

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 495

S.P. 186

In Senate, February 8, 1991

Reference to the Committee on Utilities suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator McCORMICK of Kennebec
Cosponsored by Representative SIMONDS of Cape Elizabeth, Senator CLEVELAND of
Androscoggin and Senator CARPENTER of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Create a Maine "Dig-safe" System.



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

2
4 Sec. 1. 23 MRSA §3360-A, sub-§1, §§C-1 and F are enacted to read:

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

10 F. "Utility" means any "public utility" as defined in Title
12 35-A.

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

16 1-A. Damage prevention system. Each utility must be a
18 member of and participate in a public utility underground
20 facility damage prevention system, referred to in this section as
22 "the system," unless granted an exemption by the Public Utilities
24 Commission. The system must operate during regular business
26 hours throughout the year. The system must receive notices of
28 proposed excavations and immediately transmit those notices to
30 utilities whose facilities may be affected. The cost for
32 operation of the system must be apportioned equitably among
34 members. Each utility is permitted to adjust rates to recover
36 the reasonable costs associated with the implementation and
38 operation of the system.

40 Sec. 3. 23 MRSA §3360-A, sub-§3, as enacted by PL 1979, c.
42 362, §2, is repealed and the following enacted in its place:

44 3. Notice by excavator. A person may not begin excavation
46 without first giving notice as required by this section, unless
48 exempted pursuant to this section.

A. Each excavator shall notify the public utility
underground facility damage prevention system of the
location of the intended excavation at least 3 business days
but not more than 30 calendar days prior to the commencement
of excavation.

B. Notice may be in writing, by telephone or by any other
reasonable means. For purposes of this section, the system
shall provide a toll-free telephone number.

C. If any excavation involves blasting, the excavator shall
provide, in its initial notice, the date and specific
location. In case of an unanticipated obstruction requiring
blasting, the excavator shall provide additional notice not
less than 4 hours in advance of that blasting.

2 **Sec. 4. 23 MRSA §3360-A, sub-§3-A is enacted to read:**

4 3-A. Notification by system. Upon receiving notice of
6 excavation, the system shall notify immediately all members whose
 facilities may be affected. The system shall maintain adequate
 records to document compliance with requirements of this chapter.

8 **Sec. 5. 23 MRSA §3360-A, sub-§4, as enacted by PL 1979, c.**
10 **362, §2, is amended to read:**

12 4. Response to notice. A person shall, upon receipt of the
14 notice provided for in subsection 3, advise the excavator of the
16 location and size of underground facilities in the proposed
18 excavation area by marking the location of the facilities with
20 stakes, paint or by other identifiable marking within ~~36 inches~~
22 horizontally--~~from~~ of 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~~ is
 the responsibility of the excavator to maintain those location
 markings until the excavations are completed.

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

26 5-A. Notice of damage. When any underground facility is
28 damaged, the excavator causing the damage shall immediately
30 notify the affected utility. The excavator may not backfill the
 excavation without first receiving permission from that affected
 utility.

32 **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:

34 6. Liability of excavator. If an excavator complies with
36 subsection 3 and information pursuant to subsections 3-A and 4 is
38 not provided within the time specified, or if the information
40 provided fails to identify the location of the underground
 facilities in accordance with subsection 4, then any person
 damaging or injuring underground facilities is not liable for
 damage or injury, except on proof of negligence.

42 **Sec. 8. 23 MRSA §3360-A, sub-§6-A is enacted to read:**

44 6-A. Forfeitures. The forfeitures for failure to comply
46 with this section are as follows.

48 A. An excavator who does not give notice of an excavation
 under this section and who damages an underground utility
 facility in the course of that excavation is subject to a

2 civil forfeiture of up to \$1,000 for damages resulting from
3 the excavation, in addition to any other remedies or
4 forfeitures provided by law or any liability for actual
5 damages.

6 B. A utility that does not mark the location of its
7 underground facilities under subsection 4 is subject to a
8 civil forfeiture of up to \$1,000.

10 C. If underground facilities are damaged because a utility
11 does not mark its underground facilities under subsection 4,
12 the utility is subject to a civil forfeiture as provided in
13 paragraph B and, in addition, is liable for any damages
14 incurred by the excavator as a result of the utility's
15 failure to mark its facilities.

18 STATEMENT OF FACT

20 This bill modifies the existing excavation notice law by
21 creating a statewide public utility underground facility damage
22 prevention system usually known as "dig-safe." This bill
23 requires utilities to provide a one-call system and requires
24 excavators to use the one-call system before excavating. The
25 bill includes forfeitures for utilities and excavators who fail
26 to comply and maintains the existing limitation on liability for
excavators who do comply.