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SENATE BILL 597

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO UTILITIES; AMENDING SECTIONS OF CHAPTER 62, ARTICLE  
14 NMSA 1978 TO CLARIFY CONDITIONS FOR A PERSON OWNING OR  
OPERATING AN UNDERGROUND FACILITY TO LOCATE AND MARK ON THE  
SURFACE THE ACTUAL HORIZONTAL LOCATION OF THE UNDERGROUND  
FACILITY TO A PERSON INTENDING TO EXCAVATE.

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"

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

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

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

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

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

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

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

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1 in or pulling-in equipment;

2 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 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 L. "pipeline" means a pipeline or system of  
12 pipelines and appurtenances for the transportation or movement  
13 of any oil or gas, or oil or gas products and their byproducts  
14 subject to the jurisdiction of federal law or regulation;

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

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

22 O. "underground utility line" means an underground  
23 conduit or cable, including fiber optics, and related  
24 facilities for transportation and delivery of electricity,  
25 telephonic or telegraphic communications or water, sewer and

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1 fire protection lines."

2 Section 2. 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, including  
6 up to a client's or customer's point of use, an underground  
7 facility shall, upon the request of a person intending to  
8 commence an excavation and upon advance notice, locate and mark  
9 on the surface the actual horizontal location, within twelve  
10 inches by some means of location, of the underground facilities  
11 in or near the area of the excavation, regardless of ownership,  
12 so as to enable the person engaged in excavation work to locate  
13 the facilities in advance of and during the excavation work.

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

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1 in order to verify the area as "Clear" or "No Underground  
2 Facilities".

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

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