

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

SECOND REGULAR SESSION-2012

Legislative Document

No. 1803

H.P. 1329

House of Representatives, February 2, 2012

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

Reported by Representative FITTS of Pittsfield for the Public Utilities Commission pursuant to Public Law 2011, chapter 72.

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

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

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

4 D. "Person" means an individual, partnership, municipality, state, including an
5 agency or department of the state, county, political subdivision, utility, joint venture
6 or corporation and includes the employer of an individual.

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

9 E. "Underground facility" means any item of personal property buried or placed
10 below ground for use in connection with the storage or conveyance of water, sewage,
11 electronic, telephonic or telegraphic communications, electric energy, oil, gas or
12 other substances and including, but not limited to, pipes, sewers, conduits, cables,
13 valves, lines, wires, manholes, attachments, appurtenances and those parts of poles
14 below ground. This definition ~~shall~~ does not include liquefied propane gas
15 distribution systems that are not included within the scope of 49 Code of Federal
16 Regulations, Part 192 and highway drainage culverts or under drains.

17 **Sec. 3. 23 MRSA §3360-A, sub-§6-C,** as amended by PL 2011, c. 72, §6, is
18 further amended to read:

19 **6-C. Penalties.** In an adjudicatory proceeding, the Public Utilities Commission may,
20 in accordance with this subsection, impose an administrative penalty ~~for any violation of~~
21 ~~on any person who violates~~ this subsection. The administrative penalty may not exceed
22 \$500, except that, if the person has been found in violation of this subsection within the
23 prior 12 months, the administrative penalty may not exceed \$5,000. Administrative
24 penalties imposed pursuant to this subsection are in addition to any other remedies or
25 forfeitures provided by law and any liability that may result from the act or omission
26 constituting the violation. Before imposing any penalties under this subsection, the
27 commission shall consider evidence of the record of the violator, including, to the extent
28 applicable, the number of successful excavations undertaken by the violator or the
29 number of locations successfully marked by the violator during the prior 12 months. The
30 commission may require a person who violates any provision of this section to
31 participate, at the expense of the violator, in an educational program developed and
32 conducted by the system.

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

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

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

- 1 C. Excavation by an excavator that does not comply with the requirements of
2 subsection 4-C, except to the extent the excavator is exempt from the provisions of
3 subsection 4-C pursuant to subsection 5-C;
- 4 D. Failure of an underground facility operator to mark the location of the operator's
5 underground facilities within the time limits required by subsection 4;
- 6 E. Marking by an underground facility operator of the location of an underground
7 facility in a reckless or negligent manner; or
- 8 F. Failure of an excavator to comply with the requirements of subsection 5-C, 5-D,
9 5-E, 5-I or 5-J.

10 The commission shall establish by rule standards for when and at what level penalties
11 must be assessed under this subsection. Rules adopted under this subsection are major
12 substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

13 **Sec. 4. 23 MRSA §3360-A, sub-§6-E** is enacted to read:

14 **6-E. Use of administrative penalties.** All amounts received by the Public Utilities
15 Commission due to the payment of administrative penalties imposed for a violation of
16 this section must be allocated and used only for the purposes described in this subsection.

17 A. Amounts may be used solely for the following purposes:

18 (1) Promotion of the system through marketing efforts, including but not limited
19 to radio, television and print media and other purposes intended to encourage
20 membership in the system;

21 (2) Training of utilities and contractors in the use of the system and methods of
22 preventing damage to underground facilities. Training funded pursuant to this
23 subparagraph must be offered by or through a regional or national organization or
24 program that provides training in underground facility safety; and

25 (3) Provision of grants to support mapping of underground facilities to facilities
26 operators that become first-time members of Dig Safe System, Inc., or its
27 successor organization, during the calendar year during which the administrative
28 penalties were collected.

29 B. Amounts must be allocated by the commission for the purposes stated in
30 paragraph A in the following percentages:

31 (1) Five percent for the purpose stated in paragraph A, subparagraph (1);

32 (2) Fifteen percent for the purpose stated in paragraph A, subparagraph (2); and

33 (3) Eighty percent for the purpose stated in paragraph A, subparagraph (3).

34 If, at the end of the calendar year, funds that have been allocated for the purposes
35 stated in paragraph A, subparagraphs 1 or 3 remain unspent, the commission shall use
36 those funds for additional training pursuant to paragraph A, subparagraph (2).

37 A utility or contractor that receives funds pursuant to paragraph A, subparagraph (2) shall
38 provide a report to the Public Utilities Commission by February 1st of the year following
39 receipt of the funds that includes the number of training sessions provided, the number of

1 individuals trained, the names of companies participating in training and a description of
2 the training curriculum used.

3 Beginning January 15, 2013 and every odd year after that, the Public Utilities
4 Commission shall submit to the joint standing committee of the Legislature having
5 jurisdiction over public utilities matters its recommendations regarding the allocation of
6 administrative penalties collected pursuant to subsection 6-C. The commission shall also
7 provide a recommendation as to whether the funds allocated for training of utilities and
8 contractors pursuant to paragraph A, subparagraph (2) should be made available to train
9 water and sewer districts regarding the commission's rules requiring a public utility to
10 map its service area and key infrastructure.

11 **Sec. 5. Convene a dig safe work group.** The Public Advocate shall convene a
12 dig safe work group, referred to in this section as "the work group," to examine, improve
13 and enhance the underground facility damage prevention system established in the Maine
14 Revised Statutes, Title 23, section 3360-A, subsection 1-A and referred to in this section
15 as "the damage prevention system."

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

17 **2. Convening.** The Public Advocate shall convene the work group no later than 30
18 days following the effective date of this section.

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

23 A. Creating a new apportionment of the costs of membership in the damage
24 prevention system so that members could pay a flat fee for each notification of
25 pending excavation;

26 B. Authorizing an operator who is not a member of the damage prevention system to
27 be subject to administrative penalties for violations of Title 23, section 3360-A; and

28 C. Requiring an operator who is not a member of the damage prevention system to
29 maintain insurance when an excavator is working on that operator's underground
30 facilities.

31 **4. Staff assistance.** The Public Advocate and the Public Utilities Commission shall
32 provide necessary staffing services to the work group.

33 **5. Report.** No later than January 15, 2013, the Public Utilities Commission and the
34 Public Advocate shall jointly submit a report to the joint standing committee of the
35 Legislature having jurisdiction over energy, utilities and technology matters that includes
36 all findings and recommendations of the work group that are supported by at least 2/3 of
37 the appointed members of the work group. The commission shall submit to the First
38 Regular Session of the 126th Legislature by January 15, 2013 any legislation necessary to
39 carry out the recommendations of the work group and provisionally adopted rules
40 pursuant to Title 23, section 3360-A, subsection 13 necessary to carry out the
41 recommendations of the work group.

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SUMMARY

This bill amends the so-called dig safe law to exclude liquefied propane gas distribution systems that are not included within the scope of safety regulation of the Public Utilities Commission in its role as an agent to the United States Department of Transportation from the definition of an underground facility. The bill clarifies that the dig safe law applies to state agencies and departments and allows the Public Utilities Commission to impose administrative penalties on any person who violates the dig safe law, including a state agency or department. The administrative penalties paid to resolve violations of the dig safe law are dedicated to further the prevention of damage to underground facilities in specific proportions through funding training by private nonprofit groups; dissemination of damage prevention information through the use of radio, television and print media advertising; and the creating of grants to assist facilities operators in funding mapping of their facilities. Finally, the bill requires the Public Advocate to establish and convene a dig safe work group to facilitate the creation of a centralized one-call system to notify the operators of underground facilities of pending excavations.