

Act No. 248
Public Act of 1989
December 28, 1989
Filed by the Secretary of State
December 28, 1989

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Reps. Stallworth, Hoffman, Bartnik, Law, Stopczynski, DeMars and Gubow

ENROLLED HOUSE BILL No. 5085

AN ACT to amend the title and sections 1, 5, 7, 8, 13, 14, 15, and 16 of Act No. 53 of the Public Acts of 1974, entitled as amended "An act to protect the public safety by providing for notices to public utilities by persons or public agencies excavating or discharging explosives near underground facilities or demolishing buildings containing utility facilities; to provide for notices to affected parties when underground facilities are damaged; to provide for the establishment of prima facie presumption of negligence for failure to give the notices; and to prescribe penalties," section 5 as amended by Act No. 228 of the Public Acts of 1982, being sections 460.701, 460.705, 460.707, 460.708, 460.713, 460.714, 460.715, and 460.716 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. The title and sections 1, 5, 7, 8, 13, 14, 15, and 16 of Act No. 53 of the Public Acts of 1974, section 5 as amended by Act No. 228 of the Public Acts of 1982, being sections 460.701, 460.705, 460.707, 460.708, 460.713, 460.714, 460.715, and 460.716 of the Michigan Compiled Laws, are amended to read as follows:

TITLE

An act to protect the public safety by providing for notices to public utilities by persons or public agencies engaged in certain construction related activities near underground facilities or demolishing buildings containing utility facilities; to provide for notices to affected parties when underground facilities are damaged; and to prescribe penalties.

Sec. 1. As used in this act:

- (a) "Association" means the MISS-DIG utilities communications programs.
- (b) "Person" includes an individual, partnership, corporation, or association including a person engaged as a contractor by a public agency but "person" does not mean a public agency.
- (c) "Public agency" means the state, a city, village, township, county, or any other governmental entity or municipality.
- (d) "Public utility" means a natural gas company subject to the jurisdiction of the federal energy regulatory commission or an electric, steam, gas, telephone, power, water, or pipeline company subject to the jurisdiction of the public service commission pursuant to Act No. 3 of the Public Acts of 1939, as amended, being sections 460.1 to 460.8 of the Michigan Compiled Laws, Act No. 9 of the Public Acts of 1929, being sections 483.101 to 483.120 of the Michigan Compiled Laws, Act No. 16 of the Public Acts of 1929, being sections 483.1 to 483.11 of the Michigan Compiled Laws, Act No. 19 of the Public Acts of 1967, as amended, being sections 486.551 to 486.571 of the Michigan Compiled Laws, or Act No. 165 of the Public Acts of 1969, being sections 483.151 to

483.162 of the Michigan Compiled Laws, a person or public agency owning or operating cable television facilities, and a public agency, other than the state transportation department, owning public service facilities for supplying water, light, heat, gas, power, telecommunications, sewage disposal, storm drains, or storm water drainage facilities.

Sec. 5. (1) Except as provided in sections 7 and 9, a person or public agency responsible for excavating or tunneling operations, drilling or boring procedures, or discharge of explosives in a street, highway, other public place, a private easement for a public utility, or near the location of utility facilities on a customer's property, or demolition of a building containing a utility facility, shall give written or telephone notice to the association as required in section 7 of intent to excavate, tunnel, discharge explosives, or demolish at least 2 full working days, excluding Saturdays, Sundays, and holidays, but not more than 21 calendar days, before commencing the excavating, demolishing, discharging of explosives, tunneling operations, or drilling or boring procedures. Beginning on October 1, 1990, the notice required in this subsection shall be given at least 3 full working days, excluding Saturdays, Sundays, and holidays, but not more than 21 calendar days, before commencing the excavating, demolishing, discharging of explosives, tunneling operations, or drilling or boring procedures.

(2) The written or telephone notice of intent shall contain the name, address, and telephone number of the person or public agency filing the notice of intent, the name of the person or public agency performing the excavation, discharging of explosives, tunneling, or demolition, the date and type of excavating, discharging of explosives, demolishing, drilling or boring procedure, or tunneling operation to be conducted, and the location of the excavation, tunneling, discharging of explosives, drilling, boring, or demolition.

Sec. 7. (1) Public utilities having underground facilities shall form and operate an association providing for mutual receipt of notification of construction activities in those areas served by public utilities having underground facilities. Notification to the association formed and operated by the public utilities shall be considered to be notice to each public utility having underground facilities within the proposed areas of excavation, discharging of explosives, tunneling, demolition, drilling, or boring. Notification to the association shall be effected in writing as set forth in section 5 or by telephone call, providing the same information required by section 5, made by the person or public agency responsible for the excavating, demolishing, discharging of explosives, drilling or boring procedures, or tunneling operations. A public utility owned by a public agency shall participate in and receive the services furnished by the association and shall pay their share of the costs and services furnished, but shall not be required to become a member of the association. The association, whose members or participants have underground facilities within a county, shall file with the clerk of the county a description of the geographical area served by the association and list the name and address of every member and participating public utility.

(2) If notification is made by telephone an adequate record shall be maintained by the association to document compliance with the requirements of this act.

Sec. 8. A public utility served with the notice in accordance with sections 5 or 7 shall, not less than 1 working day in advance of proposed construction, unless otherwise agreed between the person or public agency performing the excavation, discharging of explosives, drilling, boring, tunneling, or demolition and the public utility, inform the person or public agency of the approximate location of the underground facilities owned or operated by the public utility in the proposed area of excavation, discharging of explosives, drilling, boring, tunneling, or demolition, in a manner as to enable the person or public agency to employ hand dug test holes or other similar means of establishing the precise location of the underground facilities using reasonable care to establish the precise location of the underground facilities in advance of construction. For the purposes of this act, the approximate location of underground facilities is defined as a strip of land at least 36 inches wide but not wider than the width of the facility plus 18 inches on either side of the facility. If the approximate location of an underground facility is marked with stakes or other physical means the public utility shall follow the color coding prescribed herein.

Utility and Type of Product	Specific Group 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	High visibility safety yellow
Telephone and telegraph systems	Safety alert orange
Cable television	Safety brown
Police and fire communications	Safety alert orange
Water systems	Safety precaution blue
Sewer systems	Safety green
Storm drains	Safety green

If the precise location of the underground facilities cannot be established, the person or public agency shall then notify the public utility which shall no later than 1 working day after the notice provide such further assistance as may be needed to determine the precise location of the underground facilities in advance of the proposed excavating, tunneling, discharging of explosives, drilling or boring procedures, or demolition operations. Where demolition of a building is proposed and the public utility is notified, it shall be given reasonable time to remove or protect its facilities before demolition of the building.

Sec. 13. This act does not affect any civil remedies for damage to public utility facilities and does not affect any civil remedies a person may have for actual damage to the person's property caused by a public utility's negligence in staking its facilities, except as otherwise specifically provided for in this act.

Sec. 14. In a civil action in a court of this state, when it is shown by competent evidence that damage to the underground facilities of a public utility resulted from excavating, tunneling, drilling or boring procedures, or demolishing operations, or the discharge of explosives, as described in section 3, and that the person responsible for giving the notice of intent to excavate, tunnel, demolish, or discharge explosives failed to give the notice, or the person did not employ hand-digging or failed to provide support, the person shall be liable for the resulting damage to the underground facilities, but the liability for damages shall be reduced in proportion to the negligence of the public utility if it fails to comply with section 8.

Sec. 15. A person who damages the facilities of a public utility on more than 3 occasions on any 1 construction contract location because of his or her failure to comply with any of the provisions of this act may be enjoined from engaging in any further excavating, demolition, discharging of explosives, drilling or boring procedures, or tunneling work within the state, except under such terms and conditions as the court may prescribe to insure the safety of the public. A court may prescribe such penalties as it considers necessary or appropriate for violation of the injunctive order up to a maximum of \$5,000.00 per violation.

Sec. 16. A person who willfully removes or otherwise destroys the stakes or other physical markings used by a public utility to mark the approximate location of underground facilities is guilty of a misdemeanor, and shall be fined not more than \$5,000.00, for each offense or imprisoned for not more than 1 year, or both.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.