

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

SECOND REGULAR SESSION-2002

Legislative Document

No. 2024

H.P. 1520

House of Representatives, December 26, 2001

**An Act to Improve the Safety Provided by the Underground Facilities
Protection Law.**

(EMERGENCY)

Submitted by the Public Utilities Commission pursuant to Joint Rule 204.
Received by the Clerk of the House on December 19, 2001. Referred to the Committee on
Utilities and Energy pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule
401.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative SAVAGE of Buxton.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4 Whereas, the underground facilities protection law affects
6 activities that take place primarily during the building season,
which occurs during spring, summer and autumn; and

8 Whereas, enactment without emergency designation will result
10 in revisions becoming effective after a significant portion of
the building season is over; and

12 Whereas, the Public Utilities Commission is in receipt of a
14 grant to educate the public regarding the requirements of the law
and will do so most effectively if the education occurs in the
16 early months of the building season; and

18 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
20 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
22 safety; now, therefore,

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

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

28 C. "Excavation" means any operation in which earth, rock or
30 other material below the ground is moved or otherwise
displaced, by means of power tools, power equipment or
32 explosives and including grading, trenching, digging,
ditching, drilling, augering, tunneling, scraping and cable
34 or pipe driving, except tilling of soil and gardening or
displacement of earth, rock or other material for
36 agricultural purposes, ~~and except installation and~~
~~maintenance of signs performed by the Department of~~
38 ~~Transportation.~~

40 **Sec. 2. 23 MRSA §3360-A, sub-§1, ¶¶D-1 and D-2** are enacted to
read:

42 D-1. "Primary locating end point" means the point at which
44 the underground facility emerges from the ground before the
meter or the point at which the underground facility enters
46 a building in which the meter is housed.

48 D-2. "Shoulder-grading activity" means highway maintenance
work that involves the use of a motorgrader on the shoulder
50 of a road to remove accumulated surficial sand, gravel or

2 sod to reestablish drainage away from the traveled portion
3 of the highway.

4 **Sec. 3. 23 MRSA §3360-A, sub-§1, ¶E**, as enacted by PL 1979, c.
5 362, §2, is amended to read:

6
7 E. "Underground facility" means any item of personal
8 property buried or placed below ground for use in connection
9 with the storage or conveyance of water, sewage, electronic,
10 telephonic or telegraphic communications, electric energy,
11 oil, gas or other substances and including, but not limited
12 to, pipes, sewers, conduits, cables, valves, lines, wires,
13 manholes, attachments, appurtenances and those parts of
14 poles below ground, including property that is abandoned
15 after July 1, 2002. This definition ~~shall~~ does not include
16 highway drainage culverts or under drains.

17 **Sec. 4. 23 MRSA §3360-A, sub-§1, ¶F**, as enacted by PL 1991, c.
18 437, §1 and affected by §12, is amended to read:

19
20 F. "Underground facility operator" means the owner or
21 operator of any underground facility, other than an
22 underground oil storage facility as defined in Title 38,
23 section 562-A, subsection 21 or an airport aviation fuel
24 hydrant piping system, used in furnishing water, sewage,
25 electric, telephone, telegraph, gas, petroleum
26 transportation or cable television service. "Underground
27 facility operator" does not include a municipality ~~or~~ with
28 fewer than 5 full-time employees, a public utility with
29 fewer than 5 full-time employees or fewer than 300 customers
30 or a person that owns underground facilities on its own
31 property for commercial or residential purposes.

32
33 **Sec. 5. 23 MRSA §3360-A, sub-§1-A**, as amended by PL 1999, c.
34 718, §2, is further amended to read:

35
36 **1-A. Damage prevention system.** Each underground facility
37 operator ~~shall~~ must be a member of and participate in an
38 underground facility damage prevention system, referred to in
39 this section as the "system." The system shall operate during
40 regular business hours throughout the year and maintain adequate
41 operations at all other times to receive and process emergency
42 notifications of proposed excavations. The system shall receive
43 notices of proposed excavations and immediately transmit those
44 notices to underground facility operators whose facilities may be
45 affected. No later than February 1, 2003, the system shall
46 maintain a location-specific information capability determined by
47 rules developed by the Public Utilities Commission. The cost for
48 operation of the system must be apportioned equitably among
49 members. Nothing in this subsection prohibits a municipality,
50

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. 6. 23 MRSA §3360-A, sub-§3, ¶E, as enacted by PL 1991, c. 437, §3 and affected by §12, is amended to read:

E. If the proposed excavation or blasting does not commence within 30 calendar days of notification under this subsection or the excavation or blasting will be expanded outside of the location originally specified in the notification, the excavator responsible ~~for that excavation~~ shall again notify the system as specified in paragraph A.

Sec. 7. 23 MRSA §3360-A, sub-§3, ¶¶F and G are enacted to read:

F. If the proposed excavation or blasting extends 30 calendar days or longer beyond the most recent date of notification, the excavator shall again notify the system as specified in this subsection.

G. The excavator performing the mechanical processes associated with an excavation is responsible for ascertaining that all notifications required by this subsection and subsections 5, 5-A, 5-C and 10 are performed.

Sec. 8. 23 MRSA §3360-A, sub-§4, as amended by PL 1999, c. 718, §3, is further amended to read:

4. Operator response to notice-locating facilities. 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 and all other underground facilities extending from the operator's underground facilities to the primary locating end point 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 each 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

2 at the location due to obliteration, destruction or other removal
of the markings. The underground facility operator shall remark
4 the location within one business day following the receipt of a
request to remark.

6 If the proposed excavation is of such length or size that the
underground facility operator advises the excavator that the
8 operator can not reasonably respond with respect to all the
operator's underground facilities within 2 full business days,
10 the excavator shall notify the operator of the specific location
in which excavation will first be made and the operator shall
12 respond with respect to the operator's underground facilities in
that location within 2 full business days and for the remaining
14 facilities within a reasonable time thereafter.

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

20 Beginning no later than February 1, 2003, within 16 hours of
completing the marking, the underground facility operator shall
22 notify the system that it has completed marking its facilities.
If the underground facility operator determines it does not own
24 or operate any underground facilities within the proposed
excavation area, it shall notify the system within 16 hours of
26 making the determination.

28 By February 1, 2003, the excavator performing the mechanical
processes associated with an excavation is responsible for
30 verifying that each underground facility operator has marked its
facilities as required by this subsection or has responded to the
32 system as required by this subsection and that all other owners
or operators of underground facilities have located their
34 facilities as required by subsection 10. The excavator has
fulfilled this requirement if it has observed all locational
36 markings made pursuant to this subsection and subsection 10, has
obtained from the system electronic confirmation regarding all
38 underground facility operators who have positively responded
pursuant to this subsection and has made a reasonable effort to
40 identify and contact each operator of underground facilities that
is not a member of the system and has been noticed pursuant to
42 subsection 10.

44 If an underground facility is located on the customer's side of
the primary locating end point, the excavator performing the
46 mechanical processes associated with the excavation is
responsible for locating those underground facilities and
48 performing all requirements of this subsection. The excavator
has fulfilled this requirement if it has made a reasonable effort
50 based on conferring with the landowner, using locating or

2 excavating equipment or procedures and ascertaining the location
3 of facility entrance to all structures.

4 **Sec. 9. 23 MRSA §3360-A, sub-§§5-D and 5-E** are enacted to read:

6 **5-D. Exemption; cemeteries.** An excavator is exempt from
7 the notice requirements of subsection 3 for any excavation
8 undertaken within the boundaries of a cemetery as long as the
9 person responsible for operating the cemetery identifies the
10 location of any underground facilities within the excavation area
11 and takes appropriate action to avoid damage.

12 **5-E. Exemption; shoulder grading.** An excavator that is a
13 licensing authority as defined by Title 35-A, section 2502,
14 subsection 1 or its designee may be exempt from the provisions of
15 subsections 3 and 4-C for any excavation that is shoulder-grading
16 activity if the excavator carries out the provisions of this
17 subsection. If an excavator chooses to excavate under the terms
18 of this subsection all operators of underground facilities within
19 the area of excavation must follow the provisions of this
20 subsection:

21 **A.** The excavator shall contact the system to determine the
22 identity of all underground facility operators that own or
23 operate underground facilities within the area of the
24 excavation;

25 **B.** The excavator shall contact each operator of underground
26 facilities within the area of excavation and request
27 information regarding the depth and location of facilities;

28 **C.** The operator of the underground facility shall indicate
29 the location of its facilities and whether the depth of its
30 facilities is sufficient to avoid damage based upon the
31 excavator's description of the scope of its grading
32 operation;

33 **D.** The excavator and the operator of the underground
34 facility shall take reasonable actions to carry out the
35 terms of this subsection; and

36 **E.** The excavator shall excavate in a manner that does not
37 disturb the locations indicated by the operator of the
38 underground facilities.

39 **Sec. 10. 23 MRSA §3360-A, sub-§6-C,** as corrected by RR 1999,
40 c. 2, §27, is amended to read:

2 **6-C. Forfeitures.** In an adjudicatory proceeding, the
Public Utilities Commission may, in accordance with this
4 subsection, impose an administrative penalty for any violation of
this subsection. The administrative penalty may not exceed \$500,
6 except that if the person has been found in violation of this
subsection within the prior 12 months the administrative penalty
8 may not exceed \$5,000. Administrative penalties imposed pursuant
to this subsection are in addition to any other remedies or
10 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~~
12 ~~shall consider evidence of the record of the violator, including,~~
~~to the extent applicable, the number of successful excavations~~
14 ~~undertaken by the violator or the number of locations~~
~~successfully marked by the violator during the prior 12 months.~~
16 The commission may require a person who violates any provision of
this section to participate, at the expense of the violator, in
18 an educational program developed and conducted by the system.

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

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

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

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

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

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

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

48 **Emergency clause.** In view of the emergency cited in the
preamble, this Act takes effect when approved.

50

SUMMARY

2

4 This bill revises provisions of the law that govern the Dig
6 Safe underground facilities protection program in the State. The
8 revisions provide limited exemption for cemeteries and shoulder
10 grading; require operators to mark inactive facilities,
12 affirmatively respond to the underground facility damage
14 prevention system and locate to the point of service transfer;
16 require the system to implement a location-specific information
18 capability; and require excavators to renotify the system
monthly. The bill also clarifies that the person who
mechanically performs the excavation is responsible for verifying
that notifications and locations have been performed and requires
that person to locate facilities on private property under some
circumstances. Finally, the bill also revises the exemption for
water utilities and for highway sign installation and makes some
administrative changes.