

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2384 Session of
2004

INTRODUCED BY SEMMEL, GERGELY, HARHAI, LEH, REICHLLEY, BARRAR,
CAPPELLI, DALEY, DALLY, EGOLF, J. EVANS, GEIST, GEORGE,
HENNESSEY, HERMAN, HERSHEY, HORSEY, LEDERER, R. MILLER,
NAILOR, SATHER, SOLOBAY, R. STEVENSON, WASHINGTON AND
YOUNGBLOOD, MARCH 8, 2004

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, MARCH 8, 2004

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 definitions, for duties of facility
11 owners, for duties of a One Call System, for duties of
12 contractors and for fines and penalties.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Section 1 of the act of December 10, 1974
16 (P.L.852, No.287), referred to as the Underground Utility Line
17 Protection Law, amended December 19, 1996 (P.L.1460, No.187), is
18 amended to read:

19 Section 1. As used in this act:

20 "Consumer Price Index" means the index of consumer prices
21 developed and updated by the Bureau of Labor Statistics of the

1 United States Department of Labor.

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

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

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

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

12 "Emergency" means a sudden or unforeseen occurrence involving
13 a clear and immediate danger to life or property, including, but
14 not limited to, serious breaks or defects in a facility owner's
15 lines.

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

1 highway.

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

7 "Line" or "facility" means an underground conductor or
8 underground pipe or structure used in providing electric or
9 communication service, or an underground pipe used in carrying
10 or providing gas, oil or oil product, sewage, water or other
11 service to one or more consumers or customers of such service
12 and the appurtenances thereto, regardless of whether such line
13 or structure is located on land owned by a person or public
14 agency or whether it is located within an easement or right-of-
15 way. The term includes storm drainage and traffic loops.

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

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

1 operated as a nonprofit corporation pursuant to 15 Pa.C.S. Pt.
2 II Subpt. C (relating to nonprofit corporations).

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

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

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

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

14 "Secretary" means the Secretary of Labor and Industry of the
15 Commonwealth.

16 "Site" means the specific place where excavation or
17 demolition work is being or is planned to be performed.

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

20 "Working day" means any day except a Saturday, Sunday or
21 legal holiday prescribed by act of the General Assembly.

22 Section 2. Sections 2, 3, 5 and 7.2 of the act, amended
23 December 19, 1996 (P.L.1460, No.187), are amended to read:

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

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

28 (i) the legal name of the facility owner;

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;

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

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

19 (2) To give to a One Call System like written notice within
20 five working days after any of the matters stated in the last
21 previous notice shall have changed.

22 (4) Not more than ten working days after receipt of a
23 request therefor from a designer who identifies the site of
24 excavation or demolition work for which he is preparing a
25 drawing, to initially respond to his request for information as
26 to the position and type of the facility owner's lines at such
27 site based on the information currently in the facility owner's
28 possession. The facility owner shall so advise the person making
29 the request of the facility owner's status at the site through a
30 One Call System.

1 (5) Not more than two working days after receipt of a timely
2 request therefor from a contractor or operator who identifies
3 the site of excavation or demolition work he intends to perform:

4 (i) To mark, stake, locate or otherwise provide the position
5 of the facility owner's underground lines at the site within
6 eighteen inches horizontally from the outside wall of such line
7 in a manner so as to enable the contractor, where appropriate,
8 to employ prudent techniques, which may include hand-dug test
9 holes, to determine the precise position of the underground
10 facility owner's lines. This shall be done to the extent such
11 information is available in the facility owner's records or by
12 use of standard locating techniques other than excavation.

13 (i.1) A facility owner may identify the location of a known
14 facility connected to its facilities, but not owned or operated
15 by the facility owner, as a helpful guide to the excavator or
16 owner. The identification shall not be deemed to impose any
17 liability upon the facility owner for the accuracy of the
18 private facility identification.

19 (ii) A facility owner, at its option, may timely elect to
20 excavate around its facilities in fulfillment of this
21 subparagraph.

22 (v) To respond to all notices through a One Call System,
23 provided the request is made in the time frame set forth under
24 this act.

25 (vi) In marking the approximate position of underground
26 lines or facilities, the facility owner shall follow American
27 Public Works Association and Utility Locating and Coordination
28 Council Temporary Marking Standards. Should the American Public
29 Works Association and Utility Locating and Coordination Council
30 Temporary Marking Standards be amended, the amended standards

1 shall be applied and followed.

2 (vii) To respond to emergencies as soon as practical
3 following receipt of notification of such emergency.

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

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

22 (10) To submit an incident report to the department not more
23 than ten working days after receipt of notice that the facility
24 owner's lines have been damaged by excavation or demolition
25 activities.

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

29 Section 3. It shall be the duty of a One Call System to do
30 the following:

1 (1.1) To assign a serial number and log the entire voice
2 transaction on logging recorders in appropriate digital form and
3 maintain these logs for five years. All records shall be indexed
4 and available to the parties involved at a reasonable cost and
5 at reasonable times set by a One Call System.

6 (1.2) Perform the obligations, as set forth under this
7 section, on behalf of the facility owner, contractor or designer
8 as established by the board of directors of a One Call System.

9 (1.3) Provide access to municipal lists provided to a One
10 Call System for those interested parties. This list shall
11 contain facility owners having lines in the municipality,
12 including wards as indicated in subclause (ii) of clause (1) of
13 section 2, and to maintain, for each municipality, a list
14 containing the information as required to be submitted by the
15 facility owner. Such list shall be updated as revised
16 information is received from the facility owner within five
17 working days.

18 (2) To make such lists available for public inspection via
19 the county recorder of deeds without charge. A maximum copy fee
20 of no more than twenty-five dollars (\$25) may be charged per
21 county list. Each facility owner change shall be forwarded, at
22 no charge, to the respective county recorder of deeds for public
23 access. The recorder of deeds shall make such list available for
24 public inspection.

25 (3) Not more than ten working days after the receipt of a
26 request from the department, to provide access to or photocopies
27 of specific One Call System response records, tickets or other
28 like information relating to matters under investigation by the
29 department pursuant to its enforcement authority under this act.

30 Section 5. It shall be the duty of each contractor who

1 intends to perform excavation or demolition work within this
2 Commonwealth:

3 (2.1) To request the location and type of facility owner
4 lines at each site by notifying the facility owner through a One
5 Call System. Notification shall be not less than three nor more
6 than ten working days in advance of beginning excavation or
7 demolition work.

8 (2.2) To provide a One Call System with specific information
9 to identify the site so that facility owners might provide
10 indications of their lines. A contractor shall be deemed to have
11 met the obligations of clause (2.1) if he calls a One Call
12 System, provides the required information and receives a serial
13 number.

14 (3) If a contractor intends to perform work at multiple
15 sites or over a large area, he shall take reasonable steps to
16 work with facility owners, including a preconstruction meeting,
17 so that they may locate their facilities at a time reasonably in
18 advance of the actual start of excavation or demolition work for
19 each phase of the work. After commencement of excavation or
20 demolition work, the contractor shall be responsible for
21 protecting and preserving the staking, marking or other
22 designation until no longer required for proper and safe
23 excavation or demolition work at or near the underground
24 facility, or by calling for an additional relocation in the
25 event that the previous markings have been compromised or
26 eliminated.

27 (4) To exercise due care; and to take all reasonable steps
28 necessary to avoid injury to or otherwise interfere with all
29 lines where positions have been provided to the contractor by
30 the facility owners pursuant to clause (5) of section 2. Within

1 the tolerance zone or if insufficient information is available
2 pursuant to clause (5) of section 2, the contractor shall employ
3 prudent techniques, which may include hand-dug test holes, to
4 ascertain the precise position of such facilities, which shall
5 be paid for by the owner pursuant to clause (15) of this
6 section.

7 (5) If the facility owner fails to respond to the
8 contractor's timely request within the two work days as provided
9 under clause (5) of section 2 or the facility owner notifies the
10 contractor that the line cannot be marked within the time frame
11 and a mutually agreeable date for marking cannot be arrived at,
12 the contractor may proceed with excavation at the end of three
13 working days, provided he exercises due care in his endeavors,
14 subject to the limitations contained in this clause and clauses
15 (2.1) through (4).

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

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

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

1 (7) To report immediately to the facility owner any break or
2 leak on its lines, or any dent, gouge, groove or other damage to
3 such lines or to their coating or cathodic protection, made or
4 discovered in the course of the excavation or demolition work.

5 (8) To alert immediately the occupants of premises as to any
6 emergency that such person may create or discover at or near
7 such premises.

8 (9) The time requirements of clause (2.1) shall not apply to
9 a facility owner or contractor performing excavation or
10 demolition work in an emergency, as defined in section 1;
11 nonetheless, all facility owners shall be notified as soon as
12 possible before, during or after excavation or demolition,
13 depending upon the circumstances.

14 (11) A contractor shall use the color white to mark a
15 proposed excavation site when exact site information cannot be
16 provided.

17 (12) The following standards shall be applied in determining
18 whether a contractor shall incur any obligation or be subject to
19 liability as a result of a contractor's demolition or excavation
20 work damaging a facility owner's facilities:

21 (i) The contractor who has complied with the terms of this
22 act and who was not otherwise negligent shall not be subject to
23 liability or incur any obligation to facility owners, operators,
24 owners or other persons who sustain injury to person or property
25 as a result of the contractor's excavation or demolition work
26 damaging a facility owner's lines.

27 (ii) Where a contractor has failed to comply with the terms
28 of this act or was otherwise negligent, and the facility owner
29 or designer has misidentified, mislocated or failed to identify
30 its facilities pursuant to this act, then in computing the

1 amount of reimbursement to which the facility owner is entitled,
2 the cost of repairing or replacing its facilities shall be
3 diminished in the same proportion that the facility owner's or
4 designer's misidentification, mislocation or failure to identify
5 the facilities contributed to the damage. Should the facility
6 owner or designer not have misidentified, mislocated or failed
7 to identify its facilities pursuant to this act, there shall be
8 no diminution of the facility owner's right of recovery.

9 (13) If, after receiving information from a One Call System
10 or directly from a facility owner, the contractor decides to
11 change the location, scope or duration of a proposed excavation,
12 the obligations imposed by this section shall apply to the new
13 location.

14 (14) If a contractor removes its equipment and vacates a
15 worksite for more than two working days, he shall renotify a One
16 Call System unless other arrangements have been made directly
17 with the facility owners involved in his worksite.

18 (15) When the information required from the facility owner
19 under clause [(4)(1)] (5)(i) of section 2 cannot be provided or
20 it is reasonably necessary for the contractor to ascertain the
21 precise location of any line by prudent techniques, which may
22 include hand-dug test holes, vacuum excavation or other similar
23 devices, the contractor shall promptly notify the owner or the
24 owner's representative, either orally or in writing. After
25 giving such notice, the contractor shall be entitled to
26 compensation from the owner for this additional work as provided
27 in the latest edition of the Pennsylvania Department of
28 Transportation Form 408 specifications for extra work performed
29 on a force account basis. The provisions of this subsection
30 shall not be deemed to limit any other rights which the

1 contractor has under its contract with the owner or otherwise.
2 Provisions in any contract, public or private, which attempt to
3 limit the rights of contractors under this section shall be void
4 and unenforceable as against public policy.

5 (16) To submit an incident report to the department not more
6 than ten working days after striking or otherwise damaging a
7 facility owner's line during excavation or demolition
8 activities.

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

12 Section 7.2. (a) Any person violating any of the provisions
13 of this act, except [clause (1) of section 2, shall, upon
14 conviction in a summary proceeding,] clauses (1) and (2) of
15 section 2, commits a summary offense and shall, upon conviction,
16 be sentenced to pay a fine of not less than two thousand five
17 hundred dollars (\$2,500) nor more than twenty-five thousand
18 dollars (\$25,000) or undergo imprisonment for not more than
19 ninety days, or both. [A violation of clause (1) of section 2
20 shall be a civil offense punishable by a fine of not more than
21 five hundred dollars (\$500) per day for each day of the
22 offense.] The Attorney General of the Commonwealth or any
23 district attorney [or magistrate] may enforce the provisions of
24 this act in any court of competent jurisdiction. The [Department
25 of Labor and Industry] department, in consultation with the
26 Attorney General, may also enforce the provisions of this act in
27 any court of competent jurisdiction. A facility owner may
28 petition any court of competent jurisdiction to enjoin any
29 excavation or demolition work conducted in violation of this
30 act. [This act does not affect any civil remedies for personal

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

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

5 (1) Where [damages or violations have not exceeded]
6 violations result in property damage that does not exceed three
7 thousand dollars (\$3,000), the [civil penalty] fine shall not
8 exceed three thousand dollars (\$3,000).

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

12 (3) For violations which result in personal injury or death,
13 [a civil penalty not to] the fine shall not exceed twenty-five
14 thousand dollars (\$25,000).

15 (c) The following factors shall be considered in determining
16 the [civil penalty] fine to be assessed:

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

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

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

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

25 (c.1) In addition to any other sanctions provided by this
26 act, the department shall have the authority to issue warnings
27 and orders requiring compliance with this act and may levy
28 administrative penalties for violations of this act. Any
29 warning, order or penalty shall be served on the person or
30 entity violating the act at their last known address. The

1 department shall consider the factors set forth in section
2 7.2(c) in determining the administrative penalty to be assessed.
3 Any party aggrieved by the imposition of an order or
4 administrative penalty imposed by the department may appeal such
5 order or penalty as provided in 2 Pa.C.S Ch. 5 Subch. A
6 (relating to practice and procedure of Commonwealth agencies)
7 and Ch.7 Subch. A (relating to review of Commonwealth agency
8 action).

9 (c.2) Administrative penalties imposed by the department
10 under subsection (c.1) shall be determined according to the
11 following schedule:

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

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

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

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

25 (5) For violations that result in personal injury or death,
26 the administrative penalty may not exceed ten thousand dollars
27 (\$10,000).

28 (d) All fines and penalties recovered under this section
29 shall be payable to the Attorney General, district attorney[,
30 magistrate] or the [Department of Labor and Industry]

1 department, whichever brought the action, and collected in the
2 manner provided for by law. To the extent that the expenses
3 incurred by the [Department of Labor and Industry] department in
4 enforcing this act exceed the fines collected by the [Department
5 of Labor and Industry] department under this section, the
6 [Department of Labor and Industry] department may assess a
7 charge for the remaining reasonable expenses from a One Call
8 System pursuant to a written agreement between the parties.

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

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

20 Section 3. Section 7.5 of the act is repealed.

21 Section 4. This act shall take effect in 60 days.