

By Mr. Chmura of Holyoke, petition of Edward C. Boyle and Stephen T. Chmura relative to excavations in public ways, the issuance of permits therefor and notice thereof to public utility companies. Public Safety.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Three.

AN ACT RELATING TO EXCAVATION IN PUBLIC WAYS AND PERMITS THEREFOR AND REQUIRING NOTICE THEREOF TO BE GIVEN TO PUBLIC UTILITY COMPANIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 40 of chapter 82 of the General Laws, in-
2 serted by chapter 316 of the acts of 1959, is hereby amended by
3 striking out said section and inserting in place thereof the
4 following:—

5 *Section 40.* No person, other than a direct employee of the
6 commonwealth or any political subdivision thereof or of a public
7 utility company, as defined in section three of chapter twenty-
8 five, shall, except in an emergency, make an excavation in a
9 public way unless at least forty-eight hours, exclusive of Satur-
10 days, Sundays and legal holidays, before the proposed excava-
11 tion is to be made, he has given notice in writing of the proposed
12 excavation to natural gas pipe line companies and to such public
13 utility companies as supply gas, electricity, water or telephone
14 service in the city or town in which such way is located. Such
15 notice shall set forth the name of the street, or route number of
16 the way, and a reasonably accurate description of the location
17 in which the excavation is to be made. Copies of such notices
18 together with a statement certifying that they have been mailed
19 or delivered to such public utility companies as required by the
20 preceding provisions of this section shall be filed with the officer
21 or board having charge of any such public way before a permit
22 to excavate may be approved or issued, except in case of an emer-

23 gency. If such notice cannot be given as aforesaid because of
24 an emergency it shall be given as soon as may be practicable.

25 Where an excavation is to be made by a contractor as part
26 of the work required by a contract with the commonwealth or
27 with any political subdivision thereof or other public agency, for
28 the construction, reconstruction, relocation or improvement of a
29 public way or for the installation of a railway track, conduit,
30 sewer or water main, such contractor shall be deemed to have
31 complied with the requirements of this section by giving one such
32 notice setting forth the location and approximate elapsed length
33 of time of project to each of said companies.

34 Proper return notice shall be made by said companies desig-
35 nating the location, if any, of pipes or conduits in that portion
36 of the public way in which the excavation is to be made. Any
37 such excavation shall be performed in such manner, and such
38 reasonable precautions taken, as to avoid damage to the pipes
39 or conduits in use under the surface of said way.

40 Nothing contained in this section shall be construed to affect
41 or impair local ordinances or by-laws requiring permits to be
42 obtained before excavating in a public way, except that, notwith-
43 standing any contrary provision of local ordinances or by-laws,
44 no permit to excavate in a public way shall be approved or
45 issued by the officer or board having charge of any such way,
46 except in an emergency, until such time as copies of such notices
47 to public utility companies are filed by the applicant for a permit
48 as required by this section.

49 Whoever violates any provision of this section shall be pun-
50 ished by a fine of not more than fifty dollars for the first offense
51 and not less than fifty dollars nor more than one hundred dollars
52 for any subsequent offense.

1 SECTION 2. Section 21 of chapter 81 of the General Laws, as
2 most recently amended by chapter 219 of the Acts of 1954, is
3 hereby further amended by adding at the end thereof the follow-
4 ing: — Except in case of an emergency no permit for digging up
5 or opening any State Highway shall be approved or issued by the
6 Department until copies of the notices to public utility com-
7 panies required by section forty of chapter eighty-two have been
8 filed with the Department by the applicant for such permit.
9 Except as provided herein any person who digs up or makes an

10 opening in a State highway without a permit or violates any
11 other provision of the section shall be punished by a fine of not
12 more than fifty dollars for the first offense and not less than
13 fifty dollars nor more than one hundred dollars for any subse-
14 quent offense.

1 SECTION 3. Section 8 of chapter 83 of the General Laws is
2 hereby amended by striking out said section and inserting in
3 place thereof the following:—

4 *Section 8.* No person shall dig up or make an excavation in a
5 public way for the laying, altering or repairing of a drain or
6 sewer without obtaining a written permit from the board or
7 officer having charge of the maintenance and repair of sewers in
8 the town in which such way is situated. Notwithstanding any
9 contrary provision of any local ordinance or bylaw no such
10 permit shall be approved or issued by said board or officer until
11 copies of the notices to public utility companies required by sec-
12 tion forty of chapter eighty-two have been filed by the applicant
13 for such permit. Whoever violates any provision of this section
14 shall be punished by a fine of not more than fifty dollars for the
15 first offense and not less than fifty-dollars nor more than one
16 hundred dollars for any subsequent offense.

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