

HOUSE No. 00823

The Commonwealth of Massachusetts

PRESENTED BY:

Antonio F. D. Cabral

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to improving public safety and reducing construction costs..

PETITION OF:

NAME:

Antonio F. D. Cabral

DISTRICT/ADDRESS:

13th Bristol

HOUSE No. 00823

By Mr. Antonio F. D. Cabral of New Bedford, petition (accompanied by bill, House, No. 00823) of Antonio F. D. Cabral relative to the public safety in construction projects . Joint Committee on State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 2969 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to improving public safety and reducing construction costs..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 40 of Chapter 82 of the General Laws, as appearing in the 2008 Official Edition, is
2 hereby amended, in lines 15 to 17, by striking the definition of “emergency” and replacing it
3 with the following definition:-

4

5 “ ‘Emergency’ shall mean a condition in which the safety of the public is in clear and imminent
6 danger, such as a threat to life or health or where immediate correction is required to maintain or
7 restore existing public utility service. Emergency shall not include conditions, as determined by
8 the Department, which constitute operational convenience to a company.”

9 SECTION 2. Section 40 of Chapter 82 of the General Laws, as appearing in the 2008 Official
10 Edition, is hereby amended, at the end of line 27, by inserting the following new definition:-

11

12 “ ‘Non-Mechanical Means’ shall mean excavation using any device or tool manipulated by
13 human power; including air vacuum, air blowing or similar methods of excavation designed to
14 minimize direct contact with utilities.”

15 SECTION 3. Section 40B of the same chapter of the General Laws is amended by inserting at
16 the end thereof, the following sentences:-

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18 “All markings shall indicate, where practicable, the width of the underground facility, its last
19 known depth, and the material composition of the underground facility, as well as any change in
20 direction and any terminus points of the facility; including, but not limited to capped locations
21 and multiple utility lines or ducts.

22 Any company that fails to mark, locate, or otherwise provide the position and number of its
23 underground facilities which may be affected by a planned excavation or demolition shall be
24 liable for any costs, labor, parts, equipment and personnel downtime, incurred by an excavator
25 damaging a facility owned, operated or controlled by the company.

26 A qualified representative of a company shall be required to visit the excavation site to clarify
27 the location of an underground facility upon reasonable request by the project owner, excavator
28 or their respective agents. Attendance or lack of attendance at such meeting shall be an

29 affirmative defense for consideration in any Department proceeding to determine responsibility
30 in the event of damage to an underground facility.”

31 SECTION 4. Section 40C of the same chapter of the General Laws is amended by inserting at
32 the end thereof, the following sentence:-

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34 “In response to notice of utility damage, a company must provide reasonable notice for the
35 excavator to observe repair work and, within thirty days, provide a work order with an itemized
36 and detailed cost accounting including, but not limited to, reasonable rates of labor, time and
37 materials, to the excavator relative to the cost of reestablishing service as it existed at the time of
38 damage to the underground facility.”

39 SECTION 5. Chapter 82 of the General Laws, as appearing in the 2008 Official Edition, is
40 hereby amended by inserting the following new section at the end thereof:-

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42 “Any monetary dispute between a company, excavator or project owner for damages caused
43 during excavation conducted in accordance with sections 40A to 40E, inclusive, where the claim
44 is less than \$25,000, shall be subject to an alternative dispute resolution in accordance with the
45 American Arbitration Association. Nothing in this act shall be construed to discourage parties
46 from pursuing alternative dispute resolution processes for an amount greater than \$25,000. The
47 parties may by mutual agreement designate another alternative dispute resolution association for
48 all matters.”