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HOUSE BILL 500

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Rhonda S. King

AN ACT

RELATING TO UTILITIES; CLARIFYING NOTIFICATION PROCEDURES TO
PREVENT EXCAVATION DAMAGE TO PIPELINE AND UNDERGROUND
FACILITIES.

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.--As used in Chapter 62, Article 14
NMSA 1978:

- A. "advance notice" means two working days;
- 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 cable
3 communications system;

4 D. "commission" means the public regulation
5 commission;

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 F. "excavate" means the movement or removal of
10 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 tunneling and directional boring;

14 G. "excavator" means a person that excavates;

15 H. "means of location" means a mark such as a
16 stake, a flag, whiskers or paint that is conspicuous in nature
17 and that is designed to last at least ten working days if not
18 disturbed;

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

25 J. "one-call notification system" means a

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1 communication system in which an operation center provides
2 telephone services or other reliable means of communication for
3 the purpose of receiving excavation notice information and
4 distributing that information to owners and operators of
5 pipelines and other underground facilities;

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

9 L. "pipeline" means a pipeline or system of
10 pipelines and appurtenances for the transportation or movement
11 of any oil or gas, or oil or gas products and their byproducts
12 subject to the jurisdiction of federal law or regulation, with
13 the exception of master meter systems and operators;

14 M. "reasonable efforts" means notifying the
15 appropriate one-call notification center or underground
16 facility owner or operator of planned excavation;

17 N. "underground facility" means any tangible
18 property described in Subsections C, L and O of this section
19 that is underground, but does not include residential
20 sprinklers or low-voltage lighting; and

21 O. "underground utility line" means an underground
22 conduit or cable, including fiber optics, and related
23 facilities for transportation and delivery of electricity,
24 telephonic or telegraphic communications or water, sewer and
25 fire protection lines, with the exception of master meter

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1 systems and operators."

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

4 "62-14-3. EXCAVATION.--~~Every~~ A person who prepares
5 engineering plans for excavation or who engages in excavation
6 shall:

7 A. determine the location of any underground
8 facility in or near the area where the excavation is to be
9 conducted, including a request to the owner or operator of the
10 underground facility to locate the underground facility
11 pursuant to Section 62-14-5 NMSA 1978;

12 B. plan the excavation to avoid or minimize
13 interference or damage to underground facilities in or near the
14 excavation area;

15 C. provide telephonic advance notice of the
16 commencement, extent and duration of the excavation work to the
17 one-call notification system operating in the intended
18 excavation area, ~~or~~ and to the owners or operators of any
19 existing underground facility in and near the excavation area
20 that are not members of the local one-call notification center,
21 in order to allow the owners to locate and mark the location of
22 the underground facility as described in Section 62-14-5 NMSA
23 1978 prior to the commencement of work in the excavation area,
24 and shall request reaffirmation of line location every ten
25 working days after the initial ~~locate~~ request to locate;

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

8 E. provide such support for existing underground
9 facilities in or near the excavation area necessary to prevent
10 damage to them;

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

16 G. immediately notify the one-call notification
17 system operating in the area in the form and format required by
18 the commission and by telephone the owner of any underground
19 facilities [~~which~~] that may have been damaged or dislocated
20 during the excavation work; and

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

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1 **SECTION 3.** Section 62-14-4 NMSA 1978 (being Laws 1973,
2 Chapter 252, Section 4, as amended) is amended to read:

3 "62-14-4. **EMERGENCY EXCAVATION.**--Every person who engages
4 in emergency excavation shall take all necessary and reasonable
5 precaution to avoid or minimize interference with or damage to
6 existing underground facilities in and near the [~~construction~~]
7 excavation area and shall notify as promptly as possible the
8 owners of underground facilities located in and near the
9 emergency excavation area and the one-call notification system
10 operating in the area in the form and format required by the
11 commission. In the event of any damage to or dislocation of
12 any underground facility caused by the emergency excavation
13 work, the person responsible for the excavation shall
14 immediately notify the owner of the underground facility and
15 the one-call notification system operating in the area in the
16 form and format required by the commission."

17 **SECTION 4.** Section 62-14-5 NMSA 1978 (being Laws 1973,
18 Chapter 252, Section 5, as amended) is amended to read:

19 "62-14-5. **MARKING OF FACILITIES.**--

20 A. [~~Every~~] A person owning or operating an
21 underground facility shall, upon the request of a person
22 intending to commence an excavation and upon advance notice,
23 locate and mark on the surface the actual horizontal location,
24 within twelve inches by some means of location, of the
25 underground facilities in or near the area of the excavation so

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1 as to enable the person engaged in excavation work to locate
2 the facilities in advance of and during the excavation work.

3 B. If the owner or operator of the underground
4 facility finds ~~[he]~~ that the owner or operator has no
5 underground facilities in the proposed area of excavation, the
6 owner or operator shall contact the appropriate one-call
7 notification center or mark in the appropriate color code as
8 specified in Section 62-14-5.1 NMSA 1978, marking the area as
9 "Clear" or "No Underground Facilities". If the area is not
10 marked as "Clear" or "No Underground Facilities", the excavator
11 shall contact the one-call notification system operating in the
12 ~~[intended excavation area or the owners or operators of any~~
13 ~~existing underground facility in and near the excavation area~~
14 ~~that are not members of the local one-call notification center]~~
15 region in order to verify the area as "Clear" or "No
16 Underground Facilities". The requirement of this subsection to
17 contact the appropriate one-call notification center does not
18 apply to a homeowner's residential property.

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

25 D. An owner of an underground facility shall not

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1 move or obliterate markings made pursuant to Chapter 62,
2 Article 14 NMSA 1978 or fabricate markings in an unmarked
3 location for the purpose of concealing or avoiding liability
4 for a violation of or noncompliance with the provisions of
5 Chapter 62, Article 14 NMSA 1978."

6 SECTION 5. Section 62-14-5.1 NMSA 1978 (being Laws 2001,
7 Chapter 150, Section 4) is amended to read:

8 "62-14-5.1. UNIFORM COLOR CODE FOR LOCATION OF
9 UNDERGROUND FACILITIES.--In marking an excavation site and the
10 location of underground facilities, [~~an~~ both the excavator and
11 the owner or operator shall use the following uniform color
12 code:

- 13 A. blue for water;
- 14 B. green for sewer;
- 15 C. orange for communications or 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 6. Section 62-14-7.1 NMSA 1978 (being Laws 1997,
22 Chapter 30, Section 1, as amended) is amended to read:

23 "62-14-7.1. [~~PIPELINE~~] ONE-CALL NOTIFICATION SYSTEM.--

- 24 A. [~~If a one-call system is operating in the~~
25 ~~region~~] An owner or operator of an underground facility subject
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1 to Chapter 62, Article 14 NMSA 1978 shall be a member of a one-
2 call notification system [~~by April 15, 2008, unless earlier~~
3 ~~membership is required by federal law~~] operating in the region
4 with the exception of private underground facilities owned by a
5 homeowner and operated and located on residential property. A
6 one-call notification system may be for a region of the state
7 or statewide in scope, unless federal law provides otherwise.

8 B. Each one-call notification system shall be
9 operated by:

- 10 (1) an owner or operator of pipeline
11 facilities;
12 (2) a private contractor;
13 (3) a state or local government agency; or
14 (4) a person who is otherwise eligible under
15 state law to operate a one-call notification system.

16 C. If the one-call notification system is operated
17 by owners or operators of pipeline facilities, it shall be
18 established as a nonprofit entity governed by a board of
19 directors that shall establish the operating processes,
20 procedures and technology needed for a one-call notification
21 system. The board shall further establish a procedure or
22 formula to determine the equitable share of each member for the
23 costs of the one-call notification system. The board may
24 include representatives of excavators or other persons deemed
25 eligible to participate in the system who are not owners or

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1 operators.

2 D. Excavators shall give advance notice to the one-
3 call notification system operating in the intended excavation
4 area and provide information established by rule of the
5 commission, except when excavations are by or for a person
6 that:

7 (1) owns or leases or owns a mineral leasehold
8 interest in the real property on which the excavation occurs;
9 and

10 (2) operates all underground facilities
11 located in the intended excavation area.

12 E. The one-call notification system shall promptly
13 transmit excavation notice information to owners or operators
14 of pipeline facilities and other underground facilities in the
15 intended excavation area.

16 F. After receiving advance notice, owners and
17 operators of pipeline facilities and other underground
18 facilities shall locate and mark their [~~pipeline~~] facilities in
19 the intended excavation area.

20 G. The one-call notification system shall provide a
21 toll-free telephone number or another comparable and reliable
22 means of communication to receive advance notice of excavation.
23 Means of communication to distribute excavation notice to
24 owners or operators of pipeline facilities and other
25 underground facilities shall be reliable and capable of

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1 coordination with one-call notification systems operating in
2 other regions of the state.

3 H. Operators of one-call notification systems shall
4 notify the commission of its members and the name and telephone
5 number of the contact person for each member and make available
6 to the commission appropriate records in investigations of
7 alleged violations of Chapter 62, Article 14 NMSA 1978.

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

15 J. The commission may prescribe reasonable maximum
16 rates for the provision of one-call services in New Mexico,
17 provided that if the reasonableness of such rates is contested
18 in the manner provided by commission rule, the burden of proof
19 to show the unreasonableness of such rates shall be upon the
20 person contesting their reasonableness."

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

23 "62-14-8. PENALTIES.--In addition to any other liability
24 imposed by law, an excavator, after a formal hearing and upon a
25 finding, who has failed to comply with Subsection C of Section
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1 62-14-3 NMSA 1978 is subject to an administrative penalty of up
2 to five thousand dollars (\$5,000) for a first offense as
3 assessed by the commission. Thereafter, the commission may
4 assess an administrative penalty of up to a maximum of twenty-
5 five thousand dollars (\$25,000) for subsequent violations of
6 Subsection C of Section 62-14-3 NMSA 1978. In addition to any
7 other penalty imposed by law, an operator of underground
8 pipeline facilities or underground utilities, excavator or
9 operator of a one-call notification system, after formal
10 hearing and upon a finding, who has willfully failed to comply
11 with Chapter 62, Article 14 NMSA 1978 [~~and whose failure~~
12 ~~contributes to the damage of any pipeline or underground~~
13 ~~utility line]~~ shall be subject to an administrative penalty of
14 up to five thousand dollars (\$5,000) for a first offense as
15 assessed by the commission. Thereafter, upon finding that a
16 violation of Chapter 62, Article 14 NMSA 1978 has occurred, the
17 commission may, upon consideration of the nature,
18 circumstances, gravity of the violation, history of prior
19 violations, effect on public health, safety or welfare and good
20 faith on the part of the person in attempting to remedy the
21 cause of the violation, assess an administrative penalty up to
22 a maximum of twenty-five thousand dollars (\$25,000) per
23 violation consistent with federal law. No offense occurring
24 more than five years prior to the current offense charged shall
25 be considered for any purpose. All actions to recover the

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1 penalties provided for in this section shall be brought by the
2 commission. All penalties recovered in any such action shall
3 be paid into the state general fund."

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