

# House, No. 1542

Presented by: [Representative Christine E. Canavan](#)

Petition of Christine E. Canavan, Marc R. Pacheco, William C. Galvin, Robert S. Creedon, Jr., Michael J. Coppola and David L. Flynn relative to excavation and trench safety.

01/01/03 H Referred to the committee on [Public Safety](#)

01/01/03 S Senate concurred

Public Hearing date Mar 25 am at 10:30 in Room B-1

06/18/03 H Committee recommended ought NOT to pass and referred to the committee on HOUSE [House Steering, Policy and Scheduling](#)

06/18/03 H Committee reported that the matter be placed in the Orders of the Day for the question, in each instance, being on acceptance -HJ 494

06/20/03 H Report accepted -HJ 505

## HOUSE, No. 1542

By Mrs. Canavan of Brockton, petition of Christine E. Canavan, Marc R. Pacheco, William C. Galvin, Robert S. Creedon, Jr., Michael J. Coppola and David L. Flynn relative to excavation and trench safety. Public Safety.

### The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

#### AN ACT RELATIVE TO EXCAVATION AND TRENCH SAFETY.

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

SECTION 1. Section 40D of Chapter 82 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking the section in its entirety and inserting in place thereof the following:—

Section 40D. Nothing contained herein shall be construed to affect or impair local ordinances or by-laws requiring permits to be obtained before excavation in a public way or on private property; provided, however, that notwithstanding any general or special law to the contrary, nor any contrary provision of local ordinances or by-laws, to the extent that any permit issued under the provisions of the state building code or state fire code requires excavation by an excavator on a public way or on private property, such permit shall not be valid unless and until such excavator notifies the system as required pursuant to sections 40 and 40A of chapter 82, prior to the commencement of any such excavation and has complied with the permitting requirements set forth in chapter 82A.

SECTION 2. The General Laws, as appearing in the 2000 Official Edition, are hereby amended by inserting after Chapter 82 the following new chapter:—

#### Chapter 82A.

Section 1. An excavator shall not leave any open trench unattended without first making every reasonable effort to eliminate any recognized safety hazard that may exist as a result of leaving said open trench unattended. The commissioner of the department of public safety, in conjunction with the director of the department of labor and workforce development or his designee, shall draft, pursuant to chapter 30A, rules and regulations that shall govern all construction-related excavations and trench safety. Said rules and regulations shall include, but not be limited to, a description of recognized safety hazards that may exist as a result of leaving open trenches or excavations unattended, a description of the procedures required or recommended by said department in order to make every reasonable effort to eliminate said safety hazards which may include covering, barricading or otherwise protecting open trenches from accidental entry, and a penalty structure for each violation of the proposed rules and regulations to be imposed by the department empowered with ensuring compliance with said rules and regulations; provided, however, that said penalty structure shall include the imposition of a fine for each violation of the regulations

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promulgated pursuant to this section. Any such fines collected by the department of public safety or the department of labor and workforce development shall be available for expenditure, without further appropriation, by said departments in an amount not to exceed \$100,000 during each fiscal year for the sole purpose of providing construction safety training for licensed operators of hoisting equipment, police department officials, fire department officials and building officials.

Said departments may also charge a reasonable fee to help defray the costs associated with said training. Any monies collected from the imposition of said fines in excess of \$100,000 shall be transmitted monthly by said departments to the state treasurer who shall then deposit said excess funds into the General Fund. The department of public safety, in conjunction with the department of labor and workforce development, shall file a report detailing the amount of fines imposed, collected and expended pursuant to this section to the house and senate committees on ways and means and to the joint committee on public safety not later than August 15 of each calendar year. Said rules and regulations shall not become effective until the department of public safety has received a formal determination from the United States Secretary of Labor that the proposed rules or regulations do not seek to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a federal standard has already been promulgated under 29 U.S.C. 667 or until said rules and regulations are approved by the United States Secretary of Labor as a state plan for the development of such standards and their enforcement pursuant to 29 U.S.C. 667(c).

Section 2. Each city, town or public agency shall designate one board or officer to issue permits for the excavation of trenches on privately owned land and for the excavation of a public way of a city or town. Said permits, when issued, shall include a summary of sections 40-40D of chapter 82 and a summary of any regulations promulgated by the department of public safety relative to chapter 146. No person shall, except in an emergency, contract for the making of or make a trench, in any public way, public property, or privately owned land until and unless a permit is obtained from the appropriately designated person within the city, town, or public agency that is authorized to issue said permits. Said person shall notify the local permitting authority of the location of said trench which information shall accurately define the location of the trench. Any person making application for a trench excavation permit must produce a certificate of insurance with general liability coverage of \$100,000 per person and \$300,000 per claim or provide evidence of self-insurance in equal amounts. The local permitting authority may charge a reasonable fee to cover the administrative costs of the trench excavation permitting process incurred by the municipality in connection with the review and processing of such permits; provided, however, that a gas company, as defined in section 1 of chapter 164, or any corporation that is subject to the provisions of chapter 165, 166 or 166A which has already paid a fee in order to obtain a permit to excavate a public way of a city or town shall not be responsible for paying an additional fee for the same excavation.

Section 3. Permits to excavate a trench issued pursuant to this chapter may be in any form authorized by the local permitting authority, but shall include the following statements:—

(a) No trench may be excavated unless the requirements of sections 40 through 40D of chapter 82, and any accompanying regulations, have been met and this permit is invalid unless and until said requirements have been complied with by the excavator applying for the permit including, but not limited to, the establishment of a valid excavation number with the underground plant damage prevention system as said system is defined in section 76D of chapter 164;

(b) Trenches may pose a significant health and safety hazard. Pursuant to Section 1 of Chapter 82 of the General Laws, an excavator shall not leave any open trench unattended without first making every reasonable effort to eliminate any recognized safety hazard that may exist as a result of leaving said open trench unattended. Excavators should consult regulations promulgated by the department of public safety in order to familiarize themselves with the “recognized safety hazards” associated with excavations and open trenches and the procedures required or recommended by said department in order to “make every reasonable effort to eliminate” said safety hazards which may include covering, barricading or otherwise protecting open trenches from accidental entry.

(c) Persons engaging in any trenching operation shall familiarize themselves with the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CFR 1926.650 et. seq., entitled Subpart P “Excavations”.

(d) Excavators engaging in any trenching operation who utilize hoisting or other mechanical equipment subject to chapter 146 shall only employ individuals licensed to operate said equipment by the department of public safety pursuant to said chapter and this permit must be presented to said licensed operator before any excavation is commenced;

(e) By applying for, accepting and signing this permit, the applicant hereby attests to the following: (1) that he has read and understands the regulations promulgated by the department of public safety with regard to construction-

related excavations and trench safety; (2) that he has read and understands the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CFR 1926.650 et. seq., entitled Subpart P "Excavations"; and (3) that he is aware of and has, with regard to the proposed trench excavation on private property or proposed excavation of a city or town public way that forms the basis of his permit application, complied with the requirements of sections 40-40D of chapter 82 and with the requirements set forth in chapter 82A.

(f) This permit shall be posted in plain view on the site of the trench.

Section 4. For purposes of this chapter, a "trench" shall be defined as an excavation which is narrow in relation to its length, made below the surface ground in excess of three feet below grade and the depth of which is, in general, greater than the width, but the width of the trench, as measured at the bottom, is no greater than 15 feet.

Section 5. For purposes of this chapter, the terms "excavator", "excavation" and "emergency" shall be defined as said terms are defined in section 40 of chapter 82.

Section 6. The requirements set forth in this chapter are in addition to the requirements set forth in sections 40-40D of chapter 82 and not in lieu thereof.

SECTION 3. Within 90 days of the passage of this act, the commissioner of the department of public safety, in conjunction with the director of the department of labor and workforce development or his designee, shall draft, pursuant to chapter 30A, proposed rules and regulations for construction-related excavations and trench safety. Said rules and regulations shall include, but not be limited to, a description of recognized safety hazards that may exist as a result of leaving open trenches or excavations unattended, a description of the procedures required or recommended by said department in order to make every reasonable effort to eliminate said safety hazards which may include covering, barricading or otherwise protecting open trenches from accidental entry, and a penalty structure for each violation of the proposed rules and regulations to be imposed by the department empowered with ensuring compliance with said rules and regulations. Upon completion of the drafting of said proposed rules and regulations, said commissioner and director shall, subject to the approval of the governor, petition the United States Secretary of Labor for a formal determination as to whether any of the proposed rules or regulations seek to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a federal standard has already been promulgated under 29 U.S.C. 667. If the United States Secretary of Labor determines that the proposed rules or regulations seek to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a federal standard has already been promulgated, said director and said commissioner shall submit, pursuant to 29 U.S.C. 667 (b) and subject to the approval of the governor, the proposed rules and regulations as a state plan for the development of such standards and their enforcement and said proposed rules and regulations shall not take effect unless and until they are so approved by the United States Secretary of Labor pursuant to 29 U.S.C. 667(c).