HOUSE DOCKET, NO. 517 FILED ON: 1/18/2011

HOUSE . . . . . No. 823

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:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Antonio F. D. Cabral	*13th Bristol*

HOUSE DOCKET, NO. 517 FILED ON: 1/18/2011

HOUSE . . . . . No. 823

By [SPONSOR PREFIX] [SPONSOR NAME] of [SPONSOR CITY], a petition (accompanied by bill, House, No. 823) of [PETITIONERS LIST] relative to the public safety in construction projects . State Administration and Regulatory Oversight.

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

The Commonwealth of Massachusetts

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:

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

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

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

" 'Non-Mechanical Means' shall mean excavation using any device or tool manipulated by human power; including air vacuum, air blowing or similar methods of excavation designed to minimize direct contact with utilities."

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

18

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

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

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

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

34

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

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

42

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