

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2000

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Legislative Document

No. 2427

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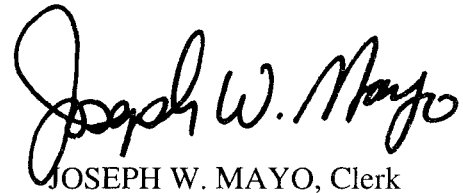
H.P. 1721

House of Representatives, January 10, 2000

### **An Act Relating to Underground Facility Plants.**

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Submitted by the Public Utilities Commission pursuant to Joint Rule 204.  
Reference to the Committee on Utilities and Energy suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative DAVIDSON of Brunswick.

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

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**Sec. 1. 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~~ 24 hours each day throughout the year. The system ~~shall~~ must 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 equitably among members. Nothing in this subsection prohibits a municipality, utility or other entity that owns or operates an underground facility from voluntarily becoming a member of the system. Notwithstanding subsection 1, paragraph F, a person that voluntarily becomes a member of the system is deemed an underground facility operator for the purposes of this section.

**Sec. 2. 23 MRSA §3360-A, sub-§4,** as amended by PL 1991, c. 437, §5 and affected by §12, is further amended to read:

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

If the proposed excavation is of such length or size that the underground facility operator advises the excavator that the operator can not reasonably respond with respect to all the operator's underground facilities within 2 full business days, the excavator shall notify the operator of the specific location

2 in which excavation will first be made and the operator shall  
3 respond with respect to the operator's underground facilities in  
4 that location within 2 full business days and for the remaining  
5 facilities within a reasonable time thereafter.

6 The system may adopt rules requiring, under certain  
7 circumstances, face-to-face meetings between excavators and  
8 underground facility operators.

10 When excavating within 18 inches of any underground facilities,  
11 nonmechanical means must be employed, as necessary, to avoid  
12 damage in locating and exposing those facilities. Any further  
13 excavation must be performed employing reasonable precautions to  
14 avoid damage to any underground facilities, including, but not  
15 limited to, any substantial weakening of structural or lateral  
16 support of those facilities, penetration or destruction of any  
17 pipe, main, wire or conduit or the protective coating of any  
18 pipe, main, wire or conduit or damage to any pipe, main, wire or  
19 conduit.

20 **Sec. 3. 23 MRSA §3360-A, sub-§5,** as enacted by PL 1979, c.  
21 362, §2, is repealed and the following enacted in its place:

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

32 **Sec. 4. 23 MRSA §3360-A, sub-§6-A,** as amended by PL 1997, c.  
33 631, §4, is repealed and the following enacted in its place:

34 **6-A. Forfeitures.** An excavator who does not give notice of  
35 an excavation as required under subsection 3, except an  
36 excavation in an area for which written clearance has been issued  
37 pursuant to subsection 4-A, or who undertakes the excavation in a  
38 reckless or negligent manner that poses a threat to an  
39 underground facility or an underground facility operator who does  
40 not mark the location of the operator's underground facilities as  
41 required by subsection 4 commits a civil violation.

44 Any person or company found by the Public Utilities Commission,  
45 after a hearing, to have violated any provision of this section  
46 must be fined not more than \$500 for the first offense and not  
47 more than \$5,000 for any subsequent offense within 12 consecutive  
48 months, in addition to any other remedies or forfeitures provided  
49 by law or any liability for actual damages.

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2           **Sec. 5. 23 MRSA §3360-A, sub-§6-B**, as enacted by PL 1991, c.  
437, §8 and affected by §12, is amended to read:

4           **6-B. Failure to notify.** An excavation that is made without  
6 the excavator providing any or all of the notices required by  
this section that results in any damage to an underground  
8 facility or facilities is prima facie evidence in any civil or  
administrative proceeding that the damage was caused by the  
negligence of the excavator.

10           **Sec. 6. 23 MRSA §3360-A, sub-§11**, as enacted by PL 1997, c.  
12 229, §2, is repealed and the following enacted in its place:

14           **11. Enforcement.** The Public Utilities Commission is  
16 authorized to investigate the operation of the system and to  
adopt procedures necessary and appropriate to gather information  
18 and hear and resolve complaints for failure to comply with the  
provisions of this section.

20           **Sec. 7. 23 MRSA §3360-A, sub-§12**, as enacted by PL 1997, c.  
22 229, §2, is amended to read:

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

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

34           B. Is causing or is likely to cause damage to the  
36 underground facility.

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

42           **Sec. 8. 35-A MRSA §102, sub-§8**, as amended by PL 1999, c. 143,  
44 §2, is further amended to read:

46           **8. Gas utility.** "Gas utility" includes every person, that  
48 person's lessees, trustees, receivers or trustees appointed by  
any court owning, controlling, operating or managing any gas  
50 plant for compensation within this State, except when gas is made  
or produced on and distributed by the maker or producer through

2 private property alone solely for its own tenants and not for  
3 sale to others, or when the gas is sold solely for use in  
4 vehicles fueled by natural gas or when ~~the gas is sold in liquid  
5 form in individual containers or is delivered in bulk in liquid  
6 form to a central tank~~ to a liquid gas system that serves fewer  
7 than 10 customers and as long as no portion of which the liquid  
8 gas system is located in a public place or that serves a single  
9 customer if the liquid gas system is located entirely on the  
10 customer's premises. "Gas utility" does not include a gas  
11 marketer whose business in the State is restricted to selling  
12 natural gas to retail consumers and who does not provide natural  
13 gas transmission or distribution service.

14 For purposes of this subsection, "liquid gas system" means any  
15 gas plant used when gas is sold in liquid form in individual  
16 containers or is delivered in bulk in liquid form to a central  
17 tank.

18  
19 **Sec. 9. 35-A MRS §4702**, as enacted by PL 1987, c. 141, Pt.  
20 A, §6, is repealed and the following enacted in its place:

21 **§4702. Safety jurisdiction only over certain gas utilities**

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

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28 1. Ten or more customers. Ten or more customers;

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

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34 3. One customer. One customer if a portion of the central  
35 tank system or petroleum gas system is located off the customer's  
36 premises in a public way.

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40 **SUMMARY**

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42 This bill vests "dig-safe" enforcement responsibility for  
43 underground facilities with the Public Utilities Commission and  
44 revises certain safety provisions. It also adds a definition of  
45 "liquid gas system" and clarifies which gas utilities are subject  
46 to safety oversight in the State to conform with governing  
47 federal provisions.