

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 500

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

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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underscored material = new  
[bracketed material] = delete

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. "master meter system and operators" means a  
16 pipeline system that distributes natural gas or liquid propane  
17 gas within a public place, such as a mobile home park, housing  
18 project, apartment complex, school, university or hospital  
19 where the operator of the master meter system purchases gas  
20 from a distributor through a single large meter and resells the  
21 gas through a gas distribution pipeline system. The resale may  
22 occur as a payment included in a rental payment or association  
23 dues or as a separately metered system;

24 [H.] I. "means of location" means a mark such as a  
25 stake, a flag, whiskers or paint that is conspicuous in nature

1 and that is designed to last at least ten working days if not  
2 disturbed;

3 ~~[F.]~~ J. "mechanical excavating equipment" means all  
4 equipment powered by any motor, engine or hydraulic or  
5 pneumatic device used for excavating and includes trenchers,  
6 bulldozers, backhoes, power shovels, scrapers, draglines, clam  
7 shells, augers, drills, cable and pipe plows or other plowing-  
8 in or pulling-in equipment;

9 ~~[J.]~~ K. "one-call notification system" means a  
10 communication system in which an operation center provides  
11 telephone services or other reliable means of communication for  
12 the purpose of receiving excavation notice and damage reporting  
13 information and distributing that information to owners and  
14 operators of pipelines and other underground facilities;

15 ~~[K.]~~ L. "person" means the legal representative of  
16 or an individual, partnership, corporation, joint venture,  
17 state, subdivision or instrumentality of the state or an  
18 association;

19 ~~[L.]~~ M. "pipeline" means a pipeline or system of  
20 pipelines and appurtenances for the transportation or movement  
21 of any oil or gas, or oil or gas products and their byproducts  
22 subject to the jurisdiction of federal law or regulation, with  
23 the exception of master meter systems and operators;

24 ~~[M.]~~ N. "reasonable efforts" means notifying the  
25 appropriate one-call notification center or underground

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1 facility owner or operator of planned excavation;

2 [N-] O. "underground facility" means any tangible  
3 property described in Subsections C, L and O of this section  
4 that is underground, but does not include residential  
5 sprinklers or low-voltage lighting; and

6 [O-] P. "underground utility line" means an  
7 underground conduit or cable, including fiber optics, and  
8 related facilities for transportation and delivery of  
9 electricity, telephonic or telegraphic communications or water,  
10 sewer and fire protection lines, with the exception of master  
11 meter systems and operators."

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

14 "62-14-3. EXCAVATION.--[Every] A person who prepares  
15 engineering plans for excavation or who engages in excavation  
16 shall:

17 A. determine the location of any underground  
18 facility in or near the area where the excavation is to be  
19 conducted, including a request to the owner or operator of the  
20 underground facility to locate the underground facility  
21 pursuant to Section 62-14-5 NMSA 1978;

22 B. plan the excavation to avoid or minimize  
23 interference or damage to underground facilities in or near the  
24 excavation area;

25 C. provide telephonic advance notice of the

1 commencement, extent and duration of the excavation work to the  
2 one-call notification system operating in the intended  
3 excavation area, ~~[or]~~ and to the owners or operators of any  
4 existing underground facility in and near the excavation area  
5 that are not members of the local one-call notification center,  
6 in order to allow the owners to locate and mark the location of  
7 the underground facility as described in Section 62-14-5 NMSA  
8 1978 prior to the commencement of work in the excavation area,  
9 and shall request reaffirmation of line location every ten  
10 working days after the initial ~~[locate]~~ request to locate;

11 D. prior to initial exposure of the underground  
12 facility, maintain at least an estimated clearance of eighteen  
13 inches between existing underground facilities for which the  
14 owners or operators have previously identified the location and  
15 the cutting edge or point of any mechanical excavating  
16 equipment utilized in the excavation and continue excavation in  
17 a manner necessary to prevent damage;

18 E. provide such support for existing underground  
19 facilities in or near the excavation area necessary to prevent  
20 damage to them;

21 F. backfill all excavations in a manner and with  
22 materials as may be necessary to prevent damage to and provide  
23 reliable support during and following backfilling activities  
24 for preexisting underground facilities in or near the  
25 excavation area;

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1           G. immediately notify the one-call notification  
2 system operating in the area in the form and format required by  
3 the commission and by telephone the owner of any underground  
4 facilities [which] that may have been damaged or dislocated  
5 during the excavation work; and

6           H. not move or obliterate markings made pursuant to  
7 Chapter 62, Article 14 NMSA 1978 or fabricate markings in an  
8 unmarked location for the purpose of concealing or avoiding  
9 liability for a violation of or noncompliance with the  
10 provisions of Chapter 62, Article 14 NMSA 1978."

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

13           "62-14-4. EMERGENCY EXCAVATION.--Every person who engages  
14 in emergency excavation shall take all necessary and reasonable  
15 precaution to avoid or minimize interference with or damage to  
16 existing underground facilities in and near the [~~construction~~]  
17 excavation area and shall notify as promptly as possible the  
18 owners of underground facilities located in and near the  
19 emergency excavation area and the one-call notification system  
20 operating in the area in the form and format required by the  
21 commission. In the event of any damage to or dislocation of  
22 any underground facility caused by the emergency excavation  
23 work, the person responsible for the excavation shall  
24 immediately notify the owner of the underground facility and  
25 the one-call notification system operating in the area in the

1 form and format required by the commission."

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

4 "62-14-5. MARKING OF FACILITIES.--

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

13 B. If the owner or operator of the underground  
14 facility finds ~~he~~ that the owner or operator has no  
15 underground facilities in the proposed area of excavation, the  
16 owner or operator shall contact the appropriate one-call  
17 notification center or mark in the appropriate color code as  
18 specified in Section 62-14-5.1 NMSA 1978, marking the area as  
19 "Clear" or "No Underground Facilities". If the area is not  
20 marked as "Clear" or "No Underground Facilities", the excavator  
21 shall contact the one-call notification system operating in the  
22 ~~[intended excavation area or the owners or operators of any~~  
23 ~~existing underground facility in and near the excavation area~~  
24 ~~that are not members of the local one-call notification center]~~  
25 region in order to verify the area as "Clear" or "No

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1 Underground Facilities".

2 C. If the owner or operator fails to correctly mark  
3 the underground facility after being given advance notice and  
4 such failure to correctly mark the facility results in  
5 additional costs to the person doing the excavating, then the  
6 owner or operator shall reimburse the person engaging in the  
7 excavation for the reasonable costs incurred.

8 D. An owner of an underground facility shall not  
9 move or obliterate markings made pursuant to Chapter 62,  
10 Article 14 NMSA 1978 or fabricate markings in an unmarked  
11 location for the purpose of concealing or avoiding liability  
12 for a violation of or noncompliance with the provisions of  
13 Chapter 62, Article 14 NMSA 1978."

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

16 "62-14-5.1. UNIFORM COLOR CODE FOR LOCATION OF  
17 UNDERGROUND FACILITIES.--In marking an excavation site and the  
18 location of underground facilities, [~~an~~] both the excavator and  
19 the owner or operator shall use the following uniform color  
20 code:

- 21 A. blue for water;
- 22 B. green for sewer;
- 23 C. orange for communications or coaxial cable;
- 24 D. pink for survey;
- 25 E. purple for reclaimed water;

- 1 F. red for electric;
- 2 G. white for proposed excavation area; and
- 3 H. yellow for gas."

4 SECTION 6. Section 62-14-7.1 NMSA 1978 (being Laws 1997,  
5 Chapter 30, Section 1, as amended) is amended to read:

6 "62-14-7.1. [~~PIPELINE~~] ONE-CALL NOTIFICATION SYSTEM.--

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

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

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

24 C. If the one-call notification system is operated  
25 by owners or operators of pipeline facilities, it shall be

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

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

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

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

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

24 F. After receiving advance notice, owners and  
25 operators of pipeline facilities and other underground

1 facilities shall locate and mark their [~~pipeline~~] facilities in  
2 the intended excavation area.

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

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

16 I. One-call notification systems and owners and  
17 operators of pipeline facilities shall promote public awareness  
18 of the availability and operation of one-call notification  
19 systems and work with state and local governmental agencies  
20 charged with issuing excavation permits to provide information  
21 concerning and promoting awareness by excavators of one-call  
22 notification systems.

23 J. The commission may prescribe reasonable maximum  
24 rates for the provision of one-call services in New Mexico,  
25 provided that if the reasonableness of such rates is contested

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1 in the manner provided by commission rule, the burden of proof  
2 to show the unreasonableness of such rates shall be upon the  
3 person contesting their reasonableness."

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

6 "62-14-8. PENALTIES.--In addition to any other liability  
7 imposed by law, an excavator, after a formal hearing and upon a  
8 finding, who has failed to comply with Subsection C of Section  
9 62-14-3 NMSA 1978 is subject to an administrative penalty of up  
10 to five thousand dollars (\$5,000) for a first offense as  
11 assessed by the commission. Thereafter, the commission may  
12 assess an administrative penalty of up to a maximum of twenty-  
13 five thousand dollars (\$25,000) for subsequent violations of  
14 Subsection C of Section 62-14-3 NMSA 1978. In addition to any  
15 other penalty imposed by law, an operator of underground  
16 pipeline facilities or underground utilities, excavator or  
17 operator of a one-call notification system, after formal  
18 hearing and upon a finding, who has willfully failed to comply  
19 with Chapter 62, Article 14 NMSA 1978 [~~and whose failure~~  
20 ~~contributes to the damage of any pipeline or underground~~  
21 ~~utility line]~~ shall be subject to an administrative penalty of  
22 up to five thousand dollars (\$5,000) for a first offense as  
23 assessed by the commission. Thereafter, upon finding that a  
24 violation of Chapter 62, Article 14 NMSA 1978 has occurred, the  
25 commission may, upon consideration of the nature,

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1 circumstances, gravity of the violation, history of prior  
2 violations, effect on public health, safety or welfare and good  
3 faith on the part of the person in attempting to remedy the  
4 cause of the violation, assess an administrative penalty up to  
5 a maximum of twenty-five thousand dollars (\$25,000) per  
6 violation consistent with federal law. No offense occurring  
7 more than five years prior to the current offense charged shall  
8 be considered for any purpose. All actions to recover the  
9 penalties provided for in this section shall be brought by the  
10 commission. All penalties recovered in any such action shall  
11 be paid into the state general fund."

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underscoring material = new  
~~bracketed material~~ = delete