

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

SENATE BILL 297

5 By: Senator J. Dismang
6 By: Representative Eaves
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS UNDERGROUND FACILITIES
10 DAMAGE PREVENTION ACT; TO DECLARE AN EMERGENCY; AND
11 FOR OTHER PURPOSES.
12
13

Subtitle

14 TO AMEND THE ARKANSAS UNDERGROUND
15 FACILITIES DAMAGE PREVENTION ACT; AND TO
16 DECLARE AN EMERGENCY.
17
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code § 14-271-102 is amended to read as follows:
23 14-271-102. Definitions.

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

25 (1) "Approximate location of underground facilities" means a
26 strip of land at least three feet (3') wide but not wider than the width of
27 the facility plus one and one-half feet (1½') on either side of the facility;

28 (2) "Contract locator" means a person contracted by an operator
29 specifically to determine the approximate location of underground facilities
30 that may exist within the area specified by a notification issued by the One
31 Call Center;

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



1 ~~(8)~~(12) "Operator" means any person that owns or operates an
2 underground facility;

3 ~~(9)~~(13) "Person" means any individual, ~~any~~ corporation,
4 partnership, association, improvement district, property owners' association,
5 property developer, public agency, or any other entity organized under the
6 laws of any state or any subdivision or instrumentality of a state, and any
7 employee, agent, or legal representative thereof;

8 ~~(10)~~(14) "Preengineered project" means a public project wherein
9 the public agency responsible for the project, as part of its engineering and
10 contract procedures, holds a formal meeting ~~prior to~~ before the commencement
11 of any construction work on the project in which all persons determined by
12 the public agency to have underground facilities located within the
13 construction area of the project are invited to attend and given an
14 opportunity to verify or inform the public agency of the location of their
15 underground facilities, if any, within the construction area and wherein the
16 location of all known underground facilities are located or noted on the
17 engineering drawing and specifications for the project;

18 ~~(11)~~(15) "Public agency" means the state or any board,
19 commission, or agency of the state and any city, town, county, subdivision
20 thereof, or other governmental entity;

21 ~~(12)~~(16) "Right-of-way" means any area along which an
22 underground facility is located;

23 ~~(13)~~(A)~~(17)~~(A) "Underground facility" means any line, system,
24 and appurtenance or facility that is:

25 (i) Located beneath the ground surface or beneath
26 structures, streets, roads, alleys, sidewalks, or other public rights-of-way;
27 and

28 (ii) Used for producing, storing, conveying,
29 transmitting, or distributing communications, data, electricity, gas, heat,
30 water, steam, chemicals, television or radio transmissions or signals, or
31 sewage.

32 (B) "Underground facility" does not include:

33 (i) Privately owned service lines:

34 (a) Used solely for the purpose of
35 transporting communications, data, electricity, gas, heat, water, steam,
36 chemicals, television or radio transmissions or signals, or sewage for the

1 operation of a residence or business; and

2 (b) Wholly located on or beneath private
3 property; or

4 (ii) Residential or agricultural underground
5 irrigation systems;

6 ~~(14)~~(18)(A) "Underground pipeline facilities" means any
7 underground pipeline facility used to transport natural gas or hazardous
8 liquids.

9 (B) ~~However, this definition~~ "Underground pipeline
10 facilities" 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 rights-of-way; and

15 ~~(15)~~(19) "Working day" means every day, except Saturday, Sunday,
16 and national and legal state holidays.

17

18 SECTION 2. Arkansas Code § 14-271-104 is amended to read as follows:
19 14-271-104. Penalties – Civil remedies.

20 (a)(1) A person who violates this chapter may be required to undergo
21 training in underground facilities damage prevention according to a training
22 program developed and administered by the One Call Center.

23 (2)(A) Except as provided in subdivision ~~(a)(2)~~(a)(3) of this
24 section, any person who damages an underground facility and violates ~~any~~
25 ~~provisions of~~ this chapter shall be subject to a civil penalty ~~not to exceed~~
26 ~~two thousand five hundred dollars (\$2,500) for each violation~~ or mandatory
27 training in underground facilities damage prevention, as follows:

28 (i)(a) For a first violation in a twelve-month
29 period, the person shall be ordered to undergo the training under subdivision
30 (a)(1) of this section.

31 (b) For subsequent violations of this
32 subchapter, within a twelve-month period, the maximum penalty amount under
33 the penalty structure of this subsection (a) shall not exceed fifty thousand
34 dollars (\$50,000);

35 (ii) For a second violation in a twelve-month
36 period, the person shall be ordered to pay a civil penalty in an amount up to

1 five thousand dollars (\$5,000) for each violation; and

2 (iii) For three (3) or more violations in a twelve-
3 month period, the person shall be ordered to pay a civil penalty in an amount
4 up to ten thousand dollars (\$10,000) for each violation.

5 (B) Any person who has violated this chapter and had been
6 ordered to undergo mandatory training in underground facilities damage
7 prevention under subdivision (a)(1) of this section shall be subject to a
8 civil penalty of up to two thousand five hundred dollars (\$2,500) for each
9 violation if the person fails to complete any of the training required within
10 one hundred twenty (120) days from the entry of the order or settlement.

11 ~~(2)~~(3) Operators of underground pipeline facilities and
12 excavators shall, upon violation of any applicable requirements of 49 C.F.R.
13 Part 198, Subpart C, or 49 U.S.C. § 60114(b), concerning marking facilities;
14 49 U.S.C. § 60114(d), concerning applicability to excavators; or 49 U.S.C. §
15 60118(a), concerning general waivers, as in effect on February 2013, unless
16 excepted under § 14-271-109, and damage to an interstate or intrastate
17 natural gas pipeline facility or an interstate or intrastate hazardous liquid
18 pipeline facility, shall be subject to civil penalties in an amount not to
19 exceed two (2) times the amount of property damage to the interstate or
20 intrastate natural gas pipeline facility or an interstate or intrastate
21 hazardous liquid pipeline facility up to a maximum of two hundred thousand
22 dollars (\$200,000) for each violation for each day that the violation
23 persists, except that the maximum civil penalty shall not exceed two million
24 dollars (\$2,000,000) for any related series of violations.

25 (b)(1)(A) Actions to enforce or recover the penalties provided for in
26 this section shall be brought by the Attorney General, the county prosecutor,
27 or the city attorney, ~~at the request of any person,~~ based upon information
28 received from an operator, excavator, or from any other source, in the
29 circuit court in the county in which the cause, ~~or some part thereof, arose~~
30 occurred or in which the defendant has its principal place of business ~~or~~
31 ~~resides.~~

32 (B)(i) The Attorney General, the county prosecutor, or the
33 city attorney may settle with a person who violates this chapter for no more
34 than the maximum civil penalty the violator would be liable for under the
35 penalty structure under subsection (a) of this section.

36 (ii) A settlement under subdivision (b)(1)(B)(i) of

1 this section shall include a requirement that the violator complete mandatory
2 training in underground facilities damage prevention.

3 (2) All penalties recovered in ~~any such an~~ an action shall be paid
4 into the general fund of the state, county, or municipality that prosecutes
5 the action.

6 (c) The Attorney General, the county prosecutor, or the city attorney
7 ~~shall~~, at the request of any person, shall bring an action in a court of
8 competent jurisdiction to enjoin ~~any a~~ a violation of 49 C.F.R. Part 198,
9 Subpart C, as it existed on January 1, 2023, committed by operators of
10 underground pipeline facilities and excavators.

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

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

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

- 18 (1) The State Highway Commission;
- 19 (2) The Arkansas Department of Transportation;
- 20 (3) An officer or employee of the commission or the Arkansas
21 Department of Transportation;
- 22 (4) A county judge; or
- 23 (5) A county road department.

24 (g)(1) The Attorney General shall produce a quarterly report and
25 provide the report to the Legislative Council, the One Call Center, and the
26 Office of Pipeline Safety of the Arkansas Public Service Commission.

27 (2) The report required under subdivision (g)(1) of this section
28 shall include:

- 29 (A) The number of complaints submitted;
- 30 (B) The number of the submitted complaints that were
31 settled or prosecuted; and
- 32 (C) The amount of fines collected under this section
33 during the previous quarter.

34
35 SECTION 3. Arkansas Code § 14-271-109(a), concerning the notice
36 requirements to the One Call Center under the Arkansas Underground Facilities

1 Damage Prevention Act, is amended to read as follows:

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

4 (1) The moving of earth that is not on a right-of-way or within
5 an easement of an operator using specialized equipment that is specifically
6 designed to excavate without damaging underground facilities, including
7 without limitation equipment that excavates using pressurized water or air
8 coupled with a vacuum system or by tools manipulated only by human or animal
9 power;

10 (2) The moving of earth by an operator that is on a right-of-way
11 or within an easement of the operator using specialized equipment that is
12 specifically designed to excavate without damaging underground facilities,
13 including without limitation equipment that excavates using pressurized water
14 or air coupled with a vacuum system or by tools only manipulated by human
15 power and exclusively for the purposes of system maintenance and leak
16 detection;

17 (3) Any agricultural purposes, including any form of cultivation
18 for agricultural purposes, digging for postholes on private property,
19 construction and maintenance of farm ponds, land clearing, or other normal
20 agricultural purposes that are not on a right-of-way of an operator;

21 (4) The opening of a grave in a cemetery that is not on a right-
22 of-way of an operator; or

23 (5) Routine road work and general maintenance as performed in
24 the right-of-way by state or county maintenance departments, but excluding
25 any work or maintenance involving any demolition or excavation.

26

27 SECTION 4. Arkansas Code § 14-271-110 is amended to read as follows:

28 14-271-110. Notifying operators of underground facilities –
29 Identification of location.

30 (a)(1) Within four (4) working hours after receiving notification ~~of~~
31 ~~intent to~~ from an excavator that intends to excavate or demolish within an
32 area marked in white, the One Call Center shall in turn notify all member
33 operators of underground facilities in the affected area of the proposed
34 activity.

35 (2)(A)(i) Unless otherwise agreed to in writing between the
36 ~~excavators~~ excavator and the operator or contract locator, within two (2)

1 working days after notification from the One Call Center, starting the
2 working day after the notification of intent to excavate is received, the
3 operator or contract locator shall identify the approximate location of the
4 facilities by field-marking on the surface by paint, dye, stakes, or any
5 other clearly visible marking which designates the horizontal course of the
6 facilities.

7 (ii) For the purpose of measuring working days, the
8 working day starts at 7:00 a.m. on each business day.

9 (B) If the operator has no facilities in the area, the
10 operator shall so inform the person proposing the activity, either by
11 contacting that person or by leaving such information at the site.

12 (3) When an underground facility is being located, the operator
13 shall furnish the excavator information ~~which~~ that identifies the approximate
14 center line, approximate or estimated depth, when known, and dimensions of
15 the underground facility.

16 (4)(A) The operator shall provide an electronic positive
17 response to the One Call Center before the expiration of the time provided in
18 subdivision (a)(2)(A) of this section.

19 (B) The response required under subdivision (a)(4)(A) of
20 this section shall indicate whether or not and to what extent the operator is
21 able to provide the information required by subdivision (a)(2)(A) of this
22 section to respond to the notice from the excavator.

23 (5)(A) When excavating within the approximate location of an
24 underground facility, the excavator shall uncover the facility using a method
25 approved by the operator.

26 (B) ~~No power-driven tools or~~ Mechanized equipment shall
27 not be used without the express approval of the operator.

28 (C) The excavator shall confirm through the One Call
29 Center's electronic positive response system before excavation or demolition
30 that all operators have responded and that all facilities that may be
31 affected by the proposed excavation or demolition have been marked.

32 (D) The excavator may begin excavation or demolition
33 before the specified waiting period only if the excavator has confirmed that
34 all operators have responded with an appropriate electronic positive
35 response.

36 (E) If the operator declares extraordinary circumstances,

1 the excavator shall not carry out excavation or demolition until after the
2 time and date that the operator has provided in the operator's response.

3 (6)(A) If extraordinary circumstances prevent the operator from
4 marking the location of the facilities within the time specified in this
5 subsection, then the operator shall notify the excavator directly or through
6 the One Call Center.

7 (B) If providing the notification under subdivision
8 (a)(6)(A) of this section, the operator shall state the date and time when
9 the location will be marked.

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

15
16 SECTION 5. Arkansas Code § 14-271-112(c), concerning the notice to be
17 provided to the One Call Center, is amended to read as follows:

18 (c)(1) The written or telephonic notice of intent required by
19 subsection (b) of this section shall:

20 (A) ~~contain~~ Contain the name of the person notifying the
21 One Call Center, the name, address, and telephone number of the person
22 responsible for the excavation or demolition, the starting date, anticipated
23 duration and type of excavation or demolition operation to be conducted, the
24 specific location of the proposed excavation or demolition, and whether or
25 not explosives are anticipated to be used; and

26 (B)(i) Be provided by an individual or entity carrying out
27 the excavation or demolition.

28 (ii) The responsibility to provide the notice under
29 subsection (b) of this section shall not be delegated to another by contract
30 or otherwise.

31 (iii) If multiple entities are carrying out
32 excavation or demolition, then each entity is responsible for providing
33 notice individually.

34
35 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
36 General Assembly of the State of Arkansas that it is in the best interest of

1 the citizens of this state to protect underground facilities in Arkansas from
2 damage and to enhance safety; that the enhanced notifications and penalties
3 in this act will make Arkansas citizens safer; and that this act is
4 immediately necessary because this act will increase public health and safety
5 in Arkansas by helping to prevent underground facilities from being hit and
6 damaged at such a high rate. Therefore, an emergency is declared to exist,
7 and this act being immediately necessary for the preservation of the public
8 peace, health, and safety shall become effective on:

9 (1) The date of its approval by the Governor;

10 (2) If the bill is neither approved nor vetoed by the Governor,
11 the expiration of the period of time during which the Governor may veto the
12 bill; or

13 (3) If the bill is vetoed by the Governor and the veto is
14 overridden, the date the last house overrides the veto.

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36