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Date: (Filing No. H- )

**ENERGY, UTILITIES AND TECHNOLOGY**

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

COMMITTEE AMENDMENT “ ” to H.P. 325, L.D. 407, Bill, “An Act To Require Clarification of the Dig Safe Standards”

Amend the bill by striking out the title and substituting the following:

**'An Act To Clarify the Dig Safe Standards'**

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,** it is crucial to the public safety and welfare to clarify the so-called "Dig Safe" standards and procedures as soon as possible; 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 striking out everything after the enacting clause and before the summary and inserting the following:

**Sec. 1. 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~~ 60 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**Sec. 2. 23 MRSA §3360-A, sub-§5,** as repealed and replaced by PL 1999, c. 718, §6, is amended to read:

**COMMITTEE AMENDMENT**

1           **5. Emergency excavations.** In an emergency, an excavator may commence an  
2 excavation after having taken all reasonable steps, consistent with the emergency, to  
3 notify the system and to mark the excavation site consistent with subsection 3, paragraph  
4 C. The excavator shall commence an excavation undertaken pursuant to this subsection  
5 within 12 hours after providing notice to the system, or as soon thereafter as can safely be  
6 accomplished. Each underground facility operator shall locate its underground facilities  
7 as soon as ~~practicable~~ reasonably possible after receiving notification of an emergency  
8 excavation whether or not the excavation has begun.

9           **Sec. 3. 23 MRSA §3360-A, sub-§5-B,** as enacted by PL 1999, c. 718, §7, is  
10 amended to read:

11           **5-B. Exemption; commercial forestry operations.** A person is exempt from the  
12 notice requirements of subsection 3 for any excavation undertaken in conjunction with a  
13 commercial timber harvesting activity ~~or borrow pit~~ as long as the excavation:

14           A. Is not conducted in a public place, on public land or within a public easement,  
15 including, but not limited to, a public way;

16           B. Is not conducted within 100 feet of an easement or land owned by an underground  
17 facility operator;

18           C. Is not conducted within 100 feet of an underground facility; and

19           D. Does not involve the use of explosives.

20           **Sec. 4. 23 MRSA §3360-A, sub-§5-I** is enacted to read:

21           **5-I. Exemption; quarries and borrow pits.** An excavator may undertake an  
22 excavation within a quarry or borrow pit in accordance with this subsection.

23           A. As used in this subsection, unless the context otherwise indicates, the following  
24 terms have the following meanings.

25           (1) "Lawfully expanded after March 1, 2011" means an expansion of a quarry or  
26 borrow pit after March 1, 2011:

27           (a) That requires an authorization, license, permit or variance issued by the  
28 Department of Environmental Protection pursuant to Title 38, chapter 3,  
29 article 6, 7 or 8-A or by the Maine Land Use Regulation Commission under  
30 Title 12, chapter 206-A and for which a valid authorization, license, permit or  
31 variance has been issued; or

32           (b) That requires a filing of a notice of intent to comply pursuant to Title 38,  
33 chapter 3, article 7 or 8-A and a complete filing has been made.

34           (2) "Lawfully located on March 1, 2011" means that on March 1, 2011 the quarry  
35 or borrow pit existed and:

36           (a) The owner or operator had been issued all authorizations, licenses,  
37 permits or variances by the Department of Environmental Protection pursuant  
38 to Title 38, chapter 3, article 6, 7 or 8-A or by the Maine Land Use  
39 Regulation Commission under Title 12, chapter 206-A necessary to operate  
40 that quarry or borrow pit; and

1                    (b) The quarry or borrow pit was in compliance with any applicable  
2                    requirements of Title 38, chapter 3, article 7 or 8-A or with any applicable  
3                    land use district standards of the Maine Land Use Regulation Commission  
4                    adopted under Title 12, chapter 206-A.

5                    (3) "Lawfully located after March 1, 2011" means that the quarry or borrow pit  
6                    is established after March 1, 2011 and:

7                    (a) The owner or operator possesses all authorizations, licenses, permits or  
8                    variances issued by the Department of Environmental Protection pursuant to  
9                    Title 38, chapter 3, article 6, 7 or 8-A or by the Maine Land Use Regulation  
10                   Commission under Title 12, chapter 206-A necessary to operate that quarry  
11                   or borrow pit; and

12                   (b) The quarry or borrow pit is in compliance with the requirements of Title  
13                   38, chapter 3, article 7 or 8-A or with applicable land use district standards of  
14                   the Maine Land Use Regulation Commission adopted under Title 12, chapter  
15                   206-A.

16                   (4) "Quarry" has the same meaning as in Title 38, section 490-W, subsection 17.

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

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

23                   (1) The owner or operator of the quarry or borrow pit shall provide notice  
24                   pursuant to subsections 3 and 10 identifying the entire area potentially subject to  
25                   excavation.

26                   (2) Owners and operators of underground facilities in the area identified pursuant  
27                   to subparagraph (1) shall mark those facilities in accordance with subsections 4  
28                   and 10, as applicable. Thereafter, the owner or operator of the quarry or borrow  
29                   pit shall maintain sufficient records or markings to identify the location of  
30                   underground facilities within the area identified pursuant to subparagraph (1) and  
31                   an excavator undertaking an excavation in that area is exempt from any further  
32                   notice requirements under subsection 3 and subsection 10.

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

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

37                   **5-J. Unpaved public road grading procedure.** A person may undertake qualified  
38                   grading activity in accordance with this subsection.

39                   A. As used in this subsection, unless the context otherwise indicates, the following  
40                   terms have the following meanings.

1           (1) "Approved road" means a public way, or portion of a public way, on which a  
2           person may undertake qualified grading activity in accordance with this  
3           subsection.

4           (2) "Licensing authority" has the same meaning as in Title 35-A, section 2502,  
5           subsection 1.

6           (3) "Qualified grading activity" means maintenance work that involves the use of  
7           suitable equipment with a blade to level or otherwise maintain the sand, gravel,  
8           sod or other surface of an unpaved public way.

9           (4) "Requested road" means a public way, or portion of a public way, on which a  
10          licensing authority requests authority to conduct qualified grading activity under  
11          this subsection.

12          (5) "Shallow-depth facilities" means underground facilities located at an  
13          insufficient depth to allow qualified grading activity.

14          B. A licensing authority shall provide notice identifying the requested road and the  
15          intended depth of the qualified grading activity to the system and to persons who are  
16          not members of the system who own or operate underground facilities in the  
17          requested road.

18          C. Upon receiving notice pursuant to paragraph B, the system shall notify  
19          immediately all members whose underground facilities may be affected in  
20          accordance with subsection 3-A.

21          D. The owner or operator of each underground facility within the requested road  
22          shall within 3 business days of receiving notice advise the licensing authority of the  
23          location and size of the owner's or operator's underground facilities and all  
24          underground facilities used in furnishing electric or gas service that are connected to  
25          the owner's or operator's facilities and known to the owner or operator that are located  
26          in the requested road and whether the depth of the facilities is sufficient to avoid  
27          damage by qualified grading activity.

28          E. After waiting 3 business days of providing notice under paragraph B, the licensing  
29          authority may file with the Public Utilities Commission a notice of intent to conduct  
30          qualified grading activity on the requested road. Upon filing the notice of intent, the  
31          requested road becomes an approved road and any person may undertake qualified  
32          grading activity on the approved road at any time during the 12 months following  
33          filing of the notice of intent and is not required to provide any further notices under  
34          this section during those 12 months. If the licensing authority has been notified  
35          pursuant to paragraph D that there are shallow-depth facilities within the requested  
36          road, any qualified grading activity must be conducted in a manner that does not  
37          disturb the shallow-depth facilities. The licensing authority may require the owner or  
38          operator of the shallow-depth facilities to lower or otherwise move its facility in  
39          accordance with applicable law and the terms of its license.

40          **Sec. 6. 23 MRSA §3360-A, sub-§6-C, ¶F,** as enacted by PL 2001, c. 577, §11,  
41          is amended to read:

1 F. Failure of an excavator to comply with the requirements of subsection 5-C, 5-D  
2 of, 5-E, 5-I or 5-J.

3 **Sec. 7. 23 MRSA §3360-A, sub-§6-D** is enacted to read:

4 **6-D. Penalty payment plan.** The Public Utilities Commission shall allow a  
5 qualified person who is assessed an administrative penalty under subsection 6-C to pay  
6 the penalty through a payment plan. For purposes of this subsection, "qualified person"  
7 means a person who demonstrates to the Public Utilities Commission that the person is  
8 unable to pay the penalty in full or that paying the penalty in full will cause undue  
9 financial hardship. The Public Utilities Commission shall establish a schedule of  
10 payments over time that allows the person to pay the fine within that person's financial  
11 means.

12 **Sec. 8. Work group; Dig Safe standards.** The Dig Safe Work Group, referred  
13 to in this section as "the work group," is established.

14 **1. Membership.** The work group consists of 23 members as follows.

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

16 (1) Two persons who are municipal public works officials, one of whom is from  
17 a municipality with a large population and one from a municipality with a small  
18 population. The Public Advocate shall consider any recommendations for  
19 appointments under this subparagraph submitted by the Maine Municipal  
20 Association within 20 days of the effective date of this Act;

21 (2) Four persons who are builders or contractors who conduct business in  
22 geographically diverse areas of the State. The Public Advocate shall consider  
23 any recommendations for appointments under this subparagraph submitted by the  
24 Associated Builders and Contractors of Maine within 20 days of the effective  
25 date of this Act;

26 (3) Four persons who are general contractors who conduct business in  
27 geographically diverse areas of the State. The Public Advocate shall consider  
28 any recommendations for appointments under this subparagraph submitted by the  
29 Associated General Contractors of Maine within 20 days of the effective date of  
30 this Act;

31 (4) One person with expertise in the underground facility damage prevention  
32 system who does not represent an active excavator or underground facility  
33 operator. The Public Advocate shall consider any person with appropriate  
34 expertise who submits a request to be appointed under this subparagraph within  
35 20 days of the effective date of this Act;

36 (5) Two persons who represent quasi-municipal water or sewer utilities, one of  
37 whom represents a small utility and one of whom represents a large utility. The  
38 Public Advocate shall consider any recommendation for a person representing a  
39 small utility submitted by the Maine Rural Water Association within 20 days of  
40 the effective date of this Act. The Public Advocate shall consider any  
41 recommendation for a person representing a large utility submitted by the Maine  
42 Water Utilities Association within 20 days of the effective date of this Act;

- 1 (6) Two persons who represent telephone utilities, one of whom represents a  
2 small rural telephone utility and one of whom represents a large telephone utility.  
3 The Public Advocate shall consider any recommendations for appointments  
4 under this subparagraph submitted by the Telephone Association of Maine within  
5 20 days of the effective date of this Act;
- 6 (7) One person representing cable television service providers in Maine;
- 7 (8) Two persons representing owners or operators of underground fuel facilities.  
8 The Public Advocate shall consider any recommendations for appointments  
9 under this subparagraph submitted by the Maine Energy Marketers Association  
10 within 20 days of the effective date of this Act;
- 11 (9) One person representing the owner or operator of a natural gas pipeline;
- 12 (10) One person representing investor-owned transmission and distribution  
13 utilities;
- 14 (11) One person representing consumer-owned transmission and distribution  
15 utilities; and
- 16 (12) One person who represents the Dig Safe system. The Public Advocate shall  
17 consider any recommendations for appointments under this subparagraph  
18 submitted by Dig Safe System, Inc. within 20 days of the effective date of this  
19 Act; and
- 20 B. The Public Advocate.
- 21 **2. Chair.** The Public Advocate serves as chair of the work group.
- 22 **3. Appointments; convening.** All appointments must be made no later than 30 days  
23 following the effective date of this section.
- 24 **4. Duties.** The work group, in consultation with the Public Utilities Commission,  
25 shall examine ways to clarify and simplify the so-called "dig safe" laws and rules to  
26 facilitate compliance and to eliminate regulatory uncertainty. The work group, in  
27 consultation with the Public Utilities Commission, shall examine at least the following  
28 matters:
- 29 A. Preexcavation marking standards for excavators;
- 30 B. Marking standards for owners and operators of underground facilities;
- 31 C. Enforcement procedures and standards and the appropriate use of penalties; and
- 32 D. Clarification of incident reporting and ensuring that incident investigations  
33 involve appropriate fact-finding and do not assume or require inappropriate  
34 admission of fault.
- 35 **5. Staff assistance.** The Public Advocate and the Public Utilities Commission shall  
36 provide necessary staffing services to the work group.
- 37 **6. Report.** No later than January 15, 2012, the Public Utilities Commission and the  
38 chair of the work group shall jointly submit a report to the Joint Standing Committee on  
39 Energy, Utilities and Technology that includes all findings and recommendations  
40 supported by at least 2/3 of the appointed members of the work group. The commission  
41 shall also submit provisionally adopted rules to the Second Regular Session of the 125th

1 Legislature pursuant to the Maine Revised Statutes, Title 23, section 3360-A, subsection  
2 13 necessary to carry out the recommendations of the work group and any legislation  
3 necessary to carry out the recommendations of the work group.

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

## 6 SUMMARY

7 This amendment replaces the bill. This amendment:

- 8 1. Adds an emergency preamble and clause to the bill;
- 9 2. Modifies the law that requires an excavator to renotify an underground facility  
10 damage prevention system if the excavator does not commence an excavation within 30  
11 days of approval by the system to extend the time of commencement to 60 days;
- 12 3. Requires an excavator to commence an emergency excavation within 12 hours of  
13 providing notice to the underground facility damage prevention system or as soon  
14 thereafter as can be safely accomplished;
- 15 4. Creates a new provision for road grading of unpaved public roads that allows  
16 grading to occur during a 12-month period after notice has been provided to underground  
17 facility owners, as long as the activity occurs in a manner that does not disturb those  
18 underground facilities;
- 19 5. Creates an exemption from the notice requirements for quarries and borrow pits;
- 20 6. Directs the Public Utilities Commission to provide payment schedules for persons  
21 fined for violations of the dig safe laws for whom paying the fine at once would create an  
22 undue financial hardship; and
- 23 7. Establishes a work group to develop recommendations for clarifying and  
24 simplifying the so-called "dig safe" laws and rules.

## 25 FISCAL NOTE REQUIRED

26  
27 (See attached)  
28