

HOUSE No. 6220

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 10, 1979.

The committee on Public Safety, to whom was referred the petition (accompanied by bill, House, No. 2433) of Louis R. Nickinello relative to excavations in public ways, reports recommending that the accompanying bill (House, No. 6220) ought to pass.

For the committee,

PETER Y. FLYNN

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Nine.

AN ACT RELATIVE TO EXCAVATIONS IN PUBLIC WAYS.

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,
2 inserted by chapter 316 of the acts of 1959 and most recently
3 amended by section 1 of chapter 403 of the acts of 1968, is hereby
4 amended by striking out the first two sentences of the first para-
5 graph and inserting in place thereof the following two sentences: —

6 No person shall, except in an emergency, make an excavation,
7 which shall include, but not be limited to, the discharge of explo-
8 sives and the demolition of any structure but which shall not be
9 deemed to include gardening or tilling the soil in the case of
10 privately owned land, in any public way, any defined public utility
11 company right of way or easement, or any privately owned land
12 under which any public utility company, municipal utility depart-
13 ment, or natural gas pipeline company maintains underground
14 facilities, including pipes, mains, wires or conduits, unless at least
15 seventy-two hours, exclusive of Saturdays, Sundays and legal
16 holidays, but not more than forty-five days, before the proposed
17 excavation is to be made such person has given notice in writing of
18 the proposed excavation to such natural gas pipeline companies,
19 public utility companies, and municipal utility departments as
20 supply gas, electricity, or telephone service in or to the city or town
21 where such excavation is to take place. Such notice shall set forth
22 the name of the street or the route number of the way and a
23 reasonably accurate description of the location in which the exca-
24 vation is to be made.

25 and further amended by striking out the third paragraph and
26 inserting in place thereof the following new paragraph: —

27 Proper return notice shall be made by said companies designat-

28 ing the approximate location, if any, of pipes, mains, wires or
29 conduits in that portion of the public way, public utility company
30 right-of-way or easement, or privately owned land in which the
31 excavation is to be made. Any such excavation shall be performed
32 in such manner, and such reasonable precautions taken, as to avoid
33 damage to the pipes, mains, wires or conduits in use under the
34 surface of said public way, public utility company right-of-way or
35 easement, or privately owned land, including, but not limited to,
36 any substantial weakening of structural or lateral support of
37 such pipe, main, wire or conduit, penetration or destruction of any
38 pipe, main, wire or conduit or the protective coating thereof, or
39 the main, wire or conduit or the protective coating thereof, or the
40 severance of any pipe, main, wire or conduit. When any damage to
41 any such pipe, main, wire or conduit or its protective coating
42 occurs, the public utility company, natural gas pipeline company,
43 or municipal utility department shall be notified immediately by
44 the person or public agency responsible for the excavation causing
45 the damage.

46 and further amended by inserting after the third paragraph the
47 following new paragraph: —

48 Failure by any person who makes an excavation to give the
49 notice or notices required by this section with respect to any
50 proposed excavation which results in any damage to a pipe, main,
51 wire or conduit or its protective coating shall constitute prima facie
52 evidence in any legal or administrative proceeding that such dam-
53 age was caused by the negligence of such person.

54 and further amended by striking out the last paragraph and insert-
55 ing in place thereof the following paragraph: —

56 Whoever violates any provision of this section shall be punished
57 by a fine of two hundred dollars for the first offense and not less
58 than five hundred dollars nor more than one thousand dollars for
59 any subsequent offense.

1 SECTION 2. Section forty-one of chapter eighty-two of the
2 General Laws, inserted by section two of chapter four hundred and
3 two of the acts of nineteen hundred sixty-eight, is hereby repealed.

1 SECTION 3. Section forty-two of chapter eighty-two of the
2 General Laws, inserted by chapter two hundred and eight of the
3 acts of nineteen hundred and seventy, is hereby repealed.

1 SECTION 4. Chapter 82 of the General Laws is hereby
2 amended by inserting after section 40 the following new
3 sections: —

4 *Section 41.* Notice to the public utility underground plant dam-
5 age prevention system pursuant to section seventy-six D of chapter
6 one hundred and sixty-four, which notice provides the information
7 required by section forty with respect to any proposed excavation
8 and which is given at least seventy-two hours, exclusive of Satur-
9 days, Sundays and legal holidays, but not more than sixty days,
10 before the proposed excavation is to be made, shall constitute
11 compliance with the notice requirements of said section forty.

1 SECTION 5. Chapter 164 of the General Laws is hereby
2 amended by inserting after section 76C the following new
3 section: —

4 *Section 76D.* All natural gas pipeline companies and public
5 utility companies, as defined in section three of chapter twenty-
6 five, shall create, participate in and be responsible for the adminis-
7 tration of a utility underground plant damage prevention system.
8 Said system shall be operated during normal business hours each
9 day of the year, exclusive of Saturdays, Sundays and legal holi-
10 days, for the purpose of receiving notices of proposed excavations
11 in public ways, utility rights-of-way, and in privately owned land
12 under which any public utility company, municipal utility depart-
13 ment or natural gas pipeline company maintains underground
14 facilities, including pipes, mains, wires or conduits, as are required
15 by the provisions of section forty of chapter eighty-two in the
16 manner permitted by section forty-one of said chapter. Said system
17 shall be responsible, upon receipt of such notices, for immediately
18 notifying such natural gas pipeline companies, public utility com-
19 panies, and municipal utility departments as supply gas, electricity
20 or telephone service in or to such city or town where such excava-
21 tion is to take place of such proposed excavation. The cost of
22 operating the utility underground plant damage prevention system

23 shall be apportioned equitably among all natural gas pipeline
24 companies, public utility companies, and municipal utility depart-
25 ments as supply gas, electricity or telephone service within the
26 commonwealth according to a formula to be fixed by agreement of
27 the companies.

28 The department is authorized to investigate compliance with the
29 rules and regulations of said system and to adopt procedures
30 necessary and appropriate to hear and resolve complaints for
31 failure to comply with the provisions of sections forty and forty-
32 one of chapter eighty-two.

HOUSE

No. 6221

THE COMMITTEE ON EDUCATION

REPORT

ON THE PROGRESS OF THE EDUCATIONAL REFORMS IN THE DISTRICT OF COLUMBIA

FOR THE YEAR 1904

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1905.

