

2009 -- S 474 SUBSTITUTE A AS AMENDED

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LC01193/SUB A
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS -- UNDERGROUND UTILITY
FACILITIES

Introduced By: Senators DeVall, DiPalma, Sosnowski, P Fogarty, and Gallo

Date Introduced: February 25, 2009

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 39-1.2-1, 39-1.2-5, 39-1.2-7, 39-1.2-8, 39-1.2-12 and 39-1.2-13 of
2 the General Laws in Chapter 39-1.2 entitled "Excavation Near Underground Utility Facilities" are
3 hereby amended to read as follows:

4 **39-1.2-1. Definitions.** -- As used in this chapter:

5 (1) "Administrator" means the administrator of the division of public utilities and
6 carriers.

7 (2) "Approximate location of underground facilities" means a strip of land extending not
8 more than one and one-half (1 1/2) feet on either side of the underground facilities.

9 (3) "Association" means the group of public utilities formed pursuant to section 39-1.2-4
10 for the purpose of receiving and giving notice of excavation activity within the state.

11 (4) "Damage" means and includes but is not limited to the substantial weakening of
12 structural or lateral support of a utility line, penetration, or destruction of any utility line
13 protective coating, housing, or other protective device or the severance, partial or complete of any
14 utility line.

15 (5) "Demolition" means the wrecking, razing, rending, moving, or removing of any
16 structure.

17 (6) "Excavation" means an operation for the purpose of movement or removal of earth,
18 rock, or other materials in or on the ground, or otherwise disturbing the subsurface of the earth,

1 by the use of powered or mechanized equipment, including but not limited to digging, blasting,
2 auguring, back filling, test boring, drilling, pile driving, grading, plowing in, hammering, pulling
3 in, trenching, and tunneling; excluding the movement of earth by tools manipulated only by
4 human or animal power and the tilling of soil for agricultural purposes.

5 (7) "Governing authority" means the permit issuing authority.

6 (8) "Person" means an individual, partnership, corporation, association, or a public
7 utility, including a person engaged as a contractor by a public agency and including a public
8 agency.

9 (9) "Public agency" means the state or any political subdivision thereof, including any
10 governmental agency.

11 (10) "Public utility" means the owner or operator of underground facilities for furnishing
12 electric, gas, telephone, or water service as defined in section 39-1-2(20); and also means and
13 includes, for the purposes of this chapter only, electric transmission companies and nonregulated
14 power producers, as defined in section 39-1-2(13) and (19); any cable television service; and any
15 water company which voluntarily becomes a member of the association provided for under
16 section 39-1.2-4.

17 (11) "Public utility facilities" means the underground plant and equipment owned and
18 operated by a public utility for the purpose of furnishing electricity, gas, water, cable television or
19 telephone service; including the underground plant and equipment owned and operated by any
20 water company, not subject to regulation by the administrator of the division of the public utilities
21 which voluntarily joins the association provided for under section 39-1.2-4. Utility facilities shall
22 include active, newly installed and inactive or abandoned, utility facilities.

23 (12) "Abandoned utility facilities" means any known underground or submerged utility
24 line or facility that has been permanently taken out of service. For excavation purposes the
25 abandoned underground utility facilities should always be considered to be active utility service.

26 (13) "Inactive utility facilities" means any underground or submerged utility facilities
27 line or facility that has been temporarily taken out of service with the expectation of becoming
28 usable in the future.

29 **39-1.2-5. Notice of excavation.** -- Except as provided in section 39-1.2-9, any person,
30 public agency or public utility responsible for excavating within one hundred feet (100') or for
31 discharging explosives within one hundred feet (100') of a public utility facility shall notify the
32 association of the proposed excavation or discharge by telephone at least ~~forty-eight (48)~~ seventy-
33 two (72) hours, excluding Saturdays, Sundays, and holidays, but not more than thirty (30) days
34 before commencing the excavation or discharge of explosives. Actual excavation must thereupon

1 ~~be performed~~ commence within thirty (30) days and be completed within sixty (60) days,
2 including Saturdays, Sundays and holidays, or the excavator must renotify the association. Each
3 public utility shall, upon receipt of each notice of excavation, mark within ~~forty-eight (48)~~
4 seventy-two (72) hours or, where applicable in accordance with section 39-1.2-12, re-mark within
5 ~~twenty-four (24)~~ forty-eight (48) hours, the location of all underground facilities. If an excavator
6 determines that a public utility facility has been mismarked, the excavator may notify the
7 association and the appropriate public utility shall remark no later than three (3) hours after
8 receipt of notification from the association. The failure to mark or re-mark the location of all
9 underground facilities upon each notice of excavation shall constitute a separate violation of this
10 chapter. Where an excavation is to be made by a contractor as part of the work required by a
11 contract with the state or with any political subdivision thereof or other public agency, for the
12 construction, reconstruction, relocation, or improvement of a public way or for the installation of
13 a railway track, conduit, sewer, or water main, the contractor shall be deemed to have complied
14 with the requirements of this section by giving one such notice as required by this section except,
15 when unanticipated obstructions are encountered, setting forth the location and the approximate
16 time required to perform the work involved to the association. In addition, the initial notice shall
17 indicate whether the excavation is anticipated to involve blasting and if so, the date on which and
18 specific location at which the blasting is to occur. If after the commencement of an excavation, it
19 is found there is an unanticipated obstruction requiring blasting, the excavator shall give at least
20 four (4) hours notice to the association before commencing the blasting. When demolition of a
21 building containing a public utility facility is proposed, the public utility or utilities involved will
22 be given written notice by registered mail at least ten (10) days prior to the commencement of the
23 demolition of the building. All notices shall include the name, address, and telephone number of
24 the entity giving notice, the name of the person, public agency, or public utility performing the
25 work, and the commencement date and proposed type of excavation, demolition, or discharge of
26 explosives. The association shall immediately transmit the information to the public utilities
27 whose facilities may be affected. An adequate record shall be maintained by the association to
28 document compliance with the requirements of this chapter.

29 **39-1.2-7. ~~Marking of underground utilities~~ Marking of underground utilities and**
30 **excavations.** -- (a) A public utility served with the notice in accordance with section 39-1.2-5
31 shall, within ~~forty-eight (48)~~ seventy-two (72) hours, exclusive of Saturdays, Sundays, and legal
32 holidays, of the receipt of the notice, unless otherwise agreed between the person or public
33 agency performing the work and the public utility, mark the approximate location of the
34 underground ~~utilities~~ utility facilities.

1 (b) Prior to notifying the association, any excavator must premark the area of proposed
2 excavation in a manner that will enable the owner of the public utility facilities to identify the
3 boundaries of the proposed excavation activities, except that premarking shall not be required if
4 the proposed excavation will be continuous and exceed five hundred feet (500') in length, or if
5 such marks may reasonably interfere with traffic or pedestrian control or are misleading to the
6 general public.

7 (c) A public utility shall mark any of their underground utility facilities that are located
8 within fifteen feet (15') of the exterior limits of the premarked excavation area.

9 (d) For the purposes of this chapter, the approximate location of underground utility
10 facilities shall be marked with stakes, paint, or other physical means as may be necessary to
11 ensure a distinctive mark. The public utility shall follow the color coding prescribed in this
12 section.

13 UTILITY AND TYPE OF PRODUCT	SPECIFIC GROUP IDENTIFYING COLOR
14 Electric power distribution and transmission	Safety Red
15 State and municipal electric systems	Safety Red
16 Gas distribution and transmission	High Visibility Safety Yellow
17 Dangerous materials, product line	High Visibility Safety Yellow
18 Telephone and telegraph systems	Safety Alert Orange
19 Water systems	Safety Precaution Blue
20 <u>Cable antenna television</u>	<u>Safety Alert Orange</u>
21 <u>Premark</u>	<u>White</u>

22 ~~(b)~~ (e) In the event the excavator shall damage the underground public utility facilities as
23 the result of an incorrect marking by the public utility, the excavator shall not be responsible for
24 the resulting damage.

25 **39-1.2-8. Notice in emergency.** – (a) In the event of any emergency ~~proposing~~ posing a
26 threat to life, public health, public safety or property, or which may require immediate correction
27 in order to continue the operation of a major industrial plant, or to assure the continuity of public
28 utility service, excavation, maintenance, or repairs may be made without using explosives upon
29 notice and advice thereof given to the association as soon as it is determined that an emergency
30 exists. The excavator shall thereafter employ any means necessary, excluding blasting, to insure
31 that the underground public utility facilities in the area of the excavation shall not be damaged.

32 (b) In the event of an emergency, public utilities shall notify the excavator, at the
33 telephone number provided to the association by the excavator, within two (2) hours upon receipt
34 of notice as to whether the public utility has any facilities in the vicinity of the proposed

1 excavation. If the public utility has any facilities in the vicinity of the proposed excavation, the
2 public utility shall mark out their facilities no later than three (3) hours after receipt of notice
3 from the association.

4 **39-1.2-12. Maintenance of utility markings.** -- After a public utility has marked its
5 underground facilities in accordance with the provisions of section 39-1.2-7, the excavator shall
6 be responsible for maintenance of the designated markings. In the event the markings are
7 obliterated, destroyed, or removed, the utility shall, within ~~twenty-four (24)~~ forty-eight (48) hours
8 following the receipt of a request, remark the location of its facilities.

9 **39-1.2-13. Penalties.** -- (a) Any person or utility who violates any provision of this
10 chapter shall be subject to a civil penalty of no more than three hundred fifty dollars (\$350) ~~two~~
11 ~~hundred dollars (\$200)~~ for the first offense and not less than five hundred dollars (\$500) nor more
12 than ~~one thousand dollars (\$1,000)~~ two thousand five hundred dollars (\$2,500) for any
13 subsequent offense within a twelve (12) month period. The administrator of the division of public
14 utilities shall assess the civil penalty against the person or utility who is determined to have
15 committed the violation. All penalties recovered shall be paid into the general fund of the state.
16 This chapter shall not be construed to affect any civil remedies for personal injury or property
17 damage (including underground utilities), except as otherwise specifically provided for in this
18 chapter.

19 (b) Any contractor found in violation of this chapter who, after due process of law, fails
20 to satisfy any such fines levied pursuant to this chapter shall be ineligible to bid on or be awarded
21 any municipal, quasi-municipal, state, state funded, state regulated or state subsidized
22 construction and/or public works contracts.

23 SECTION 2. Chapter 39-1.2 of the General Laws entitled "Excavation Near
24 Underground Utility Facilities" is hereby amended by adding thereto the following section:

25 **39-1.2-1.1. Findings.** – The general assembly finds and declares that:

26 (1) Safety and the need for an effective damage prevention program for underground
27 utility facilities should include participation from all stakeholders including excavators and utility
28 companies;

29 (2) To develop a process for fostering and promoting the use of an effective damage
30 prevention program, by all appropriate stakeholders, technologies need to be improved that
31 enhance communications, underground pipeline locating capability, and gathering and analyzing
32 information about the accuracy and effectiveness of underground facility locating programs;

33 (3) Many public, private and municipal utilities are located underground including, but
34 not limited to, gas, water, electric, cable television, telephone and sewers. Excavation in the

1 vicinity of such utilities can be dangerous and the utilities should be marked appropriately to
2 avoid damage, injury or public emergency; and

3 (4) All utilities whether public, private or municipal should strongly consider
4 participation in the utility damage prevention program known as Dig Safe System, Inc. to insure
5 the highest level of safety and awareness of utility facility locations.

6 SECTION 3. Chapter 45-14 of the General Laws entitled "Sewage Charges" is hereby
7 amended by adding thereto the following section:

8 **45-14-1.1. Recording of sewer system.** – Starting on January 1, 2012, all cities and
9 towns that own, operate, manage or control a sewer system shall require as-built drawings and
10 plans on any new sewer main extension to be submitted to the sewer authority. In addition, an as-
11 built record drawing and plans shall be submitted to the sewer authority for any sewer main
12 upgrade or repair that deviates in horizontal or vertical alignment from the existing sewer main
13 horizontal or vertical alignment. The preparation and submission of such as-built drawings and
14 plans shall be the responsibility of the person that each city and town has designated either by
15 ordinance or by contract. All cities and towns shall determine the form in which such drawings
16 and plans shall be submitted.

17 SECTION 4. Chapter 46-25 of the General Laws entitled "Narragansett Bay
18 Commission" is hereby amended by adding thereto the following section:

19 **46-25-19.1. Recording of sewer systems.** – Starting on January 1, 2012, the commission
20 shall maintain as-built drawings and plans on any new or upgraded sewer main it owns and
21 operates. Such as-built drawings and plans shall be the responsibility of the person that the
22 commission has designated and shall be in a form designated by the commission.

23 SECTION 5. This act shall take effect on November 1, 2009.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO PUBLIC UTILITIES AND CARRIERS -- UNDERGROUND UTILITY
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1 This act would amend the provisions of the general laws which regulate excavation near
2 underground utility facilities, including, but not limited to, the time frame for giving notice of
3 excavation and the markings that must be made to identify where the excavation shall take place.
4 The act would also increase the penalties for violation of this chapter.

5 This act would take effect on November 1, 2009.

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Presented by