

2009 -- S 0476

LC01706

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS - EXCAVATION NEAR
UNDERGROUND UTILITY FACILITIES

Introduced By: Senators Tassoni, DiPalma, and P Fogarty

Date Introduced: February 25, 2009

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 39-1.2 of the General Laws entitled "Excavation Near
2 Underground Utility Facilities" is hereby amended by adding thereto the following section:

3 **39-1.2-7.1. Premarking requirements.** – (a) Prior to notifying the association, the public
4 or private utility must premark the area of proposed excavation activities in a manner that will
5 enable operators of public or private underground facilities to identify the boundaries of the
6 proposed excavation activities. Premarking is not required if: (1) the actual excavation will be
7 continuous and exceed five hundred feet (500') in length; or (2) the boundaries of the proposed
8 excavation activities can be clearly described in such a way that the operators of the public or
9 private underground facilities can precisely identify those boundaries from the notice required by
10 this chapter. Premarking shall be made with white paint, white stakes or other physical means of
11 white color. The public or private underground facility operators or their agents shall mark their
12 underground facilities that are located within fifteen feet (15') of the premarked excavation area.

13 (b) As a public service, each electric public utility shall also mark the approximate
14 location of private electric utility facilities that are connected to its facilities which are located
15 within one hundred feet (100') of the proposed excavation. An electric public utility shall have no
16 liability under any theory of recovery to any person including without limiting the generality of
17 the foregoing, the owner of any such private electric utility person including without limiting the
18 generality of the foregoing, the owner of any such private electric utility facilities, the excavator,

1 their agents or employees or any member of the public from the negligent marking, mismarking
2 or failure to mark any private electric facilities. In the event the excavator shall damage the
3 underground public utility facilities as the result of an incorrect marking by the public utility, the
4 excavator shall not be responsible for the resulting damage.

5 (c) Private underground utility facilities shall be marked by the property owner or agent
6 with a hashed or broken mark in the appropriate identifying color.

7 (d) Any person installing public or private underground utility facilities on public or
8 private property or private electric utility facilities shall, immediately after the installation of such
9 facilities and before leaving the site, mark the location of such facilities using the colors specified
10 in this chapter.

11 (e) Public utilities shall attempt to provide information on the depth of their respective
12 facilities at the time of marking such facilities. All utilities installed shall require a minimum
13 depth of cover over said utility. Depth shall not be considered mis-marking.

14
15 SECTION 2. Sections 39-1.2-1, 39-1.2-4, 39-1.2-5, 39-1.2-7, 39-1.2-8, 39-1.2-12 and 39-
16 1.2-13 of the General Laws in Chapter 39-1.2 entitled "Excavation Near Underground Utility
17 Facilities" are hereby amended to read as follows:

18 **39-1.2-1. Definitions.** -- As used in this chapter:

19 (1) "Administrator" means the administrator of the division of public utilities and
20 carriers.

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

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

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

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

31 (6) "Excavation" means an operation for the purpose of movement or removal of earth,
32 rock, or other materials in or on the ground, or otherwise disturbing the subsurface of the earth,
33 by the use of powered or mechanized equipment, including but not limited to digging, blasting,
34 auguring, back filling, test boring, drilling, pile driving, grading, plowing in, hammering, pulling

1 in, trenching, and tunneling; excluding the movement of earth by tools manipulated only by
2 human or animal power and the tilling of soil for agricultural purposes.

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

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

7 (9) "Public agency" means the state or any political subdivision thereof, ~~including~~ any
8 governmental agency: regulated by the public utilities commission, or a quasi-state agency.

9 (10) "Public utility" means the owner or operator of underground facilities for furnishing
10 electric, gas, telephone, or water service as defined in section39-1-2(20); and also means and
11 includes, for the purposes of this chapter only, electric transmission companies and nonregulated
12 power producers, as defined in section39-1-2(13) and (19); any sewer company; any CATV; and
13 any water company or utility company which ~~voluntarily~~ shall be mandated to ~~becomes~~ become a
14 member of the association provided for under section39-1.2-4.

15 (11) "Public utility facilities" means the underground plant and equipment owned and
16 operated by a public utility for the purpose of furnishing electricity, gas, water, ~~or~~ telephone
17 sewer or cable television service; including the underground plant and equipment owned and
18 operated by any water company, not subject to regulation by the administrator of the division of
19 the public utilities which ~~voluntarily joins~~ shall be mandated to join the association provided for
20 under section39-1.2-4.

21 (12) "Private utility facility" means the underground plant and equipment, such as, but
22 not limited to: electric, gas, telephone, sewer, cable television, and water, owned by a person
23 other than a public utility for the purpose of providing utility service to property owned by such
24 person and which is located between public utility facilities and a customer's meter, or, in the
25 absence of a meter, the entrance to the customer's building or other point of demarcation.

26 (13) "Premark" means to delineate the general scope of the excavation or boring on the
27 paved surface of the ground using white paint, or stakes or other suitable white markings on non-
28 paved surfaces.

29 **39-1.2-4. Public utilities association -- Creation.** -- All public utilities of the state,
30 owning and operating underground facilities, shall, with the assistance of the administrator,
31 jointly participate in an association providing for mutual receipt of notification required by
32 sections 39-1.2-2 and 39-1.2-5. The cost of the operation of the association shall be apportioned
33 equitably among all public utilities, and private utilities as defined herein, whose underground
34 facilities are registered with the administrator.

1 **39-1.2-5. Notice of excavation.** -- Except as provided in section 39-1.2-9, any person,
2 public agency or public utility responsible for excavating within one hundred feet (100') or for
3 discharging explosives within one hundred feet (100') of a public utility facility shall notify the
4 association of the proposed excavation or discharge by telephone at least forty-eight (48) hours,
5 excluding Saturdays, Sundays, and holidays, but not more than thirty (30) days before
6 commencing the excavation or discharge of explosives. Actual excavation must thereupon be
7 ~~performed~~ commenced within thirty (30) days, including Saturdays, Sundays and holidays, or the
8 excavator must renotify the association. Each public utility shall, upon receipt of each notice of
9 excavation, mark within forty-eight (48) hours or, where applicable, re-mark within ~~twenty-four~~
10 ~~(24)~~ forty-eight (48) hours, the location of all underground facilities. The failure to mark or re-
11 mark the location of all underground facilities upon each notice of excavation shall constitute a
12 separate violation of this chapter. Where an excavation is to be made by a contractor as part of the
13 work required by a contract with the state or with any political subdivision thereof or other public
14 agency, for the construction, reconstruction, relocation, or improvement of a public way or for the
15 installation of a railway track, conduit, sewer, or water main, the contractor shall be deemed to
16 have complied with the requirements of this section by giving one such notice as required by this
17 section except, when unanticipated obstructions are encountered, setting forth the location and the
18 approximate time required to perform the work involved to the association. In addition, the initial
19 notice shall indicate whether the excavation is anticipated to involve blasting and if so, the date
20 on which and specific location at which the blasting is to occur. If after the commencement of an
21 excavation, it is found there is an unanticipated obstruction requiring blasting, the excavator shall
22 give at least four (4) hours notice to the association before commencing the blasting. When
23 demolition of a building containing a public utility facility is proposed, the public utility or
24 utilities involved will be given written notice by registered mail at least ten (10) days prior to the
25 commencement of the demolition of the building. All notices shall include the name, address, and
26 telephone number of the entity giving notice, the name of the person, public agency, or public
27 utility performing the work, and the commencement date and proposed type of excavation,
28 demolition, or discharge of explosives. The association shall immediately transmit the
29 information to the public utilities whose facilities may be affected. An adequate record shall be
30 maintained by the association to document compliance with the requirements of this chapter.

31 **39-1.2-7. Marking of underground utilities.** -- (a) ~~A~~ Except as provided in section 39-
32 1.2-8, a public or private utility served with the notice in accordance with section 39-1.2-5 shall,
33 within forty eight (48) hours, exclusive of Saturdays, Sundays, and legal holidays, of the receipt
34 of the notice, unless otherwise agreed between the person or public agency performing the work

1 and the public or private utility, mark the approximate location of the underground ~~utilities.~~ utility
 2 facilities, but not limited to, active, abandoned and newly installed underground facilities. The
 3 mark shall be made within eighteen inches (18") or either side of the underground facilities. For
 4 the purposes of this chapter, the approximate location of underground facilities shall be marked
 5 with stakes, paint, or other physical means. The public utility shall follow the color coding
 6 prescribed in this section.

UTILITY AND TYPE OF PRODUCT	SPECIFIC GROUP	IDENTIFYING COLOR
Electric power distribu- tion and transmission	Safety Red	
State and municipal elec- tric systems	Safety Red	
Gas distribution and transmission	High Visibility Safety	Yellow
Dangerous materials, product line	High Visibility Safety	Yellow
Telephone and telegraph systems	Safety Alert Orange	
Water systems	Safety Precaution Blue	
<u>Sewer</u>	<u>High Visibility Green</u>	
<u>Cable antenna television</u>	<u>Safety Alert Orange</u>	
<u>Premark</u>	<u>White</u>	

23 (b) In the event the excavator shall damage the active or abandoned underground public
 24 or private utility facilities as the result of an incorrect marking by the public or private utility, the
 25 excavator shall not be responsible for the resulting damage.

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

1 are necessary and shall state the reason for the request. Upon notice given, a minimum two (2)
2 hour response period shall be provided, and if the utility provider is unable to meet the
3 requirement, the provider shall notify the excavator as to when such markings shall be made. If
4 the utility provider is unable to comply with the request for markings in a timely manner, the
5 provider shall submit, by fax or print copy, the approximate locations of utility facilities in the
6 vicinity of the proposed excavation site. In addition, the utility provider shall provide the
7 excavator with a direct contact telephone number for the provider.

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

13 **39-1.2-13. Penalties.** -- (a) Any person or utility who fails to exercise reasonable care
14 and therefore, violates any provision of this chapter shall be subject to a civil penalty of ~~two~~
15 ~~hundred dollars (\$200)~~ no greater than five hundred dollars (\$500) for the first offense and not
16 less than five hundred dollars (\$500) nor more than ~~one thousand dollars (\$1,000)~~ three thousand
17 dollars (\$3,000) for any subsequent offense: within a twelve (12) month period. Multiple
18 violations resulting from the same incident shall be considered a single offense. The administrator
19 of the division of public utilities shall assess the civil penalty against the person or utility who is
20 determined to have committed the violation. All penalties recovered shall be paid into the general
21 fund of the state. This chapter shall not be construed to affect any civil remedies for personal
22 injury or property damage (including underground utilities), except as otherwise specifically
23 provided for in this chapter.

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

1 (c) Notwithstanding the above, the administrator shall have the authority to order any
2 person who violates a provision of this chapter, or any person having ownership interest, officer,
3 manager, supervisory personnel or employee of an entity which violates this chapter, to attend an
4 education course related to the duties and responsibilities of persons under this chapter. The
5 curriculum for such course shall be approved by the administrator. Person attending such course
6 shall be responsible for the reasonable costs of the course as determined by the administrator.

7 SECTION 3. This act shall take effect upon passage.

=====
LC01706
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PUBLIC UTILITIES AND CARRIERS - EXCAVATION NEAR
UNDERGROUND UTILITY FACILITIES

- 1 This act would include private utilities in the regulations relative to excavation near
- 2 underground utility facilities and would increase the penalties for violations.
- 3 This act would take effect upon passage.

=====
LC01706
=====