

# MAINE STATE LEGISLATURE

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A.O.S.

L.D. 2024

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UTILITIES AND ENERGY

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STATE OF MAINE HOUSE OF REPRESENTATIVES 120TH LEGISLATURE SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1520, L.D. 2024, Bill, "An Act to Improve the Safety Provided by the Underground Facilities Protection Law"

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

Sec. 1. 23 MRSA §3360-A, sub-§1, ¶C, as amended by PL 1997, c. 631, §1, is further amended to read:

C. "Excavation" means any operation in which earth, rock or other material 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-§1, ¶D-1 is enacted to read:

D-1. "Shoulder grading activity" means highway maintenance work that involves the use of a motorgrader or other suitable construction equipment with a blade on the shoulder of a road to remove accumulated sand, gravel, sod or other material to establish drainage away from the traveled portion of the highway.

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2           **Sec. 3. 23 MRSA §3360-A, sub-§1, ¶F**, as enacted by PL 1991, c.  
437, §1 and affected by §12, is amended to read:

4           F. "Underground facility operator" means the owner or  
6           operator of any underground facility, other than an  
underground oil storage facility as defined in Title 38,  
8           section 562-A, subsection 21 or an airport aviation fuel  
hydrant piping system, used in furnishing electric,  
10          telephone, telegraph, gas, petroleum transportation or cable  
television service. "Underground facility operator" does  
12          not include a municipality or a public utility with fewer  
than 5 full-time employees or fewer than 300 customers or a  
14          person that owns underground facilities on its own property  
for commercial or residential purposes.

16          **Sec. 4. 23 MRSA §3360-A, sub-§2**, as enacted by PL 1979, c.  
362, §2, is repealed.

18          **Sec. 5. 23 MRSA §3360-A, sub-§3, ¶F** is enacted to read:

20          F. In the case of an excavation involving subcontractors or  
22          other arrangements in which more than one entity qualifies  
24          as the excavator under this section, the excavator directly  
26          responsible for performing the excavation shall ascertain  
that all notifications required by this subsection and  
subsections 5, 5-A and 10 are performed.

28          **Sec. 6. 23 MRSA §3360-A, sub-§4**, as amended by PL 1999, c.  
718, §3, is further amended to read:

30           **4. Operator response to notice locating facilities.** An  
32           underground facility operator shall, upon receipt of the notice  
provided for in subsection 3-A, advise the excavator of the  
34           location and size of the operator's underground facilities and  
all underground facilities used in furnishing electric or gas  
36           service that are connected to the operator's facilities, located  
in the public way and known to the operator in the proposed  
38           excavation area by marking the location of the facilities with  
stakes, paint or by other identifiable markings. The marking  
40           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  
42           1/2 feet on each side of the underground facility and must  
indicate the depth of the underground facility, if known. The  
44           underground facility operator shall complete this marking no  
later than 2 full business days after receipt of the notice.  
46           After the underground facility operator has marked the location  
of that operator's underground facilities in the proposed  
48           excavation area, the excavator is responsible for maintaining the  
markings at the location, unless the excavator requests remarking  
50           at                           the                           location                           due                           to

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2 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.

4  
6 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  
8 operator's underground facilities within 2 full business days,  
the excavator shall notify the operator of the specific location  
10 in which excavation will first be made and the operator shall  
respond with respect to the operator's underground facilities in  
12 that location within 2 full business days and for the remaining  
facilities within a reasonable time thereafter.

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

18 **Sec. 7. 23 MRSA §3360-A, sub-§4-D** is enacted to read:

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22 4-D. Abandoned or inactive facilities. Beginning on the  
date an owner or operator of underground facilities is required  
24 by the Public Utilities Commission to implement electronic  
mapping, the owner or operator shall indicate the existence of  
26 facilities abandoned or inactive after that date on its  
electronic mapping system and shall notify an excavator when  
28 abandoned or inactive facilities exist in the area of an  
excavation. If an owner or operator of an underground facility  
30 does not maintain an electronic mapping system, the owner or  
operator shall notify the excavator if the operator is aware of  
abandoned or inactive facilities in the area of an excavation.

32 **Sec. 8. 23 MRSA §3360-A, sub-§§5-D and 5-E** are enacted to read:

34  
36 5-D. Exemption; cemeteries. An excavator is exempt from  
the notice requirements of subsection 3 and subsection 10 for any  
38 excavation undertaken within the boundaries of a cemetery if the  
following procedures are followed.

40 A. The person responsible for operating the cemetery shall  
provide notice pursuant to subsections 3 and 10 identifying  
the entire cemetery as a potential excavation site. Owners  
and operators of underground facilities within the cemetery  
shall mark those facilities in accordance with subsections 4  
and 10, as applicable. Thereafter, the person responsible  
for operating the cemetery shall maintain sufficient records  
or markings to identify the location of underground  
facilities within the cemetery.

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2 B. The person responsible for operating the cemetery shall  
3 identify the location of any underground facilities within  
4 the excavation area and take appropriate action to avoid  
5 damage to the facilities.

6 5-E. Shoulder-grading procedure. An excavator that is a  
7 licensing authority as defined by Title 35-A, section 2502,  
8 subsection 1 or its designee may be exempt from subsection 4-C  
9 for any excavation that is shoulder-grading activity if the  
10 excavator complies with this subsection. If an excavator chooses  
11 to excavate under this subsection, all owners of underground  
12 facilities within the area of excavation must comply with this  
13 subsection.

14 A. The excavator shall provide notice as required by  
15 subsections 3 and 10 and the owner or operator of  
16 underground facilities shall respond as required by  
17 subsections 4 and 10.

18 B. The excavator shall contact each owner or operator of  
19 underground facilities within the area of proposed  
20 shoulder-grading activity and describe the scope of its  
21 proposed shoulder-grading activity, including the  
22 anticipated depth of grading.

23 C. The owner or operator of each underground facility shall  
24 within 3 business days determine and notify the excavator  
25 whether the depth of its facility is sufficient to avoid  
26 damage.

27 D. After receipt of notice provided pursuant to paragraph  
28 C, the excavator may commence its shoulder-grading activity  
29 in a manner that does not disturb the facilities indicated  
30 by the owners or operators of the underground facilities or,  
31 if a facility is located at an insufficient depth to allow  
32 the proposed shoulder-grading activity, prior to the  
33 shoulder-grading activity the licensing authority may  
34 require the owner or operator of the underground facility to  
35 lower or otherwise move its facility in accordance with  
36 applicable law and the terms of its license.

37 **Sec. 9. 23 MRSA §3360-A, sub-§6-C, ¶D,** as corrected by RR  
38 1999, c. 2, §27, is amended to read:

39 D. Failure of an underground facility operator to mark the  
40 location of the operator's underground facilities within the  
41 time limits required by subsection 4; e¶

42 **Sec. 10. 23 MRSA §3360-A, sub-§6-C, ¶E,** enacted by PL 1999, c.  
43 718, §11, is amended to read:

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

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

F. Failure of an excavator to comply with the requirements of subsection 5-C, 5-D or 5-E.'

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

**FISCAL NOTE**

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The Public Utilities Commission will incur some minor additional costs associated with revising provisions of the law that govern the Dig Safe underground facilities protection program in the State. These costs can be absorbed within the commission's existing budgeted resources.

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Adding the failure of an excavator to comply with certain requirements of this bill to the violations that the Public Utilities Commission may impose an administrative penalty for will result in insignificant increases of General Fund revenue from administrative penalties.

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

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This bill may increase the number of civil suits filed in the court system. The additional workload and administrative costs associated with the minimal number of new cases filed can be absorbed within the budgeted resources of the Judicial Department. The collection of additional filing fees may also increase General Fund revenue by minor amounts.'

**40**

**SUMMARY**

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This amendment replaces the bill. This amendment changes the so-called dig-safe law by:

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1. Establishing alternative procedures for shoulder-grading activities, allowing exemption from current hand-dig requirements;
2. Exempting excavations in cemeteries if certain precautions are taken;

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- 2           3. Eliminating the current exemption for highway sign work;
- 4           4. Requiring underground facility operators to mark gas and  
6 electric facilities known to the operators located within a  
public way;
- 8           5. Establishing procedures to identify and locate abandoned  
10 facilities;
- 12          6. Requiring, in the case of subcontracting or multiple  
excavators, the excavator responsible for the actual excavation  
14 to ascertain whether required notices have been given;
- 16          7. Exempting private landowners from the definition of  
underground facility operator; and
- 18          8. Repealing the provision requiring architects and  
20 designers to make the location of underground facilities part of  
their plans.

**COMMITTEE AMENDMENT**