

APPENDIX B

Transportation Equity Act for the 21st Century

TEA 21, Title VII, Subtitle C – Comprehensive One-Call Notification

(May 22, 1998 Congressional Record, pp. H 3889-H 3990)

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Subtitle C - Comprehensive One-Call Notification

SEC. 7301. FINDINGS.

Congress finds that –

(1) unintentional damage to underground facilities during excavation is a significant cause of disruptions in telecommunications, water supply, electric power, and other vital public services, such as hospital and air traffic control operations, and is a leading cause of natural gas and hazardous liquid pipeline accidents;

(2) excavation that is performed without prior notification to an underground facility operator or with inaccurate or untimely marking of such a facility prior to excavation can cause damage that results in fatalities, serious injuries, harm to the environment and disruption of vital services to the public; and

(3) protection of the public and the environment from the consequences of underground facility damage caused by excavations will be enhanced by a coordinated national effort to improve one-call notification programs in each State and the effectiveness and efficiency of one-call notification systems that operate under such programs.

SEC. 7302. ONE-CALL NOTIFICATION PROGRAMS.

(a) In General. -- Subtitle III of title 49, United States Code, is amended by adding at the end thereof the following:

"CHAPTER 61--ONE-CALL NOTIFICATION PROGRAMS

"Sec.

"6101. Purposes.

"6102. Definitions.

"6103. Minimum standards for State one-call notification programs.

- "6104. Compliance with minimum standards.
- "6105. Review of one-call system best practices.
- "6106. Grants to States.
- "6107. Authorization of appropriations.
- "6108. Relationship to State laws.

“6101. Purposes

"The purposes of this chapter are—

- "(1) to enhance public safety;
- "(2) to protect the environment;
- "(3) to minimize risks to excavators; and
- "(4) to prevent disruption of vital public services,

by reducing the incidence of damage to underground facilities during excavation through the voluntary adoption and efficient implementation by all States of State one-call notification programs that meet the minimum standards set forth under section 6103.

"6102. Definitions

"In this chapter, the following definitions apply:

"(1) ONE-CALL NOTIFICATION SYSTEM. -- The term 'one-call notification system' means a system operated by an organization that has as 1 of its purposes to receive notification from excavators of intended excavation in a specified area in order to disseminate such notification to underground facility operators that are members of the system so that such operators can locate and mark their facilities in order to prevent damage to underground facilities in the course of such excavation.

"(2) STATE ONE-CALL NOTIFICATION PROGRAM. -- The term 'State one-call notification program' means the State statutes, regulations, orders, judicial decisions, and other elements of law and policy in effect in a State that establish the requirements for the operation of one-call notification systems in such State.

"(3) STATE. -- The term 'State' means a State, the District of Columbia, and Puerto Rico.

"(4) SECRETARY. -- The term 'Secretary' means the Secretary of Transportation.

"6103. Minimum standards for State one-call notification programs

"(a) MINIMUM STANDARDS. -- In order to qualify for a grant under section 6106, a State one-call notification program shall, at a minimum, provide for-

- "(1) appropriate participation by all underground facility operators;
- "(2) appropriate participation by all excavators; and
- "(3) flexible and effective enforcement under State law with respect to participation in, and use of, one-call notification systems.

"(b) APPROPRIATE PARTICIPATION. -- In determining the appropriate extent of participation required for types of underground facilities or excavators under subsection (a), a State shall assess, rank, and take into consideration the risks to the public safety, the environment, excavators, and vital public services associated with--

- "(1) damage to types of underground facilities; and
- "(2) activities of types of excavators.

"(c) IMPLEMENTATION. -- A State one-call notification program also shall, at a minimum, provide for--

- "(1) consideration of the ranking of risks under subsection (b) in the enforcement of its provisions;
- "(2) a reasonable relationship between the benefits of one-call notification and the cost of implementing and complying with the requirements of the State one-call notification program; and
- "(3) voluntary participation where the State determines that a type of underground facility or an activity of a type of excavator poses a de minimis risk to public safety or the environment.

"(d) PENALTIES. -- To the extent the State determines appropriate and necessary to achieve the purposes of this chapter, a State one-call notification program shall, at a minimum, provide for--

- "(1) administrative or civil penalties commensurate with the seriousness of a violation by an excavator or facility owner of a State one-call notification program;
- "(2) increased penalties for parties that repeatedly damage underground facilities because they fail to use one-call notification systems or for parties that repeatedly fail to provide timely and accurate marking after the required call has been made to a one-call notification system;
- "(3) reduced or waived penalties for a violation of a requirement of a State one-call notification program that results in, or could result in, damage that is promptly reported by the violator;
- "(4) equitable relief; and
- "(5) citation of violations.

"6104. Compliance with minimum standards

"(a) REQUIREMENT. -- In order to qualify for a grant under section 6106, each State shall submit to the Secretary a grant application under subsection (b). The State shall submit the application not later than 2 years after the date of enactment of this chapter.

"(b) APPLICATION. --

"(1) Upon application by a State, the Secretary shall review that State's one-call notification program, including the provisions for the implementation of the program and the record of compliance and enforcement under the program.

"(2) Based on the review under paragraph (1), the Secretary shall determine whether the State's one-call notification program meets the minimum standards for such a program set forth in section 6103 in order to qualify for a grant under section 6106.

"(3) In order to expedite compliance under this section, the Secretary may consult with the State as to whether an existing State one-call notification program, a specific modification thereof, or a proposed State program would result in a positive determination under paragraph (2).

"(4) The Secretary shall prescribe the form and manner of filing an application under this section that shall provide sufficient information about a State's one-call notification program for the Secretary to evaluate its overall effectiveness. Such information may include the nature and reasons for exceptions from required participation, the types of enforcement available, and such other information as the Secretary deems necessary.

"(5) The application of a State under paragraph (1) and the record of actions of the Secretary under this section shall be available to the public.

"(c) ALTERNATIVE PROGRAM. -- A State is eligible to receive a grant under section 6106 if the State maintains an alternative one-call notification program that provides protection for public safety, excavators, and the environment that is equivalent to, or greater than, protection provided under a program that meets the minimum standards set forth in section 6103.

"(d) REPORT. -- Within 3 years after the date of the enactment of this chapter, the Secretary shall begin to include the following information in reports submitted under section 60124 of this title--

"(1) a description of the extent to which each State has adopted and implemented the minimum Federal standards under section 6103 or maintains an alternative program under subsection (c);

"(2) an analysis by the Secretary of the overall effectiveness of each State's one-call notification program and the one-call notification systems operating under such program in achieving the purposes of this chapter;

"(3) the impact of each State's decisions on the extent of required participation in one-call notification systems on prevention of damage to underground facilities; and

"(4) areas where improvements are needed in one-call notification systems in operation in each State.

The report shall also include any recommendations the Secretary determines appropriate. If the Secretary determines that the purposes of this chapter have been substantially achieved, no further report under this section shall be required.

“6105. Review of one-call system best practices

"(a) STUDY OF EXISTING ONE-CALL SYSTEMS. -- Except as provided in subsection (d), the Secretary, in consultation with other appropriate Federal agencies, State agencies, one-call notification system operators, underground facility operators, excavators, and other interested parties, shall undertake a study of damage prevention practices associated with existing one-call notification systems.

"b) PURPOSE OF STUDY OF DAMAGE PREVENTION PRACTICES. -- The purpose of the study is to gather information in order to determine which existing one-call notification systems practices appear to be the most effective in protecting the public, excavators, and the environment and in preventing disruptions to public services and damage to underground facilities. As part of the study, the Secretary shall consider, at a minimum--

"(1) the methods used by one-call notification systems and others to encourage participation by excavators and owners of underground facilities;

"(2) the methods by which one-call notification systems promote awareness of their programs, including use of public service announcements and educational materials and programs;

"(3) the methods by which one-call notification systems receive and distribute information from excavators and underground facility owners;

"(4) the use of any performance and service standards to verify the effectiveness of a one-call notification system;

"(5) the effectiveness and accuracy of mapping used by one-call notification systems;

"(6) the relationship between one-call notification systems and preventing damage to underground facilities;

"(7) how one-call notification systems address the need for rapid response to situations where the need to excavate is urgent;

"(8) the extent to which accidents occur due to errors in marking of underground facilities, untimely marking or errors in the excavation process after a one-call notification system has been notified of an excavation;

"(9) the extent to which personnel engaged in marking underground facilities may be endangered;

"(10) the characteristics of damage prevention programs the Secretary believes could be relevant to the effectiveness of State one-call notification programs; and

"(11) the effectiveness of penalties and enforcement activities under State one-call notification programs in obtaining compliance with program requirements.

"(c) REPORT. -- Within 1 year after the date of the enactment of this chapter, the Secretary shall publish a report identifying those practices of one-call notification systems that are the most and least successful in--

“(1) preventing damage to underground facilities; and

"(2) providing effective and efficient service to excavators and underground facility operators.

The Secretary shall encourage each State and operator of one-call notification programs to adopt and implement those practices identified in the report that the State determines are the most appropriate.

"(d) SECRETARIAL DISCRETION. -- Prior to undertaking the study described in subsection (a), the Secretary shall determine whether timely information described in subsection (b) is readily available. If the Secretary determines that such information is readily available, the Secretary is not required to carry out the study.

"6106. Grants to States

"(a) IN GENERAL. -- The Secretary may make a grant of financial assistance to a State that qualifies under section 6104(b) to assist in improving--

- "(1) the overall quality and effectiveness of one-call notification systems in the State;
- "(2) communications systems linking one-call notification systems;
- "(3) location capabilities, including training personnel and developing and using location technology;
- "(4) record retention and recording capabilities for one-call notification systems;
- "(5) public information and education;
- "(6) participation in one-call notification systems; or
- "(7) compliance and enforcement under the State one-call notification program.

"(b) STATE ACTION TAKEN INTO ACCOUNT. -- In making grants under this section, the Secretary shall take into consideration the commitment of each State to improving its State one-call notification program, including legislative and regulatory actions taken by the State after the date of enactment of this chapter.

"(c) FUNDING FOR ONE-CALL NOTIFICATION SYSTEMS. -- A State may provide funds received under this section directly to any one-call notification system in such State that substantially adopts the best practices identified under section 6105.

"6107. Authorization of appropriations

"(a) FOR GRANTS TO STATES. -- There are authorized to be appropriated to the Secretary to provide grants to States under section 6106 \$1,000,000 for fiscal year 2000 and \$5,000,000 for fiscal year 2001. Such funds shall remain available until expended.

"(b) FOR ADMINISTRATION. -- There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out sections 6103, 6104, and 6105 for fiscal years 1999, 2000, and 2001.

"(c) GENERAL REVENUE FUNDING. -- Any sums appropriated under this section shall be derived from general revenues and may not be derived from amounts collected under section 60301 of this title.

“6108. Relationship to State laws

"Nothing in this chapter preempts State law or shall impose a new requirement on any State or mandate revisions to a one-call system."

(b) CONFORMING AMENDMENT. -- The table of chapters for subtitle III of such title is amended by adding at the end thereof the following:

"61. ONE-CALL NOTIFICATION PROGRAMS 6101".

CONFERENCE REPORT LANGUAGE

(May 22, 1998 Congressional Record, pp. H 3930-H 3931)

Subtitle C--Comprehensive One-call Notification

House bill

No provision.

Senate amendment

Section 3301 contains several findings that unintentional damage to underground facilities during excavation is a significant cause of disruptions; that excavation performed without prior notification or with inaccurate marking causes damage that can result in fatalities; and, that protection of the public and the environment from the consequences of underground facility damage will be enhanced by a coordinated national effort to improve one-call notification programs.

Section 3302 establishes a new chapter, which would be chapter 61, in Subtitle III of title 49, United States Code. The purposes of chapter 61, as set forth in 6101, are to enhance public safety; protect the environment; minimize risks to excavators; and prevent disruption of vital public services by improving one-call notification programs.

The new section 6102 defines a one-call notification system as a system operated by an organization that has as one of its purposes the receipt of notification from excavators of their intent to excavate in a specified area and the notification of underground facility operators so that they can locate and mark their lines in the area scheduled for excavation. The definition includes statutes, regulations, orders, and other elements of law and policy in effect that establish one-call notification system operation requirements within a State.

The new section 6103 also outlines minimum components that one-call notification programs should cover, including the appropriate participation by all underground facility operators, all excavators, and flexible and effective enforcement mechanisms governing participation in, and use of, one-call notification systems. In making a determination on the appropriate extent of participation required by underground facilities or excavators, the section requires a State to assess, and take into consideration, the risks to public safety, excavators, the environment, and vital services posed by underground facility damage and the actions of excavators.

The new section 6103 would further provide that a state could allow voluntary participation in one-call notification systems when it determines that certain types of underground facilities or excavation activities pose a de minimis risk to public safety or the environment. The section requires one-call notification programs to include administrative or civil penalties commensurate with the seriousness of a violation, increased penalties for parties that repeatedly damage underground facilities because they neglect to use one-call notification systems or fail to provide timely and accurate marking of underground facilities. The section allows states to reduce or waive penalties when underground facility damage is promptly reported.

The new section 6104 establishes a two-year program whereby states could apply for grants upon a showing that the state's one-call notification program meets the minimum standards outlined in the bill. The section further provides that a state providing for greater protection than the minimum standards criteria

established in the legislation would also be eligible to receive grants. The new section 6104 would also require the Secretary to include, three years after the enactment of this legislation, additional information on one-call notification programs in the biennial report on gas and hazardous liquids.

The new section 6105 requires the Secretary of Transportation to initiate a study of the best practices employed by one-call notification systems in operation in the States. If a study is undertaken, the Secretary is required to report on the best practices identified and encourage their adoption in the States. The Secretary is authorized to suspend with the report if the Secretary determines that the information is already readily accessible.

The new section 6106 would authorize the Secretary to make grants to improve one-call notification systems, and should take into account the commitment of each state in improving its program, in awarding grants. The provision also authorizes a state to convey its funds directly to any one-call notification system that adopts the best practices established under 6105. The new section neither opens nor closes the door to having one or more one-call system. Most states have a single one-call system, but several have more than one, this determination will remain a state's choice.

The new section 6107 would authorize up to \$1,000,000 and \$5,000,000 in fiscal years 2000 and 2001 out of general revenue funds.

Section 3302 also made conforming changes to the table of chapters for subtitle III, and certain conforming changes to the existing one-call notification systems language of 49 United States Code 60114.

Conference substitute

The Conference adopts the Senate provisions with modifications. The Conference stresses that untimely marking of underground facilities, as well as the findings contained in the Senate provision, also cause underground facility damage.

The Conference also clarifies that compliance with the minimum standards outlined in sections 6103 and 6104 would only be required when applying for a grant under the new section 6106. The Conference also modifies the Senate language to require the Secretary to encourage states to adopt the most successful practices of one-call notification systems as determined the most appropriate by each state. The Conference also modifies language in the newly added section 6108 to clarify that nothing in the new chapter 61 preempts any existing state law, or would require a state to modify or revise existing one-call notification systems. The Conference also retains 49 U.S.C. 60114.