
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1104 Session of
2006

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FEBRUARY 14, 2006

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF
REPRESENTATIVES, AS AMENDED, OCTOBER 4, 2006

AN ACT

1 Amending the act of December 10, 1974 (P.L.852, No.287),
2 entitled "An act to protect the public health and safety by
3 preventing excavation or demolition work from damaging
4 underground lines used in providing electricity,
5 communication, gas, oil delivery, oil product delivery,
6 sewage, water or other service; imposing duties upon the
7 providers of such service, recorders of deeds, and persons
8 and other entities preparing drawings or performing
9 excavation or demolition work; and prescribing penalties,"
10 further providing for the title of the act, for definitions,
11 for duties of facility owners and for the duties of the One
12 Call System; providing for liability, fees and governance of
13 the One Call System; further providing for applicability;
14 providing for the duties of project owners and for rights of
15 the Auditor General; further providing for the governing
16 board of the One Call System, for fines and penalties and for
17 applicability to certain pipeline systems and facilities;
18 providing for a voluntary payment dispute resolution process,
19 for best efforts, for removal or tampering with a marking,
20 for determination of position and type of lines and for
21 impairment of rights and immunities; further providing for
22 expiration; repealing provisions of the act of June 19, 2002
23 (P.L.421, No.61), known as the Propane and Liquefied
24 Petroleum Gas Act, concerning the prohibition of certain
25 liquefied petroleum gas facilities or distributors from being
26 subject to the Underground Utility Line Protection Law; and
27 making an editorial change.

28 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. The title of the act of December 10, 1974
3 (P.L.852, No.287), referred to as the Underground Utility Line
4 Protection Law, is amended to read:

5 AN ACT

6 To protect the public health and safety by preventing excavation
7 or demolition work from damaging underground lines used in
8 providing electricity, communication, gas, propane, oil
9 delivery, oil product delivery, sewage, water or other
10 service; imposing duties upon the providers of such service,
11 recorders of deeds, and persons and other entities preparing
12 drawings or performing excavation or demolition work; and
13 prescribing penalties.

14 Section 2. Section 1 of the act, amended November 30, 2004
15 (P.L.1567, No.199), is amended to read:

16 Section 1. As used in this act:

17 "Abandoned" means no longer in service and physically
18 disconnected from a line.

19 "Business day" means any day except a Saturday, Sunday or
20 legal holiday prescribed by statute. A business day begins at
21 12:00:00 a.m. and ends at 11:59:59 p.m.

22 "Cartway" means that portion of a street which is improved by
23 surfacing with permanent or semipermanent material and is
24 intended for vehicular traffic.

25 "Common Ground Alliance best practices" means the damage
26 prevention industry recommended standards issued by the Common
27 Ground Alliance, a not-for-profit corporation created pursuant
28 to the issuance of the United States Department of
29 Transportation's Common Ground Task Force report in 1999.

30 "Complex project" means an excavation that involves more work

1 than properly can be described in a single locate request or any
2 project designated as such by the excavator as a consequence of
3 its complexity or its potential to cause significant disruption
4 to lines or facilities and the public, including excavations
5 that require scheduling locates over an extended time frame.

6 "Consumer Price Index" means the index of consumer prices
7 developed and updated by the Bureau of Labor Statistics of the
8 United States Department of Labor.

9 ["Contractor" means any person who or which performs
10 excavation or demolition work for himself or for another
11 person.]

12 "Continuing property records" means a record required
13 pursuant to 66 Pa.C.S. § 1702 (relating to continuing property
14 records).

15 "Demolition work" means the partial or complete destruction
16 of a structure, by any means, served by or adjacent to a line or
17 lines.

18 "Department" means the Department of Labor and Industry of
19 the Commonwealth.

20 "Designer" means any architect, engineer or other person who
21 or which prepares a drawing for a construction or other project
22 which requires excavation or demolition work as herein defined.

23 "Emergency" means a sudden or unforeseen occurrence involving
24 a clear and immediate danger to life [or], property and the
25 environment, including, but not limited to, serious breaks or
26 defects in a facility owner's lines.

27 "Excavation work" means the use of powered equipment or
28 explosives in the movement of earth, rock or other material, and
29 includes but is not limited to anchoring, augering, backfilling,
30 blasting, boring, digging, ditching, drilling, driving-in,

1 grading, plowing-in, pulling-in, ripping, scraping, trenching
2 and tunneling, but does not include soft excavation technology
3 such as vacuum, high pressure air or water, tilling of soil for
4 agricultural purposes to a depth of less than eighteen inches,
5 the direct operations necessary or incidental to the purposes of
6 finding or extracting natural resources, political subdivisions
7 performing minor routine maintenance up to a depth of less than
8 eighteen inches measured from the top of the edge of the cartway
9 or the top of the outer edge of an improved shoulder, in
10 addition to the performance of incidental de minimis excavation
11 associated with the routine maintenance and the removal of
12 sediment buildup, within the right-of-way of public roads or
13 employes of the Department of Transportation performing within
14 the scope of their employment work up to a depth of twenty-four
15 inches beneath the existing surface within the right-of-way of a
16 State highway.

17 "Excavator" means any person who or which performs excavation
18 or demolition work for himself or for another person.

19 "Facility owner" means the public utility or agency,
20 political subdivision, municipality, authority, rural electric
21 cooperative or other person or entity who or which owns or
22 operates a line. The term does not include the Department of
23 Transportation within a State highway right-of-way. The term
24 does not include any of the following:

25 (1) A person serving the person's own property through the
26 person's own line if the person does not provide service to any
27 other customer.

28 (2) A person using a line which the person does not own or
29 operate if the use of the line does not serve more than a single
30 property.

1 "Final design" means the engineering and construction
2 drawings that are provided to a bidder or other person who is
3 asked to initiate construction on the bid date or the date the
4 project is set for construction in the absence of a bid.

5 "Horizontal directional drilling" means the use of horizontal
6 boring devices that can be guided between a launch point and a
7 reception point beneath the earth's surface.

8 "Line" or "facility" means an underground conductor or
9 underground pipe or structure used in providing electric or
10 communication service, or an underground pipe used in carrying,
11 gathering, transporting or providing natural or artificial gas,
12 petroleum, propane, oil or [oil] petroleum and production
13 product, sewage, water or other service to one or more
14 transportation carriers, consumers or customers of such service
15 and the appurtenances thereto, regardless of whether such line
16 or structure is located on land owned by a person or public
17 agency or whether it is located within an easement or right-of-
18 way. [The term includes storm drainage and traffic loops.] The
19 term shall include unexposed storm drainage and traffic loops
20 that are not clearly visible. The term shall not include crude
21 oil or natural gas production and gathering lines or facilities
22 unless the line or facility is a regulated onshore gathering
23 line as defined in regulations promulgated after January 1,
24 2006, by the United States Department of Transportation pursuant
25 to the Pipeline Safety Act of 1992 (Public Law 102-508, 49
26 U.S.C. § 60101 et seq.), if the regulated gathering line is
27 subject to the damage prevention program requirements of 49 CFR
28 § 192.614.

29 "Locate request" means a communication between an excavator
30 or designer and the One Call System in which a request for

1 locating facilities is processed. Locate requests submitted by
2 an excavator performing work within the right-of-way of any
3 State highway, either under contract to the Department of
4 Transportation or under authority of a permit issued by the
5 Department of Transportation, shall include the number of the
6 Department of Transportation contract or permit.

7 "Minor routine maintenance" means shaping of or adding dust
8 palliative to unpaved roads, removal and application of patches
9 to the surface or base of flexible base, rigid base or rigid
10 surface roads by either manual or mechanized method to the
11 extent of the existing exposed base material, crack and joint
12 sealing, adding dust palliative to road shoulders, patching and
13 cutting of shoulders and shoulder bases by either manual or
14 mechanized methods to the extent of the existing exposed base,
15 and cleaning of inlets and drainage pipes and ditches.

16 "One Call System" means [a] the communication system
17 established within this Commonwealth to provide a single
18 nationwide toll-free telephone number or 811 number for
19 [contractors] excavators or designers or any other person
20 covered by this act to call facility owners and notify them of
21 their intent to perform excavation, demolition or similar work
22 as defined by this act. [A] The One Call System shall be
23 incorporated and operated as a nonprofit corporation pursuant to
24 15 Pa.C.S. Pt. II Subpt. C (relating to nonprofit corporations).

25 "Operator" means any individual in physical control of
26 powered equipment or explosives when being used to perform
27 excavation or demolition work.

28 ["Owner" means any person who or which engages a contractor
29 for construction or any other project which requires excavation
30 or demolition work as herein defined.]

1 "Person" means an individual, partnership, corporation,
2 political subdivision, a municipal authority, the Commonwealth
3 and its agencies and instrumentalities, or any other entity.

4 "Powered equipment" means any equipment energized by an
5 engine or motor and used in excavation or demolition work.

6 "Preconstruction request" means a notification to facility
7 owners regarding a complex project.

8 "Project owner" means any person who or which engages an
9 excavator for construction or any other project which requires
10 excavation or demolition work.

11 "Secretary" means the Secretary of Labor and Industry of the
12 Commonwealth.

13 "Site" means the specific place denoted on the locate request
14 where excavation or demolition work is being or is planned to be
15 performed. A site should be denoted as a clearly defined,
16 bounded area, including relevant identifiable points of
17 reference such as the specific address with a specific
18 description as to the portion of the property, including
19 descriptions such as front, back, left side, right side and
20 direction such as N, S, E, W or variants. Where possible, the
21 points should also reference, without limitation, the size and
22 radius or circumference of the excavation, utility pad or
23 pedestal numbers, utility pole numbers, landmarks, including
24 trees, fountains, fences, railroads, highway and pipeline
25 markers, and latitude and longitude.

26 "Subsurface Utility Engineering" or "(SUE)" means those
27 techniques set forth in the American Society of Civil Engineers
28 (ASCE) standard CI/ASCE 38-02, or its successor document as
29 determined by the One Call System.

30 "Tolerance zone" means the horizontal space within eighteen

1 inches of the outside wall or edge of a line or facility.

2 "Traffic loop" means a device that detects metal object such
3 as cars and bicycles based on the change in inductance that they
4 induce in the device.

5 ["Working day" means any day except a Saturday, Sunday or
6 legal holiday prescribed by act of the General Assembly.]

7 Section 3. Sections 2 and 3 of the act, amended November 30,
8 2004 (P.L.1567, No.199), are amended to read:

9 Section 2. It shall be the duty of each facility owner:

10 (1) To be a member of and give written notice to [a] the One
11 Call System. Such notice shall be in a form acceptable to [a]
12 the One Call System and include:

13 (i) the legal name of the facility owner[;] and their
14 official mailing address;

15 (ii) the names of the counties and municipalities, down to
16 and including wards in Philadelphia, Pittsburgh, Allentown and
17 Erie, in which its lines are located and other related
18 information as may be required by the One Call System regarding
19 the location of a member's facilities;

20 (iii) the facility owner's address (by street, number and
21 political subdivision), and the telephone number and fax number,
22 if available, to which inquiries may be directed as to the
23 location of such lines; [and]

24 (iv) [at the option of any facility owner,] the street
25 identifications[, within or outside of the municipality] or like
26 information within each of the municipalities in which its lines
27 are located. This information shall be in a form acceptable to
28 [a] the One Call System. [and shall include the names of streets
29 bounding, crossing or adjacent to the facility owner's lines.]

30 Upon [receipt of a signed street identification list] acceptance

1 of the information from a facility owner, [a] the One Call
2 System shall provide the facility owner with notification within
3 the boundaries described [in the street identification list].
4 All facility owners [which opt for this service] shall agree to
5 indemnify and hold harmless [a] the One Call System for any
6 [street identity] errors and omissions on the part of the
7 facility owner or the [contractor] excavator or designer
8 providing [street identifications.] the information as the agent
9 of the facility owner; and

10 (v) any other information required by the One Call System.

11 (2) [To give to a One Call System like written notice within
12 five working days after any of the matters stated in the last
13 previous notice shall have changed.] To provide the One Call
14 System, within five business days, with any revised information
15 required under this section.

16 (4) Not more than ten [working] business days after receipt
17 of a request [therefor] from a designer who identifies the site
18 of excavation or demolition work for which he is preparing a
19 drawing, to initially respond to his request for information as
20 to the position and type of the facility owner's lines at such
21 site based on the information currently in the facility owner's
22 possession[.] or to mark the plans which have been provided to
23 it by the designer by field location or by another method agreed
24 to by the designer, excavator and facility owner, or their
25 agent. The facility owner shall so advise the person making the
26 request of the facility owner's status at the site through [a]
27 the One Call System.

28 (5) [Not more than two working days after] After receipt of
29 a timely request [therefor] from [a contractor] an excavator or
30 operator who identifies the site of excavation or demolition

1 work he intends to perform[:] and not later than the business
2 day prior to the scheduled date of excavation:

3 (i) To mark, stake, locate or otherwise provide the position
4 of the facility owner's underground lines at the site within
5 eighteen inches horizontally from the outside wall of such line
6 in a manner so as to enable the [contractor] excavator, where
7 appropriate, to employ prudent techniques, which may include
8 hand-dug test holes, to determine the precise position of the
9 underground facility owner's lines. This shall be done to the
10 extent such information is available in the facility owner's
11 records or by use of standard locating techniques other than
12 excavation. Standard locating techniques shall include at the
13 utility owner's discretion the option to choose available
14 technologies suitable to each type of line or facility being
15 located at the site, topography, soil conditions or to assist
16 the facility owner in locating its lines or facilities, based on
17 accepted engineering and operational practices. Facility owners
18 shall make reasonable efforts during the excavation phase to
19 locate or notify excavators of the existence and type of
20 abandoned lines that remain on the continuing property records
21 of the facility owners.

22 (i.1) [A] To, where contained on its continuing property
23 records, [facility owner may] identify the location of [a known
24 facility connected] an actually known facility's point of
25 connection to its facilities, [but] where the point of
26 connection is not owned or operated by the facility owner[, as a
27 helpful guide to the excavator or owner]. The identification
28 shall not be deemed to impose any liability upon the facility
29 owner for the accuracy of the [private facility] other
30 facility's identification.

1 (ii) [A facility owner,] To, at its option, [may] timely
2 elect to excavate around its facilities in fulfillment of this
3 subparagraph.

4 (iii.1) To propose mutually agreeable scheduling by which
5 the excavator, facility owner or designer may locate the
6 facilities.

7 (v) To respond to all notices through [a] the One Call
8 System, provided the request is made in the time frame set forth
9 under this act. The response shall be made not later than the
10 end of the second business day following receipt of the
11 notification by the One Call System, excluding the business day
12 upon which the notification is received, or not later than the
13 day prior to the scheduled date of excavation, if the excavator
14 specifies a later date. In the case of an emergency, to respond
15 through the One Call System as soon as practicable following
16 receipt of notification of the emergency by the One Call System.

17 (vi) In marking the approximate position of underground
18 lines or facilities, the facility owner shall follow [American
19 Public Works Association and Utility Locating and Coordination
20 Council Temporary Marking Standards.] the Common Ground Alliance
21 Best Practices for Temporary Marking set forth in ANSI standard
22 Z535.1. Should the [American Public Works Association and
23 Utility Locating and Coordination Council Temporary Marking
24 Standards] Common Ground Alliance Best Practices be amended, the
25 amended [standards] guidelines shall be applied and followed. If
26 the Common Ground Alliance Best Practices no longer publishes
27 guidelines for temporary markings or if the responsibility for
28 publishing the guidelines is transferred to or assumed by
29 another entity, the facility owner shall follow the guidelines
30 approved by the One Call System's board of directors.

1 (vii) To respond to [emergencies] emergency notifications as
2 soon as [practical] practicable following receipt of
3 notification of such emergency. The response by the facility
4 owner shall be consistent with the nature of the emergency
5 information received by the facility owner.

6 (viii) To participate in preconstruction meetings for a
7 complex project or as described in clause (3) of section 5.

8 (ix) If notification is received pursuant to clause (8) of
9 section 5, to give priority to responding to notification as an
10 emergency.

11 [(8) Operation costs for a One Call System shall be shared,
12 in an equitable manner for services received, by facility owner
13 members as determined by a One Call System's board of directors.
14 Political subdivisions with a population of less than two
15 thousand persons or municipal authorities having an aggregate
16 population in the area served by the municipal authority of less
17 than five thousand persons shall be exempt from payment of any
18 service fee.]

19 (9) If a facility owner fails to become a member of [a] the
20 One Call System in violation of this act and a line or lines of
21 such nonmember facility owner are damaged by [a contractor] an
22 excavator by reason of the [contractor's] excavator's failure to
23 notify the facility owner because the facility owner was not a
24 member of [a] the One Call System serving the location where the
25 damage occurred, such facility owner shall have no right of
26 recovery from the [contractor] excavator of any costs associated
27 with the damage to its lines. The right herein granted shall not
28 be in limitation of any other rights of the [contractor]
29 excavator.

30 (10) To submit an incident report to the department not more

1 than ten [working] business days after receipt of notice that
2 the facility owner's lines have been damaged by excavation or
3 demolition activities that resulted in personal injury or in
4 property damage to parties other than the affected excavator or
5 facility owner. In addition, the incident report may likewise be
6 furnished to the Pennsylvania Public Utility Commission and the
7 Pennsylvania Emergency Management Agency pursuant to memoranda
8 of understanding negotiated between these agencies and the
9 department[.], which shall, at a minimum, provide for a common
10 reporting format for incident reports. The department shall
11 furnish to [a] the One Call System, upon reasonable request,
12 statistical data pertaining to the number of incident reports
13 filed with the department and the type, number and results of
14 investigations for violations of this act.

15 (11) To comply with all requests for information by the
16 department relating to the department's enforcement authority
17 under this act within thirty days of the receipt of the request.

18 Section 3. It shall be the duty of [a] the One Call System
19 to do the following:

20 (1.1) To assign [a serial number and] one or more serial
21 numbers and the date that the site may legally be excavated and
22 to log the entire voice transaction on logging recorders in
23 appropriate digital form and maintain these logs for five years.
24 All records shall be indexed and available to the parties
25 involved at a reasonable cost and at reasonable times set by [a]
26 the One Call System.

27 (1.2) Perform the obligations, as set forth under this
28 section, on behalf of the facility owner, [contractor] excavator
29 or designer as established by the board of directors of [a] the
30 One Call System.

1 (1.3) Provide access to municipal lists provided to [a] the
2 One Call System for those interested parties. This list shall
3 contain facility owners having lines in the municipality,
4 including wards as indicated in subclause (ii) of clause (1) of
5 section 2, and to maintain, for each municipality, a list
6 containing the information as required to be submitted by the
7 facility owner. Such list shall be updated as revised
8 information is received from the facility owner within five
9 [working] business days.

10 (2) To make such lists under clause (1.3) available for
11 public inspection via the county recorder of deeds without
12 charge. A maximum copy fee of no more than twenty-five dollars
13 (\$25) may be charged per county list. Each facility owner change
14 shall be forwarded, at no charge, to the respective county
15 recorder of deeds for public access. The recorder of deeds shall
16 make such list available for public inspection[.] based on the
17 most current information provided to it by the One Call System.

18 (3) Not more than ten [working] business days after the
19 receipt of a clear and specific request from the department, to
20 provide access to or photocopies of specific One Call System
21 response records, tickets or other like information relating to
22 matters under investigation by the department pursuant to its
23 enforcement authority under this act.

24 (4) To determine the maximum geographic area that shall
25 constitute a valid single notification and to determine when
26 multiple notifications shall be required of any person,
27 including the method, the type and the number of notifications
28 in a complex project.

29 (5) If approved by the board of directors of the One Call
30 System, to offer a service for the application and obtaining of

1 State or municipal permits for excavation work. Issuance of the
2 required permits shall be the responsibility of the appropriate
3 State or municipal agency which has jurisdiction over the type
4 of excavation work being performed.

5 (6) Pursuant to policies adopted by the One Call System's
6 board of directors, to provide a secure repository for and
7 access to subsurface utility engineering data received from
8 project owners to affected facility owner members.

9 (7) To inquire, when an excavator has notified the One Call
10 System of the existence of a release of natural gas or other
11 hazardous substance or of potential danger to life, health or
12 property, whether the excavator has notified the 911 system. If
13 the 911 system has not been notified, the One Call System shall
14 notify the excavator of the excavator's responsibility to notify
15 the 911 system and shall make a record of the conversation.

16 Section 4. The act is amended by adding a section to read:

17 Section 3.1. (a) The duties of the One Call System are
18 those duties as set forth in section 3. Duties assigned to other
19 parties in other sections of this act shall be the duties of
20 those parties and shall not be imputed to the One Call System,
21 including the duty to provide accurate information to the One
22 Call System concerning proposed excavation and the duty to
23 locate facilities at a site.

24 (b) The One Call System shall not be liable for damages to
25 the person or the person's property arising out of its
26 nonnegligent actions in furtherance of the duties imposed under
27 this act and shall be liable only if the failure to comply was
28 the proximate cause of any damages claimed.

29 (c) Reserved.

30 (d) The One Call System shall be governed by a board of

1 directors, to be chosen by the facility owners. No less than
2 twenty percent of the seats on the board shall be held by
3 municipalities or municipal authorities. The board shall include
4 all of the following:

5 (1) The Chairman of the Pennsylvania Public Utility
6 Commission or his designee.

7 (2) The Director of the Pennsylvania Emergency Management
8 Agency or his designee.

9 (3) The Secretary of Labor and Industry or his designee.

10 (4) The Secretary of Transportation or his designee.

11 (5) An excavator or excavation industry representative.

12 (6) A designer or designer industry representative.

13 (e) Operation costs for the One Call System shall be shared,
14 in an equitable manner for services received, by facility owner
15 members as determined by the One Call System's board of
16 directors. Political subdivisions with a population of less than
17 two thousand people or municipal authorities having an aggregate
18 population in the area served by the municipal authority of less
19 than five thousand people shall be exempt from the payment of
20 any service fee. The One Call System may be reimbursed for its
21 costs in providing this service from the contractor fees.

22 (f) All fees shall be set by the board of directors and
23 shall be based on the latest annual audited cost factors of the
24 One Call System. Fees shall be set and adjusted to a rate not
25 more than five percent above the audited cost factor plus the
26 current average published Consumer Price Index for Pennsylvania.
27 Costs of capital improvements may be added, if the improvement
28 receives a majority vote of the board of directors.

29 (g) An excavator, designer or operator who proposes to
30 commence excavation or demolition work and requests information

1 of the One Call System shall be charged a fee for the service
2 received from the One Call System. The fee shall be used to
3 offset the operation cost levied on the political subdivision
4 and municipal authority members in lieu of additional fees
5 charged for locations under this act.

6 (h) Any request for information shall be reviewed and
7 provided as determined in accordance with the procedure
8 established by the One Call System's board of directors.

9 Section 5. Section 4 of the act, amended December 19, 1996
10 (P.L.1460, No.187), is amended to read:

11 Section 4. It shall be the duty of each designer preparing a
12 drawing [requiring] which requires excavation or demolition work
13 within the Commonwealth:

14 (2) To request the line and facility information prescribed
15 by section 2, clause (4) from [a] the One Call System not less
16 than ten nor more than ninety [working] business days before
17 final design is to be completed. This clause is not intended to
18 prohibit designers from obtaining such information more than
19 ninety days before final design is to be completed; however,
20 they shall state in their requirements that such work is
21 preliminary.

22 (2.1) To forward a copy of the project plans to each
23 facility owner who requests a copy. If a designer is unable to
24 provide a copy because of security of the project or proprietary
25 concerns regarding the design or the project, the designer shall
26 negotiate in a timely manner with the facility owner the means
27 of obtaining the necessary data.

28 (3) To show upon the drawing the position and type of each
29 facility owner's line, derived pursuant to the request made as
30 required by clause (2), and the name of the facility owner[, and

1 the facility owner's designated office address and the telephone
2 number] as shown on the list referred to in section 3.

3 (4) To make a reasonable effort to prepare the construction
4 drawings to avoid damage to and minimize interference with a
5 facility owner's facilities in the construction area by
6 maintaining the clearance as provided for in the applicable
7 easement condition or an eighteen-inch clearance of the facility
8 owner's facilities if no easement restriction exists.

9 (5) A designer shall be deemed to have met the obligations
10 of clause (2) if he calls [a] the One Call System and shows as
11 proof the serial number of one call notice on drawings. The
12 designer shall also show the toll-free number of [a] the One
13 Call System on the drawing near his serial number.

14 (6) If, after receiving information from the facility
15 owners, the designer decides to change the site of a proposed
16 excavation, the obligations imposed by this section shall apply
17 to the new site.

18 (7) The designer who has complied with the terms of this act
19 and who was not otherwise negligent shall not be subject to
20 liability or incur any obligation to facility owners, operators,
21 owners or other persons who sustain injury to person or property
22 as a result of the excavation or demolition planning work of the
23 designer.

24 Section 6. Section 5 of the act, amended November 30, 2004
25 (P.L.1567, No.199), is amended to read:

26 Section 5. It shall be the duty of each [contractor]
27 excavator who intends to perform excavation or demolition work
28 within this Commonwealth:

29 (2.1) To request the location and type of facility owner
30 lines at each site by notifying the facility owner through [a]

1 the One Call System. Notification shall be not less than three
2 nor more than ten [working] business days in advance of
3 beginning excavation or demolition work. No work shall begin
4 earlier than the scheduled excavation date which shall be on or
5 after the third business day after notification. The scheduled
6 excavation date shall exclude the date upon which notification
7 was received by the One Call System and notification received on
8 a Saturday, Sunday or holiday, which shall be processed on the
9 following business day. In the case of a complex project,
10 notification shall not be less than ten business days in advance
11 of the beginning of excavation or demolition work.

12 (2.2) To provide [a] the One Call System with specific
13 information to identify the site so that facility owners might
14 provide indications of their lines. [A contractor] An excavator
15 shall be deemed to have met the obligations of clause (2.1) if
16 he calls [a] the One Call System, provides the site and other
17 required information and receives a serial number.

18 (3) [If a contractor] In a complex project or if an
19 excavator intends to perform work at multiple sites or over a
20 large area, he shall take reasonable steps to work with facility
21 owners, including scheduling and conducting a preconstruction
22 meeting, so that they may locate their facilities at a time
23 reasonably in advance of the actual start of excavation or
24 demolition work for each phase of the work. A preconstruction
25 meeting may take place at any time prior to the commencement of
26 excavation or demolition work, and the excavator, facility
27 owners and designer, or their agents, shall attend the meeting.
28 Notice of the meeting shall be given sufficiently in advance so
29 as to permit attendance, either in person or electronically, by
30 the excavator, facility owners and designer, or their agents,

1 and shall include information sufficient to identify the scope
2 of work. If the excavator does not believe that a
3 preconstruction meeting is necessary under the circumstances of
4 this paragraph it shall indicate such belief in its notice, but
5 any facility owner with facilities at the site may request a
6 meeting with the excavator and a meeting shall be held between
7 the facility owner and the excavator. After commencement of
8 excavation or demolition work, the [contractor] excavator shall
9 be responsible for protecting and preserving the staking,
10 marking or other designation until no longer required for proper
11 and safe excavation or demolition work at or near the
12 underground facility, or by [calling for an additional
13 relocation] contacting the One Call System to request that the
14 facilities be marked again in the event that the previous
15 markings have been compromised or eliminated.

16 (3.1) To comply with the requirements established by the One
17 Call System as determined by the board of directors regarding
18 the maximum area that a notification may cover.

19 (4) To exercise due care; and to take all reasonable steps
20 necessary to avoid injury to or otherwise interfere with all
21 lines where positions have been provided to the [contractor]
22 excavator by the facility owners pursuant to clause (5) of
23 section 2. Within the tolerance zone [or if insufficient
24 information is available pursuant to clause (5) of section 2,
25 the contractor] the excavator shall employ prudent techniques,
26 which may include hand-dug test holes, to ascertain the precise
27 position of such facilities[,]. If insufficient information to
28 safely excavate is available pursuant to clause (5) of section
29 2, the excavator shall employ like prudent techniques which
30 shall be paid for by the project owner pursuant to clause (15)

1 of this section.

2 (5) If the facility owner fails to respond to the
3 [contractor's timely request within the two work days]
4 excavator's timely request as provided under clause (5) of
5 section 2 or the facility owner notifies the [contractor]
6 excavator that the line cannot be marked within the time frame
7 and a mutually agreeable date for marking cannot be arrived at,
8 the [contractor] excavator may proceed with excavation [at the
9 end of three working days] as scheduled, but not earlier than
10 the lawful dig date, provided he exercises due care in his
11 endeavors, subject to the limitations contained in this clause
12 and clauses (2.1) through (4).

13 (6) To inform each operator employed by the [contractor]
14 excavator at the site of such work of the information obtained
15 by the [contractor] excavator pursuant to clauses (2.1) through
16 (5), and the [contractor] excavator and operator shall:

17 (i) Plan the excavation or demolition to avoid damage to or
18 minimize interference with a facility owner's facilities in the
19 construction area. Excavation or demolition work which requires
20 temporary or permanent interruption of a facility owner's
21 service shall be coordinated with the affected facility owner in
22 all cases.

23 (ii) After consulting with a facility owner, provide such
24 support and mechanical protection for known facility owner's
25 lines at the construction site during the excavation or
26 demolition work, including during backfilling operations, as may
27 be reasonably necessary for the protection of such lines.

28 (7) To report immediately to the facility owner any break or
29 leak on its lines, or any dent, gouge, groove or other damage to
30 such lines or to their coating or cathodic protection, made or

1 discovered in the course of the excavation or demolition work.
2 The One Call System board of directors may adopt procedures to
3 permit reporting under this clause through the One Call System.

4 (8) [To alert immediately the occupants of premises as to
5 any emergency that such person may create or discover at or near
6 such premises.] To immediately notify 911 and the facility
7 owner, if the damage results in the escape of any flammable,
8 toxic, or corrosive gas or liquid which endangers life, health
9 or property. The excavator shall take reasonable measures, based
10 on its knowledge, training, resources, experience and
11 understanding of the situation to protect themselves and those
12 in immediate danger, the general public, property and the
13 environment until the facility owner or emergency responders
14 have arrived and completed their assessment and shall remain on
15 site to convey any pertinent information to responders that may
16 help them to safely mitigate the situation.

17 (9) The time requirements of clause (2.1) shall not apply to
18 a facility owner or [contractor] excavator performing excavation
19 or demolition work in an emergency, as defined in section 1;
20 nonetheless, all facility owners shall be notified as soon as
21 possible before, during or after excavation or demolition,
22 depending upon the circumstances.

23 (11) [A contractor] An excavator shall use the color white
24 to mark a proposed excavation site when exact site information
25 cannot be provided.

26 (11.1) To assist a facility owner in determining involvement
27 of a facility owner's lines by disclosing additional available
28 information requested by the facility owner, including
29 dimensions and the direction of proposed excavations.

30 (11.2) If using horizontal directional drilling (HDD), at a

1 minimum, to utilize the best practices published by the HDD
2 Consortium.

3 (12) The following standards shall be applied in determining
4 whether [a contractor] an excavator shall incur any obligation
5 or be subject to liability as a result of [a contractor's] an
6 excavator's demolition or excavation work damaging a facility
7 owner's facilities:

8 (i) The [contractor] excavator who has complied with the
9 terms of this act and who was not otherwise negligent shall not
10 be subject to liability or incur any obligation to facility
11 owners, operators, project owners or other persons who sustain
12 injury to person or property as a result of the [contractor's]
13 excavator's excavation or demolition work damaging a facility
14 owner's lines.

15 (ii) Where [a contractor] an excavator has failed to comply
16 with the terms of this act or was otherwise negligent, and the
17 facility owner or designer has misidentified, mislocated or
18 failed to identify its facilities pursuant to this act, then in
19 computing the amount of reimbursement to which the facility
20 owner is entitled, the cost of repairing or replacing its
21 facilities shall be diminished in the same proportion that the
22 facility owner's or designer's misidentification, mislocation or
23 failure to identify the facilities contributed to the damage.
24 Should the facility owner or designer not have misidentified,
25 mislocated or failed to identify its facilities pursuant to this
26 act, there shall be no diminution of the facility owner's right
27 of recovery.

28 (13) If, after receiving information from [a] the One Call
29 System or directly from a facility owner, the [contractor]
30 excavator decides to change the location, scope or duration of a

1 proposed excavation, the obligations imposed by this section
2 shall apply to the new location.

3 (14) If [a contractor] an excavator removes its equipment
4 and vacates a worksite for more than two [working] business
5 days, he shall renotify [a] the One Call System unless other
6 arrangements have been made directly with the facility owners
7 involved in his worksite.

8 (15) When the information required from the facility owner
9 under clause (5)(i) of section 2 cannot be provided or due to
10 the nature of the information received from the facility owner,
11 it is reasonably necessary for the [contractor] excavator to
12 ascertain the precise location of any line or abandoned or
13 unclaimed lines by prudent techniques, which may include hand-
14 dug test holes, vacuum excavation or other similar devices, the
15 [contractor] excavator shall promptly notify the project owner
16 or the project owner's representative, either orally or in
17 writing. If oral notification is given, the notice shall be
18 reduced to writing within a reasonable time by the project owner
19 or excavator. After giving such notice, the [contractor]
20 excavator shall be entitled to compensation from the project
21 owner for this additional work as provided in the latest edition
22 of the Pennsylvania Department of Transportation Form 408
23 specifications for extra work performed on a force account
24 basis. The provisions of this subsection shall not be deemed to
25 limit any other rights which the [contractor] excavator has
26 under its contract with the project owner or otherwise.
27 Provisions in any contract, public or private, which attempt to
28 limit the rights of [contractors] excavators under this section
29 shall not be [waived] valid for any reason, and any attempted
30 waiver of this section shall be void and unenforceable as

1 against public policy and any such attempted waiver shall be
2 reported to the [Department of Labor and Industry] department.

3 (16) To submit an incident report to the department not more
4 than ten [working] business days after striking or otherwise
5 damaging a facility owner's line during excavation or demolition
6 activities that resulted in personal injury or property damage
7 to parties other than the affected [contractor] excavator or
8 facility owner. In addition, the incident report may be
9 furnished to the Pennsylvania Public Utility Commission and the
10 Pennsylvania Emergency Management Agency pursuant to memoranda
11 of understanding negotiated between these agencies and the
12 department.

13 (17) To comply with all requests for information by the
14 department relating to the department's enforcement authority
15 under this act within thirty days of the receipt of the request.

16 (18) To, if it chooses to do so and if working for a
17 facility owner, a municipality or a municipal authority,
18 delegate the power to discharge the duties set forth in clauses
19 (2.1) and (2.2) to its project owner, with the project owner's
20 consent. If the power is delegated pursuant to this clause, both
21 the excavator and the project owner shall be responsible for
22 providing the required notices.

23 (19) To ensure the accuracy of any information provided to
24 the One Call System pursuant to this section.

25 Section 7. Section 6 of the act, amended December 12, 1986
26 (P.L.1574, No.172), is amended to read:

27 Section 6. [This] Except as otherwise provided in this act,
28 this act shall not be deemed to amend or repeal any other law,
29 Commonwealth regulation or any local ordinance enacted pursuant
30 to law concerning the same subject matter, it being the

1 legislative intent that any such other law or local ordinance
2 shall have full force and effect where not inconsistent with
3 this act.

4 Section 8. The act is amended by adding sections to read:

5 Section 6.1. It shall be the duty of each project owner who
6 engages in excavation or demolition work to be done within this
7 Commonwealth:

8 (1) To utilize sufficient quality levels of subsurface
9 utility engineering or other similar techniques WHENEVER <—
10 PRACTICABLE to properly determine the existence and positions of
11 underground facilities when designing known complex projects or <—
12 when designing projects having an estimated cost of five hundred <—
13 thousand dollars (\$500,000) FOUR HUNDRED THOUSAND DOLLARS <—
14 (\$400,000) or more.

15 (2) To timely respond to notifications received from
16 excavators pursuant to clause (15) of section 5.

17 (3) To not release to bid or construction any project until
18 after final design is completed.

19 (4) To participate in design and preconstruction meetings
20 either directly or through a representative.

21 (5) To furnish the pertinent data obtained through
22 subsurface utility engineering to the One Call System in a
23 mutually agreeable format.

24 (6) For new construction and where practicable in the
25 opinion of the project owner, to install color-coded permanent
26 markers to indicate the type and location of all laterals
27 installed by the project owner.

28 Section 7. (a) The Auditor General may review management
29 and financial audits of the One Call System, which audits shall
30 be performed by a qualified auditing firm within this

1 Commonwealth. A copy of the audit shall be submitted to the
2 Auditor General upon its completion and to the General Assembly
3 by October 31 of the year following the end of the audit period.
4 The cost of reasonable expenses incurred by the Auditor General
5 in performing the obligations under this section shall be
6 reimbursed by the One Call System. The fees shall not be
7 inconsistent with those of commercial auditing firms for similar
8 work.

9 (b) The Auditor General, for the purposes set forth in
10 subsection (a), and any contractor, excavator, facility owner or
11 member of the One Call System shall have the right during
12 regular business hours to inspect and copy any record, book,
13 account, document or any other information relating to the
14 provision of one call services by the One Call System, at the
15 cost determined by the board of directors.

16 (c) The One Call System shall submit an annual report to its
17 members, and a copy of the report shall be submitted to the
18 Auditor General.

19 Section 9. Section 7.1 of the act, amended December 19, 1996
20 (P.L.1460, No.187), is amended to read:

21 [Section 7.1.

22 (b) A One Call System shall be governed by a board of
23 directors, to be chosen by the facility owners. No less than
24 twenty percent of the seats on the board shall be held by
25 municipalities or municipal authorities. The board shall include
26 the following:

27 (1) The Chairman of the Pennsylvania Public Utility
28 Commission or his designee.

29 (2) The Director of the Pennsylvania Emergency Management
30 Agency or his designee.

1 (3) The Secretary of Labor and Industry or his designee.

2 (4) The Secretary of Transportation or his designee.

3 (5) A contractor or industry representative.

4 (6) A designer or industry representative.

5 (b.1) All fees are to be set by the board of directors and
6 shall be based on the latest annual audited cost factors of a
7 One Call System. Fees shall be set and adjusted to a rate not
8 more than five percent above the audited cost factor plus the
9 current average published Consumer Price Index for Pennsylvania.
10 Costs of capital improvements may be added, provided the
11 improvement receives a majority vote of the board of directors.

12 (c) The Auditor General, for the purposes set forth in
13 subsection (c.1), and any contractor, facility owner or member
14 of a One Call System shall have the right at any time to inspect
15 and copy any record, book, account, document or any other
16 information relating to the provision of one call services by a
17 One Call System at his own cost.

18 (c.1) The Auditor General shall conduct a biennial
19 performance and financial audit of a One Call System. A copy of
20 the audit conducted by the Auditor General under this paragraph
21 shall be submitted to the General Assembly no later than one
22 hundred and eighty days following the end of the audit period.
23 The actual cost of reasonable expenses incurred by the Auditor
24 General in performing his obligations under this section shall
25 be reimbursed by a One Call System. Such fees shall not be
26 inconsistent with those of commercial auditing firms for similar
27 work.

28 (c.2) A One Call System shall submit an annual report to its
29 members, and a copy of the report shall be submitted to the
30 General Assembly.

1 (g) Any contractor, designer or operator who proposes to
2 commence excavation or demolition work and requests information
3 of a One Call System shall be charged a fee for the service
4 received from a One Call System. Such fee shall be used to
5 offset the operation cost levied on the political subdivision
6 and municipal authority members in lieu of additional fees
7 charged for locations specifically related to this act.]

8 Section 10. Section 7.2 of the act, amended November 30,
9 2004 (P.L.1567, No.199), is amended to read:

10 Section 7.2. (a) Any person violating any of the provisions
11 of this act, except clauses (1) and (2) of section 2, commits a
12 summary offense and shall, upon conviction, be sentenced to pay
13 a fine of not less than two thousand five hundred dollars
14 (\$2,500) nor more than [twenty-five thousand dollars (\$25,000)]
15 fifty thousand dollars (\$50,000) or undergo imprisonment for not
16 more than ninety days, or both. The Attorney General of the
17 Commonwealth or any district attorney may enforce the provisions
18 of this act in any court of competent jurisdiction. The
19 department, in consultation with the Attorney General, may also
20 enforce the provisions of this act in any court of competent
21 jurisdiction. A facility owner may petition any court of
22 competent jurisdiction to enjoin any excavation or demolition
23 work conducted in violation of this act. Local law enforcement
24 or emergency management personnel may, in the interest of public
25 safety, order excavators on a site to stop further excavation,
26 if the excavation is being conducted in violation of this act.

27 (b) Fines levied under subsection (a) shall be determined
28 according to the following schedule:

29 (1) Where violations result in property damage that does not
30 exceed three thousand dollars (\$3,000), the fine shall not

1 exceed [three thousand dollars (\$3,000)] five thousand dollars
2 (\$5,000).

3 (2) Where violations result in property damage of more than
4 three thousand dollars (\$3,000), the fine shall not exceed [five
5 thousand dollars (\$5,000)] ten thousand dollars (\$10,000).

6 (3) For violations which result in personal injury or death,
7 the fine shall not exceed [twenty-five thousand dollars
8 (\$25,000)] fifty thousand dollars (\$50,000).

9 (c) The following factors shall be considered in determining
10 the fine to be assessed:

11 (1) The degree of the party's compliance with the statute
12 prior to date of the violation.

13 (2) The amount of personal and property damage caused by the
14 party's noncompliance.

15 (3) The degree of threat to the public safety and
16 inconvenience caused by the party's noncompliance.

17 (4) The party's plans and procedures to insure future
18 compliance with statutes and regulations.

19 (c.1) In addition to any other sanctions provided by this
20 act, the department shall have the authority to issue warnings
21 and orders requiring compliance with this act and may levy
22 administrative penalties for violations of this act. Any
23 warning, order or penalty shall be served on the person or
24 entity violating the act at their last known address. The
25 department shall consider the factors set forth in subsection
26 (c) in determining the administrative penalty to be assessed.
27 Any party aggrieved by the imposition of an order or
28 administrative penalty imposed by the department may appeal such
29 order or penalty as provided in 2 Pa.C.S. Ch. 5 Subch. A
30 (relating to practice and procedure of Commonwealth agencies)

1 and Ch. 7 Subch. A (relating to review of Commonwealth agency
2 action).

3 (c.2) Administrative penalties imposed by the department
4 under subsection (c.1) shall be determined according to the
5 following schedule:

6 (1) Any person or entity violating the provisions of clauses
7 (1) and (2) of section 2 may be subject to an administrative
8 penalty not to exceed five hundred dollars (\$500) per day. Each
9 day of noncompliance shall constitute a separate violation.

10 (2) Any person or entity receiving three or more warnings in
11 a calendar year may be subject to an administrative penalty not
12 to exceed five hundred dollars (\$500).

13 (3) Where violations result in property damage that does not
14 exceed ten thousand dollars (\$10,000), the administrative
15 penalty may not exceed one thousand dollars (\$1,000).

16 (4) Where violations result in property damage of more than
17 ten thousand dollars (\$10,000), the administrative penalty may
18 not exceed five thousand dollars (\$5,000).

19 (5) For violations that result in personal injury or death,
20 the administrative penalty may not exceed ten thousand dollars
21 (\$10,000).

22 (d) All fines and penalties recovered under this section
23 shall be payable to the Attorney General, district attorney or
24 the department, whichever brought the action, and collected in
25 the manner provided for by law. [To the extent that the expenses
26 incurred by the department in enforcing this act exceed the
27 fines collected by the department under this section, the
28 department may assess a charge for the remaining reasonable
29 expenses from a One Call System pursuant to a written agreement
30 between the parties.] Administrative penalties collected by the

1 department may be expended by the department for costs related
2 to its enforcement activities and to sponsor damage prevention
3 activities of the One Call System.

4 (e) The provisions of this act shall not affect any civil
5 remedies for personal injury or property damage, except as
6 otherwise specifically provided for in this act.

7 (f) The secretary or his designee shall have the authority
8 to issue subpoenas, upon application of an attorney responsible
9 for representing the Commonwealth in actions before the
10 department, for the purpose of investigating alleged violations
11 of this act. The department shall have the power to subpoena
12 witnesses and compel the production of books, records, papers
13 and documents as it deems necessary or pertinent to an
14 investigation or hearing.

15 Section 11. Section 7.6 of the act, added December 19, 1996
16 (P.L.1460, No.187), is amended to read:

17 [Section 7.6. This act shall not apply to any of the
18 following pipeline systems and facilities:

19 (1) Oil and gas production or gathering pipeline systems
20 constructed with pipe measuring less than three inches inside
21 diameter which are designed to collect and transport crude oil
22 or natural gas from the wellhead to the point of custody
23 transfer, provided such systems are permanently marked or staked
24 where they cross public highway rights-of-way or the boundary of
25 property which is owned in fee by the owner of the gathering
26 pipeline system.

27 (2) Any continuous one-mile length of a crude oil or natural
28 gas production or gathering pipeline system constructed with
29 pipe measuring three inches inside diameter or larger which is
30 designed principally to collect and transport crude oil or

1 natural gas from the wellhead to the point of custody transfer
2 where no more than fifty buildings intended for permanent
3 residential occupancy are located within two hundred twenty
4 yards on either side of the center line of the one-mile length
5 of pipeline.]

6 Section 12. The act is amended by adding sections to read:

7 Section 8. The One Call System shall have the authority to
8 design, establish and administer a voluntary payment dispute
9 resolution process which may be used by excavators, facility
10 owners, designers, project owners and other involved persons.
11 The process shall provide for dispute resolution panels selected
12 from among a list of representatives of stakeholder groups,
13 including facility owners, excavators, designers and regulators.
14 The process established under this section may not be used to
15 settle or resolve alleged violations of this act nor may involve
16 any issues related to the department's enforcement activities.

17 Section 9. Except as otherwise provided for by this act,
18 persons shall use their best efforts to comply with the Common
19 Ground Alliance Best Practices.

20 Section 10. No person shall intentionally remove or tamper
21 with a marking provided for under this act.

22 Section 11. Nothing in this act shall impair the rights or
23 immunities provided to political subdivisions under 42 Pa.C.S.
24 Ch. 85 Subch. C (relating to actions against local parties) or
25 any other State law.

26 Section 13. Section 7.7 of the act, added December 19, 1996
27 (P.L.1460, No.187), is amended to read:

28 Section [7.7] 39. This act shall expire on December 31,
29 [2006] 2016.

30 Section 14. Section 8 of the act is amended to read:

1 Section [8] 40. This act shall take effect in one hundred
2 twenty days.

3 Section 15. Repeals are as follows:

4 (1) The General Assembly declares that the repeal under
5 paragraph (2) is necessary to effectuate the amendment of the
6 title of the act and to cause certain liquefied petroleum gas
7 facilities or distributors to be subject to this act.

8 (2) The provisions of section 19 of the act of June 19,
9 2002 (P.L.421, No.61), known as the Propane and Liquefied
10 Petroleum Gas Act, are repealed to the extent that they
11 prohibit certain liquefied petroleum gas facilities or
12 distributors, other than facility owners as defined in
13 section 1 of the act, from being subject to the act.

14 Section 16. This act shall take effect as follows:

15 (1) The following provisions shall take effect
16 immediately:

17 (i) The amendment of section 7.7 of the act.

18 (ii) This section.

19 (2) The remainder of this act shall take effect in 120
20 days.