

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

HOUSE BILL

4 **By: Representatives M. Wilson and Pollan**

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For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED § 14-271-101 ET
9 SEQ. ('THE ARKANSAS UNDERGROUND FACILITIES DAMAGE
10 PREVENTION ACT') TO ENABLE THE STATE OF ARKANSAS TO
11 QUALIFY FOR FEDERAL GRANTS-IN-AID RELATING TO UNDERGROUND
12 PIPELINE SAFETY; AND FOR OTHER PURPOSES."

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

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16 SECTION 1. It is the purpose and intent of this Act to amend The
17 Arkansas Underground Facilities Damage Prevention Act, Arkansas Code Annotated
18 § 14-271-101 et seq., to comply with regulations promulgated by the United
19 States Department of Transportation governing federal grants-in-aid for state
20 pipeline safety programs. The Department of Transportation adopted
21 regulations mandating that a state's one (1) call notification system meet
22 certain criteria, with respect to underground pipeline facilities, as a
23 condition to a state's eligibility for the aforementioned federal grants-in-
24 aid program. (55 Fed. Reg. 38,688 (1990) (to be codified at 49 C.F.R. Part
25 198)) Accordingly, the legislature hereby finds and determines that this Act
26 is necessary and is in the public interest, to ensure that the State of
27 Arkansas will qualify for federal grants-in-aid relating to state pipeline
28 safety programs.

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30 SECTION 2. Subdivision (6) of Arkansas Code Annotated § 14-271-102 is
31 hereby amended as follows:

32 "(6) 'Operator' means any public utility as defined in § 23-1-101,
33 which owns or operates an underground facility; all municipally owned or
34 operated water, sewer, or electric utilities; any gas utility however owned or
35 operated; and any other water or sewer utilities, owned or operated

1 individually or by property owners associations, improvement districts, or
2 property developers, serving in excess of one hundred (100) customers;"

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4 SECTION 3. Arkansas Code Annotated § 14-271-102 is hereby amended by
5 adding the following subdivision (12):

6 "(12) 'Underground pipeline facilities' means any underground pipeline
7 facility used to transport natural gas or hazardous liquids. However, this
8 definition does not apply to persons (including operator's master meters)
9 whose primary activity does not include the production, transportation, or
10 marketing of gas or hazardous liquids."

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12 SECTION 4. Arkansas Code Annotated § 14-271-104 is hereby amended as
13 follows:

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

15 (a) (1) Except as provided in subdivision (a) (2) of this subsection, any
16 person who violates any provisions of this chapter shall be subject to a civil
17 penalty not to exceed one thousand dollars (\$1,000) for each violation.

18 (2) Operators of underground pipeline facilities and excavators shall,
19 upon violation of any applicable requirements of 49 C.F.R. Part 198, Subpart
20 C, be subject to civil penalties not to exceed ten thousand dollars (\$10,000)
21 for each violation for each day that the violation persists, except that the
22 maximum civil penalty shall not exceed five hundred thousand dollars
23 (\$500,000) for any related series of violations.

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

29 (2) All penalties recovered in any such action shall be paid into the
30 General Fund of the State.

31 (c) The Attorney General of Arkansas shall, at the request of any
32 person, bring an action in a court of competent jurisdiction to enjoin any
33 violation of 49 C.F.R. Part 198, Subpart C committed by operators of
34 underground pipeline facilities and excavators.

35 (d) Nothing in this chapter shall be construed to modify or repeal

1 existing laws pertaining to the tort liability of local governments and their
2 employees.

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

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7 SECTION 5. Arkansas Code Annotated § 14-271-105 is hereby amended as
8 follows:

9 "14-271-105. Ordinance or resolution adopting provisions.

10 (a) Every city of the first class, city of the second class,
11 incorporated town, county, and rural water association, whether formed as a
12 corporation, improvement district, or other legal entity, shall adopt an
13 ordinance or other formal resolution no later than January 1, 1989, indicating
14 whether the city, county, or rural water association desires to be subject to
15 the provisions of this chapter. However, every first-class city, second-class
16 city, incorporated town, county, and rural water association which fails to
17 adopt an ordinance or resolution indicating whether it desires to not be
18 covered by the provisions of this chapter shall be subject to each and every
19 provision of this chapter on and after January 1, 1989.

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

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26 SECTION 6. Subsection (a) of Arkansas Code Annotated § 14-271-107 is
27 hereby amended as follows:

28 "(a) All operators of underground facilities shall become members of
29 the One Call Center; however, the commission may provide, by rule or by
30 orders, for such exemptions or waivers concerning some or all of the
31 requirements of membership as may appear reasonable and proper, as long as the
32 exemption or waiver is not prohibited by statute or federal law."

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34 SECTION 7. Subdivision (b)(2) of Arkansas Code Annotated § 14-271-109
35 is hereby amended as follows:

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

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11 SECTION 8. Arkansas Code Annotated § 14-271-112 is hereby amended as
12 follows:

13 "14-271-112. Notice of intent to excavate or demolish.

14 (a) Except as provided in § 14-271-109, no person may excavate in a
15 street, highway, public space, a private easement, or right-of-way of an
16 operator, or demolish a building without having first notified either the
17 operator in the excavation area or the One Call Center (but, in the case of
18 underground pipeline facilities, the One Call Center must be notified) in
19 accordance with the provisions listed in this section.

20 (b) Each person responsible for any excavation or demolition operation
21 shall serve written or telephonic notice of intent to excavate or demolish at
22 least two (2), but not more than ten (10), full working days before commencing
23 this activity. The notice of intent shall be delivered either to the One Call
24 Center or to the operator in the area affected by the proposed excavation or
25 demolition as applicable under this section.

26 (c) The written or telephonic notice of intent required by subsection
27 (b) of this section shall contain the name of the person notifying the
28 operator or the One Call Center, the name, address, and telephone number of
29 the person responsible for the excavation or demolition, the starting date,
30 anticipated duration and type of excavation or demolition operation to be
31 conducted, the specific location of the proposed excavation or demolition, and
32 whether or not explosives are anticipated to be used.

33 (d) The One Call Center shall, as soon as practicable after receiving
34 such notice, provide persons giving notice of an intention to engage in an
35 excavation activity the names of any participating operators of underground

1 pipeline facilities to whom the notice will be transmitted.

2 (e) An adequate record of the notification shall be maintained by the
3 One Call Center. A copy of the record shall be furnished to the persons
4 giving notice of intent to excavate or demolish if requested.

5 The records shall be maintained by the One Call Center for at least three (3)
6 years."

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8 SECTION 9. All provisions of this Act of a general and permanent nature
9 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
10 Revision Commission shall incorporate the same in the Code.

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12 SECTION 10. If any provision of this Act or the application thereof to
13 any person or circumstance is held invalid, such invalidity shall not affect
14 other provisions or applications of the Act which can be given effect without
15 the invalid provision or application, and to this end the provisions of this
16 Act are declared to be severable.

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18 SECTION 11. All laws and parts of laws in conflict with this Act are
19 hereby repealed.

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