

[First Reprint]

**ASSEMBLY, No. 2416**

**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

INTRODUCED FEBRUARY 4, 2016

**Sponsored by:**

**Assemblyman TIM EUSTACE**

**District 38 (Bergen and Passaic)**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**SYNOPSIS**

Expands One-Call Damage Prevention System to include underground contamination with engineering or institutional controls.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Environment and Solid Waste Committee on May 19, 2016, with amendments.



**(Sponsorship Updated As Of: 9/16/2016)**

1 AN ACT concerning underground facilities, and amending and  
2 supplementing P.L.1994, 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  
8 as follows:

9 3. As used in **[this act]** <sup>1</sup>**[P.L. ;]** P.L.1994, c.118 (C.48:2-73  
10 et seq.):<sup>1</sup>

11 "Board" means the Board of Public Utilities <sup>1</sup>**[;]** .<sup>1</sup>

12 "Business day" means any day other than Saturday, Sunday, or a  
13 nationally or State recognized holiday <sup>1</sup>**[;]** .<sup>1</sup>

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

19 "Emergency" means any condition constituting a clear and  
20 present danger to life, health or property caused by the escape of  
21 any material or substance transported by means of an underground  
22 facility or the interruption of a vital communication or public  
23 service that requires immediate action to prevent or mitigate loss or  
24 potential loss of the communication or public service, or any  
25 condition on or affecting a transportation right-of-way or  
26 transportation facility that creates a risk to the public of potential  
27 injury or property damage <sup>1</sup>**[;]** .<sup>1</sup>

28 "Excavate" or "excavating" or "excavation" or "demolition"  
29 means any operation in which earth, rock, or other material in the  
30 ground is moved, removed, or otherwise displaced by means of any  
31 tools, equipment, or explosive, and includes but is not limited to  
32 drilling, grading, boring, milling to a depth greater than six inches,  
33 trenching, tunneling, scraping, tree and root removal, cable or pipe  
34 plowing, fence post or pile driving, and wrecking, razing, rending,  
35 or removing any structure or mass material, but does not include  
36 routine residential property or right-of-way maintenance or  
37 landscaping activities performed with non-mechanized equipment,  
38 excavation within the flexible or rigid pavement box within the  
39 right-of-way, or the tilling of soil for agricultural purposes to a  
40 depth of 18 inches or less <sup>1</sup>**[;]** .<sup>1</sup>

41 "Excavator" means any person performing excavation or  
42 demolition and may include a contractor having oversight for an  
43 excavation or demolition to be performed by rented, operated  
44 equipment under the contractor's on-site direction provided the

**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:

<sup>1</sup>Assembly AEN committee amendments adopted May 19, 2016.

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

5 "Hand digging" means any excavation involving non-  
6 mechanized tools or equipment, including but not limited to digging  
7 with shovels, picks and manual post-hole diggers **1[;] 1**

8 "Mechanized equipment" means equipment powered by a motor,  
9 engine, or hydraulic, pneumatic or electrical device, including but  
10 not limited to trenchers, bulldozers, power shovels, augers,  
11 backhoes, scrapers, drills, cable and pipe plows, and other  
12 equipment used for plowing-in cable or pipe, but does not include  
13 tools manipulated solely by human power **1[;] 1**

14 "One-Call Damage Prevention System" means the  
15 communication system established pursuant to section 4 of **1[**this  
16 act;**]** P.L.1994, c.118 (C.48:2-76).**1**

17 "Operator" means a person owning or operating, or controlling  
18 the operation of, an underground facility, or a person who has been  
19 issued a permit that regulates an engineering or institutional control  
20 for underground contamination pursuant to section 19 of P.L.2009,  
21 c.60 (C.58:10C-19), but shall not include a homeowner who owns  
22 only residential underground facilities, such as an underground  
23 lawn sprinkler system or an underground structure for a residential  
24 low-voltage lighting system **1[;] 1**

25 "Person" means any individual, firm, joint venture, partnership,  
26 corporation, association, State, county, municipality, public agency  
27 or authority, bi-state or interstate agency or authority, public utility,  
28 cooperation association, or joint stock association, and includes any  
29 trustee, receiver, assignee, or personal representative thereof **1[;] 1**

30 "Public entity" means any federal, State, county or municipal  
31 entity responsible for issuing road opening, building, blasting,  
32 demolition or excavation permits **1[;] 1**

33 "Site" means the specific place where excavation work is  
34 performed or to be performed and shall be identified by street  
35 address referenced to the nearest intersecting street and subdivision  
36 name, if applicable, as well as by lot and block number, if available  
37 and by kilometer or mile marker for railways **1[;] 1**

38 "State department or agency" means any department, public  
39 authority, public agency, public commission, or other political  
40 subdivision of the State, including any county, municipality or  
41 political subdivision thereof **1[;] 1 [and] 1 1**

42 "Underground contamination" means any contamination which is  
43 buried, located below ground, or submerged on a right-of-way,  
44 easement, public street, other public place, or private property and  
45 which is contained or stabilized by an engineering or institutional  
46 control pursuant to a permit issued pursuant to section 19 of  
47 P.L.2009, c.60 (C.58:10C-19) **1[; and] 1 1**

1 "Underground facility" means (1) underground contamination,  
 2 or (2) any public or private personal property which is buried,  
 3 placed below ground, or submerged on a right-of-way, easement,  
 4 public street, other public place or private property and is being  
 5 used or will be used for the conveyance of water, forced sewage,  
 6 telecommunications, cable television, electricity, oil, petroleum  
 7 products, gas, optical signals, or traffic control, or for the  
 8 transportation of a hazardous liquid regulated pursuant to the  
 9 "Hazardous Liquid Pipeline Safety Act of 1979" (49 U.S.C. app.  
 10 s.2001 et seq.), but does not include storm drains or gravity sewers.  
 11 (cf: P.L.2005, c.22, s.1)

12

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

15 8. a. Except as provided in sections 6 and 9 of **[this act]**  
 16 P.L.1994, c.118 (C.48:2-78 and C.48:2-81), the operator of an  
 17 underground facility shall:

18 (1) Participate in and comply with the requirements of the One-  
 19 Call Damage Prevention System established pursuant to section 4 of  
 20 **[this act]** P.L.1994, c.118 (C.48:2-76); and

21 (2) Mark, stake, locate or otherwise provide the position and  
 22 number of its underground facilities which may be affected by a  
 23 planned excavation or demolition within three business days after  
 24 receipt of the information concerning a notice of intent to excavate  
 25 transmitted pursuant to subsection a. of section 10 of **[this act]**  
 26 P.L.1994, c.118 (C.48:2-82). An underground facility shall be  
 27 marked in accordance with standards approved by the board, which  
 28 shall be based upon approved industry standards, and shall be  
 29 marked at the site within 18 inches horizontally from the outside  
 30 wall of the facility, in a manner that will enable the excavator to  
 31 employ prudent techniques, which may include hand-dug test holes,  
 32 to determine the precise position of the operator's underground  
 33 facility. An underground facility shall be marked from information  
 34 available in the operator's records or by use of standard locating  
 35 techniques other than excavation. In temporarily marking the  
 36 approximate position of an underground facility, an operator shall  
 37 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
Oil Distribution and Transmission	High Visibility Safety Yellow
Dangerous Materials, Product Lines, Steam Lines	High Visibility Safety Yellow
Telephone and Telecommunications	Safety Alert Orange
Police and Fire Communications	Safety Alert Orange
Cable Television	Safety Alert Orange
Water Systems	Safety Precaution Blue
Slurry Systems	Safety Precaution Blue
Sewer Lines	Safety Green
<u>Underground contamination</u>	<u>Safety Gray</u>

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1 b. If an operator does not own, operate or control any  
2 underground facilities at the site concerning which he received  
3 information of a notice of intent to excavate transmitted pursuant to  
4 subsection c. of section 4 of **[this act]** P.L.1994, c.118 (C.48:2-76) ,  
5 the operator shall make a reasonable effort to so advise the person  
6 giving the notice of intent to excavate, providing the notice is given  
7 within the time frame set forth in subsection a. of section 10 of  
8 **[this act]** P.L.1994, c.118 (C.48:2-82).

9 c. An operator shall maintain a record of all damage to its  
10 underground facilities, including all damage reported by an  
11 excavator pursuant to subsection e. of section 10 of **[this act]**  
12 P.L.1994, c.118 (C.48:2-82). An operator shall provide an updated  
13 copy of this record to the board on a quarterly basis.

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

35 (cf: P.L.2005, c.22, s.2)

36  
37 3. (New section) a. The Department of Environmental  
38 Protection shall, no later than 30 days after the date of enactment of  
39 P.L. , c. (C. ) (pending before the Legislature as this bill):

40 (1) provide to the Board of Public Utilities and the system  
41 operator of the One-Call Damage Prevention System the name and  
42 contact information of any person who holds a permit issued  
43 pursuant to section 19 of P.L.2009, c.60 (C.58:10C-19), as well as  
44 the location of underground contamination regulated by the permit;  
45 and

46 (2) notify any person who holds a permit issued pursuant to  
47 section 19 of P.L.2009, c.60 (C.58:10C-19) of the requirements of

1 the "Underground Facility Protection Act," P.L.1994, c.118  
2 (C.48:2-73 et seq.).

3 b. The Department of Environmental Protection shall, at the  
4 time of issuance of a permit pursuant to section 19 of P.L.2009,  
5 c.60 (C.58:10C-19):

6 (1) notify the Board of Public Utilities and the system operator  
7 of the One-Call Damage Prevention System of the name and contact  
8 information of any person who is issued a permit pursuant to  
9 section 19 of P.L.2009, c.60 (C.58:10C-19) after the effective date  
10 of this section, as well as the location of underground  
11 contamination regulated by the permit; and

12 (2) notify any person who is issued a permit pursuant to section  
13 19 of P.L.2009, c.60 (C.58:10C-19) after the effective date of this  
14 section, of the requirements of the "Underground Facility Protection  
15 Act," P.L.1994, c.118 (C.48:2-73 et seq.).

16

17 4. This act shall take effect 60 days after the date of enactment.