

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 325 - L.D. 407

An Act To Clarify the Dig Safe Standards

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,

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

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Sec. 2. 23 MRSA §3360-A, sub-§5, as repealed and replaced by PL 1999, c. 718, §6, is amended to read:

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

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

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

- A. Is not conducted in a public place, on public land or within a public easement, including, but not limited to, a public way;
- B. Is not conducted within 100 feet of an easement or land owned by an underground facility operator;
- C. Is not conducted within 100 feet of an underground facility; and
- D. Does not involve the use of explosives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6-D. Penalty payment plan. The Public Utilities Commission shall allow a qualified person who is assessed an administrative penalty under subsection 6-C to pay the penalty through a payment plan. For purposes of this subsection, "qualified person"

means a person who demonstrates to the Public Utilities Commission that the person is unable to pay the penalty in full or that paying the penalty in full will cause undue financial hardship. The Public Utilities Commission shall establish a schedule of payments over time that allows the person to pay the fine within that person's financial means.

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

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

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

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

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

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

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

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

(6) Two persons who represent telephone utilities, one of whom represents a small rural telephone utility and one of whom represents a large telephone utility. The Public Advocate shall consider any recommendations for appointments under this subparagraph submitted by the Telephone Association of Maine within 20 days of the effective date of this Act;

(7) One person representing cable television service providers in Maine;

(8) Two persons representing owners or operators of underground fuel facilities. The Public Advocate shall consider any recommendations for appointments under this subparagraph submitted by the Maine Energy Marketers Association within 20 days of the effective date of this Act;

(9) One person representing the owner or operator of a natural gas pipeline;

(10) One person representing investor-owned transmission and distribution utilities;

(11) One person representing consumer-owned transmission and distribution utilities; and

(12) One person who represents the Dig Safe system. The Public Advocate shall consider any recommendations for appointments under this subparagraph submitted by Dig Safe System, Inc. within 20 days of the effective date of this Act; and

B. The Public Advocate.

2. Chair. The Public Advocate serves as chair of the work group.

3. Appointments; convening. All appointments must be made no later than 30 days following the effective date of this section.

4. Duties. The work group, in consultation with the Public Utilities Commission, shall examine ways to clarify and simplify the so-called "dig safe" laws and rules to facilitate compliance and to eliminate regulatory uncertainty. The work group, in consultation with the Public Utilities Commission, shall examine at least the following matters:

A. Preexcavation marking standards for excavators;

B. Marking standards for owners and operators of underground facilities;

C. Enforcement procedures and standards and the appropriate use of penalties; and

D. Clarification of incident reporting and ensuring that incident investigations involve appropriate fact-finding and do not assume or require inappropriate admission of fault.

5. Staff assistance. The Public Advocate and the Public Utilities Commission shall provide necessary staffing services to the work group.

6. Report. No later than January 15, 2012, the Public Utilities Commission and the chair of the work group shall jointly submit a report to the Joint Standing Committee on Energy, Utilities and Technology that includes all findings and recommendations supported by at least 2/3 of the appointed members of the work group. The commission shall also submit provisionally adopted rules to the Second Regular Session of the 125th Legislature pursuant to the Maine Revised Statutes, Title 23, section 3360-A, subsection 13 necessary to carry out the recommendations of the work group and any legislation necessary to carry out the recommendations of the work group.

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

In House of Representatives, 2011

Read twice and passed to be enacted.

..... Speaker

In Senate, 2011

Read twice and passed to be enacted.

..... President

Approved 2011

..... Governor