

State of Arkansas

76th General Assembly

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HOUSE BILL 1252

By: Representatives Pollan and Wilson

"AN ACT TO ENHANCE THE PUBLIC SAFETY BY THE PREVENTION OF
UNSAFE EXCAVATION OR DEMOLITION OPERATIONS WHICH COULD RESULT
IN DAMAGE BY AND TO UNDERGROUND FACILITIES; AND FOR OTHER
PURPOSES."

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

SECTION 1. SHORT TITLE. This Act may be cited as the "Arkansas
Underground Facilities Damage Prevention Act."

SECTION 2. DEFINITIONS. As used in this Act:

(a) "damage includes the substantial weakening of structural or lateral support of underground facilities, 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 rendering of any underground facility inaccessible;

(b) "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 of explosives;

(c) "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, back-filling, drilling, grading, pile driving, plowing in, pulling in, trenching, tunneling and plowing;

(d) "mechanized equipment" means equipment operated by means of mechanical power including trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows and other equipment used for plowing-in or pulling-in cable or pipe;

(e) "One Call Center" means the Arkansas One Call System, Inc., a non-profit corporation, or its successor, so long as it shall exist;

(f) "operator" means any public utility as defined in Section 1 of Act 324 of 1935, as amended, which owns or operates an underground facility; all municipally-owned or operated water, sewer, gas or electric utilities; and all non-public water, sewer or gas utilities, owned or operated individually or by property-owners associations, improvement districts, or property developers, serving in excess of one hundred (100) customers;

(g) "person" means any individual, any corporation, partnership, association, or any other entity organized under the laws of any state, any subdivision or instrumentality of a state, and any employee, agent, or legal representative thereof;

(h) "pre-engineered project" means a public project wherein the public agency responsible for such project, as part of its engineering and contract procedures, holds a formal meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and where the location of all known underground facilities are duly located or noted on the engineering drawing and specifications for the project;

(i) "public agency" means the state or any board, commission or agency of the state and any city, town, county, subdivision thereof or other governmental entity;

(j) "underground facility" means any line, system and appurtenance or facility used for producing, storing, conveying, transmitting, or distributing communications, electricity, gas, heat, petroleum, petroleum products, hazardous liquids, water, steam or sewage;

(k) "working day" means every day, except Saturday, Sunday, and national and legal state holidays.

SECTION 3. EXEMPTIONS. Compliance with notice requirements of Section 6 of this Act is not required for: (a) the moving of earth by tools manipulated only by human or animal power, nor (b) any form of cultivation for agricultural purposes, nor digging for postholes on private property, farm ponds,

land clearing or other normal agricultural purposes which are not on a private easement or right-of-way of an operator, nor (c) work by a public agency or its contractors on a pre-engineered project, nor (d) the opening of a grave in a cemetery, nor (e) a solid waste disposal site which is a pre-engineered project, nor (f) any individual excavating on his own property and who is not in the excavating business for hire, nor (g) routine road work and general maintenance as performed in the right-of-way by state or county maintenance departments.

SECTION 4. EXCAVATION AND DEMOLITION PERMITS. A permit issued pursuant to law authorizing excavation or demolition operation, shall not be deemed to relieve a person from the responsibility for complying with the provisions of this Act.

SECTION 5. FILING REQUIREMENTS OF UTILITY OPERATORS. (a) No later than thirty (30) days after the effective date of this Act, each operator having underground facilities, including those facilities that have been abandoned in place by the operator but not yet physically removed and can be identified, shall file a notice with the One Call Center that said operator has underground facilities. The notice shall include a list of the towns and cities where facilities are located, maps of those locations, if available, the name of the operator, and the name, title, address and telephone number of its representative designated to respond to notices of intent to excavate.

(b) Changes to any of the information contained in the list of maps filed in accordance with subpart (a) of this Section shall be filed with the One Call Center within thirty (30) days of the change. If changes on maps are not finalized, information from engineering drawings may be submitted in the interim.

(c) The One Call Center shall file the maps and lists submitted by operators and shall maintain an index of said maps and lists.

(d) The One Call Center shall, within one working day, furnish in writing when requested, to any party requesting such information, a list of operators having underground facilities in any given area of the State.

(e) After the effective date of this Act, operators shall maintain records and drawings of all changes and additions to their underground facilities.

SECTION 6. NOTICE OF INTENT TO EXCAVATE OR DEMOLISH. Except as provided in Sections 3 and 9 of this Act, no person may excavate in a street, highway, public space, a private easement or right-of-way of an operator, or demolish a building without having first notified either the operator(s) in the excavation area or the One Call Center in accordance with the provisions listed herein.

(a) Each person responsible for any excavation or demolition operation shall serve written or telephonic notice of intent to excavate or demolish at least two (2), but not more than ten (10), full working days before commencing such activity. The notice of intent shall be delivered either to the One Call Center or to the operator(s) in the area affected by the proposed excavation or demolition.

(b) The written or telephonic notice of intent required by subpart (a) of this Section shall contain the name, address, and telephone number of the person responsible for the excavation or demolition, the starting date, anticipated duration and type of excavation or demolition operation to be conducted, the specific location of the proposed excavation or demolition, and whether or not explosives are anticipated to be used.

(c) If the notification required by this Section is made by telephone, an adequate record of such notification shall be maintained by the One Call System, and a copy of the record shall be furnished to the persons giving notice of intent to excavate or demolish if requested.

SECTION 7. MANDATORY PARTICIPATION IN ONE CALL CENTER. All operators of underground facilities shall become members of the One Call Center. Membership shall be evidenced by participation in and payment for the services furnished by One Call Center.

SECTION 8. RESPONSE TO NOTICE OF INTENT TO EXCAVATE OR DEMOLISH.

(a) Within four (4) working hours after receiving notification of intent to excavate or demolish, the One Call Center shall in turn notify all operators of underground facilities in the affected area of the proposed activity. Within two (2) working days, unless otherwise agreed to between the excavators and operator, after notification from either the One Call Center or the person proposing the activity, the operator shall identify the approximate location of the facilities by field-marking on the surface by paint, dye, stakes, or

any other clearly visible marking which designates the horizontal course of such facilities. When pipe is being located, the operator shall furnish the excavator information which identifies the approximate center line, approximate or estimated depth and dimensions of the facility. If there is doubt regarding the depth of the facility, the excavator shall uncover the facility using a method recommended by the operator.

(b) When projects are delayed or are lengthy in time and location, the operator(s) and excavator(s) shall establish and maintain coordination regarding location, marking and identification of the facilities until all excavation or demolition is completed.

For purposes of this Section, the approximate location of underground facilities is defined as a strip of land at least three (3) feet wide but not wider than the width of the facility plus one-and-one-half (1 1/2) feet on either side of the facility. If the approximate location of an underground facility is marked with temporary markers, stakes, or other physical means, the operator shall follow the color coding prescribed herein:

FACILITY AND TYPE OF PRODUCT	SPECIFIC GROUP IDENTIFYING COLOR
Electric Power Distribution and Transmission	Safety Red
Municipal Electric Systems	Safety Red
Gas Distribution and Transmission	High Visibility Safety Yellow
Oil Distribution and Transmission	High Visibility Safety Yellow
Dangerous Materials, Product Lines	High Visibility Safety Yellow
Telephone and Telegraph Systems	Safety Alert Orange
Cable Television	Safety Alert Orange
Police and Fire Communications	Safety Alert Orange
Water Systems	Safety Precaution Blue
Sewer Systems	Safety Green.

SECTION 9. EMERGENCY EXCAVATION OR DEMOLITION. Compliance with notice requirements of Section 6 of this Act is not required of persons responsible for emergency excavation or demolition, for repair or restoration of service or to ameliorate an imminent danger to life, health, or property. Provided, however, that such persons give, as soon as practicable, oral notice of the emergency excavation or demolition to either the One Call Center or to each operator having underground facilities located in the area where such excava-

tion or demolition is to be performed and requests emergency assistance from each operator so identified in locating and providing immediate protection to its underground facilities. An imminent danger to life, health, or property exists whenever there is a substantial likelihood that loss of life, health, or property will result before the procedures under Sections 6 and 8 of this Act can be fully complied with.

SECTION 10. PRECAUTIONS TO AVOID DAMAGE. In addition to the notification requirements of Section 6, each person responsible for any excavation or demolition operation shall:

- (1) plan the excavation or demolition to avoid damage to or minimize interference with underground facilities in and near the construction area;
- (2) maintain a clearance between underground facilities and the cutting edge or point of any mechanized equipment, taking into account the known limit of control of such cutting edge or point, as may be reasonably necessary to avoid damage to such facility; and
- (3) provide such support for underground facilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such facilities.

SECTION 11. EXCAVATION OR DEMOLITION DAMAGE. (a) Except as provided by subpart (b) of this Section, each person responsible for any excavation or demolition operation that results in any damage to an underground facility shall, immediately upon discovery of such damage, notify the operator of such facility of the location and nature of the damage and shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of such facility.

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

SECTION 12. CIVIL PENALTIES. Any person who violates any provisions of

this Act shall be subject to a civil penalty not to exceed One Thousand Dollars (\$1,000.00) for each violation. Actions to recover the penalty provided for in this Section shall be brought by the Attorney General of Arkansas at the request of any person in the circuit court in the county in which the cause, or some part thereof, arose or in which the defendant has its principal place of business or resides. All penalties recovered in any such action shall be paid into the general fund of the State. Nothing in this Act shall be construed to modify or repeal existing laws pertaining to the tort liability of local governments and their employees. This Act does not affect any civil remedies for personal injury or property (including underground facilities) damage except as otherwise specifically provided for in this Act.

SECTION 13. SEVERABILITY. If any provision of this Act or the applicability thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 14. GENERAL REPEALER. All laws and parts of laws in conflict with this Act are hereby repealed; provided, no provision of this Act shall be construed to amend or repeal Section 57 of Act 65 of 1929, the same being Arkansas Statute 76-531, nor Section 5 of Act 419 of 1953, as amended, the same being Arkansas Statute 76-544.

/s/ Carolyn Pollan, et al

