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HOUSE BILL 587

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO PIPELINES AND UNDERGROUND UTILITY LINES; AMENDING  
STATUTES PROVIDING FOR REGULATION OF EXCAVATION NEAR OR OF  
PIPELINES AND UNDERGROUND UTILITY LINES; INCREASING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 62-14-2 NMSA 1978 (being Laws 1973,  
Chapter 252, Section 2, as amended) is amended to read:

"62-14-2. DEFINITIONS. -- For purposes of Chapter 62,  
Article 14 NMSA 1978:

A. "advance notice" means two working days;

~~[A.]~~ B. "blasting" means the use of an explosive  
to excavate;

C. "cable television lines and related facilities"  
means the facilities of any cable television system or closed-  
circuit coaxial cable communications system or other similar

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1 transmission service used in connection with any cable  
2 television system or other similar closed-circuit coaxial  
3 cable communications system;

4 D. "commission" means the public regulation  
5 commi ssi on;

6 E. "emergency excavation" means an excavation that  
7 must be performed due to circumstances beyond the excavator's  
8 control and that affects public safety, health or welfare;

9 ~~[B.-]~~ F. "excavate" means the movement or removal  
10 of earth using mechanical excavating equipment or blasting and  
11 includes augering, backfilling, digging, ditching, drilling,  
12 grading, plowing in, pulling in, ripping, scraping, trenching  
13 and tunneling;

14 G. "means of location" means a mark such as a  
15 stake in earthen areas or a paint mark in paved areas that is  
16 conspicuous in nature and that is designed to last at least  
17 five days if not disturbed;

18 ~~[C.-]~~ H. "mechanical excavating equipment" means  
19 all equipment powered by any motor, engine or hydraulic or  
20 pneumatic device used for excavating and includes trenchers,  
21 bulldozers, backhoes, power shovels, scrapers, draglines, clam  
22 shells, augers, drills, cable and pipe plows or other  
23 plowing-in or pulling-in equipment;

24 ~~[D.-]~~ I. "one-call notification system" means a  
25 communication system in which an operation center provides

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1 telephone services or other reliable means of communication  
2 for the purpose of receiving excavation notice information and  
3 distributing that information to owners and operators of  
4 pipeline facilities;

5 J. "person" means the legal representative of or  
6 an individual, partnership, corporation, joint venture, state,  
7 subdivision or instrumentality of the state or an association;

8 ~~[E.]~~ K. "pipeline" means a pipeline or system of  
9 pipelines and appurtenances for the transportation or movement  
10 of any oil or gas, oil or gas products and byproducts, [~~but~~  
11 does not include] gathering lines or systems operated  
12 exclusively for the gathering of oil or gas, oil and gas  
13 products and their byproducts in any field or area, lines or  
14 systems constituting a part of any tank farm, plant facilities  
15 of any processing plant or underground storage projects  
16 ~~[unless it is located within a municipality or in the~~  
17 ~~boundaries of an established easement or right of way or~~  
18 ~~within the limits of any unincorporated city, town or village~~  
19 ~~or within any designated residential or commercial area such~~  
20 ~~as a subdivision, business or shopping center or community~~  
21 ~~development];~~

22 L. "reasonable efforts" means notifying the  
23 appropriate one-call notification center or underground  
24 facility of planned excavation;

25 M. "underground facilities" means any tangible

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1 property described in Subsections C, K and M of this section  
2 that is underground and does not include residential  
3 sprinklers or low-voltage lighting; and

4 [F.] N. "underground utility line" means an  
5 underground conduit or cable, including fiber optics, and  
6 related facilities for transportation and delivery of  
7 electricity, telephonic or telegraphic communications or  
8 water.

9 [G. ~~"cable television lines and related~~  
10 ~~facilities" means the facilities of any cable television~~  
11 ~~system or closed-circuit coaxial cable communications system~~  
12 ~~or other similar transmission service used in connection with~~  
13 ~~any cable television system or other similar closed-circuit~~  
14 ~~coaxial cable communications system;~~

15 H. ~~"underground facilities" means any tangible~~  
16 ~~property described in Subsections E through G of this section~~  
17 ~~that is underground and does not include residential~~  
18 ~~sprinklers or low-voltage lighting;~~

19 I. ~~"person" means the legal representative of or~~  
20 ~~any individual, partnership, corporation, joint venture,~~  
21 ~~state, subdivision or instrumentality of the state or an~~  
22 ~~association;~~

23 J. ~~"means of location" means a mark such as a~~  
24 ~~stake in earthen areas or a paint mark in paved areas that is~~  
25 ~~conspicuous in nature and that is designed to last at least~~

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1 ~~five days if not disturbed;~~

2 ~~K. "advance notice" means two working days; and~~

3 ~~L. "commission" means the state corporation~~  
4 ~~commission or its successor agency.]"~~

5 Section 2. Section 62-14-3 NMSA 1978 (being Laws 1973,  
6 Chapter 252, Section 3, as amended) is amended to read:

7 "62-14-3. EXCAVATION. -- Every person who prepares  
8 engineering plans for excavation or who engages in excavation  
9 shall:

10 A. make reasonable efforts to inform himself of  
11 the location of any underground facility in or near the area  
12 where the excavation is to be conducted, including a request  
13 to the owner or operator of the underground facility to locate  
14 the underground facility pursuant to Section 62-14-5 NMSA  
15 1978;

16 B. plan the excavation to avoid or minimize  
17 interference or damage to underground facilities in or near  
18 the excavation area;

19 C. provide [reasonable] advance notice of the  
20 commencement, extent and duration of the excavation work to  
21 the owners of any existing underground facility in and near  
22 the excavation area in order to allow the owners to locate and  
23 mark the location of the underground facility described in  
24 Section 62-14-5 NMSA 1978 prior to the commencement of work in  
25 the excavation area and request reaffirmation of line location

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1 every ten days after the initial line locate request;

2 D. prior to initial exposure of the underground  
3 facility, maintain at least an estimated clearance of eighteen  
4 inches between existing underground facilities for which the  
5 owners or operators have previously identified the location  
6 and the cutting edge or point of any mechanical excavating  
7 equipment utilized in the excavation and continue excavation  
8 in a manner necessary to prevent damage;

9 E. provide such support for existing underground  
10 facilities in or near the excavation area [~~as may be~~  
11 ~~reasonably~~] necessary to prevent damage to them;

12 F. backfill all excavations in a manner and with  
13 materials as may be necessary to prevent damage to and provide  
14 reliable support during and following backfilling activities  
15 for preexisting underground facilities in or near the  
16 excavation area; [~~and~~]

17 G. notify as promptly as possible the owner of any  
18 underground facilities which may have been damaged or  
19 dislocated during the excavation work; and

20 H. not move or obliterate markings made pursuant  
21 to Chapter 62, Article 14 NMSA 1978 or fabricate markings in  
22 an unmarked location for the purpose of concealing or avoiding  
23 liability for a violation of or noncompliance with the  
24 provisions of Chapter 62, Article 14 NMSA 1978."

25 Section 3. Section 62-14-5 NMSA 1978 (being Laws 1973,

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1 Chapter 252, Section 5, as amended) is amended to read:

2 "62-14-5. MARKING OF FACILITIES. --

3 A. Every person owning or operating an underground  
4 facility shall, upon the request of a person intending to  
5 commence an excavation and upon [~~reasonable~~] advance notice,  
6 locate and mark on the surface the actual horizontal location,  
7 within twelve inches by some means of location, of the  
8 underground facilities in or near the area of the excavation  
9 so as to enable the person engaged in excavation work to  
10 locate the facilities in advance of and during the excavation  
11 work.

12 B. If the owner or operator of the underground  
13 facility finds he has no underground facilities in the  
14 proposed area of excavation, the owner or operator shall  
15 contact the excavator directly or mark in the appropriate  
16 color code as specified in Section 62-14-5.1 NMSA 1978, the  
17 area as "Clear" or "No Underground Facilities". In this  
18 instance, paint may be used in earthen areas.

19 [~~B.~~] C. If the owner or operator fails to  
20 correctly mark the underground facility after being given  
21 [~~reasonable~~] advance notice and such failure to correctly mark  
22 the facility results in additional costs to the person doing  
23 the excavating, then the owner or operator shall reimburse the  
24 person engaging in the excavation for the reasonable costs  
25 incurred.

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1                    D. A facility owner shall not move or obliterate  
2 markings made pursuant to Chapter 62, Article 14 NMSA 1978 or  
3 fabricate markings in an unmarked location for the purpose of  
4 concealing or avoiding liability for a violation of or  
5 noncompliance with the provisions of Chapter 62, Article 14  
6 NMSA 1978. "

7                    Section 4. A new Section 62-14-5.1 NMSA 1978 is enacted  
8 to read:

9                    "62-14-5.1. [NEW MATERIAL] UNIFORM COLOR CODE FOR  
10 LOCATION OF UNDERGROUND FACILITIES. --In marking the location  
11 of underground facilities, an owner or operator shall use the  
12 following uniform color code:

- 13                    A. blue for water;
- 14                    B. green for sewer;
- 15                    C. orange for ~~communications~~/coaxial cable;
- 16                    D. pink for survey;
- 17                    E. purple for reclaimed water;
- 18                    F. red for electric;
- 19                    G. white for proposed excavation area; and
- 20                    H. yellow for gas. "

21                    Section 5. Section 62-14-6 NMSA 1978 (being Laws 1973,  
22 Chapter 252, Section 6, as amended) is amended to read:

23                    "62-14-6. LIABILITY FOR DAMAGE TO UNDERGROUND  
24 FACILITIES. --

- 25                    A. If any underground facility is damaged by any

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1 person who failed to make reasonable efforts to ~~[inform~~  
2 ~~himself as to]~~ determine its location as provided in Chapter  
3 62, Article 14 NMSA 1978, that person shall reimburse the  
4 owner of the underground facility for the actual cost of the  
5 damage to the underground facility, including the cost of  
6 restoration of services. The person engaging in the  
7 excavation may also be liable to the owner or operator of the  
8 underground facility for the comparative negligence of the  
9 person engaging in the excavation which results in damage to  
10 the facility for an additional amount not to exceed three  
11 hundred thousand dollars (\$300,000) for each occurrence.

12 B. If any underground facility is damaged by any  
13 person who has made reasonable efforts ~~[to inform himself as]~~  
14 to determine its location and ~~[such]~~ the damaged underground  
15 facility was correctly located by the owner or operator of the  
16 underground facility as provided in Section 62-14-5 NMSA 1978,  
17 then that person causing the damage shall be liable to the  
18 owner or operator of the underground facility for only the  
19 actual cost of damage to the underground facility, including  
20 the cost of restoration of service.

21 C. If any underground facility is damaged by any  
22 person who has made reasonable efforts ~~[to inform himself as]~~  
23 to determine its location and damage to the underground  
24 facility is caused by the failure of the owner or operator to  
25 correctly locate that underground facility as provided in

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1 Section 62-14-5 NMSA 1978, then the person engaging in the  
2 excavation shall have no liability for the damage to that  
3 facility.

4 D. It is not the intent of Chapter 62, Article 14  
5 NMSA 1978 to impose civil liability to any person beyond that  
6 provided in this section. "

7 Section 6. Section 62-14-7.1 NMSA 1978 (being Laws 1997,  
8 Chapter 30, Section 1) is amended to read:

9 "62-14-7.1. PIPELINE ONE-CALL NOTIFICATION SYSTEM --

10 A. Every owner or operator of a pipeline facility,  
11 unless exempted by federal law, shall be a member of a  
12 one-call notification system. A one-call notification system  
13 may be for a region of the state or statewide in scope, unless  
14 federal law provides otherwise.

15 B. Each one-call notification system shall be  
16 operated by:

- 17 (1) an owner or operator of pipeline  
18 facilities;
- 19 (2) a private contractor;
- 20 (3) a state or local government agency; or
- 21 (4) a person who is otherwise eligible under  
22 state law to operate a one-call notification system.

23 C. If the one-call notification system is operated  
24 by owners or operators of pipeline facilities, it shall be  
25 established as a nonprofit entity governed by a board of

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1 directors that shall establish the operating processes,  
2 procedures and technology needed for a one-call notification  
3 system. The board shall further establish a procedure or  
4 formula to determine the equitable share of each member for  
5 the costs of the one-call notification system. The board may  
6 include representatives of excavators or other persons deemed  
7 eligible to participate in the system who are not owners or  
8 operators.

9 D. Excavators shall give advance notice to the  
10 one-call notification system operating in the intended  
11 excavation area and provide information established by rule  
12 [~~and regulation~~] of the commission, except when excavations  
13 are by or for a person that:

14 (1) owns or leases or owns a mineral  
15 leasehold interest in the real property on which the  
16 excavation occurs; and

17 (2) operates all underground facilities  
18 located in the intended excavation area.

19 E. The one-call notification system shall promptly  
20 transmit excavation notice information to owners or operators  
21 of pipeline facilities in the intended excavation area.

22 F. After receiving advance notice, owners and  
23 operators of pipeline facilities shall locate and mark their  
24 pipeline facilities in the intended excavation area.

25 G. The one-call notification system shall provide

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1 a toll-free telephone number or another comparable and  
2 reliable means of communication to receive advance notice of  
3 excavation. Means of communication to distribute excavation  
4 notice to owners or operators of pipeline facilities shall be  
5 reliable and capable of coordination with one-call  
6 notification systems operating in other regions of the state.

7 H. Operators of one-call notification systems  
8 shall notify the commission of its members and the name and  
9 telephone number of the contact person for each member.

10 I. One-call notification systems and owners and  
11 operators of pipeline facilities shall promote public  
12 awareness of the availability and operation of one-call  
13 notification systems and work with state and local  
14 governmental agencies charged with issuing excavation permits  
15 to provide information concerning and [~~promote~~] promoting  
16 awareness by excavators of one-call notification systems."

17 Section 7. Section 62-14-8 NMSA 1978 (being Laws 1973,  
18 Chapter 252, Section 8, as amended) is amended to read:

19 "62-14-8. PENALTIES.--In addition to any other liability  
20 imposed by law, any [~~person~~] operator of underground pipeline  
21 facilities or underground utilities, excavator or operator of  
22 a one-call notification system who [~~willfully~~] fails to comply  
23 with Chapter 62, Article 14 NMSA 1978 and whose failure  
24 [~~proximately~~] contributes to the damage of any pipeline or  
25 underground utility line shall be subject to [~~a civil penalty~~

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1 ~~not to exceed five hundred dollars (\$500) for each offense] an~~  
2 administrative penalty as assessed by the commission. All  
3 actions to recover the penalties provided for in this section  
4 shall be brought by ~~[either the attorney general or the~~  
5 ~~appropriate district attorney upon complaint of]~~ the  
6 commission ~~[the New Mexico public utility commission or the~~  
7 ~~construction industries division of the regulation and~~  
8 ~~licensing department. All such actions shall be brought in~~  
9 ~~the district court in and for the county in which the cause,~~  
10 ~~or some part of the cause, arose or in which the person~~  
11 ~~complained of has his principal place of business or~~  
12 ~~residence].~~ After a formal hearing and upon a finding that a  
13 violation of Chapter 62, Article 14 NMSA 1978 has occurred,  
14 the commission may assess an administrative penalty of up to  
15 five thousand dollars (\$5,000) for a first offense.  
16 Thereafter, the commission may assess upon consideration of  
17 the nature, circumstances, gravity of the violation, history  
18 of prior violations, effect on public health, safety or  
19 welfare and good faith on the part of the person in attempting  
20 to remedy the cause of the violation, up to a maximum of  
21 twenty-five thousand dollars (\$25,000) per violation as  
22 provided by federal law. All penalties recovered in any such  
23 action shall be paid into the state general fund. The  
24 commission shall adopt rules for alternative dispute  
25 resolution procedures to resolve appropriate matters."

