

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1036

H. P. 838

House of Representatives, March 5, 1979

On Motion of Mr. Davies of Orono, referred to the Committee on Public Utilities. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Higgins of Scarborough.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

**AN ACT Relating to the Protection of Underground Facilities.**

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

**Sec. 1.** 23 MRSA § 3360, as enacted by PL 1971, c. 284, is repealed.

**Sec. 2.** 23 MRSA § 3360-A is enacted to read:

**§ 3360-A. Protection of underground facilities**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms shall have the following meanings.

**A. "Business day"** means any day other than Saturday, Sunday or a legal holiday.

**B. "Excavation"** means any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced, by means of power tools, power equipment or explosives and including grading, trenching, digging, ditching, drilling, augering, tunneling, scraping and cable or pipe driving, except tilling of soil and gardening or agricultural purposes.

**C. "Person"** means an individual, partnership, municipality, state, county, political subdivision, utility, joint venture or corporation and includes the employer of an individual.

**D. "Underground facility" means any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, electric energy, oil, gas or other substances and including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, appurtenances and those parts of poles below ground.**

**2. Responsibility of designers. Architects, engineers or other persons designing or requiring excavation shall obtain information from persons with underground facilities, as to the nature and location of underground facilities and then make the information and location a part of the plan by which the contractors operate.**

**3. Notice to be given to utilities. Except as hereafter provided, no person shall begin excavation without first notifying any person having underground facilities in the area of the proposed excavation, except an employee with respect to his employer's facility. This notice shall be in writing or in person, at least 2 full business days prior to the commencement of the excavation.**

**4. Responsibility of utility. A person shall, upon receipt of the notice provided for in subsection 3, advise the excavator of the location and size of underground facilities in the proposed excavation area by marking the location of the facilities with stakes, paint or by other identifiable marking within 18 inches horizontally from the exterior sides of the underground facilities and the depth of the underground facility, if known. The person providing information shall respond no later than 2 full business days after receipt of the notice. It shall be the responsibility of the excavator to maintain those location markings until the excavations are completed.**

**5. Emergency excavations exempt. Emergency excavations are exempt from the provisions of subsections 3 and 4.**

**6. Liability of excavator. If information pursuant to subsections 3 and 4 is not provided within the time specified therein, or if the information provided fails to identify the location of the underground facilities in accordance with subsection 4, then any person damaging or injuring underground facilities shall not be liable for damage or injury, except on proof of negligence.**

**7. Imprudent action. Compliance with this section does not excuse a person from acting in a careful and prudent manner nor does compliance with this section excuse a person from liability for damage or injury for failure to so act.**

**8. Effect on existing statutes or ordinances. Nothing contained in this section shall be construed to effect or impair any statute or ordinance requiring permits for excavation in a street or public highway.**

**9. Exceptions.**

**A. Nothing in this section shall apply to a public utility, municipal public works department or sewer district, if written or verbal notice of the**

**approximate location and time of that excavation is given by that utility, department or district to a designated representative of those other utilities, districts, municipal sewer or public works departments prior to any excavation taking place.**

**B. Nothing in this section shall apply to state and state aid highway construction activities, performed by state maintenance forces.**

**10. Penalties. Whoever violates any provision of this section commits a civil violation for which a forfeiture of not less than \$50 nor more than \$100 may be adjudged.**

#### STATEMENT OF FACT

In 1971, legislation was enacted to provide protection to utility companies from damage to buried pipes, cables, conduits and other facilities. That legislation, PL 1971, chapter 284, required that notice be given by any person, firm or corporation to any and all utilities which may be located in the construction area prior to any excavation.

The law places the responsibility squarely on the person doing the excavation, which is a constructive start. However, the law has 2 obvious flaws. First, the law does not apply to any public construction contracts, e.g., contracts awarded by any federal, state, municipal or quasi-municipal government, agency or commission, including the installation of water lines, sewer lines, electrical conduits, communicables and the like.

Secondly, it is obvious that the owners of the underground facilities and the designers of construction projects, requiring excavation, must share the responsibility of protecting these buried facilities with the person doing the excavating.

The proposed legislation addresses these issues and provides a mechanism whereby each of the involved parties assumes responsibilities which do not vary substantially from existing practice.

1. The designer is required to obtain information relating to the location of these buried utilities and record these locations on the the construction plans.

2. The excavation contractor is required to provide notice of intent to excavate, 24 hours prior to excavation.

3. The notified utility is required to physically mark the location of the buried facility on the surface of the area to be excavated.

4. Having followed the required procedures, the excavator is relieved of liability for damage to underground facilities, except in the case of his own negligence.