

# MAINE STATE LEGISLATURE

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L.D. 495

(Filing No. S-224)

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STATE OF MAINE  
SENATE  
115TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A" to S.P. 186, L.D. 495, Bill, "An Act to Create a Maine 'Dig-safe' System"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 23 MRSA §3360-A, sub-§1, ¶¶C-1, F and G are enacted to read:

C-1. "Excavator" means any person proposing to make, making or contracting for an excavation.

F. "Underground facility operator" means the owner or operator of any underground facility, other than an underground oil storage facility as defined in Title 38, section 562-A, subsection 21 or an airport aviation fuel hydrant piping system, used in furnishing electric, telephone, telegraph, gas, petroleum transportation or cable television service. "Underground facility operator" does not include a municipality or a public utility with fewer than 5 full-time employees or fewer than 300 customers.

G. "Utility" means any public utility as defined in Title 35-A, section 102, subsection 13.

Sec. 2. 23 MRSA §3360-A, sub-§1-A is enacted to read:

1-A. Damage prevention system. Each underground facility operator must be a member of and participate in an underground facility damage prevention system, referred to in this section as the "system." The system shall operate during regular business hours throughout the year. The system shall receive notices of proposed excavations and immediately transmit those notices to underground facility operators whose facilities may be affected. The cost for operation of the system must be apportioned

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2 equitably among members. Nothing in this subsection prohibits a  
3 municipality, utility or other entity that owns or operates an  
4 underground facility from voluntarily becoming a member of the  
5 system. Notwithstanding subsection 1, paragraph F, a person that  
6 voluntarily becomes a member of the system is deemed an  
7 underground facility operator for the purposes of this section.

8 **Sec. 3. 23 MRSA §3360-A, sub-§3,** as enacted by PL 1979, c.  
9 362, §2, is repealed and the following enacted in its place:

10 **3. Notice by excavator.** A person may not begin excavation  
11 without first giving notice as required by this section, unless  
12 exempted pursuant to this section.

13 **A.** In addition to any other notices required under this  
14 section, each excavator shall notify the system of the  
15 location of the intended excavation at least 3 business days  
16 but not more than 30 calendar days prior to the commencement  
17 of excavation.

18 **B.** Notice may be in writing, by telephone or by electronic  
19 facsimile as long as an excavator acquires and records an  
20 acknowledgement of the receipt of any notice the excavator  
21 sends by electronic facsimile. For purposes of this  
22 section, the system shall provide a toll-free telephone  
23 number.

24 **C.** Prior to notifying the system, the area of proposed  
25 excavation must be marked by the excavator in a manner  
26 designed to enable the operator of the underground facility  
27 to know the approximate boundaries of the proposed  
28 excavation.

29 **D.** If an excavation involves blasting, the excavator shall  
30 provide written notice of that blasting, either in the  
31 initial notice or in a subsequent notice, accurately  
32 specifying the date and location of that blasting. This  
33 written notice must be given and received at least 24 hours  
34 in advance except that, in the case of an unanticipated  
35 obstruction requiring blasting, the excavator shall provide  
36 written notice not less than 4 hours in advance of that  
37 blasting.

38 **E.** If the proposed excavation or blasting does not commence  
39 within 30 calendar days of notification under this  
40 subsection or the excavation or blasting will be expanded  
41 outside of the location originally specified in the  
42 notification, the excavator responsible for that excavation  
43 shall again notify the system as specified in paragraph A.

44 **Sec. 4. 23 MRSA §3360-A, sub-§§3-A, 3-B and 3-C** are enacted to  
45 read:

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3-A. Notification by system. Upon receiving notice of excavation, the system shall notify immediately all members whose underground facilities may be affected. The system shall maintain adequate records to document compliance with requirements of this chapter.

3-B. Additional notification by certain utilities. In addition to providing any other notices required under this section and before commencing any excavation for the purposes of working on an underground gas transmission line, a gas utility as defined in Title 35-A, section 102, subsection 8 or a natural gas pipeline utility as defined in Title 35-A, section 102, subsection 10 shall provide to the fire department within whose service area the excavation will occur notice of its intent to excavate. This notice must be in writing or by telephone and must be given at least 3 business days prior to the utility commencing work. The utility may not commence work until it has received from the fire department an acknowledgment of the notice either by telephone or in writing.

3-C. Information provided to municipalities, fire departments and emergency response agencies. Each gas utility as defined in Title 35-A, section 102, subsection 8 or natural gas pipeline utility as defined in Title 35-A, section 102, subsection 10 shall provide maps to:

A. Each municipality within which it operates gas or natural gas underground transmission facilities. These maps must clearly indicate the location and depth of all main supply underground transmission facilities located within the jurisdiction of the municipality;

B. Each fire department within whose service territory it operates gas or natural gas underground transmission facilities. These maps must clearly indicate the location and depth of all main supply underground transmission facilities located within the jurisdiction of the fire department;

C. Each county emergency management agency within which it operates gas or natural gas underground transmission facilities. These maps must clearly indicate the location and depth of all main supply underground transmission facilities located within the jurisdiction of the county emergency management agency; and

D. The Maine Emergency Management Agency. These maps must clearly indicate the location and depth of all main supply underground transmission facilities that the utility operates in this State.

2 The utility must provide updated maps to the appropriate entities  
3 whenever changes occur in the configuration of the utility's main  
4 supply underground facilities.

6 **Sec. 5. 23 MRSA §3360-A, sub-§4, as enacted by PL 1979, c.**  
7 **362, §2, is amended to read:**

8 **4. Response to notice.** ~~A person~~ An underground facility  
9 operator shall, upon receipt of the notice provided for in  
10 subsection 3 3-A, advise the excavator of the location and size  
11 of the operator's underground facilities in the proposed  
12 excavation area by marking the location of the facilities with  
13 stakes, paint or by other identifiable marking ~~within 36 inches~~  
14 ~~horizontally from the exterior sides~~ markings. The marking must  
15 identify a strip of land not more than 3 feet wide directly over  
16 the facility or a strip of land extending not more than 1 1/2  
17 feet on either side of the underground facilities facility and  
18 must indicate the depth of the underground facility, if known.  
19 ~~The person providing information~~ underground facility operator  
20 shall respond complete this marking no later than 2 full business  
21 days after receipt of the notice. It shall be the responsibility  
22 ~~of the excavator to maintain these location markings until the~~  
23 ~~excavations are completed.~~ After the underground facility  
24 operator has marked the location of that operator's underground  
25 facilities in the proposed excavation area, the excavator is  
26 responsible for maintaining the markings at the location, unless  
27 the excavator requests remarking at the location due to  
28 obliteration, destruction or other removal of the markings. The  
29 underground facility operator shall remark the location within  
30 one business day following the receipt of a request to remark.

31 If the proposed excavation is of such length or size that the  
32 underground facility operator advises the excavator that the  
33 operator can not reasonably respond with respect to all the  
34 operator's underground facilities within 2 full business days,  
35 the excavator shall notify the operator of the specific location  
36 in which excavation will first be made and the operator shall  
37 respond with respect to the operator's underground facilities in  
38 that location within 2 full business days and for the remaining  
39 facilities within a reasonable time thereafter.

40 The system may adopt rules requiring, under certain  
41 circumstances, face-to-face meetings between excavators and  
42 underground facility operators.

43 **Sec. 6. 23 MRSA §3360-A, sub-§5-A is enacted to read:**

44 **5-A. Notice of damage.** When an underground facility is  
45 damaged, the excavator causing the damage shall immediately  
46 notify the affected underground facility operator. The excavator  
47 may not backfill an excavation where damage has occurred without  
48 first receiving permission from the affected operator.

2           **Sec. 7. 23 MRSA §3360-A, sub-§6**, as enacted by PL 1979, c.  
362, §2, is repealed and the following enacted in its place:

4           6. Liability of excavator. If an excavator complies with  
5 subsection 3 and if information pursuant to subsections 3-A and 4  
6 is not provided within the time specified or if the information  
7 provided fails to identify the location of the underground  
8 facilities in accordance with subsection 4, then an excavator  
9 damaging or injuring underground facilities is not liable for any  
10 damage or injury caused by the excavation, except on proof of  
11 negligence.

14           **Sec. 8. 23 MRSA §3360-A, sub-§§6-A and 6-B** are enacted to read:

16           6-A. Forfeitures. The forfeitures for failure to comply  
17 with this section are as follows.

18           A. An excavator who does not give notice of an excavation  
19 under subsection 3 and who damages an underground facility  
20 in the course of that excavation is subject to a civil  
21 forfeiture of up to \$1,000 in addition to any other remedies  
22 or forfeitures provided by law or any liability for actual  
23 damages.

24           B. An underground facility operator who does not mark the  
25 location of the operator's underground facilities under  
26 subsection 4 is subject to a civil forfeiture of up to  
27 \$1,000 in addition to any other remedies or forfeitures  
28 provided by law or any liability for actual damages  
29 resulting from the operator's failure to mark those  
30 facilities.

31           6-B. Failure to notify. An excavation that is made without  
32 the excavator providing any or all of the notices required by  
33 this section that results in any damage to an underground  
34 facility or facilities is prima facie evidence in any civil  
35 proceeding that the damage was caused by the negligence of the  
36 excavator.

37           **Sec. 9. 23 MRSA §3360-A, sub-§9**, as amended by PL 1989, c.  
109, is repealed.

38           **Sec. 10. 23 MRSA §3360-A, sub-§10** is enacted to read:

39           10. Further notice requirements. The following provisions  
40 govern excavations in areas where there are underground  
41 facilities owned or operated by a person who is not an  
42 underground facility operator as defined in subsection 1 and who  
43 is not a voluntary member of the system established under  
44 subsection 1-A.

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2 A. In addition to other notice requirements under this  
3 section and except for an employee with respect to an  
4 employer's facility, an excavator shall notify any person  
5 who is not a member of the system and has underground  
6 facilities in the area of the proposed excavation. This  
7 notice must be in writing or in person and must be given at  
8 least 3 business days prior to the commencement of  
9 excavation.

10 B. A person owning or operating an underground facility  
11 shall, upon receipt of the notice provided for in paragraph  
12 A, advise the excavator of the location and size of the  
13 underground facilities in the proposed excavation area by  
14 marking the location of the facilities with stakes, paint or  
15 by any other identifiable markings within 36 inches  
16 horizontally from the exterior sides of the underground  
17 facilities and the depth of the underground facilities, if  
18 known. The person providing information shall respond no  
19 later than 2 full business days after receipt of the notice.  
20 It is the responsibility of the excavator to maintain those  
21 location markings until the excavations are completed.

22 If an excavator complies with paragraph A and if information  
23 pursuant to paragraph B is not provided within the time specified  
24 or if the information fails to identify the location of the  
25 underground facilities in accordance with paragraph B, then an  
26 excavator damaging or injuring underground facilities is not  
27 liable for any damage or injury caused by the excavation, except  
28 on proof of negligence.

30 **Sec. 11. System choice under the Maine Revised Statutes, Title 23,**  
31 **section 3360-A, subsection 1-A.** Each underground facility operator,  
32 as defined in the Maine Revised Statutes, Title 23, section  
33 3360-A, subsection 1, shall participate in a damage prevention  
34 system comparison study, the sole purpose of which is to compare  
35 the costs of establishing of a stand-alone underground damage  
36 prevention system in Maine to the costs of joining the  
37 Massachusetts Utility Underground Plant Damage Prevention  
38 System. The study participants shall determine which option  
39 involves the least overall costs and present their report to the  
40 Public Utilities Commission and the Joint Standing Committee on  
41 Utilities no later than January 1, 1992. The commission shall  
42 make an evaluation of the reasonableness of the report's  
43 conclusion by March 1, 1992. By January 1, 1993, underground  
44 facility operators shall establish a Maine-based system unless  
45 the study's conclusion, approved by the commission, indicates  
46 that joining the Massachusetts Utility Underground Plant Damage  
47 Prevention System will be less expensive.

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50 The duties imposed by this section of this Act are in  
addition to those imposed under Title 23, section 3360-A.

Nothing in this section of this Act may be interpreted to limit, alter or otherwise affect any duties and liabilities established under Title 23, section 3360-A.

**Sec. 12. Effective date.** Sections 1 to 10 of this Act take effect on January 1, 1993.

### FISCAL NOTE

This bill requires the Public Utilities Commission to review the report prepared by underground facility operators concerning damage prevention systems. The costs associated with the report review can be absorbed within existing resources of the Public Utilities Commission.

This bill establishes a new civil violation and forfeiture for utilities and excavators who fail to comply with new dig-safe requirements. There will be a minimal number of new cases filed in District Court as a result of these violations. The additional work load and administrative costs associated with these few cases will be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines will increase General Fund revenue. The amount can not be determined at this time.'

### STATEMENT OF FACT

This amendment strikes the language of the bill and replaces it with provisions establishing a Maine dig-safe system. The following is a summary of the major provisions.

This amendment defines "underground facility operator" as any owner or operator of an underground facility used in furnishing electric, gas, telephone, telegraph, petroleum transportation or cable television service. Excluded from the definition are the following: underground oil storage facilities, airport aviation fuel hydrant piping systems, municipalities and any public utility with fewer than 5 full-time employees or fewer than 300 customers.

This amendment establishes a damage prevention system. Every underground facility operator must be a member of this system. Any owner or operator of underground facilities who is not an underground facility operator may voluntarily become a member of the system.

This amendment requires excavators to give notice to the damage prevention system before beginning any excavation. The notice must be given at least 3 days and not more than 30 days prior to commencement of excavation. If the excavation involves



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2 blasting, notice must be given in writing at least 24 hours in  
advance and must accurately specify the location of the proposed  
3 blasting.

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5 This amendment requires the damage prevention system to  
6 notify immediately member underground facility operators, who  
operate facilities in the area of the excavation, of the proposed  
7 excavation.  
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10 This amendment requires gas utilities and natural gas  
pipeline utilities, before commencing any excavation for the  
11 purposes of working on an underground transmission line, to  
12 notify the fire department in whose service area the excavation  
will occur. The utility may not commence excavation until it  
13 receives acknowledgement of its notice in writing or by telephone.  
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17 This amendment requires these same utilities to provide maps  
of their main supply underground transmission facilities to  
18 municipalities, fire departments and emergency response  
19 agencies. These maps must be updated whenever changes occur in  
the configuration of these main supply underground transmission  
20 facilities.  
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24 This amendment requires an underground facility operator who  
receives notice of an excavation through the damage prevention  
25 system to mark the facilities in the area of the proposed  
excavation. The marking must be completed within 2 full business  
26 days of the operator's receiving notice. The amendment provides  
a mechanism for very large excavations whereby the operator may  
27 mark the location of the facilities over a longer period. It  
also allows the system to adopt rules requiring face-to-face  
28 meetings between excavators and operators in certain  
circumstances.  
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35 This amendment requires an excavator who has damaged an  
underground facility to notify immediately the affected operator.  
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38 This amendment provides that if an excavator notifies the  
damage prevention system and the system or the operator fails to  
39 respond as required, then the excavator is not liable for any  
damages, except on proof of negligence.  
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- 43 This amendment provides \$1,000 forfeitures when:  
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45 A. An excavator fails to notify the system that an  
underground facility has been damaged; and  
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47 B. An operator fails to mark the facility upon receipt of  
notice from the system.  
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51 This amendment provides that any excavation made without the  
excavator providing any or all of the notices required that  
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2 results in damage to an underground facility is prima facie  
evidence that the damage was caused by the excavator's negligence.

4 This amendment repeals a broad exemption clause in the Maine  
Revised Statutes, Title 23, section 3360-A. This amendment  
6 provides for defined exemptions from the damage prevention system.

8 This amendment requires an excavator to provide notice to  
operators of underground facilities who are not mandatory or  
10 voluntary members of the damage prevention system. The notice  
must be to the nonmember operator at least 3 days prior to the  
12 commencement of the excavation.

14 This amendment provides that the nonmember operator respond  
to the notice within 2 business days by marking the location of  
16 the facilities within the proposed excavation area.

18 This amendment states that if an excavator notifies the  
nonmember operator and the nonmember operator fails to respond as  
20 required, the excavator is not liable for damages caused by the  
excavation, except on proof of negligence.

22 This amendment requires underground facility operators to  
24 join in a study, the sole purpose of which is to compare the  
costs of establishing a Maine stand-alone damage prevention  
26 system to the costs of joining the existing Massachusetts Utility  
Underground Plant Damage Prevention System. The participants in  
28 the study must report the findings of the study to the Public  
Utilities Commission and the Joint Standing Committee on  
30 Utilities. Operators must establish a Maine system by January 1,  
1993 unless the study indicates joining the Massachusetts system  
32 would be less expensive.

34 This amendment provides an effective date of January 1, 1993  
for sections 1 to 10 to allow time for the study provided for in  
36 section 11 of the amendment.

38 This amendment also adds a fiscal note to the bill.

Reported by Senator Vose for the Committee on Utilities.  
Reproduced and Distributed Pursuant to Senate Rule 12.  
(5/28/91) (Filing No. S-224)