

By Mr. White of Worcester, petition of the Utility Contractors of New England and Thomas P. White relative to excavations in public ways. State Administration.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Eighty.

AN ACT RELATIVE TO EXCAVATION 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. Chapter 82 of the General Laws is hereby  
2 amended by striking out section 40, as most recently amended by  
3 Section 1 of chapter 403 of the acts of 1968, and inserting in place  
4 thereof the following section: —

5 *Section 40.* No person shall, except in an emergency, make an  
6 excavation, which shall include, but not be limited to, the dis-  
7 charge of explosives and the demolition of any structure but which  
8 shall not be deemed to include gardening or tilling the soil in the  
9 case of privately owned land, in any public way, any defined public  
10 utility company right of way or easement, or any privately owned  
11 land under which any public utility company, municipal utility  
12 department, or natural gas pipeline company maintains under-  
13 ground facilities, including pipes, mains, wires or conduits, unless  
14 at least seventy-two hours, exclusive of Saturdays, Sundays and  
15 legal holidays, but not more than forty-five days, before the pro-  
16 posed excavation is to be made such person has given notice in  
17 writing of the proposed excavation to such natural gas pipeline  
18 companies, public utility companies, and municipal utility depart-  
19 ments as supply gas, electricity, or telephone service in or to the  
20 city or town where such excavation is to be made. If such notice  
21 cannot be given as aforesaid because of an emergency, it shall be  
22 given as soon as may be practicable. Copies of such notices  
23 together with a statement certifying that they had been mailed or

24 delivered to such public utility companies as required by the  
25 preceeding provisions of this section shall be filed with the officer  
26 or board having charge of any such public way before a permit to  
27 excavate may be approved or issued, except in case of an  
28 emergency.

29 Where an excavation is to be made by a contractor as part of the  
30 work required by a contract with the commonwealth or with any  
31 political subdivision thereof, relocation or improvement of a pub-  
32 lic way or for the installation of a railway track, conduit, sewer or  
33 water main, such contractor shall be deemed to have complied  
34 with the requirements of this section by giving one such notice  
35 setting forth the location and the approximate time required to  
36 perform the work involved to each of said companies.

37 Proper return notice shall be made by said companies designat-  
38 ing the location, depth, nature, and condition or age of pipes,  
39 mains, wires or conduits in that portion of the public way, public  
40 utility company right of way or easement, or privately owned land  
41 in which the excavation is to be made. Said companies shall take  
42 reasonable precautions in such designations to avoid damages to  
43 pipes, mains and conduits.

44 When any damage to any such pipe, main, wire or conduit or its  
45 protective coating occurs, the public utility company, natural gas  
46 pipeline company, or municipal utility department shall be noti-  
47 fied immediately by the person or public agency responsible for the  
48 excavation causing the damage. Upon notification of such dam-  
49 ages, said companies shall take immediate measures to avoid  
50 additional damages to pipes, mains and conduits. Immediate meas-  
51 ures shall include, but not be limited to the prompt site inspection  
52 of damages and the suitable repair thereof.

53 The making of an excavation without providing notice or noti-  
54 ces required by this section with respect to any proposed excava-  
55 tion which results in any damage to a pipe, main, wire or conduit  
56 or its protective coating shall be evidence in any legal or adminis-  
57 trative proceeding that such damage was caused by the negligence  
58 of such person.

59 Notice to the public utility underground plant damage preven-  
60 tion system pursuant to section seventy-six D of chapter one  
61 hundred and sixty-four, which notice provides the information  
62 required by this section with respect to any proposed excavation

63 and which is given at least seventy-two hours, exclusive of Satur-  
64 days, Sundays and legal holidays, but not more than sixty days,  
65 before the proposed excavation is to be made, shall constitute  
66 compliance with the notice requirements of this section.

67 Nothing contained in this section shall be construed to affect or  
68 impair local ordinances or by-laws requiring permits to be  
69 obtained before excavating in a public way, except that, notwith-  
70 standing any contrary provision of local ordinances or by-laws, no  
71 permit to excavate in a public way shall be approved or issued by  
72 the officer or board having charge of any such way, except in an  
73 emergency, until such time as copies of such notices to public  
74 utility companies are filed by the applicant for a permit as required  
75 by this section.

76 Whoever violates any provision of this section shall be punished  
77 by a fine of two hundred dollars for the first offense and not less  
78 than five hundred dollars nor more than one thousand dollars for  
79 any subsequent offense.

1 SECTION 2. Sections forty-one and forty-two of said chapter  
2 eighty-two are hereby repealed.

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

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

19 such excavation is to take place of such proposed excavation. The  
20 cost of operating the utility underground plant damage prevention  
21 system shall be apportioned equitably among all natural gas pipe-  
22 line companies, public utility companies, and municipal utility  
23 departments as supply gas, electricity or telephone service within  
24 the commonwealth according to a formula to be fixed by agree-  
25 ment of the companies.

26 The department is authorized to investigate the operation of  
27 said system and to adopt procedures necessary and appropriate to  
28 hear and resolve complaints for failure to comply with the provi-  
29 sions of section forty of chapter eighty-two.