common damage reporting tool; however, the Bill could be amended to enable the Minister to make regulations governing actual and near misses.
2. Training Z247	2. This is out-of-scope for inclusion in proposed legislation and its regulations.
3. Provincial OHS	3. This is out-of-scope of the bill and jurisdiction.
4. Competency of locator	4. This is out-of-scope for inclusion in proposed legislation and its regulations.
5. Not far enough – Provinces and others have to follow	5. Acknowledged. There is a funding element to attract the development of provincial legislation.
6. Can't affect Province	6. This is out-of-scope / jurisdiction of the Bill.
7. Limited in scope	7. The Bill has reached as far as it can within the limit of its jurisdiction.
8. Currently not harmonized	8. This is out-of-scope / jurisdiction of the bill
9. Needs to layout how to educate	9. The federal department responsible for this Bill can develop communications and educational and awareness tools.
10. Penalty is not laid out or enforced	10. The Bill is to include an offence provision.
ABCGA (Group # 2)	
Positives	
1. All buried facilities must participate	1. Only those facilities and the persons governed by the bill will be required to participate.
2. Asset and integrity management will be value added benefits –	2. Acknowledged.

General Comments	RESPONSES
3. Planning will also be improved through a registry	3. Acknowledged.
4. Consensus across industry	4. Acknowledged.
5. Ground disturbance	5. Vague comment; however, our definition of “ground disturbance” is non-exhaustive. See comments above on this definition.
6. Training	6. This is out-of-scope for inclusion in the proposed legislation and its regulations.
7. Gives firm footing for call center	7. Acknowledged.
8. Positive education tool	8. Acknowledged.
9. All required to participate	9. Only those facilities and the persons governed by the Bill will be required to participate.
10. Asset management	10. Acknowledged.
11. Registry	11. Acknowledged.
12. Planning	12. Acknowledged.
13. Engineering, education, enforcement	13. Acknowledged.
<u>Negatives</u>	
1. Should cover all buried not just more than 30 cm	1. Agreed. Reference to depth will be removed from the Bill.
2. Charges for locates – should have an option to charge	2. Only locates where the services is being abused are subject to charges.
3. Caution does it squelch locates	3. As the draft exists, prior to revision, yes it could. The revised language in subsections 11(3) and 11(4) will ensure it does not.
4. Cost structure – how to charge	4. This is out-of-scope / jurisdiction of the Bill.
5. Protect your own facilities – don’t charge for the locates	5. Comment is acknowledged; however, charges for locates are deemed necessary in some circumstances where abuse of the service is occurring.
6. Is it finite or is it open ended frequency before dollars are charged	6. Comment is acknowledged; however, charges for locates are deemed necessary in some circumstances where abuse of the service is occurring.

General Comments	RESPONSES
7. First locate is free and then relocates extra charge	7. Comment is acknowledged; however, charges for locates are deemed necessary in some circumstances where abuse of the service is occurring.
8. Quantity cost/benefits	8. Vague comment. Difficult to respond to.
9. How would you substantiate locate costs	9. This is out-of-scope / jurisdiction of the bill.
10. Before taking a position on charging for locates, make sure you've cleared this approval with your upper VP management – is it really the position of your company.	10. This is out-of-scope / jurisdiction of the Bill.
11. What is the time differential between calling for a locate and being able to dig? (3 days, 14 days, 30 days etc.)	11. The Bill refers to the time and manner of the notification centre or of the legislation of the province in which it is located.
ABCGA (Group # 3)	
Positives	
1. Importance for rural Alberta, including health care service in rural Alberta	1. Acknowledged.
2. Safety for workers	2. Acknowledged.
3. Consistent training for workers	3. Acknowledged.
4. Safety for underground infrastructure	4. Acknowledged.
5. Make digging clear for contractors	5. Acknowledged.
6. Public safety	6. Acknowledged.
7. Shared cost	7. Acknowledged.
8. Better service	8. Acknowledged.

General Comments	RESPONSES
9. Follows the US model	9. There may elements of the U.S. model that were taken into consideration; however, this Bill is following Canadian regulations.
<u>Negatives</u>	
1. Challenge to communicate changes after legislation passes	1. Acknowledged; however, the Bill S-233 Team will reach out to those who made comments with transparency.
2. How will this be administered	2. The Minister referred to in the Bill will be responsible for its administration. However, different Ministers may be responsible for the administration of the statutes that are amended in the "Consequential amendments" part of the Bill.
3. How will this be enforced - Bill S-233 is to include an offence provision by which Court will be able to impose fines.	3. New administrative penalties with respect to damages to underground infrastructure could be imposed pursuant to the administrative regime found in the statutes amended in the "consequential amendments" part of the Bill.
4. Questions on how and when regulations will be developed	4. Statutes provide parameters (ie: regulation making power). The regulations are usually more specific and technical than statutes. The executive branch of the government usually drafts federal regulations.
5. More work needs to be done on the already damaged infrastructure	5. The Bill is designed to prevent damages. Infrastructure that has already been damaged would be managed through civil means / action.
6. Perception of winners and losers, and municipalities may see this as increased cost for them	6. Acknowledged.
7. No way to go back in time	7. Acknowledged.
ABCGA (Group # 4)	
<u>Positives</u>	
1. Less damages	1. Acknowledged.
2. Improved communications	2. Acknowledged.
3. More awareness	3. Acknowledged.

General Comments	RESPONSES
4. Increase public safety 5. Symmetry in legislation (consistency definitions and harmonization) 6. Eliminates confusion 7. True one call 8. Simplifies process 9. Level playing field 10. More cost efficient 11. System integrity 12. Social license a. Pro-active b. Standardizing process c. Automated process 13. Encourages one call services 14. Environmental stewardship 15. All aspects of safety improved 16. Develops framework for provincial legislation 17. One call centers = data hub <u>Negatives</u> 1. Lack of enforcement – Non-compliance	4. Acknowledged. 5. Acknowledged. 6. Acknowledged. 7. Acknowledged. 8. Acknowledged. 9. Acknowledged. 10. Acknowledged. 11. Acknowledged. 12. Acknowledged. a. Acknowledged. b. Acknowledged. c. Acknowledged. 13. Acknowledged. 14. Acknowledged. 15. Acknowledged. 16. Acknowledged. 17. Acknowledged. 1. The Bill is to include an offence provision. Further, new administrative penalties with respect to damages to underground infrastructure could be imposed pursuant

General Comments	RESPONSES
2. Lack of penalties 3. Who oversees CM within regulatory agencies 4. Regulatory agency consistency of application 5. No implementation timeline 6. Does legislation allow for new one call services to emerge (TELUS, SHAW)?	to the administrative regime found in the statutes amended in the "consequential amendments" part of the Bill. 2. The Bill is to include an offence provision. 3. If "CM" means Change Management, the regulator or the Minister. 4. The Bill is aimed to eliminate / reduce inconsistencies. 5. In general, the entire proposed legislation will come into force as per section 21 of the Bill. The Bill S-233 Team is considering a grace period for certain aspects of the legislation. 6. No, the Bill is specific in that the notification centre be a non-profit organization.

Submitted By	
Name	
Organization	
Mailing Address	
Phone	
Email	