

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

# A Bill

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

1 mechanical power including trenchers, bulldozers, power shovels, augers,  
2 backhoes, scrapers, drills, cable and pipe plows, and other equipment used  
3 for plowing in or pulling in cable or pipe;

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

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

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

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

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

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

1           (11) Right-of-way means any area along which an underground facility  
2 is located.

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

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

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

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

18           "14-271-104. Penalties - Civil remedies.

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

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

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

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

1 the action.

2 (c) The Attorney General of Arkansas, the county prosecutor or the  
3 city attorney shall, at the request of any person, bring an action in a court  
4 of competent jurisdiction to enjoin any violation of 49 C.F.R. Part 198,  
5 Subpart C, committed by operators of underground pipeline facilities and  
6 excavators.

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

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

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

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

19 "14-271-105. Ordinance or resolution adopting provisions.

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

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

1 (c) Notwithstanding the issuance of a resolution opting out of One  
2 Call membership under subsection (a), any city of the first class, city of  
3 the second class, incorporated town, county and rural water association,  
4 whether formed as a corporation, improvement district, or other legal entity,  
5 shall remain subject to the provisions and requirements of Ark. Code Ann. §§  
6 14-271-110 (a)(2), 14-271-111, 14-271-112, and 14-271-113."

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

9 "14-271-108. Notice to One Call Center - Changes - Files.

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

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

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

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

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

28 "14-271-109. Notice to One Call Center - Exceptions.

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

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

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

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

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

4                   (5) Routine road work and general maintenance as performed in  
5 the right-of-way by state or county maintenance departments, but excluding  
6 any work or maintenance involving change of grade or clearing or widening  
7 drainage ditches.

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

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

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

24

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

26           "14-271-110. Notifying operators of underground facilities -  
27 Identification of location.

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

32           (2) Unless otherwise agreed to between the excavators and  
33 operator, within two (2) working days after notification from either the One  
34 Call Center or the person proposing the activity, the operator shall identify  
35 the approximate location of the facilities by field-marking on the surface by

1 paint, dye, stakes, or any other clearly visible marking which designates the  
2 horizontal course of the facilities. If the operator has no facilities in  
3 the area, the operator shall so inform the person proposing the activity,  
4 either by contacting that person or by leaving such information at the site.

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

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

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

18 (c) For purposes of this section, the approximate location of  
19 underground facilities is defined as a strip of land at least three feet (3')  
20 wide but not wider than the width of the facility plus one and one-half feet  
21 (1 1/2') on either side of the facility."  
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23 SECTION 7. Arkansas Code 14-271-111 is amended to read as follows:

24 "14-271-111. Color code for marking facility and excavation or  
25 demolition locations.

26 (a)(1) If the approximate location of an underground facility is marked  
27 with temporary markers, stakes, or other physical means, the operator shall  
28 follow the color coding prescribed as follows:  
29

30 FACILITY AND TYPE OF	SPECIFIC GROUP
31 PRODUCT	IDENTIFYING COLOR
32 Electric power distribution and transmission	Safety red
33 Municipal electric systems	Safety red
34 Gas distribution and transmission	High visibility safety yellow
35 Oil distribution and transmission	High visibility safety yellow

1 Dangerous materials, product lines	High visibility safety yellow
2 Telephone and telegraph systems	Safety alert orange
3 Cable television	Safety alert orange
4 Police and fire communications	Safety alert orange
5 Water systems	Safety precaution blue
6 Sewer systems	Safety green.

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

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

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

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20           SECTION 8. Arkansas Code 14-271-112 is amended to read as follows:  
21           "14-271-112. Notice of intent to excavate or demolish.

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

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

35           (c) The written or telephonic notice of intent required by subsection



1 (b) of this section shall contain the name of the person notifying the One  
2 Call Center, the name, address, and telephone number of the person  
3 responsible for the excavation or demolition, the starting date, anticipated  
4 duration and type of excavation or demolition operation to be conducted, the  
5 specific location of the proposed excavation or demolition, and whether or  
6 not explosives are anticipated to be used.

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

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

16 (f) Nothing in this section shall be construed to obligate the One  
17 Call Center to transmit a notice of intent to excavate for any operator that  
18 is not a member of the One Call Center."  
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20 SECTION 9. Arkansas Code 14-271-113 is amended to read as follows:

21 "14-271-113. Notice of damage required - Exception.

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

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

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

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

In addition to the provisions of this chapter, all operators of underground pipeline facilities are required to comply with all applicable federal statutes and regulations pertaining to pipeline safety and damage prevention."

SECTION 11. Arkansas Code Title 14, Chapter 271, Subchapter 1 is amended to add the following new section:

"14-271-115. No responsibility for non-member facilities.

Neither the One Call Center, any entity operating the One Call Center, nor any member of the One Call Center shall be responsible for locating non-member underground utility facilities, or for advising or otherwise warning of the possibility of the existence of underground utility facilities other than those owned or operated by members of the One Call Center."

SECTION 12. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

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

SECTION 14. All laws and parts of laws in conflict with this act are hereby repealed.

*/s/Rep. Pollan*

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