

48:2-77

LEGISLATIVE HISTORY CHECKLIST
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(Underground facilities--offenses)

NJSA: 48:2-77

LAWS OF: 1997 CHAPTER: 7

BILL NO: A2247

SPONSOR(S): Stuhltrager

DATE INTRODUCED: July 18, 1996

COMMITTEE: ASSEMBLY: Transportation & Communications

SENATE: ---

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: October 21, 1996

SENATE: December 16, 1996

DATE OF APPROVAL: January 24, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: No

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:
REPORTS: No

HEARINGS: No

KBP:pp

P.L. 1997, CHAPTER 7, *approved January 24, 1997*
Assembly, No. 2247

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 5 of P.L.1994, c.118 (C.48:2-77) is amended to read as
8 follows:

9 5. a. **[Two]** Five years after the effective date of this act, the board
10 shall designate, through an appropriate administrative mechanism, a
11 person to operate the One-Call Damage Prevention System. The
12 board may, as necessary, adopt rules establishing the process by which
13 it shall select a person to operate the system.

14 b. The board shall designate the Garden State Underground Plant
15 Location Service (GSUPLS), a non-profit corporation of this State, to
16 operate the One-Call Damage Prevention System, on an interim basis,
17 for **[two]** five years after the effective date of this act. During this
18 interim period, GSUPLS will operate the system in conformance with
19 the provisions of this act and the board shall have policy oversight
20 over operation of the system.

21 (cf: P.L.1994, c.118, s.5)

22

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

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

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

30 (2) Mark, stake, locate or otherwise provide the position and
31 number of its underground facilities which may be affected by a
32 planned excavation or demolition within three business days after
33 receipt of the information concerning a notice of intent to excavate
34 transmitted pursuant to subsection **[c.]** a. of section 10 of this act. An
35 underground facility shall be marked in accordance with standards

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

Matter underlined thus is new matter.

1 approved by the board, which shall be based upon approved industry
2 standards, and shall be marked at the site within 18 inches horizontally
3 from the outside wall of the facility, in a manner that will enable the
4 excavator to employ prudent techniques, which may include hand-dug
5 test holes, to determine the precise position of the operator's
6 underground facility. An underground facility shall be marked from
7 information available in the operator's records or by use of standard
8 locating techniques other than excavation. In temporarily marking the
9 approximate position of an underground facility, an operator shall
10 utilize the following color coding:

11 Utility and Type Product Identifying color

12 Electric Power Distribution Safety Red

13 and Transmission

14 Municipal Electric Systems Safety Red

15 Gas Distribution and High Visibility Safety

16 Transmission Yellow

17 Oil Distribution and High Visibility Safety

18 Transmission Yellow

19 Dangerous Materials, Product High Visibility Safety

20 Lines, Steam Lines Yellow

21 Telephone and Telecommunications Safety Alert Orange

22 Police and Fire Communications Safety Alert Orange

23 Cable Television Safety Alert Orange

24 Water Systems Safety Precaution Blue

25 Slurry Systems Safety Precaution Blue

26 Sewer Lines Safety Green

27 b. If an operator does not own, operate or control any
28 underground facilities at the site concerning which he received
29 information of a notice of intent to excavate transmitted pursuant to
30 subsection c. of section 4 of this act, the operator shall make a
31 reasonable effort to so advise the person giving the notice of intent to
32 excavate, providing the notice is given within the time frame set forth
33 in subsection a. of section 10 of this act.

34 c. An operator shall maintain a record of all damage to its
35 underground facilities, including all damage reported by an excavator
36 pursuant to subsection e. of section 10 of this act. An operator shall
37 provide an updated copy of this record to the board on a quarterly
38 basis.

39 (cf: P.L.1994, c.118, s.8)

40

41 3. Section 15 of P.L.1994, c.118 (C.48:2-87) is amended to read
42 as follows:

43 15. Any person who knowingly **[and willfully]** engages in an
44 excavation without:

45 a. First using the One-Call Damage Prevention System to
46 determine the location of underground facilities in the area being

1 excavated; or

2 b. Heeding appropriate location information or markings
3 established by any operator; or

4 c. Otherwise complying with the provisions of this act; [and who
5 because of that violation damages] is guilty of a disorderly persons
6 offense. If, because of the violation, damage occurs to an
7 underground facility resulting in death, serious bodily harm, or actual
8 damage to property or loss of service revenue exceeding \$50,000, or
9 [damages] damage occurs to an underground hazardous liquid pipeline
10 facility resulting in the release of more than 50 barrels of product, the
11 person shall, upon conviction, be guilty of a crime of the third degree.

12 Nothing in this section shall limit the jurisdiction of the board with
13 respect to natural gas pipeline safety or limit the jurisdiction of the
14 board or a court of competent jurisdiction with respect to the civil
15 administrative penalty and enforcement provisions of this act.

16 (cf: P.L.1994, c.118, s.15)

17

18 4. This act shall take effect immediately.

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STATEMENT

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23 This bill amends the "Underground Facility Protection Act,"
24 P.L.1994, c.118 (C.48:2-73 et seq.), to provide a five-year interim
25 period in which the Garden State Underground Plant Location Service
26 (GSPULS) will operate the one-call damage prevention system.
27 Current law provides that GSPULS will operate the one-call system
28 for a two-year period. At the end of the interim period, the Board of
29 Public Utilities will designate the operator of the one-call system.

30 The bill also amends section 15 of the act (C.48:2-87), which
31 establishes a crime of the third degree, to include a disorderly persons
32 offense. Proof of serious damage is an element of the third degree
33 crime established in the act. Inclusion of language concerning a
34 disorderly persons offense would permit a jury to return a guilty
35 verdict on that lesser-included offense, if it is not persuaded as to the
36 damage element. The bill further amends the definition of the crime
37 of the third degree to remove language requiring a defendant to have
38 acted "willfully." The term "willfully" is not defined in the Code of
39 Criminal Justice and the term "knowingly," also used in this section,
40 encompasses the state of mind intended by the use of the term
41 "willfully." These amendments were recommended by the Department
42 of Law and Public Safety.

43 Finally, the bill makes a technical correction to section 8 of the act
44 to correct a cross reference.

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46

- 1 Amends "Underground Facility Protection Act" to provide a five-year
- 2 interim period for system operator; establishes a disorderly persons
- 3 offense.

ASSEMBLY TRANSPORTATION AND COMMUNICATIONS
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2247

STATE OF NEW JERSEY

DATED: SEPTEMBER 16, 1996

The Assembly Transportation and Communications Committee reports favorably Assembly Bill No.2247.

This bill amends the "Underground Facility Protection Act," P.L.1994, c.118 (C.48:2-73 et seq.), to provide a five-year interim period in which the Garden State Underground Plant Location Service (GSPULS) will operate the one-call damage prevention system. Current law provides that GSPULS will operate the one-call system for a two-year period. At the end of the interim period, the Board of Public Utilities will designate the operator of the one-call system.

The bill also amends section 15 of the act (C.48:2-87), which establishes that a violation of one-call requirements constitutes a crime of the third degree, to provide that a violation which does not cause death, serious bodily harm or serious monetary damage shall be a disorderly persons offense. Proof of serious damage is an element of the third degree crime established in the act. Inclusion of language concerning a disorderly persons offense would permit a jury to return a guilty verdict on that lesser-included offense, if it is not persuaded as to the damage element. The bill further amends the definition of the crime of the third degree to remove language requiring a defendant to have acted "willfully." The term "willfully" is not defined in the Code of Criminal Justice and the term "knowingly," also used in this section, encompasses the state of mind intended by the use of the term "willfully." These amendments were recommended by the Department of Law and Public Safety.

Finally, the bill makes a technical correction to section 8 of the act to correct a cross reference.