

104TH CONGRESS
1ST SESSION

H. R. 2482

To require States to consider adopting mandatory, comprehensive, statewide one-call notification systems to protect underground facilities from being damaged by any excavations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 13, 1995

Mr. PALLONE introduced the following bill; which was referred to the
Committee on Commerce

A BILL

To require States to consider adopting mandatory, comprehensive, statewide one-call notification systems to protect 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 1995”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act, the following definitions
8 apply:

1 (1) DAMAGE.—The term “damage” means any
2 impact or contact with an underground facility, its
3 appurtenances, or its protective coating, or weaken-
4 ing of the support for the facility or protective hous-
5 ing, which requires repair.

6 (2) EXCAVATION.—The term “excavation”
7 means any operation in which earth, rock, or other
8 material in the ground is moved, removed, or other-
9 wise displaced by means of any mechanized tools or
10 equipment, or any explosive, but shall not include—

11 (A) any generally accepted normal agricul-
12 tural practices and activities taken in support
13 thereof, as determined by each State, including
14 tilling of the soil for agricultural purposes to a
15 depth of 18 inches or less;

16 (B) generally accepted normal lawn and
17 garden activities, as determined by each State;
18 and

19 (C) the excavation of a gravesite in a cem-
20 etery.

21 (3) EXCAVATOR.—The term “excavator” means
22 a person who conducts excavation.

23 (4) FACILITY OPERATOR.—The term “facility
24 operator” means any person who operates an under-
25 ground facility.

1 (5) PERSON.—The term “person” includes any
2 agency of Federal, State, or local government.

3 (6) SECRETARY.—The term “Secretary” means
4 the Secretary of Commerce.

5 (7) STATE.—The term “State” means a State
6 of the United States, the District of Columbia, or
7 Puerto Rico.

8 (8) STATE PROGRAM.—The term “State pro-
9 gram” means the program of a State to establish or
10 maintain a one-call notification system.

11 (9) UNDERGROUND FACILITY.—The term “un-
12 derground facility” means any underground line,
13 system, or structure that is part of a system in
14 interstate commerce used for transmitting or distrib-
15 uting electricity or communication.

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

17 Within 1 year after the date of enactment of this Act,
18 the Secretary shall, in consultation with the Federal Com-
19 munications Commission, facility operators, excavators,
20 and one-call notification system operators, provide for the
21 establishment of a nationwide toll-free telephone number
22 system to be used by State one-call notification systems.

23 **SEC. 4. STATE PROGRAMS.**

24 (a) CONSIDERATION.—Each State shall consider
25 whether to adopt a comprehensive statewide one-call noti-

1 fication program with each element described in section
2 5, to protect all underground facilities from damage due
3 to any excavation. Such State program may be provided
4 for through the establishment of a new program, or
5 through modification or improvement of an existing pro-
6 gram, and may be implemented by a nongovernmental or-
7 ganization. Such State program may include protection of
8 facilities not part of a system in interstate commerce.

9 (b) PROCEDURES.—State consideration under sub-
10 section (a) shall be undertaken after public notice and
11 hearing, and shall be completed within 3 years after the
12 date of enactment of this Act. Such consideration may be
13 undertaken as part of any proceeding of a State with re-
14 spect to the safety of underground facilities.

15 (c) COMPLIANCE.—If a State fails to comply with the
16 requirements of subsection (a), the Secretary or any per-
17 son aggrieved by such failure may in a civil action obtain
18 appropriate relief against any appropriate officer or entity
19 of the State, including the State itself, to compel such
20 compliance.

21 (d) APPROPRIATENESS.—Nothing in this Act pro-
22 hibits a State from making a determination that it is not
23 appropriate to adopt a State program described in section
24 5, pursuant to its authority under otherwise applicable
25 State law.

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

2 (a) IN GENERAL.—Each State’s consideration under
3 section 4(a) shall include consideration of program ele-
4 ments that—

5 (1) provide for a one-call notification system or
6 systems which shall—

7 (A) apply to all excavators and to all facil-
8 ity operators;

9 (B) operate in all areas of the State and
10 not duplicate the geographical coverage of other
11 one-call notification systems;

12 (C) receive and record appropriate infor-
13 mation from excavators about intended exca-
14 vations;

15 (D) inform facility operators of any in-
16 tended excavations that may be in the vicinity
17 of their underground facilities; and

18 (E) inform excavators of the identity of fa-
19 cility operators who will be notified of the in-
20 tended excavation;

21 (2) provide for 24-hour coverage for emergency
22 excavation, with the manner and scope of coverage
23 determined by the State;

24 (3) employ mechanisms to ensure that the gen-
25 eral public, and in particular all excavators, are
26 aware of the one-call telephone number and the re-

1 requirements, penalties, and benefits of the State pro-
2 gram relating to excavations;

3 (4) inform excavators of any procedures that
4 the State has determined must be followed when ex-
5 cavating;

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

11 (6) require facility operators to provide for lo-
12 cating and marking or otherwise identifying their fa-
13 cilities at an excavation site, in accordance with
14 State specifications, which may vary depending on
15 whether the excavation is short term, long term, rou-
16 tine, continuous, or emergency;

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

19 (8) provide for a fair and appropriate schedule
20 of fees to cover the costs of providing for, maintain-
21 ing, and operating the State program;

22 (9) provide an opportunity for citizen suits to
23 enforce the State program; and

24 (10) require railroads to report any accidents
25 that occur during or as a result of routine railroad

1 maintenance to the Secretary and the appropriate
2 local officials.

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

10 **SEC. 6. PENALTIES AND ENFORCEMENT.**

11 (a) GENERAL PENALTIES.—Each State's consider-
12 ation under section 4(a) shall include consideration of a
13 requirement that any excavator or facility operator who
14 violates the requirements of the State program shall be
15 liable for an appropriate administrative or civil penalty.

16 (b) INCREASED PENALTIES.—If a violation results in
17 damage to an underground facility resulting in death, seri-
18 ous bodily harm, or actual damage to property exceeding
19 \$50,000, the penalties shall be increased, and an addi-
20 tional penalty of imprisonment may be assessed for a
21 knowing and willful violation.

22 (c) DECREASED PENALTIES.—Each State's consider-
23 ation under section 4(a) shall include consideration of re-
24 duced penalties for a violation, that results in or could re-
25 sult in damage, that is promptly reported by the violator.

1 (d) EQUITABLE RELIEF AND MANDAMUS AC-
2 TIONS.—Each State’s consideration under section 4(a)
3 shall include consideration of provisions for appropriate
4 equitable relief and mandamus actions.

5 (e) IMMEDIATE CITATION OF VIOLATIONS.—Each
6 State’s consideration under section 4(a) shall include con-
7 sideration of procedures for issuing a citation of violation
8 at the site and time of the violation.

9 **SEC. 7. GRANTS TO STATES.**

10 (a) AUTHORITY.—Using \$4,000,000 of the amounts
11 previously collected under section 7005 of the Consoli-
12 dated Omnibus Budget Reconciliation Act of 1985 (pre-
13 viously codified as 49 U.S.C. App. 1682a) or section
14 60301 of title 49, United States Code, for each of the fis-
15 cal years 1996, 1997, and 1998, to the extent provided
16 in advance in appropriations Acts, the Secretary shall
17 make grants to States, or to operators of one-call notifica-
18 tion systems in such States, which have elected to adopt
19 a State program described in section 5, or to establish and
20 maintain a State program pursuant to subsection (b) of
21 this section. Such grants may be used in establishing one-
22 call notification systems, modifying existing systems to
23 conform to standards established under this Act, and im-
24 proving systems to exceed such standards. Such grants
25 may be used to—

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

3 (2) improve location capabilities, including
4 training personnel and developing and using location
5 technology;

6 (3) improve record retention and recording ca-
7 pabilities;

8 (4) enhance public information and education
9 campaigns;

10 (5) increase and improve enforcement mecha-
11 nisms, including administrative processing of viola-
12 tions; and

13 (6) otherwise further the purposes of this Act.

14 (b) ALTERNATE FORM OF STATE PROGRAM.—The
15 Secretary may make a grant under subsection (a) to a
16 State that establishes or maintains a State program that
17 differs from a State program described in section 5 if such
18 State program is at least as protective of the public health
19 and safety and the environment as a State program de-
20 scribed in section 5.

21 **SEC. 8. DEPARTMENT OF COMMERCE.**

22 (a) COORDINATION WITH OTHER RESPONSIBIL-
23 ITIES.—

1 (1) COORDINATION.—The Secretary shall co-
2 ordinate the implementation of this Act with appro-
3 priate Federal agencies.

4 (2) REVIEW OF PROGRAMS.—Within 18 months
5 after the date of enactment of this Act, the Sec-
6 retary shall review, and report to Congress on, the
7 extent to which any policies, programs, and proce-
8 dures of the Department of Commerce could be used
9 to achieve the purposes of this Act.

10 (b) MODEL PROGRAM.—

11 (1) DEVELOPMENT.—Within 1 year after the
12 date of enactment of this Act, the Secretary, in con-
13 sultation with facility operators, excavators, one-call
14 notification system operators, and State and local
15 governments, shall develop and make available to
16 States a model State program, including a model en-
17 forcement program. Such model program may be
18 amended by the Secretary on the Secretary's initia-
19 tive or in response to reports submitted by the
20 States pursuant to section 9, or as a result of work-
21 shops conducted under paragraph (3) of this sub-
22 section.

23 (2) SUGGESTED ELEMENTS.—The model pro-
24 gram developed under paragraph (1) shall include all
25 elements of a State program described in section 5.

1 The Secretary shall consider incorporating the fol-
2 lowing elements into the model program:

3 (A) The one-call notification system or sys-
4 tems shall—

5 (i) receive and record appropriate in-
6 formation from excavators about intended
7 excavations, including—

8 (I) the name of the person con-
9 tacting the one-call notification sys-
10 tem;

11 (II) the name, address, and tele-
12 phone number of the excavator;

13 (III) the specific location of the
14 intended excavation, along with the
15 starting date thereof and a description
16 of the intended excavation activity;
17 and

18 (IV) the name, address, and tele-
19 phone number of the person for whom
20 the work is being performed; and

21 (ii) maintain records on each notice of
22 intent to excavate for the period of time
23 necessary to ensure that such records re-
24 main available for use in the adjudication
25 of any claims relating to the excavation.

1 (B) The provision of information on exca-
2 vation requirements at the time of issuance of
3 excavation or building permits, or other specific
4 mechanisms for ensuring excavator awareness.

5 (C) A requirement that any excavator
6 must contact the one-call notification system at
7 least 2 business days, and not more than 10
8 business days, before excavation begins.

9 (D) Alternative notification procedures for
10 excavation activities conducted as a normal part
11 of ongoing operations within specific geographic
12 locations over an extended period of time.

13 (E) A requirement that facility opera-
14 tors—

15 (i) provide for locating and marking,
16 in accordance with the American Public
17 Works Association Uniform Color Code for
18 Utilities, or otherwise identifying, in ac-
19 cordance with standards established by the
20 State or the American National Standards
21 Institute, their underground facilities at
22 the site of an intended excavation within
23 no more than 2 business days after notifi-
24 cation of such intended excavation; and

1 (ii) monitor such excavation as appro-
2 priate.

3 (F) Provision for notification of excavators
4 if no underground facilities are located at the
5 excavation site.

6 (G) Provision for the approval of a State
7 program under this Act with time limitations
8 longer than those required under subpara-
9 graphs (C) and (E) of this paragraph where
10 special circumstances, such as severe weather
11 conditions or remoteness of location, pertain.

12 (H) Procedures for excavators and facility
13 operators to follow when the location of under-
14 ground facilities is unknown.

15 (I) Procedures to improve underground fa-
16 cility location capabilities, including compiling
17 and notifying excavators, facility operators, and
18 one-call centers of any information about pre-
19 viously unknown underground facility locations
20 when such information is discovered.

21 (J) Alternative rules for timely compliance
22 with State program requirements in emergency
23 circumstances.

24 (K) If a State has procedures for licensing
25 or permitting entities to do business, procedures

1 for the revocation of the license or permit to do
2 business of any excavator determined to be a
3 habitual violator of the requirements of the
4 State program.

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

14 (c) **PUBLIC EDUCATION.**—The Secretary shall de-
15 velop, in conjunction with facility operators, excavators,
16 one-call notification system operators, and State and local
17 governments, public service announcements and other edu-
18 cational materials and programs to be broadcast or pub-
19 lished to educate the public about one-call notification sys-
20 tems, including the national phone number.

21 **SEC. 9. STATE REPORTS.**

22 (a) **REQUIREMENT.**—

23 (1) **INITIAL REPORT.**—Within 3 years after the
24 date of enactment of this Act, each State shall sub-

1 mit to the Secretary a report on progress made in
2 implementing this Act.

3 (2) STATUS REPORTS.—Within 4½ years after
4 the date of enactment of this Act, and annually
5 thereafter, each State shall report to the Secretary
6 on the status of its State program, if any, and its
7 requirements, and any other information the Sec-
8 retary requires.

9 (b) SIMPLIFIED REPORTING FORM.—Within 3 years
10 after the date of enactment of this Act, the Secretary shall
11 develop and distribute to the States a simplified form for
12 complying with the reporting requirements of subsection
13 (a)(2).

14 **SEC. 10. MORE PROTECTIVE SYSTEMS.**

15 Nothing in this Act prohibits a State from imple-
16 menting a one-call notification system that provides great-
17 er protection for underground facilities from damage due
18 to excavation than a system established pursuant to this
19 Act.

20 **SEC. 11. SENSE OF CONGRESS; REQUIREMENT REGARDING**
21 **NOTICE.**

22 (a) PURCHASE OF AMERICAN-MADE EQUIPMENT
23 AND PRODUCTS.—It is the sense of Congress that, to the
24 greatest extent practicable, all equipment and products

1 purchased with funds made available under this Act
2 should be American-made.

3 (b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In
4 providing financial assistance under this Act, the Sec-
5 retary, to the greatest extent practicable, shall provide to
6 each recipient of the assistance a notice describing the
7 statement made in subsection (a).

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