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HOUSE BILL 494

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY
Stephen Easley

AN ACT

RELATING TO PIPELINES; PROVIDING FOR A POSITIVE RESPONSE NOTICE
BY OWNERS OR OPERATORS OF PIPELINES TO VERIFY LOCATIONS FOR
EXCAVATORS.

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

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

3 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 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 L. "person" means the legal representative of or an
16 individual, partnership, corporation, joint venture, state,
17 subdivision or instrumentality of the state or an association;

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

23 N. "positive response" means a documented response,
24 within the advance notice period, initiated by owners or
25 operators of pipelines and underground facilities by reliable

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1 means of communication, which may include telephonic notice
2 with documented call-log record, fax, email, internet or
3 automated response system directly to the excavator; or to the
4 one-call notification system's positive response registry
5 system. A positive response allows the excavator to verify
6 whether all affected pipeline and underground facility owners
7 or operators have marked their underground facilities pursuant
8 to Section 62-14-5 NMSA 1978 prior to commencing to the
9 excavation site and commencing excavation;

10 [N-] O. "reasonable efforts" means notifying the
11 appropriate one-call notification center or underground
12 facility owner or operator of planned excavation;

13 [O-] P. "underground facility" means any tangible
14 property described in Subsections C, M and [P] Q of this
15 section that is underground, but does not include residential
16 sprinklers or low-voltage lighting; and

17 [P-] Q. "underground utility line" means an
18 underground conduit or cable, including fiber optics, and
19 related facilities for transportation and delivery of
20 electricity, telephonic or telegraphic communications or water,
21 sewer and fire protection lines, with the exception of master
22 meter systems and operators."

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

25 "62-14-5. MARKING OF FACILITIES.--

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

9 B. If the owner or operator of the underground
10 facility finds that the owner or operator has no underground
11 facilities in the proposed area of excavation, the owner or
12 operator shall ~~[contact the appropriate one-call notification~~
13 ~~center or mark]~~ provide a positive response and, if chosen,
14 mark the area as "Clear" or "No Underground Facilities" in the
15 appropriate color code as specified in Section 62-14-5.1 NMSA
16 1978 ~~[marking the area as "Clear" or "No Underground~~
17 ~~Facilities". If the area is not marked as "Clear" or "No~~
18 ~~Underground Facilities", the excavator shall contact the one-~~
19 ~~call notification system operating in the region in order to~~
20 ~~verify the area as "Clear" or "No Underground Facilities"]~~.

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

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1 excavation for the reasonable costs incurred.

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

8 SECTION 3. Section 62-14-7.1 NMSA 1978 (being Laws 1997,
9 Chapter 30, Section 1, as amended) is amended to read:

10 "62-14-7.1. ONE-CALL NOTIFICATION SYSTEM.--

11 A. An owner or operator of an underground facility
12 subject to Chapter 62, Article 14 NMSA 1978 shall be a member
13 of a one-call notification system operating in the region with
14 the exception of private underground facilities owned by a
15 homeowner and operated and located on residential property. A
16 one-call notification system may be for a region of the state
17 or statewide in scope, unless federal law provides otherwise.

18 B. Each one-call notification system shall be
19 operated by:

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

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

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

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

19 and

20 (2) operates all underground facilities
21 located in the intended excavation area.

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

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1 F. After receiving advance notice, owners and
2 operators of pipeline facilities and other underground
3 facilities shall locate and mark their facilities in the
4 intended excavation area and shall provide a positive response.
5 The owners and operators of pipeline facilities and other
6 underground facilities shall make available to the commission
7 appropriate positive response records for investigations of
8 alleged violations of Chapter 62, Article 14 NMSA 1978.

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

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

22 I. One-call notification systems and owners and
23 operators of pipeline facilities shall promote public awareness
24 of the availability and operation of one-call notification
25 systems and work with state and local governmental agencies

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1 charged with issuing excavation permits to provide information
2 concerning and promoting awareness by excavators of one-call
3 notification systems.

4 J. The commission may prescribe reasonable maximum
5 rates for the provision of one-call services in New Mexico,
6 provided that if the reasonableness of such rates is contested
7 in the manner provided by commission rule, the burden of proof
8 to show the unreasonableness of such rates shall be upon the
9 person contesting their reasonableness."