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FISCAL IMPACT REPORT

ORIGINAL DATE 2-23-09

SPONSOR Cisneros LAST UPDATED _____ HB _____

SHORT TITLE Underground Utility Facility Markings SB 597

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non- Rec	Fund Affected
Total		None to government but possibly significant to Private Sector *				Private Sector Impact

(Parenthesis () Indicate Expenditure Decreases)

(* There may be a significant impact to private sector, especially utility companies)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

Senate Bill 597 amends Section 62-14-2 NMSA 1978 to add “regardless of ownership” to the definition of “underground facility” and Section 62-14-5 (Marking of Facilities) to specify that a person owning or operating an underground facility shall mark the underground facility “including up to a client’s or customer’s point of use”, before excavation.

It is unclear what the intended purpose of the language change is. It is uncertain as to what is intended by the suggested language.

Current statute requires each underground facility owner or operator locate and mark their own facilities only. Locating and marking of customer-owned underground facilities are the responsibility of the customer. The demarcation point between the utility and the customer is generally where transfer occurs. Demarcation points are at the outlets of meters (gas, water, electric, etc.) or other transfer points (the “Subscriber Network Interface” for telecommunications, fire system protection tie-in, etc). The suggested language could either reinforce the current statute requirements or could be interpreted to require underground facility owners to locate and mark customer-owned underground facilities beyond the demarcation point.

FISCAL IMPLICATIONS

Although there may not be a direct impact to governmental entities, there may be a significant impact to private sector, especially utility companies. In turn, the additional costs to the private sector entities could eventually impact state agencies.

The financial impact of the legislation would be on the utility service provider if the language is construed to require utilities to locate customer-owned facilities such as gas lines, buried electric and telephone cable, water lines, etc. In most instances, customer-owned facilities are installed by customer-hired contractors and are not recorded on a site map. Many are not locatable by instrument (for example, plastic water lines) and can only be located by manually exposing the line (potholing). It is not possible to estimate how many customer-owned facilities each year would need to be located if the proposed language is interpreted in this way. The cost of locating an underground facility can vary greatly and could be as much as \$500 to \$1000 or more per underground facility if it has to be exposed manually. The average home has 2-5 underground facilities serving it. In addition to the cost, this interpretation substantially increases the liability exposure of utility for damages or injuries that could occur because of failure to correctly locate such customer-owned facilities.

SIGNIFICANT ISSUES

According to the Public Regulation Commission:

The most significant issue is what is intended by the proposed language. If it is intended to only reinforce current requirements, then the proposed language, we believe, actually confuses the subject more.

However, the language added leads us to believe that the language is intended to require utility owners and operators (i.e., “underground facility owner or operator”) to locate customer-owned underground facilities. For example, the definition of an underground facility (§62-14-2.N NMSA 1978) is being modified by adding “regardless of ownership”. Likewise, §62-14-5.A NMSA 1978, the section that requires and underground facility owner or operator locate and mark their own facilities, is being modified by adding “... including up to a client’s or customer’s point of use ...” A “customer’s point of use” is not defined and could be construed to mean all the way up to the appliance that uses the service (eg, the water heater, gas stove, etc).

In our opinion, the suggested language would not enhance public safety requirements nor significantly reduce damage due to excavation activity. In the majority of cases, the demarcation point for gas, underground electric, and underground telecommunications is adjacent to the residence, thus those facilities do get located and marked by the utility. For potable water and sewer lines, the demarcation point is at the street at the meter or sewer line interconnection. Anecdotally, in the last five years, only a handful of complaints have been received from customers, mostly because of frustration with having to hire someone to locate their owned facilities. Few significant property damage, service interruption, or injury incidents on customer-owned facilities have occurred