

State of Wisconsin



1995 Senate Bill 64

Date of enactment: **December 20, 1995**

Date of publication*: **January 5, 1996**

1995 WISCONSIN ACT 135

AN ACT *to repeal* 182.0175 (1) (a) and 182.0175 (2) (c) and (d); *to renumber and amend* 182.0175 (1) (c), 182.0175 (2) (a) 3., 182.0175 (2) (a) 4., 182.0175 (2) (a) 5., 182.0175 (2) (a) 6., 182.0175 (2) (a) 7., 182.0175 (2) (b), 182.0175 (2) (e), 182.0175 (2) (f) and 182.0175 (3); *to amend* 182.0175 (1) (intro.), 182.0175 (1) (b), 182.0175 (2) (a) (intro.), 182.0175 (2) (a) 1., 182.0175 (2) (a) 2., 182.0175 (4) and 182.0175 (5); *to repeal and recreate* 182.0175 (2) (title); and *to create* 182.0175 (1) (am), 182.0175 (1) (bm), 182.0175 (1) (c) 1. and 2., 182.0175 (1m), 182.0175 (2) (am) (intro.), 182.0175 (2) (am) 4., 182.0175 (2) (am) 6m., 182.0175 (2) (bm), 182.0175 (2m) (title) and (a), 182.0175 (2m) (b) 6. and 7. and 182.0175 (3) (b) of the statutes; **relating to:** damage to transmission facilities and providing penalties.

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

SECTION 1. 182.0175 (1) (intro.) of the statutes is amended to read:

182.0175 (1) DEFINITIONS. (intro.) ~~As used in In~~ this section, ~~unless the context requires otherwise:~~

SECTION 2. 182.0175 (1) (a) of the statutes is repealed.

SECTION 3. 182.0175 (1) (am) of the statutes is created to read:

182.0175 (1) (am) "Emergency" means a condition that poses a clear and immediate danger to life or health, or a significant loss of property.

SECTION 4. 182.0175 (1) (b) of the statutes is amended to read:

182.0175 (1) (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, tunnel-

ing, scraping, cable or pipe plowing, and driving and means any operation by which a structure or mass of material is wrecked, razed, rended, moved or removed.

SECTION 5. 182.0175 (1) (bm) of the statutes is created to read:

182.0175 (1) (bm) "Excavator" means a person who engages in excavation.

SECTION 6. 182.0175 (1) (c) of the statutes is renumbered 182.0175 (1) (c) (intro.) and amended to read:

182.0175 (1) (c) (intro.) "Transmission facilities" includes all pipes, pipelines, wires, cables, ducts, wirelines and associated facilities, whether underground or above-ground, regardless of the nature of their transmittants or of their in-service application. The term includes, but is not restricted to, utility facilities, government-owned facilities, facilities transporting hazardous materials, communications and data facilities, drainage facilities and private water facilities and sewer systems. The term does not include any of the following:

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

SECTION 6m. 182.0175 (1) (c) 1. and 2. of the statutes are created to read:

182.0175 (1) (c) 1. A culvert.

2. A fuel storage tank and a fuel storage pipeline, if the pipeline does not cross a public right-of-way and if the tank and pipeline are located on property that is owned or leased by the user of the tank and pipeline.

SECTION 7. 182.0175 (1m) of the statutes is created to read:

182.0175 (1m) ONE-CALL SYSTEM. (a) *Statewide system.* Transmission facilities owners shall establish or designate a nonprofit organization governed by a board of directors as the operator of a one-call system. The one-call system shall be a statewide communication system in which a single operational center receives excavation notices and transmits notice information to affected-member transmission facilities owners.

(b) *Membership.* 1. Except as provided in subd. 2., a transmission facilities owner shall be a member of the one-call system.

2. A transmission facilities owner or lessee is not required to be a member of the one-call system if all of that person's transmission facilities are located on property owned or leased by that person. This subdivision does not apply to a governmental unit that is a transmission facilities owner.

(bm) *Membership fees.* Members may be assessed an initial start-up fee equal to the system's costs in adding the member to the one-call system, except that any initial start-up fee may not exceed \$100 for a member whose transmission facilities serve less than 5,000 customers. For purposes of assessing the initial start-up fee, affiliated transmission facilities owners shall be considered a single member. Under this paragraph, a transmission facilities owner is affiliated with another transmission facilities owner if the transmission facilities owner, directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other transmission facilities owner. Members shall also be assessed a fee per notice of intended excavation activity. Membership in the one-call system ceases if a fee assessed under this paragraph is more than 90 days past due. A transmission facilities owner may be reinstated as a member upon payment of the amount past due.

(c) *Liability.* Any transmission facilities owner who is required to be a member of the one-call system and has not complied with the membership requirement is liable for all damages to the owner's transmission facilities and for any other damages that occur as a result of a properly noticed excavation to the one-call system.

(d) *System functions.* The one-call system shall do all of the following:

1. Publicize the availability and use of the one-call system.

2. Provide toll-free communication to the one-call system.

3. Accept notices of intended excavation activity.

4. Accept notices of intended emergency location or emergency excavation activity 24 hours a day.

5. Inform the person providing notice of the names of transmission facilities owners who will receive the notice information.

6. Promptly transmit notice information to affected-member transmission facilities owners.

7. Retain records of notices for a period of not less than 6 years.

SECTION 8. 182.0175 (2) (title) of the statutes is repealed and recreated to read:

182.0175 (2) (title) EXCAVATOR AND PLANNER RESPONSIBILITIES.

SECTION 9. 182.0175 (2) (a) (intro.) of the statutes is amended to read:

182.0175 (2) (a) (title) *Planning.* (intro.) Every person who engages in or with respect to subds. 1. and 2. is responsible for the preparation of plans and specifications for nonemergency excavation or demolition and every excavator shall do all of the following:

SECTION 10. 182.0175 (2) (a) 1. of the statutes is amended to read:

182.0175 (2) (a) 1. Take reasonable action to learn the location of any transmission facilities in and near the area where such operation the excavation is to be conducted.

SECTION 11. 182.0175 (2) (a) 2. of the statutes is amended to read:

182.0175 (2) (a) 2. Plan the excavation or demolition to avoid to the extent possible interference with transmission facilities in and near the construction excavation area.

SECTION 12. 182.0175 (2) (a) 3. of the statutes is renumbered 182.0175 (2) (am) 1. and amended to read:

182.0175 (2) (am) 1. Provide reasonable advance notice not less than 3 working days prior to before the start of the nonemergency 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 one-call system.

SECTION 13. 182.0175 (2) (a) 4. of the statutes is renumbered 182.0175 (2) (am) 3. and amended to read:

182.0175 (2) (am) 3. Maintain an estimated minimum clearance of 18 inches between an unexposed underground transmission facility marked pursuant to par. (e) under sub. (2m) and the cutting edge or point of any power-operated excavating or earth moving equipment. If the transmission facility is exposed, the excavator may reduce 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.

SECTION 14. 182.0175 (2) (a) 5. of the statutes is renumbered 182.0175 (2) (am) 5. and amended to read:

182.0175 (2) (am) 5. Provide ~~such~~ support for existing transmission facilities in and near the ~~construction excavation~~ area as that may be reasonably necessary or that is specified by the transmission facility owner for the protection of ~~such~~ the facilities, unless ~~such~~ protection is required of the owner of the transmission facility under s. 66.047.

SECTION 15. 182.0175 (2) (a) 6. of the statutes is renumbered 182.0175 (2) (am) 6. and amended to read:

182.0175 (2) (am) 6. ~~Inspect prior to backfilling. Before backfilling, inspect~~ all transmission facilities exposed during excavation ~~or demolition~~ to ascertain if the transmission facilities have been or may have been struck, damaged, dislocated or disrupted and ~~notify promptly before backfilling.~~

7. Immediately notify the owner of ~~any a~~ transmission facility ~~which if an inspection reveals that the transmission facility~~ has been or may have been struck, damaged, dislocated or disrupted.

SECTION 16. 182.0175 (2) (a) 7. of the statutes is renumbered 182.0175 (2) (am) 8. and amended to read:

182.0175 (2) (am) 8. Backfill ~~all excavations in such an excavation as specified by the owner of the existing transmission facilities or in a manner and with such materials as that~~ may be reasonably necessary for the protection of, and to provide reliable support during backfilling and following backfilling for, existing transmission facilities in and near the ~~construction excavation~~ area.

SECTION 17. 182.0175 (2) (am) (intro.) of the statutes is created to read:

182.0175 (2) (am) *Excavation notice.* (intro.) An excavator shall do all of the following:

SECTION 18. 182.0175 (2) (am) 4. of the statutes is created to read:

182.0175 (2) (am) 4. Provide a repeat notice to the one-call system if marks are destroyed or covered by excavation site activities, if the excavation does not start within 10 days of the scheduled start date or if excavation is interrupted for more than 10 days.

SECTION 19. 182.0175 (2) (am) 6m. of the statutes is created to read:

182.0175 (2) (am) 6m. Refrain from backfilling an excavation until an inspection is conducted and any necessary repairs have been made by the owner of the transmission facility.

SECTION 20. 182.0175 (2) (b) of the statutes is renumbered 182.0175 (2) (am) 2. and amended to read:

182.0175 (2) (am) 2. ~~Every person who engages in In an 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 excavation~~ area and ~~shall~~ notify as promptly as possible the owners of transmission facilities which may be affected by the emergency excavation ~~or demolition.~~

SECTION 21. 182.0175 (2) (bm) of the statutes is created to read:

182.0175 (2) (bm) *Notice.* An excavation notice shall include all of the following information:

1. The name of the person providing notice.
2. The name, address and telephone number of the excavator.
3. The specific location and description of the excavation area, including the county, place, street address, nearest intersecting road, distance and direction from the nearest intersection and marking instructions.
4. A description of the intended excavation activity.
5. The intended starting date of the excavation.

SECTION 22. 182.0175 (2) (c) and (d) of the statutes are repealed.

SECTION 23. 182.0175 (2) (e) of the statutes is renumbered 182.0175 (2m) (b) and amended to read:

182.0175 (2m) (b) (title) *Facilities marking.* ~~Every A~~ person owning transmission facilities, upon receipt of ~~an excavation notice under par. (a) 3.,~~ shall mark in a reasonable manner the locations of transmission facilities ~~in at the field so as~~ area described in the notice to enable the ~~person engaged in excavation or demolition excavator~~ to locate the transmission facilities without endangering the security of ~~such the~~ facilities or the public. The marking of facilities shall be ~~accomplished~~ completed within 3 working days after receipt of the notice, ~~except or~~ if notice is given more than 10 days before ~~the excavation or demolition~~ is scheduled to begin, marking ~~need not shall~~ be ~~accomplished more than~~ completed at least 3 working days before excavation ~~or demolition~~ is scheduled to begin. If the approximate location of ~~an underground a~~ transmission facility is marked with paint, flags, stakes or other physical means, the following color coding of lines, cables or conduits shall be as follows except that color coding shall not be required for permanent markers required by state and federal codes comply with the uniform color code adopted by the American National Standards Institute:

1. Electric power ~~distribution and transmission:~~ safety: red.
2. ~~Natural gas distribution and transmission, oil distribution and transmission and dangerous Gas, oil, steam, petroleum or gaseous materials products lines: high visibility safety:~~ yellow.
3. ~~Telecommunications and telegraph systems~~ Communications, cable television and police and fire communications: safety alert or alarm or signal systems: orange.
4. ~~Water, irrigation or slurry systems: safety precaution~~ blue.
5. ~~Sewer or drain systems: safety~~ green.

SECTION 24. 182.0175 (2) (f) of the statutes is renumbered 182.0175 (2m) (c) and amended to read:

182.0175 (2m) (c) (title) *Facilities inspection and repair.* Every person owning transmission facilities who

receives a notice under par. (a) 6., (c) or (d) of possible damage shall inspect the facilities for damage within 24 hours after receipt of the notice if there is risk of personal injury or loss of life or within 24 hours after receipt of the notice if there is not a risk of personal injury or loss of life and shall 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 as an excavator, the owner shall ~~is~~ not be responsible for 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.

SECTION 25. 182.0175 (2m) (title) and (a) of the statutes are created to read:

182.0175 (2m) (title) TRANSMISSION FACILITIES OWNER REQUIREMENTS. (a) *Responsibilities.* A transmission facilities owner shall do all of the following:

1. Respond to a planning notice within 10 days after receipt of the notice by conducting field markings, providing records and taking other appropriate responses.
2. Respond to an excavation notice within 3 working days by marking the location of transmission facilities as provided under par. (b) in the area described in the excavation notice.
3. Provide emergency locator service within 24 hours after receiving a request for that service.

SECTION 26. 182.0175 (2m) (b) 6. and 7. of the statutes are created to read:

182.0175 (2m) (b) 6. Temporary survey markings: pink.

7. Proposed excavation: white.

SECTION 27. 182.0175 (3) of the statutes is renumbered 182.0175 (3) (a) and amended to read:

182.0175 (3) (a) (title) *Forfeitures.* Any person who wilfully and knowingly fails to comply with violates this section, except sub. (2) (e), shall ~~may be required to~~ forfeit \$1,000 ~~\$2,000~~ for each such failure, provided that if the failure to comply results in damage to any transmis-

sion facility, the forfeiture shall be \$2,000 offense. Each day that failure to comply persists is of continued violation constitutes a separate offense. All actions to recover penalties under this section shall be brought in circuit court by the district attorney.

SECTION 28. 182.0175 (3) (b) of the statutes is created to read:

182.0175 (3) (b) *Misdemeanor.* Whoever intentionally removes, moves or obliterates a transmission facilities marking placed by the transmission facilities owner may be fined not more than \$500 or imprisoned for not more than 30 days or both. This paragraph does not apply to an excavator who removes or obliterates markings during an excavation.

SECTION 29. 182.0175 (4) of the statutes is amended to read:

182.0175 (4) **RIGHT OF ACTION.** This section shall not release or waive or otherwise affect any right of action, forfeiture or penalty which the ~~this~~ state or any person has or may have.

SECTION 30. 182.0175 (5) of the statutes is amended to read:

182.0175 (5) **RIGHT TO INJUNCTION.** If any person engages in or is likely to engage in excavation or demolition contrary to the provisions of inconsistent with this section, and which results or is likely to result in damage to transmission facilities, the person who owns or operates such the facilities may seek injunctive relief in the circuit court for Dane the county or in any other court of competent jurisdiction in which the transmission facilities are located. If the transmission facilities are owned or operated by a public utility as defined in s. 196.01 (5), including a telecommunications carrier, as defined in s. 196.01 (8m), 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 the county or in any other court of competent jurisdiction in which the transmission facilities are located.

SECTION 31. Initial applicability.

(1) This act first applies to notices given on the effective date of this subsection.

SECTION 32. Effective date.

(1) This act takes effect on the first day of the 12th month beginning after publication.