



**House
Legislative
Analysis
Section**

Manufacturer's Bank Building, 12th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

MISS-DIG AMENDMENTS

**House Bill 5085 (Substitute H-1)
First Analysis (10-24-89)**

RECEIVED

NOV 16 1989

**Sponsor: Rep. Alma Stallworth
Committee: Public Utilities**

Mich. State Law Library

THE APPARENT PROBLEM:

Representatives of utilities and of some underground contractors have been meeting under the sponsorship of the House Public Utilities Committee in an effort to resolve their differences over the operation of the Miss-Dig program. That program, regulated by Public Act 53 of 1974 (although begun several years earlier by utilities), requires those who plan to dig, blast, or tunnel near underground utility facilities to notify a special association of utilities (known as "Miss-Dig") of their intentions and requires the appropriate utility or utilities to help in locating the facilities at risk. Obviously, the aim of the program is to prevent damage to underground utility facilities by forcing communication between contractors and utilities. Those associated with the program say it has substantially reduced damage to utility facilities, but there has been conflict between utilities and contractors over the administration of the program. Contractors have complained, for example, that the law governing the program is tilted in favor of the utilities, because while contractors face sanctions for damaging utility facilities, it is not easy for contractors to collect for losses caused by utility negligence.

THE CONTENT OF THE BILL:

Public Act 53 of 1974 requires those who plan to dig, blast, or tunnel near underground utility facilities to provide notice at least two full working days beforehand to the utility, and requires the utility to help locate the facilities. (Utilities have formed an association, as authorized by the act, to help carry out their responsibilities.) House Bill 5085 would amend Public Act 53 in the following ways.

- Beginning October 1, 1990, notice would have to be provided at least three full working days (rather than two) prior to commencing excavation, demolition, discharging explosives, or tunneling. The bill specifies that notice to the Miss-Dig Association would be considered notice to the appropriate public utilities. ("Drilling or boring procedures" would be added to the activities that require advance notice.)
- The act provides that if the precise location of the underground facilities cannot be established with the initial assistance of the utility, the utility must provide further assistance. The bill specifies that this assistance must be provided no later than one working day after notification.
- The act authorizes a public utility whose underground facilities are damaged to file a complaint with the county prosecutor, and requires the prosecutor to prosecute the case if the excavator (other than a public agency) failed to comply with notice or due care requirements. This language would be deleted.
- The act specifies that it does not affect any civil remedies for damage to public utility facilities except as specified. The bill would add that the act does not affect any civil remedies a person may have for actual damage to

property caused by a public utility's negligence in staking its facilities.

- Currently, the act provides that, in a civil action over damage to underground utility facilities, a person would be "deemed prima facie guilty of negligence" if the person failed to provide notice, did not employ hand-digging (to locate facilities), or provide support. (The term "person" includes individuals, partnerships, corporations, and associations, but does not include public agencies.) The bill deletes the language in quotation marks and says the person in such cases would be liable for the resulting damage to the underground facilities but the liability for damage would be reduced in proportion to the negligence of the public utility if the utility did not provide required assistance.
- The maximum penalty that could be imposed on someone who violates an injunctive order (resulting from more than three instances of damage to underground facilities at one location) would be increased from \$1,000 to \$5,000.
- The bill would eliminate a provision imposing a maximum fine of \$1,000 per offense for willful violations of the act and a maximum fine of \$1,000, imprisonment for not more than 90 days, or both, for officers, agents, representatives, servants, or employees of companies or public agencies who are willfully involved in a violation. (The latter is a misdemeanor charge at present.)
- A new penalty would be imposed for willfully removing or destroying stakes and other physical markings used by public utilities to indicate the approximate location of underground facilities. The penalty would be a fine of not more than \$5,000 for each offense, imprisonment for not more than one year, or both. (The act currently says this is a misdemeanor but does not specify penalties.)
- The bill would exempt the state transportation department from having to become a member of the association. (The department is not now a member but new language requiring rather than permitting public utilities form the association was understood to require the transportation department to join, since public agencies owning facilities for supplying water, light, heat, gas, power, telecommunications, sewage disposal, storm drains, or storm water drainage facilities fall under the act's definition of a public utility.)

MCL 460.701 et al.

FISCAL IMPLICATIONS:

There is no information at present.

ARGUMENTS:

For:

The bill represents a compromise agreement between utilities that make up the Miss-Dig Association and some underground contractors regarding the operation of the Miss-Dig program. Among the bill's principal features are: 1) the requirement that notice be given, through Miss-Dig, to utilities at least three days before excavation rather than

H.B. 5085 (10-24-89)

OVER

two days; 2) liability for damages to utility facilities by contractors would be reduced in proportion to the utility's negligence, and contractors would no longer be "prima facie guilty of negligence" as they are now in certain instances; 3) a stipulation that the act does not prevent civil actions for damages caused by a utility's negligence in staking its facilities; 4) an increase in penalties for violating injunctions and for removing or destroying stakes; and 5) the removal of language authorizing criminal prosecutions and criminal penalties against contractors, which reportedly have never been used.

Against:

Some contractors oppose (or at least are uncertain of the effect of) requiring a minimum three-day notice instead of two days. This could increase construction delays for some kinds of projects and be economically harmful to contractors. For example, agricultural tilers testified that they are sometimes approached while working on one farm by a neighboring farmer who needs work done. If the contractor cannot begin that next job as soon as the one at hand is finished (perhaps the next day), but must wait three days for aid or clearance from utilities, that means equipment and workers are idled at relatively great expense. Homebuilders and industrial and commercial contractors expressed similar dissatisfaction with the increase in notification time. It reduces contractor flexibility and increases costs. While this may not matter to large underground contractors whose jobs take a great deal of time and require much planning, it is important to smaller operators and those who do smaller excavating jobs.

Response: Utilities say the increase in notification time is important given the volume of calls to Miss-Dig. The extra day will help utilities better coordinate, plan, and stake. It should be noted that notification is permitted up to 21 days prior to construction and typically, notification is provided a week in advance and further in advance for large projects.

POSITIONS:

A representative from Consumers Power testified in support of the bill on behalf of that company and other Miss-Dig utilities, including Detroit Edison, Michigan Consolidated Gas, Michigan Bell, General Telephone, AT&T, the Telephone Association of Michigan, the Michigan Electric and Gas Association, and others. (10-18-89)

Associated Underground Contractors testified in support of the bill. (10-18-89)

Associated Builders and Contractors has no position on the bill. (10-18-89)

The Michigan Association of Homebuilders opposes the bill with the three-day notification requirement. (10-23-89)

The Michigan Land Improvement Contractors Association opposes amending the two-day notification requirement to three days. (10-20-89)