

Union Calendar No. 415

103D CONGRESS
2D SESSION

H. R. 4394

[Report No. 103-765, Parts I and II]

A BILL

To provide for the establishment of mandatory State-operated comprehensive one-call systems to protect natural gas and hazardous liquid pipelines and all other underground facilities from being damaged by any excavations, and for other purposes.

SEPTEMBER 30, 1994

Reported from the Committee on Public Works and Transportation with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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To provide for the establishment of mandatory State-operated comprehensive one-call systems to protect natural gas and hazardous liquid pipelines and all other underground facilities from being damaged by any excavations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 11, 1994

Mr. PALLONE introduced the following bill; which was referred jointly to the Committees on Public Works and Transportation and Energy and Commerce

SEPTEMBER 29, 1994

Reported from the Committee on Energy and Commerce with amendments

[Strike out all after the enacting clause and insert the part printed in italic]

SEPTEMBER 30, 1994

Additional sponsors: Mr. FRANKS of New Jersey, Mr. BEVILL, Mr. TORRICELLI, Mr. ANDREWS of New Jersey, Mr. KOPETSKI, Mr. INHOFE, Mr. VENTO, and Ms. FURSE

SEPTEMBER 30, 1994

Reported from the Committee on Public Works and Transportation with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text of introduced bill, see copy of bill as introduced on May 11, 1994]

A BILL

To provide for the establishment of mandatory State-oper-

ated comprehensive one-call systems to protect natural gas and hazardous liquid pipelines and all other underground facilities from being damaged by any excavations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SEC. 2. DEFINITIONS.**

4 *For purposes of this Act, the term—*

5 (1) “damage” means any impact or contact with
6 *an underground facility, its appurtenances, or its*
7 *protective coating, or weakening of the support for the*
8 *facility or protective housing, which requires repair;*

9 (2) “excavation” means any operation in which
10 *earth, rock, or other material in the ground is moved,*
11 *removed, or otherwise displaced by means of any*
12 *mechanized tools or equipment, or any explosive, but*
13 *shall not include the tilling of soil for agricultural*
14 *purposes to a depth of 18 inches or less;*

15 (3) “excavator” means a person who conducts ex-
16 *cavation;*

17 (4) “facility operator” means any person who
18 *operates an underground facility;*

19 (5) “hazardous liquid” has the meaning given
20 *such term in section 60101(a)(4) of title 49, United*
21 *States Code;*

1 (6) “natural gas” has the meaning given the
2 term “gas” in section 60101(a)(2) of title 49, United
3 States Code;

4 (7) “person” includes any agency of Federal,
5 State, or local government;

6 (8) “pipeline facilities”—

7 (A) when used with respect to natural gas,
8 has the meaning given the term “gas pipeline fa-
9 cility” in section 60101(a)(3) of title 49, United
10 States Code; and

11 (B) when used with respect to hazardous
12 liquids, has the meaning given the term “hazard-
13 ous liquid pipeline facility” in section
14 60101(a)(5) of title 49, United States Code;

15 (9) “Secretary” means the Secretary of Trans-
16 portation;

17 (10) “State” has the meaning given such term in
18 section 60101(a)(20) of title 49, United States Code;

19 (11) “State program” means the program of a
20 State to comply with the provisions of this Act, in-
21 cluding a one-call notification system; and

22 (12) “underground facility” means any under-
23 ground pipeline facilities, or any underground line,
24 system, or structure used for gathering, storing, trans-
25 mitting, or distributing communication, electricity,

1 *water, steam, sewerage, or any other commodities the*
2 *Secretary determines should be included under the re-*
3 *quirements of this Act, except that such term does not*
4 *include any such pipeline facility, line, system, or*
5 *structure if the person who owns or leases the real*
6 *property in which the pipeline facility, line, system,*
7 *or structure is located also operates the pipeline facil-*
8 *ity, line, system, or structure only for the purpose of*
9 *furnishing services or materials to itself.*

10 **SEC. 3. NATIONWIDE TOLL-FREE NUMBER SYSTEM.**

11 *Within 1 year after the date of enactment of this Act,*
12 *the Secretary shall, in consultation with the Federal Com-*
13 *munications Commission, facility operators, excavators,*
14 *and one-call notification system operators, provide for the*
15 *establishment of a nationwide toll-free telephone number*
16 *system to be used by one-call notification systems provided*
17 *for pursuant to this Act.*

18 **SEC. 4. STATE PROGRAMS.**

19 *(a) REQUIREMENT.—Each State shall, within 3 years*
20 *after the date of enactment of this Act, provide for a com-*
21 *prehensive statewide one-call notification program, includ-*
22 *ing a one-call notification system, in accordance with this*
23 *Act, to protect all underground facilities from damage due*
24 *to any excavation. A State program may be provided for*
25 *through the establishment of a new program, or through*

1 *modification or improvement of an existing program. A*
2 *State program may be implemented by a nongovernmental*
3 *organization.*

4 (b) *GRANTS TO STATES.*—Using \$4,000,000 of the
5 amounts previously collected under section 7005 of the Con-
6 solidated Omnibus Budget Reconciliation Act of 1985 (49
7 U.S.C. App. 1682a) for each of the fiscal years 1996, 1997,
8 and 1998, to the extent provided in advance in appropria-
9 tions Acts, the Secretary shall make grants to States or op-
10 erators of one-call notification systems for use in establish-
11 ing one-call notification systems, modifying existing sys-
12 tems to conform to standards established under this Act,
13 and improving systems to exceed such standards. Such
14 grants may be used to—

15 (1) *improve communications systems linking*
16 *one-call notification systems;*

17 (2) *improve location capabilities, including*
18 *mapping, training personnel, geographical informa-*
19 *tion system development, and location technology de-*
20 *velopment and use;*

21 (3) *improve record retention and recording capa-*
22 *bilities;*

23 (4) *enhance public information and education*
24 *campaigns;*

1 (5) *increase and improve enforcement mecha-*
2 *nisms, including administrative processing of viola-*
3 *tions; and*

4 (6) *otherwise further the purposes of this Act.*

5 (c) *COMPLIANCE.—If a State fails to comply with the*
6 *requirements of this Act, the Secretary or any person ag-*
7 *grieved by such failure may in a civil action obtain appro-*
8 *priate relief against any appropriate officer or entity of the*
9 *State, including the State itself, to compel such compliance.*

10 **SEC. 5. REQUIRED ELEMENTS OF STATE PROGRAM.**

11 (a) *IN GENERAL.—Except as provided in subsection*
12 *(b), each State program provided for under section 4(a)*
13 *shall, at a minimum—*

14 (1) *provide for a one-call notification system or*
15 *systems which shall—*

16 (A) *apply to all excavators and to all facil-*
17 *ity operators;*

18 (B) *operate in all areas of the State and not*
19 *duplicate the geographical coverage of other one-*
20 *call notification systems;*

21 (C) *receive and record appropriate informa-*
22 *tion from excavators about intended excavations;*

23 (D) *inform facility operators of any in-*
24 *tended excavations that may be in the vicinity of*
25 *their underground facilities; and*

1 (E) inform excavators of the identity of fa-
2 cility operators who will be notified of the in-
3 tended excavation;

4 (2) provide for 24-hour coverage for emergency
5 excavation, with the manner and scope of coverage de-
6 termined by the State;

7 (3) employ mechanisms to ensure that the gen-
8 eral public, and in particular all excavators, are
9 aware of the one-call telephone number and the re-
10 quirements, penalties, and benefits of the State pro-
11 gram relating to excavations;

12 (4) inform excavators of any procedures that the
13 State has determined must be followed when excavat-
14 ing;

15 (5) require that any excavator must contact the
16 one-call notification system in accordance with State
17 specifications, which may vary depending on whether
18 the excavation is short term, long term, routine, con-
19 tinuous, or emergency;

20 (6) require facility operators to provide for locat-
21 ing and marking or otherwise identifying their facili-
22 ties at an excavation site, in accordance with State
23 specifications, which may vary depending on whether
24 the excavation is short term, long term, routine, con-
25 tinuous, or emergency;

1 (7) *provide effective mechanisms for penalties*
2 *and enforcement as described in section 6;*

3 (8) *provide for a fair and appropriate schedule*
4 *of fees to cover the costs of providing for, maintain-*
5 *ing, and operating the State program; and*

6 (9) *provide an opportunity for citizen suits to*
7 *enforce the requirements of section 4(a).*

8 (b) *EXCEPTION.—Where excavation is undertaken by*
9 *or for a person, on real property owned or leased by that*
10 *person, and the same person operates all underground fa-*
11 *cilities located at the site of the excavation, a State program*
12 *need not require that such person contact the one-call notifi-*
13 *cation system before excavating.*

14 **SEC. 6. PENALTIES AND ENFORCEMENT.**

15 (a) *GENERAL PENALTIES.—Each State program pro-*
16 *vided for under section 4(a) shall provide that any exca-*
17 *vator or facility operator who violates the requirements of*
18 *the State program shall be liable for an appropriate admin-*
19 *istrative or civil penalty.*

20 (b) *INCREASED PENALTIES.—If a violation results in*
21 *damage to an underground facility resulting in death, seri-*
22 *ous bodily harm, or actual damage to property exceeding*
23 *\$50,000, or damage to a hazardous liquid underground fa-*
24 *cility resulting in the release of more than 50 barrels of*
25 *product, the penalties shall be increased, and an additional*

1 *penalty of imprisonment may be assessed for a willful viola-*
2 *tion.*

3 (c) *DECREASED PENALTIES.*—A State program shall
4 *provide for reduced penalties for a violation, that results*
5 *in or could result in damage, that is promptly reported by*
6 *the violator.*

7 (d) *EQUITABLE RELIEF AND MANDAMUS ACTIONS.*—
8 *Each State program shall provide for appropriate equitable*
9 *relief and mandamus actions.*

10 (e) *IMMEDIATE CITATION OF VIOLATIONS.*—A State
11 *program may include procedures for issuing a citation of*
12 *violation at the site and time of the violation.*

13 ***SEC. 7. DEPARTMENT OF TRANSPORTATION.***

14 (a) *COORDINATION WITH OTHER RESPONSIBIL-*
15 *ITIES.*—

16 (1) *COORDINATION.*—The Secretary shall coordi-
17 *nate the implementation of this Act with the imple-*
18 *mentation of the Natural Gas Pipeline Safety Act of*
19 *1968 and the Hazardous Liquid Pipeline Safety Act*
20 *of 1979.*

21 (2) *REVIEW OF PROGRAMS.*—Within 18 months
22 *after the date of enactment of this Act, the Secretary*
23 *shall review, and report to Congress on, the extent to*
24 *which any policies, programs, and procedures of the*

1 *Department of Transportation could be used to*
2 *achieve the purposes of this Act.*

3 **(b) MODEL PROGRAM.—**

4 **(1) DEVELOPMENT.—***Within 1 year after the*
5 *date of enactment of this Act, the Secretary, in con-*
6 *sultation with facility operators, excavators, one-call*
7 *notification system operators, and State and local*
8 *governments, shall develop and make available to*
9 *States a model State program, including a model en-*
10 *forcement program. Such model program may be*
11 *amended by the Secretary on the Secretary's initia-*
12 *tive or in response to reports submitted by the States*
13 *pursuant to section 9, or as a result of workshops con-*
14 *ducted under paragraph (3) of this subsection.*

15 **(2) SUGGESTED ELEMENTS.—***The model pro-*
16 *gram developed under paragraph (1) shall meet all*
17 *the requirements of this Act. The Secretary shall con-*
18 *sider incorporating the following elements into the*
19 *model program:*

20 **(A) The one-call notification system or sys-**
21 *tems shall—*

22 **(i) receive and record appropriate in-**
23 *formation from excavators about intended*
24 *excavations, including—*

1 (I) the name of the person con-
2 tacting the one-call notification system;

3 (II) the name, address, and tele-
4 phone number of the excavator;

5 (III) the specific location of the
6 intended excavation, along with the
7 starting date thereof and a description
8 of the intended excavation activity;
9 and

10 (IV) the name, address, and tele-
11 phone number of the person for whom
12 the work is being performed; and

13 (ii) maintain records on each notice of
14 intent to excavate for the period of time nec-
15 essary to ensure that such records remain
16 available for use in the adjudication of any
17 claims relating to the excavation.

18 (B) The provision of information on exca-
19 vation requirements at the time of issuance of ex-
20 cavation or building permits, or other specific
21 mechanisms for ensuring excavator awareness.

22 (C) A requirement that any excavator must
23 contact the one-call notification system at least
24 2 business days, and not more than 10 business
25 days, before excavation begins.

1 (D) *Alternative notification procedures for*
2 *excavation activities conducted as a normal part*
3 *of ongoing operations within specific geographic*
4 *locations over an extended period of time.*

5 (E) *A requirement that facility operators—*

6 (i) *provide for locating and marking,*
7 *in accordance with the American Public*
8 *Works Association Uniform Color Code for*
9 *Utilities, or otherwise identifying, in ac-*
10 *cordance with standards established by the*
11 *State, their underground facilities at the*
12 *site of an intended excavation within no*
13 *more than 2 business days after notification*
14 *of such intended excavation; and*

15 (ii) *monitor such excavation as appro-*
16 *priate.*

17 (F) *Provision for notification of excavators*
18 *if no underground facilities are located at the ex-*
19 *cavation site.*

20 (G) *Provision for the approval of a State*
21 *program under this Act with time limitations*
22 *longer than those required under subparagraphs*
23 *(C) and (E) of this paragraph where special cir-*
24 *cumstances, such as severe weather conditions or*
25 *remoteness of location, pertain.*

1 (H) Procedures for excavators and facility
2 operators to follow when the location of under-
3 ground facilities is unknown.

4 (I) Procedures to improve underground fa-
5 cility location capabilities, including compiling
6 and notifying excavators, facility operators, and
7 one-call centers of any information about pre-
8 viously unknown underground facility locations
9 when such information is discovered.

10 (J) Alternative rules for timely compliance
11 with State program requirements in emergency
12 circumstances.

13 (K) If a State has procedures for licensing
14 or permitting entities to do business, procedures
15 for the revocation of the license or permit to do
16 business of any excavator determined to be a ha-
17 bitual violator of the requirements of the State
18 program.

19 (3) WORKSHOPS.—Within 6 months after the
20 date of enactment of this Act, and annually there-
21 after, the Secretary shall conduct workshops with fa-
22 cility operators, excavators, one-call notification sys-
23 tem operators, and State and local governments in
24 order to develop, amend, and promote the model pro-
25 gram, and to provide an opportunity to share infor-

1 *mation among such parties and to recognize State*
2 *programs that exemplify the goals of this Act.*

3 *(c) PUBLIC EDUCATION.—The Secretary shall develop,*
4 *in conjunction with facility operators, excavators, one-call*
5 *notification system operators, and State and local govern-*
6 *ments, public service announcements and other educational*
7 *materials and programs to be broadcast or published to edu-*
8 *cate the public about one-call notification systems, includ-*
9 *ing the national phone number.*

10 **SEC. 8. ALTERNATE FORM OF STATE PROGRAM.**

11 *(a) CERTIFICATION.—A State that wishes to establish*
12 *or maintain a State program that differs from the require-*
13 *ments of this Act may certify to the Secretary that such*
14 *State program is at least as protective of the public health*
15 *and safety and the environment as a State program de-*
16 *scribed in section 5. Except as provided in subsection (b)*
17 *of this section, unless the Secretary has, within 6 months*
18 *after receipt of such a certification, disapproved the certifi-*
19 *cation, the Secretary shall be considered to have concurred*
20 *in the certification. The Secretary shall inform a State of*
21 *the reasons for any disapproval of a certification under this*
22 *section.*

23 *(b) CONDITIONAL APPROVAL.—Approval under sub-*
24 *section (a) may be given where a State program is substan-*
25 *tially in compliance with the requirements of this Act, on*

1 *the condition that such State program, within 6 months*
2 *after the granting of conditional approval, shall be brought*
3 *in full compliance with such requirements.*

4 **SEC. 9. STATE REPORTS.**

5 (a) *REQUIREMENT.*—

6 (1) *INTERIM REPORT.*—*Within 2 years after the*
7 *date of enactment of this Act, each State shall submit*
8 *to the Secretary an interim report on progress made*
9 *in implementing this Act.*

10 (2) *STATUS REPORTS.*—*Within 4½ years after*
11 *the date of enactment of this Act, and annually there-*
12 *after, each State shall report to the Secretary on the*
13 *status of its State program and its requirements, and*
14 *any other information the Secretary requires.*

15 (b) *SIMPLIFIED REPORTING FORM.*—*Within 3 years*
16 *after the date of enactment of this Act, the Secretary shall*
17 *develop and distribute to the States a simplified form for*
18 *complying with the reporting requirements of subsection*
19 *(a)(2).*

20 **SEC. 10. MORE PROTECTIVE SYSTEMS.**

21 *Nothing in this Act prohibits a State from implement-*
22 *ing a one-call notification system that provides greater pro-*
23 *tection for underground facilities from damage due to exca-*
24 *vation than a system provided for under this Act.*

Amend the title to read as follows: “A bill to provide for mandatory, comprehensive, Statewide one-call notifi-

cation systems to protect natural gas and hazardous liquid pipelines and all other underground facilities from being damaged by any excavations, and for other purposes.”.

1 **SECTION 1. SHORT TITLE.**

2 **This Act may be cited as the “Comprehen-**
3 **sive One-Call Notification Act of 1994”.**

4 **SEC. 2. DEFINITIONS.**

5 **For purposes of this Act, the term—**

6 **(1) “damage” means any impact or**
7 **contact with an underground facility, its**
8 **appurtenances, or its protective coating,**
9 **or weakening of the support for the facil-**
10 **ity or protective housing, which requires**
11 **repair;**

12 **(2) “excavation” means any operation**
13 **in which earth, rock, or other material in**
14 **the ground is moved, removed, or other-**
15 **wise displaced by means of any mecha-**
16 **nized tools or equipment, or any explo-**
17 **sive, but shall not include any generally**
18 **accepted agricultural practices and ac-**
19 **tivities taken in support thereof and rou-**
20 **tine lawn and garden activities;**

21 **(3) “excavator” means a person who**
22 **conducts excavation;**

1 **(4) “facility operator” means any per-**
2 **son who operates an underground facil-**
3 **ity;**

4 **(5) “hazardous liquid” has the mean-**
5 **ing given such term in section 60101(a)(4)**
6 **of title 49, United States Code;**

7 **(6) “natural gas” has the meaning**
8 **given the term “gas” in section**
9 **60101(a)(2) of title 49, United States Code;**

10 **(7) “person” includes any agency of**
11 **Federal, State, or local government;**

12 **(8) “Secretary” means the Secretary**
13 **of Transportation;**

14 **(9) “State” has the meaning given**
15 **such term in section 60101(a)(20) of title**
16 **49, United States Code;**

17 **(10) “State program” means the pro-**
18 **gram of a State to establish or maintain**
19 **a one-call notification system; and**

20 **(11) “underground facility” means**
21 **any underground line, system, or struc-**
22 **ture used for gathering, storing, trans-**
23 **mitting, or distributing oil, petroleum**
24 **products, other hazardous liquids, natu-**
25 **ral gas, communication, electricity,**

1 **water, steam, sewerage, or any other**
2 **commodities the Secretary determines**
3 **should be included under the require-**
4 **ments of this Act, but such term does not**
5 **include a portion of a line, system, or**
6 **structure if the person who owns or**
7 **leases, or holds an oil or gas mineral**
8 **leasehold interest in, the real property in**
9 **which such portion is located also oper-**
10 **ates, or has authorized the operation of,**
11 **the line, system, or structure only for the**
12 **purpose of furnishing services or mate-**
13 **rials to such person, except to the extent**
14 **that such portion contains predominantly**
15 **natural gas or hazardous liquids and—**

16 **(A) is located within an easement**
17 **for a public road (as defined under**
18 **section 101(a) of title 23, United**
19 **States Code), or a toll highway,**
20 **bridge, or tunnel (as described in sec-**
21 **tion 129(a)(2) of such title); or**

22 **(B) is located on a mineral lease**
23 **and is within the boundaries of a city,**
24 **town, or village.**

1 **SEC. 3. NATIONWIDE TOLL-FREE NUMBER SYSTEM.**

2 **Within 1 year after the date of enactment**
3 **of this Act, the Secretary shall, in consulta-**
4 **tion with the Federal Communications Com-**
5 **mission, facility operators, excavators, and**
6 **one-call notification system operators, pro-**
7 **vide for the establishment of a nationwide**
8 **toll-free telephone number system to be used**
9 **by State one-call notification systems.**

10 **SEC. 4. STATE PROGRAMS.**

11 **(a) CONSIDERATION.—Each State shall con-**
12 **sider whether to adopt a comprehensive**
13 **statewide one-call notification program with**
14 **each element described in section 5, to pro-**
15 **tect all underground facilities from damage**
16 **due to any excavation. Such State program**
17 **may be provided for through the establish-**
18 **ment of a new program, or through modifica-**
19 **tion or improvement of an existing program,**
20 **and may be implemented by a nongovern-**
21 **mental organization.**

22 **(b) PROCEDURES.—State consideration**
23 **under subsection (a) shall be undertaken**
24 **after public notice and hearing, and shall be**
25 **completed within 3 years after the date of en-**
26 **actment of this Act. Such consideration may**

1 **be undertaken as part of any proceeding of a**
2 **State with respect to the safety of pipelines or**
3 **other underground facilities.**

4 **(c) COMPLIANCE.—If a State fails to comply**
5 **with the requirements of this section, the Sec-**
6 **retary or any person aggrieved by such fail-**
7 **ure may in a civil action obtain appropriate**
8 **relief against any appropriate officer or en-**
9 **tity of the State, including the State itself, to**
10 **compel such compliance.**

11 **(d) APPROPRIATENESS.—Nothing in this Act**
12 **prohibits a State from making a determina-**
13 **tion that it is not appropriate to adopt a State**
14 **program described in section 5, pursuant to**
15 **its authority under otherwise applicable State**
16 **law.**

17 **SEC. 5. ELEMENTS OF STATE PROGRAM.**

18 **(a) IN GENERAL.—Each State’s consider-**
19 **ation under section 4(a) shall include consid-**
20 **eration of program elements that—**

21 **(1) provide for a one-call notification**
22 **system or systems which shall—**

23 **(A) apply to all excavators and to**
24 **all facility operators;**

1 **(B) operate in all areas of the**
2 **State and not duplicate the geo-**
3 **graphical coverage of other one-call**
4 **notification systems;**

5 **(C) receive and record appro-**
6 **priate information from excavators**
7 **about intended excavations;**

8 **(D) inform facility operators of**
9 **any intended excavations that may be**
10 **in the vicinity of their underground**
11 **facilities; and**

12 **(E) inform excavators of the iden-**
13 **tity of facility operators who will be**
14 **notified of the intended excavation;**

15 **(2) provide for 24-hour coverage for**
16 **emergency excavation, with the manner**
17 **and scope of coverage determined by the**
18 **State;**

19 **(3) employ mechanisms to ensure that**
20 **the general public, and in particular all**
21 **excavators, are aware of the one-call tele-**
22 **phone number and the requirements,**
23 **penalties, and benefits of the State pro-**
24 **gram relating to excavations;**

1 **(4) inform excavators of any proce-**
2 **dures that the State has determined must**
3 **be followed when excavating;**

4 **(5) require that any excavator must**
5 **contact the one-call notification system**
6 **in accordance with State specifications,**
7 **which may vary depending on whether**
8 **the excavation is short term, long term,**
9 **routine, continuous, or emergency;**

10 **(6) require facility operators to pro-**
11 **vide for locating and marking or other-**
12 **wise identifying their facilities at an ex-**
13 **cavation site, in accordance with State**
14 **specifications, which may vary depend-**
15 **ing on whether the excavation is short**
16 **term, long term, routine, continuous, or**
17 **emergency;**

18 **(7) provide effective mechanisms for**
19 **penalties and enforcement as described**
20 **in section 6;**

21 **(8) provide for a fair and appropriate**
22 **schedule of fees to cover the costs of pro-**
23 **viding for, maintaining, and operating**
24 **the State program; and**

1 **(9) provide an opportunity for citizen**
2 **suits to enforce the State program.**

3 **(b) EXCEPTION.—Where excavation is un-**
4 **dertaken by or for a person, on real property**
5 **owned or leased, or in which an oil or gas**
6 **mineral leasehold interest is held, by that per-**
7 **son, and the same person operates all under-**
8 **ground facilities located at the site of the ex-**
9 **cavation, a State program may elect not to re-**
10 **quire that such person contact the one-call**
11 **notification system before excavating.**

12 **SEC. 6. PENALTIES AND ENFORCEMENT.**

13 **(a) GENERAL PENALTIES.—Each State’s con-**
14 **sideration under section 4(a) shall include**
15 **consideration of a requirement that any exca-**
16 **vator or facility operator who violates the re-**
17 **quirements of the State program shall be lia-**
18 **ble for an appropriate administrative or civil**
19 **penalty.**

20 **(b) INCREASED PENALTIES.—If a violation**
21 **results in damage to an underground facility**
22 **resulting in death, serious bodily harm, or ac-**
23 **tual damage to property exceeding \$50,000, or**
24 **damage to a hazardous liquid underground**
25 **facility resulting in the release of more than**

1 **50 barrels of product, the penalties shall be**
2 **increased, and an additional penalty of im-**
3 **prisonment may be assessed for a knowing**
4 **and willful violation.**

5 **(c) DECREASED PENALTIES.—Each State’s**
6 **consideration under section 4(a) shall include**
7 **consideration of reduced penalties for a viola-**
8 **tion, that results in or could result in damage,**
9 **that is promptly reported by the violator.**

10 **(d) EQUITABLE RELIEF AND MANDAMUS AC-**
11 **TIONS.—Each State’s consideration under sec-**
12 **tion 4(a) shall include consideration of provi-**
13 **sions for appropriate equitable relief and**
14 **mandamus actions.**

15 **(e) IMMEDIATE CITATION OF VIOLATIONS.—**
16 **Each State’s consideration under section 4(a)**
17 **shall include consideration of procedures for**
18 **issuing a citation of violation at the site and**
19 **time of the violation.**

20 **SEC. 7. GRANTS TO STATES.**

21 **(a) AUTHORITY.—Using \$4,000,000 of the**
22 **amounts previously collected under section**
23 **7005 of the Consolidated Omnibus Budget**
24 **Reconciliation Act of 1985 (previously codi-**
25 **fied as 49 U.S.C. App. 1682a) or section 60301**

1 of title 49, United States Code, for each of the
2 fiscal years 1996, 1997, and 1998, to the extent
3 provided in advance in appropriations Acts,
4 the Secretary shall make grants to States, or
5 to operators of one-call notification systems
6 in such States, which have elected to adopt a
7 State program described in section 5, or to es-
8 tablish and maintain a State program pursu-
9 ant to subsection (b) of this section. Such
10 grants may be used in establishing one-call
11 notification systems, modifying existing sys-
12 tems to conform to standards established
13 under this Act, and improving systems to ex-
14 ceed such standards. Such grants may be used
15 to—

16 (1) improve communications systems
17 linking one-call notification systems;

18 (2) improve location capabilities, in-
19 cluding training personnel and develop-
20 ing and using location technology;

21 (3) improve record retention and re-
22 cording capabilities;

23 (4) enhance public information and
24 education campaigns;

1 **(5) increase and improve enforcement**
2 **mechanisms, including administrative**
3 **processing of violations; and**

4 **(6) otherwise further the purposes of**
5 **this Act.**

6 **(b) ALTERNATE FORM OF STATE PROGRAM.—**

7 **The Secretary may make a grant under sub-**
8 **section (a) to a State that establishes or main-**
9 **tains a State program that differs from a State**
10 **program described in section 5 if such State**
11 **program is at least as protective of the public**
12 **health and safety and the environment as a**
13 **State program described in section 5.**

14 **SEC. 8. DEPARTMENT OF TRANSPORTATION.**

15 **(a) COORDINATION WITH OTHER RESPON-**
16 **SIBILITIES.—**

17 **(1) COORDINATION.—The Secretary**
18 **shall coordinate the implementation of**
19 **this Act with the implementation of chap-**
20 **ter 601 of title 49, United States Code.**

21 **(2) REVIEW OF PROGRAMS.—Within 18**
22 **months after the date of enactment of**
23 **this Act, the Secretary shall review, and**
24 **report to Congress on, the extent to**
25 **which any policies, programs, and proce-**

1 **dures of the Department of Transpor-**
2 **tation could be used to achieve the pur-**
3 **poses of this Act.**

4 **(b) MODEL PROGRAM.—**

5 **(1) DEVELOPMENT.—Within 1 year**
6 **after the date of enactment of this Act,**
7 **the Secretary, in consultation with facil-**
8 **ity operators, excavators, one-call notifi-**
9 **cation system operators, and State and**
10 **local governments, shall develop and**
11 **make available to States a model State**
12 **program, including a model enforcement**
13 **program. Such model program may be**
14 **amended by the Secretary on the Sec-**
15 **retary's initiative or in response to re-**
16 **ports submitted by the States pursuant to**
17 **section 9, or as a result of workshops con-**
18 **ducted under paragraph (3) of this sub-**
19 **section.**

20 **(2) SUGGESTED ELEMENTS.—The model**
21 **program developed under paragraph (1)**
22 **shall include all elements of a State pro-**
23 **gram described in section 5. The Sec-**
24 **retary shall consider incorporating the**

1 following elements into the model pro-
2 gram:

3 (A) The one-call notification sys-
4 tem or systems shall—

5 (i) receive and record appro-
6 priate information from exca-
7 vators about intended exca-
8 vations, including—

9 (I) the name of the person
10 contacting the one-call notifi-
11 cation system;

12 (II) the name, address,
13 and telephone number of the
14 excavator;

15 (III) the specific location
16 of the intended excavation,
17 along with the starting date
18 thereof and a description of
19 the intended excavation activ-
20 ity; and

21 (IV) the name, address,
22 and telephone number of the
23 person for whom the work is
24 being performed; and

1 **(ii) maintain records on each**
2 **notice of intent to excavate for**
3 **the period of time necessary to**
4 **ensure that such records remain**
5 **available for use in the adjudica-**
6 **tion of any claims relating to the**
7 **excavation.**

8 **(B) The provision of information**
9 **on excavation requirements at the**
10 **time of issuance of excavation or**
11 **building permits, or other specific**
12 **mechanisms for ensuring excavator**
13 **awareness.**

14 **(C) A requirement that any exca-**
15 **vator must contact the one-call notifi-**
16 **cation system at least 2 business**
17 **days, and not more than 10 business**
18 **days, before excavation begins.**

19 **(D) Alternative notification proce-**
20 **dures for excavation activities con-**
21 **ducted as a normal part of ongoing**
22 **operations within specific geographic**
23 **locations over an extended period of**
24 **time.**

1 **(E) A requirement that facility op-**
2 **erators—**

3 **(i) provide for locating and**
4 **marking, in accordance with the**
5 **American Public Works Associa-**
6 **tion Uniform Color Code for Utili-**
7 **ties, or otherwise identifying, in**
8 **accordance with standards estab-**
9 **lished by the State or the Amer-**
10 **ican National Standards Institute,**
11 **their underground facilities at**
12 **the site of an intended excavation**
13 **within no more than 2 business**
14 **days after notification of such in-**
15 **tended excavation; and**

16 **(ii) monitor such excavation**
17 **as appropriate.**

18 **(F) Provision for notification of**
19 **excavators if no underground facili-**
20 **ties are located at the excavation site.**

21 **(G) Provision for the approval of**
22 **a State program under this Act with**
23 **time limitations longer than those re-**
24 **quired under subparagraphs (C) and**
25 **(E) of this paragraph where special**

1 **circumstances, such as severe weath-**
2 **er conditions or remoteness of loca-**
3 **tion, pertain.**

4 **(H) Procedures for excavators**
5 **and facility operators to follow when**
6 **the location of underground facilities**
7 **is unknown.**

8 **(I) Procedures to improve under-**
9 **ground facility location capabilities,**
10 **including compiling and notifying ex-**
11 **cavators, facility operators, and one-**
12 **call centers of any information about**
13 **previously unknown underground fa-**
14 **ility locations when such informa-**
15 **tion is discovered.**

16 **(J) Alternative rules for timely**
17 **compliance with State program re-**
18 **quirements in emergency cir-**
19 **cumstances.**

20 **(K) If a State has procedures for**
21 **licensing or permitting entities to do**
22 **business, procedures for the revoca-**
23 **tion of the license or permit to do**
24 **business of any excavator determined**

1 to be a habitual violator of the re-
2 quirements of the State program.

3 **(3) WORKSHOPS.—**Within 6 months
4 after the date of enactment of this Act,
5 and annually thereafter, the Secretary
6 shall conduct workshops with facility op-
7 erators, excavators, one-call notification
8 system operators, and State and local
9 governments in order to develop, amend,
10 and promote the model program, and to
11 provide an opportunity to share informa-
12 tion among such parties and to recognize
13 State programs that exemplify the goals
14 of this Act.

15 **(c) PUBLIC EDUCATION.—**The Secretary
16 shall develop, in conjunction with facility op-
17 erators, excavators, one-call notification sys-
18 tem operators, and State and local govern-
19 ments, public service announcements and
20 other educational materials and programs to
21 be broadcast or published to educate the pub-
22 lic about one-call notification systems, includ-
23 ing the national phone number.

24 **SEC. 9. STATE REPORTS.**

25 **(a) REQUIREMENT.—**

1 **(1) INITIAL REPORT.—**Within 3 years
2 **after the date of enactment of this Act,**
3 **each State shall submit to the Secretary a**
4 **report on progress made in implementing**
5 **this Act.**

6 **(2) STATUS REPORTS.—**Within 4½ years
7 **after the date of enactment of this Act,**
8 **and annually thereafter, each State shall**
9 **report to the Secretary on the status of**
10 **its State program, if any, and its require-**
11 **ments, and any other information the**
12 **Secretary requires.**

13 **(b) SIMPLIFIED REPORTING FORM.—**Within 3
14 **years after the date of enactment of this Act,**
15 **the Secretary shall develop and distribute to**
16 **the States a simplified form for complying**
17 **with the reporting requirements of subsection**
18 **(a)(2).**

19 **SEC. 10. MORE PROTECTIVE SYSTEMS.**

20 **Nothing in this Act prohibits a State from**
21 **implementing a one-call notification system**
22 **that provides greater protection for under-**
23 **ground facilities from damage due to exca-**
24 **vation than a system established pursuant to**
25 **this Act.**

1 **SEC. 11. USE OF TECHNOLOGIES FOR REMOTE AND ABOVE-**
2 **GROUND PIPELINE LOCATION.**

3 **The Secretary of Transportation shall**
4 **consult with other agencies as to the avail-**
5 **ability and affordability of technologies**
6 **which will help relocate pipelines from above-**
7 **ground and remote locations.**

8 **SEC. 12. RAILROAD COMPLIANCE WITH ONE-CALL.**

9 **If a railroad has rules requiring under-**
10 **ground facilities other than its own to be bur-**
11 **ied 3 feet or lower on its property or along its**
12 **right-of-way, the railroad shall not be re-**
13 **quired to inform the State one-call system**
14 **when the railroad undertakes routine mainte-**
15 **nance on its property or along its right-of-way**
16 **when such maintenance would disturb the**
17 **ground to a depth of no more than 18 inches**
18 **as measured from the surface of the ground.**
19 **Any accidents that occur during, or as a result**
20 **of such routine maintenance, must be re-**
21 **ported by the railroad to the Department of**
22 **Transportation and the appropriate local offi-**
23 **cial.**

1 SEC. 13. SENSE OF CONGRESS; REQUIREMENT REGARDING
2 NOTICE.

3 (a) PURCHASE OF AMERICAN-MADE EQUIP-
4 MENT AND PRODUCTS.—It is the sense of Con-
5 gress that, to the greatest extent practicable,
6 all equipment and products purchased with
7 funds made available under this Act should be
8 American-made.

9 (b) NOTICE TO RECIPIENTS OF ASSISTANCE.—
10 In providing financial assistance under this
11 Act, the Administrator of the Research and
12 Special Programs Administration of the De-
13 partment of Transportation, to the greatest
14 extent practicable, shall provide to each re-
15 cipient of the assistance a notice describing
16 the statement made in subsection (a).

Amend the title to read as follows: “A bill to require State’s to consider adopting mandatory, comprehensive, Statewide one-call notification systems to protect natural gas and hazardous liquid pipelines and all other underground facilities from being damaged by any excavations, and for other purposes.”.

17 HR 4394 RH—2

18 HR 4394 RH—3