

# MAINE STATE LEGISLATURE

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UTILITIES AND ENERGY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1721, L.D. 2427, Bill, "An Act Relating to Underground Facility Plants"

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, ¶¶A-1 and A-2 are enacted to read:

A-1. "Borrow pit" has the same meaning as provided in Title 38, section 482, subsection 1-A.

A-2. "Commercial timber harvesting activity" means the cutting or removal of timber for the primary purpose of selling or processing forest products and includes the attendant operation of mobile or portable chipping mills and of cutting and skidding machinery and the creation, use and maintenance of skid trails, skid roads, winter haul roads and other roads to facilitate timber harvesting.

Sec. 2. 23 MRSA §3360-A, sub-§1-A, as enacted by PL 1991, c. 437, §2 and affected by §12, is amended to read:

1-A. Damage prevention system. Each underground facility operator must shall 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 and maintain adequate operations at all other times to receive and process emergency

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2 notifications of proposed excavations. The system shall receive  
3 notices of proposed excavations and immediately transmit those  
4 notices to underground facility operators whose facilities may be  
5 affected. The cost for operation of the system must be  
6 apportioned equitably among members. Nothing in this subsection  
7 prohibits a municipality, utility or other entity that owns or  
8 operates an underground facility from voluntarily becoming a  
9 member of the system. Notwithstanding subsection 1, paragraph F,  
10 a person that voluntarily becomes a member of the system is  
11 deemed an underground facility operator for the purposes of this  
12 section.

13 **Sec. 3. 23 MRSA §3360-A, sub-§4,** as amended by PL 1991, c.  
14 437, §5 and affected by §12, is further amended to read:

15 **4. Response to notice.** An underground facility operator  
16 shall, upon receipt of the notice provided for in subsection 3-A,  
17 advise the excavator of the location and size of the operator's  
18 underground facilities in the proposed excavation area by marking  
19 the location of the facilities with stakes, paint or by other  
20 identifiable markings. The marking must identify a strip of land  
21 not more than 3 feet wide directly over the facility or a strip  
22 of land extending not more than 1 1/2 feet on either each side of  
23 the underground facility and must indicate the depth of the  
24 underground facility, if known. The underground facility operator  
25 shall complete this marking no later than 2 full business days  
26 after receipt of the notice. After the underground facility  
27 operator has marked the location of that operator's underground  
28 facilities in the proposed excavation area, the excavator is  
29 responsible for maintaining the markings at the location, unless  
30 the excavator requests remarking at the location due to  
31 obliteration, destruction or other removal of the markings. The  
32 underground facility operator shall remark the location within  
33 one business day following the receipt of a request to remark.

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

44  
45 The system may adopt rules requiring, under certain  
46 circumstances, face-to-face meetings between excavators and  
47 underground facility operators.  
48

2           **Sec. 4. 23 MRSA §3360-A, sub-§§4-A and 4-B**, as enacted by PL  
1997, c. 631, §2, are repealed.

4           **Sec. 5. 23 MRSA §3360-A, sub-§4-C** is enacted to read:

6           **4-C. Excavation methods.** An excavator may not use  
7           mechanical means of excavation when excavating within 18 inches  
8           of any marked underground facilities until the underground  
9           facilities have been exposed, except that mechanical means may be  
10          used, as necessary, for initial penetration and removal of  
11          pavement, rock or other materials requiring use of mechanical  
12          means of excavation. Once the underground facilities have been  
13          exposed, further excavation must be performed employing  
14          reasonable precautions to avoid damage to the underground  
15          facilities, including, but not limited to, any substantial  
16          weakening of structural or lateral support of the facilities or  
17          penetration or destruction of the facilities or their protective  
18          coatings. For the purposes of this subsection, "mechanical means  
19          of excavation" means excavation using any device or tool powered  
20          by an engine except air vacuum methods of excavation.

22           **Sec. 6. 23 MRSA §3360-A, sub-§5**, as enacted by PL 1979, c.  
23          362, §2, is repealed and the following enacted in its place:

24           **5. Emergency excavations.** In an emergency, an excavator  
25          may commence an excavation after having taken all reasonable  
26          steps, consistent with the emergency, to notify the system and to  
27          mark the excavation site consistent with subsection 3, paragraph  
28          C. Each underground facility operator shall locate its  
29          underground facilities as soon as practicable after receiving  
30          notification of an emergency excavation whether or not the  
31          excavation has begun.

34           **Sec. 7. 23 MRSA §3360-A, sub-§§5-B and 5-C** are enacted to read:

36           **5-B. Exemption; commercial forestry and borrow pit  
37          operations.** A person is exempt from the notice requirements of  
38          subsection 3 for any excavation undertaken in conjunction with a  
39          commercial timber harvesting activity or borrow pit as long as  
40          the excavation:

42           A. Is not conducted in a public place, on public land or  
43          within a public easement, including, but not limited to, a  
44          public way;

46           B. Is not conducted within 100 feet of an easement or land  
47          owned by an underground facility operator;

2 C. Is not conducted within 100 feet of an underground  
facility; and

4 D. Does not involve the use of explosives.

6 **5-C. Exemptions; written agreements.** A person undertaking  
8 an excavation in conjunction with a commercial timber harvesting  
10 activity within 100 feet of an underground facility or on an  
12 easement or land owned by an underground facility operator or  
14 within 100 feet of an easement or land owned by an underground  
16 facility operator is exempt from the notice requirements of  
18 subsection 3 and from the provisions of subsection 4-C if the  
20 person:

16 A. Has contacted the system to determine the identity of all  
18 underground facility operators that own or operate  
20 underground facilities within the area of the excavation;

20 B. Has entered into written agreements with all underground  
22 facility operators owning or operating facilities in the  
24 area of the excavation and with all persons owning the land  
26 on which the excavation occurs; and

24 C. Undertakes the excavation in accordance with the terms of  
26 the written agreements.

28 **Sec. 8. 23 MRSA §3360-A, sub-§6,** as amended by PL 1997, c.  
30 631, §3, is further amended to read:

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

40 **Sec. 9. 23 MRSA §3360-A, sub-§6-A,** as amended by PL 1997, c.  
42 631, §4, is repealed.

44 **Sec. 10. 23 MRSA §3360-A, sub-§6-B,** as enacted by PL 1991, c.  
46 437, §8 and affected by §12, is amended to read:

46 **6-B. Failure to notify.** An excavation that is made without  
48 the excavator providing any or all of the notices required by  
this section that results in any damage to an underground  
facility or facilities is prima facie evidence in any civil or

administrative proceeding that the damage was caused by the negligence of the excavator.

Sec. 11. 23 MRSA §3360-A, sub-§6-C is enacted to read:

6-C. Forfeitures. In an adjudicatory proceeding, the Public Utilities Commission may, in accordance with this subsection, impose an administrative penalty for any violation of this subsection. The administrative penalty may not exceed \$500, except that if the person has been found in violation of this subsection within the prior 12 months the administrative penalty may not exceed \$5,000. Administrative penalties imposed pursuant to this subsection are in addition to any other remedies or forfeitures provided by law and any liability that may result from the act or omission constituting the violation. Prior to imposing any penalties under this subsection, the commission shall consider evidence of the record of the violator, including, to the extent applicable, the number of successful excavations undertaken by the violator or the number of locations successfully marked by the violator during the prior 12 months. The commission may require a person who violates any provision of this section to participate, at the expense of the violator, in an educational program developed and conducted by the system.

The Public Utilities Commission may impose administrative penalties for any the following violations:

A. Failure of an excavator to give notice of an excavation as required under subsection 3, except to the extent the excavator is exempt from the provisions of subsection 3 pursuant to other provisions of this section;

B. Excavation by an excavator in a reckless or negligent manner that poses a threat to an underground facility;

C. Excavation by an excavator that does not comply with the requirements of section 4-C, except to the extent the excavator is exempt from the provisions of subsection 4-C pursuant to subsection 5-C;

D. Failure of an underground facility operator to mark the location of the operator's underground facilities within the time limits required by section 4; or

E. Marking by an underground facility operator of the location of an underground facility in a reckless or negligent manner.

Sec. 12. 23 MRSA §3360-A, sub-§11, as enacted by PL 1997, c. 229, §2, is repealed and the following enacted in its place:

2           **11. Enforcement.** The Public Utilities Commission may adopt  
4 procedures necessary and appropriate to gather information and  
hear and resolve complaints concerning failure to comply with the  
6 provisions of this section.

8           **Sec. 13. 23 MRSA §3360-A, sub-§12,** as enacted by PL 1997, c.  
229, §2, is amended to read:

10           **12. Injunctions; costs.** The owner or operator of an  
12 underground facility or the Public Utilities Commission may  
14 commence an action in a court of competent jurisdiction seeking a  
16 temporary restraining order or injunction to prevent a person  
18 from undertaking an excavation that may result in damage to the  
underground facility. The court may issue a temporary  
restraining order or injunction if the court determines that the  
excavation or proposed excavation:

20           A. Is being conducted or is likely to be conducted in a  
negligent or unsafe manner; and

22           B. Is causing or is likely to cause damage to the  
24 underground facility.

26 If the owner or operator prevails in an action brought pursuant  
28 to this subsection, the owner or operator is entitled to an award  
of the costs of bringing the action, including reasonable  
attorney's fees.

30           **Sec. 14. 35-A MRSA §102, sub-§8,** as amended by PL 1999, c.  
143, §2, is further amended to read:

32           **8. Gas utility.** "Gas utility" includes every person, that  
34 person's lessees, trustees, receivers or trustees appointed by  
36 any court owning, controlling, operating or managing any gas  
38 plant for compensation within this State, except when gas is made  
40 or produced on and distributed by the maker or producer through  
42 private property alone solely for its own tenants and not for  
44 sale to others, or when the gas is sold solely for use in  
46 vehicles fueled by natural gas or ~~when the gas is sold in liquid~~  
~~form in individual containers or is delivered in bulk in liquid~~  
48 ~~form to a central tank~~ to a liquid gas system that serves fewer  
50 than 10 customers and as long as no portion of which the liquid  
gas system is located in a public place or that serves a single  
customer if the liquid gas system is located entirely on the  
customer's premises. "Gas utility" does not include a gas  
marketer whose business in the State is restricted to selling  
natural gas to retail consumers and who does not provide natural  
gas transmission or distribution service.

2 **Sec. 15. 35-A MRSA §4702**, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed and the following enacted in its place:

4 **§4702. Safety jurisdiction only over certain gas utilities**

6 A gas utility owning, controlling, operating or managing a central tank system or a petroleum gas system is subject to the jurisdiction of the commission solely with respect to safety if that system serves:

10 1. Ten or more customers. Ten or more customers:

12 2. System in public place. More than one customer and any portion of the central tank system or petroleum gas system is located in a public place; or

14 3. One customer. One customer and a portion of the central tank system or petroleum gas system is located off the customer's premises in a public place.'

16  
18  
20 Further amend the bill by inserting at the end before the summary the following:

22  
24 **FISCAL NOTE**

26  
28 The Public Utilities Commission will incur some minor additional costs to adopt procedures and resolve complaints. These costs can be absorbed within the commission's existing budgeted resources. The assessment of administrative penalties for violations of the dig-safe law may increase General Fund revenue collected by the Public Utilities Commission by minor amounts.

34  
36 The Department of Transportation will incur some minor additional costs to comply with certain safety requirements. These costs can be absorbed within the department's existing budgeted resources.

38  
40 The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may increase General Fund revenue by minor amounts.'

42  
44  
46 **SUMMARY**

48 This amendment replaces the bill. This amendment:



COMMITTEE AMENDMENT "A" to H.P. 1721, L.D. 2427

1. Requires the so-called "dig-safe" system to maintain adequate operations at all times to receive and process emergency notices;

2. Requires an underground facility operator to mark facilities in a manner that does not extend more than 1 1/2 feet on each side of the underground facility;

3. Prohibits the use of mechanical means of excavation within 18 inches of marked underground facilities;

4. Requires an excavator to undertake reasonable steps to notify the system and mark the excavation site prior to undertaking an emergency excavation;

5. Creates exemptions, with certain limitations, from the notice requirements for excavations undertaken in conjunction with commercial timber harvesting activity or borrow pit operations;

6. Creates exemptions from the notice requirements and the prohibition on the use of mechanical means of excavation for excavations undertaken in conjunction with timber harvesting activities if the excavator undertakes the excavation in accordance with written agreements with the underground facility owners;

7. Repeals provisions providing for one-year written clearances;

8. Authorizes the Public Utilities Commission to impose penalties for violations of the "dig-safe" law and to seek injunctions to prevent unsafe excavations;

9. Modifies the definition of "gas utility" in the Maine Revised Statutes, Title 35-A and Public Utilities Commission jurisdiction over gas utilities; and

10. Adds a fiscal note.