

48:2-75

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LAWS OF: 2005 **CHAPTER:** 22
NJSA: 48:2-75 (Changes liability of underground facility operators)
BILL NO: A3009 (Substituted for S1748)
SPONSOR(S): Caraballo
DATE INTRODUCED: June 14, 2004
COMMITTEE: **ASSEMBLY:** Telecommunications and Utilities
SENATE: Economic Growth
AMENDED DURING PASSAGE: Yes
DATE OF PASSAGE: **ASSEMBLY:** June 21, 2004
SENATE: December 13, 2004
DATE OF APPROVAL: January 24, 2005

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL 2nd reprint enacted

A3009

SPONSOR'S STATEMENT: (Begins on page 6 of original bill) Yes
COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: Yes
FLOOR AMENDMENT STATEMENT: Yes
LEGISLATIVE FISCAL ESTIMATE: No

S1748

SPONSOR'S STATEMENT: (Begins on page 6 of original bill) Yes
COMMITTEE STATEMENT: ASSEMBLY: No
SENATE: Yes
FLOOR AMENDMENT STATEMENT: No
LEGISLATIVE FISCAL ESTIMATE: No

(continued)

48:2-75
A3009 (S1748)

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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KBP

[Second Reprint]
ASSEMBLY, No. 3009

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED JUNE 14, 2004

Sponsored by:

Assemblyman WILFREDO CARABALLO
District 29 (Essex and Union)

Co-Sponsored by:

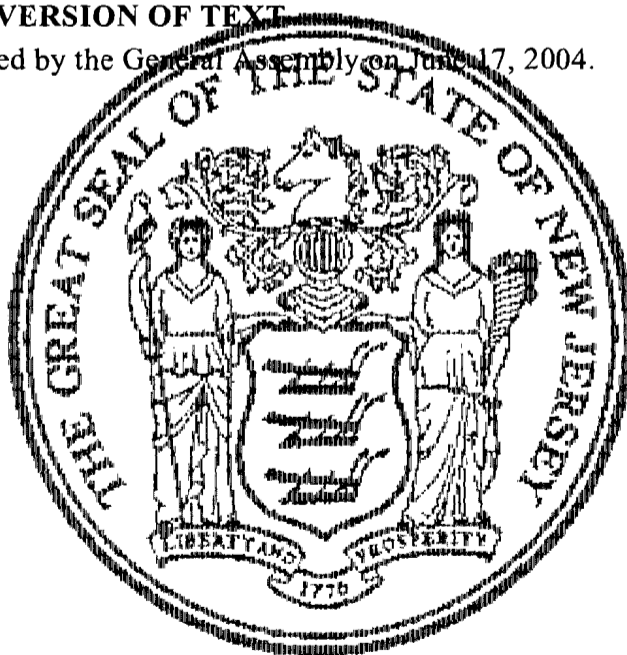
Assemblyman Chivukula, Senators Doria, Sacco, Sarlo and B.Smith

SYNOPSIS

Changes liability of underground facility operators with respect to certain provisions of the "Underground Facility Protection Act."

CURRENT VERSION OF TEXT

As amended by the General Assembly on June 17, 2004.



(Sponsorship Updated As Of: 12/14/2004)

A3009 [2R] CARABALLO

2

1 AN ACT concerning underground facilities and amending P.L.1994,
2 c.118.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 3 of P.L.1994, c.118 (C.48:2-75) is amended to read as
8 follows:

9 3. As used in this act:

10 "Board" means the Board of Public Utilities;

11 "Business day" means any day other than Saturday, Sunday, or a
12 nationally or State recognized holiday;

13 "Damage" means any impact or contact with an underground
14 facility, its appurtenances or its protective coating or any weakening
15 of the support for the facility or protective housing, including, but not
16 limited to a break, leak, dent, gouge, groove, or other damage to the
17 facility, its lines, or their coating or cathodic protection.

18 "Emergency" means any condition constituting a clear and present
19 danger to life, health or property caused by the escape of any material
20 or substance transported by means of an underground facility or the
21 interruption of a vital communication or public service that requires
22 immediate action to prevent or mitigate loss or potential loss of the
23 communication or public service, or any condition on or affecting a
24 transportation right-of-way or transportation facility that creates a risk
25 to the public of potential injury or property damage;

26 "Excavate" or "excavating" or "excavation" or "demolition" means
27 any operation in which earth, rock, or other material in the ground is
28 moved, removed, or otherwise displaced by means of any tools,
29 equipment, or explosive, and includes but is not limited to drilling,
30 grading, boring, milling to a depth greater than six inches, trenching,
31 tunneling, scraping, tree and root removal, cable or pipe plowing,
32 fence post or pile driving, and wrecking, razing, rending, or removing
33 any structure or mass material, but does not include routine residential
34 property or right-of-way maintenance or landscaping activities
35 performed with non-mechanized equipment, excavation within the
36 flexible or rigid pavement box within the right-of-way, or the tilling of
37 soil for agricultural purposes to a depth of 18 inches or less;

38 "Excavator" means any person performing excavation or demolition
39 and may include ²[, but not be limited to.]² a contractor having
40 oversight for an excavation or demolition to be performed by rented,
41 operated equipment under the contractor's ²on-site² direction provided

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ATU committee amendments adopted June 14, 2004.

² Assembly floor amendments adopted June 17, 2004.

1 the contractor contacts the One-Call Damage Prevention System in the
2 contractor's name¹, thereby assuming responsibility and liability,¹ to
3 give notice of the intent to engage in excavation or demolition work
4 in that manner;

5 "Hand digging" means any excavation involving non-mechanized
6 tools or equipment, including but not limited to digging with shovels,
7 picks and manual post-hole diggers;

8 "Mechanized equipment" means equipment powered by a motor,
9 engine, or hydraulic, pneumatic or electrical device, including but not
10 limited to trenchers, bulldozers, power shovels, augers, backhoes,
11 scrapers, drills, cable and pipe plows, and other equipment used for
12 plowing-in cable or pipe, but does not include tools manipulated solely
13 by human power;

14 "One-Call Damage Prevention System" means the communication
15 system established pursuant to section 4 of this act;

16 "Operator" means a person owning or operating, or controlling the
17 operation of, an underground facility, but shall not include a
18 homeowner who owns only residential underground facilities, such as
19 an underground lawn sprinkler system or an underground structure for
20 a residential low-voltage lighting system;

21 "Person" means any individual, firm, joint venture, partnership,
22 corporation, association, State, county, municipality, public agency or
23 authority, bi-state or interstate agency or authority, public utility,
24 cooperation association, or joint stock association, and includes any
25 trustee, receiver, assignee, or personal representative thereof;

26 "Public entity" means any federal, State, county or municipal entity
27 responsible for issuing road opening, building, blasting, demolition or
28 excavation permits;

29 "Site" means the specific place where excavation work is performed
30 or to be performed and shall be identified by street address referenced
31 to the nearest intersecting street and subdivision name, if applicable,
32 as well as by lot and block number, if available and by kilometer or
33 mile marker for railways;

34 "State department or agency" means any department, public
35 authority, public agency, public commission, or other political
36 subdivision of the State, including any county, municipality or political
37 subdivision thereof **[.] ; and**

38 "Underground facility" means any public or private personal
39 property which is buried, placed below ground, or submerged on a
40 right-of-way, easement, public street, other public place or private
41 property and is being used or will be used for the conveyance of water,
42 forced sewage, telecommunications, cable television, electricity, oil,
43 petroleum products, gas, optical signals, or traffic control, or for the
44 transportation of a hazardous liquid regulated pursuant to the
45 "Hazardous Liquid Pipeline Safety Act of 1979" (49 U.S.C. app. s.
46 2001 et seq.), but does not include storm drains or gravity sewers.
47 (cf: P.L.1994, c.118, s.3)

1 2. Section 8 of P.L.1994, c.118 (C.48:2-80) is amended to read as
2 follows:

3 8. a. Except as provided in sections 6 and 9 of this act, the
4 operator of an underground facility shall:

5 (1) Participate in and comply with the requirements of the One-Call
6 Damage Prevention System established pursuant to section 4 of this
7 act; and

8 (2) Mark, stake, locate or otherwise provide the position and
9 number of its underground facilities which may be affected by a
10 planned excavation or demolition within three business days after
11 receipt of the information concerning a notice of intent to excavate
12 transmitted pursuant to subsection a. of section 10 of this act. An
13 underground facility shall be marked in accordance with standards
14 approved by the board, which shall be based upon approved industry
15 standards, and shall be marked at the site within 18 inches horizontally
16 from the outside wall of the facility, in a manner that will enable the
17 excavator to employ prudent techniques, which may include hand-dug
18 test holes, to determine the precise position of the operator's
19 underground facility. An underground facility shall be marked from
20 information available in the operator's records or by use of standard
21 locating techniques other than excavation. In temporarily marking the
22 approximate position of an underground facility, an operator shall
23 utilize the following color coding:

24 Utility and Type Product	Identifying color
25 Electric Power Distribution	Safety Red
26 and Transmission	
27 Municipal Electric Systems	Safety Red
28 Gas Distribution and Transmission	High Visibility Safety
29	Yellow
30 Oil Distribution and Transmission	High Visibility Safety
31	Yellow
32 Dangerous Materials, Product	High Visibility Safety
33 Lines, Steam Lines	Yellow
34 Telephone and Telecommunications	Safety Alert Orange
35 Police and Fire Communications	Safety Alert Orange
36 Cable Television	Safety Alert Orange
37 Water Systems	Safety Precaution Blue
38 Slurry Systems	Safety Precaution Blue
39 Sewer Lines	Safety Green

40 b. If an operator does not own, operate or control any
41 underground facilities at the site concerning which he received
42 information of a notice of intent to excavate transmitted pursuant to
43 subsection c. of section 4 of this act, the operator shall make a
44 reasonable effort to so advise the person giving the notice of intent to
45 excavate, providing the notice is given within the time frame set forth
46 in subsection a. of section 10 of this act.

1 c. An operator shall maintain a record of all damage to its
2 underground facilities, including all damage reported by an excavator
3 pursuant to subsection e. of section 10 of this act. An operator shall
4 provide an updated copy of this record to the board on a quarterly
5 basis.

6 d. Any underground facilities operator that fails to mark, locate, or
7 otherwise provide the position and number of its underground facilities
8 which may be affected by a planned excavation or demolition, in
9 accordance with the provisions of paragraph (2) of subsection a. of
10 this section, shall be liable for any costs, labor, parts, equipment and
11 personnel downtime, incurred by an excavator damaging a facility
12 owned, operated or controlled by the underground facility operator.
13 An excavator that damages an underground facility in violation of the
14 provisions of the "Underground Facility Protection Act," P.L.1994,
15 c.118 (C.48:2-73 et seq.) shall be liable for any costs, labor, parts,
16 equipment and personnel downtime, incurred by the underground
17 facilities operator that owns or controls the damaged underground
18 facility. Any dispute arising from the provisions of this subsection,
19 where the claim is less than \$25,000, shall be subject to an alternative
20 dispute resolution process as established within the Office of Dispute
21 Settlement in the Office of the Public Defender. Nothing in this act
22 shall be construed to discourage parties from pursuing alternative
23 dispute resolution processes for an amount greater than \$25,000.
24 ¹The parties may by mutual agreement designate another alternative
25 dispute resolution association for all matters. ¹

26 (cf: P.L.1997, c.7, s.2)

27
28 3. Section 10 of P.L.1994, c.118 (C.48:2-82) is amended to read
29 as follows:

30 10. a. An excavator shall notify the One-Call Damage Prevention
31 System established pursuant to section 4 of this act of his intent to
32 engage in excavation or demolition not less than three business days
33 and not more than 10 business days prior to the beginning of the
34 excavation or demolition.

35 b. Upon notifying the One-Call Damage Prevention System, an
36 excavator shall provide the following information:

37 (1) The name and telephone number of the person notifying the
38 system;

39 (2) The name, address, and office and field telephone numbers and
40 facsimile numbers of the excavator;

41 (3) The name, address and telephone number of the person for
42 whom the excavation work is to be performed; and

43 (4) The specific site location, starting date, starting time and
44 description of the intended excavation or demolition, including the
45 approximate depth of the excavation or demolition.

46 c. Where appropriate to provide clarification, an excavator shall

1 mark and identify the perimeter of the proposed site of the excavation
2 by the color white prior to notifying the One-Call Damage Prevention
3 System of his intent to engage in excavation or demolition.

4 d. An excavator shall:

5 (1) Not operate any mechanized equipment within two feet
6 horizontally of the outside wall of any underground facility marked in
7 accordance with the provisions of this act, or marked in accordance
8 with any rule, regulation, or order adopted pursuant to this act, unless
9 the underground facility has first been located by hand digging.
10 Mechanized equipment shall be used with proper care and under
11 adequate supervision to avoid damage to the underground facility;

12 (2) Plan the excavation or demolition to avoid damage to and to
13 minimize interference with underground facilities;

14 (3) Use reasonable care during excavation or demolition to avoid
15 damage to or interference with underground facilities; and

16 (4) After commencement of excavation or demolition, protect and
17 preserve the marking, staking, or other designation of an underground
18 facility until the marking, staking, or other designation is no longer
19 necessary for safe excavation or demolition.

20 e. An excavator shall immediately report to the operator of an
21 underground facility any damage to the underground facility caused by
22 or discovered by the excavator in the course of an excavation or
23 demolition.

24 f. Notice for an excavation that is commenced within 10 business
25 days, as pursuant to the provisions of subsection a. of this section,
26 shall remain valid for 45 business days from the notification, providing
27 that the excavator maintains any mark out that is made by an operator
28 in accordance with the provisions of paragraph (4) of subsection d.
29 of this section¹. Any excavation occurring after 45 business days from
30 the time of such notification shall require a new notification, in
31 accordance with the provisions of this section.

32 (cf: P.L.1994, c.118, s.10)

33

34 4. This act shall take effect immediately.

1 System of his intent to engage in excavation or demolition.

2 d. An excavator shall:

3 (1) Not operate any mechanized equipment within two feet
4 horizontally of the outside wall of any underground facility marked in
5 accordance with the provisions of this act, or marked in accordance
6 with any rule, regulation, or order adopted pursuant to this act, unless
7 the underground facility has first been located by hand digging.
8 Mechanized equipment shall be used with proper care and under
9 adequate supervision to avoid damage to the underground facility;

10 (2) Plan the excavation or demolition to avoid damage to and to
11 minimize interference with underground facilities;

12 (3) Use reasonable care during excavation or demolition to avoid
13 damage to or interference with underground facilities; and

14 (4) After commencement of excavation or demolition, protect and
15 preserve the marking, staking, or other designation of an underground
16 facility until the marking, staking, or other designation is no longer
17 necessary for safe excavation or demolition.

18 e. An excavator shall immediately report to the operator of an
19 underground facility any damage to the underground facility caused by
20 or discovered by the excavator in the course of an excavation or
21 demolition.

22 f. Notice for an excavation that is commenced within 10 business
23 days, as pursuant to the provisions of subsection a. of this section,
24 shall remain valid for 45 business days from the notification, providing
25 that the excavator maintains any mark out that is made by an operator.
26 Any excavation occurring after 45 business days from the time of such
27 notification shall require a new notification, in accordance with the
28 provisions of this section.

29 (cf: P.L.1994, c.118, s.10.)

30

31 4. This act shall take effect immediately.

32

33

34

STATEMENT

35

36 This bill provides that any underground facilities operator that fails
37 to mark, locate, or otherwise provide the position and number of its
38 underground facilities which may be affected by a planned excavation
39 or demolition, in accordance with the provisions of paragraph (2) of
40 subsection a. of section 8 of P.L.1994, c.118 (C.48:2-80), shall be
41 liable for any costs, labor, parts, equipment and personnel downtime,
42 incurred by an excavator damaging a facility owned, operated or
43 controlled by the underground facility operator. The bill provides that
44 an excavator that damages an underground facility in violation of the
45 provisions of the "Underground Facility Protection Act," P.L.1994,
46 c.118 (C.48:2-73 et seq.) shall be liable for any costs, labor, parts,

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1 equipment and personnel downtime, incurred by the underground
2 facilities operator that owns or controls the damaged underground
3 facility. Any dispute arising from these aforementioned provisions,
4 where the claim is less than \$25,000, shall be subject to an alternative
5 dispute resolution process as established within the Office of Dispute
6 Settlement in the Office of the Public Defender. These provisions are
7 not to be construed as to discourage parties from pursuing alternative
8 dispute resolution processes where the claim amount is greater than
9 \$25,000.

10 The bill provides that notice for an excavation that is commenced
11 within 10 business days shall remain valid for 45 business days from
12 the notification, providing that the excavator maintains any mark out
13 that is made by an operator. Any excavation occurring after 45
14 business days from the time of such notification shall require a new
15 notification, in accordance with the provisions of section 10 of
16 P.L.1994, c.118 (C.48:2-82).

17 The bill expands the definition of "excavator" to include, but not
18 be limited to, a contractor having oversight for an excavation or
19 demolition to be performed by rented, operated equipment under the
20 contractor's direction provided the contractor contacts the One-Call
21 Damage Prevention System in the contractor's name to give notice of
22 the intent to engage in excavation or demolition work in that manner.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3009

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 14, 2004

The Assembly Telecommunications and Utilities Committee reports favorably Assembly Bill No. 3009 with committee amendments.

As reported, this bill provides that any underground facilities operator that fails to mark, locate, or otherwise provide the position and number of its underground facilities which may be affected by a planned excavation or demolition, in accordance with the provisions of paragraph (2) of subsection a. of section 8 of P.L.1994, c.118 (C.48:2-80), shall be liable for any costs, labor, parts, equipment and personnel downtime, incurred by an excavator damaging a facility owned, operated or controlled by the underground facility operator. The bill provides that an excavator that damages an underground facility in violation of the provisions of the "Underground Facility Protection Act," P.L.1994, c.118 (C.48:2-73 et seq.) shall be liable for any costs, labor, parts, equipment and personnel downtime, incurred by the underground facilities operator that owns or controls the damaged underground facility. Any dispute arising from these aforementioned provisions, where the claim is less than \$25,000, shall be subject to an alternative dispute resolution process as established within the Office of Dispute Settlement in the Office of the Public Defender. These provisions are not to be construed as to discourage parties from pursuing alternative dispute resolution processes where the claim amount is greater than \$25,000. In addition, the bill authorizes the parties to designate another alternative dispute resolution association for any matter.

The bill provides that notice for an excavation that is commenced within 10 business days shall remain valid for 45 business days from the notification, providing that the excavator maintains any mark out that is made by an operator in accordance with the provisions of paragraph (4) of subsection d. of section 3 of the bill. Any excavation occurring after 45 business days from the time of such notification shall require a new notification, in accordance with the provisions of section 10 of P.L.1994, c.118 (C.48:2-82).

The bill expands the definition of "excavator" to include, but not

be limited to, a contractor having oversight for an excavation or demolition to be performed by rented, operated equipment under the contractor's direction provided the contractor contacts the One-Call Damage Prevention System in the contractor's name thereby assuming responsibility and liability to give notice of the intent to engage in excavation or demolition work in that manner.

COMMITTEE AMENDMENTS

The committee amended the definition of "excavator" in section 1 of the bill to provide that an excavator may include a contractor having oversight for excavation or demolition to be performed by rented, operated equipment under the contractor's direction, who contacts the One-Call Damage Prevention System in the contractor's name, thereby assuming responsibility and liability, to give notice of intent to do excavation or demolition work.

The committee amended section 2 of the bill to provide that parties to a dispute arising from subsection d. of section 8 of P.L.1994, c.118 (C.48:2-80) concerning liability from failing to mark out underground facilities or from performing excavation or demolition work may, as an alternative to following prescribed dispute resolution procedures, designate by mutual agreement, another dispute resolution association for all matters.

The committee amended section 3 of the bill to clarify that the excavator's responsibility to maintain any mark out made by an operator shall be consistent with the provisions of paragraph (4) of subsection d. of section 10 of P.L.1994, c.118 (C.48:2-82).

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

[Second Reprint]

ASSEMBLY, No. 3009

STATE OF NEW JERSEY

DATED: NOVEMBER 15, 2004

The Senate Economic Growth Committee reports favorably Assembly Bill No. 3009 (2R).

This bill provides that any underground facilities operator that fails to mark, locate, or otherwise provide the position and number of its underground facilities which may be affected by a planned excavation or demolition, in accordance with the provisions of paragraph (2) of subsection a. of section 8 of P.L.1994, c.118 (C.48:2-80), shall be liable for any costs, labor, parts, equipment and personnel downtime, incurred by an excavator damaging a facility owned, operated or controlled by the underground facility operator. The bill provides that an excavator that damages an underground facility in violation of the provisions of the "Underground Facility Protection Act," P.L.1994, c.118 (C.48:2-73 et seq.) shall be liable for any costs, labor, parts, equipment and personnel downtime, incurred by the underground facilities operator that owns or controls the damaged underground facility. Any dispute arising from these aforementioned provisions, where the claim is less than \$25,000, shall be subject to an alternative dispute resolution process as established within the Office of Dispute Settlement in the Office of the Public Defender. These provisions are not to be construed as to discourage parties from pursuing alternative dispute resolution processes where the claim amount is greater than \$25,000. In addition, the bill authorizes the parties to designate another alternative dispute resolution association for any matter.

The bill provides that notice for an excavation that is commenced within 10 business days shall remain valid for 45 business days from the notification, providing that the excavator maintains any mark out that is made by an operator in accordance with the provisions of paragraph (4) of subsection d. of section 3 of the bill. Any excavation occurring after 45 business days from the time of such notification shall require a new notification, in accordance with the provisions of section 10 of P.L.1994, c.118 (C.48:2-82).

The bill expands the definition of "excavator" to include a contractor having oversight for an excavation or demolition to be performed by rented, operated equipment under the contractor's on-site direction provided the contractor contacts the One-Call Damage

Prevention System in the contractor's name thereby assuming responsibility and liability to give notice of the intent to engage in excavation or demolition work in that manner.

As reported by the committee, Assembly Bill, No. 3009 (2R) is identical to Senate Bill, No. 1748 which was also reported by the committee on this date.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 3009

with Assembly Floor Amendments
(Proposed By Assemblyman CARABALLO)

ADOPTED: JUNE 17, 2004

These amendments clarify that the definition of "excavator" may include a contractor having oversight for an excavation or demolition to be performed by rented, operated equipment under the contractor's "on-site" direction provided the contractor contacts the One-Call Damage Prevention System in the contractor's name in accordance with the provisions of section 1 of the bill.