

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1104 Session of
2006

INTRODUCED BY TOMLINSON, RHOADES, LEMMOND, VANCE, PILEGGI,
KITCHEN, COSTA, EARLL, PIPPY, RAFFERTY, FONTANA, KASUNIC,
ORIE, WAUGH, BROWNE, WONDERLING, O'PAKE, LOGAN AND FERLO,
FEBRUARY 14, 2006

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
FEBRUARY 14, 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 dispute resolution process, for
19 best efforts and for removal or tampering with a marking;
20 further providing for expiration; and repealing provisions of
21 the act of June 19, 2002 (P.L.421, No.61), known as the
22 Propane and Liquefied Petroleum Gas Act, concerning the
23 prohibition of certain liquefied petroleum gas facilities or
24 distributors from being subject to the Underground Utility
25 Line Protection Law.

26 The General Assembly of the Commonwealth of Pennsylvania
27 hereby enacts as follows:

28 Section 1. The title of the act of December 10, 1974

(P.L.852, No.287), referred to as the Underground Utility Line Protection Law, is amended to read:

AN ACT

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

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

Section 1. As used in this act:

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

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

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

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

"Complex project" means an excavation that involves more work than properly can be described in a single locate request or any project designated as such by the excavator as a consequence of

its complexity or its potential to cause significant disruption to lines or facilities and the public, including excavations that require scheduling locates over an extended time frame.

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

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

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

"Culvert" means a sewer or drain crossing a road or embankment, a part of a road or embankment that passes over a sewer or drain or the channel or conduit for a sewer or drain.

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

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

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

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

"Engineering control" means man-made controls designed to isolate or contain in the ground waste or materials hazardous to human health and the environment. The term includes all of the

1 following:

2 (1) Hazardous, municipal, residual and radioactive waste
3 landfills.

4 (2) Vaults, repositories and in-situ stabilization.

5 (3) Caps on residual contamination.

6 (4) Groundwater pump and treat systems, leachate collection
7 systems and monitoring and containment systems.

8 "Excavation work" means the use of powered equipment or
9 explosives in the movement of earth, rock or other material, and
10 includes but is not limited to anchoring, augering, backfilling,
11 blasting, boring, digging, ditching, drilling, driving-in,
12 grading, plowing-in, pulling-in, ripping, scraping, trenching
13 and tunneling, but does not include soft excavation technology
14 such as vacuum, high pressure air or water, tilling of soil for
15 agricultural purposes to a depth of less than eighteen inches,
16 the direct operations necessary or incidental to the purposes of
17 finding or extracting natural resources[,]
18 or the Department of
19 Transportation and political subdivisions performing minor
20 routine maintenance up to a depth of [less than eighteen] twelve
21 inches within the [right-of-way of] cartway of public roads or
22 [employees of the Department of Transportation performing within
23 the scope of their employment work up to a depth of twenty-four
24 inches beneath the existing surface within the right-of-way of a
25 State highway.] within six inches of the remaining right-of-way
of public roads.

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

28 "Facility owner" means the public utility or agency,
29 political subdivision, municipality, authority, rural electric
30 cooperative or other person or entity who or which owns or

1 operates a line. [The term does not include the Department of
2 Transportation within a State highway right-of-way.] The term
3 does not include any of the following:

4 (1) A person serving the person's own property through the
5 person's own line if the person does not provide service to any
6 other customer.

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

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

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

17 "Line" or "facility" means an engineering control or an
18 underground conductor or underground pipe or structure used in
19 providing electric or communication service, or an underground
20 pipe used in carrying, gathering, transporting or providing
21 natural or artificial gas, petroleum, propane, oil or [oil]
22 petroleum and production product, sewage, water or other service
23 to one or more transportation carriers, consumers or customers
24 of such service and the appurtenances thereto, regardless of
25 whether such line or structure is located on land owned by a
26 person or public agency or whether it is located within an
27 easement or right-of-way. The term includes storm drainage and
28 traffic loops. The term shall not include crude oil or natural
29 gas production and gathering lines or facilities unless the line
30 or facility is a regulated onshore gathering line as defined in

1 regulations promulgated after January 1, 2006, by the United
2 States Department of Transportation pursuant to the Pipeline
3 Safety Act of 1992 (Public Law 102-508, 49 U.S.C. § 60101 et
4 seq.), if the regulated gathering line is subject to the damage
5 prevention program requirements of 49 CFR § 192.614.

6 "Locate request" means a communication between an excavator
7 or designer and the One Call System in which a request for
8 locating facilities is processed. Locate requests submitted by
9 an excavator performing work within the right-of-way of any
10 State highway, either under contract to the Department of
11 Transportation or under authority of a permit issued by the
12 Department of Transportation, shall include the number of the
13 Department of Transportation contract or permit.

14 "Minor routine maintenance" means shaping of or adding dust
15 palliative to unpaved roads, removal and application of patches
16 to the surface or base of flexible base, rigid base or rigid
17 surface roads by either manual or mechanized method to the
18 extent of the existing exposed base material, crack and joint
19 sealing, adding dust palliative to road shoulders, patching and
20 cutting of shoulders and shoulder bases by either manual or
21 mechanized methods to the extent of the existing exposed base,
22 and cleaning of inlets and drainage pipes and ditches.

23 "One Call System" means [a] the communication system
24 established within this Commonwealth to provide a single
25 nationwide toll-free telephone number or 811 number for
26 [contractors] excavators or designers or any other person
27 covered by this act to call facility owners and notify them of
28 their intent to perform excavation, demolition or similar work
29 as defined by this act. [A] The One Call System shall be
30 incorporated and operated as a nonprofit corporation pursuant to

1 15 Pa.C.S. Pt. II Subpt. C (relating to nonprofit corporations).

2 "Operator" means any individual in physical control of
3 powered equipment or explosives when being used to perform
4 excavation or demolition work.

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

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

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

13 "Preconstruction request" means a notification to facility
14 owners regarding a complex project.

15 "Project owner" means any person who or which engages an
16 excavator for construction or any other project which requires
17 excavation or demolition work.

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

20 "Site" means the specific place denoted on the locate request
21 where excavation or demolition work is being or is planned to be
22 performed. A site should be denoted as a clearly defined,
23 bounded area, including relevant identifiable points of
24 reference such as the specific address with a specific
25 description as to the portion of the property, including
26 descriptions such as front, back, left side, right side and
27 direction such as N, S, E, W or variants. Where possible, the
28 points should also reference, without limitation, the size and
29 radius or circumference of the excavation, utility pad or
30 pedestal numbers, utility pole numbers, landmarks, including

1 trees, fountains, fences, railroads, highway and pipeline
2 markers, and latitude and longitude.

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

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

10 "Tolerance zone" means the horizontal space within eighteen
11 inches of the outside wall or edge of a line or facility.

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

14 Section 3. Sections 2 and 3 of the act, amended November 30,
15 2004 (P.L.1567, No.199), are amended to read:

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

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

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

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

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

1 (iv) [at the option of any facility owner,] the street
2 identifications[, within or outside of the municipality] or like
3 information within each of the municipalities in which its lines
4 are located. This information shall be in a form acceptable to
5 [a] the One Call System. [and shall include the names of streets
6 bounding, crossing or adjacent to the facility owner's lines.]
7 Upon [receipt of a signed street identification list] acceptance
8 of the information from a facility owner, [a] the One Call
9 System shall provide the facility owner with notification within
10 the boundaries described [in the street identification list].
11 All facility owners [which opt for this service] shall agree to
12 indemnify and hold harmless [a] the One Call System for any
13 [street identity] errors and omissions on the part of the
14 facility owner or the [contractor] excavator or designer
15 providing [street identifications.] the information as the agent
16 of the facility owner; and

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

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

23 (4) Not more than ten [working] business days after receipt
24 of a request [therefor] from a designer who identifies the site
25 of excavation or demolition work for which he is preparing a
26 drawing, to initially respond to his request for information as
27 to the position and type of the facility owner's lines at such
28 site based on the information currently in the facility owner's
29 possession[.] or to mark the plans which have been provided to
30 it by the designer by field location or by another method agreed

1 to by the designer, excavator and facility owner, or their
2 agent. The facility owner shall so advise the person making the
3 request of the facility owner's status at the site through [a]
4 the One Call System.

5 (5) [Not more than two working days after] After receipt of
6 a timely request [therefor] from [a contractor] an excavator or
7 operator who identifies the site of excavation or demolition
8 work he intends to perform[:] and not later than the business
9 day prior to the scheduled date of excavation:

10 (i) To mark, stake, locate or otherwise provide the position
11 of the facility owner's underground lines at the site within
12 eighteen inches horizontally from the outside wall of such line
13 in a manner so as to enable the [contractor] excavator, where
14 appropriate, to employ prudent techniques, which may include
15 hand-dug test holes, to determine the precise position of the
16 underground facility owner's lines. This shall be done to the
17 extent such information is available in the facility owner's
18 records or by use of standard locating techniques other than
19 excavation. In the excavation phase, facility owners shall make
20 reasonable efforts to locate or notify excavators of the
21 existence and type of abandoned lines that remain on their
22 continuing property records.

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

1 facility's identification.

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

5 (iii) To propose mutually agreeable scheduling by which the
6 excavator, facility owner or designer may locate the 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 7535.1. 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.

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

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

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

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

(10) To submit an incident report to the department not more than ten [working] business days after receipt of notice that the facility owner's lines have been damaged by excavation or demolition activities that resulted in personal injury or in

1 property damage to parties other than the affected excavator or
2 facility owner. In addition, the incident report may likewise be
3 furnished to the Pennsylvania Public Utility Commission and the
4 Pennsylvania Emergency Management Agency pursuant to memoranda
5 of understanding negotiated between these agencies and the
6 department[.], which shall, at a minimum, provide for a common
7 reporting format for incident reports. The department shall
8 furnish to [a] the One Call System, upon reasonable request,
9 statistical data pertaining to the number of incident reports
10 filed with the department and the type, number and results of
11 investigations for violations of this act.

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

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

17 (1.1) To assign [a serial number and] one or more serial
18 numbers and the date that the site may legally be excavated and
19 to log the entire voice transaction on logging recorders in
20 appropriate digital form and maintain these logs for five years.
21 All records shall be indexed and available to the parties
22 involved at a reasonable cost and at reasonable times set by [a]
23 the One Call System.

24 (1.2) Perform the obligations, as set forth under this
25 section, on behalf of the facility owner, [contractor] excavator
26 or designer as established by the board of directors of [a] the
27 One Call System.

28 (1.3) Provide access to municipal lists provided to [a] the
29 One Call System for those interested parties. This list shall
30 contain facility owners having lines in the municipality,

1 including wards as indicated in subclause (ii) of clause (1) of
2 section 2, and to maintain, for each municipality, a list
3 containing the information as required to be submitted by the
4 facility owner. Such list shall be updated as revised
5 information is received from the facility owner within five
6 [working] business days.

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

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

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

26 (5) If approved by the board of directors of the One Call
27 System, to offer a service for the application and obtaining of
28 State or municipal permits for excavation work. Issuance of the
29 required permits shall be the responsibility of the appropriate
30 State or municipal agency which has jurisdiction over the type

1 of excavation work being performed.

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

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

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

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

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

26 (c) Prior to any action instituted in a court of this
27 Commonwealth naming or joining the One Call System as a party,
28 the court shall conduct a hearing to determine whether the One
29 Call System may be named or joined in the action for failure to
30 comply with this act.

1 (d) The One Call System shall be governed by a board of
2 directors, to be chosen by the facility owners. No less than
3 twenty percent of the seats on the board shall be held by
4 municipalities or municipal authorities. The board shall include
5 all of the following:

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

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

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

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

12 (5) An excavator or excavation industry representative.

13 (6) A designer or designer industry representative.

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

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

30 (g) An excavator, designer or operator who proposes to

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

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

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

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

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

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

29 (3) To show upon the drawing the position and type of each
30 facility owner's line, derived pursuant to the request made as

1 required by clause (2), and the name of the facility owner[, and
2 the facility owner's designated office address and the telephone
3 number] as shown on the list referred to in section 3.

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

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

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

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

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

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

30 (2.1) To request the location and type of facility owner

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

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

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

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

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

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

1 shall be paid for by the owner pursuant to clause (15) of this
2 section.

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

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

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

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

29 (7) To report immediately to the facility owner any break or
30 leak on its lines, or any dent, gouge, groove or other damage to

1 such lines or to their coating or cathodic protection, made or
2 discovered in the course of the excavation or demolition work.
3 The One Call System board of directors may adopt procedures to
4 permit reporting under this clause through the One Call System.

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

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

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

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

1 (11.2) If using horizontal directional drilling (HDD), at a
2 minimum, to utilize the best practices published by the HDD
3 Consortium.

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

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

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

29 (13) If, after receiving information from [a] the One Call
30 System or directly from a facility owner, the [contractor]

1 excavator decides to change the location, scope or duration of a
2 proposed excavation, the obligations imposed by this section
3 shall apply to the new location.

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

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

1 reported to the [Department of Labor and Industry] department.

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

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

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

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

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

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

shall have full force and effect where not inconsistent with this act.

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

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

(1) To utilize subsurface utility engineering or other similar techniques, wherever practicable, when designing complex projects having an estimated cost of five hundred thousand dollars (\$500,000) or more.

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

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

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

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

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

Section 7. (a) The Auditor General may review management and financial audits of the One Call System, which audits shall be performed by a qualified auditing firm within this Commonwealth. A copy of the audit shall be submitted to the Auditor General upon its completion and to the General Assembly by October 31 of the year following the end of the audit period. The cost of reasonable expenses incurred by the Auditor General

1 in performing the obligations under this section shall be
2 reimbursed by the One Call System. The fees shall not be
3 inconsistent with those of commercial auditing firms for similar
4 work.

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

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

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

17 [Section 7.1.

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

23 (1) The Chairman of the Pennsylvania Public Utility
24 Commission or his designee.

25 (2) The Director of the Pennsylvania Emergency Management
26 Agency or his designee.

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

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

29 (5) A contractor or industry representative.

30 (6) A designer or industry representative.

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

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

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

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

(g) Any contractor, designer or operator who proposes to commence excavation or demolition work and requests information of a One Call System shall be charged a fee for the service received from a One Call System. Such fee shall be used to

1 offset the operation cost levied on the political subdivision
2 and municipal authority members in lieu of additional fees
3 charged for locations specifically related to this act.]

4 Section 10. Section 7.2 of the act, amended November 30,
5 2004 (P.L.1567, No.199), is amended to read:

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

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

25 (1) Where violations result in property damage that does not
26 exceed three thousand dollars (\$3,000), the fine shall not
27 exceed [three thousand dollars (\$3,000)] five thousand dollars
28 (\$5,000).

29 (2) Where violations result in property damage of more than
30 three thousand dollars (\$3,000), the fine shall not exceed [five

1 thousand dollars (\$5,000)] ten thousand dollars (\$10,000).

2 (3) For violations which result in personal injury or death,
3 the fine shall not exceed [twenty-five thousand dollars
4 (\$25,000)] fifty thousand dollars (\$50,000).

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

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

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

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

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

15 (c.1) In addition to any other sanctions provided by this
16 act, the department shall have the authority to issue warnings
17 and orders requiring compliance with this act and may levy
18 administrative penalties for violations of this act. Any
19 warning, order or penalty shall be served on the person or
20 entity violating the act at their last known address. The
21 department shall consider the factors set forth in subsection
22 (c) in determining the administrative penalty to be assessed.
23 Any party aggrieved by the imposition of an order or
24 administrative penalty imposed by the department may appeal such
25 order or penalty as provided in 2 Pa.C.S. Ch. 5 Subch. A
26 (relating to practice and procedure of Commonwealth agencies)
27 and Ch. 7 Subch. A (relating to review of Commonwealth agency
28 action).

29 (c.2) Administrative penalties imposed by the department
30 under subsection (c.1) shall be determined according to the

1 following schedule:

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

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

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

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

15 (5) For violations that result in personal injury or death,
16 the administrative penalty may not exceed ten thousand dollars
17 (\$10,000).

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

30 (e) The provisions of this act shall not affect any civil

1 remedies for personal injury or property damage, except as
2 otherwise specifically provided for in this act.

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

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

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

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

23 (2) Any continuous one-mile length of a crude oil or natural
24 gas production or gathering pipeline system constructed with
25 pipe measuring three inches inside diameter or larger which is
26 designed principally to collect and transport crude oil or
27 natural gas from the wellhead to the point of custody transfer
28 where no more than fifty buildings intended for permanent
29 residential occupancy are located within two hundred twenty
30 yards on either side of the center line of the one-mile length

1 of pipeline.]

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

3 Section 7.7. The One Call System shall have the authority to
4 design, establish and administer a voluntary dispute resolution
5 process which may be used by excavators, facility owners,
6 designers, project owners and other involved persons. The
7 process shall provide for dispute resolution panels selected
8 from among a list of representatives of stakeholder groups,
9 including facility owners, excavators, designers and regulators.
10 The process established under this section may not be used to
11 settle or resolve alleged violations of this act nor may involve
12 any issues related to the department's enforcement activities.

13 Section 7.8. Except as otherwise provided for by this act,
14 persons shall use their best efforts to comply with the Common
15 Ground Alliance Best Practices.

16 Section 7.9. No person shall intentionally remove or tamper
17 with a marking provided for under this act.

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

20 Section [7.7] 7.10. This act shall expire on December 31,
21 [2006] 2016.

22 Section 14. Repeals are as follows:

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

27 (2) The provisions of section 19 of the act of June 19,
28 2002 (P.L.421, No.61), known as the Propane and Liquefied
29 Petroleum Gas Act, are repealed to the extent that they
30 prohibit certain liquefied petroleum gas facilities or

1 distributors, other than facility owners as defined in
2 section 1 of the act, from being subject to the act.
3 Section 15. This act shall take effect in 60 days.