

48:2-73

LEGISLATIVE HISTORY CHECKLIST
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("Underground facility protection
act"--pipelines)

NJSA: 48:2-73

LAWS OF: 1994 **CHAPTER:** 118

BILL NO: A36

SPONSOR(S): Gregory-Socchi and other

DATE INTRODUCED: April 25, 1994

COMMITTEE: **ASSEMBLY:** Transportation
SENATE: Commerce

AMENDED DURING PASSAGE: No Assembly Committee
substitute enacted

DATE OF PASSAGE: **ASSEMBLY:** June 27, 1994
SENATE: September 19, 1994

DATE OF APPROVAL: October 18, 1994

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

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ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 36

STATE OF NEW JERSEY

ADOPTED JUNE 20, 1994

Sponsored by Assemblywoman GREGORY-SCOCCHI,
Assemblymen WARSH, HAYTAIAN and Mikulak

1 AN ACT concerning underground facilities, supplementing
2 chapter 2 of Title 48 of the Revised Statutes, amending
3 P.L.1989, c.80, and repealing N.J.S.2C:17-4 and N.J.S.2C:17-5.

4

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

7 1. (New section) Sections 1 through 19 of this act shall be
8 known and may be cited as the "Underground Facility Protection
9 Act."

10 2. (New section) The Legislature finds and declares that
11 damage to underground facilities caused by excavation and the
12 discharge of explosives poses a significant risk to the public
13 safety; that such damage to underground natural gas facilities
14 poses a substantial risk to the public safety; and that the
15 implementation of a comprehensive One-Call Damage Prevention
16 System can substantially reduce the frequency of damage caused
17 by these activities.

18 The Legislature therefore determines that it is in the public
19 interest for the State to require all operators of underground
20 facilities to participate in a One-Call Damage Prevention System
21 and to require all excavators to notify the One-Call Damage
22 Prevention System prior to excavation or demolition.

23 The Legislature further determines that the Board of Public
24 Utilities is the appropriate State agency to designate the
25 operator of, and provide policy oversight to, the One-Call
26 Damage Prevention System and enforce the provisions of this act.

27 3. (New section) As used in this act:

28 "Board" means the Board of Public Utilities;

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

31 "Damage" means any impact or contact with an underground
32 facility, its appurtenances or its protective coating or any
33 weakening of the support for the facility or protective housing,
34 including, but not limited to a break, leak, dent, gouge, groove, or
35 other damage to the facility, its lines, or their coating or
36 cathodic protection.

37 "Emergency" means any condition constituting a clear and
38 present danger to life, health or property caused by the escape of
39 any material or substance transported by means of an
40 underground facility or the interruption of a vital communication
41 or public service that requires immediate action to prevent or
42 mitigate loss or potential loss of the communication or public
43 service, or any condition on or affecting a transportation

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.

1 right-of-way or transportation facility that creates a risk to the
2 public of potential injury or property damage;

3 "Excavate" or "excavating" or "excavation" or "demolition"
4 means any operation in which earth, rock, or other material in
5 the ground is moved, removed, or otherwise displaced by means
6 of any tools, equipment, or explosive, and includes but is not
7 limited to drilling, grading, boring, milling to a depth greater
8 than six inches, trenching, tunneling, scraping, tree and root
9 removal, cable or pipe plowing, fence post or pile driving, and
10 wrecking, razing, rending, or removing any structure or mass
11 material, but does not include routine residential property or
12 right-of-way maintenance or landscaping activities performed
13 with non-mechanized equipment, excavation within the flexible
14 or rigid pavement box within the right-of-way, or the tilling of
15 soil for agricultural purposes to a depth of 18 inches or less;

16 "Excavator" means any person performing excavation or
17 demolition;

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

21 "Mechanized equipment" means equipment powered by a
22 motor, engine, or hydraulic, pneumatic or electrical device,
23 including but not limited to trenchers, bulldozers, power shovels,
24 augers, backhoes, scrapers, drills, cable and pipe plows, and other
25 equipment used for plowing-in cable or pipe, but does not include
26 tools manipulated solely by human power;

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

30 "Operator" means a person owning or operating, or controlling
31 the operation of, an underground facility, but shall not include a
32 homeowner who owns only residential underground facilities, such
33 as an underground lawn sprinkler system or an underground
34 structure for a residential low-voltage lighting system;

35 "Person" means any individual, firm, joint venture, partnership,
36 corporation, association, State, county, municipality, public
37 agency or authority, bi-state or interstate agency or authority,
38 public utility, cooperation association, or joint stock association,
39 and includes any trustee, receiver, assignee, or personal
40 representative thereof;

41 "Public entity" means any federal, State, county or municipal
42 entity responsible for issuing road opening, building, blasting,
43 demolition or excavation permits;

44 "Site" means the specific place where excavation work is
45 performed or to be performed and shall be identified by street
46 address referenced to the nearest intersecting street and
47 sub-division name, if applicable, as well as by lot and block
48 number, if available and by kilometer or mile marker for railways;

49 "State department or agency" means any department, public
50 authority, public agency, public commission, or other political
51 subdivision of the State, including any county, municipality or
52 political subdivision thereof.

53 "Underground facility" means any public or private personal
54 property which is buried, placed below ground, or submerged on a

1 right-of-way, easement, public street, other public place or
2 private property and is being used or will be used for the
3 conveyance of water, forced sewage, telecommunications, cable
4 television, electricity, oil, petroleum products, gas, optical
5 signals, or traffic control, or for the transportation of a
6 hazardous liquid regulated pursuant to the "Hazardous Liquid
7 Pipeline Safety Act of 1979" (49 U.S.C. app. § 2001 et seq.), but
8 does not include storm drains or gravity sewers.

9 4. (New section) The Board of Public Utilities shall establish a
10 One-Call Damage Prevention System pursuant to the provisions
11 of this act, and may adopt, pursuant to the "Administrative
12 Procedure Act", P.L.1968, c.410 (C.52:14B-1 et seq.), such rules
13 and regulations as it deems necessary to implement the provisions
14 of this act. This system shall be a single Statewide 24-hour,
15 seven-day-a-week notification center which shall:

16 a. Receive and record the notice of intent to excavate
17 provided by excavators pursuant to subsection a. of section 10 of
18 this act;

19 b. Assign a confirmation number to each notice of intent to
20 engage in an excavation, inform the excavator of the
21 confirmation number, and maintain a register showing the name,
22 address, and telephone number of the excavator, the site to which
23 the notice pertains, and the assigned confirmation number;

24 c. Promptly transmit to the appropriate operators the
25 information received from an excavator regarding any intended
26 excavation in areas where the operators have underground
27 facilities;

28 d. Maintain a record of each notice of intent received pursuant
29 to subsection a. of this section for a period of seven years from
30 the date of notice; and

31 e. Provide to the excavator the names of the operators who
32 will be notified by the One-Call Damage Prevention System of
33 the intended excavation.

34 5. (New section) a. Two years after the effective date of this
35 act, the board shall designate, through an appropriate
36 administrative mechanism, a person to operate the One-Call
37 Damage Prevention System. The board may, as necessary, adopt
38 rules establishing the process by which it shall select a person to
39 operate the system.

40 b. The board shall designate the Garden State Underground
41 Plant Location Service (GSUPLS), a non-profit corporation of this
42 State, to operate the One-Call Damage Prevention System, on an
43 interim basis, for two years after the effective date of this act.
44 During this interim period, GSUPLS will operate the system in
45 conformance with the provisions of this act and the board shall
46 have policy oversight over operation of the system.

47 6. (New section) The board may grant a waiver from the
48 requirements of section 8 of this act for such reasons as it deems
49 appropriate. The board shall have sole jurisdiction and authority
50 for reviewing and granting or denying any waiver requested
51 pursuant to this section. However, a waiver shall be deemed
52 appropriate in those instances when an operator demonstrates
53 that:

54 a. Damage to the underground facilities owned, operated, or

1 controlled by the operator would pose no threat to the public
2 safety; or

3 b. There is no possibility that an underground facility owned,
4 operated or controlled by the operator will be damaged by
5 excavating activities.

6 An operator who has requested a waiver pursuant to this
7 section shall participate in the One-Call Damage Prevention
8 System while the request is being considered by the board.

9 7. (New section) The system operator shall:

10 a. Operate the One-Call Damage Prevention System, which
11 shall include but not be limited to the services described in
12 section 4 of this act;

13 b. Establish a schedule of fees under which each operator shall
14 pay an equitable share of the costs of maintaining the One-Call
15 Damage Prevention System. This schedule of fees shall be
16 submitted to the board for review and approval and shall be
17 subject to the continuing jurisdiction of the board;

18 c. Ensure that the One-Call Damage Prevention System
19 operates in all areas of the State. The telephone number of the
20 One-Call Damage Prevention System for providing any notice
21 required by this act shall be a toll-free number;

22 d. Notify the public and known excavators of the requirement
23 pursuant to this act for the mandatory use of the One-Call
24 Damage Prevention System to locate underground facilities; and

25 e. Comply with all other provisions of this act.

26 8. (New section) a. Except as provided in sections 6 and 9 of
27 this act, the operator of an underground facility shall:

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

31 (2) Mark, stake, locate or otherwise provide the position and
32 number of its underground facilities which may be affected by a
33 planned excavation or demolition within three business days after
34 receipt of the information concerning a notice of intent to
35 excavate transmitted pursuant to subsection c. of section 10 of
36 this act. An underground facility shall be marked in accordance
37 with standards approved by the board, which shall be based upon
38 approved industry standards, and shall be marked at the site
39 within 18 inches horizontally from the outside wall of the
40 facility, in a manner that will enable the excavator to employ
41 prudent techniques, which may include hand-dug test holes, to
42 determine the precise position of the operator's underground
43 facility. An underground facility shall be marked from
44 information available in the operator's records or by use of
45 standard locating techniques other than excavation. In
46 temporarily marking the approximate position of an underground
47 facility, an operator shall utilize the following color coding:

Utility and Type Product	Identifying color
Electric Power Distribution and Transmission	Safety Red
Municipal Electric Systems	Safety Red
Gas Distribution and Transmission	High Visibility Safety Yellow

1	Utility and Type Product	Identifying color
2		
3	Oil Distribution and	High Visibility Safety
4	Transmission	Yellow
5	Dangerous Materials, Product	High Visibility Safety
6	Lines, Steam Lines	Yellow
7	Telephone and Telecommunications	Safety Alert Orange
8	Police and Fire Communications	Safety Alert Orange
9	Cable Television	Safety Alert Orange
10	Water Systems	Safety Precaution Blue
11	Slurry Systems	Safety Precaution Blue
12	Sewer Lines	Safety Green
13		

14 b. If an operator does not own, operate or control any
 15 underground facilities at the site concerning which he received
 16 information of a notice of intent to excavate transmitted
 17 pursuant to subsection c. of section 4 of this act, the operator
 18 shall make a reasonable effort to so advise the person giving the
 19 notice of intent to excavate, providing the notice is given within
 20 the time frame set forth in subsection a. of section 10 of this act.

21 c. An operator shall maintain a record of all damage to its
 22 underground facilities, including all damage reported by an
 23 excavator pursuant to subsection e. of section 10 of this act. An
 24 operator shall provide an updated copy of this record to the board
 25 on a quarterly basis.

26 9. (New section) a. The requirement, pursuant to paragraph
 27 (2) of subsection a. of section 8 of this act, for an operator to
 28 mark, stake, locate or otherwise provide the position of its
 29 underground facilities shall not apply to an underground
 30 non-metallic water pipe or non-metallic water distribution
 31 facility installed prior to the effective date of this act. An
 32 operator that qualifies for this exemption shall cooperate with
 33 the excavator in reasonable efforts to determine the location of
 34 such facilities.

35 b. The requirement pursuant to paragraph (2) of subsection a.
 36 of section 8 of this act for an operator to mark, stake, locate or
 37 otherwise provide the position of its underground facilities shall
 38 be deemed met by a State department or agency when an
 39 excavation is conducted on property or a right-of-way owned or
 40 controlled by the State department or agency and the excavation
 41 is subject to an excavation permitting process by the State
 42 department or agency if:

43 (1) The underground facilities of the State department or
 44 agency at the proposed excavation site comprise only traffic
 45 signals and lights or street and highway lights and their
 46 associated electrical feeds, control lines and traffic sensing loops;

47 (2) The State department or agency excavation permit is
 48 conditional upon the excavator notifying the One-Call Damage
 49 Prevention System; and

50 (3) The State department or agency provides the excavator
 51 with plans of the position and number of its underground facilities
 52 during the permitting process and agrees to cooperate on a
 53 continuing basis with the excavator in reasonable efforts to
 54 determine the location of such facilities, including notifying an
 55 excavator of any changes which may occur in the position or

1 number of underground facilities after the initial issuance of
2 plans to the excavator. However, the State department or
3 agency may elect to mark, stake, or locate its underground
4 facilities pursuant to the requirements of paragraph (2) of
5 subsection a. of section 8 of this act.

6 If a State department or agency elects not to mark or stake its
7 facilities under this subsection, an excavator who has conformed
8 with the requirements of this act and all other applicable permit
9 requirements, and uses reasonable care while excavating shall not
10 be liable for damage to the State department or agency's
11 underground facilities.

12 10. (New section) a. An excavator shall notify the One-Call
13 Damage Prevention System established pursuant to section 4 of
14 this act of his intent to engage in excavation or demolition not
15 less than three business days and not more than 10 business days
16 prior to the beginning of the excavation or demolition.

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

19 (1) The name and telephone number of the person notifying the
20 system;

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

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

25 (4) The specific site location, starting date, starting time and
26 description of the intended excavation or demolition, including
27 the approximate depth of the excavation or demolition.

28 c. Where appropriate to provide clarification, an excavator
29 shall mark and identify the perimeter of the proposed site of the
30 excavation by the color white prior to notifying the One-Call
31 Damage Prevention System of his intent to engage in excavation
32 or demolition.

33 d. An excavator shall:

34 (1) Not operate any mechanized equipment within two feet
35 horizontally of the outside wall of any underground facility
36 marked in accordance with the provisions of this act, or marked
37 in accordance with any rule, regulation, or order adopted
38 pursuant to this act, unless the underground facility has first been
39 located by hand digging. Mechanized equipment shall be used
40 with proper care and under adequate supervision to avoid damage
41 to the underground facility;

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

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

46 (4) After commencement of excavation or demolition, protect
47 and preserve the marking, staking, or other designation of an
48 underground facility until the marking, staking, or other
49 designation is no longer necessary for safe excavation or
50 demolition.

51 e. An excavator shall immediately report to the operator of an
52 underground facility any damage to the underground facility
53 caused by or discovered by the excavator in the course of an
54 excavation or demolition.

55 11. (New section) The provisions of any other law, rule,

1 regulation or ordinance to the contrary notwithstanding, any
2 permit or permission for a road opening, building, blasting,
3 demolition or excavation granted by a public entity to an
4 excavator that will result in excavation or demolition activity
5 shall not be effective until the excavator provides proof to the
6 public entity that the excavator has notified the One-Call
7 Damage Prevention System pursuant to section 10 of this act.
8 This proof may be provided by supplying the public entity with
9 the confirmation number assigned to the notice of intent pursuant
10 to subsection b. of section 4 of this act.

11 12. (New section) The provisions of this act shall not apply
12 when an excavation or demolition is undertaken in response to an
13 emergency, provided that the One-Call Damage Prevention
14 System is notified at the earliest reasonable opportunity and that
15 all reasonable precautions are taken to protect underground
16 facilities.

17 13. (New section) a. An operator of an interstate natural gas
18 pipeline or an interstate hazardous liquid underground pipeline
19 shall file a map depicting the route of the pipeline in this State
20 with the clerk of each municipality in the State through which
21 the interstate pipeline passes, with the board, and with the
22 Department of Environmental Protection.

23 b. Nothing in this act shall be construed to modify or interfere
24 with the enforcement jurisdiction of the United States
25 Department of Transportation with regard to the operators of
26 interstate pipelines.

27 14. (New section) a. Whenever it appears to the board that a
28 person has violated any provision of this act, or any rule,
29 regulation or order adopted pursuant thereto, it may issue an
30 order specifying the provision or provisions of this act, or the
31 rule, regulation or order of which the person is in violation, citing
32 the action which constituted the violation, ordering abatement of
33 the violation, and giving notice to the person of his right to a
34 hearing on the matters contained in the order. Such order shall
35 be effective upon receipt and any person to whom such order is
36 directed shall comply with the order immediately.

37 b. The board may institute an action or proceeding in the
38 Superior Court for injunctive and other relief for any violation of
39 this act, or of any rule or regulation adopted pursuant to this act
40 and the court may proceed in the action in a summary manner. In
41 any such proceeding the court may grant temporary or
42 interlocutory relief, notwithstanding the provisions of
43 R.S.48:2-24.

44 Such relief may include, singly or in combination:

- 45 (1) A temporary or permanent injunction; and
- 46 (2) Assessment of the violator for the costs of any
47 investigation, inspection, or monitoring survey which led to the
48 establishment of the violation, and for the reasonable costs of
49 preparing and litigating the case under this subsection.
50 Assessments under this subsection shall be paid to the State
51 Treasurer.

52 The board or an affected operator may institute an action in
53 the Superior Court to enjoin a person whose repeated failure to
54 comply with the provisions of this act constitutes a threat to

1 public safety from engaging in any further excavation or
2 demolition work within the State, except under such terms and
3 conditions as the Superior Court may prescribe to ensure the
4 safety of the public.

5 c. The provisions of section 16 of this act to the contrary
6 notwithstanding, a person who is determined by the board, after
7 notice and opportunity to be heard, to have violated any provision
8 of this act or any rule, regulation, or order adopted pursuant
9 thereto with respect to a natural gas underground pipeline or
10 distribution facility, or a hazardous liquid underground pipeline or
11 distribution facility, shall be liable to a civil penalty not to
12 exceed \$25,000 for each violation for each day the violation
13 continues, except that the maximum civil penalty may not exceed
14 \$500,000 for any related series of violations.

15 Any civil penalty imposed pursuant to this subsection may be
16 compromised by the board. In determining the amount of the
17 penalty, or the amount agreed upon in compromise, the board
18 shall consider the nature, circumstances, and gravity of the
19 violation; the degree of the violator's culpability; any history of
20 prior violations; the prospective effect of the penalty on the
21 ability of the violator to conduct business; any good faith effort
22 on the part of the violator in attempting to achieve compliance;
23 the violator's ability to pay the penalty; and other factors the
24 board determines to be appropriate.

25 The amount of the penalty when finally determined, or the
26 amount agreed upon in compromise, may be deducted from any
27 sums owing by the State to the person charged, or may be
28 recovered, if necessary, in a summary proceeding pursuant to
29 "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The
30 Superior Court shall have jurisdiction to enforce the provisions of
31 "the penalty enforcement law" in connection with this act.

32 d. Pursuit of any remedy specified in this section shall not
33 preclude the pursuit of any other remedy, including any civil
34 remedy for damage to an operator's underground facilities or for
35 damage to a person's property, provided by any other law.
36 Administrative and judicial remedies provided in this section may
37 be pursued simultaneously.

38 15. (New section) Any person who knowingly and willfully
39 engages in an excavation without:

40 a. First using the One-Call Damage Prevention System to
41 determine the location of underground facilities in the area being
42 excavated; or

43 b. Heeding appropriate location information or markings
44 established by any operator; or

45 c. Otherwise complying with the provisions of this act; and
46 who because of that violation damages an underground facility
47 resulting in death, serious bodily harm, or actual damage to
48 property or loss of service revenue exceeding \$50,000, or
49 damages an underground hazardous liquid pipeline facility
50 resulting in the release of more than 50 barrels of product, shall,
51 upon conviction, be guilty of a crime of the third degree.

52 Nothing in this section shall limit the jurisdiction of the board
53 with respect to natural gas pipeline safety or limit the
54 jurisdiction of the board or a court of competent jurisdiction with

1 respect to the civil administrative penalty and enforcement
2 provisions of this act.

3 16. (New section) a. An operator or excavator, or the person
4 who operates the One-Call Damage Prevention System, who
5 violates any provision of this act or any rule or regulation or
6 order adopted pursuant thereto shall be liable to a civil penalty of
7 not less than \$1,000 and not more than \$2,500 per day for each
8 day the violation continues, except that the maximum civil
9 penalty may not exceed \$25,000 for any related series of
10 violations.

11 b. Any civil action pursuant to subsection a. of this section
12 may be brought in a court of this State by the board or by an
13 affected operator. Nothing in this act shall affect any civil
14 remedy for damage to an operator's underground facility or for
15 actual damage to any person's property.

16 17. (New section) Evidence that an excavation or demolition
17 that results in any damage to an underground facility was
18 performed without providing the notice required pursuant to
19 section 10 of this act shall be prima facie evidence in any civil or
20 administrative proceeding that the damage was caused by the
21 negligence of the person engaged in the excavation or demolition.

22 18. (New section) All civil penalties recovered pursuant to
23 this act shall be paid into the General Fund.

24 19. (New section) Nothing in this act shall limit the
25 jurisdiction of the board:

26 a. Over public utilities pursuant to R.S.48:2-1 et seq.,
27 notwithstanding the fact that a public utility may be an operator
28 or excavator as defined in section 3 of this act; or

29 b. Concerning natural gas pipeline safety pursuant to
30 R.S.48:9-33.

31 20. Section 1 of P.L.1989, c.80 (C.48:9-33) is amended to read
32 as follows:

33 1. a. Any person who is determined by the Board of Public
34 Utilities, after notice and opportunity to be heard, to have
35 violated the provisions of any law, rule, regulation, or order
36 relating to natural gas pipeline safety shall be subject to a civil
37 penalty of not more than [~~\$10,000~~] \$25,000 for each such
38 violation for each day that the violation persists, except that the
39 maximum civil penalty shall not exceed \$500,000 for any related
40 series of violations.

41 b. Any civil penalty imposed pursuant to subsection a. of this
42 section may be compromised by the board. In determining the
43 amount of the penalty, or the amount agreed upon in compromise,
44 the board shall consider the nature, circumstances, and gravity of
45 the violation; the degree of the violator's culpability; any history
46 of prior violations; the prospective effect of the penalty on the
47 ability of the violator to conduct business; any good faith on the
48 part of the violator in attempting to achieve compliance; his
49 ability to pay the penalty; and any other factors justice may
50 require. The amount of the penalty, when finally determined, or
51 the amount agreed upon in compromise, may be deducted from
52 any sums owing by the State to the person charged, or may be
53 recovered in a summary proceeding instituted by the board in
54 Superior Court in accordance with "the penalty enforcement

1 law," N.J.S.2A:58-1 et seq.

2 c. Whenever it shall appear to the board that a person has
3 violated, intends to violate, or will violate any provision of any
4 law, rule, regulation, or order relating to natural gas pipeline
5 safety, the board may institute a civil action in Superior Court
6 for injunctive relief or for any other appropriate relief under the
7 circumstances, and the court may proceed on any such action in a
8 summary manner.

9 (cf: P.L.1989, c.80, s.1)

10 21. N.J.S.2C:17-4 and N.J.S.2C:17-5 are repealed.

11 22. This act shall take effect 30 days after enactment.

12

13

14

15

16 "Underground Facility Protection Act"

ASSEMBLY, No. 36

STATE OF NEW JERSEY

INTRODUCED APRIL 25, 1994

By Assemblywoman GREGORY-SCOCCHI,
Assemblymen WARSH, Augustine, Azzolina, Mikulak,
Oros, Assemblywoman J. Smith and Assemblyman Bateman

1 AN ACT concerning underground pipelines, supplementing
2 chapter 2 of Title 48 of the Revised Statutes, and repealing
3 N.J.S.2C:17-4 and N.J.S.2C:17-5.
4

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

7 1. This act may be cited as the "Underground Utility Line
8 Protection Act."

9 2. As used in this act:

10 "Board" means the Board of Regulatory Commissioners;

11 "Contractor" means any person that performs excavation or
12 demolition work for himself or for another person;

13 "Demolition" means the use of powered equipment or
14 explosives to destroy or raze any structure;

15 "Designer" means any architect, engineer or other person that
16 prepares a drawing for a construction or other project that
17 requires excavation or demolition work;

18 "Emergency" means any condition constituting a clear and
19 present danger to life or property by reason of escaping gas,
20 exposed wires or other similar and serious breaks or defects in a
21 user's lines;

22 "Excavation" means the use of powered equipment or
23 explosives in the movement of earth, rock, or other material, and
24 includes but is not limited to anchoring, auguring, backfilling,
25 blasting, digging, ditching, drilling, driving-in, grading,
26 plowing-in, polling-in, ripping, scraping, trenching and tunneling.

27 "Excavation" shall not include (1) such use in agricultural
28 operations; (2) operations necessary or incidental to the purposes
29 of finding or extracting natural resources, including all well site
30 operations; (3) work within a state highway right-of-way,
31 performed by employees of the State acting within the scope of
32 their employment, which does not extend more than 24 inches
33 beneath the existing surface; or (4) minor routine maintenance
34 performed by political subdivisions within the right-of-way of
35 roads within their jurisdiction;

36 "Line" means an underground conductor or underground facility
37 used in providing electric or communication service, or an
38 underground pipe used in carrying or providing gas, oil or oil
39 product delivery, sewage, water or other service to one or more
40 consumers or customers of such service and the appurtenances
41 thereto. "Line" does not include: (1) storm drainage facilities
42 which are located within a public highway right-of-way; or (2) oil
43 and gas production and gathering pipeline systems designed
44 principally to collect oil or gas production from wells located in
45 this State provided such systems are marked or staked where they
46 cross a public highway right-of-way;

1 "Minor routine maintenance" means shaping of or adding dust
2 palliative to unpaved roads, patching of the surface or base of
3 flexible base, rigid base or rigid surface roads by either manual or
4 mechanized method to the extent of the existing exposed base
5 material, crack and joint sealing, adding dust palliative to road
6 shoulders, patching of shoulders and shoulder bases by either
7 manual or mechanized methods of the extent of the existing
8 exposed base, and cleaning on inlets and drainage pipes and
9 ditches;

10 "One-call system" means a communication system established
11 pursuant to section 3 of this act;

12 "Operator" means any individual in physical control of powered
13 equipment or explosives when being used to perform excavation
14 or demolition work;

15 "Person" means an individual, partnership, corporation,
16 political subdivision, a municipal authority, the state and its
17 agencies and instrumentalities, or any other entity;

18 "Powered equipment" means any equipment energized by an
19 engine or motor and used in excavation or demolition work;

20 "Site" means the specific place or places where excavation or
21 demolition work is being or is to be performed;

22 "User" means the public utility, political subdivision,
23 municipality, authority, rural electric cooperative or its named
24 representative trade association, or other person or entity that
25 owns or operates a line; "User" does not include the State or its
26 agencies; and

27 "Working day" means any day except a Saturday, Sunday or
28 legal holiday prescribed by act of the Legislature.

29 3. a. The Board of Regulatory Commissioners shall adopt,
30 pursuant to the "Administrative Procedure Act", P.L.1968, c.410
31 (C.52:14B-1 et seq.), rules and regulations establishing a one-call
32 system for the protection of underground utility lines. This
33 system shall:

34 (1) Receive and record the information provided by users
35 pursuant to subsections a. and b. of section 5 of this act;

36 (2) Receive and record the notice of intent to excavate
37 provided by contractors pursuant to subsection c. of section 7 of
38 this act;

39 (3) Promptly transmit to the appropriate users that participate
40 in the one-call system the information received from a
41 contractor about any intended excavation in areas where the
42 users have underground facilities;

43 (4) Maintain a record of each notice of intent to excavate for
44 a period of seven years from the date of notice; and

45 (5) Provide to a designer or contractor the information
46 requested pursuant to subsection a. of section 6 of this act or
47 pursuant to subsection a. of section 7 of this act.

48 4. Upon the adoption of rules and regulations pursuant to
49 section 3 of this act, the board shall appoint an operator of the
50 one-call system. The system operator shall:

51 a. Operate the one-call system, which shall include but not be
52 limited to the services described in section 3 of this act;

53 b. Ensure that the one-call system operates in all areas of the
54 State containing underground facilities. The telephone number of

1 the one-call system for providing any notice required by this act
2 shall be a toll-free number; and

3 c. Notify the public and known contractors of the availability
4 and use of the one-call system to locate underground lines.

5 5. A user shall:

6 a. Give written notice to the one-call system created pursuant
7 to section 3 of this act establishing the general location of each
8 of its lines, which notice shall include:

9 (1) The name of the user;

10 (2) The name of each municipality in which its lines are
11 located; and

12 (3) The user's office address by street, number and political
13 subdivision, and the telephone number to which inquiries may be
14 directed as to the location of such lines;

15 b. Give written notice in the manner described in subsection a.
16 of this section within five working days after any change in the
17 information stated in the user's last previous notice;

18 c. Provide, within ten working days after receipt of a request
19 from a designer pursuant to section 6 of this act, information as
20 to the position and type of the user's lines located at an
21 excavation or demolition site. If there are no lines at the site,
22 the user shall so advise the person making the request. The
23 response shall be in writing when requested by the designer;

24 d. Mark, stake, locate or otherwise provide, within two
25 working days after receipt of a timely request from a contractor
26 or operator pursuant to subsection c. of section 7 of this act, the
27 position of the user's underground lines at the site within 18
28 inches horizontally from the outside wall of such line in a manner
29 so as to enable the contractor, where appropriate, to employ
30 prudent techniques, which may include hand-dug test holes, to
31 determine the precise position of the underground user's lines.
32 This shall be done to the extent such information is available in
33 the user's records or by use of standard location techniques other
34 than excavation. A user, at its option, may elect to excavate
35 around its facilities in fulfillment of this subsection.

36 In marking the approximate position of underground utilities,
37 the user shall follow the color coding described herein:

39 Utility and Type of Product	Specific Group Identifying Color
40 Electric Power Distribution 41 and Transmission	Safety Red
42 Municipal Electric System	Safety Red
43 Gas Distribution and 44 Transmission	High Visibility Safety Yellow
45 Oil Distribution and Trans- 46 mission	High Visibility Safety Yellow
47 Dangerous Materials, Product 48 Lines, Steam Lines	High Visibility Safety Yellow
49 Telephone & Telecommunications	Safety Alert Orange
50 Police and Fire Communications	Safety Alert Orange
51 Cable Television	Safety Alert Orange
52 Water Systems	Safety Precaution Blue
53 Slurry Systems	Safety Precaution Blue
54 Sewer Lines	Safety Green

- 1 If there are no lines at the site, the user shall make a reasonable
2 effort to so advise the person making the request, providing the
3 request is made in the time frame set forth in subsection c. of
4 section 7 of this act; and
- 5 e. Assign a serial number to each request received pursuant to
6 subsections c. or d. of this section, inform the requester of the
7 serial number and maintain a register showing the name, address
8 and telephone number of the requester, the site to which the
9 request pertains, and the assigned serial number.
- 10 6. A designer who is preparing a drawing requiring excavation
11 or demolition work shall:
- 12 a. Notify the one-call system, not less than ten days prior to
13 completion of the final design, of the site of excavation or
14 demolition work for which he is preparing a drawing and obtain the
15 name of any user with a line at the site and the user's designated
16 office address and telephone number;
- 17 b. Obtain from any user identified pursuant to subsection a. of
18 this section information as to the position and type of the user's
19 lines at the site, and show upon the drawing the position and type
20 of each line; and
- 21 c. Make a reasonable effort to prepare the construction
22 drawings to avoid damage to and minimize interference with a
23 user's facilities in the construction area.
- 24 7. A contractor who intends to perform excavation or
25 demolition work within this state shall:
- 26 a. Ascertain the presence of lines at the site, either by
27 inspection of the designer's drawing made pursuant to section 6 of
28 this act or, if no drawing has been made, by obtaining the
29 information in the same manner as described in subsections a. and
30 b. of section 6 of this act;
- 31 b. Secure all necessary municipal permits relating to road
32 occupancy prior to commencing excavation;
- 33 c. Not less than three nor more than 10 working days prior to
34 the day of beginning the work:
- 35 (1) Notify the one-call system of the contractor's intent to
36 perform such work at the site; and
- 37 (2) Request from each user designated on the designer's
38 drawing or on the list of users provided by the one-call system the
39 locational information required to be provided by the user pursuant
40 to subsection d. of section 5 of this act. If a contractor intends to
41 perform work at multiple sites or over a large area, he shall take
42 reasonable steps to work with users so that they may locate their
43 facilities at a time reasonably in advance of the actual start of
44 excavation or demolition work at each site;
- 45 d. Exercise due care and take all reasonable steps necessary to
46 avoid injury to or otherwise interfere with all lines where positions
47 have been provided to the contractor by the users pursuant to
48 subsection d. of section 5. If insufficient information is provided
49 pursuant to subsection d. of section 5, the contractor shall employ
50 prudent techniques, which may include hand-dug test holes to
51 ascertain the precise position of such facilities;
- 52 e. If the user fails to respond to the contractor's timely request
53 within the two working days provided under subsection d. of
54 section 5 or the user notifies the contractor that the line cannot

1 be marked within the time frame and a mutually agreeable date
2 for marking cannot be arrived at, the contractor may proceed with
3 the excavation in accordance with the requirements of this act;

4 f. Inform each operator employed by him at the location of the
5 excavation or demolition work of the information obtained by him
6 pursuant to subsections a., c., and d. of this section, and the
7 contractor and operator shall:

8 (1) Plan the excavation or demolition to avoid damage to or
9 minimize interference with a user's facilities in the construction
10 area. Excavation or demolition work which requires temporary or
11 permanent interruption of a user's service shall be coordinated
12 with the affected user in all cases; and

13 (2) After consulting with a user, provide such support for known
14 user's lines in the construction area, including during backfilling
15 operations, as may be reasonably necessary for the protection of
16 such utilities;

17 g. Report immediately to the user any break or leak on its lines,
18 or any dent, gouge, groove or other damage to such lines or to
19 their coating or cathodic protection, made or discovered in the
20 course of the excavation or demolition work; and

21 h. Alert immediately the occupants of premises as to any
22 emergency that such person may create or discover at or near such
23 premises.

24 8. The provisions of this act shall not apply when an excavation
25 or demolition is undertaken in response to an emergency, provided
26 that the one-call system is notified at the earliest reasonable
27 opportunity and that all reasonable precautions are taken to
28 protect underground lines.

29 9. a. Whenever the board finds that a person has violated any
30 provision of this act, or any rule or regulation adopted pursuant
31 thereto, it shall:

32 (1) Issue an order requiring the person found to be in violation
33 to comply in accordance with subsection b. of this section;

34 (2) Bring a civil action in accordance with subsection c. of this
35 section;

36 (3) Bring an action for a civil penalty in accordance with
37 subsection d. of this section; or

38 (4) Petition the Attorney General to bring a criminal action in
39 accordance with subsection e. of this section.

40 b. Whenever the board finds that a person has violated any
41 provision of this act, or any rule or regulation adopted pursuant
42 thereto, it may issue an order specifying the provision or
43 provisions of this act, or the rule or regulation of which the person
44 is in violation, citing the action which constituted the violation,
45 ordering abatement of the violation, and giving notice to the
46 person of his right to a hearing on the matters contained in the
47 order. The ordered party shall have 20 calendar days from receipt
48 of the order within which to deliver to the board a written request
49 for a hearing. Such order shall be effective upon receipt and any
50 person to whom such order is directed shall comply with the order
51 immediately. A request for hearing shall not automatically stay
52 the effect of the order.

53 c. The board may institute an action or proceeding in the
54 Superior Court for injunctive and other relief for any violation of

1 this act, or of any rule or regulation adopted pursuant to this act
2 and the court may proceed in the action in a summary manner. In
3 any such proceeding the court may grant temporary or
4 interlocutory relief, notwithstanding the provisions of R.S.48:2-24.

5 Such relief may include, singly or in combination:

6 (1) A temporary or permanent injunction; and

7 (2) Assessment of the violator for the costs of any
8 investigation, inspection, or monitoring survey which led to the
9 establishment of the violation, and for the reasonable costs of
10 preparing and litigating the case under this subsection.
11 Assessments under this subsection shall be paid to the State
12 Treasurer.

13 d. (1) Except as provided by paragraph (2) of this subsection, a
14 person who violates any provision of this act or any rule or
15 regulation or order adopted pursuant thereto shall be liable to a
16 penalty of not less than \$500 and not more than \$1,000 per day for
17 each day the violation continues, except that the maximum civil
18 penalty may not exceed \$15,000 for any related series of
19 violations, to be collected in a civil action commenced by the
20 board or by a user of an underground line that has been damaged as
21 a result of the violation.

22 (2) A person who is determined by the board, after notice and
23 opportunity to be heard, to have violated any provision of this act
24 or any rule, regulation, or order adopted pursuant thereto with
25 respect to a natural gas underground facility shall be liable to a
26 civil penalty not to exceed \$25,000 for each violation for each day
27 the violation continues, except that the maximum civil penalty
28 may not exceed \$500,000 for any related series of violations, to be
29 collected in a civil action commenced by the board.

30 (3) Any civil penalty imposed pursuant to paragraphs (1) or (2)
31 of this subsection may be compromised by the board. In
32 determining the amount of the penalty, or the amount agreed upon
33 in compromise, the board shall consider the nature, circumstances,
34 and gravity of the violation; the degree of the violator's
35 culpability; any history of prior violations; the prospective effect
36 of the penalty on the ability of the violator to conduct business;
37 any good faith on the part of the violator in attempting to achieve
38 compliance; the violator's ability to pay the penalty; and other
39 factors the board determines to be appropriate.

40 (4) The amount of the penalty when finally determined, or the
41 amount agreed upon in compromise, may be deducted from any
42 sums owing by the State to the person charged, or may be
43 recovered in a summary proceeding pursuant to "the penalty
44 enforcement law" (N.J.S.2A:58-1 et seq.). The Superior Court and
45 the municipal court shall have jurisdiction to enforce the
46 provisions of "the penalty enforcement law" in connection with
47 this act.

48 e. A person who engages in an excavation without first using
49 the one-call system to determine the location of underground
50 facilities in the area being excavated or heeding appropriate
51 location information or markings established by a user, and causes
52 damage to a line shall, upon conviction, be guilty of a disorderly
53 persons offense.

54 Nothing in the subsection shall limit the jurisdiction of the board

1 with respect to natural gas pipeline safety or limit the jurisdiction
2 of the board or a court of competent jurisdiction with respect to
3 the civil penalty and enforcement provisions of this act.

4 f. Pursuit of any remedy specified in this section shall not
5 preclude the pursuit of any other remedy, including any civil
6 remedy for damage to a user's underground lines or for damage to
7 a person's property, provided by any other law. Administrative and
8 judicial remedies provided in this section may be pursued
9 simultaneously.

10 g. All civil penalties recovered pursuant to this act shall be paid
11 into the General Fund.

12 10. The board may charge a fee to each user participating in
13 the one-call system to pay for the reasonable costs of maintaining
14 the one-call system.

15 11. Sections 2C:17-4 and 2C:17-5 of P.L.1978, c.95 (C.2C:17-4
16 and C.2C:17-5) are repealed.

17 12. This act shall take effect immediately.

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STATEMENT

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22 This bill would require the Board of Regulatory Commissioners
23 to adopt rules and regulations setting up a "one-call system" for
24 the protection of underground lines that are used to carry or
25 provide communications, electricity, gas, oil, petroleum products,
26 sewage, water, or other services.

27 The system would require that the owner or operator of an
28 underground line (a user) would provide to the one-call system
29 general information concerning the user and its lines in the State.
30 A designer or contractor planning an excavation or demolition
31 would call the one-call system to notify it of the excavation and
32 to obtain information about users' lines at the site. The users
33 would be notified of the excavation by the one-call system. A
34 designer would be required to obtain specific information about
35 the position and type of each user's lines from each user and
36 incorporate it into any drawing requiring excavation or demolition
37 work.

38 A contractor would be required to obtain this information from
39 the drawing, or if there is no drawing, to obtain it from the user.
40 A contractor would also be required to request that a user mark
41 the lines in the method specified in the bill, which the user is
42 required to provide. A contractor is further required to exercise
43 due care to avoid interference with the lines that are so marked,
44 and to inform any operator employed by him of the location of the
45 lines. A contractor must also report to the user any break, leak,
46 dent, gouge or other damage to a line made or discovered in the
47 course of excavation.

48 The bill would provide several civil and criminal penalties for
49 failure to comply with its requirements. The board could issue an
50 order citing a violation and ordering abatement; institute an action
51 for injunctive relief; bring an action for a civil penalty; or petition
52 the Attorney General to bring a criminal action.

53 Except in the case of a natural gas underground facility, the
54 civil penalty for a violation would be not less than \$500 and not

1 more than \$1,000 per day for each day the violation continues, up
2 to a maximum of \$15,000 for any related series of violations.
3 Whenever the violations concern a natural gas underground
4 facility, the civil penalty would be not more than \$25,000 for each
5 violation for each day the violation continues, up to a maximum of
6 \$500,000 for any related series of violations. The board is
7 authorized to compromise these civil penalties.

8 A person who engages in an excavation without first using the
9 one-call system to determine the location of underground
10 facilities in the area being excavated or heeding appropriate
11 location information or markings established by a user, and causes
12 damage to a line would, upon conviction, be guilty of a disorderly
13 persons offense.

14 The board is authorized to charge a fee to users to pay for the
15 reasonable costs of the one-call system.

16 The bill would delete the current criminal provisions relating to
17 the protection of pipelines during excavations.

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22 "Underground Utility Line Protection Act"

ASSEMBLY TRANSPORTATION AND
COMMUNICATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 36

STATE OF NEW JERSEY

DATED: JUNE 17, 1994

The Assembly Transportation and Communications Committee favorably reports an Assembly Committee Substitute for Assembly Bill No. 36.

This substitute bill would require the Board of Public Utilities to establish a "One-Call Damage Prevention System" for the protection of underground facilities that are used for the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, traffic control, or for the transportation of a hazardous liquid subject to the "Hazardous Liquid Pipeline Safety Act of 1979" (49 U.S.C. app. § 2001 et seq.).

The One-Call Damage Prevention System would be a single Statewide notification system which would receive notice from excavators of intended excavation or demolition activities and then transmit those notices to operators of underground facilities in the area of proposed excavation or demolition. The board would be required to designate a person to operate the system two years after the effective date of the act. The substitute bill further requires the board to designate the Garden State Underground Plant Location Service (GSUPLS) to operate the system during the two-year interim period. GSUPLS is a non-profit corporation of the State which currently operates the voluntary one-call system in the State.

Under the provisions of the bill, using a toll-free number, an excavator would provide the one-call system with a notice of intent to excavate. The system would transmit this notice to operators of underground facilities in the area of the proposed excavation and would inform the excavator of the operators that were notified. The system would maintain records of notices of intent to excavate for at least seven years. The system operator would maintain the system Statewide and would notify excavators of the availability and use of the system. The system operator would be required to notify the public and known excavators of the act's requirements and the mandatory use of the One-Call Damage Prevention System.

An operator of an underground facility would be required to participate in the one-call system and to pay an equitable share of the cost to maintain the system. An operator would be required to mark the location of his facility within three days after receipt of the information from the system concerning the excavator's notice. Standards for marking the underground facility are set forth in the bill. An operator with no underground facility at the site would be required to make a reasonable effort to so notify the excavator.

The substitute bill provides limited exceptions to the marking requirement for underground non-metallic water pipe or non-metallic water distribution facilities installed prior to the effective date of the act and for public agencies in certain circumstances. In particular, the marking requirement would be deemed met by a public agency when an excavation is conducted on property or a right-of-way owned or controlled by the public agency and the excavation is subject to an excavation permitting process by the public agency if: (1) the underground facilities of the public agency at the proposed excavation site comprise only traffic signals and lights or street and highway lights and their associated electrical feeds, control lines and traffic sensing loops; (2) the public agency excavation permit is conditional upon the excavator notifying the One-Call Damage Prevention System; and (3) the public agency provides the excavator with plans of the position and number of its underground facilities during the permitting process and agrees to cooperate on a continuing basis with the excavator in reasonable efforts to determine the location of such facilities, including notifying an excavator of any changes which may occur in the position or number of underground facilities after the initial issuance of plans to the excavator. The bill further provides that if the public agency elects not to mark or stake its facilities, an excavator who has conformed with the requirements of this bill and all other applicable permit requirements, and uses reasonable care while excavating will not be liable for damage to the public agency's underground facilities.

In addition, the substitute bill authorizes the board to issue waivers from participating in the one-call system to operators when the board deems a waiver appropriate. The bill further provides that a waiver will be deemed appropriate in those instances when an operator demonstrates that damage to his facility would not threaten public safety or that the underground facility could not be harmed by excavation.

An excavator would be required to notify the one-call system of his intent to excavate not less than three and not more than ten business days prior to the beginning of excavation. The notice would include the notifier's name and telephone number, the excavator's name, address and telephone number, the name, address and telephone number of the person for whom the excavation work is to be performed and the specific location, starting date and time, and nature of the excavation or demolition including the depth of the excavation or demolition. The bill would set standards for the excavation designed to protect the underground facilities that have been identified. A public entity would not be permitted to issue any excavation permit that would result in excavation within ten business days without proof that the excavator has contacted the one-call system.

The provisions of the bill would not apply when making an excavation at times of emergency provided that the one-call system is notified at the earliest opportunity and all reasonable precautions are taken to protect underground facilities.

The bill requires excavators to report all damage made or discovered in the course of excavation or demolition. Operators are required to maintain a record of all damage to its underground facilities and to provide a copy of that record to the board on a quarterly basis. The bill provides that any person whose history of damaging underground facilities is deemed excessive may, upon application of the board or an affected operator, be enjoined from engaging in future excavation or demolition work within the State.

The bill would provide several civil and criminal penalties for failure to comply with its requirements. The board could issue an order citing a violation and ordering abatement; institute an action for injunctive relief; bring an action for a civil penalty; or petition the Attorney General to bring a criminal action.

Except in the case of a natural gas or hazardous liquid underground facility, the civil penalty for a violation would be not less than \$1,000 and not more than \$2,500 per day for each day the violation continues, up to a maximum of \$25,000 for any related series of violations. Whenever the violation concerns a natural gas or hazardous liquid underground facility, the civil penalty would be not more than \$25,000 for each violation for each day the violation continues, up to a maximum of \$500,000 for any related series of violations. The board is authorized to compromise these civil penalties.

A person who knowingly and willfully violates the act in the course of an excavation and through that violation causes death, serious bodily harm, or significant property damage, as specified in the bill, would be guilty of a crime of the third degree. A crime of the third degree is punishable by a term of imprisonment not to exceed five years or a fine not to exceed \$7,500 or both.

Engaging in an excavation or demolition without providing the required notice to the one-call system would be prima facie evidence of negligence in any civil or administrative proceeding.

Because the substitute bill creates new civil and criminal penalties that are tied to violations of the act, the substitute bill would repeal current criminal provisions relating to the protection of pipelines during excavations.

SENATE COMMERCE COMMITTEE
STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 36
STATE OF NEW JERSEY

DATED: SEPTEMBER 12, 1994

The Senate Commerce Committee reports favorably Assembly, No. 36 (ACS).

This bill would require the Board of Public Utilities to establish a "One-Call Damage Prevention System" for the protection of underground facilities that are used for the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, traffic control, or for the transportation of a hazardous liquid subject to the "Hazardous Liquid Pipeline Safety Act of 1979" (49 U.S.C. app. § 2001 et seq.).

The One-Call Damage Prevention System would be a single Statewide, 24-hour, seven-day-a-week notification system which would receive notice from excavators of intended excavation or demolition activities and then transmit those notices to operators of underground facilities in the area of proposed excavation or demolition. The board would be required to designate the Garden State Underground Plant Location Service (GSUPLS) to operate the system during the first two years and to designate a person to operate the system thereafter. GSUPLS is a non-profit corporation of the State which currently operates the voluntary one-call system in the State.

Under the provisions of the bill, using a toll-free number, an excavator would provide the one-call system with a notice of intent to excavate. The system would transmit this notice to operators of underground facilities in the area of the proposed excavation and would inform the excavator of the operators that were notified. The system would maintain records of notices of intent to excavate for at least seven years. The system operator would maintain the system Statewide and would notify excavators of the availability and use of the system. The system operator would be required to notify the public and known excavators of the act's requirements and the mandatory use of the One-Call Damage Prevention System.

An operator of an underground facility would be required to participate in the one-call system and to pay an equitable share of the cost to maintain the system. An operator would be required to mark the location of his facility within three days after receipt of the information from the system concerning the excavator's notice. Standards for marking the underground facility are set forth in the bill. An operator with no underground facility at the site would be required to make a reasonable effort to so notify the excavator.

The bill provides limited exceptions to the marking requirement for underground non-metallic water pipe or non-metallic water distribution facilities installed prior to the effective date of the act and for public agencies in certain circumstances. In particular, the marking requirement would be deemed met by a public agency when an excavation is conducted on property or a right-of-way owned or controlled by the public agency and the excavation is subject to an excavation permitting process by the public agency if: (1) the underground facilities of the public agency at the proposed excavation site comprise only traffic signals and lights or street and highway lights and their associated electrical feeds, control lines and traffic sensing loops; (2) the public agency excavation permit is conditional upon the excavator notifying the One-Call Damage Prevention System; and (3) the public agency provides the excavator with plans of the position and number of its underground facilities during the permitting process and agrees to cooperate on a continuing basis with the excavator in reasonable efforts to determine the location of such facilities, including notifying an excavator of any changes which may occur in the position or number of underground facilities after the initial issuance of plans to the excavator. The bill further provides that if the public agency elects not to mark or stake its facilities, an excavator who has conformed with the requirements of this bill and all other applicable permit requirements, and uses reasonable care while excavating will not be liable for damage to the public agency's underground facilities.

In addition, the bill authorizes the board to issue waivers from participating in the one-call system to operators when the board deems a waiver appropriate. The bill further provides that a waiver will be deemed appropriate in those instances when an operator demonstrates that damage to his facility would not threaten public safety or that the underground facility could not be harmed by excavation.

An excavator would be required to notify the one-call system of his intent to excavate not less than three and not more than 10 business days prior to the beginning of excavation. The notice would include the notifier's name and telephone number, the excavator's name, address and telephone number, the name, address and telephone number of the person for whom the excavation work is to be performed and the specific location, starting date and time, and nature of the excavation or demolition including the depth of the excavation or demolition. The bill would set standards for the excavation designed to protect the underground facilities that have been identified. A public entity would not be permitted to issue any excavation permit that would result in excavation within ten business days without proof that the excavator has contacted the one-call system.

The provisions of the bill would not apply when making an excavation at times of emergency provided that the one-call system is notified at the earliest opportunity and all reasonable precautions are taken to protect underground facilities.

The bill requires excavators to report all damage made or discovered in the course of excavation or demolition. Operators are required to maintain a record of all damage to its underground facilities and to provide a copy of that record to the board on a quarterly basis. The bill provides that any person whose history of damaging underground facilities is deemed excessive may, upon application of the board or an affected operator, be enjoined from engaging in future excavation or demolition work within the State.

The bill would provide several civil and criminal penalties for failure to comply with its requirements. The board could issue an order citing a violation and ordering abatement; institute an action for injunctive relief; bring an action for a civil penalty; or petition the Attorney General to bring a criminal action.

Except in the case of a natural gas or hazardous liquid underground facility, the civil penalty for a violation would be not less than \$1,000 and not more than \$2,500 per day for each day the violation continues, up to a maximum of \$25,000 for any related series of violations. Whenever the violation concerns a natural gas or hazardous liquid underground facility, the civil penalty would be not more than \$25,000 for each violation for each day the violation continues, up to a maximum of \$500,000 for any related series of violations. The board is authorized to compromise these civil penalties.

A person who knowingly and willfully violates the act in the course of an excavation and through that violation causes death, serious bodily harm, or significant property damage, as specified in the bill, would be guilty of a crime of the third degree. A crime of the third degree is punishable by a term of imprisonment not to exceed five years or a fine not to exceed \$7,500 or both.

Engaging in an excavation or demolition without providing the required notice to the one-call system would be prima facie evidence of negligence in any civil or administrative proceeding.

Because the bill creates new civil and criminal penalties that are tied to violations of the act, the bill would repeal current criminal provisions relating to the protection of pipelines during excavations.

It is the committee's understanding that, in connection with the maintenance of underground heating oil storage tanks, to a depth beyond 18 inches to the top of the storage tank, excavations which involve hand-digging only, would not be considered within the scope of the bill's provisions.

This bill is identical to Senate, No. 1009 (SCS).

LEGISLATIVE FISCAL ESTIMATE TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 36
STATE OF NEW JERSEY

DATED: July 8, 1994

The Assembly Committee Substitute for Assembly Bill No. 36 of 1994 would require the Board of Public Utilities to establish a "One-Call Damage Prevention System" for the protection of underground facilities that are used for the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, traffic control, or for the transportation of a hazardous liquid subject to the "Hazardous Liquid Pipeline Safety Act of 1979" (49 U.S.C. app. §2001 et seq.).

The One-Call Damage Prevention System would be a single Statewide notification system which would receive notice from excavators of intended excavation or demolition activities and then transmit those notices to operators of underground facilities in the area of proposed excavation or demolition. The board would be required to designate a person to operate the system two years after the effective date of the act. The substitute bill further requires the board to designate the Garden State Underground Plant Location Service (GSUPLS) to operate the system during the two-year interim period. GSUPLS is a non-profit corporation of the State which currently operates the voluntary one-call system in the State.

Under the provisions of the bill, using a toll-free number, an excavator would provide the one-call system with a notice of intent to excavate. The system would transmit this notice to operators of underground facilities in the area of the proposed excavation and would inform the excavator of the operators that were notified. The system would maintain records of notices of intent to excavate for at least seven years. The system operator would maintain the system Statewide and would notify excavators of the availability and use of the system. The system operator would be required to notify the public and known excavators of the act's requirements and the mandatory use of the One-Call Damage Prevention System.

An operator of an underground facility would be required to participate in the one-call system and to pay an equitable share of the cost to maintain the system. An operator would be required to mark the location of his facility within three days after receipt of the information from the system concerning the excavator's notice. Standards for marking the underground facility are set forth in the bill. An operator with no underground facility at the site would be required to make a reasonable effort to so notify the excavator.

The Office of Legislative Services cannot estimate the total increased costs to municipal operators of facilities that would be required under the substitute to participate in the one-call system due to the unavailability of data on 1) the number of such facilities and 2) the size and complexity of such facilities (which would presumably affect the cost assessed under the new mandatory system). Currently, the Garden State Underground Plant Location

Service (GSUPLS) is funded by member companies' contributions based on the size of the company as determined by the square miles of service territory. According to a representative of the GSUPLS, that service's 1993 operating budget was approximately \$800,000, and can be expected to increase somewhat under the terms of the substitute.

The substitute provides that all operators of underground facilities would be required to pay an "equitable share of the cost to maintain the system;" therefore, the increase in costs to municipal and county operators of such facilities not currently participating in GSUPLS will be commensurate with the size of and territorial service provided by these operators.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.



OFFICE OF THE GOVERNOR

NEWS RELEASE

CN-001
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OCT. 19, 1994

Gov. Christie Whitman today signed legislation to establish a "one call system" for contractors to learn the location and use of underground utility lines prior to undertaking excavation work.

The legislation is a result of the devastating natural gas pipeline explosion which occurred in Edison in March.

The legislation signed by the Governor, A-36, was sponsored by Assemblywoman Joanna Gregory-Scocchi and Assemblyman Jeff Warsh, both R-Middlesex. It was co-sponsored by Assemblyman Stephen Mikulak, R-Middlesex.

The Senate version of the bill, S-1009, was sponsored by Sens. Joseph Kyrillos and Jack Sinagra, both R-Middlesex.

The bill requires the development of rules and regulations by the Board of Public Utilities to establish the one-step system of notification.

Using the system, the owner or operator of an underground utility line would be required to provide information on the line to the one-call system. A contractor could then use the system to learn the line's location and use.

"This new system will provide safeguards against accidental damage to underground lines which could result in serious consequences later," Gov. Whitman said. "Contractors will now have access to information which will allow them to exercise greater caution and care as excavation is undertaken."
