
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2384

Session of
2004

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

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL
LICENSURE, IN SENATE, AS AMENDED, NOVEMBER 9, 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

1 developed and updated by the Bureau of Labor Statistics of the
2 United States Department of Labor.

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

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

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

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

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

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

1 beneath the existing surface within the right-of-way of a State
2 highway.

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.

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

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

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

1 defined by this act. A One Call System shall be incorporated and
2 operated as a nonprofit corporation pursuant to 15 Pa.C.S. Pt.
3 II Subpt. C (relating to nonprofit corporations).

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

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

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

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

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

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

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

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

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

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

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

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

30 (ii) the names of the counties and municipalities, down to

1 and including wards in Philadelphia, Pittsburgh, Allentown and
2 Erie, in which its lines are located;

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

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

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

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

1 One Call System.

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

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

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

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

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

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

1 Temporary Marking Standards be amended, the amended standards
2 shall be applied and followed.

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

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

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

23 (10) To submit an incident report to the department through <—
24 the One Call System not more than ten working days after receipt
25 of notice that the facility owner's lines have been damaged by
26 excavation or demolition activities that resulted in personal
27 injury or in property damage to parties other than the affected
28 excavator or facility owner. In addition, the incident report
29 may likewise be furnished to the Pennsylvania Public Utility
30 Commission and the Pennsylvania Emergency Management Agency

1 pursuant to memoranda of understanding negotiated between these
2 agencies and the One Call System. The role of the One Call <—
3 System is to transmit all reports to the department and the
4 indicated agencies and the One Call System shall have no
5 discretion in transmitting the incident reports. DEPARTMENT. THE <—
6 DEPARTMENT SHALL FURNISH TO A ONE CALL SYSTEM UPON REASONABLE
7 REQUEST, STATISTICAL DATA PERTAINING TO THE NUMBER OF INCIDENT
8 REPORTS FILED WITH THE DEPARTMENT, THE TYPE, NUMBER AND RESULTS
9 OF INVESTIGATIONS FOR VIOLATIONS OF THIS ACT.

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

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

15 (1.1) To assign a serial number and log the entire voice
16 transaction on logging recorders in appropriate digital form and
17 maintain these logs for five years. All records shall be indexed
18 and available to the parties involved at a reasonable cost and
19 at reasonable times set by a One Call System.

20 (1.2) Perform the obligations, as set forth under this
21 section, on behalf of the facility owner, contractor or designer
22 as established by the board of directors of a One Call System.

23 (1.3) Provide access to municipal lists provided to a One
24 Call System for those interested parties. This list shall
25 contain facility owners having lines in the municipality,
26 including wards as indicated in subclause (ii) of clause (1) of
27 section 2, and to maintain, for each municipality, a list
28 containing the information as required to be submitted by the
29 facility owner. Such list shall be updated as revised
30 information is received from the facility owner within five

1 working days.

2 (2) To make such lists available for public inspection via
3 the county recorder of deeds without charge. A maximum copy fee
4 of no more than twenty-five dollars (\$25) may be charged per
5 county list. Each facility owner change shall be forwarded, at
6 no charge, to the respective county recorder of deeds for public
7 access. The recorder of deeds shall make such list available for
8 public inspection.

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

14 Section 5. It shall be the duty of each contractor who
15 intends to perform excavation or demolition work within this
16 Commonwealth:

17 (2.1) To request the location and type of facility owner
18 lines at each site by notifying the facility owner through a One
19 Call System. Notification shall be not less than three nor more
20 than ten working days in advance of beginning excavation or
21 demolition work.

22 (2.2) To provide a One Call System with specific information
23 to identify the site so that facility owners might provide
24 indications of their lines. A contractor shall be deemed to have
25 met the obligations of clause (2.1) if he calls a One Call
26 System, provides the required information and receives a serial
27 number.

28 (3) If a contractor intends to perform work at multiple
29 sites or over a large area, he shall take reasonable steps to
30 work with facility owners, including a preconstruction meeting,

1 so that they may locate their facilities at a time reasonably in
2 advance of the actual start of excavation or demolition work for
3 each phase of the work. After commencement of excavation or
4 demolition work, the contractor shall be responsible for
5 protecting and preserving the staking, marking or other
6 designation until no longer required for proper and safe
7 excavation or demolition work at or near the underground
8 facility, or by calling for an additional relocation in the
9 event that the previous markings have been compromised or
10 eliminated.

11 (4) To exercise due care; and to take all reasonable steps
12 necessary to avoid injury to or otherwise interfere with all
13 lines where positions have been provided to the contractor by
14 the facility owners pursuant to clause (5) of section 2. Within
15 the tolerance zone or if insufficient information is available
16 pursuant to clause (5) of section 2, the contractor shall employ
17 prudent techniques, which may include hand-dug test holes, to
18 ascertain the precise position of such facilities, which shall
19 be paid for by the owner pursuant to clause (15) of this
20 section.

21 (5) If the facility owner fails to respond to the
22 contractor's timely request within the two work days as provided
23 under clause (5) of section 2 or the facility owner notifies the
24 contractor that the line cannot be marked within the time frame
25 and a mutually agreeable date for marking cannot be arrived at,
26 the contractor may proceed with excavation at the end of three
27 working days, provided he exercises due care in his endeavors,
28 subject to the limitations contained in this clause and clauses
29 (2.1) through (4).

30 (6) To inform each operator employed by the contractor at

1 the site of such work of the information obtained by the
2 contractor pursuant to clauses (2.1) through (5), and the
3 contractor and operator shall:

4 (i) Plan the excavation or demolition to avoid damage to or
5 minimize interference with a facility owner's facilities in the
6 construction area. Excavation or demolition work which requires
7 temporary or permanent interruption of a facility owner's
8 service shall be coordinated with the affected facility owner in
9 all cases.

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

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

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

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

28 (11) A contractor shall use the color white to mark a
29 proposed excavation site when exact site information cannot be
30 provided.

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

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

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

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

28 (14) If a contractor removes its equipment and vacates a
29 worksite for more than two working days, he shall renotify a One
30 Call System unless other arrangements have been made directly

1 with the facility owners involved in his worksite.

2 (15) When the information required from the facility owner
3 under clause [(4)(1)] (5)(i) of section 2 cannot be provided or
4 it is reasonably necessary for the contractor to ascertain the
5 precise location of any line by prudent techniques, which may
6 include hand-dug test holes, vacuum excavation or other similar
7 devices, the contractor shall promptly notify the owner or the
8 owner's representative, either orally or in writing. After
9 giving such notice, the contractor shall be entitled to
10 compensation from the owner for this additional work as provided
11 in the latest edition of the Pennsylvania Department of
12 Transportation Form 408 specifications for extra work performed
13 on a force account basis. The provisions of this subsection
14 shall not be deemed to limit any other rights which the
15 contractor has under its contract with the owner or otherwise.
16 Provisions in any contract, public or private, which attempt to
17 limit the rights of contractors under this section shall NOT BE <—
18 WAIVED FOR ANY REASON AND ANY ATTEMPTED WAIVER SHALL be void and
19 unenforceable as against public policy AND ANY SUCH ATTEMPTED <—
20 WAIVER SHALL BE REPORTED TO THE DEPARTMENT OF LABOR AND
21 INDUSTRY.

22 (16) To submit an incident report to the department not more
23 than ten working days after striking or otherwise damaging a
24 facility owner's line during excavation or demolition activities
25 THAT RESULTED IN PERSONAL INJURY OR PROPERTY DAMAGE TO PARTIES <—
26 OTHER THAN THE AFFECTED CONTRACTOR. IN ADDITION, THE INCIDENT
27 REPORT MAY BE FURNISHED TO THE PENNSYLVANIA PUBLIC UTILITY
28 COMMISSION AND THE PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY
29 PURSUANT TO MEMORANDA OF UNDERSTANDING NEGOTIATED BETWEEN THESE
30 AGENCIES AND THE DEPARTMENT.

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

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

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

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

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

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

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

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

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

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

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

(c.1) In addition to any other sanctions provided by this act, the department shall have the authority to issue warnings and orders requiring compliance with this act and may levy administrative penalties for violations of this act. Any warning, order or penalty shall be served on the person or entity violating the act at their last known address. The department shall consider the factors set forth in section 7.2(c) in determining the administrative penalty to be assessed. Any party aggrieved by the imposition of an order or administrative penalty imposed by the department may appeal such order or penalty as provided in 2 Pa.C.S Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch.7 Subch. A (relating to review of Commonwealth agency action).

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

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

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

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

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

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

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

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

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

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

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