

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 151

6
7 H.P. 126

House of Representatives, January 22, 1985

8 Reference to the Committee on Utilities suggested and ordered printed.

9 EDWIN H. PERT, Clerk

10 Presented by Representative Vose of Eastport.

Cosponsored by Representative Richard of Madison, Senator Perkins of
Hancock and Representative Paradis of Old Town.

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12 STATE OF MAINE
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14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT Relating to the Protection of
18 Underground Facilities under the
19 Public Utility Law.
20

21 Be it enacted by the People of the State of Maine as
22 follows:

23 23 MRSA §3360-A, as enacted by PL 1979, c. 362,
24 §2, is amended to read:

25 §3360-A. Protection of underground facilities

26 1. Definitions. As used in this section, unless
27 the context otherwise indicates, the following terms
28 ~~shall~~ have the following meanings.

29 A. "Business day" means any day other than Sat-
30 urday, Sunday or a legal holiday.

31 B. "Emergency excavation" means immediate exca-
32 vation necessary to prevent injury, death or loss
33 of an existing vital service.

1 C. "Excavation" means any operation in which
2 earth, rock or other material on or below the
3 ground is moved or otherwise displaced, by means
4 of power tools, power equipment or explosives and
5 including grading, trenching, digging, ditching,
6 drilling, augering, tunneling, scraping and cable
7 or pipe driving, except tilling of soil and gar-
8 dening or agricultural purposes.

9 D. "Person" means an individual, partnership,
10 municipality, state, county, political subdivi-
11 sion, utility, joint venture or corporation and
12 includes the employer of an individual.

13 E. "Underground facility" means any item of per-
14 sonal property buried or placed below ground for
15 use in connection with the storage or conveyance
16 of ~~water, sewage,~~ electronic, telephonic or tele-
17 graphic communications, electric energy, ~~oil,~~ gas
18 or other substances and including, but not lim-
19 ited to, pipes, ~~sewers,~~ conduits, cables, valves,
20 lines, wires, manholes, attachments, and appurte-
21 nances and ~~these parts of poles below ground.~~
22 ~~This definition shall not include highway drain-~~
23 ~~age culverts or under drains.~~

24 F. "Utility underground plant damage prevention
25 system" means a system created by public utili-
26 ties which supply telephone, electric and gas
27 service which operates during normal business
28 hours each day of the year exclusive of Satur-
29 days, Sundays and legal holidays for the purpose
30 of receiving notice of proposed excavations and
31 transmitting those notices to member utilities
32 and others interested in receiving notice of pro-
33 posed excavations. The cost of operating the
34 utility underground plant damage prevention sys-
35 tem shall be apportioned equitably among members
36 according to a formula to be fixed by agreement
37 of the members.

38 2. Responsibility of designers. Architects, en-
39 gineers or other persons designing or requiring exca-
40 vation shall obtain recorded information from persons
41 with underground facilities, as to the nature and lo-
42 cation of underground facilities and then make the
43 information and location a part of the plan by which
44 the contractors operate.

1 3. Notice to be given. Except as hereafter provided,
2 no person shall may begin excavation without
3 first notifying any person having underground facilities
4 in the area of the proposed excavation, except
5 an employee with respect to his employer's facility.
6 This notice shall be in writing or in person, to be
7 delivered to the utility at its area place of business,
8 at least 3 4 working days prior to the commencement
9 of excavation. Notice to a public utility
10 underground plant damage prevention system given at
11 least 3 working days prior to the commencement of an
12 excavation shall constitute compliance with the notice
13 requirements of this section.

14 4. Response to notice. A person shall, upon receipt
15 of the notice provided for in subsection 3, advise the excavator
16 of the location and size of underground facilities in the proposed
17 excavation area by marking the location of the facilities with stakes,
18 paint or by other identifiable marking within 36 18
19 inches horizontally from the exterior sides of the
20 underground facilities and the depth of the underground
21 facility, if known. The person providing information shall respond
22 no later than 2 3 full business days after receipt of the notice.
23 It shall be the responsibility of the excavator to maintain those
24 location markings until the excavations are completed.
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28 5. Emergency excavations exempt. Emergency excavations
29 are exempt from the provisions of this section.
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31 6. Liability of excavator. If information pursuant to
32 subsections 3 and 4 is not provided within the time specified therein,
33 or if the information provided fails to identify the location of the
34 underground facilities in accordance with subsection 4,
35 then any person damaging or injuring underground facilities shall not
36 be liable for damage or injury, except on proof of negligence.
37 Failure to provide such notice as specified in subsection 3, which
38 results in damage to underground facilities shall be considered as
39 prima facie evidence in any legal or administrative proceeding that
40 the damage was caused by the negligence of that person. Failure by
41 the owner of these underground facilities to respond as out-
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1 lined in subsection 4 shall relieve the excavator of
2 liability for damage or injury, except on proof of
3 negligence.

4 7. Imprudent action. Compliance with this sec-
5 tion does not excuse a person from acting in a care-
6 ful and prudent manner nor does compliance with this
7 section excuse a person from liability for damage or
8 injury for failure to so act.

9 8. Effect on existing statutes or ordinances.
10 Nothing contained in this section shall be construed
11 to effect or impair any statute or ordinance requir-
12 ing permits for excavation in a street or public
13 highway.

14 9. Exceptions-

15 A. Nothing in this section shall apply to a pub-
16 lic utility, municipal public works department or
17 sewer district, if written or verbal notice of
18 the approximate location and time of that excava-
19 tion is given by that utility, department or dis-
20 trict to a designated representative of those
21 other utilities, districts, municipal sewer or
22 public works departments prior to any excavation
23 taking place-

24 B. Nothing in this section shall apply to state
25 and state aid highway construction and mainte-
26 nance activities performed by state maintenance
27 forces-

28 10. Penalty. Any person failing to give notice
29 of an excavation as required by subsection 3 and dam-
30 aging an underground facility in the course of that
31 excavation shall forfeit and pay into the State Treas-
32 ury not more than \$500 for each offense, to be re-
33 covered in a civil action in the name of the State,
34 in addition to any liability for actual damages to
35 any utility or other person.

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STATEMENT OF FACT

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Under present law, public utilities must respond to notices of excavation within 2 business days. The response must identify all underground facilities in the proposed excavation area. Public utilities of Maine have found that it is not possible to identify all underground facilities in an excavation area in 2 short days. Three days is not an unreasonable period.

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This bill also makes the State subject to the notice requirement and imposes a \$500 civil penalty upon persons who fail to give the required notice.

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