

# MAINE STATE LEGISLATURE

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L.D. 1803

Date: 3/27/12

(Filing No. H-842)

**ENERGY, UTILITIES AND TECHNOLOGY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
125TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1329, L.D. 1803, Bill, "An Act To Implement the Recommendations of the Dig Safe Work Group"

Amend the bill by inserting after the title and before the enacting clause the following:

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

**Whereas,** the underground facility damage prevention system, established pursuant to the so-called dig safe law, ensures the health and safety of the citizens of the State when excavations are to occur; and

**Whereas,** this Act affects the system; and

**Whereas,** it is important to implement the changes to the system immediately to keep the people involved with the system safe; and

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

Amend the bill by inserting after section 2 the following:

**Sec. 3. 23 MRSA §3360-A, sub-§3, ¶F,** as enacted by PL 2001, c. 577, §5, is amended to read:

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

**Sec. 4. 23 MRSA §3360-A, sub-§3, ¶G,** as enacted by PL 2003, c. 373, §2, is amended to read:

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1 G. If an excavator notifies the system and nonmember operators as required by this  
 2 section and is informed by the system and each nonmember operator, including  
 3 private landowners, that no underground facilities exist in the proposed excavation  
 4 area, ~~then~~ the excavator is not required to wait the 3 days as required by this  
 5 subsection and subsection ~~10~~ 10-A and may begin excavation immediately.

6 **Sec. 5. 23 MRSA §3360-A, sub-§5-D**, as enacted by PL 2001, c. 577, §8, is  
 7 amended to read:

8 **5-D. Exemption; cemeteries.** An excavator is exempt from the notice requirements  
 9 of subsection 3 and subsection ~~10~~ 10-A for any excavation undertaken within the  
 10 boundaries of a cemetery if the following procedures are followed.

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

18 B. The person responsible for operating the cemetery shall identify the location of  
 19 any underground facilities within the excavation area and take appropriate action to  
 20 avoid damage to the facilities.

21 **Sec. 6. 23 MRSA §3360-A, sub-§5-E, ¶A**, as enacted by PL 2001, c. 577, §8, is  
 22 amended to read:

23 A. The excavator shall provide notice as required by subsections 3 and ~~10~~ 10-A and  
 24 the owner or operator of underground facilities shall respond as required by  
 25 subsections 4 and ~~10~~ 10-A.

26 **Sec. 7. 23 MRSA §3360-A, sub-§5-I, ¶¶B and C**, as enacted by PL 2011, c.  
 27 72, §4, are amended to read:

28 B. Except as provided in paragraph C, an excavator is exempt from the notice  
 29 requirements of subsection 3 and subsection ~~10~~ 10-A when undertaking an  
 30 excavation within a quarry or borrow pit lawfully located on March 1, 2011.

31 C. An excavator undertaking an excavation within a quarry or borrow pit lawfully  
 32 located after March 1, 2011 or lawfully expanded after March 1, 2011 is governed by  
 33 the following.

34 (1) The owner or operator of the quarry or borrow pit shall provide notice  
 35 pursuant to subsections 3 and ~~10~~ 10-A identifying the entire area potentially  
 36 subject to excavation.

37 (2) Owners and operators of underground facilities in the area identified pursuant  
 38 to subparagraph (1) shall mark those facilities in accordance with subsections 4  
 39 and ~~10~~ 10-A, as applicable. Thereafter, the owner or operator of the quarry or  
 40 borrow pit shall maintain sufficient records or markings to identify the location of  
 41 underground facilities within the area identified pursuant to subparagraph (1) and

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1 an excavator undertaking an excavation in that area is exempt from any further  
2 notice requirements under subsection 3 and subsection ~~10~~ 10-A.

3 (3) The owner or operator of the quarry or borrow pit shall take appropriate  
4 action to avoid damage to the underground facilities identified pursuant to  
5 subparagraph (2).

6 **Sec. 8. 23 MRSA §3360-A, sub-§5-K** is enacted to read:

7 **5-K. Exemption; unpaved private road grading.** A person is exempt from the  
8 requirements of this section for any grading activities undertaken on private roads that  
9 meet the following criteria:

10 A. The grading activities are limited to the shaping, maintaining or scraping of a road  
11 surface or road shoulder to allow for proper drainage; and

12 B. The depth of the grading activities is no deeper than 6 inches as measured from  
13 the road surface or shoulder of the road surface prior to the commencement of those  
14 grading activities.'

15 Amend the bill by striking out all of sections 4 and 5 and inserting the following:

16 'Sec. 4. 23 MRSA §3360-A, sub-§10, as enacted by PL 1991, c. 437, §10 and  
17 affected by §12, is repealed.

18 **Sec. 5. 23 MRSA §3360-A, sub-§10-A** is enacted to read:

19 **10-A. Further notice requirements.** The following provisions govern excavations  
20 in areas where there are underground facilities owned or operated by a person who is not  
21 an underground facility operator and who is not a voluntary member of the system  
22 established under subsection 1-A.

23 A. In addition to other notice requirements under this section and except for an  
24 employee with respect to that employee's employer's facility, an excavator shall  
25 notify any person who is not a member of the system and has underground facilities  
26 in the area of the proposed excavation. This notice must be in writing or in person.

27 B. If the underground facilities are located on private property and are owned and  
28 operated by the owner of that property:

29 (1) That landowner may mark the underground facilities in accordance with  
30 paragraph D;

31 (2) The excavator may wait 3 business days from the date of notification to  
32 commence the excavation or may commence the excavation upon notification;

33 (3) If the excavator waits 3 business days from the date of notification or until  
34 after the underground facilities are marked, if sooner, to commence excavation or  
35 if the markings made by the landowner pursuant to subparagraph (1) fail to  
36 identify the location of the underground facilities in accordance with paragraph  
37 D, an excavator damaging or injuring underground facilities is not liable for any  
38 damage or injury caused by the excavation, except on proof of negligence; and

1 (4) If the excavator does not wait until the underground facilities are marked or 3  
2 business days from the date of notification to commence excavation, whichever  
3 occurs earlier, the excavator is liable for all damages to the underground facilities  
4 as a result of the excavation.

5 C. If the underground facilities are located on private or public land and are owned  
6 and operated by a person other than the owner of the property where the excavation is  
7 to occur:

8 (1) The person who owns or operates the underground facilities shall mark the  
9 underground facilities in accordance with paragraph D; and

10 (2) The excavator shall wait until the underground facilities are marked or 3  
11 business days from the date of notification, whichever occurs earlier, before  
12 commencing the excavation.

13 If an excavator complies with paragraph A and subparagraph (2) and if information  
14 pursuant to paragraph D is not provided within the time specified or if the  
15 information provided does not identify the location of the underground facilities in  
16 accordance with paragraph D, an excavator damaging or injuring underground  
17 facilities is not liable for any damage or injury caused by the excavation, except on  
18 proof of negligence.

19 D. A person who marks underground facilities under this subsection shall mark the  
20 location and size of the underground facilities in the proposed excavation area by  
21 marking the location of the facilities with stakes, with paint or by any other  
22 identifiable markings within 36 inches horizontally from the exterior sides of the  
23 underground facilities and if the depth is known the depth of the underground  
24 facilities. The person providing information shall respond no later than 2 full business  
25 days after receipt of the notice. It is the responsibility of the excavator to maintain  
26 those location markings until the excavations are completed.

27 **Sec. 6. Convene a "dig safe" work group.** The Public Advocate shall convene  
28 a work group, referred to in this section as "the work group," to examine, improve and  
29 enhance the underground facility damage prevention system established in the Maine  
30 Revised Statutes, Title 23, section 3360-A, subsection 1-A and referred to in this section  
31 as "the damage prevention system."

32 **1. Chair.** The Public Advocate shall serve as the chair of the work group.

33 **2. Membership.** When appointing members, the Public Advocate shall consider a  
34 fair representation of members and nonmembers of the damage prevention system. The  
35 work group consists of 23 members as follows:

36 A. Twenty-two persons appointed by the Public Advocate:

37 (1) Two persons who are municipal public works officials, one of whom is from  
38 a municipality with a large population and one from a municipality with a small  
39 population. The Public Advocate shall consider any recommendations for  
40 appointments under this subparagraph submitted by the Maine Municipal  
41 Association;

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- 1 (2) Three persons who are builders or contractors who conduct business in  
2 geographically diverse areas of the State. The Public Advocate shall consider any  
3 recommendations for appointments under this subparagraph submitted by the  
4 Associated Builders and Contractors of Maine;
- 5 (3) Three persons who are general contractors who conduct business in  
6 geographically diverse areas of the State. The Public Advocate shall consider any  
7 recommendations for appointments under this subparagraph submitted by the  
8 Associated General Contractors of Maine;
- 9 (4) One person with expertise in the damage prevention system who does not  
10 represent an active excavator or underground facility operator. The Public  
11 Advocate shall consider any person with appropriate expertise who submits a  
12 request to be appointed under this subparagraph;
- 13 (5) Two persons who represent quasi-municipal water or sewer utilities, one of  
14 whom represents a small utility and one of whom represents a large utility. The  
15 Public Advocate shall consider any recommendation for the person to represent a  
16 small utility submitted by the Maine Rural Water Association. The Public  
17 Advocate shall consider any recommendation for the person to represent a large  
18 utility submitted by the Maine Water Utilities Association;
- 19 (6) Two persons who represent telephone utilities, one of whom represents a  
20 small rural telephone utility and one of whom represents a large telephone utility.  
21 The Public Advocate shall consider any recommendations for appointments  
22 under this subparagraph submitted by the Telephone Association of Maine;
- 23 (7) One person representing cable television service providers in the State;
- 24 (8) Two persons representing owners or operators of underground fuel facilities.  
25 The Public Advocate shall consider any recommendations for appointments  
26 under this subparagraph submitted by the Maine Energy Marketers Association;
- 27 (9) One person representing the owner or operator of a natural gas pipeline;
- 28 (10) One person representing investor-owned transmission and distribution  
29 utilities;
- 30 (11) One person representing consumer-owned transmission and distribution  
31 utilities;
- 32 (12) One person who represents the Dig Safe system. The Public Advocate shall  
33 consider any recommendations for appointments under this subparagraph  
34 submitted by Dig Safe System, Inc.; and
- 35 (13) Two municipal officials or persons representing municipal officials; and

36 B. The Public Advocate.

37 **3. Convening.** The Public Advocate shall convene the work group no later than 60  
38 days following the effective date of this section.

39 **4. Duties.** The work group, in consultation with the Public Utilities Commission,  
40 shall examine ways to facilitate the creation of a centralized one-call system to notify the  
41 operators of underground facilities of pending excavations. This examination must  
42 include, but is not limited to:

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- 1           A. Creating a new apportionment of the costs of membership in the damage
- 2           prevention system so that members could pay a flat fee for each notification of
- 3           pending excavation;
- 4           B. Authorizing an operator who is not a member of the damage prevention system to
- 5           be subject to administrative penalties for violations of Title 23, section 3360-A;
- 6           C. Requiring an operator who is not a member of the damage prevention system to
- 7           maintain insurance when an excavator is working on that operator's underground
- 8           facilities;
- 9           D. Identifying appropriate tolerance zones for marking different types of
- 10          underground facilities;
- 11          E. Developing a process for the commission to keep records of successful markings
- 12          or excavations completed by members of the damage prevention system; and
- 13          F. Evaluating the need for an ongoing advisory board to provide input to the
- 14          commission regarding the damage prevention system. The work group shall consider
- 15          staffing requirements, membership, funding and the scope of responsibility for the
- 16          advisory board.

17           **5. Staff assistance.** To the extent possible within existing resources, the Public  
 18 Advocate and the Public Utilities Commission shall provide necessary staffing services to  
 19 the work group.

20           **6. Report.** No later than January 15, 2013, the Public Utilities Commission and the  
 21 Public Advocate shall jointly submit a report to the joint standing committee of the  
 22 Legislature having jurisdiction over energy, utilities and technology matters that includes  
 23 all findings and recommendations of the work group that are supported by at least 2/3 of  
 24 the appointed members of the work group. The commission shall submit to the First  
 25 Regular Session of the 126th Legislature by January 15, 2013 any legislation necessary to  
 26 carry out the recommendations of the work group and provisionally adopted rules  
 27 pursuant to Title 23, section 3360-A, subsection 13 necessary to carry out the  
 28 recommendations of the work group.

29           **Sec. 7. Rule adoption.** Final adoption of portions of Chapter 895: Underground  
 30 Facility Damage Prevention Requirements, a provisionally adopted major substantive rule  
 31 of the Public Utilities Commission that has been submitted to the Legislature for review  
 32 pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is  
 33 authorized only if the commission:

- 34           1. Modifies the notification requirements of excavators to notify private property
- 35           owners that own and operate underground facilities on their property in accordance with
- 36           this Act;
- 37           2. Requires a 36-inch tolerance zone for marking underground facilities operated by
- 38           nonmember operators;
- 39           3. Removes the requirement that the commission include the number of excavations
- 40           and markings by a respondent in the past 12 months that did not result in a violation of
- 41           the so-called dig safe law or rules on a notice of enforcement investigation;

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1 4. Permits a respondent to request an adjudicatory hearing only after an informal  
2 review and requires that the commission approve any request by a respondent to waive  
3 the informal review; and

4 5. Corrects a cross-reference to the definition of an underground facility operator in  
5 section 6 of the rule.

6 **Emergency clause.** In view of the emergency cited in the preamble, this  
7 legislation takes effect when approved.'

8 Amend the bill by relettering or renumbering any nonconsecutive Part letter or  
9 section number to read consecutively.

10

**SUMMARY**

11 This amendment creates an exemption from the requirement to notify the  
12 underground facility damage prevention system, established pursuant to the so-called dig  
13 safe law, for grading completed on private unpaved roads. It also changes the  
14 circumstances under which an excavator notifies a private landowner of excavations that  
15 occur on that landowner's property and the excavator's liability for work completed on  
16 that land. This amendment specifies the membership of the "dig safe" work group,  
17 changes the requirement that the work group convene within 30 days of the effective date  
18 of the bill to 60 days, as well as adds additional items to the work group's scope of work.  
19 Finally, this amendment addresses major substantive rulemaking proposed for  
20 authorization in L.D. 1790, H.P. 1315, "Resolve, Regarding Legislative Review of  
21 Portions of Chapter 895: Underground Facility Damage Prevention Requirements, a  
22 Major Substantive Rule of the Public Utilities Commission," by conditionally authorizing  
23 final adoption of portions of Chapter 895 only if the Public Utilities Commission makes  
24 specific changes to the rule.

25 This amendment also adds an emergency preamble and emergency clause to the bill.

26

**FISCAL NOTE REQUIRED**

27

(See attached)





# 125th MAINE LEGISLATURE

LD 1803

LR 2734(02)

An Act To Implement the Recommendations of the Dig Safe Work Group

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-842)  
Committee: Energy, Utilities and Technology  
Fiscal Note Required: Yes

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## Fiscal Note

Minor cost increase - Other Special Revenue Funds

### Fiscal Detail and Notes

Any additional costs to the Public Advocate to convene, staff and report on a Dig Safe work group can be absorbed within existing budgeted resources. Any additional costs to the Public Utilities Commission to staff and report on the Dig Safe work group and to finally adopt a provisionally adopted rule can be absorbed within existing budgeted resources.