

SENATE No. 1641

By Mr. Havern, a petition (accompanied by bill, Senate, No. 1641) of Robert A. Havern, Robert E. Travaglini and Therese Murray for legislation relative to excavation. Transportation.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Seven.

AN ACT RELATIVE TO EXCAVATION.

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

1 Chapter 82 of the General Laws is hereby amended by striking
2 out Section 40, as most recently amended by Chapter 353 of the
3 Acts of 1983, and inserting in place thereof the following sec-
4 tions:—

5 Section 40. The following words, as used in this section, shall
6 have the following meanings:

7 “Excavator”, any entity, including but not limited to, a person,
8 partnership, joint venture, trust, corporation, association, public
9 utility, company, or state or local government body, which performs
10 excavation operations.

11 “Excavation”, an operation for the purpose of movement or
12 removal of earth, rock or the materials in the ground, including but
13 not limited to digging, blasting, augering, backfilling, test boring,
14 drilling, pile driving, grading, plowing in, hammering, pulling in,
15 jacking in, trenching and tunneling; excluding excavation by tools
16 manipulated only by human power for agricultural purposes and the
17 use of blasting for quarrying purposes.

18 “Emergency”, whenever the safety of the public is in imminent
19 danger such as a threat to life and/or health, or where immediate cor-
20 rection is required to maintain or restore essential public utility
21 service.

22 “System”, the Underground Plant Damage Prevention System as
23 defined in Section 76D of Chapter 164 of the Massachusetts General
24 Laws.

25 “Description of Excavation Location”, such description shall
26 include the name of the city or town, street, way, and/or route
27 number where appropriate, the name of the streets at the nearest
28 intersection to the excavation, the number of the buildings closest to
29 the excavation and/or any other description including landmarks,
30 utility pole numbers or other information which will accurately
31 define the locus of the excavation.

32 “Company or Companies”, the words Company or Companies,
33 shall include natural gas pipeline companies, public utility compa-
34 nies, cable television companies, and municipal utility companies or
35 departments that supply gas, electricity, telephone, communication,
36 or cable television services, or private water companies, within the
37 city or town where such excavation is to be made.

38 “Safety Zone”, a zone designated on the surface by the use of
39 standard color-coded markings which contains the width of the facil-
40 ities plus not more than eighteen inches on each side.

41 “Standard Color-coded Markings”

42 Red — Electric power lines, cables, conduit or lighting cables,
43 Yellow — Gas, oil, street petroleum, or other gaseous materials,
44 Orange — communications cables or conduit, alarm or signal lines,
45 Blue — Water, irrigation and slurry lines, Green — Sewer and drain
46 lines, White — Premark of proposed excavation.

47 Section 40A. Notification Requirements: No excavator shall,
48 except in an emergency as herein defined, make an excavation, in
49 any public or private way, any company right-of-way or easement,
50 or any public or privately owned land or way, unless at least
51 seventy-two hours, exclusive of Saturdays, Sundays, and legal holi-
52 days, but not more than thirty days before the proposed excavation is
53 to be made, such excavator has given an initial notice to the System.
54 Such notice shall set forth a description of the excavation location in
55 the manner as herein defined. In addition, such initial notice shall
56 indicate whether any such excavation will involve blasting and, if
57 so, the date and the location at which such blasting is to occur.

58 The notice requirements are waived in an emergency as defined
59 herein; provided however the before such excavation begins, or
60 during a life threatening emergency, notification shall be given to the
61 System. Moreover, the excavator shall ensure that the underground
63 facilities of the utilities in the area of said excavation shall not be
64 damaged or jeopardized.

65 In no event shall any excavation by blasting take place unless
66 notice thereof, either in the initial notice or a subsequent notice,
67 accurately specifying the date and location of such blasting shall
68 have been given and received at least seventy-two hours in advance,
69 except in the case of an unanticipated obstruction requiring blasting,
70 when such notice should not be less than four hours prior to blasting.
71 If any such notice cannot be given as aforesaid because of an emer-
72 gency requiring blasting, it shall be give as soon as may be practi-
73 cable, but before any explosives are discharged.

74 Section 40B. Company Obligations: Within seventy-two hours,
75 exclusive of Saturdays, Sundays, and legal holidays, from the time
76 said initial notice is received by the System or at such time as the
77 company and the excavator agree, said company shall respond to the
78 original notice or to such subsequent notice by designating the loca-
79 tion of their underground facilities, so that the existing facilities are
80 to be found within a safety zone. This safety zone shall be so desig-
81 nated by the use of standard color-coded markings. The providing of
82 such designation by the company shall constitute prima facie evi-
83 dence of an exercise of reasonable precaution by the company as
84 required by this section. Provided, however, that in the event that the
85 excavator has given notice as aforesaid at a location, at which
86 because of the length of excavation the company cannot reasonably
87 designate the entire location of its facilities within such seventy-two
88 hour period, then the said excavator shall identify for the company
89 that portion of the excavation which is to be first made and the com-
90 pany shall designate the location of its facilities in such portion
91 within seventy-two hours and shall designate the location of the said
92 facilities in the remaining portion of the location within a reasonable
93 time thereafter. When an emergency notification has been given to
94 the System, the company shall make every attempt to designate its
95 facilities as promptly as possible.

96 Section 40C. Excavator's Obligations: After a company has des-
97 signed the location of its facilities at the location in accordance with
98 Section B hereof, the excavator shall be responsible for maintaining
99 the designation markings at such locations, unless the said excavator
100 requests remarking at the location due to the obliteration, destruc-
101 tion, or other removal of such markings. The company shall then
102 have twenty-four hours following the receipt of such request to
103 remark such location.

104 When excavating in close proximity to the underground facilities
105 of any public utility when said facilities are to be exposed, non-
106 mechanical means shall be employed, as necessary, to avoid damage
107 in locating such facility, and any further excavation shall be per-
108 formed employing reasonable precautions to avoid damage to any
109 underground facilities including, but not limited to, any substantial
110 weakening of structural or lateral support of such facilities, penetra-
111 tion or destruction of any pipe, main, wire, or conduit or the protec-
112 tive coating thereof, or damage to any pipe, main, wire, or conduit.

113 If any damage to such pipe, main, wire, or conduit or its protec-
114 tive coating occurs, the company or companies shall be notified
115 immediately by the excavator responsible for causing the damage.

116 The making of an excavation without providing the notice or
117 notices required by subsection A herein, with respect to any pro-
118 posed excavation which results in any damage to a pipe, main, wire,
119 or conduit, or its protective coating, shall be prima facie evidence in
120 any legal or administrative proceeding that such damage was caused
121 by the negligence of such person.

122 Section 40D. Requirements by Public Agencies: Nothing con-
123 tained herein shall be construed to affect or impair local ordinances
124 or bylaws requiring permits to be obtained before excavation in a
125 public way, except that, notwithstanding any contrary provision of
126 local ordinances or bylaws, no permit to excavate in a public way
127 shall be approved or issued by the officer or board having charge of
128 any such way, except in any emergency as herein defined, until such
129 time as proof of such notices to the System are filed with said officer
130 or board by the applicant for the permit as required by this section
131 and notice of issuance of a permit to excavate are served by said
132 officer or board upon the appropriate water and sewer department.

133 Section 40E. Penalties: Any person or company found by the
134 Department of Public Utilities, after a hearing, to have violated any
135 provision of this section shall forfeit to the Commonwealth the sum
136 of five hundred dollars for the first offense and not less than one
137 thousand nor more than five thousand dollars for any subsequent
138 offense as set forth by the rules of the Department of Public Utilities;
139 provided, however, that nothing herein shall require the forfeiture of
140 any penal sum by a state or local government body.