

**HOUSE . . . . . No.**

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**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

# The Commonwealth of Massachusetts

\_\_\_\_\_  
In the Year Two Thousand and Nine  
\_\_\_\_\_

## 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 2006 Official Edition, is hereby  
2 amended, in lines 15 to 17, by striking the definition of “emergency” and replacing it with the following  
3 definition:-

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

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10          SECTION 2. Section 40 of Chapter 82 of the General Laws, as appearing in the 2006 Official Edition, is  
11 hereby amended, at the end of line 27, by inserting the following new definition:-

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

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

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

24

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

29

30 A qualified representative of a company shall be required to visit the excavation site to clarify the  
31 location of an underground facility upon reasonable request by the project owner, excavator or their  
32 respective agents. Attendance or lack of attendance at such meeting shall be an affirmative defense for  
33 consideration in any Department proceeding to determine responsibility in the event of damage to an  
34 underground facility.”

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

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

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45 SECTION 5. Chapter 82 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended  
46 by inserting the following new section at the end thereof:-

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48 “Any monetary dispute between a company, excavator or project owner for damages caused during  
49 excavation conducted in accordance with sections 40A to 40E, inclusive, where the claim is less than

50 \$25,000, shall be subject to an alternative dispute resolution in accordance with the American  
51 Arbitration Association. Nothing in this act shall be construed to discourage parties from pursuing  
52 alternative dispute resolution processes for an amount greater than \$25,000. The parties may by mutual  
53 agreement designate another alternative dispute resolution association for all matters.”

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