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4

As Engrossed: S3/6/23

A Bill

SENATE BILL 297

5 By: Senator J. Dismang
6 By: Representative Eaves
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS UNDERGROUND FACILITIES
10 DAMAGE PREVENTION ACT; TO DECLARE AN EMERGENCY; AND
11 FOR OTHER PURPOSES.
12
13

Subtitle

15 TO AMEND THE ARKANSAS UNDERGROUND
16 FACILITIES DAMAGE PREVENTION ACT; AND TO
17 DECLARE AN EMERGENCY.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code § 14-271-102 is amended to read as follows:
23 14-271-102. Definitions.

24 As used in this chapter, ~~unless the context otherwise requires:~~

25 (1) "Approximate location of underground facilities" means a
26 strip of land at least three feet (3') wide but not wider than the width of
27 the facility plus one and one-half feet (1½') on either side of the facility;

28 (2) "Contract locator" means a person contracted by an operator
29 specifically to determine the approximate location of underground facilities
30 that may exist within the area specified by a notification issued by the One
31 Call Center;

32 (3) "Damage" includes the substantial weakening of structural or
33 lateral support of underground facilities, the penetration or destruction of
34 any protective coating, housing, or other protective device of underground
35 facilities, the partial or complete severance of an underground facility, and
36 the rendering of any underground facility inaccessible;



1 ~~(3)~~(4) “Demolish” or “demolition” means any operation by which a
2 structure or mass of material is wrecked, razed, rendered, moved, or removed
3 by means of any powered tools, powered equipment, exclusive of transportation
4 equipment, or discharge explosives;

5 ~~(4)~~(5) “Excavate” or “excavation” means to dig, compress, or
6 remove earth, rock, or other materials in or on the ground by use of
7 mechanized equipment, tools manipulated only by human or animal power, or
8 blasting, including without limitation augering, boring, backfilling,
9 drilling, grading, pile-driving, plowing in, pulling in, trenching,
10 tunneling, dredging, and plowing;

11 ~~(5)~~(6) “Excavator” means a person that engages in demolition or
12 excavation;

13 (7) “Extraordinary circumstances” means:

14 (A) Floods, snow, ice storms, tornadoes, earthquakes, or
15 other natural disasters; or

16 (B) Cybersecurity events involving the One Call Center’s
17 system or the operator’s system;

18 (8) “Infrastructure project” means a telecommunications, fiber
19 network, gas, water, sewer, or power and electric buildout that focuses on
20 the development and placement of extensive underground facilities to support
21 services provided by the facilities;

22 (9)(A) “Mechanized equipment” means equipment operated by means
23 of mechanical power, including trenchers, bulldozers, power shovels, augers,
24 backhoes, scrapers, drills, cable and pipe plows, and other equipment used
25 for plowing in or pulling in cable or pipe.

26 (B) “Mechanized equipment” does not include specialized
27 equipment that is specifically designed to excavate without damaging
28 underground facilities, including without limitation equipment that excavates
29 using pressurized water or air coupled with a vacuum system;

30 ~~(6)~~(10) “Member operator” means any operator that is a member of
31 the One Call Center;

32 ~~(7)~~(11) “One Call Center” means a center operated by an
33 organization which has as one of its purposes to receive notification of
34 planned excavation and demolition in a specified area from excavators and to
35 disseminate such notification of planned excavation or demolition to
36 operators who are members of the ~~center~~ One Call Center;

1 ~~(8)~~(12) “Operator” means any person that owns or operates an
2 underground facility;

3 ~~(9)~~(13) “Person” means any individual, ~~any~~ corporation,
4 partnership, association, improvement district, property owners’ association,
5 property developer, public agency, or any other entity organized under the
6 laws of any state or any subdivision or instrumentality of a state, and any
7 employee, agent, or legal representative thereof;

8 ~~(10)~~(14) “Preengineered project” means a public project wherein
9 the public agency responsible for the project, as part of its engineering and
10 contract procedures, holds a formal meeting ~~prior to~~ before the commencement
11 of any construction work on the project in which all persons determined by
12 the public agency to have underground facilities located within the
13 construction area of the project are invited to attend and given an
14 opportunity to verify or inform the public agency of the location of their
15 underground facilities, if any, within the construction area and wherein the
16 location of all known underground facilities are located or noted on the
17 engineering drawing and specifications for the project;

18 ~~(11)~~(15) “Public agency” means the state or any board,
19 commission, or agency of the state and any city, town, county, subdivision
20 thereof, or other governmental entity;

21 ~~(12)~~(16) “Right-of-way” means any area along which an
22 underground facility is located;

23 ~~(13)~~(A)~~(17)~~(A) “Underground facility” means any line, system,
24 and appurtenance or facility that is:

25 (i) Located beneath the ground surface or beneath
26 structures, streets, roads, alleys, sidewalks, or other public rights-of-way;
27 and

28 (ii) Used for producing, storing, conveying,
29 transmitting, or distributing communications, data, electricity, gas, heat,
30 water, steam, chemicals, television or radio transmissions or signals, or
31 sewage.

32 (B) “Underground facility” does not include:

33 (i) Privately owned service lines:

34 (a) Used solely for the purpose of
35 transporting communications, data, electricity, gas, heat, water, steam,
36 chemicals, television or radio transmissions or signals, or sewage for the

1 operation of a residence or business; and

2 (b) Wholly located on or beneath private
3 property; or

4 (ii) Residential or agricultural underground
5 irrigation systems;

6 ~~(14)(18)(A)~~ “Underground pipeline facilities” means any
7 underground pipeline facility used to transport natural gas or hazardous
8 liquids.

9 ~~(B) However, this definition~~ “Underground pipeline
10 facilities” does not apply to persons, including operator’s master meters,
11 whose primary activity does not include the production, transportation, or
12 marketing of gas or hazardous liquids or to master-metered systems whose
13 underground facilities do not cross property other than their own or are not
14 located under public rights-of-way; and

15 ~~(15)(19)~~ “Working day” means every day, except Saturday, Sunday,
16 and national and legal state holidays.

17
18 SECTION 2. Arkansas Code § 14-271-104 is amended to read as follows:
19 14-271-104. Penalties – Civil remedies.

20 (a)(1) A person who violates this chapter may be required to undergo
21 training in underground facilities damage prevention according to a training
22 program developed and administered by the One Call Center.

23 (2)(A) Except as provided in subdivision ~~(a)(2)(a)(3)~~ of this
24 section, any person who damages an underground facility and violates any
25 provisions of this chapter shall be subject to a civil penalty not to exceed
26 two thousand five hundred dollars (\$2,500) for each violation or mandatory
27 training in underground facilities damage prevention, as follows:

28 (i)(a) For a first violation in a twelve-month
29 period, the person shall be ordered to undergo the training under subdivision
30 (a)(1) of this section.

31 (b) For subsequent violations of this
32 subchapter, within a twelve-month period, the maximum penalty amount under
33 the penalty structure of this subsection (a) shall not exceed fifty thousand
34 dollars (\$50,000);

35 (ii) For a second violation in a twelve-month
36 period, the person shall be ordered to pay a civil penalty in an amount up to

1 five thousand dollars (\$5,000) for each violation; and

2 (iii) For three (3) or more violations in a twelve-
3 month period, the person shall be ordered to pay a civil penalty in an amount
4 up to ten thousand dollars (\$10,000) for each violation.

5 (B) Any person who has violated this chapter and had been
6 ordered to undergo mandatory training in underground facilities damage
7 prevention under subdivision (a)(1) of this section shall be subject to a
8 civil penalty of up to two thousand five hundred dollars (\$2,500) for each
9 violation if the person fails to complete any of the training required within
10 one hundred twenty (120) days from the entry of the order or settlement.

11 ~~(2)~~(3) Operators of underground pipeline facilities and
12 excavators shall, upon violation of any applicable requirements of 49 C.F.R.
13 Part 198, Subpart C, or 49 U.S.C. § 60114(b), concerning marking facilities;
14 49 U.S.C. § 60114(d), concerning applicability to excavators; or 49 U.S.C. §
15 60118(a), concerning general waivers, as in effect on ~~February 2013~~ January
16 2023, unless excepted under § 14-271-109, and damage to an interstate or
17 intrastate natural gas pipeline facility or an interstate or intrastate
18 hazardous liquid pipeline facility, shall be subject to civil penalties in an
19 amount not to exceed two (2) times the amount of property damage to the
20 interstate or intrastate natural gas pipeline facility or an interstate or
21 intrastate hazardous liquid pipeline facility up to a maximum of ~~two hundred~~
22 ~~thousand dollars (\$200,000)~~ two hundred fifty-seven thousand six hundred
23 sixty-four dollars (\$257,664) for each violation for each day that the
24 violation persists, except that the maximum civil penalty shall not exceed
25 ~~two million dollars (\$2,000,000)~~ two million two hundred fifty-seven thousand
26 six hundred sixty-four dollars (\$2,257,664) for any related series of
27 violations.

28 (b)(1)(A) Actions to enforce or recover the penalties provided for in
29 this section shall be brought by the Attorney General, the county prosecutor,
30 or the city attorney, ~~at the request of any person,~~ based upon information
31 received from an operator, excavator, or from any other source, in the
32 circuit court in the county in which the cause, ~~or some part thereof, arose~~
33 occurred or in which the defendant has its principal place of business ~~or~~
34 resides.

35 (B)(i) The Attorney General, the county prosecutor, or the
36 city attorney may settle with a person who violates this chapter for no more

1 than the maximum civil penalty the violator would be liable for under the
2 penalty structure under subsection (a) of this section.

3 (ii) A settlement under subdivision (b)(1)(B)(i) of
4 this section shall include a requirement that the violator complete mandatory
5 training in underground facilities damage prevention.

6 (2) All penalties recovered in ~~any such~~ an action shall be paid
7 into the general fund of the state, county, or municipality that prosecutes
8 the action.

9 (c) The Attorney General, the county prosecutor, or the city attorney
10 ~~shall~~, at the request of any person, shall bring an action in a court of
11 competent jurisdiction to enjoin ~~any~~ a violation of 49 C.F.R. Part 198,
12 Subpart C, as it existed on January 1, 2023, committed by operators of
13 underground pipeline facilities and excavators.

14 (d) ~~Nothing in this chapter shall be construed to~~ This chapter does
15 not modify or repeal existing laws pertaining to the tort liability of local
16 governments and their employees.

17 (e) This chapter does not affect any civil remedies for personal
18 injury or property damage, including underground facilities, except as
19 otherwise specifically provided for in this chapter.

20 (f) This section ~~shall~~ does not apply to:

21 (1) The State Highway Commission;

22 (2) The Arkansas Department of Transportation;

23 (3) An officer or employee of the commission or the Arkansas
24 Department of Transportation;

25 (4) A county judge; or

26 (5) A county road department.

27 (g)(1) The Attorney General shall produce a quarterly report and
28 provide the report to the Legislative Council, the One Call Center, and the
29 Office of Pipeline Safety of the Arkansas Public Service Commission.

30 (2) The report required under subdivision (g)(1) of this section
31 shall include:

32 (A) The number of complaints submitted;

33 (B) The number of the submitted complaints that were
34 settled or prosecuted; and

35 (C) The amount of fines collected under this section
36 during the previous quarter.

1
2 SECTION 3. Arkansas Code § 14-271-109(a), concerning the notice
3 requirements to the One Call Center under the Arkansas Underground Facilities
4 Damage Prevention Act, is amended to read as follows:

5 (a) Compliance with notice requirements of § 14-271-112 is not
6 required for:

7 (1) The moving of earth that is not on a right-of-way or within
8 an easement of an operator using specialized equipment that is specifically
9 designed to excavate without damaging underground facilities, including
10 without limitation equipment that excavates using pressurized water or air
11 coupled with a vacuum system or by tools manipulated only by human or animal
12 power;

13 (2) The moving of earth by an operator that is on a right-of-way
14 or within an easement of the operator using specialized equipment that is
15 specifically designed to excavate without damaging underground facilities,
16 including without limitation equipment that excavates using pressurized water
17 or air coupled with a vacuum system or by tools only manipulated by human
18 power and exclusively for the purposes of system maintenance and leak
19 detection;

20 (3) Any agricultural purposes, including any form of cultivation
21 for agricultural purposes, digging for postholes on private property,
22 construction and maintenance of farm ponds, land clearing, or other normal
23 agricultural purposes that are not on a right-of-way of an operator;

24 (4) The opening of a grave in a cemetery that is not on a right-
25 of-way of an operator; or

26 (5) Routine road work and general maintenance as performed in
27 the right-of-way by state or county maintenance departments, but excluding
28 any work or maintenance involving any demolition or excavation.

29
30 SECTION 4. Arkansas Code § 14-271-110 is amended to read as follows:

31 14-271-110. Notifying operators of underground facilities –
32 Identification of location.

33 (a)(1) Within four (4) working hours after receiving notification ~~of~~
34 intent to from an excavator that intends to excavate or demolish within an
35 area marked in white, the One Call Center shall in turn notify all member
36 operators of underground facilities in the affected area of the proposed

1 activity.

2 (2)(A)(i) Unless otherwise agreed to in writing between the
3 ~~excavators~~ excavator and the operator or contract locator, within two (2)
4 working days after notification from the One Call Center, starting the
5 working day after the notification of intent to excavate is received, the
6 operator or contract locator shall identify the approximate location of the
7 facilities by field-marking on the surface by paint, dye, stakes, or any
8 other clearly visible marking which designates the horizontal course of the
9 facilities.

10 (ii) For the purpose of measuring working days, the
11 working day starts at 7:00 a.m. on each business day.

12 (B) If the operator has no facilities in the area, the
13 operator shall so inform the person proposing the activity, either by
14 contacting that person or by leaving such information at the site.

15 (3) When an underground facility is being located, the operator
16 shall furnish the excavator information ~~which~~ that identifies the approximate
17 center line, approximate or estimated depth, when known, and dimensions of
18 the underground facility.

19 (4)(A) The operator shall provide an electronic positive
20 response to the One Call Center before the expiration of the time provided in
21 subdivision (a)(2)(A) of this section.

22 (B) The response required under subdivision (a)(4)(A) of
23 this section shall indicate whether or not and to what extent the operator is
24 able to provide the information required by subdivision (a)(2)(A) of this
25 section to respond to the notice from the excavator.

26 (5)(A) When excavating within the approximate location of an
27 underground facility, the excavator shall uncover the facility using a method
28 approved by the operator.

29 (B) ~~No power-driven tools or~~ Mechanized equipment shall
30 not be used without the express approval of the operator.

31 (C) The excavator shall confirm through the One Call
32 Center's electronic positive response system before excavation or demolition
33 that all operators have responded and that all facilities that may be
34 affected by the proposed excavation or demolition have been marked.

35 (D) The excavator may begin excavation or demolition
36 before the specified waiting period only if the excavator has confirmed that

1 all operators have responded with an appropriate electronic positive
2 response.

3 (E) If the operator declares extraordinary circumstances,
4 the excavator shall not carry out excavation or demolition until after the
5 time and date that the operator has provided in the operator's response.

6 (6)(A) If extraordinary circumstances prevent the operator from
7 marking the location of the facilities within the time specified in this
8 subsection, then the operator shall notify the excavator directly or through
9 the One Call Center.

10 (B) If providing the notification under subdivision
11 (a)(6)(A) of this section, the operator shall state the date and time when
12 the location will be marked.

13 (b) Subject to ~~the provisions of~~ § 14-271-112(b) governing the
14 duration of a locate request, when infrastructure projects are delayed or are
15 lengthy in time and location, the operator and the excavator shall establish
16 and maintain coordination regarding location, marking, and identification of
17 the facilities until all excavation or demolition is completed.

18

19 SECTION 5. Arkansas Code § 14-271-112(c), concerning the notice to be
20 provided to the One Call Center, is amended to read as follows:

21 (c)(1) The written or telephonic notice of intent required by
22 subsection (b) of this section shall:

23 (A) ~~contain~~ Contain the name of the person notifying the
24 One Call Center, the name, address, and telephone number of the person
25 responsible for the excavation or demolition, the starting date, anticipated
26 duration and type of excavation or demolition operation to be conducted, the
27 specific location of the proposed excavation or demolition, and whether or
28 not explosives are anticipated to be used; and

29 (B)(i) Be provided by an individual or entity carrying out
30 the excavation or demolition.

31 (ii) The responsibility to provide the notice under
32 subsection (b) of this section shall not be delegated to another by contract
33 or otherwise.

34 (iii) If multiple entities are carrying out
35 excavation or demolition, then each entity is responsible for providing
36 notice individually.

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SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that it is in the best interest of the citizens of this state to protect underground facilities in Arkansas from damage and to enhance safety; that the enhanced notifications and penalties in this act will make Arkansas citizens safer; and that this act is immediately necessary because this act will increase public health and safety in Arkansas by helping to prevent underground facilities from being hit and damaged at such a high rate. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/J. Dismang