

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 587

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

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-

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

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

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

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

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

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

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

2 ~~[D.]~~ J. "one-call notification system" means a
3 communication system in which an operation center provides
4 telephone services or other reliable means of communication for
5 the purpose of receiving excavation notice information and
6 distributing that information to owners and operators of
7 ~~[pipeline]~~ pipelines and other underground facilities;

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

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

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

6 [F.] 0. "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 ~~[G. "cable television lines and related facilities"~~
11 ~~means the facilities of any cable television system or~~
12 ~~closed-circuit coaxial cable communications system or other~~
13 ~~similar transmission service used in connection with any cable~~
14 ~~television system or other similar closed-circuit coaxial cable~~
15 ~~communications system;~~

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

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

24 ~~J. "means of location" means a mark such as a stake~~
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1 ~~in earthen areas or a paint mark in paved areas that is~~
2 ~~conspicuous in nature and that is designed to last at least~~
3 ~~five days if not disturbed;~~

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

5 L. ~~"commission" means the state corporation~~
6 ~~commission or its successor agency.]"~~

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

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

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

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

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

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

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

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

23 G. immediately notify [~~as promptly as possible~~] by
24 telephone the owner of any underground facilities which may
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1 have been damaged or dislocated during the excavation work; and
2 H. not move or obliterate markings made pursuant to
3 Chapter 62, Article 14 NMSA 1978 or fabricate markings in an
4 unmarked location for the purpose of concealing or avoiding
5 liability for a violation of or noncompliance with the
6 provisions of Chapter 62, Article 14 NMSA 1978."

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

9 "62-14-5. MARKING OF FACILITIES. --

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

18 B. If the owner or operator of the underground
19 facility finds he has no underground facilities in the proposed
20 area of excavation, the owner or operator shall contact the
21 appropriate one-call notification center or mark in the
22 appropriate color code as specified in Section 62-14-5.1 NMSA
23 1978 the area as "Clear" or "No Underground Facilities". In
24 this instance, paint may be used in earthen areas.

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

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

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

15 "62-14-5.1. [NEW MATERIAL] UNIFORM COLOR CODE FOR
16 LOCATION OF UNDERGROUND FACILITIES. --In marking the location of
17 underground facilities, an owner or operator shall use the
18 following uniform color code:

- 19 A. blue for water;
- 20 B. green for sewer;
- 21 C. orange for communications/coaxial cable;
- 22 D. pink for survey;
- 23 E. purple for reclaimed water;
- 24 F. red for electric;

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1 G. white for proposed excavation area; and

2 H. yellow for gas. "

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

5 "62-14-6. LIABILITY FOR DAMAGE TO UNDERGROUND
6 FACILITIES. --

7 A. If any underground facility is damaged by any
8 person who failed to make reasonable efforts to [~~inform himself~~
9 ~~as to~~] determine its location as provided in Chapter 62,
10 Article 14 NMSA 1978, that person shall reimburse the owner of
11 the underground facility for the actual cost of the damage to
12 the underground facility, including the cost of restoration of
13 services. The person engaging in the excavation may also be
14 liable to the owner or operator of the underground facility for
15 the comparative negligence of the person engaging in the
16 excavation which results in damage to the facility for an
17 additional amount not to exceed three hundred thousand dollars
18 (\$300,000) for each occurrence.

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

4 C. If any underground facility is damaged by any
5 person who has made reasonable efforts [~~to inform himself as~~]
6 to determine its location and damage to the underground
7 facility is caused by the failure of the owner or operator to
8 correctly locate that underground facility as provided in
9 Section 62-14-5 NMSA 1978, then the person engaging in the
10 excavation shall have no liability for the damage to that
11 facility.

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

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

17 "62-14-7.1. PIPELINE ONE-CALL NOTIFICATION SYSTEM --

18 A. Every owner or operator of a pipeline facility
19 shall be a member of a one-call notification system. A
20 one-call notification system may be for a region of the state
21 or statewide in scope, unless federal law provides otherwise.

22 B. Each one-call notification system shall be
23 operated by:

- 24 (1) an owner or operator of pipeline

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1 facilities;

2 (2) a private contractor;

3 (3) a state or local government agency; or

4 (4) a person who is otherwise eligible under
5 state law to operate a one-call notification system.

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

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

22 (1) owns or leases or owns a mineral leasehold
23 interest in the real property on which the excavation occurs;
24 and

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

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

6 F. After receiving advance notice, owners and
7 operators of pipeline facilities shall locate and mark their
8 pipeline facilities in the intended excavation area.

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 shall be reliable
14 and capable of coordination with one-call notification systems
15 operating in other regions of the state.

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

21 I. One-call notification systems and owners and
22 operators of pipeline facilities shall promote public awareness
23 of the availability and operation of one-call notification
24 systems and work with state and local governmental agencies
25 charged with issuing excavation permits to provide information

1 concerning and [~~promote~~] promoting awareness by excavators of
 2 one-call notification systems. "

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

5 "62-14-8. PENALTIES. -- In addition to any other liability
 6 imposed by law, [~~any person who willfully fails to comply with~~
 7 ~~Chapter 62, Article 14 NMSA 1978 and whose failure proximately~~
 8 ~~contributes to the damage of any pipeline or underground~~
 9 ~~utility line shall be subject to a civil penalty not to exceed~~
 10 ~~five hundred dollars (\$500) for each offense. All actions to~~
 11 ~~recover the penalties provided for in this section shall be~~
 12 ~~brought by either the attorney general or the appropriate~~
 13 ~~district attorney upon complaint of the commission the~~
 14 ~~New Mexico public utility commission or the construction~~
 15 ~~industries division of the regulation and licensing department.~~
 16 ~~All such actions shall be brought in the district court in and~~
 17 ~~for the county in which the cause, or some part of the cause,~~
 18 ~~arose or in which the person complained of has his principal~~
 19 ~~place of business or residence]~~ an excavator, after a formal
 20 hearing and upon a finding, who has failed to comply with
 21 Subsection C of Section 62-14-3 NMSA 1978 is subject to an
 22 administrative penalty of up to five thousand dollars (\$5,000)
 23 for a first offense as assessed by the commission. Thereafter,
 24 the commission may assess an administrative penalty of up to a
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1 maximum of twenty-five thousand dollars (\$25,000) for
2 subsequent violations of Subsection C of Section 62-14-3 NMSA
3 1978. In addition to any other penalty imposed by law, an
4 operator of underground pipeline facilities or underground
5 utilities, excavator or operator of a one-call notification
6 system, after formal hearing and upon a finding, who has
7 willfully failed to comply with Chapter 62, Article 14 NMSA
8 1978 and whose failure contributes to the damage of any
9 pipeline or underground utility line shall be subject to an
10 administrative penalty of up to five thousand dollars (\$5,000)
11 for a first offense as assessed by the commission. Thereafter,
12 upon finding that a violation of Chapter 62, Article 14 NMSA
13 1978 has occurred, the commission may, upon consideration of
14 the nature, circumstances, gravity of the violation, history of
15 prior violations, effect on public health, safety or welfare
16 and good faith on the part of the person in attempting to
17 remedy the cause of the violation, assess an administrative
18 penalty up to a maximum of twenty-five thousand dollars
19 (\$25,000) per violation consistent with federal law. No
20 offense occurring more than five years prior to the current
21 offense charged shall be considered for any purpose. All
22 actions to recover the penalties provided for in this section
23 shall be brought by the commission. All penalties recovered in
24 any such action shall be paid into the state general fund."
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