

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1235 Session of 2015

INTRODUCED BY BAKER, TOMLINSON, BARTOLOTTA, GREENLEAF, SCAVELLO, VANCE, RESCHENTHALER, RAFFERTY, VULAKOVICH AND BREWSTER, MAY 25, 2016

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, AS AMENDED, JUNE 7, 2016

AN ACT

1 Amending the act of December 10, 1974 (P.L.852, No.287),
2 entitled, as amended, "An act to protect the public health
3 and safety by preventing excavation or demolition work from
4 damaging underground lines used in providing electricity,
5 communication, gas, propane, oil delivery, oil product
6 delivery, sewage, water or other service; imposing duties
7 upon the providers of such service, recorders of deeds, and
8 persons and other entities preparing drawings or performing
9 excavation or demolition work; and prescribing penalties,"
10 further providing for definitions, for duties of facility
11 owners, for duties of the One Call System, for duties of
12 excavators, for duties of designers, for duties of project
13 owners and for penalties; providing for enforcement, for
14 underground utility line protection fund and for compliance;
15 and further providing for One Call System authority and for
16 expiration.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. The title and section 1 of the act of December
20 10, 1974 (P.L.852, No.287), referred to as the Underground
21 Utility Line Protection Law, amended November 29, 2006
22 (P.L.1593, No.181), are amended to read:

AN ACT

24 To protect the public health and safety by preventing

1 excavation or demolition work from damaging underground
2 lines used in providing electricity, communication, gas,
3 propane, oil delivery, oil product delivery, sewage,
4 water or other service; imposing duties upon the
5 providers of such service[, recorders of deeds,] and
6 persons and other entities preparing drawings or
7 performing excavation or demolition work; and prescribing
8 penalties.

9 Section 1. [As used in this act:] The following words and
10 phrases when used in this act shall have the meanings given to
11 them in this section unless the context clearly indicates
12 otherwise:

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

15 "Alleged violation" means an instance when a person by action
16 or inaction fails to fulfill the obligations of this act.

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

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

23 "Chairman" means the Chairman of the Pennsylvania Public
24 Utility Commission.

25 "Commission" means the Pennsylvania Public Utility
26 Commission.

27 "Committee" means the Damage Prevention Committee established
28 under section 7.8.

29 "Common Ground Alliance best practices" means the damage
30 prevention industry recommended standards issued by the Common

1 Ground Alliance, a not-for-profit corporation created pursuant
2 to the issuance of the United States Department of
3 Transportation's Common Ground Task Force report in 1999.

4 "Complex project" means an excavation that involves more work
5 than properly can be described in a single locate request or any
6 project designated as such by the excavator or facility owner as
7 a consequence of its complexity or its potential to cause
8 significant disruption to lines or facilities and the public,
9 including excavations that require scheduling locates over an
10 extended time frame.

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

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

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

20 ["Department" means the Department of Labor and Industry of
21 the Commonwealth.]

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

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

29 "Excavation work" means the use of powered equipment or
30 explosives in the movement of earth, rock or other material, and

1 includes, but is not limited to, anchoring, augering,
2 backfilling, blasting, boring, digging, ditching, drilling,
3 driving-in, grading, plowing-in, pulling-in, ripping, scraping,
4 trenching and tunneling[, but]. The term does not include soft
5 excavation technology such as vacuum, high pressure air or
6 water, tilling of soil for agricultural purposes to a depth of
7 less than eighteen inches[, the direct operations necessary or
8 incidental to the purposes of finding or extracting natural
9 resources, political subdivisions performing minor routine
10 maintenance up to a depth of less than eighteen inches measured
11 from the top of the edge of the cartway or the top of the outer
12 edge of an improved shoulder, in addition to the performance of
13 incidental de minimis excavation associated with the routine
14 maintenance and the removal of sediment buildup, within the
15 right-of-way of public roads or employes of the Department of
16 Transportation performing within the scope of their employment
17 work up to a depth of twenty-four inches beneath the existing
18 surface within the right-of-way of a State highway.], work
19 performed by persons whose activities must comply with the
20 requirements of and regulations promulgated under the act of May
21 31, 1945 (P.L.1198, No.418), known as the Surface Mining
22 Conservation and Reclamation Act, the act of April 27, 1966 (1st
23 Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence
24 and Land Conservation Act, or the act of September 24, 1968
25 (P.L.1040, No.318), known as the Coal Refuse Disposal Control
26 Act, that relate to the protection of utility facilities ~~work~~ <--
27 ~~involving~~ OR THE direct operations on a well pad following <--
28 construction of the well pad AND that are necessary or ~~work~~ <--
29 ~~involving~~ operations incidental to the extraction of oil or
30 natural gas.

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

3 "Facility owner" means the public utility or agency,
4 political subdivision, municipality, authority, rural electric
5 cooperative or other person or entity who or which owns or
6 operates a line. [The term does not include the Department of
7 Transportation within a State highway right-of-way.] The term
8 does not include any of the following:

9 (1) A person serving the person's own property through the
10 person's own line, if the person does not provide service to any
11 other customer.

12 (2) A person using a line which the person does not own or
13 operate, if the use of the line does not serve more than a
14 single property.

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

19 "Fiscal year" means the fiscal year utilized by the
20 commission.

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

24 "Injury" means a bodily harm to a person, who as a result of
25 the bodily harm, immediately receives medical attention away
26 from the scene of the incident.

27 "Lawful start date" means the scheduled start date as
28 provided under section 1.1.

29 "Line" or "facility" means an underground conductor or
30 underground pipe or structure used in providing electric or

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

19 "Locate request" means a communication between an excavator
20 or designer and the One Call System in which a request for
21 locating facilities is processed. Locate requests submitted by
22 an excavator performing work within the right-of-way of any
23 State highway, either under contract to the Department of
24 Transportation or under authority of a permit issued by the
25 Department of Transportation, shall include the number of the
26 Department of Transportation contract or permit.

27 ["Minor routine maintenance" means shaping of or adding dust
28 palliative to unpaved roads, removal and application of patches
29 to the surface or base of flexible base, rigid base or rigid
30 surface roads by either manual or mechanized method to the

1 extent of the existing exposed base material, crack and joint
2 sealing, adding dust palliative to road shoulders, patching and
3 cutting of shoulders and shoulder bases by either manual or
4 mechanized methods to the extent of the existing exposed base,
5 and cleaning of inlets and drainage pipes and ditches.]

6 "One Call System" means the communication system established
7 within this Commonwealth to provide a single nationwide toll-
8 free telephone number or 811 number for excavators or designers
9 or any other person covered by this act to call facility owners
10 and notify them of their intent to perform excavation,
11 demolition or similar work as defined by this act. The One Call
12 System shall be incorporated and operated as a nonprofit
13 corporation pursuant to 15 Pa.C.S. Pt. II Subpt. C (relating to
14 nonprofit corporations).

15 "Operator" means any individual in physical control of
16 powered equipment or explosives when being used to perform
17 excavation or demolition work.

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

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

23 ["Preconstruction request" means a notification to facility
24 owners regarding a complex project.]

25 "Preconstruction meeting" means a scheduled event held by the
26 excavator, designer, project owner and facility owner, or an
27 agent of the excavator, designer, project owner and facility
28 owner, prior to the commencement of excavation or demolition
29 work in a complex project.

30 "Project owner" means any person who or which engages an

1 excavator for construction or any other project which requires
2 excavation or demolition work.

3 ["Secretary" means the Secretary of Labor and Industry of the
4 Commonwealth.

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

18 "Report of alleged violation" means a recorded account of an
19 alleged violation.

20 "Subsurface utility engineering" or "SUE" means those
21 techniques set forth in the American Society of Civil Engineers
22 (ASCE) most recently published standard CI/ASCE 38-02, or its
23 successor document as determined by the One Call System.

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

26 "Traffic loop" means a device that detects metal objects such
27 as cars and bicycles based on the change in inductance that they
28 induce in the device.

29 "Well pad" means area, under the control of an oil or natural
30 gas company, occupied by equipment or facilities necessary or

1 required for the drilling, production or plugging of an oil or
2 natural gas well.

3 "Work site" means the specific place denoted on the locate
4 request where excavation or demolition work is being or is
5 planned to be performed. A work site should be denoted as a
6 clearly defined, bounded area, including relevant identifiable
7 points of reference such as the specific address with a specific
8 description as to the portion of the property, including
9 descriptions such as front, back, left side, right side and
10 direction such as N, S, E, W or variants. Where possible, the
11 points should also reference, without limitation, the size and
12 radius or circumference of the excavation, utility pad or
13 pedestal numbers, utility pole numbers, landmarks, including
14 trees, fountains, fences, railroads, highway and pipeline
15 markers, and latitude and longitude.

16 Section 1.1. The act is amended by adding a section to read:

17 Section 1.1. The lawful start date shall be three business
18 days through ten business days following notification to the One
19 Call System.

20 Section 2. Section 2 of the act, amended November 29, 2006
21 (P.L.1593, No.181) and October 9, 2008 (P.L.1507, No.121), is
22 amended to read:

23 Section 2. (a) It shall be the duty of each facility owner:

24 (1) To be a member of and give written notice to the One
25 Call System. Such notice shall be in a form acceptable to the
26 One Call System and include:

27 (i) the legal name of the facility owner and their official
28 mailing address;

29 (ii) the names of the counties and municipalities, down to
30 and including wards in Philadelphia, Pittsburgh, Allentown and

1 Erie, in which its lines are located and other related
2 information as may be required by the One Call System regarding
3 the location of a member's facilities;

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

8 (iv) the street identifications or like information within
9 each of the municipalities in which its lines are located. This
10 information shall be in a form acceptable to the One Call
11 System. Upon acceptance of the information from a facility
12 owner, the One Call System shall provide the facility owner with
13 notification within the boundaries described. All facility
14 owners shall agree to indemnify and hold harmless the One Call
15 System for any errors and omissions on the part of the facility
16 owner or the excavator or designer providing the information as
17 the agent of the facility owner; and

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

19 ~~(1.1) To participate in the One Call System's Member Mapping <--~~
20 ~~Solutions as determined by the One Call System's board of~~
21 ~~directors.~~

22 (2) To provide the One Call System, within five business
23 days, with any revised information required under this section.

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

1 to it by the designer by field location or by another method
2 agreed to by the designer, excavator and facility owner, or
3 their agent. The facility owner shall so advise the person
4 making the request of the facility owner's status at the work
5 site through the One Call System.

6 (5) After receipt of a timely request from an excavator or
7 operator who identifies the work site of excavation or
8 demolition work he intends to perform and not later than the
9 business day prior to the [scheduled] lawful start date of
10 excavation:

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

30 (B) To maintain existing records of main lines abandoned on

1 or after the effective date of this clause and to mark, locate
2 or identify the main lines if possible, based upon the existing
3 records. The records shall include written or electronic
4 documents or drawings in the possession of the facility owner
5 that show the location of an existing line or facility.

6 (i.1) To[, where contained on its continuing property
7 records,] identify the location of an actually known facility's
8 point of connection to its facilities, where the point of
9 connection is not owned or operated by the facility owner. A
10 facility owner may identify the location of a known facility
11 connected to its facilities, but not owned or operated by the
12 facility owner, as a helpful guide to the excavator or owner.
13 The identification shall not be deemed to impose any liability
14 upon the facility owner for the accuracy of the other facility's
15 identification.

16 (ii) To[, at its option,] timely elect to excavate around
17 its facilities in fulfillment of this subparagraph, at its
18 option.

19 (iii.1) To propose mutually agreeable scheduling by which
20 the excavator, facility owner or designer may locate the
21 facilities.

22 (v) To respond to all notices through the One Call System,
23 provided the request is made in the time frame set forth under
24 this act. The response shall be made not later than the end of
25 the second business day following receipt of the notification by
26 the One Call System, excluding the business day upon which the
27 notification is received, or not later than the day prior to the
28 [scheduled] lawful start date of excavation if the excavator
29 specifies a later date or, in the case of an emergency, to
30 respond through the One Call System as soon as practicable

1 following receipt of notification of the emergency by the One
2 Call System.

3 (v.1) To, if a facility owner failed to respond to an
4 original, proper, nonemergency locate request from the One Call
5 System or to a renotification under section 5(20), communicate
6 directly to the excavator within two hours after renotification
7 of the information about its facility location and, if necessary
8 and possible, go to the proposed work site to mark, stake or
9 locate its underground lines or to verify to the excavator that
10 the facility owner's underground lines are not within the area
11 of the proposed work site.

12 (vi) In marking the approximate position of underground
13 lines or facilities, [the facility owner shall] to follow the
14 Common Ground Alliance Best Practices for Temporary Marking set
15 forth in ANSI standard Z535.1. Should the Common Ground Alliance
16 Best Practices be amended, the amended guidelines shall be
17 applied and followed. If the Common Ground Alliance Best
18 Practices no longer publishes guidelines for temporary markings
19 or if the responsibility for publishing the guidelines is
20 transferred to or assumed by another entity, the facility owner
21 shall follow the guidelines approved by the One Call System's
22 board of directors.

23 (vii) To respond to emergency notifications as soon as
24 practicable following receipt of notification of such emergency.
25 The response by the facility owner shall be consistent with the
26 nature of the emergency information received by the facility
27 owner.

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

1 (ix) If notification is received pursuant to [clause (8) of
2 section 5] section 5(8), to give priority to responding to
3 notification as an emergency.

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

14 (10) [To submit an incident report to the department not
15 more than ten business days after receipt of notice that the
16 facility owner's lines have been damaged by excavation or
17 demolition activities that resulted in personal injury or in
18 property damage to parties other than the affected excavator or
19 facility owner. In addition, the incident report may likewise be
20 furnished to the Pennsylvania Public Utility Commission and the
21 Pennsylvania Emergency Management Agency pursuant to memoranda
22 of understanding negotiated between these agencies and the
23 department, which shall, at a minimum, provide for a common
24 reporting format for incident reports. The department shall
25 furnish to the One Call System, upon reasonable request,
26 statistical data pertaining to the number of incident reports
27 filed with the department and the type, number and results of
28 investigations for violations of this act.] To submit a report
29 of alleged violation to the commission through the One Call
30 System not more than thirty business days after receipt of

1 notice that the facility owner's lines have been damaged by
2 excavation or demolition work or if the facility owner believes
3 a violation of this act has been committed in association with
4 excavation or demolition work. The report of alleged violation
5 shall be in a form and manner as required by the commission. No
6 report may be required where the cost to repair the damage to
7 the facility owner's lines is less than two thousand five
8 hundred dollars (\$2,500), unless the same person damaged the
9 facility owner's lines two or more times within a six-month
10 period.

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

15 (12) To participate in the One Call System's Member Mapping
16 Solutions as determined by the One Call System's board of
17 directors.

18 (b) The following provisions shall apply to a line or
19 facility installed prior to the effective date of this
20 subsection:

21 (1) The One Call System may require the mapping of the line
22 or facility only if the facility owner has existing maps of the
23 line or facility and the existing maps meet the requirements of
24 the One Call System's Member Mapping Solutions.

25 (2) The facility owner has the burden of proving the line or
26 facility was not subject to the requirements of this act at the
27 time the line or facility was installed.

28 Section 3. Sections 3, 3.1, 4, 5 and 6.1 of the act, amended
29 or added November 29, 2006 (P.L.1593, No.181), are amended to
30 read:

1 Section 3. It shall be the duty of the One Call System [to
2 do the following]:

3 (1.1) To assign one or more serial numbers and the date that
4 the work site may legally be excavated and to log the entire
5 voice transaction on logging recorders in appropriate digital
6 form and maintain these logs for five years. All records shall
7 be indexed and available to the parties involved at a reasonable
8 cost and at reasonable times set by the One Call System.

9 (1.2) [Perform] To perform the obligations, as set forth
10 under this section, on behalf of the facility owner, excavator
11 or designer as established by the board of directors of the One
12 Call System.

13 (1.3) [Provide] To provide access to municipal lists
14 provided to the One Call System for those interested parties.
15 This list shall contain facility owners having lines in the
16 municipality, including wards as indicated in [subclause (ii) of
17 clause (1) of section 2] section 2(1)(ii), and to maintain, for
18 each municipality, a list containing the information as required
19 to be submitted by the facility owner. Such list shall be
20 updated as revised information is received from the facility
21 owner within five business days.

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

30 (3) [Not more than ten business days after the receipt of a

1 clear and specific request from the department, to provide
2 access to or photocopies of specific One Call System response
3 records, tickets or other like information relating to matters
4 under investigation by the department pursuant to its
5 enforcement authority under this act.] To, per memoranda of
6 understanding between the commission and the One Call System,
7 provide reports of alleged violations and other information,
8 such as photographs, photocopies and drawings, that are
9 submitted with the report of alleged violation. The One Call
10 System shall provide access to or photocopies of One Call System
11 response records, tickets or other similar information related
12 to matters covered by this act under investigation by the
13 commission, pursuant to its enforcement authority under this
14 act. The One Call System may provide reports of alleged
15 violations to the Pennsylvania Emergency Management Agency, per
16 memoranda of understanding.

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

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

28 (6) Pursuant to policies adopted by the One Call System's
29 board of directors, to provide a secure repository for and
30 access to subsurface utility engineering data received from

1 project owners to affected facility owner members.

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

9 (8) To notify the facility owner as soon as possible that an
10 excavator has identified an unmarked or incorrectly marked
11 facility and of the facility owner's responsibilities under
12 section 2(5)(v.1).

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

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

25 (c) (Reserved).

26 (d) The One Call System shall be governed by a board of
27 directors[,] to be chosen by the facility owners. No less than
28 twenty percent of the seats on the board shall be held by
29 municipalities or municipal authorities. The board shall include
30 all of the following:

1 (1) The [Chairman of the Pennsylvania Public Utility
2 Commission] chairman or his designee.

3 (2) The Director of the Pennsylvania Emergency Management
4 Agency or his designee.

5 [(3) The Secretary of Labor and Industry or his designee.]

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

7 (5) An excavator or excavation industry representative.

8 (6) A designer or designer industry representative.

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

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

25 [(g) An excavator, designer or operator who proposes to
26 commence excavation or demolition work and requests information
27 of the One Call System shall be charged a fee for the service
28 received from the One Call System. The fee shall be used to
29 offset the operation cost levied on the political subdivision
30 and municipal authority members in lieu of additional fees

1 charged for locations under this act.]

2 (f.1) An excavator, designer or operator who proposes to
3 commence excavation or demolition work and requests information
4 from the One Call System shall pay to the One Call System an
5 annual fee for the service provided by the One Call System under
6 section 3. The fee shall be set by the One Call System board of
7 directors and shall be used to offset a portion of the operation
8 costs of the One Call System and a portion of the operation
9 costs levied on the One Call System's political subdivision and
10 municipal authority members. Failure to pay the fee shall
11 constitute a violation of this act and shall subject the
12 excavator, designer or operator to the enforcement authority of
13 the commission for the nonpayment.

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

17 Section 4. It shall be the duty of each designer preparing a
18 drawing which requires excavation or demolition work within
19 [the] this Commonwealth:

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

28 (2.1) To forward a copy of the project plans to each
29 facility owner who requests a copy. If a designer is unable to
30 provide a copy because of security of the project or proprietary

1 concerns regarding the design or the project, the designer shall
2 negotiate in a timely manner with the facility owner the means
3 of obtaining the necessary data.

4 (3) To show upon the drawing the position and type of each
5 facility owner's line, derived pursuant to the request made as
6 required by clause (2), and the name of the facility owner as
7 shown on the list referred to in section 3.

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

14 (5) A designer shall be deemed to have met the obligations
15 of clause (2) if he calls the One Call System and shows, as
16 proof, the serial number of one call notice on drawings. The
17 designer shall also show the toll-free number of the One Call
18 System on the drawing near his serial number.

19 (6) If, after receiving information from the facility
20 owners, the designer decides to change the work site of a
21 proposed excavation, the obligations imposed by this section
22 shall apply to the new work site.

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

29 (8) To submit a report of alleged violation to the
30 commission through the One Call System not more than thirty

1 business days from the time the designer becomes aware that a
2 violation of this act may have been committed in association
3 with excavation or demolition work. The report of alleged
4 violation shall be in a form and manner as required by the
5 commission.

6 (9) To request line and facility information required under
7 section 2(4) from the One Call System and to pay the applicable
8 fee for the request.

9 Section 5. It shall be the duty of each excavator who
10 intends to perform excavation or demolition work within this
11 Commonwealth:

12 (2.1) To request the location and type of facility owner
13 lines at each work site by notifying the facility owner through
14 the One Call System. Notification shall be not less than three
15 nor more than ten business days in advance of beginning
16 excavation or demolition work. No work shall begin earlier than
17 the [scheduled excavation date] lawful start date which shall be
18 on or after the third business day after notification. The
19 [scheduled excavation date] lawful start date shall exclude the
20 date upon which notification was received by the One Call System
21 and notification received on a Saturday, Sunday or holiday,
22 which shall be processed on the following business day. In the
23 case of a complex project, notification shall not be less than
24 ten business days in advance of the beginning of excavation or
25 demolition work.

26 (2.2) To provide the One Call System with [specific] exact
27 information to identify the work site so that facility owners
28 might provide indications of their lines. An excavator shall be
29 deemed to have met the obligations of clause (2.1) if he calls
30 the One Call System, provides the work site and other required

1 information and receives a serial number.

2 (3) In a complex project or if an excavator intends to
3 perform work at multiple work sites or over a large area, [he
4 shall] to take reasonable steps to work with facility owners,
5 including scheduling and conducting a preconstruction meeting,
6 so that they may locate their facilities at a time reasonably in
7 advance of the actual start of excavation or demolition work for
8 each phase of the work. A preconstruction meeting may take place
9 at any time prior to the commencement of excavation or
10 demolition work, and the excavator, facility owners and
11 designer, or their agents, shall attend the meeting. Notice of
12 the meeting shall be given sufficiently in advance so as to
13 permit attendance, either in person or electronically, by the
14 excavator, facility owners and designer, or their agents, and
15 shall include information sufficient to identify the scope of
16 work. If the excavator does not believe that a preconstruction
17 meeting is necessary under the circumstances of this [paragraph]
18 clause it shall indicate such belief in its notice, but any
19 facility owner with facilities at the work site may request a
20 meeting with the excavator, and a meeting shall be held between
21 the facility owner and the excavator. After commencement of
22 excavation or demolition work, the excavator shall be
23 responsible for protecting and preserving the staking, marking
24 or other designation until no longer required for proper and
25 safe excavation or demolition work at or near the underground
26 facility[,] or by contacting the One Call System to request that
27 the facilities be marked again in the event that the previous
28 markings have been compromised or eliminated.

29 (3.1) To comply with the requirements established by the One
30 Call System as determined by the board of directors regarding

1 the maximum area that a notification may cover.

2 (4) To exercise due care[;] and to take all reasonable steps
3 necessary to avoid injury to or otherwise interfere with all
4 lines where positions have been provided to the excavator by the
5 facility owners pursuant to [clause (5) of section 2] section
6 2(5). Within the tolerance zone the excavator shall employ
7 prudent techniques, which may include hand-dug test holes, to
8 ascertain the precise position of such facilities. If
9 insufficient information to safely excavate is available
10 pursuant to [clause (5) of section 2] section 2(5), the
11 excavator shall employ like prudent techniques which shall be
12 paid for by the project owner pursuant to clause (15) [of this
13 section].

14 (5) If the facility owner fails to respond to the
15 excavator's timely request as provided under [clause (5) of
16 section 2] section 2(5) or the facility owner notifies the
17 excavator that the line cannot be marked within the time frame
18 and a mutually agreeable date for marking cannot be arrived at,
19 the excavator may proceed with excavation as scheduled, but not
20 earlier than the lawful dig date, provided he exercises due care
21 in his endeavors, subject to the limitations contained in this
22 clause and clauses (2.1) through (4) and (20).

23 (6) To inform each operator employed by the excavator at the
24 work site of such work of the information obtained by the
25 excavator pursuant to clauses (2.1) through (5), and the
26 excavator and operator shall:

27 (i) Plan the excavation or demolition work to avoid damage
28 to or minimize interference with a facility owner's facilities
29 in the construction area. Excavation or demolition work which
30 requires temporary or permanent interruption of a facility

1 owner's service shall be coordinated with the affected facility
2 owner in all cases.

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

8 (7) To report immediately to the facility owner any break or
9 leak on its lines, or any dent, gouge, groove or other damage to
10 such lines or to their coating or cathodic protection, made or
11 discovered in the course of the excavation or demolition work.
12 The One Call System board of directors may adopt procedures to
13 permit reporting under this clause through the One Call System.

14 (8) To immediately notify 911 and the facility owner if the
15 damage results in the escape of any flammable, toxic or
16 corrosive gas or liquid which endangers life, health or
17 property. The excavator shall take reasonable measures, based on
18 its knowledge, training, resources, experience and understanding
19 of the situation, to protect themselves and those in immediate
20 danger, the general public, the property and the environment
21 until the facility owner or emergency responders have arrived
22 and completed their assessment and shall remain on the work site
23 to convey any pertinent information to responders that may help
24 them to safely mitigate the situation.

25 (9) The time requirements of clause (2.1) shall not apply to
26 a facility owner or excavator performing excavation or
27 demolition work in an emergency, as defined in section 1;
28 nonetheless, all facility owners shall be notified as soon as
29 possible before, during or after excavation or demolition work,
30 depending upon the circumstances.

1 (11) [An excavator shall] To use the color white to mark a
2 proposed excavation work site when exact work site information
3 cannot be provided.

4 (11.1) To assist a facility owner in determining involvement
5 of a facility owner's lines by disclosing additional available
6 information requested by the facility owner, including
7 dimensions and the direction of proposed excavations.

8 (11.2) If using horizontal directional drilling (HDD), at a
9 minimum, to utilize the best practices published by the HDD
10 Consortium.

11 (12) The following standards shall be applied in determining
12 whether an excavator shall incur any obligation or be subject to
13 liability as a result of an excavator's demolition work or
14 excavation work damaging a facility owner's facilities:

15 (i) The excavator who has complied with the terms of this
16 act and who was not otherwise negligent shall not be subject to
17 liability or incur any obligation to facility owners, operators,
18 project owners or other persons who sustain injury to person or
19 property as a result of the excavator's excavation or demolition
20 work damaging a facility owner's lines.

21 (ii) Where an excavator has failed to comply with the terms
22 of this act or was otherwise negligent, and the facility owner
23 or designer has misidentified, mislocated or failed to identify
24 its facilities pursuant to this act, then in computing the
25 amount of reimbursement to which the facility owner is entitled,
26 the cost of repairing or replacing its facilities shall be
27 diminished in the same proportion that the facility owner's or
28 designer's misidentification, mislocation or failure to identify
29 the facilities contributed to the damage. Should the facility
30 owner or designer not have misidentified, mislocated or failed

1 to identify its facilities pursuant to this act, there shall be
2 no diminution of the facility owner's right of recovery.

3 (13) If, after receiving information from the One Call
4 System or directly from a facility owner, the excavator decides
5 to change the location, scope or duration of a proposed
6 excavation, the obligations imposed by this section shall apply
7 to the new location.

8 (14) If an excavator removes its equipment and vacates a
9 [worksite] work site for more than two business days, [he shall]
10 to renotify the One Call System unless other arrangements have
11 been made directly with the facility owners involved in his
12 [worksite] work site.

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

1 otherwise. Provisions in any contract, public or private, which
2 attempt to limit the rights of excavators under this section
3 shall not be valid for any reason, and any attempted waiver of
4 this section shall be void and unenforceable as against public
5 policy and any such attempted waiver shall be reported to the
6 [department] commission.

7 (16) [To submit an incident report to the department not
8 more than ten business days after striking or otherwise damaging
9 a facility owner's line during excavation or demolition
10 activities that resulted in personal injury or property damage
11 to parties other than the affected excavator or facility owner.
12 In addition, the incident report may be furnished to the
13 Pennsylvania Public Utility Commission and the Pennsylvania
14 Emergency Management Agency pursuant to memoranda of
15 understanding negotiated between these agencies and the
16 department.] To submit a report of alleged violation to the
17 commission through the One Call System not more than ten
18 business days after striking or damaging a facility owner's line
19 during excavation or demolition or if the excavator believes a
20 violation of this act has been committed in association with
21 excavation or demolition work. The report of alleged violation
22 shall be in a form and manner as required by the commission.

23 (17) To comply with all requests for information by the
24 [department] commission relating to the [department's]
25 commission's enforcement authority under this act within thirty
26 days of the receipt of the request.

27 (18) To, if it chooses to do so and if working for a
28 facility owner, a municipality or a municipal authority,
29 delegate the power to discharge the duties set forth in clauses
30 (2.1) and (2.2) to its project owner, with the project owner's

1 consent. If the power is delegated pursuant to this clause, both
2 the excavator and the project owner shall be responsible for
3 providing the required notices.

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

6 (20) To renotify the One Call System of an unmarked or
7 incorrectly marked facility, if an original, proper,
8 nonemergency locate request has been made to the One Call System
9 and, upon initial arrival at the proposed work site, it is
10 apparent to the excavator that there is an unmarked or
11 incorrectly marked facility. An excavator may not begin
12 excavating in the affected area of the work site until after
13 receiving sufficient information from the facility owner to
14 safely excavate. If the facility owner fails to provide
15 sufficient information to the excavator within three hours after
16 the excavator has notified the One Call System of the unmarked
17 or incorrectly marked facility, the excavator may proceed with
18 excavation subject to the limitations under clause (5).

19 (21) To make a locate request to the One Call System prior
20 to excavation or demolition work and to pay the applicable fee
21 for the request.

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

25 (1) To utilize sufficient quality levels of subsurface
26 utility engineering or other similar techniques whenever
27 practicable to properly determine the existence and positions of
28 underground facilities when designing known complex projects
29 having an estimated cost of four hundred thousand dollars
30 (\$400,000) or more.

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

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

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

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

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

14 (7) To submit a report of alleged violation to the
15 commission through the One Call System not more than ten
16 business days after striking or damaging a facility owner's line
17 during excavation or demolition work activities, after a project
18 owner's contracted excavator strikes or damages a facility
19 owner's line during excavation or demolition activities or if
20 the project owner believes a violation of this act has been
21 committed in association with excavation or demolition. The
22 report of alleged violation shall be in a form and manner as
23 required by the commission.

24 Section 4. Section 7.2 of the act is repealed:

25 [Section 7.2. (a) Any person violating any of the
26 provisions of this act, except clauses (1) and (2) of section 2,
27 commits a summary offense and shall, upon conviction, be
28 sentenced to pay a fine of not less than two thousand five
29 hundred dollars (\$2,500) nor more than fifty thousand dollars
30 (\$50,000) or undergo imprisonment for not more than ninety days,

1 or both. The Attorney General of the Commonwealth or any
2 district attorney may enforce the provisions of this act in any
3 court of competent jurisdiction. The department, in consultation
4 with the Attorney General, may also enforce the provisions of
5 this act in any court of competent jurisdiction. A facility
6 owner may petition any court of competent jurisdiction to enjoin
7 any excavation or demolition work conducted in violation of this
8 act. Local law enforcement or emergency management personnel
9 may, in the interest of public safety, order excavators on a
10 site to stop further excavation if the excavation is being
11 conducted in violation of this act.

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

14 (1) Where violations result in property damage that does not
15 exceed three thousand dollars (\$3,000), the fine shall not
16 exceed five thousand dollars (\$5,000).

17 (2) Where violations result in property damage of more than
18 three thousand dollars (\$3,000), the fine shall not exceed ten
19 thousand dollars (\$10,000).

20 (3) For violations which result in personal injury or death,
21 the fine shall not exceed fifty thousand dollars (\$50,000).

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

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

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

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

30 (4) The party's plans and procedures to insure future

1 compliance with statutes and regulations.

2 (c.1) In addition to any other sanctions provided by this
3 act, the department shall have the authority to issue warnings
4 and orders requiring compliance with this act and may levy
5 administrative penalties for violations of this act. Any
6 warning, order or penalty shall be served on the person or
7 entity violating the act at their last known address. The
8 department shall consider the factors set forth in subsection
9 (c) in determining the administrative penalty to be assessed.
10 Any party aggrieved by the imposition of an order or
11 administrative penalty imposed by the department may appeal such
12 order or penalty as provided in 2 Pa.C.S. Ch. 5 Subch. A
13 (relating to practice and procedure of Commonwealth agencies)
14 and Ch. 7 Subch. A (relating to review of Commonwealth agency
15 action).

16 (c.2) Administrative penalties imposed by the department
17 under subsection (c.1) shall be determined according to the
18 following schedule:

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

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

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

29 (4) Where violations result in property damage of more than
30 ten thousand dollars (\$10,000), the administrative penalty may

1 not exceed five thousand dollars (\$5,000).

2 (5) For violations that result in personal injury or death,
3 the administrative penalty may not exceed ten thousand dollars
4 (\$10,000).

5 (d) All fines and penalties recovered under this section
6 shall be payable to the Attorney General, district attorney or
7 the department, whichever brought the action, and collected in
8 the manner provided for by law. Administrative penalties
9 collected by the department may be expended by the department
10 for costs related to its enforcement activities and to sponsor
11 damage prevention activities of the One Call System.

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

15 (f) The secretary or his designee shall have the authority
16 to issue subpoenas, upon application of an attorney responsible
17 for representing the Commonwealth in actions before the
18 department, for the purpose of investigating alleged violations
19 of this act. The department shall have the power to subpoena
20 witnesses and compel the production of books, records, papers
21 and documents as it deems necessary or pertinent to an
22 investigation or hearing.]

23 Section 5. The act is amended by adding sections to read:

24 Section 7.8. (a) A damage prevention committee shall be
25 established as follows:

26 (1) The committee shall consist of the following members,
27 appointed by the commission:

28 (i) The chairman, or his designee from the commission's
29 professional staff.

30 (ii) The president of the One Call System, or his designee

1 from the One Call System professional staff.

2 (iii) One representative from each of the following
3 municipally owned or affiliated facility owner industries:
4 electric, natural gas or petroleum pipelines, telephone, water
5 or wastewater and cable television, nominated by facility owners
6 or affiliated organizations.

7 (iv) Three representatives of excavators, nominated by
8 excavators or affiliated organizations.

9 (v) One representative of municipal governments, nominated
10 by municipal governments or affiliated organizations.

11 (vi) One representative of municipal authorities, nominated
12 by municipal authorities or affiliated organizations.

13 (2) A person appointed to the committee must have expertise
14 within the operation of this act.

15 (3) A nomination under clause (1)(iii), (iv), (v) and (vi)
16 shall be forwarded to the secretary of the commission. The
17 executive director of the commission shall provide recommended
18 candidates to the commission for approval.

19 (4) Except for an unexpired term or for committee members
20 under clause (1)(i) and (ii), the following shall apply:

21 (i) An appointment to the committee shall begin January 1.

22 (ii) Except for initial terms under clause (5), a committee
23 member's term shall be for a term of three years.

24 (5) The initial term of committee members shall be as
25 follows:

26 (i) Two representatives of facility owners shall serve three
27 years, one representative shall serve two years and two
28 representatives shall serve one year.

29 (ii) One representative of excavators shall serve three
30 years, one representative shall serve two years and one

1 representative shall serve one year.

2 (iii) The representative of municipal governments shall
3 serve two years.

4 (iv) The representative of municipal authorities shall serve
5 three years.

6 (6) The commission member shall serve as the chairman of the
7 committee and shall be a nonvoting member, except if the
8 chairman's vote is necessary to break a tie. The chairman's
9 attendance shall not be counted to establish a quorum.

10 (7) At least six members of the committee who are present
11 shall constitute a quorum for the transaction of business. A
12 simple majority vote of the committee members present at a
13 meeting shall be deemed to be the position of the committee.

14 (b) The committee shall meet regularly to carry out the
15 following purposes:

16 (1) Review a report of an alleged violation of this act and
17 damage prevention investigator findings and recommendations.

18 (2) Issue a warning letter to a person as deemed appropriate
19 by the committee or as recommended by the damage prevention
20 investigator.

21 (3) Issue an informal determination that imposes an
22 administrative penalty.

23 (4) Require a person to attend a damage prevention
24 educational program.

25 (5) Issue an informal determination that modifies or
26 dismisses a recommendation of committee staff.

27 (c) The following shall apply to alleged violations:

28 (1) A person determined, in a report issued by a damage
29 prevention investigator, to have committed an alleged violation
30 shall do one of the following:

1 (i) Provide a written acknowledgment of the findings and
2 administrative penalty contained in the report issued by the
3 damage prevention investigator to the committee.

4 (ii) Appear before the commission to present its position.

5 (2) A person who is subject to an informal determination of
6 the committee may accept or reject the result. If an informal
7 determination is rejected, the matter shall be returned to the
8 damage prevention investigator for further action, if
9 appropriate, including referring the matter to the commission
10 prosecutor staff for the purpose of issuing a formal complaint.

11 (d) Except for alleged violations involving injury or death,
12 the provisions of subsection (c) may be applied in advance or
13 instead of filing a formal complaint against a person
14 determined, in a report issued by a damage prevention
15 investigator, to have committed an alleged violation. An
16 informal determination of the committee shall be binding on the
17 commission unless the person rejects the informal determination.

18 (e) The committee shall have the following additional
19 duties:

20 (1) Upon the request of the commission, the committee shall
21 hold a special meeting to advise the commission on a matter
22 related to damage prevention for underground facilities under
23 this act.

24 (2) As soon as practicable after establishment, the
25 committee, with input from the One Call System, shall develop
26 and implement bylaws. The bylaws shall:

27 (i) Establish a schedule for the frequency of regular
28 meetings.

29 (ii) Delineate the committee's practice and procedure
30 concerning the performance of duties assigned under this act and

1 commission orders and regulations.

2 (iii) Be approved by the commission.

3 (f) Except for willful misconduct, members of the committee
4 shall be immune, individually and jointly, from civil liability
5 for an act or omission done or made in performance of the
6 members' duties while serving as members of the committee.

7 (g) The commission shall have the following powers to carry
8 out the purposes of this act:

9 (1) To employ individuals.

10 (2) To issue orders.

11 (3) To promulgate regulations. If the commission promulgates
12 regulations that limit reporting to a specific type of incident,
13 including contact with a line, damage to a line or line coating,
14 personal injury, third-party damage and failure to comply with
15 this act, the commission may consider the resources available
16 for enforcement and other factors.

17 (4) For one year following the effective date of this
18 section, to promulgate temporary regulations. Regulations under
19 this clause shall:

20 (i) Expire no later than two years following the effective
21 date of this section.

22 (ii) Be exempt from all of the following:

23 (A) Sections 201, 202 and 203 of the act of July 31, 1968
24 (P.L.769, No.240), referred to as the Commonwealth Documents
25 Law.

26 (B) The act of June 25, 1982 (P.L.633, No.181), known as the
27 Regulatory Review Act.

28 Section 7.9 (a) Program costs for commission enforcement of
29 this act shall be included in the commission's proposed budget
30 and shall be subject to the review and approval of the Governor

1 and the General Assembly as described under 66 Pa.C.S. § 510(a)
2 (relating to assessment for regulatory expenses upon public
3 utilities). The assessment of the commission's program costs for
4 commission enforcement of this act shall not include Federal and
5 State funds provided for the enforcement of this act and shall
6 be allocated in the following manner:

7 (1) Eighty percent of the program costs shall be included
8 within the amount assessed to public utilities under 66 Pa.C.S.
9 § 510.

10 (2) Twenty percent of the program costs shall be assessed as
11 a fee upon the One Call System, with the fee to be paid to the
12 commission. The One Call System's board of directors shall
13 determine the manner in which the fee may be recovered from
14 facility owners, excavators, designers and other involved
15 persons, provided that the One Call System's board of directors'
16 manner of recovery may not include facility owners that are
17 public utilities.

18 Section 7.10. (a) The commission may issue a warning and
19 order requiring compliance with this act and may levy an
20 administrative penalty for a violation of this act. A warning,
21 order or penalty shall be served on the person or entity
22 violating this act at the person's last known address. A party
23 aggrieved by the imposition of an order or administrative
24 penalty imposed by the commission may appeal the order or
25 penalty as provided under 2 Pa.C.S. Chs. 5 Subch. A (relating to
26 practice and procedure of Commonwealth agencies) and 7 Subch. A
27 (relating to judicial review of Commonwealth agency action).

28 (b) The following shall apply:

29 (1) A person or entity violating this act may be subject to:

30 (i) an administrative penalty of not more than two thousand

1 five hundred dollars (\$2,500) per violation; or
2 (ii) if the violation results in injury, death or property
3 damage of twenty-five thousand dollars (\$25,000) or more, an
4 administrative penalty of not more than fifty thousand dollars
5 (\$50,000).

6 (2) The commission and committee shall consider the
7 following factors in determining the administrative penalty to
8 be assessed:

9 (i) The history of the party's compliance with the act prior
10 to the date of the violation.

11 (ii) The amount of injury or property damage caused by the
12 party's noncompliance.

13 (iii) The degree of threat to the public safety and
14 inconvenience caused by the party's noncompliance.

15 (iv) The party's proposed modification to internal practices
16 and procedures to ensure future compliance with statutes and
17 regulations.

18 (v) The degree of the party's culpability.

19 (vi) Other factors as may be appropriate considering the
20 facts and circumstances of the incident.

21 (c) An administrative penalty recovered under this section
22 shall be payable to the commission and collected in the manner
23 provided for by law.

24 (d) This act shall not affect a civil remedy for personal
25 injury or property damage, except as provided for under this
26 act.

27 (e) The commission may issue a subpoena, on application of
28 an attorney responsible for representing the Commonwealth in
29 actions before the commission, for the purpose of investigating
30 an alleged violation of this act. The commission shall have the

1 power to subpoena witnesses and compel the production of books,
2 records, papers and documents.

3 (f) No provision of this act shall be construed or
4 interpreted to do any of the following:

5 (1) Affect the ability of a district attorney or the
6 Attorney General to investigate or file a claim for the same
7 conduct.

8 (2) Deprive a governmental agency, including a law
9 enforcement agency, the Auditor General and a district attorney,
10 of any jurisdictional power or duty.

11 (g) A facility owner may petition a court of competent
12 jurisdiction to enjoin excavation or demolition work conducted
13 in violation of this act. Local law enforcement or emergency
14 management personnel may, in the interest of public safety,
15 order an excavator on a work site to stop further excavation if
16 the excavation is being conducted in violation of this act.

17 Section 6. Section 8 of the act, added November 29, 2006
18 (P.L.1593, No.181), is amended to read:

19 Section 8. The One Call System shall have the authority to
20 design, establish and administer a voluntary payment dispute
21 resolution process which may be used by excavators, facility
22 owners, designers, project owners and other involved persons.
23 The process shall provide for dispute resolution panels selected
24 from among a list of representatives of stakeholder groups,
25 including facility owners, excavators, designers and regulators.
26 The process established under this section may not be used to
27 settle or resolve alleged violations of this act nor may involve
28 any issues related to the [department's] commission's
29 enforcement activities.

30 Section 7. Section 39 of the act, amended November 29, 2006

1 (P.L.1593, No.181), is amended to read:

2 Section 39. This act shall expire on December 31, [2016]
3 2021.

4 Section 8. This act shall take effect as follows:

5 (1) The following provisions shall take effect
6 immediately:

7 (i) The addition of section 7.9 of the act.

8 (ii) This section.

9 (2) The remainder of this act shall take effect in 180
10 days.