

**SUBJECT:** Statewide one-call notification system for excavations

**COMMITTEE:** Public Safety — committee substitute recommended

**VOTE:** 9 ayes — Oakley, Driver, Carter, Keel, Keffer, Madden, McClendon, Olivo, E. Reyna

0 nays

**WITNESSES:** For — Chris Literas and Rell Rice, Southwestern Bell; Ellen Weaver and James W. Hinds, Lone Star Gas Co.; Frank Fuentes, Texas Hispanic Contractors

Against — Betty Armstrong, Navarro County Commissioners; Jim Allison, Texas Association of County Judges and Commissioners; Steve Conoway, Texas Association of Builders; Thomas H. Hornseth, Comal County; Gene Shull; Johnny Weisman

**DIGEST:** CSHB 2295 would enact the Underground Facility Damage Prevention and Safety Act. It would create a public non-profit corporation, the Texas Underground Facility Notification Center, to provide statewide notification services to help monitor underground excavation activities in order to prevent damage to underground lines. The corporation would be required to maintain a registry of notification centers, establish a statewide toll-free phone number to be used by excavators, and develop minimum technical standards for use by notification centers. It could recommend civil penalties against notification centers that failed to comply with the act.

Corporate members would be divided into 15 divisions according to type of operators, including electrical utilities, phone companies, gas operators and cable companies. “Class A” underground facilities would include facilities that produce, store, convey or distribute electricity, gas, petroleum, steam or other telecommunication services. “Class B” facilities would mean those used for water, slurry, or sewage. The governor would appoint a representative from each operator division to serve on the corporation's board of directors for staggered three-year terms.

Class A operators, including political subdivisions, would have to participate in a notification center as a condition of doing business in Texas. These facilities would have to pay a \$50 annual fee, provide the name and phone number of a contact person, and furnish the center with periodic maps identifying the location of its underground lines. Class B facilities could voluntarily provide this information; by doing so, they would be treated as a Class A facility under the act.

Within two hours of receiving notice of an intent to excavate by an excavator, a notification center would have to inform every other affected notification center, using high speed transmission, and each member operator with an underground facility in the vicinity of the excavation. Notification centers would have to operate 24 hours a day, have the capacity to disseminate information quickly, submit expense information to the corporation, keep records for four years and maintain \$5 million in personal liability insurance. Notification centers would pay the corporation one cent for each call received from an excavator, up to a statewide maximum of \$500,000 per year. Notification centers would charge operators up to \$1.50 for each call they made.

Excavators intending to excavate to a depth of 12 or more inches would be required to notify a center at least 48 hours before beginning excavation and provide 30-day updates until the excavation was completed. The notification requirements would not apply to emergency excavations necessary to respond to a life-threatening situation, cemetery interment operations, operations at secured facilities, routine railroad maintenance, agriculture operations on private property, and oil and gas exploration activities. Excavators would also be required to take precautions in order to avoid damaging underground facilities and would have to notify operators in the event of damage to an underground facility.

An operator that believed it necessary to locate and mark the approximate location of its underground facilities at or near the proposed excavation site would have to do so within 48 hours of receiving notice of an impending excavation. This deadline would not apply in extraordinary circumstances due to an act of God. Operators also could file for an injunction to enjoin an excavation conducted in violation of the act and could pursue civil remedies for personal injury or property damage. Excavators also could be liable for

civil penalties ranging from \$100 to \$2,500, depending on the number of violations. Half of the penalty would be transferred to the prosecuting county and half to the corporation to develop public information on the statewide one-call notification system.

The bill would take effect on September 1, 1997, and stipulate deadlines for the corporation to develop and implement processes, collect fees, and require registration.

**SUPPORTERS  
SAY:**

CSHB 2295 would put Texas on track to developing a “one call system” enabling citizens and businesses to verify the location of underground utility lines with a single call prior to excavating. Currently, excavators in Texas are not required to determine if any underground facilities are underneath the proposed excavation site beforehand nor are they required to report any damage they cause. This is a huge problem in Texas because excavation work is responsible for 45 percent of pipeline failures; more than 250,000 Texans lose total phone service each year because of damage to underground facilities caused by excavators. Furthermore, severing a half-inch fiber optic cable can cut off whole communities from 911 services.

Currently, Texas, Alaska, and Hawaii are the only three states without a centralized one-call system for verifying the location of buried service lines. Texas also leads the nation in FCC reportable telephone cable cuts with 20 percent of all nationwide outages. The current system is inadequate because existing notification centers only provide regional information, and the centers only notify underground facility operators who have joined their system.

Texas would also benefit from establishing a one-call system because about \$200,000 in federal funding would become available to the Railroad Commission for public service announcements related to the program. In addition, the Railroad Commission estimates that this system would decrease time spent investigating pipeline accidents and increase time spent inspecting pipelines around the state.

The “dial-before-you-dig” system established by CSHB 2295 would make it easy and convenient for excavators to find out if there were any underground facilities beneath the proposed excavation site by allowing

them to call a toll-free number. The bill also would help operators protect their facilities by giving them the option to come out and mark the location of their underground lines. Furthermore, it would greatly reduce the number of damaged lines in Texas by providing a centralized tracking system and with clearly defined responsibilities and duties for all parties — excavators, operators and notification centers.

CSHB 2295 would include a number of common sense exceptions to its requirements and provide incentives for compliance by allowing the possibility of civil penalties and injunctions. The bill would not impose an onerous burden on the residential building industry because residential builders already routinely call notification centers to protect themselves from liability.

**OPPONENTS  
SAY:**

CSHB 2295 would have several unintended effects on county operations. For one thing, it would impose a continuous notification requirement on county crews doing road maintenance work on public rights of way. This requirement would soon prove to be extremely burdensome for counties. Counties routinely conduct maintenance excavations on public right of ways at a depth of 12 inches. Counties try to respond quickly to complaints made, but the 48-hour advance notification requirement would mean they would have to wait an extra day before starting a job. Furthermore, by statute phone companies are allowed to lay lines on public roads at their own risk without having to purchase an easement. By mandating notice requirements and precautions to avoid damages, in essence the bill would shift liability from the phone company to the county in these cases.

This bill would impose a new burden on the residential construction industry as well. The current system for new residential development works well because it usually is a coordinated effort between utilities and phone companies. The residential builders know where underground lines are located because they work with the companies to put these lines in. The notice requirements and the liability provisions could cause an increase in the costs of new homes.

**NOTES:**

Rep. Oakley is planning to offer two floor amendments. One would exempt county operations performed by county employees on county road right of ways up to a depth of 24 inches. The amendment would also

provide that nothing in the act would affect the contractual or statutory right of a county to require a line installed without an easement to be removed, repaired or replaced. The other amendment would allow Saturday calls to count toward the 48-hour advance notice requirement.

The committee substitute specified that only Class A operators would be required to pay the \$50 annual fee, modified notification deadlines, added the railroad exemption, and deleted a requirement that an operator provide a written agreement that a smaller safety clearance could be used in excavation.

The companion bill, SB 1281 by Cain, is pending in the Senate State Affairs Committee.