

The Legislature
of the
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER 103

HOUSE JUDICIARY COMMITTEE SUBSTITUTE

FOR HOUSE BILL 500, as amended

Introduced by



Chapter 103

AN ACT

RELATING TO UTILITIES; CLARIFYING NOTIFICATION PROCEDURES TO PREVENT EXCAVATION DAMAGE TO PIPELINE AND UNDERGROUND FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 62-14-2 NMSA 1978 (being Laws 1973, Chapter 252, Section 2, as amended) is amended to read:

"62-14-2. DEFINITIONS.--As used in Chapter 62, Article 14 NMSA 1978:

A. "advance notice" means two working days;

B. "blasting" means the use of an explosive to excavate;

C. "cable television lines and related facilities" means the facilities of any cable television system or closed-circuit coaxial cable communications system or other similar transmission service used in connection with any cable television system or other similar closed-circuit coaxial cable communications system;

D. "commission" means the public regulation commission;

E. "emergency excavation" means an excavation that must be performed due to circumstances beyond the excavator's control and that affects public safety, health or welfare;

F. "excavate" means the movement or removal of

1 earth using mechanical excavating equipment or blasting and
2 includes augering, backfilling, digging, ditching, drilling,
3 grading, plowing in, pulling in, ripping, scraping, trenching,
4 tunneling and directional boring;

5 G. "excavator" means a person that excavates;

6 H. "master meter system and operators" means a
7 pipeline system that distributes natural gas or liquid propane
8 gas within a public place, such as a mobile home park, housing
9 project, apartment complex, school, university or hospital
10 where the operator of the master meter system purchases gas
11 from a distributor through a single large meter and resells
12 the gas through a gas distribution pipeline system. The
13 resale may occur as a payment included in a rental payment or
14 association dues or as a separately metered system;

15 I. "means of location" means a mark such as a
16 stake, a flag, whiskers or paint that is conspicuous in nature
17 and that is designed to last at least ten working days if not
18 disturbed;

19 J. "mechanical excavating equipment" means all
20 equipment powered by any motor, engine or hydraulic or
21 pneumatic device used for excavating and includes trenchers,
22 bulldozers, backhoes, power shovels, scrapers, draglines, clam
23 shells, augers, drills, cable and pipe plows or other plowing-
24 in or pulling-in equipment;

25 K. "one-call notification system" means a

1 communication system in which an operation center provides
2 telephone services or other reliable means of communication
3 for the purpose of receiving excavation notice and damage
4 reporting information and distributing that information to
5 owners and operators of pipelines and other underground
6 facilities;

7 L. "person" means the legal representative of or
8 an individual, partnership, corporation, joint venture, state,
9 subdivision or instrumentality of the state or an association;

10 M. "pipeline" means a pipeline or system of
11 pipelines and appurtenances for the transportation or movement
12 of any oil or gas, or oil or gas products and their byproducts
13 subject to the jurisdiction of federal law or regulation, with
14 the exception of master meter systems and operators;

15 N. "reasonable efforts" means notifying the
16 appropriate one-call notification center or underground
17 facility owner or operator of planned excavation;

18 O. "underground facility" means any tangible
19 property described in Subsections C, M and P of this section
20 that is underground, but does not include residential
21 sprinklers or low-voltage lighting; and

22 P. "underground utility line" means an underground
23 conduit or cable, including fiber optics, and related
24 facilities for transportation and delivery of electricity,
25 telephonic or telegraphic communications or water, sewer and

1 fire protection lines, with the exception of master meter
2 systems and operators."

3 SECTION 2. Section 62-14-3 NMSA 1978 (being Laws 1973,
4 Chapter 252, Section 3, as amended) is amended to read:

5 "62-14-3. EXCAVATION.--A person who prepares
6 engineering plans for excavation or who engages in excavation
7 shall:

8 A. determine the location of any underground
9 facility in or near the area where the excavation is to be
10 conducted, including a request to the owner or operator of the
11 underground facility to locate the underground facility
12 pursuant to Section 62-14-5 NMSA 1978;

13 B. plan the excavation to avoid or minimize
14 interference or damage to underground facilities in or near
15 the excavation area;

16 C. provide telephonic advance notice of the
17 commencement, extent and duration of the excavation work to
18 the one-call notification system operating in the intended
19 excavation area, and to the owners or operators of any
20 existing underground facility in and near the excavation area
21 that are not members of the local one-call notification
22 center, in order to allow the owners to locate and mark the
23 location of the underground facility as described in Section
24 62-14-5 NMSA 1978 prior to the commencement of work in the
25 excavation area, and shall request reaffirmation of line

1 location every ten working days after the initial request to
2 locate;

3 D. prior to initial exposure of the underground
4 facility, maintain at least an estimated clearance of eighteen
5 inches between existing underground facilities for which the
6 owners or operators have previously identified the location
7 and the cutting edge or point of any mechanical excavating
8 equipment utilized in the excavation and continue excavation
9 in a manner necessary to prevent damage;

10 E. provide such support for existing underground
11 facilities in or near the excavation area necessary to prevent
12 damage to them;

13 F. backfill all excavations in a manner and with
14 materials as may be necessary to prevent damage to and provide
15 reliable support during and following backfilling activities
16 for preexisting underground facilities in or near the
17 excavation area;

18 G. immediately notify the one-call notification
19 system operating in the area in the form and format required
20 by the commission and by telephone the owner of any
21 underground facilities that may have been damaged or
22 dislocated during the excavation work; and

23 H. not move or obliterate markings made pursuant
24 to Chapter 62, Article 14 NMSA 1978 or fabricate markings in
25 an unmarked location for the purpose of concealing or avoiding

1 liability for a violation of or noncompliance with the
2 provisions of Chapter 62, Article 14 NMSA 1978."

3 SECTION 3. Section 62-14-4 NMSA 1978 (being Laws 1973,
4 Chapter 252, Section 4, as amended) is amended to read:

5 "62-14-4. EMERGENCY EXCAVATION.--Every person who
6 engages in emergency excavation shall take all necessary and
7 reasonable precaution to avoid or minimize interference with
8 or damage to existing underground facilities in and near the
9 excavation area and shall notify as promptly as possible the
10 owners of underground facilities located in and near the
11 emergency excavation area and the one-call notification system
12 operating in the area in the form and format required by the
13 commission. In the event of any damage to or dislocation of
14 any underground facility caused by the emergency excavation
15 work, the person responsible for the excavation shall
16 immediately notify the owner of the underground facility and
17 the one-call notification system operating in the area in the
18 form and format required by the commission."

19 SECTION 4. Section 62-14-5 NMSA 1978 (being Laws 1973,
20 Chapter 252, Section 5, as amended) is amended to read:

21 "62-14-5. MARKING OF FACILITIES.--

22 A. A person owning or operating an underground
23 facility shall, upon the request of a person intending to
24 commence an excavation and upon advance notice, locate and
25 mark on the surface the actual horizontal location, within

1 twelve inches by some means of location, of the underground
2 facilities in or near the area of the excavation so as to
3 enable the person engaged in excavation work to locate the
4 facilities in advance of and during the excavation work.

5 B. If the owner or operator of the underground
6 facility finds that the owner or operator has no underground
7 facilities in the proposed area of excavation, the owner or
8 operator shall contact the appropriate one-call notification
9 center or mark in the appropriate color code as specified in
10 Section 62-14-5.1 NMSA 1978, marking the area as "Clear" or
11 "No Underground Facilities". If the area is not marked as
12 "Clear" or "No Underground Facilities", the excavator shall
13 contact the one-call notification system operating in the
14 region in order to verify the area as "Clear" or "No
15 Underground Facilities".

16 C. If the owner or operator fails to correctly
17 mark the underground facility after being given advance notice
18 and such failure to correctly mark the facility results in
19 additional costs to the person doing the excavating, then the
20 owner or operator shall reimburse the person engaging in the
21 excavation for the reasonable costs incurred.

22 D. An owner of an underground facility shall not
23 move or obliterate markings made pursuant to Chapter 62,
24 Article 14 NMSA 1978 or fabricate markings in an unmarked
25 location for the purpose of concealing or avoiding liability

1 for a violation of or noncompliance with the provisions of
2 Chapter 62, Article 14 NMSA 1978."

3 SECTION 5. Section 62-14-5.1 NMSA 1978 (being Laws
4 2001, Chapter 150, Section 4) is amended to read:

5 "62-14-5.1. UNIFORM COLOR CODE FOR LOCATION OF
6 UNDERGROUND FACILITIES.--In marking an excavation site and the
7 location of underground facilities, both the excavator and the
8 owner or operator shall use the following uniform color code:

- 9 A. blue for water;
- 10 B. green for sewer;
- 11 C. orange for communications or coaxial cable;
- 12 D. pink for survey;
- 13 E. purple for reclaimed water;
- 14 F. red for electric;
- 15 G. white for proposed excavation area; and
- 16 H. yellow for gas."

17 SECTION 6. Section 62-14-7.1 NMSA 1978 (being Laws
18 1997, Chapter 30, Section 1, as amended) is amended to read:

19 "62-14-7.1. ONE-CALL NOTIFICATION SYSTEM.--

20 A. An owner or operator of an underground facility
21 subject to Chapter 62, Article 14 NMSA 1978 shall be a member
22 of a one-call notification system operating in the region with
23 the exception of private underground facilities owned by a
24 homeowner and operated and located on residential property. A
25 one-call notification system may be for a region of the state

1 or statewide in scope, unless federal law provides otherwise.

2 B. Each one-call notification system shall be
3 operated by:

4 (1) an owner or operator of pipeline
5 facilities;

6 (2) a private contractor;

7 (3) a state or local government agency; or

8 (4) a person who is otherwise eligible under
9 state law to operate a one-call notification system.

10 C. If the one-call notification system is operated
11 by owners or operators of pipeline facilities, it shall be
12 established as a nonprofit entity governed by a board of
13 directors that shall establish the operating processes,
14 procedures and technology needed for a one-call notification
15 system. The board shall further establish a procedure or
16 formula to determine the equitable share of each member for
17 the costs of the one-call notification system. The board may
18 include representatives of excavators or other persons deemed
19 eligible to participate in the system who are not owners or
20 operators.

21 D. Excavators shall give advance notice to the
22 one-call notification system operating in the intended
23 excavation area and provide information established by rule of
24 the commission, except when excavations are by or for a person
25 that:

1 (1) owns or leases or owns a mineral
2 leasehold interest in the real property on which the
3 excavation occurs; and

4 (2) operates all underground facilities
5 located in the intended excavation area.

6 E. The one-call notification system shall promptly
7 transmit excavation notice information to owners or operators
8 of pipeline facilities and other underground facilities in the
9 intended excavation area.

10 F. After receiving advance notice, owners and
11 operators of pipeline facilities and other underground
12 facilities shall locate and mark their facilities in the
13 intended excavation area.

14 G. The one-call notification system shall provide
15 a toll-free telephone number or another comparable and
16 reliable means of communication to receive advance notice of
17 excavation. Means of communication to distribute excavation
18 notice to owners or operators of pipeline facilities and other
19 underground facilities shall be reliable and capable of
20 coordination with one-call notification systems operating in
21 other regions of the state.

22 H. Operators of one-call notification systems
23 shall notify the commission of its members and the name and
24 telephone number of the contact person for each member and
25 make available to the commission appropriate records in

1 investigations of alleged violations of Chapter 62, Article 14
2 NMSA 1978.

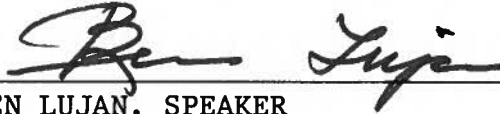
3 I. One-call notification systems and owners and
4 operators of pipeline facilities shall promote public
5 awareness of the availability and operation of one-call
6 notification systems and work with state and local
7 governmental agencies charged with issuing excavation permits
8 to provide information concerning and promoting awareness by
9 excavators of one-call notification systems.

10 J. The commission may prescribe reasonable maximum
11 rates for the provision of one-call services in New Mexico,
12 provided that if the reasonableness of such rates is contested
13 in the manner provided by commission rule, the burden of proof
14 to show the unreasonableness of such rates shall be upon the
15 person contesting their reasonableness."

16 SECTION 7. Section 62-14-8 NMSA 1978 (being Laws 1973,
17 Chapter 252, Section 8, as amended) is amended to read:

18 "62-14-8. PENALTIES.--In addition to any other
19 liability imposed by law, an excavator, after a formal hearing
20 and upon a finding, who has failed to comply with Subsection C
21 of Section 62-14-3 NMSA 1978 is subject to an administrative
22 penalty of up to five thousand dollars (\$5,000) for a first
23 offense as assessed by the commission. Thereafter, the
24 commission may assess an administrative penalty of up to a
25 maximum of twenty-five thousand dollars (\$25,000) for

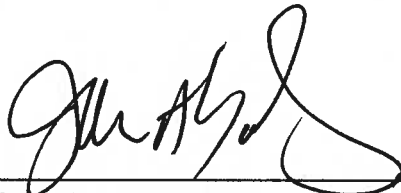
1 subsequent violations of Subsection C of Section 62-14-3 NMSA
2 1978. In addition to any other penalty imposed by law, an
3 operator of underground pipeline facilities or underground
4 utilities, excavator or operator of a one-call notification
5 system, after formal hearing and upon a finding, who has
6 willfully failed to comply with Chapter 62, Article 14 NMSA
7 1978 shall be subject to an administrative penalty of up to
8 five thousand dollars (\$5,000) for a first offense as assessed
9 by the commission. Thereafter, upon finding that a violation
10 of Chapter 62, Article 14 NMSA 1978 has occurred, the
11 commission may, upon consideration of the nature,
12 circumstances, gravity of the violation, history of prior
13 violations, effect on public health, safety or welfare and
14 good faith on the part of the person in attempting to remedy
15 the cause of the violation, assess an administrative penalty
16 up to a maximum of twenty-five thousand dollars (\$25,000) per
17 violation consistent with federal law. No offense occurring
18 more than five years prior to the current offense charged
19 shall be considered for any purpose. All actions to recover
20 the penalties provided for in this section shall be brought by
21 the commission. All penalties recovered in any such action
22 shall be paid into the state general fund." _____



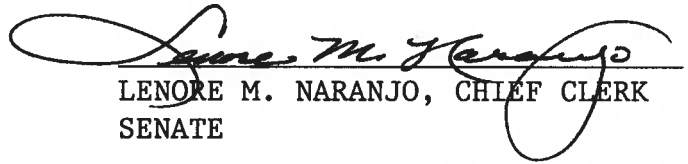
BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES

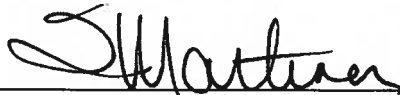


JOHN A. SANCHEZ, PRESIDENT
SENATE



LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this 6th day of April, 2011



SUSANA MARTINEZ, GOVERNOR
STATE OF NEW MEXICO

OFFICE OF THE GOVERNOR

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