

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

As Engrossed: H3/4/21

# A Bill

HOUSE BILL 1364

5 By: Representatives Pilkington, *Underwood*  
6 By: Senator L. Eads  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS UNDERGROUND FACILITIES  
10 DAMAGE PREVENTION ACT; TO CREATE THE ARKANSAS  
11 UNDERGROUND FACILITIES DAMAGE PREVENTION ENFORCEMENT  
12 BOARD; AND FOR OTHER PURPOSES.  
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14

## Subtitle

15 TO AMEND THE ARKANSAS UNDERGROUND  
16 FACILITIES DAMAGE PREVENTION ACT; AND TO  
17 CREATE THE ARKANSAS UNDERGROUND  
18 FACILITIES DAMAGE PREVENTION ENFORCEMENT  
19 BOARD.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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25 SECTION 1. Arkansas Code § 14-271-104 is amended to read as follows:  
26 14-271-104. ~~Penalties—Civil remedies~~ Civil penalties.

27 (a)(1) ~~Except as provided in subdivision (a)(2) of this section, any A~~  
28 ~~person who violates any provisions of this chapter shall be~~ undergo training  
29 in underground facilities damage prevention according to a training program  
30 developed by the Arkansas Underground Facilities Damage Prevention  
31 Enforcement Board and administered by the One Call Center.

32 (2) A person who violates this chapter may be subject to a civil  
33 ~~penalty not to exceed two thousand five hundred dollars (\$2,500) for each~~  
34 ~~violation~~ to induce compliance with this chapter and as determined under a  
35 tiered penalty structure adopted by the board under § 14-271-117.

36 ~~(2)(3)~~ Operators of underground pipeline facilities and



1 excavators shall, upon violation of any applicable requirements of 49 C.F.R.  
2 Part 198, Subpart C, or 49 U.S.C. § 60114(b), concerning marking facilities;  
3 49 U.S.C. § 60114(d), concerning applicability to excavators; or 49 U.S.C. §  
4 60118(a), concerning general waivers, as in effect on February 2013, unless  
5 excepted under § 14-271-109, and damage to an interstate or intrastate  
6 natural gas pipeline facility or an interstate or intrastate hazardous liquid  
7 pipeline facility, be subject to civil penalties in an amount not to exceed  
8 two (2) times the amount of property damage to the interstate or intrastate  
9 natural gas pipeline facility or an interstate or intrastate hazardous liquid  
10 pipeline facility up to a maximum of two hundred thousand dollars (\$200,000)  
11 for each violation for each day that the violation persists, except that the  
12 maximum civil penalty shall not exceed two million dollars (\$2,000,000) for  
13 any related series of violations.

14 (b)(1) Actions to recover the penalties provided for in this section  
15 ~~shall be brought by the Attorney General, the county prosecutor, or the city~~  
16 ~~attorney~~ may be brought by the board, at the request of any person, ~~in the~~  
17 ~~circuit court in the county in which the cause, or some part thereof, arose~~  
18 ~~or in which the defendant has its principal place of business or resides~~ by  
19 filing a complaint with the board.

20 (2) All penalties recovered in ~~any such~~ an action under  
21 subdivision (b)(1) of this section shall be paid into the ~~general fund of the~~  
22 ~~state, county, or municipality that prosecutes the action~~ Underground  
23 Facilities Damage Prevention Fund.

24 (c) The Attorney General, ~~the~~ a county prosecutor, or ~~the~~ a city  
25 attorney in the county in which an action arises or in which the defendant  
26 has its principal place of business or resides ~~shall~~ may, ~~at the request of~~  
27 ~~any person~~, bring an action in a court of competent jurisdiction to enforce  
28 the civil penalties of this section or to enjoin any a violation of this  
29 chapter or 49 C.F.R. Part 198, Subpart C, committed by ~~operators of~~  
30 ~~underground pipeline facilities and excavators~~ a person.

31 (d) ~~Nothing in this chapter shall be construed to~~ This chapter does  
32 not modify or repeal existing laws pertaining to the tort liability of local  
33 governments and their employees.

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

1 (f) This section ~~shall~~ does not apply to:

- 2 (1) The State Highway Commission;
- 3 (2) The Arkansas Department of Transportation;
- 4 (3) An officer or employee of the commission or Arkansas  
5 Department of Transportation;
- 6 (4) A county judge; or
- 7 (5) A county road department.
- 8

9 SECTION 2. Arkansas Code Title 14, Chapter 271, Subchapter 1, is  
10 amended to add additional sections to read as follows:

11 14-271-116. Arkansas Underground Facilities Damage Prevention  
12 Enforcement Board – Creation – Members.

13 (a) The Arkansas Underground Facilities Damage Prevention Enforcement  
14 Board is established in the Department of Energy and Environment.

15 (b)(1) The board shall consist of the following members:

16 (A) A commissioner of the Arkansas Public Service  
17 Commission or his or her designee;

18 (B) The Attorney General or his or her designee, if the  
19 designee is an attorney licensed to practice law in this state;

20 (C) An individual who is a representative of One Call  
21 Center, appointed by the Governor;

22 (D) An individual who is a representative of a natural gas  
23 utility that is serving customers in Arkansas, appointed by the Governor;

24 (E) An individual who is a representative of a business or  
25 association engaged in locating underground facilities, appointed by the  
26 Governor;

27 (F) An individual who is a representative of the Arkansas  
28 Rural Water Association, appointed by the Governor;

29 (G) An individual who is a representative of the Arkansas  
30 Municipal League, appointed by the Governor;

31 (H) Three (3) individuals who are representatives of the  
32 Arkansas Chapter of the Associated General Contractors of America, appointed  
33 by the Governor;

34 (I) An individual who is a representative of an electric  
35 utility serving customers in Arkansas, appointed by the Governor;

36 (J) An individual who is a representative of a water or

1 wastewater utility serving customers in Arkansas, appointed by the Governor;  
2 and

3 (K) An individual who is a representative of a cable  
4 telecommunications provider, appointed by the Governor.

5 (2) Members shall have expertise with the operation of this  
6 chapter.

7 (c)(1) A member who is appointed by the Governor shall serve for a  
8 term of two (2) years.

9 (2) The initial terms of members shall be staggered as  
10 determined by the Governor so that some members shall have an initial term of  
11 one (1) year.

12 (3) At the end of the term, a member continues to serve until a  
13 successor is appointed and qualifies under this chapter.

14 (4)(A) A vacancy shall be filled in the same manner as the  
15 original appointment.

16 (B) The new appointee shall serve for the remainder of the  
17 unexpired term.

18 (d)(1) The Governor shall fill any vacancy in the membership of the  
19 board within sixty (60) days of the vacancy, if possible.

20 (2) On the recommendation of the board, the Governor may remove  
21 and replace a member for incompetence or misconduct.

22 (e) A majority of the voting members constitutes a quorum for the  
23 transaction of business before the board.

24 (f)(1) The Attorney General or his or her designee shall call the  
25 first meeting of the board in Little Rock, Arkansas, no later than thirty  
26 (30) days after the appointment of a majority of the members of the board.

27 (2) At the first meeting of the board, a majority of the voting  
28 members shall elect a member to serve as the Chair of the Arkansas  
29 Underground Facilities Damage Prevention Enforcement Board.

30 (g) Members shall serve without compensation.

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32 14-271-117. Arkansas Underground Facilities Damage Prevention  
33 Enforcement Board – Powers, authority, duties.

34 (a) The Arkansas Underground Facilities Damage Prevention Enforcement  
35 Board may:

36 (1) Adopt rules for the conducting of board business and

1 proceedings;

2 (2) Adopt a seal;

3 (3) Maintain an office at a place designated by the board for  
4 business and proceedings, including meetings;

5 (4) Maintain facilities for the purpose of holding hearings  
6 under this chapter;

7 (5) Employ a staff;

8 (6) Accept a grant, loan, or any other assistance in any form  
9 from any public or private source, except state appropriations, subject to  
10 this chapter;

11 (7) Oversee the development of or contract for the development  
12 of an underground facility damage prevention training program in consultation  
13 with the Pipeline Safety Division of the Arkansas Public Service Commission,  
14 the Oil and Gas Commission, and the One Call Center;

15 (8) Enter into contracts and execute the instruments necessary  
16 or convenient to carry out and implement this chapter;

17 (9) Issue subpoenas; and

18 (10) Conduct all things necessary or convenient to carry out the  
19 powers expressly granted by this chapter.

20 (b) The board shall:

21 (1)(A) Develop and adopt no later than January 1, 2022, rules  
22 concerning a tiered penalty structure.

23 (B)(i)(a) Establish a tiered penalty structure.

24 (b) The tiered penalty structure described in  
25 subdivision (b)(1)(B)(i)(a) of this section shall be based on:

26 (1) The number of violations by the  
27 person within a twelve-month period; and

28 (2) Other relevant factors as determined  
29 by the board.

30 (ii)(a) For a first violation of this chapter, the  
31 maximum penalty amount under the tiered penalty structure shall not exceed  
32 two thousand five hundred dollars (\$2,500) for each violation.

33 (b) For subsequent violations of this chapter,  
34 within a twelve-month period, the maximum penalty amount under the tiered  
35 penalty structure shall not exceed fifty thousand dollars (\$50,000).

36 (C) Before adoption of the tiered penalty structure by the

1 board, the board may impose a penalty not to exceed two thousand five hundred  
2 dollars (\$2,500) per violation.

3 (D) The board shall conduct administrative hearings  
4 according to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

5 (2) Hear and adjudicate complaints relating to violations of  
6 this chapter;

7 (3) Assess civil penalties for violations of this chapter;

8 (4) Require education for a person who violates this chapter as  
9 described in § 14-271-104; and

10 (5) Administer the Underground Facilities Damage Prevention Fund

11 (c) The board shall not accept any state appropriations.

12 (d) This chapter does not modify or repeal existing laws concerning  
13 the power or jurisdiction of the Arkansas Public Service Commission.

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15 14-271-118. Dispute resolution panel.

16 (a) The Arkansas Underground Facilities Damage Prevention Enforcement  
17 Board may form a dispute resolution panel and adopt rules to design a  
18 voluntary dispute resolution process that may be used by excavators, facility  
19 owners, designers, project owners, and other interested or involved persons.

20 (b)(1) The use of a dispute resolution panel administered by the board  
21 is voluntary.

22 (2) A dispute resolution panel has to be agreed upon by all  
23 interested parties.

24 (3) The findings of a dispute resolution panel is not binding.

25 (c) The dispute resolution panel may settle disputes arising from  
26 damage to underground facilities, including without limitation any cost or  
27 damage incurred by an owner, operator, or excavator as a result of any delay  
28 in the excavation project while the underground facility is restored.

29 (d) The dispute resolution panel shall not:

30 (1) Be used or resolve alleged complaints to the board; or

31 (2) Impact any issues related to the board's enforcement  
32 activities.

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34 14-271-119. Arkansas Underground Facilities Damage Prevention  
35 Enforcement Board – Enforcement.

36 The Arkansas Underground Facilities Damage Prevention Enforcement Board

1 may:

2 (1) Initiate proceedings on complaints filed for violations of  
3 this chapter under the Arkansas Administrative Procedure Act, § 25-15-201 et  
4 seq., and rules adopted by the board;

5 (2) After a hearing:

6 (A) Assess a civil penalty under § 14-271-104;

7 (B) Order operators of underground pipeline facilities and  
8 excavators to cease and desist any violation of 49 C.F.R. Part 198, Subpart  
9 C, as it existed on January 1, 2021, or of this chapter;

10 (C) Assess civil penalties for failure to comply with  
11 orders of the board up to two thousand five hundred dollars (\$2,500) per  
12 violation for a first violation in a twelve-month period; or

13 (D) Reach a settlement for violations under this chapter;

14 (3) Establish reasonable complaint filing fees and  
15 administrative fees for complaints heard by the board;

16 (4) Waive filing and administrative fees if the board determines  
17 that a party cannot afford to pay the fees; and

18 (5) Use the services of a third party to collect civil  
19 penalties.

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21 14-271-120. Hearings.

22 (a) In a hearing before the Arkansas Underground Facilities Damage  
23 Prevention Enforcement Board for an alleged violation of this chapter or 49  
24 C.F.R. Part 198, Subpart C, as it existed on January 1, 2021:

25 (1) Proceedings shall be conducted according to the Arkansas  
26 Administrative Procedure Act, § 25-15-201 et seq., and rules adopted by the  
27 board;

28 (2) All testimony shall be given under oath; and

29 (3) The proceedings shall be recorded and a transcript created  
30 at the expense of the board.

31 (b) The Chair of the Arkansas Underground Facilities Damage Prevention  
32 Enforcement Board or a hearing officer appointed by the chair may administer  
33 the oath.

34

35 14-271-121. Funding – Underground Facilities Damage Prevention Fund.

36 (a) The Arkansas Underground Facilities Damage Prevention Enforcement

1 Board may obtain funding for its operational expenses from:

2 (1) A federal or state grant;

3 (2) Filing fees and administrative fees for complaints heard by  
4 the board;

5 (3) An additional assessment or charge per ticket as authorized  
6 under subsection (b) of this section; and

7 (4) Any other source, except state appropriations.

8 (b)(1) By a two-thirds vote of all members of the board, the board may  
9 assess the board's annual operating cost to member operators through a per-  
10 ticket charge not to exceed five cents (5¢) collected by the One Call Center.

11 (2) The per-ticket charge shall be designed to recover the cost  
12 of investigative, administrative, and legal services, and other costs  
13 reasonably necessary to carry out the board's responsibilities under this  
14 chapter.

15 (3) The annual operating costs of the board shall be determined  
16 after deducting funds available from other sources, including without  
17 limitation federal grants.

18 (c) Except as provided in subdivision (a)(2) and subsection (b) of  
19 this section, the board shall not impose a charge or assessment against a  
20 person, directly or indirectly, to obtain funding for its operation expenses.

21 (d)(1) The board shall establish an Underground Facilities Damage  
22 Prevention Fund.

23 (2) All civil penalties collected under this chapter shall be  
24 deposited into the fund.

25 (3) Any moneys remaining in the fund at the end of the fiscal  
26 year shall not revert to the General Revenue Fund but shall remain in the  
27 fund for the exclusive use of the board.

28 (4) The board shall administer the fund.

29 (5) The expenditures of moneys in the fund shall be at the  
30 discretion of the board for the purposes of damage prevention, public  
31 awareness, education, compliance programs, and compliance training.

32 (6) The fund shall not be used for operational expenses of the  
33 fund.

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35 14-271-122. Rules.

36 The Arkansas Underground Facilities Damage Prevention Enforcement Board



1 shall promulgate rules to implement the chapter.

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3 SECTION 3. DO NOT CODIFY. Rules.

4 (a) When adopting the initial rules required under this act, the  
5 Arkansas Underground Facilities Damage Prevention Enforcement Board shall  
6 file the final rules with the Secretary of State for adoption under § 25-15-  
7 204(f):

8 (1) On or before January 1, 2022; or

9 (2) If approval under § 10-3-309 has not occurred by January 1,  
10 2022, as soon as practicable after approval under § 10-3-309.

11 (b) The board shall file the proposed rules with the Legislative  
12 Council under § 10-3-309(c) sufficiently in advance of January 1, 2022, so  
13 that the Legislative Council may consider the rules for approval before  
14 January 1, 2022.

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16 */s/Pilkington*  
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