

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

L.D. 2025

DATE: *March 12, 1998*

(Filing No. S-507)

UTILITIES AND ENERGY

Reported by:

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE
SENATE
118TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 747, L.D. 2025, Bill, "An Act to Reduce Technical Violations of Maine's Laws Regarding the Protection of Underground Utilities"

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

Sec. 1. 23 MRSA §3360-A, sub-§1, ¶C, as amended by PL 1985, c. 111, §1, is further amended to read:

C. "Excavation" means any operation in which earth, rock or other material ~~en-er~~ 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 displacement of earth, rock or other material for agricultural purposes, and except installation and maintenance of signs performed by the Department of Transportation.

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

4-A. Alternative notice by certain excavators. Except as provided in subsection 4-B, a person is exempt from the notice requirements of subsection 3 for any excavation occurring in an area in which written clearance has been issued by the system pursuant to this subsection. A person applying for written clearance must provide to the system a written description of the area in which clearance is sought and a detailed map acceptable

2 to the system that clearly demarcates the area, except that an
4 application for a renewal of a written clearance for the same
6 area covered by an existing written clearance may refer to the
8 existing written clearance. Upon receiving an acceptable
10 application, the system shall immediately notify all members
12 whose underground facilities may be affected.

8 A. If, within 45 days of notifying members, the system
10 receives no notice from any member of any existing or
12 proposed underground facility in the area, the system may
14 issue a written clearance to the applicant for the area.

14 B. If, within 45 days of notifying members, the system
16 receives notice from any member of an existing or proposed
18 underground facility in the area, the system may:

18 (1) In consultation with the underground facility
20 operator, issue a written clearance for an area that
22 excludes any area in which underground facilities are
24 or are proposed to be located; or

24 (2) Deny the application for written clearance if the
26 system, in consultation with the underground facility
28 operator, determines that modification of the
30 boundaries of the area for which clearance is sought is
32 impractical or would not ensure adequate safety.

28 A written clearance issued under this subsection expires on the
30 last day of the month one year following the month of issuance.
32 A written clearance applies only to the area specified in the
34 written clearance and is subject to revocation or modification
36 under subsection 4-B. The system shall keep adequate maps and
38 records of all written clearances issued under this subsection.

36 4-B. Modification and revocation of clearance. Any
38 underground facility operator that proposes to construct an
40 underground facility in any area in which a written clearance has
42 been issued under subsection 4-A shall notify the system. If at
44 any time the system receives notice from any underground facility
46 operator that underground facilities are located or are proposed
48 to be located within an area in which a written clearance has
50 been issued under subsection 4-A, the system, in consultation
with the underground facility operator, may modify or, if
necessary, revoke a written clearance in order to ensure adequate
safety in the area of the underground facility or proposed
underground facility.

48 Sec. 3. 23 MRSA §3360-A, sub-§6, as repealed and replaced by
50 PL 1991, c. 437, §7 and affected by §12, is amended to read:

2 6. **Liability of excavator.** If an excavator complies with
4 subsection 3 and if information pursuant to subsections 3-A and 4
6 is not provided within the time specified or if the information
8 provided fails to identify the location of the underground
10 facilities in accordance with subsection 4, or if an excavator is
12 excavating in an area for which written clearance has been issued
14 pursuant to subsection 4-A, then an excavator damaging or
16 injuring underground facilities is not liable for any damage or
18 injury caused by the excavation, except on proof of negligence.

20 **Sec. 4. 23 MRSA §3360-A, sub-§6-A, ¶A,** as amended by PL 1997,
22 c. 229, §1, is further amended to read:

24 A. An excavator who does not give notice of an excavation
26 as required under subsection 3, except an excavation in an
28 area for which written clearance has been issued pursuant to
30 subsection 4-A, or who undertakes the excavation in a
32 reckless or negligent manner that poses a threat to an
34 underground facility commits a civil violation and is
36 subject to a civil forfeiture of up to \$1,000 in addition to
38 any other remedies or forfeitures provided by law or any
40 liability for actual damages.'

42 Further amend the bill by inserting at the end before the
44 summary the following:

46 **FISCAL NOTE**

48 The Judicial Department may realize some minor savings from
50 reductions of workload and administrative costs associated with
52 the minimal number of cases that will no longer be filed in the
54 court system. Reductions in the collection of fines may decrease
56 General Fund revenue by minor amounts.'

58 **SUMMARY**

60 This amendment replaces the bill. This amendment provides
62 for the issuance of annual written clearances by the "dig safe
64 system," which would allow excavators to undertake excavations in
66 clearly identified areas in which no underground facilities are
68 located. Such clearances may be revoked or modified if new
70 underground facilities are proposed for the area for which
72 clearance has been issued.

74 The amendment also adds a fiscal note to the bill.