

BILL ANALYSIS

Senate Research Center

H.B. 2295
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State Affairs
5-18-97
Committee Report (Amended)

DIGEST

Currently, a person or business that excavates in Texas is not required to determine if any underground facilities are beneath the proposed excavation site. Furthermore, an excavator is not required to report any damage made. Underground utilities report large product and service losses each year from accidental damage to service lines. Some of these same utilities point to the lack of a single, centralized system for verifying the location of buried service lines as a probable reason for the large amount of service line damage in Texas.

The term "one-call system" refers to a utility protection program that enables citizens and businesses alike to verify the location of underground utility lines with a single call made prior to digging. Texas is one of two states that does not have a one-call system.

Statistics indicate that excavation work is responsible for 45 percent of pipeline failures, making third-party damage or outside force damages the leading cause of all ruptures. Furthermore, more than 250,000 Texans each year lose total phone service or access to long distance service due to underground facilities that are cut by excavators who fail to call for information.

Although several dial-before-you-dig centers offer notification services in Texas today, there are concerns that these centers are rather regionalized, and lack information regarding the location of many utility lines. Another concern is that even when excavators did call one of these notification centers, the center only notifies underground facility operators who have joined their system.

H.B. 2295 would require an excavator to make one telephone call to a notification center that is registered with the Texas Underground Facility Notification Corporation, as created by this Act, before beginning excavation. The call to the notification center would generate notification of the intended excavation to the proper underground facility operators, which would give the facility operators an opportunity to mark their underground facilities. The underground facility markings would, in turn, allow the excavation to be made without damage to any underground facility, without interruption of utility service, and without danger to the excavator and the general public caused by underground facility damage.

PURPOSE

As proposed, H.B. 2295 sets forth a statewide notification system designed to prevent damage and increase safety with regard to underground facilities and excavation operations. In establishing this system, this bill creates the Texas Underground Facility Notification Corporation.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. SHORT TITLE: Underground Facility Damage Prevention and Safety Act.

SECTION 2. DEFINITIONS. Defines "agricultural operations" "Class A underground facility," "Class B underground facility," "corporation," "damage," "excavate" or "excavation," "excavator," "exploration and production underground facility," "high speed data transmission," "legal holiday,"

"mechanized equipment," "notification center," "operator," "person," "routine maintenance," "secured facility," "underground facility," and "Saturday notification."

SECTION 3. EXEMPTIONS. Provides that certain storage tanks, sumps, or impoundment, or piping, as well as certain underground facilities are not subject to this Act as underground facilities. Authorizes an operator of an underground register facility that is exempted under this section to voluntarily convert that facility to a Class A underground facility by sending written communication form a competent authority of the operator to the Texas Underground Facility Notification Corporation advising of the status change. Provides that the provisions of this Act are inapplicable to certain contractors. Provides that evacuation by an employee of the Texas Department of Transportation on a segment of the state highway system is not subject to this Act in certain situation.

SECTION 4. COMPLIANCE BY PERMIT HOLDERS. Provides that the fact that a person has a legal permit, permission from the owner of the property or the owner's licensee, or an easement to conduct excavation operations does not affect the person's duty to comply with this Act. Provides that compliance with this Act does not affect a person's responsibility to obtain a permit required by law.

SECTION 5. TEXAS UNDERGROUND FACILITY NOTIFICATION CORPORATION. Provides that the Texas Underground Facility Notification Corporation (corporation) is created to provide statewide notification services under this Act. Provides that the corporation is a public nonprofit corporation and has all the powers and duties incident to a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01, et seq., V.T.C.S.), except that the corporation is prohibited from making certain donations, from merging or consolidating with another corporation, and from being placed in receivership. Provides that the corporation is subject to Chapters 551 and 552, Government Code, with certain exceptions. Requires all expenses of the corporation to be paid from the income of the corporation. Sets forth provisions regarding liabilities of the corporation. Prohibits the corporation, except as provided by SECTION 6 of this Act, for any reason, from imposing an assessment, fee, or other charge, including a charge for inputting the data, against an operator. Provides that the corporation member operators are divided into divisions according to type of operator and sets forth these divisions. Requires the governor to appoint from each division a representative to serve on the board of directors of the corporation (board). Provides that a member operator that has operations that can be classified in more than one division is entitled to participate in each applicable division. Sets forth provisions regarding board membership. Sets forth provisions regarding a vacancy on the board. Requires the board to elect from among its directors a chair and vice chair. Provides that the chair and vice chair serve for a term of one year and authorizes the reelection of the chair and vice chair. Requires the corporation's bylaws to provide that each division is entitled to one vote.

SECTION 6. FEES AND RATES. Requires a Class A facility operator to pay the board an annual fee of \$50 before a certain date. Prohibits a fee from being prorated. Requires the notification center, each time a notification center receives a call from an excavator pursuant to SECTION 9(a), to pay the corporation \$0.01. Requires the \$0.01 charge to be waived for the remainder of any year in which the corporation receives \$500,000 under this subsection. Requires the notification center to charge a Class A underground facility operator not more than \$1.25 for a call made to the system that affects the operator. Authorizes the board to increase or decrease the maximum charge only on an affirmative vote of at least two-thirds of the total number of votes entitled to be cast. Authorizes a notification center to petition the corporation for an increase in the maximum charge and is entitled to the increase on proof that costs exceed the maximum charge. Prohibits the notification center from charging an operator any additional fee such as an initiation fee, a membership fee, or a set-up fee.

SECTION 7. DUTY OF AN OPERATOR. Requires each operator of a Class A underground facility, including a political subdivision of this state, to participate in a notification center as a condition of doing business in this state. Requires each operator of a Class A underground facility to provide certain information to the notification center. Prohibits the notification center from requiring an operator to conduct a survey of the operator's underground facilities or alter the operator's existing sign age. Authorizes an operator of a Class B underground facility to voluntarily convert to a Class A underground facility operator by sending written communication form a

competent authority of the operator to the Texas Underground Facility Notification Corporation advising of the status change.

SECTION 8. DUTY OF NOTIFICATION CENTER. Requires the notification center to advise the excavator of certain conditions that exist regarding the proposed excavation area. Requires the notification center, not later than two hours after the time the notification center receives a notice of intent to excavate from an excavator, to provide via high speed data transmission to every other affected notification center operating in the state the SECTION 9(c) information received from the excavator. Requires the notification center, two hours after the time the notification center receives a notice of intent to excavate from an excavator or from a different notification center, to notify each member operator that may have an underground facility in the vicinity of the proposed excavation. Sets forth additional requirements regarding the duties of a notification center. Sets forth procedures regarding the recovering of costs. Sets forth provisions regarding the maintenance of records to document certain information. Prohibits a notification center from destroying certain records. Requires a notification center, at all times, to maintain a minimum of \$5 million professional liability and errors and omissions insurance to cover duties prescribed by this Act. Prohibits the notification center from disseminating, making available, or otherwise distributing maps or information provided by an operator unless that action is necessary to perform the notification center's specific obligations under this Act.

SECTION 9. DUTY OF AN EXCAVATOR. Requires, except as provided by SECTIONS 12 and 13 of this Act, a person that intends to excavate to notify a notification center not earlier than the 14th day before the day the excavation is to begin or later than the 48th hour before the time the excavation is to begin, excluding Saturdays, Sundays, and legal holidays. Sets forth provisions regarding a Saturday notification. Prohibits the excavator from beginning excavation before the time the excavation is to begin without the prior written agreement of each operator that has an underground facility in the area to be excavated. Requires the person to again notify a notification center of the intended excavation in accordance with this subsection if the person does not begin the excavation within 15 days after notifying the notification center, excluding Saturdays, Sundays, and legal holidays. Requires the notice required under this section to include certain information. Requires the operator, if the operator notifies the excavator that the operator wants to have a representative present during the excavation, to contact the excavator and advise the excavator of the operator's intent to be present during excavation and confirm the start time of the excavation. Requires the excavator, if the start time is changed by the excavator, to notify the operator of the start time change. Prohibits the excavator, once notified by the operator of the intent to be present, from commencing at an earlier time than the confirmed start time without the operator's agreement.

SECTION 10. DUTY OF THE TEXAS UNDERGROUND FACILITY NOTIFICATION CORPORATION. Sets forth the specific duties of the corporation. Requires the corporation to solicit proposals for the contract to establish and operate the statewide toll-free number and the call router system by using a request for proposals process that includes specifications that have been approved by the board of directors in accordance with this Act. Provides that the corporation is not required to award the contract to the lowest offeror if the terms of another proposal would result in a lower annual cost and are more advantageous to the corporation and its members. Authorizes the corporation to reject all proposals if the corporation finds that none of the proposals is acceptable. Sets forth procedures applicable after the proposals are opened.

SECTION 11. NOTIFICATION BY AN EXCAVATOR. Provides that a person is considered to have provided notification under this Act when a person required to provide notice under this Act delivers the required information and a notification center receives that information within the time limits prescribed by this Act. Authorizes a person to deliver information required under this Act by any appropriate method, including the use of any electronic means of data transfer.

SECTION 12. EXCEPTION IN CASE OF EMERGENCY. Provides that SECTION 9 of this Act does not apply to an emergency excavation that is necessary to respond to a situation that endangers life, health, or property or a situation in which the public need for service compels immediate action. Authorizes the excavator to begin emergency excavation under Subsection (a) of this section immediately and requires the excavator to take reasonable precautions to protect underground facilities. Requires an excavator, when an emergency exists, to notify a notification

center as promptly as reasonably possible.

SECTION 13. OTHER EXCEPTIONS TO DUTY OF EXCAVATORS. Provides that SECTION 9 of this Act does not apply to certain operations.

SECTION 14. DUTY OF OPERATOR TO PERSON EXCAVATING. Requires each Class A underground facility operator contracted by the notification system, not later than the 48th hour after the excavator gives to the notification system notice of intent to excavate, excluding Saturdays, Sundays, and legal holidays, or at such time mutually agreed to by the operator and the excavator, to mark the approximate location of its underground facilities at or near the site of the proposed excavation if the operator believes that locating and marking the location is necessary. Authorizes an excavator, for the purposes of this section, to presume, unless the operator advises the excavator otherwise, that the marking of an approximate location of an underground facility is within 18 inches on either side of the underground facility. Requires an operator to refer to the American Public Works Association color coding standards when marking. Provide that an excavator who has fully complied with this Act may not be liable for damage to an underground facility that was not marked in accordance with this Act.

SECTION 15. DUTY OF OPERATOR IN EVENT OF AN EXTRAORDINARY CIRCUMSTANCE. Provides that the deadline prescribed by SECTION 14(a) of this Act does not apply under certain conditions. Requires the operator to notify a notification center of the extraordinary circumstance and to include certain information in the notification. Requires the operator, in addition to the notification required by Subsection (b) of this section, to also notify each excavator that has a pending location request in the location where an extraordinary circumstance is being experienced and to include in the notification certain information. Requires a notification center to inform each excavator notifying the system under SECTION 9 of this Act that the operator's location request activities are suspended until the extraordinary circumstance has discontinued or has been corrected within the affected location. Provides that an excavator is relieved from all provisions of this Act until such time as the operator notifies the notification center that the operator has resumed location request within the affected location.

SECTION 16. PRECAUTIONS TO AVOID DAMAGE TO FACILITIES. Sets forth the responsibilities of the excavator regarding damage to facilities, in addition to providing notice required by SECTION 9 of this Act. Requires an excavator to consider the known limit of control of the cutting edge or point of a piece of mechanized equipment in determining the necessary clearance that must be maintained with uncovered surfaces and paved surfaces. Requires the excavator, if the center line or outer edges of the underground facility is marked, to use a certain clearance. Provides that an operator can agree in writing that a smaller clearance can safely be used. Prohibits the operator from reasonably withholding an agreement to use a smaller clearance if the clearance is reasonable. Authorizes the operator, in determining if the clearance is reasonable, to consider the method of excavation to be used and the potential for damage, service, interruption, and loss of revenue.

SECTION 17. EXCAVATION DAMAGE. Requires the excavator, if an excavation operation results in damage to an underground facility, to immediately contact the underground facility operator to report the damage. Requires the excavator, if the excavator is not certain of the operator's identity, to contact a notification center to report the damage, and requires the notification center to immediately notify all other affected notification centers. Requires each notification center upon receiving such notification, to immediately contact each member operator that has underground facilities in or near the area in which the damage occurred. Authorizes only the operator or a person authorized by the operator to perform repairs and the repairs must be made in an expeditious manner. Requires an excavator to delay backfilling in the immediate area of the damage until the damage is repaired unless the operator authorizes the backfilling. Requires the excavator, if damage endangers life, health, or property because of the presence of flammable material, to keep sources of ignition away.

SECTION 18. INJUNCTION. Authorizes an operator to file an action in a district court for an injunction to enjoin excavation conducted or anticipated to be conducted in violation of this Act. Provides that venue for a suit brought under this section is in a county in which all or part of the

excavation occurs.

SECTION 19. CIVIL PENALTY. Sets forth provisions regarding civil penalties. Sets forth provisions regarding the assessment of penalties. Sets forth provisions regarding venue for a proceeding under this section. Requires the appropriate county attorney or criminal district attorney to bring the action to recover the civil penalty at the request of an operator. Requires 50 percent of the civil penalty collected under this section to be transferred to the county treasurer of the county prosecuting the action and 50 percent of the civil penalty collected under this section to be transferred to the corporation. Requires the county treasurer to deposit all money received under this section in the general fund of the county. Requires the corporation to use the money received under this section to develop public service announcements to educate the public about the one-call notification system and its availability as prescribed by SECTION 10(a)(7) of this Act. Provides that except as otherwise specifically provided in this Act, this section is not intended to affect any civil remedies otherwise provided by law for personal injury or for property damage, including any damage to an underground facility.

SECTION 20. CRIMINAL PENALTY FOR REMOVAL; DAMAGE, OR CONCEALMENT OF MARKER OR SIGN. Provides that a person commits a Class B misdemeanor if the person performs certain actions.

SECTION 21. EXISTING NOTIFICATION CENTERS. Authorizes a notification center operating on the effective date of this Act to continue to operate if the notification center complies with this Act.

SECTION 22. INITIAL DIRECTORS. (a) Requires the governor to appoint the initial directors under SECTION 5 of this Act before November 1, 1997.

(b) Outlines the terms of the directors appointed to represent the division under certain sections of this Act.

SECTION 23. FACILITY ON COUNTY OR MUNICIPAL ROAD. (a) Provides that SECTION 16 of this Act does not apply to an evacuation by a county employee on a county road or a municipal employee on a municipal road except in certain circumstances.

(b) Provides that this Act does not affect any contractual or statutory right of a county or municipality to require an operator to relocate, replace, or repair its underground facility.

SECTION 24. Effective date: September 1, 1997. Sets forth provisions regarding the application of this Act.

SECTION 25. Provides that this Act does not affect any civil remedy for personal injury or for property damage, including any damage to an underground facility.

SECTION 26. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Amendment 1.

(1) Section 8, subdivision (e), before "(d)(3)" insert "b(d)(2), or."

(2) Section 2, add subdivision (18) as follows:

(18) "Saturday notification" means a notice of intent to excavate provided by an excavator to a notification center on a Saturday before 11:59a.m."

(3) Section 24, subsection (6), before "19" strike "and" and after "19" insert ",23."

Amendment 2.

(1) Section 3, subdivision (b), strike "register" and replace with "convert."

(2) Section 3, subdivision (b), strike "under this Act but by doing so assumes the obligation to comply with all the duties of an operator of a Class A underground facility under this Act" and replace with "to a Class A underground facility by sending written communication form a competent authority of the operator to the Texas Underground Facility Notification Corporation advising of the status change."

(3) Section 6, subdivision (c), strike "an" and insert after "charge" and before "operator" the phrase "a Class A underground facility."

(4) Section 7, subdivision (d), strike "provide the information required by this section. A Class B underground facility that provides the information shall be treated as a Class A underground facility under this Act." and replace with "convert to a Class A underground facility operator by sending written communication from a competent authority of the operator to the Texas Underground Facility Notification Corporation advising of the status change."

(5) Strike Section 10(a)(1), and substitute the following:

(1) maintain a registration of:

(A) notification centers as provided by Section 2(12)(C) of this Act:

(B) operators who elect to convert facilities to Class A facilities under Section 3(b) of this Act; or

(C) operators who elect to become Class A underground facility operators under Section 7(d) of this Act.

(6) Section 14, subdivision (a), strike the "the" before "operator contracted" and replace with "each Class A underground facility."

Amendment 3.

Section 19, subsection (a), insert after the word "violates" the following:

"either Section 9 or Section 17 of"

Amendment 4.

Section 3, add Subsection (d), as follows:

"(c) Evacuation by an employee of the Texas Department of Transportation on a segment of the state highway system is not subject to this Act, provided that such exemption is:

(1) less than 24 inches is depth; and

(2) more than 10 feet form the right-of-way line."

Amendment 5.

Sections 9, deletes subsection (b) and renumbers remaining subsections accordingly.

Amendment 6.

Section 15, adds new Subsection (e), as follows:

"(e) An evacuation is relieved from all provisions of this Act until such time as the operator notified the notification center that the operator has resumed location request activities within the affected location."

Amendment 7.

Section 3, strikes Subsection (a)(5), and replace with the following:

"(5) the portion of an exploration and production underground facility that is located within the boundaries of the oil or gas field from which the oil and gas is produced and that is not located in the boundaries of an established easement or right-of-way granted for the benefit of a governmental entity or a private entity if the easment of right-of-way is granted for a public purpose; or."

Amendment 8.

Section 2, subsection 6, strike "depth of 12 or more inches." and replace with "depth of 16 or more inches."

Amendment 12.

Section 19, page 22, line 24, subdivision (c), strike "cause of action" and replace with "proceeding."

Amendment 13.

Section 23(a), strike "or an evacuation in a public right-of-way."