

103^D CONGRESS
2^D SESSION

S. 2101

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

IN THE SENATE OF THE UNITED STATES

MAY 10 (legislative day, MAY 2), 1994

Mr. BRADLEY introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide for the establishment of mandatory State-operated comprehensive one-call systems to protect all 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 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Comprehensive One-
5 Call Notification Act of 1994”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

1 (1) since the 1950s, steadily increasing develop-
2 ment of infrastructure has resulted in the construc-
3 tion of underground facilities throughout the United
4 States, including water pipelines, natural gas pipe-
5 lines, liquids pipelines, steam pipelines, telephone
6 lines, electric lines, fiber optic lines, cable television
7 lines, sewer pipelines, and dedicated traffic control,
8 emergency communication, and alarm lines;

9 (2) these underground facilities offer a safe and
10 economical means of providing essential services to
11 the public;

12 (3) of all accidents involving these facilities, the
13 largest number are caused by nearby excavation,
14 demolition, or tunneling activities, known as third-
15 party damage;

16 (4) accidents resulting from third-party damage
17 present an unnecessary risk to public safety and the
18 environment;

19 (5) costs arising from third-party damage are
20 ultimately paid by consumers;

21 (6) in the case of interstate facilities, consumers
22 in one State may pay for damages incurred in an-
23 other State;

24 (7) to prevent third-party damage, the owners
25 of some underground facilities have initiated one-call

1 (or “call before you dig”) programs, and some
2 States have mandated one-call programs, although
3 the scope and effectiveness of these programs is in-
4 consistent;

5 (8) to maximize the effectiveness of one-call
6 programs, national standards are needed;

7 (9) these standards should apply, without ex-
8 ception, to all excavation near any underground fa-
9 cilities; and

10 (10) these standards should produce one-call
11 systems which are simple to use, with a single tele-
12 phone number established which excavators must
13 call to obtain information on the location of any type
14 of underground facility anywhere in the United
15 States.

16 **SEC. 3. DEFINITIONS.**

17 For purposes of this Act, the term—

18 (1) “damage” means any impact on or contact
19 with an underground facility, its appurtenances, or
20 its protective coating, or weakening of the support
21 for the facility or protective housing, which requires
22 repair;

23 (2) “excavation” means any operation in which
24 earth, rock, or other material in the ground is
25 moved, removed, or otherwise displaced by means of

1 any tools, equipment, or explosive, and includes,
2 without limitation, grading, boring, milling, trench-
3 ing, tunneling, scraping, tree and root removal, cable
4 or pipe plowing, pile driving, wrecking, razing, rend-
5 ing, or removing any structure or mass material, but
6 shall not include the tilling of soil for agricultural
7 purposes to a depth of 18 inches or less;

8 (3) “facility operator” means any person who
9 owns or operates an underground facility, except for
10 any person who is the owner of real property where-
11 in are located underground facilities for the purpose
12 of furnishing services or materials only to himself or
13 occupants of such property;

14 (4) “Secretary” means the Secretary of Trans-
15 portation; and

16 (5) “underground facility” means any under-
17 ground line, system, or structure used for producing,
18 gathering, storing, conveying, transmitting, or dis-
19 tributing communication, electricity, gas, petroleum,
20 petroleum products, hazardous liquids, water, steam,
21 sewerage, or any other commodities the Secretary of
22 Commerce determines to be similar and appropriate.

23 **SEC. 4. NATIONWIDE DEDICATED NUMBER.**

24 Within 1 year after the date of enactment of this Act,
25 the Federal Communications Commission shall establish

1 a nationwide dedicated telephone number to be used by
2 local or regional underground facility location services and
3 by one-call systems established pursuant to this Act.

4 **SEC. 5. ESTABLISHMENT OF STATE ONE-CALL SYSTEMS.**

5 (a) REQUIREMENT.—Each State shall, within 3 years
6 after the date of enactment of this Act, establish a com-
7 prehensive statewide one-call notification system, in ac-
8 cordance with this Act, to protect all underground facili-
9 ties from damage due to any excavation.

10 (b) STATE SANCTIONS FOR NONPARTICIPATION.—

11 The Secretary may impose a prohibition, applicable to a
12 State that does not comply with subsection (a), on the ap-
13 proval by the Secretary of any projects or the awarding
14 by the Secretary of any grants under title 23, United
15 States Code, other than projects or grants for safety where
16 the Secretary determines, based on accident or other ap-
17 propriate data submitted by the State, that the principal
18 purpose of the project is an improvement in safety to re-
19 solve a demonstrated safety problem and likely will result
20 in a significant reduction in, or avoidance of, accidents.

21 **SEC. 6. ELEMENTS OF SYSTEM.**

22 Each State one-call system established under section
23 5(a) shall—

24 (1) have a designated system operator;

1 (2) operate in all areas of the State containing
2 underground facilities;

3 (3) apply to all excavations and to all under-
4 ground facility operators, except as provided by this
5 Act;

6 (4) employ mechanisms, such as the issuance of
7 excavation or building permits, to ensure that the
8 general public, and in particular all excavators, are
9 aware of the one-call telephone number and the re-
10 quirements and penalties of the State system relat-
11 ing to excavations;

12 (5) require that any person conducting an exca-
13 vation must contact the one-call system at least 3
14 business days, and not more than 10 business days,
15 before excavation begins;

16 (6) receive and record appropriate information
17 from excavators about intended excavations, includ-
18 ing—

19 (A) the name of the person contacting the
20 one-call system;

21 (B) the name, address, and telephone num-
22 ber of the excavator; and

23 (C) the specific location of the intended ex-
24 cavation, along with the starting date thereof

1 and a description of the intended excavation ac-
2 tivity;

3 (7) inform excavators of the identity of facility
4 operators who will be notified of the intended exca-
5 vation;

6 (8) inform excavators of any procedures that
7 the State has determined must be followed when ex-
8 cavating;

9 (9) inform facility operators of any intended ex-
10 cavations that may be in the vicinity of their under-
11 ground facilities;

12 (10) require facility operators to locate and
13 mark, in accordance with standards established by
14 the State, their underground facilities in the vicinity
15 of an intended excavation within no more than 3
16 business days after notification of such intended ex-
17 cavation, and to supervise such excavation as nec-
18 essary;

19 (11) provide for penalties and enforcement as
20 described in section 7;

21 (12) maintain records on each notice of intent
22 to excavate for at least 7 years;

23 (13) establish procedures to promote the timely
24 acquisition of information on previously unknown
25 underground facility locations;

1 (14) provide for an appropriate waiver of timely
2 compliance with system requirements in emergency
3 circumstances in which public safety is endangered,
4 as long as the one-call system is notified at the earli-
5 est practicable time;

6 (15) establish an appropriate schedule of fees to
7 be imposed on facility operators to cover the costs of
8 establishing, maintaining, and operating the one-call
9 system; and

10 (16) provide an opportunity for citizen suits to
11 enforce the requirements of this section.

12 **SEC. 7. PENALTIES AND ENFORCEMENT.**

13 (a) GENERAL PENALTIES.—Each State one-call sys-
14 tem established under section 5(a) shall provide that any
15 excavator or facility operator who violates the require-
16 ments of the system shall be liable for a civil penalty of
17 not more than \$25,000 for each violation for each day that
18 violation persists, except that the maximum civil penalty
19 shall not exceed \$500,000 for any related series of viola-
20 tions and the minimum civil penalty for a violation shall
21 be not less than \$250.

22 (b) INCREASED PENALTIES.—If a violation results in
23 damage to an underground facility resulting in death, seri-
24 ous bodily harm, or actual damage to property exceeding
25 \$50,000, or damage to an underground hazardous liquid

1 pipeline facility resulting in the release of more than 50
2 barrels of product, the penalties may be increased, and
3 an additional penalty of imprisonment may be assessed.

4 (c) DECREASED PENALTIES.—A State one-call sys-
5 tem may provide for reduced penalties for a violation, that
6 results in or could result in damage, that is promptly re-
7 ported by the violator.

8 (d) INJUNCTIVE RELIEF.—Each State one-call sys-
9 tem shall provide for appropriate injunctive relief.

10 (e) REVOCATION OF LICENSE.—Each State one-call
11 system shall include procedures for the revocation of a li-
12 cense or permit to do business of any excavator deter-
13 mined to be a habitual violator of the requirements of the
14 system.

15 (f) IMMEDIATE CITATION OF VIOLATIONS.—A State
16 one-call system may include procedures for issuing a cita-
17 tion of violation at the site and time of the violation.

18 **SEC. 8. ASSISTANCE OF DEPARTMENT OF TRANSPOR-**
19 **TATION IN DEVELOPMENT OF SYSTEMS.**

20 (a) COORDINATION WITH OTHER RESPONSIBIL-
21 ITIES.—The Secretary shall coordinate the implementa-
22 tion of this Act with the implementation of the Natural
23 Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671
24 et seq.) and the Hazardous Liquid Pipeline Safety Act of
25 1979 (49 U.S.C. App. 2001 et seq.).

1 (b) MODEL PROGRAM.—Within 1 year after the date
2 of enactment of this Act, the Office of Pipeline Safety of
3 the Department of Transportation shall draft and make
4 available to States a model one-call system program, along
5 with such additional guidance as the Secretary considers
6 appropriate, to assist the States in complying with this
7 Act. Such model program may be amended in response
8 to reports submitted by the States pursuant to section 10.

9 (c) PUBLIC EDUCATION.—The Secretary shall de-
10 velop public service announcements to be broadcast or
11 published to educate the public about one-call notification
12 systems, including the national phone number.

13 **SEC. 9. ALTERNATE FORM OF SYSTEM.**

14 A State that wishes to establish or maintain a one-
15 call system that differs from the requirements of this Act
16 may petition the Secretary for approval of such system.
17 The Secretary shall approve such a petition if the pro-
18 posed system is at least as protective of the public health
19 and safety as a system described in this Act.

20 **SEC. 10. STATE REPORTS.**

21 Within 54 months after the date of enactment of this
22 Act, each State shall report to Congress and the Secretary
23 on the status of their one-call notification system and its
24 requirements. The report shall contain data on the oper-
25 ation and effectiveness of the one-call system including—

1 (1) the status of its law establishing the one-
2 call system;

3 (2) the number of notification requests received
4 annually;

5 (3) the effectiveness of the method of under-
6 ground facility marking required;

7 (4) the degree of excavator compliance;

8 (5) the number of incidents where underground
9 facilities were damaged and the type of damage to
10 such facilities;

11 (6) the number of deaths and injuries and the
12 estimate amount of property loss resulting from
13 damage to underground facilities;

14 (7) the extent to which all underground facili-
15 ties participate; and

16 (8) any other information that the Secretary
17 determines relevant.

○