

HOUSE BILL No. 5085

September 26, 1989, Introduced by Reps. Stallworth, Hoffman, Bartnik, Law, Stopczynski, DeMars and Gubow and referred to the Committee on Public Utilities.

A bill 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:

1 Section 1. The title and sections 1, 5, 7, 8, 13, 14, 15,
2 and 16 of Act No. 53 of the Public Acts of 1974, section 5 as
3 amended by Act No. 228 of the Public Acts of 1982, being sections

1 460.701, 460.705, 460.707, 460.708, 460.713, 460.714, 460.715,
2 and 460.716 of the Michigan Compiled Laws, are amended to read as
3 follows:

4 TITLE

5 An act to protect the public safety by providing for notices
6 to public utilities by persons or public agencies excavating or
7 discharging explosives near underground facilities or demolishing
8 buildings containing utility facilities; to provide for notices
9 to affected parties when underground facilities are damaged; ~~to~~
10 ~~provide for the establishment of prima facie presumption of neg-~~
11 ~~ligence for failure to give the notices;~~ and to prescribe
12 penalties.

13 Sec. 1. As used in this act:

14 (A) "ASSOCIATION" MEANS THE MISS-DIG UTILITIES COMMUNICA-
15 TIONS PROGRAMS.

16 (B) ~~(a)~~ "Person" includes an individual, partnership, cor-
17 poration, or association including a person engaged as a contrac-
18 tor by a public agency but "person" does not mean a public
19 agency.

20 (C) ~~(b)~~ "Public agency" means the state, a city, village,
21 township, county, or any other governmental entity OR
22 MUNICIPALITY.

23 (D) ~~(c)~~ "Public utility" means a natural gas company
24 subject to the jurisdiction of the federal ~~power~~ ENERGY
25 REGULATORY commission or an electric, steam, gas, telephone,
26 power, water, or pipeline company subject to the jurisdiction of
27 the public service commission pursuant to Act No. 3 of the Public

1 Acts of 1939, as amended, being sections 460.1 to 460.8 of the
2 Michigan Compiled Laws, Act No. 9 of the Public Acts of 1929,
3 being sections 483.101 to 483.120 of the Michigan Compiled Laws,
4 Act No. 16 of the Public Acts of 1929, being sections 483.1 to
5 483.11 of the Michigan Compiled Laws, Act No. 19 of the Public
6 Acts of 1967, as amended, being sections 486.551 to 486.571 of
7 the Michigan Compiled Laws, or Act No. 165 of the Public Acts of
8 1969, being sections 483.151 to 483.162 of the Michigan Compiled
9 Laws, a person ~~, city, village, county, the state, or other gov-~~
10 ~~ernmental entity~~ OR PUBLIC AGENCY owning or operating cable
11 television facilities, and a ~~city, village, county, the state,~~
12 ~~or other governmental entity~~ PUBLIC AGENCY owning public service
13 facilities for supplying water, light, heat, gas, power,
14 TELECOMMUNICATIONS, sewage disposal, storm drains, or storm water
15 drainage facilities.

16 Sec. 5. (1) Except as provided in sections 7 and 9, a
17 person or public agency responsible for excavating or tunneling
18 operations, DRILLING OR BORING PROCEDURES, or discharge of explo-
19 sives in a street, highway, other public place, a private ease-
20 ment for a public utility, or near the location of utility facil-
21 ities on a customer's property, or demolition of a building con-
22 taining a utility facility, shall serve a written notice WITH THE
23 ASSOCIATION AS REQUIRED IN SECTION 7 of intent to excavate,
24 tunnel, discharge explosives, or demolish at least 2 full working
25 days, excluding Saturdays, Sundays, and holidays, but not more
26 than 21 calendar days, before commencing the excavating,
27 demolishing, discharging of explosives, or tunneling operations

1 on the public utility having underground facilities located in
2 the proposed area of excavation, discharging of explosives, tun-
3 neling, or demolition. BEGINNING ON OCTOBER 1, 1990, THE WRITTEN
4 NOTICE REQUIRED IN THIS SUBSECTION SHALL BE SERVED AT LEAST 3
5 FULL WORKING DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND HOLIDAYS,
6 BUT NOT MORE THAN 21 CALENDAR DAYS, BEFORE COMMENCING THE EXCA-
7 VATING, DEMOLISHING, DISCHARGING OF EXPLOSIVES, OR TUNNELING
8 OPERATIONS ON THE PUBLIC UTILITY HAVING UNDERGROUND FACILITIES
9 LOCATED IN THE PROPOSED AREA OF EXCAVATION, DISCHARGING OF EXPLO-
10 SIVES, TUNNELING, OR DEMOLITION.

11 (2) The written notice of intent shall contain the name,
12 address, and telephone number of the person or public agency
13 filing the notice of intent, the name of the person or public
14 agency performing the excavation, discharging of explosives, tun-
15 neling, or demolition, the date and type of excavating, discharg-
16 ing of explosives, demolishing, or tunneling operation to be con-
17 ducted, and the location of the excavation, tunneling, discharg-
18 ing of explosives, or demolition.

19 Sec. 7. (1) ~~Two or more public~~ PUBLIC utilities ~~may~~
20 HAVING UNDERGROUND FACILITIES SHALL form and operate an associa-
21 tion providing for mutual receipt of notification of construction
22 activities in ~~a specified area. In areas where such an associa-~~
23 ~~tion is formed, notification~~ THOSE AREAS SERVED BY PUBLIC UTILI-
24 TIES HAVING UNDERGROUND FACILITIES. NOTIFICATION TO THE ASSOCIA-
25 TION FORMED AND OPERATED BY THE PUBLIC UTILITIES SHALL BE CONSID-
26 ERED TO BE NOTICE TO EACH PUBLIC UTILITY HAVING UNDERGROUND
27 FACILITIES WITHIN THE PROPOSED AREAS OF EXCAVATION, DISCHARGING

1 OF EXPLOSIVES, TUNNELING, DEMOLITION, DRILLING, OR BORING.

2 Notification to the association shall be effected in writing as
3 set forth in section 5 or by telephone call, providing the same
4 information required by section 5, made by the person or public
5 agency responsible for the excavating, demolishing, discharging
6 of explosives, or tunneling operations. ~~In areas where such an~~
7 ~~association is formed, the public utilities having underground~~
8 ~~facilities in the area shall become a member of the association~~
9 ~~or shall participate in and receive the services furnished by the~~
10 ~~association.~~ A public utility owned by a public agency shall
11 participate in and receive the services furnished by the associa-
12 tion and shall pay their share of the costs and services fur-
13 nished, but shall not be required to become a member of the
14 association. The association, whose members or participants have
15 underground facilities within a county, shall file with the clerk
16 of the county a description of the geographical area served by
17 the association and list the name and address of every member and
18 participating public utility.

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

22 Sec. 8. A public utility served with the notice in accord-
23 ance with sections 5 or 7 shall, not less than 1 working day in
24 advance of proposed construction, unless otherwise agreed between
25 the person or public agency performing the excavation, discharg-
26 ing of explosives, tunneling, or demolition and the public
27 utility, inform the person or public agency of the approximate

1 location of the underground facilities owned or operated by the
 2 public utility in the proposed area of excavation, discharging of
 3 explosives, tunneling, or demolition, in a manner as to enable
 4 the person or public agency to employ hand dug test holes or
 5 other similar means of establishing the precise location of the
 6 underground facilities using reasonable care to establish the
 7 precise location of the underground facilities in advance of
 8 construction. For the purposes of this act, the approximate
 9 location of underground facilities is defined as a strip of land
 10 at least ~~3 feet~~ 36 INCHES wide but not wider than the width of
 11 the facility plus ~~1 1/2 feet~~ 18 INCHES on either side of the
 12 facility. If the approximate location of an underground facility
 13 is marked with stakes or other physical means the public utility
 14 shall follow the color coding prescribed herein.

15 Utility and Type of Product	Specific Group Identifying Color
16 Electric power distribution and	
17 transmission	Safety red
18 Municipal electric systems	Safety red
19 Gas distribution and	
20 transmission	High visibility safety yellow
21 Oil distribution and	
22 transmission	High visibility safety yellow
23 Dangerous materials, product	
24 lines	High visibility safety yellow
25 Telephone and telegraph systems	Safety alert orange

1 Cable television	Safety alert orange BROWN
2 Police and fire communications	Safety alert orange
3 Water systems	Safety precaution blue
4 Sewer systems	Safety brown GREEN
5 Storm drains	Safety green

6 If the precise location of the underground facilities cannot be
7 established, the person or public agency shall then notify the
8 public utility which shall NO LATER THAN 1 WORKING DAY AFTER THE
9 NOTICE provide such further assistance as may be needed to deter-
10 mine the precise location of the underground facilities in
11 advance of the proposed excavating, tunneling, discharging of
12 explosives, or demolition operations. Where demolition of a
13 building is proposed and the public utility is notified, it shall
14 be given reasonable time to remove or protect its facilities
15 before demolition of the building.

16 Sec. 13. ~~A public utility whose underground facilities are~~
17 ~~damaged may file a complaint against the person responsible~~
18 ~~therefor with the prosecuting attorney of the county wherein the~~
19 ~~damage occurred. If the person failed to comply with the notice~~
20 ~~or due care requirements of this act, the prosecuting attorney~~
21 ~~shall prosecute the case in a court of competent jurisdiction.~~
22 This act does not affect any civil remedies for damage to public
23 utility facilities, AND DOES NOT AFFECT ANY CIVIL REMEDIES A
24 PERSON MAY HAVE FOR ACTUAL DAMAGE TO THE PERSON'S PROPERTY CAUSED
25 BY A PUBLIC UTILITY'S NEGLIGENCE IN STAKING ITS FACILITIES except
26 as otherwise specifically provided for in this act.

1 Sec. 14. In a civil action in a court of this state, when
2 it is shown by competent evidence that damage to the underground
3 facilities of a public utility resulted from excavating, tunnel-
4 ing, or demolishing operations, or the discharge of explosives,
5 as described in section 3, and that the person responsible for
6 giving the notice of intent to excavate, tunnel, demolish, or
7 discharge explosives failed to give the notice, or the person did
8 not employ hand-digging or failed to provide support, the person
9 ~~is deemed prima facie guilty of negligence~~ SHALL BE LIABLE FOR
10 THE RESULTING DAMAGE TO THE UNDERGROUND FACILITIES, BUT THE
11 LIABILITY FOR DAMAGES SHALL BE REDUCED IN PROPORTION TO THE NEG-
12 LIGENCE OF THE PUBLIC UTILITY IF IT FAILS TO COMPLY WITH SECTION
13 8.

14 Sec. 15. A person who damages the facilities of a public
15 utility on more than 3 occasions on any 1 construction contract
16 location because of his OR HER failure to comply with any of the
17 provisions of this act may be enjoined from engaging in any fur-
18 ther excavating, demolition, discharging of explosives, or tun-
19 neling work within the state, except under such terms and condi-
20 tions as the court may prescribe to insure the safety of the
21 public. A court may prescribe such penalties as it ~~deems~~
22 CONSIDERS necessary or appropriate for violation of the injunc-
23 tive order up to a maximum of ~~\$1,000.00~~ \$5,000.00 per
24 violation.

25 Sec. 16. ~~A person, who wilfully violates any provision of~~
26 ~~this act shall be fined not more than \$1,000.00 for each~~
27 ~~offense. An officer, agent, representative, servant, or employee~~

~~1 of any person or public agency who wilfully causes, aids, or~~
~~2 assists or participates in any wilful violation of this act is~~
~~3 guilty of a misdemeanor, and shall be fined not more than~~
~~4 \$1,000.00, for each offense or imprisoned for not more than 90~~
~~5 days, or both. These penalties are in addition to any civil~~
~~6 liability.~~ A person who ~~wilfully~~ WILLFULLY removes or other-
wise 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.