

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Representative Pollan**

A Bill

ACT 727 OF 1995
HOUSE BILL 1264

For An Act To Be Entitled

"AN ACT TO AMEND VARIOUS SECTIONS OF ARKANSAS CODE TITLE
14, CHAPTER 271, SUBCHAPTER 1 CONCERNING UNDERGROUND
FACILITIES DAMAGE PREVENTION; AND FOR OTHER PURPOSES."

Subtitle

"AN ACT CONCERNING UNDERGROUND
FACILITIES DAMAGE PREVENTION."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code 14-271-102 is amended to read as follows:

"14-271-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) Damage includes the substantial weakening of structural or lateral support of underground facilities, the penetration or destruction of any protective coating, housing, or other protective device of underground facilities, the partial or complete severance of an underground facility, and the rendering of any underground facility inaccessible;

(2) Demolish or demolition means any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any powered tools, powered equipment, *exclusive of transportation equipment*, or discharge explosives;

(3) Excavate or excavation means to dig, compress, or remove earth, rock, or other materials in or on the ground by use of mechanized equipment or blasting including, but not necessarily limited to, augering, boring, backfilling, drilling, grading, pile driving, plowing in, pulling in, trenching, tunneling, and plowing;

(4) Mechanized equipment means equipment operated by means of mechanical power including trenchers, bulldozers, power shovels, augers,

1 backhoes, scrapers, drills, cable and pipe plows, and other equipment used for
2 plowing in or pulling in cable or pipe;

3 (5) Member operator means any operator that is a member of the
4 Arkansas One Call Center.

5 (6) One Call Center means a center operated by an organization which
6 has as one of its purposes to receive notification of planned excavation and
7 demolition in a specified area from excavators, and to disseminate such
8 notification of planned excavation or demolition to operators who are members
9 of the center.

10 (7) Operator means any public utility as defined in § 23-1-101, which
11 owns or operates an underground facility; all municipally owned or operated
12 water, sewer, or electric utilities; any gas utility however owned or
13 operated; all master meter operators whose underground facilities cross
14 property other than their own or under public right-of-ways; and any other
15 water or sewer utilities, owned or operated individually or by property
16 owners' associations, improvement districts, or property developers, serving
17 in excess of one hundred (100) customers;

18 (8) Person means any individual, any corporation, partnership,
19 association, or any other entity organized under the laws of any state, any
20 subdivision or instrumentality of a state, and any employee, agent, or legal
21 representative thereof;

22 (9) *'Preengineered project' means a public project wherein the public*
23 *agency responsible for the project, as part of its engineering and contract*
24 *procedures, holds a formal meeting prior to the commencement of any*
25 *construction work on the project in which all persons determined by the public*
26 *agency to have underground facilities located within the construction area of*
27 *the project are invited to attend and given an opportunity to verify or inform*
28 *the public agency of the location of their underground facilities, if any,*
29 *within the construction area and wherein the location of all known underground*
30 *facilities are located or noted on the engineering drawing and specifications*
31 *for the project;*

32 (10) Public agency means the state or any board, commission, or
33 agency of the state and any city, town, county, subdivision thereof, or other
34 governmental entity;

35 (11) Right-of-way means any area along which an underground facility

1 is located.

2 (12) Underground facility means any line, system, and appurtenance or
3 facility used for producing, storing, conveying, transmitting, or distributing
4 communications, electricity, gas, heat, water, steam, or sewage, but shall not
5 include cable television facilities;

6 (13) Working day means every day, except Saturday, Sunday, and
7 national and legal state holidays;

8 (14) Underground pipeline facilities means any underground pipeline
9 facility used to transport natural gas or hazardous liquids. However, this
10 definition does not apply to persons (including operator's master meters)
11 whose primary activity does not include the production, transportation, or
12 marketing of gas or hazardous liquids or to master metered systems whose
13 underground facilities do not cross property other than their own or are not
14 located under public right-of-ways."

15

16 SECTION 2. Arkansas Code 14-271-104 is amended to read as follows:

17 "14-271-104. Penalties - Civil remedies.

18 (a) (1) Except as provided in subdivision (a) (2) of this subsection, any
19 person who violates any provisions of this chapter shall be subject to a civil
20 penalty not to exceed *two thousand five hundred (\$2,500)* for each violation.

21 (2) Operators of underground pipeline facilities and excavators
22 shall, upon violation of any applicable requirements of 49 C.F.R. Part 198,
23 Subpart C, be subject to civil penalties not to exceed twenty-five thousand
24 dollars (\$25,000) for each violation for each day that the violation persists,
25 except that the maximum civil penalty shall not exceed five hundred thousand
26 dollars (\$500,000) for any related series of violations.

27 (b) (1) Actions to recover the penalties provided for in this section
28 shall be brought by the Attorney General of Arkansas, the county prosecutor or
29 the city attorney at the request of any person in the circuit court in the
30 county in which the cause, or some part thereof, arose or in which the
31 defendant has its principal place of business or resides.

32 (2) All penalties recovered in any such action shall be paid into
33 the General Fund of the state, county or municipality that prosecutes the
34 action.

35 (c) The Attorney General of Arkansas, the county prosecutor or the city

1 attorney shall, at the request of any person, bring an action in a court of
2 competent jurisdiction to enjoin any violation of 49 C.F.R. Part 198, Subpart
3 C, committed by operators of underground pipeline facilities and excavators.

4 (d) Nothing in this chapter shall be construed to modify or repeal
5 existing laws pertaining to the tort liability of local governments and their
6 employees.

7 (e) This chapter does not affect any civil remedies for personal injury
8 or property damage, including underground facilities, except as otherwise
9 specifically provided for in this chapter.

10 (f) *Neither the Arkansas Highway Commission, Arkansas State Highway and*
11 *Transportation Department nor their officers, agents, employees or*
12 *contractors, nor the county judges or their road departments shall be subject*
13 *to the provisions of this section."*

14

15 SECTION 3. Arkansas Code 14-271-105 is amended to read as follows:

16 "14-271-105. Ordinance or resolution adopting provisions.

17 (a) Every city of the first class, city of the second class,
18 incorporated town, county, and rural water association, whether formed as a
19 corporation, improvement district, or other legal entity, shall adopt an
20 ordinance or other formal resolution no later than January 1, 1989, indicating
21 whether the city, county, or rural water association desires to be subject to
22 the provisions of the One Call membership requirements of §14-271-107 of this
23 chapter. However, every first-class city, second-class city, incorporated
24 town, county, and rural water association which fails to adopt an ordinance or
25 resolution indicating whether it desires to not be covered by the provisions
26 of this chapter shall be subject to each and every provision of this chapter
27 on and after January 1, 1989.

28 (b) Notwithstanding subsection (a) of this section, every city of the
29 first-class, city of the second-class, incorporated town, county, and rural
30 water association, whether formed as a corporation, improvement district, or
31 other legal entity which operates an underground pipeline facility must become
32 a member of the One Call Center unless otherwise provided herein.

33 (c) Notwithstanding the issuance of a resolution opting out of One Call
34 membership under subsection (a), any city of the first class, city of the
35 second class, incorporated town, county and rural water association, whether

1 formed as a corporation, improvement district, or other legal entity, shall
2 remain subject to the provisions and requirements of Ark. Code Ann. §§ 14-271-
3 110 (a) (2), 14-271-111, 14-271-112, and 14-271-113."

4

5 SECTION 4. Arkansas Code 14-271-108 is amended to read as follows:

6 "14-271-108. Notice to One Call Center - Changes - Files.

7 (a) Each member operator having underground facilities, including those
8 facilities that have been abandoned in place by the member operator but not
9 yet physically removed and can be identified, shall file a notice with the One
10 Call Center that the member operator has underground facilities. The notice
11 shall include a list of the geographic areas where facilities are located,
12 providing as much specific information as reasonably possible, the name of the
13 member operator, and the name, title, address, and telephone number of its
14 representative designated to respond to notices of intent to excavate.

15 (b) Changes to any of the information contained in the notice filed in
16 accordance with subsection (a) of this section shall be filed with the One
17 Call Center within thirty (30) days of the change.

18 (c) The One Call Center shall file the notice submitted by member
19 operators and shall maintain an index of the notices.

20 (d) Member operators shall maintain records and drawings of all changes
21 and additions to their underground facilities."

22

23 SECTION 5. Arkansas Code 14-271-109 is amended to read as follows:

24 "14-271-109. Notice to One Call Center - Exceptions.

25 (a) Compliance with notice requirements of § 14-271-112 is not required
26 for:

27 (1) The moving of earth by tools manipulated only by human or
28 animal power; or

29 (2) Any form of cultivation for agricultural purposes, digging
30 for postholes on private property, farm ponds, land clearing, or other normal
31 agricultural purposes which are not on a right-of-way of an operator; or

32 (3) *Work by a public agency or its contractors on a preengineered*
33 *project; or*

34 (4) The opening of a grave in a cemetery; or

35 (5) Routine road work and general maintenance as performed in the

1 right-of-way by state or county maintenance departments, but excluding any
2 work or maintenance involving change of grade or clearing or widening drainage
3 ditches.

4 (b)(1) Compliance with notice requirements of § 14-271-112 is not
5 required of persons responsible for repair or restoration of service, or to
6 ameliorate an imminent danger to life, health, property, or public safety.

7 (2) However, those persons shall give, as soon as practicable,
8 oral notice of the emergency excavation or demolition to either the One Call
9 Center or to each operator having underground facilities located in the area
10 where the excavation or demolition is to be performed and request emergency
11 assistance from each operator so identified in locating and providing
12 immediate protection to its underground facilities. However, if such notice
13 is given to an operator of an underground pipeline facility, the person giving
14 the notification shall also notify the One Call Center as soon as is
15 reasonably possible.

16 (3) An imminent danger to life, health, property or public safety
17 exists whenever there is a substantial likelihood that loss of life, health,
18 or property will result before the procedures under § 14-271-112 can be fully
19 complied with.

20

21 SECTION 6. Arkansas Code 14-271-110 is amended to read as follows:

22 "14-271-110. Notifying operators of underground facilities -
23 Identification of location.

24 (a)(1) Within four (4) working hours after receiving notification of
25 intent to excavate or demolish, the One Call Center shall in turn notify all
26 member operators of underground facilities in the affected area of the
27 proposed activity.

28 (2) Unless otherwise agreed to between the excavators and
29 operator, within two (2) working days after notification from either the One
30 Call Center or the person proposing the activity, the operator shall identify
31 the approximate location of the facilities by field-marking on the surface by
32 paint, dye, stakes, or any other clearly visible marking which designates the
33 horizontal course of the facilities. If the operator has no facilities in the
34 area, the operator shall so inform the person proposing the activity, either
35 by contacting that person or by leaving such information at the site.

1 (3) When an underground facility is being located, the operator
2 shall furnish the excavator information which identifies the approximate
3 center line, approximate or estimated depth, when known, and dimensions of the
4 underground facility.

5 (4) When excavating within the approximate location of an
6 underground facility, the excavator shall uncover the facility using a method
7 approved by the operator. No power-driven tools or equipment shall be used
8 without the express approval of the operator.

9 (b) Subject to the provisions of §14-271-112(b) governing the duration
10 of a locate request, when projects are delayed or are lengthy in time and
11 location, the operator and excavator shall establish and maintain coordination
12 regarding location, marking, and identification of the facilities until all
13 excavation or demolition is completed.

14 (c) For purposes of this section, the approximate location of
15 underground facilities is defined as a strip of land at least three feet (3')
16 wide but not wider than the width of the facility plus one and one-half feet
17 (1 1/2') on either side of the facility."

18

19 SECTION 7. Arkansas Code 14-271-111 is amended to read as follows:

20 "14-271-111. Color code for marking facility and excavation or
21 demolition locations.

22 (a)(1) If the approximate location of an underground facility is marked
23 with temporary markers, stakes, or other physical means, the operator shall
24 follow the color coding prescribed as follows:

25

26 FACILITY AND TYPE OF	SPECIFIC GROUP
27 PRODUCT	IDENTIFYING COLOR
28 Electric power distribution and transmission	Safety red
29 Municipal electric systems	Safety red
30 Gas distribution and transmission	High visibility safety yellow
31 Oil distribution and transmission	High visibility safety yellow
32 Dangerous materials, product lines	High visibility safety yellow
33 Telephone and telegraph systems	Safety alert orange
34 Cable television	Safety alert orange
35 Police and fire communications	Safety alert orange

1 Water systems Safety precaution blue
2 Sewer systems Safety green.

3

4 (2) In addition to the foregoing, all underground facilities
5 installed after January 1, 1996, shall be permanently marked with tracing
6 wires of appropriate durability or in other manner which will enable the
7 operator to trace the specific course of the underground facility.

8 (b) Unless otherwise agreed by all affected operators, persons engaged
9 in excavation or demolition shall mark the proposed area of work with stakes,
10 flags, posts, or painted or chalked lines that are white in color and are
11 clearly visible.

12 (c) Any person who moves, removes, alters, conceals or defaces any
13 markings required under this act before the demolition or excavation work is
14 commenced shall be subject to the penalties contained in §14-271-104."

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16 SECTION 8. Arkansas Code 14-271-112 is amended to read as follows:

17 "14-271-112. Notice of intent to excavate or demolish.

18 (a) Except as provided in § 14-271-109, no person may engage in
19 excavation or demolition activities without having first notified the One Call
20 Center in accordance with the provisions listed in this section.

21 (b) Each person responsible for any excavation or demolition operation
22 shall serve written or telephonic notice of intent to excavate or demolish at
23 least two (2), but not more than ten (10), full working days before commencing
24 this activity. The notice of intent shall be delivered to the One Call Center.
25 The notice given by this section shall be effective for a period of *twenty*
26 (20) working days from the date that the notice was given. If the work to be
27 performed is not completed within this period, or if the location markings
28 have been removed or are no longer visible, the person engaging in the
29 demolition or excavation activity shall re-initiate the notice procedure set
30 forth in this section.

31 (c) The written or telephonic notice of intent required by subsection
32 (b) of this section shall contain the name of the person notifying the One
33 Call Center, the name, address, and telephone number of the person responsible
34 for the excavation or demolition, the starting date, anticipated duration and
35 type of excavation or demolition operation to be conducted, the specific

1 location of the proposed excavation or demolition, and whether or not
2 explosives are anticipated to be used.

3 (d) The One Call Center shall, as soon as practicable after receiving
4 such notice, provide persons giving notice of an intention to engage in an
5 excavation activity the names of any member operators of underground
6 facilities to whom the notice will be transmitted.

7 (e) An adequate record of notifications to the One Call Center shall be
8 maintained by the One Call Center. A copy of the record shall be furnished to
9 the persons giving notice of intent to excavate or demolish if requested. The
10 records shall be maintained by the One Call Center for at least three (3)
11 years.

12 (f) Nothing in this section shall be construed to obligate the One Call
13 Center to transmit a notice of intent to excavate for any operator that is not
14 a member of the One Call Center."

15

16 SECTION 9. Arkansas Code 14-271-113 is amended to read as follows:

17 "14-271-113. Notice of damage required - Exception.

18 (a) Except as provided by subsection (b) of this section, each person
19 responsible for any excavation or demolition operation that results in any
20 damage to an underground facility shall notify, immediately upon discovery of
21 the damage, the operator of the facility of the location and nature of the
22 damage and shall allow the operator reasonable time to accomplish necessary
23 repairs before completing the excavation or demolition in the immediate area
24 of the facility.

25 (b) Each person responsible for any excavation or demolition operation
26 that results in damage to an underground facility permitting the escape of any
27 flammable, toxic, or corrosive gas or liquid shall notify the operator,
28 police, and fire departments immediately upon discovery of the damage, and
29 take any other action reasonably necessary to protect persons and property and
30 to minimize the hazards until arrival of the operator's personnel or police
31 and fire departments."

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33 SECTION 10. Arkansas Code Title 14, Chapter 271, Subchapter 1 is
34 amended to add the following new section.

35 "14-271-114. Operators of underground pipeline facilities.

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