

1973 Assembly Bill 1079

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**CHAPTER 277, Laws of 1973**

AN ACT to repeal 66.047 (2); to renumber 66.047 (1); and to create 182.0175 of the statutes, relating to the prevention of negligent or unsafe excavations or demolition operations resulting in damage to transmission facilities.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 66.047 (1) of the statutes is renumbered 66.047.

SECTION 2. 66.047 (2) of the statutes is repealed.

SECTION 3. 182.0175 of the statutes is created to read:

**182.0175 Damage to transmission facilities.** (1) DEFINITIONS. As used in this section, unless the context requires otherwise:

(a) "Transmission facilities" includes all pipes, pipelines, wires, ducts, wirelines and associated facilities, regardless of the nature of their transmittants or of their in-service application. The term includes, but is not restricted to, utility facilities, facilities transporting hazardous materials, drainage facilities and private water facilities.

(b) "Excavation" means any operation in which earth, rock or other material in or on the ground is moved, removed or otherwise displaced by means of any tools, equipment or explosives and includes grading, trenching, digging, ditching, drilling, augering, tunnelling, scraping, cable or pipe plowing, and driving.

(c) "Demolition" means any operation by which a structure or mass of material is wrecked, razed, rended, moved or removed by means of any tools, equipment or explosives.

(d) "Working days" means days other than Saturday, Sunday and legal holidays.

(2) PRECAUTIONS TO BE TAKEN. (a) Every person who engages in or with respect to subs. 1 and 2 is responsible for the preparation of plans and specifications for nonemergency excavation or demolition shall:

1. Take reasonable action to inform himself of the location of any transmission facilities in and near the area where such operation is to be conducted.

2. Plan the excavation or demolition to avoid to the extent possible interference with transmission facilities in and near the construction area.

3. Provide reasonable advance notice not less than 3 working days prior to the start of the excavation or demolition of the intent to excavate or demolish and the commencement date to the owners of the transmission facilities in and near the construction area whose facilities may be affected by the excavation or demolition.

4. Maintain an estimated minimum clearance of 18 inches between an unexposed underground transmission facility marked pursuant to par. (e) and the cutting edge or point of any power-operated excavating or earth moving equipment. If the transmission facility is exposed, the clearance may be reduced to 2 times the known limit of control of the cutting edge or point of the equipment or 12 inches, whichever is greater.

5. Provide such support for existing transmission facilities in and near the construction area as may be reasonably necessary for the protection of such facilities, unless such protection is required of the owner of the transmission facility under s. 66.047.

6. Inspect prior to backfilling all transmission facilities exposed during excavation or demolition to ascertain if transmission facilities have been or may have been struck, damaged, dislocated or disrupted and notify promptly before backfilling the owner of any transmission facility which has been or may have been struck, damaged, dislocated or disrupted.

7. Backfill all excavations in such manner and with such materials as may be reasonably necessary for the protection of, and to provide reliable support during backfilling and following backfilling for, existing facilities in and near the construction area.

(b) Every person who engages in emergency excavation or demolition shall take all reasonable precautions to avoid to the extent possible interference with existing transmission facilities in and near the construction area and shall notify as promptly as possible the owners of transmission facilities which may be affected by the emergency excavation or demolition.

(c) If any transmission facility has been or may have been struck, damaged, dislocated or disrupted in connection with any excavation or demolition, emergency or nonemergency, the person responsible for the excavation or demolition operations shall immediately notify the owner of the facility.

(d) Every person who engages in emergency excavation or demolition shall inspect prior to backfilling all transmission facilities exposed during the excavation or demolition to ascertain if transmission facilities have been or may have been struck, damaged, dislocated or disrupted and notify promptly before backfilling the owner of any transmission facilities which have been or may have been struck, damaged, dislocated or disrupted.

(e) Every person owning transmission facilities shall, upon receipt of notice under par. (a) 3, mark in a reasonable manner the locations of transmission facilities in the field so as to enable the person engaged in excavation or demolition to locate the transmission facilities without endangering the security of such facilities. The marking of facilities shall be accomplished within 3 working days after receipt of the notice, except if notice is given more than 10 days before the excavation or demolition is scheduled to begin, marking need not be accomplished more than 3 working days before excavation or demolition is scheduled to begin.

(f) Every person owning transmission facilities who receives notice under par. (a) 6, (c) or (d) shall inspect for damage within 24 hours after receipt of notice and repair any damage found as soon as practicable. Unless the owner of any transmission facility is notified pursuant to par. (a) 6, (c) or (d) or has knowledge of frequent damage to transmission facilities by a person doing emergency or nonemergency excavation or demolition, such owner shall not be responsible or be required to make an inspection of its transmission facilities, nor shall the owner, in the absence of such notification or knowledge, be responsible for supervising in any manner the excavation or demolition work. Upon the giving of notice pursuant to par. (a) 6, (c) or (d) the person performing the demolition or excavation shall refrain from backfilling until an inspection and any necessary repairs are made by the owner of the transmission facilities.

(3) PENALTIES. Any person who knowingly fails to comply with this section, except sub. (2) (e), shall forfeit \$1,000 for each such failure, provided that if the failure to comply results in damage to any transmission facility, the forfeiture shall be \$2,000. Each day that failure to comply persists is a separate offense. All actions to recover penalties under this section shall be brought in county court by the district attorney.

(4) RIGHT OF ACTION. This section shall not release or waive or otherwise affect any right of action, forfeiture or penalty which the state or any person has or may have.

(5) RIGHT TO INJUNCTION. If any person engages in or is likely to engage in excavation or demolition contrary to the provisions of this section, which results or is likely to result in damage to transmission facilities, the person who owns or operates such facilities may seek injunctive relief in the circuit court for Dane county or in any other court of competent jurisdiction. If the transmission facilities are owned or operated by a public utility as defined in s. 196.01 and the public utility does not seek injunctive relief, the attorney general upon request of the public service commission shall seek injunctive relief in the circuit court for Dane county or in any other court of competent jurisdiction.

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