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FISCAL IMPACT REPORT

SPONSOR: HJC DATE TYPED: 3/15/01 HB 587/HJCS/aHJC/aSJC
 SHORT TITLE: Excavation Near Pipelines SB _____
 ANALYST: Valenzuela

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
 Public Regulation Commission

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to the amended House Judiciary Committee substitute makes technical corrections that reference the proper subsections of the statute.

Synopsis of the amended HJC Committee Substitute

The amended House Judiciary Committee (HJC) substitute for House Bill 587 makes substantive and technical changes to the original bill. A detailed summary is provided below.

Section 1. Adds to, amends, or makes technical corrections to existing definitions within this section of the statute:

Subsection F. Adds the following language “. . . and directional boring” to the end of the definition for “excavate”.

Subsection G. Adds new definition for the term “excavator”.

Subsection H. Amends the definition of “means of location” to ensure that markings include use of “a flag or whiskers” and extends the time the markings should be able to stand undisturbed, from five to ten days.

Subsection J. Amends the definition for “one-call notification system” by clarifying that “underground facilities”.

Subsection L. Amends the definition of “pipeline” to revert back to the statute’s original language.

Subsection N. Makes technical corrections to the definition of “underground facility”.

Section 2. Requires excavators to make advance notice of or make known any problems resulting from excavation immediately via telephone to the one-call notification system, or the owners of or the operators of the area being excavated, and requires the excavation request to be reaffirmed after ten working days of the original request.

Section 3. Adds new language and makes technical corrections to the original bill.

Subsection B. Adds the requirement that the owner or operator of underground facilities to notify the one-call notification system that it has no facilities in the proposed excavation area. Requires the excavator to contact the one-call notification system to verify that an area marked as “Clear” or “No Underground Facilities” are marked accurately. Eliminates the option of using paint for markings on earthen areas.

Subsection D. Makes technical corrections to the language added by the original bill.

Section 4. No changes were made to the original bill.

Section 5. No changes were made to the original bill.

Section 6. Eliminates the changes made by the original bill, and thus, reverts to the original statute. Makes one substantive change to subsection H, which requires operators of one-call notification systems to notify the PRC of any investigations related to members of the systems.

Section 7. Adds language specific to excavators that requires compliance with subsection C of Section 62-14-3 NMSA 1978 and stipulates that a violations could result in a \$5,000.00 administrative penalty. Makes technical corrections to the House Bill 587 original changes. Deletes the alternative dispute resolution language, which is expanded upon in a new section (see Section 8).

Section 8. Creates a new section of the statute that requires the PRC to promulgate rules on voluntary alternative dispute resolution.

Synopsis of SPAC Amendments

The Senate Public Affairs Committee deleted the House Judiciary Amendments. Instead of \$100 per day, the rate of credit would be eight times the federal hourly wage.

Upon submitting an affidavit that the defendant has no property out of which to pay the fine or costs, the jail term is limited to sixty days.

Significant Issues

By limiting the credit rate and the amount of time that a defendant may spend in jail, the amendment would decrease the fiscal impact of the original bill and encourage more defendants to pay the fine rather than go to jail.

Synopsis of HJC Amendments

The House Judiciary Committee amends the credit per day or portion of a day of incarceration from \$100 to twelve hours of the federal minimum wage or the amount equal to the actual daily cost of incarceration, whichever is greater.

Synopsis of Original Bill

House Bill 587 amends numerous statutes that relate to excavation damage to pipelines and underground utility lines [Section 62-14-1 to Section 62-14-10 NMSA 1978]. In general, the additions and clarifications make changes to hold accountable for pipeline safety incidents owners/operators of underground facilities, excavators, and operators of one-call notification systems. A section-by-section summary is outlined below:

Section 1. Amends Section 62-14-2 by adding two new definitions to the statute: “emergency excavation” and “reasonable efforts” to make the statute more clear in its reference of these terms. Deletes a major portion of the “pipeline” definition by eliminating the exemption for gathering lines or systems operated exclusively for gathering of oil or gas, etc. Reorders, alphabetically, the definitions.

Section 2. Amends Section 62-14-3 to prohibit excavators from concealing a violation of this statute, to require reaffirmation of line location every ten days after initial line locate request, and to require continued excavation work to be done in a manner to prevent damage. Makes technical corrections.

Section 3. Adds two new subsections to Section 62-14-5. The first requires an owner of underground facilities to mark in paint with the words “Clear” or “No Underground Facilities” in those locations where facilities are not present, or contact the excavator directly. The second new subsection prohibits excavators from concealing a violation of this statute. Makes technical corrections.

Section 4. Adds a new section to the statute, which standardizes the color code scheme for marking locations of underground facilities.

Section 5. Makes technical corrections to Section 62-14-6 to align with the changes to definitions.

Section 6. Allows exemptions for owners from the one-call notification system [Section 62-14-7.1], pursuant to federal law. Makes technical corrections.

Section 7. Amends Section 62-14-8 making operators of underground facilities, excavators, or operators of the one-call notification system accountable for complying with the statute and gives authority to the Public Regulation Commission (PRC) to hear violations and assess administrative penalties of up to \$5.0 for the first offense and \$25.0 for subsequent offenses. The PRC is required to adopt rules for alternative dispute resolution. Strikes the language that

requires either the Office of the Attorney General or relevant District Attorney to pursue civil remedies to violations in district court.

Section 8. Makes the effective of the bill July 1, 2001.

Significant Issues

A substantial change in the bill is that it removes the language in the definition of “pipeline” which currently exempted several components that aid in the collection and transportation of products such as gathering pipelines and compressor/pumping stations. The exemption is not valid for systems in close proximity of municipalities and other locations as identified in the current statute. However, as New Mexico has learned this past year, pipelines in desolate locations can have a devastating impact on public health and safety.

A report¹ issued by the U.S. Governmental Accounting Office (GAO) stated that “the total number of major pipeline accidents increased by about 4 percent annually” over a 10-year period from 1989 to 1998. The GAO data indicate that the primary causes of these accidents results from outside forces, such as excavation.

FISCAL IMPLICATIONS

House Bill 587 does not carry an appropriation. Enactment would have only a minor impact on the PRC, of which it could absorb. The changes proposed in the bill could meet with approval of the Office of Pipeline Safety, and as a result, could result in additional federal funding for the Transportation Division of the PRC. Consequently, the Legislature should encourage the PRC to pursue this potential funding source. Currently, the Transportation Division receives roughly 10 percent of its operating budget from the federal government.

ADMINISTRATIVE IMPLICATIONS

Enactment would have only a minor impact on the PRC, of which it could absorb.

MFV/njw:ar

¹U.S. GAO. “Pipeline Safety: The Office of Pipeline Safety is Changing How it Oversees the Pipeline Industry.” *Report to the Ranking Minority Member, Committee on Commerce, U.S. House of Representatives*, RCED-00-128, May 2000.