

SENATE, No. 2324

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED JUNE 6, 2016

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator SAMUEL D. THOMPSON

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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]** P.L.1994, c.118 (C.48:2-73 et seq.):

10 "Board" means the Board of Public Utilities **[;]** .

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

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

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

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

40 "Excavator" means any person performing excavation or
41 demolition and may include a contractor having oversight for an
42 excavation or demolition to be performed by rented, operated
43 equipment under the contractor's on-site direction provided the
44 contractor contacts the One-Call Damage Prevention System in the
45 contractor's name, thereby assuming responsibility and liability, to

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 give notice of the intent to engage in excavation or demolition work
2 in that manner [;] .

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

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

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

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

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

28 "Public entity" means any federal, State, county or municipal
29 entity responsible for issuing road opening, building, blasting,
30 demolition or excavation permits [;] .

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

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

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

46 "Underground facility" means (1) underground contamination,
47 or (2) any public or private personal property which is buried,
48 placed below ground, or submerged on a right-of-way, easement,

1 public street, other public place or private property and is being
 2 used or will be used for the conveyance of water, forced sewage,
 3 telecommunications, cable television, electricity, oil, petroleum
 4 products, gas, optical signals, or traffic control, or for the
 5 transportation of a hazardous liquid regulated pursuant to the
 6 "Hazardous Liquid Pipeline Safety Act of 1979" (49 U.S.C. app.
 7 s.2001 et seq.), but does not include storm drains or gravity sewers.
 8 (cf: P.L.2005, c.22, s.1)

9

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

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

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

18 (2) Mark, stake, locate or otherwise provide the position and
 19 number of its underground facilities which may be affected by a
 20 planned excavation or demolition within three business days after
 21 receipt of the information concerning a notice of intent to excavate
 22 transmitted pursuant to subsection a. of section 10 of **[this act]**
 23 P.L.1994, c.118 (C.48:2-82). An underground facility shall be
 24 marked in accordance with standards approved by the board, which
 25 shall be based upon approved industry standards, and shall be
 26 marked at the site within 18 inches horizontally from the outside
 27 wall of the facility, in a manner that will enable the excavator to
 28 employ prudent techniques, which may include hand-dug test holes,
 29 to determine the precise position of the operator's underground
 30 facility. An underground facility shall be marked from information
 31 available in the operator's records or by use of standard locating
 32 techniques other than excavation. In temporarily marking the
 33 approximate position of an underground facility, an operator shall
 34 utilize the following color coding:

35 Utility and Type Product	Identifying color
36 Electric Power Distribution and Transmission	Safety Red
37 Municipal Electric Systems	Safety Red
38 Gas Distribution and Transmission	High Visibility Safety Yellow
39 Oil Distribution and Transmission	High Visibility Safety Yellow
40 Dangerous Materials, Product Lines, Steam	
41 Lines	High Visibility Safety Yellow
42 Telephone and Telecommunications	Safety Alert Orange
43 Police and Fire Communications	Safety Alert Orange
44 Cable Television	Safety Alert Orange
45 Water Systems	Safety Precaution Blue
46 Slurry Systems	Safety Precaution Blue
47 Sewer Lines	Safety Green
48 <u>Underground contamination</u>	<u>Safety Gray</u>

49 b. If an operator does not own, operate or control any
 50 underground facilities at the site concerning which he received
 51 information of a notice of intent to excavate transmitted pursuant to

1 subsection c. of section 4 of **[this act]** P.L.1994, c.118 (C.48:2-76) ,
2 the operator shall make a reasonable effort to so advise the person
3 giving the notice of intent to excavate, providing the notice is given
4 within the time frame set forth in subsection a. of section 10 of
5 **[this act]** P.L.1994, c.118 (C.48:2-82).

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

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

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

33

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

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

43 (2) notify any person who holds a permit issued pursuant to
44 section 19 of P.L.2009, c.60 (C.58:10C-19) of the requirements of
45 the "Underground Facility Protection Act," P.L.1994, c.118
46 (C.48:2-73 et seq.).

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

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

7 (2) notify any person who is issued a permit pursuant to section
8 19 of P.L.2009, c.60 (C.58:10C-19) after the effective date of this
9 section, of the requirements of the "Underground Facility Protection
10 Act," P.L.1994, c.118 (C.48:2-73 et seq.).

11
12 4. This act shall take effect 60 days after the date of enactment.
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15 STATEMENT
16

17 This bill would amend the "Underground Facility Protection
18 Act" by including underground contamination controlled by
19 engineering or institutional controls in the definition of
20 "underground facility." The purpose of the bill is to prevent an
21 excavator from damaging an engineering control installed as part of
22 a remedial action of a contaminated site, unknowingly spreading
23 contaminated materials, or unknowingly digging in an area where
24 contamination is present.

25 Under the bill, any person who has been issued a permit
26 regulating the operation, maintenance, and inspection of
27 engineering or institutional controls and related systems installed as
28 part of a remedial action of a contaminated site pursuant to section
29 19 of P.L.2009, c.60 (C.58:10C-19), would be required, among
30 other things, to (1) be notified of a proposed excavation, and (2)
31 mark the location of the underground contamination within three
32 days after receipt of the information. The person holding the permit
33 would be an "operator" under the "Underground Facility Protection
34 Act."

35 The bill would require the Department of Environmental
36 Protection (DEP) to notify the Board of Public Utilities and the
37 operator of the One-Call Damage Prevention System of the names
38 and contact information of persons holding permits regulating the
39 operation, maintenance, and inspection of engineering or
40 institutional controls and related systems installed as part of a
41 remedial action of a contaminated site pursuant to section 19 of
42 P.L.2009, c.60 (C.58:10C-19) and the locations of the underground
43 contamination regulated by the permits. The DEP would also be
44 required to notify any person who holds a permit issued pursuant to
45 section 19 of P.L.2009, c.60 (C.58:10C-19) of the requirements of
46 the "Underground Facility Protection Act."