

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 242 Session of 2017

INTRODUCED BY BAKER, TOMLINSON, GREENLEAF, SCAVELLO, BREWSTER, EICHELBERGER, RESCHENTHALER, SCHWANK AND RAFFERTY, JANUARY 26, 2017

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 4, 2017

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 TITLE AND FOR definitions,; PROVIDING <--
11 FOR LAWFUL START DATE; FURTHER PROVIDING for duties of
12 facility owners, for duties of the One Call System, FOR <--
13 DUTIES OF OTHER PARTIES, for duties of excavators, for duties
14 of designers, for duties of project owners, FOR AUDITS and <--
15 for penalties; providing for enforcement, for ~~underground~~ <--
16 ~~utility line protection fund~~ DAMAGE PREVENTION COMMITTEE and
17 for compliance; and further providing for One Call System
18 authority and for expiration.

19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

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

AN ACT

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

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

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

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

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

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

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

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

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

30 "Common Ground Alliance best practices" means the damage

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

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

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

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

18 "Conventional oil and gas well" means a conventional oil and  
19 gas well as defined in section 2 of the act of June 23, 2016  
20 (P.L.375, No.52), known as the "Pennsylvania Grade Crude  
21 Development Act."

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

25 ["Department" means the Department of Labor and Industry of  
26 the Commonwealth.]

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

30 "Emergency" means a sudden or unforeseen occurrence involving

1 a clear and immediate danger to life, property and the  
2 environment, including, but not limited to, serious breaks or  
3 defects in a facility owner's lines.

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

1 Act, that relate to the protection of utility facilities or the  
2 direct operations on a well pad following construction of the  
3 well pad and that are necessary or operations incidental to the  
4 extraction of oil or natural gas.

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

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

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

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

19 "Federal pipeline safety laws" means the provisions of 49  
20 U.S.C. Ch. 601 (relating to safety), including the regulations  
21 promulgated under 49 U.S.C. Ch. 601.

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

26 "Fiscal year" means the fiscal year utilized by the  
27 commission.

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

1 "Injury" means a bodily harm to a person, who as a result of  
2 the bodily harm, immediately receives medical attention away  
3 from the scene of the incident.

4 "Lawful start date" means the scheduled start date as  
5 provided under section 1.1.

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

28 "Locate request" means a communication between an excavator  
29 or designer and the One Call System in which a request for  
30 locating facilities is processed. Locate requests submitted by

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

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

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

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

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

30 "Powered equipment" means any equipment energized by an

1 engine or motor and used in excavation or demolition work.

2 ["Preconstruction request" means a notification to facility  
3 owners regarding a complex project.]

4 "Preconstruction meeting" means a scheduled event held by the  
5 excavator, designer, project owner and facility owner, or an  
6 agent of the excavator, designer, project owner and facility  
7 owner, prior to the commencement of excavation or demolition  
8 work in a complex project.

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

12 ["Secretary" means the Secretary of Labor and Industry of the  
13 Commonwealth.

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

27 "Report of alleged violation" means a recorded account of an  
28 alleged violation.

29 "Stripper well" means a conventional oil and gas well with a  
30 maximum daily average production which does not exceed fifteen



1 (15) barrels of oil and ninety thousand (90,000) cubic feet of  
2 natural gas during any twelve-month consecutive time period.

3 "Stripper well lines" means a production or gathering line or  
4 facility that has a nominal inside diameter of eight (8) inches  
5 or less, only carries oil or natural gas produced exclusively  
6 from one or more stripper wells and is not regulated under the  
7 Federal pipeline safety laws and subject to the pipeline damage  
8 prevention requirements in 49 C.F.R. § 192.614 (relating to  
9 damage prevention program) or 49 C.F.R. § 195.442 (relating to  
10 damage prevention program).

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

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

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

20 "Unconventional formation" means a geological shale formation  
21 existing below the base of the Elk Sandstone or its geologic  
22 equivalent stratigraphic interval where oil or natural gas  
23 generally cannot be produced at economic flow rates or in  
24 economic volumes except by vertical or horizontal well bores  
25 stimulated by hydraulic fracture treatments or by using  
26 multilateral well bores or other techniques to expose more of  
27 the formation to the well bore.

28 "Unconventional oil and gas well" means a bore hole drilled  
29 or being drilled for the purpose of or to be used for the  
30 production of oil or natural gas from an unconventional

1 formation.

2 "Well pad" means area, under the control of an oil or natural  
3 gas company, occupied by equipment or facilities necessary or  
4 required for the drilling, production or plugging of an oil or  
5 natural gas well.

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

19 Section 2. The act is amended by adding a section to read:

20 Section 1.1. The lawful start date shall be three business  
21 days through ten business days following notification to the One  
22 Call System.

23 Section 3. Sections 2, 3, 3.1, 4, 5, 6.1 and 7 of the act  
24 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 the One  
27 Call System. Such notice shall be in a form acceptable to the  
28 One Call System and include:

29 (i) the legal name of the facility owner and their official  
30 mailing address;

1 (ii) As follows:

2 [the] (A) The names of the counties and municipalities, down  
3 to and including wards in Philadelphia, Pittsburgh, Allentown  
4 and Erie, in which its lines are located and other related  
5 information as may be required by the One Call System regarding  
6 the location of a member's facilities[;].

7 (B) The One Call System may not require its members to  
8 locate lines or facilities installed before the effective date  
9 of this clause unless the member has existing maps of the lines  
10 or facilities and the member's existing maps meet the  
11 specifications of the One Call System's Member Mapping  
12 Solutions. Nothing under this clause shall prohibit the One-Call  
13 System members from voluntarily submitting to the One Call  
14 System maps of lines or facilities installed before the  
15 effective date of this clause.

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

20 (iv) the street identifications or like information within  
21 each of the municipalities in which its lines are located. This  
22 information shall be in a form acceptable to the One Call  
23 System. Upon acceptance of the information from a facility  
24 owner, the One Call System shall provide the facility owner with  
25 notification within the boundaries described. All facility  
26 owners shall agree to indemnify and hold harmless the One Call  
27 System for any errors and omissions on the part of the facility  
28 owner or the excavator or designer providing the information as  
29 the agent of the facility owner; and

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

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

3 (4) Not more than ten business days after receipt of a  
4 request from a designer who identifies the work site of  
5 excavation or demolition work for which he is preparing a  
6 drawing, to initially respond to his request for information as  
7 to the position and type of the facility owner's lines at such  
8 work site based on the information currently in the facility  
9 owner's possession or to mark the plans which have been provided  
10 to it by the designer by field location or by another method  
11 agreed to by the designer, excavator and facility owner, or  
12 their agent. The facility owner shall so advise the person  
13 making the request of the facility owner's status at the work  
14 site through the One Call System.

15 (5) After receipt of a timely request from an excavator or  
16 operator who identifies the work site of excavation or  
17 demolition work he intends to perform and not later than the  
18 business day prior to the [scheduled] lawful start date of  
19 excavation:

20 (i) To mark, stake, locate or otherwise provide the position  
21 of the facility owner's underground lines at the work site  
22 within eighteen inches horizontally from the outside wall of  
23 such line in a manner so as to enable the excavator, where  
24 appropriate, to employ prudent techniques, which may include  
25 hand-dug test holes, to determine the precise position of the  
26 underground facility owner's lines. This shall be done to the  
27 extent such information is available in the facility owner's  
28 records or by use of standard locating techniques other than  
29 excavation. Standard locating techniques shall include, at the  
30 utility owner's discretion, the option to choose available

1 technologies suitable to each type of line or facility being  
2 located at the work site, topography or soil conditions or to  
3 assist the facility owner in locating its lines or facilities,  
4 based on accepted engineering and operational practices.  
5 Facility owners shall make reasonable efforts during the  
6 excavation phase to locate or notify excavators of the existence  
7 and type of abandoned lines [that remain on the continuing  
8 property records of the facility owners].

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

19 (ii) To[, at its option,] timely elect to excavate around  
20 its facilities in fulfillment of this subparagraph, at its  
21 option.

22 (iii.1) To propose mutually agreeable scheduling by which  
23 the excavator, facility owner or designer may locate the  
24 facilities.

25 (v) To respond to all notices through the One Call System,  
26 provided the request is made in the time frame set forth under  
27 this act. The response shall be made not later than the end of  
28 the second business day following receipt of the notification by  
29 the One Call System, excluding the business day upon which the  
30 notification is received, or not later than the day prior to the

1 [scheduled] lawful start date of excavation if the excavator  
2 specifies a later date or, in the case of an emergency, to  
3 respond through the One Call System as soon as practicable  
4 following receipt of notification of the emergency by the One  
5 Call System.

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

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

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

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

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

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

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

1 investigations for violations of this act.] To submit a report  
2 of alleged violation to the commission through the One Call  
3 System not more than thirty business days after receipt of  
4 notice that the facility owner's lines have been damaged by  
5 excavation or demolition work or if the facility owner believes  
6 a violation of this act has been committed in association with  
7 excavation or demolition work. The report of alleged violation  
8 shall be in a form and manner as required by the commission. No  
9 report may be required where the cost to repair the damage to  
10 the facility owner's lines is less than two thousand five  
11 hundred dollars (\$2,500), unless the same person damaged the  
12 facility owner's lines two or more times within a six-month  
13 period.

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

18 (12) To participate in the One Call System's Member Mapping  
19 Solutions as determined by the One Call System's board of  
20 directors.

21 (13) To maintain existing records of main lines abandoned on  
22 or after the effective date of this paragraph and to mark,  
23 locate or identify the main lines if possible, based upon the  
24 existing records. The records shall include written or  
25 electronic documents or drawings in the possession of the  
26 facility owner that show the location of an existing line or  
27 facility.

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

30 (1.1) To assign one or more serial numbers and the date that



1 the work site may legally be excavated and to log the entire  
2 voice transaction on logging recorders in appropriate digital  
3 form and maintain these logs for five years. All records shall  
4 be indexed and available to the parties involved at a reasonable  
5 cost and at reasonable times set by the One Call System.

6 (1.2) [Perform] To perform the obligations, as set forth  
7 under this section, on behalf of the facility owner, excavator  
8 or designer as established by the board of directors of the One  
9 Call System.

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

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

27 (3) [Not more than ten business days after the receipt of a  
28 clear and specific request from the department, to provide  
29 access to or photocopies of specific One Call System response  
30 records, tickets or other like information relating to matters

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

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

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

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

29 (7) To inquire, when an excavator has notified the One Call  
30 System of the existence of a release of natural gas or other

1 hazardous substance or of potential danger to life, health or  
2 property, whether the excavator has notified the 911 system. If  
3 the 911 system has not been notified, the One Call System shall  
4 notify the excavator of the excavator's responsibility to notify  
5 the 911 system and shall make a record of the conversation.

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

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

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

22 (c) (Reserved).

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

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

30 (2) The Director of the Pennsylvania Emergency Management

1 Agency or his designee.

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

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

4 (5) An excavator or excavation industry representative.

5 (6) A designer or designer industry representative.

6 (7) AN OWNER OR OPERATOR OR A REPRESENTATIVE OF AN OWNER OR <--

7 OPERATOR OF PIPELINES ASSOCIATED WITH CONVENTIONAL OIL AND GAS

8 WELLS. THE OWNER OR OPERATOR MAY BE A FACILITY OWNER OR A

9 PIPELINE OWNER OR OPERATOR WHO VOLUNTARILY SUBMITS MAPS OF ITS

10 LINES OR FACILITIES TO THE ONE CALL SYSTEM.

11 (8) A FACILITY OWNER OR FACILITY OWNER REPRESENTATIVE OF

12 PIPELINES ASSOCIATED WITH UNCONVENTIONAL OIL AND GAS WELLS.

13 (e) Operation costs for the One Call System shall be shared,

14 in an equitable manner for services received, by facility owner

15 members as determined by the One Call System's board of

16 directors. Political subdivisions with a population of less than

17 two thousand people or municipal authorities having an aggregate

18 population in the area served by the municipal authority of less

19 than five thousand people shall be exempt from the payment of

20 any service fee. The One Call System may be reimbursed for its

21 costs in providing this service from the contractor fees.

22 (f) All fees shall be set by the board of directors and

23 shall be based on the latest annual audited cost factors of the

24 One Call System. Fees shall be set and adjusted to a rate not

25 more than five percent above the audited cost factor plus the

26 current average published Consumer Price Index for Pennsylvania.

27 Costs of capital improvements may be added, if the improvement

28 receives a majority vote of the board of directors.

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

30 commence excavation or demolition work and requests information

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

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

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

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

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

1 preliminary.

2 (2.1) To forward a copy of the project plans to each  
3 facility owner who requests a copy. If a designer is unable to  
4 provide a copy because of security of the project or proprietary  
5 concerns regarding the design or the project, the designer shall  
6 negotiate in a timely manner with the facility owner the means  
7 of obtaining the necessary data.

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

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

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

23 (6) If, after receiving information from the facility  
24 owners, the designer decides to change the work site of a  
25 proposed excavation, the obligations imposed by this section  
26 shall apply to the new work site.

27 (7) The designer who has complied with the terms of this act  
28 and who was not otherwise negligent shall not be subject to  
29 liability or incur any obligation to facility owners, operators,  
30 owners or other persons who sustain injury to person or property

1 as a result of the excavation or demolition planning work of the  
2 designer.

3 (8) To submit a report of alleged violation to the  
4 commission through the One Call System not more than thirty  
5 business days from the time the designer becomes aware that a  
6 violation of this act may have been committed in association  
7 with excavation or demolition work. The report of alleged  
8 violation shall be in a form and manner as required by the  
9 commission.

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

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

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

30 (2.2) To provide the One Call System with [specific] exact

1 information to identify the work site so that facility owners  
2 might provide indications of their lines. An excavator shall be  
3 deemed to have met the obligations of clause (2.1) if he calls  
4 the One Call System, provides the work site and other required  
5 information and receives a serial number.

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



1 the facilities be marked again in the event that the previous  
2 markings have been compromised or eliminated.

3 (3.1) To comply with the requirements established by the One  
4 Call System as determined by the board of directors regarding  
5 the maximum area that a notification may cover.

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

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

27 (6) To inform each operator employed by the excavator at the  
28 work site of such work of the information obtained by the  
29 excavator pursuant to clauses (2.1) through (5), and the  
30 excavator and operator shall:

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

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

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

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

29 (9) The time requirements of clause (2.1) shall not apply to  
30 a facility owner or excavator performing excavation or

1 demolition work in an emergency, as defined in section 1;  
2 nonetheless, all facility owners shall be notified as soon as  
3 possible before, during or after excavation or demolition work,  
4 depending upon the circumstances.

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

8 (11.1) To assist a facility owner in determining involvement  
9 of a facility owner's lines by disclosing additional available  
10 information requested by the facility owner, including  
11 dimensions and the direction of proposed excavations.

12 (11.2) If using horizontal directional drilling (HDD), at a  
13 minimum, to utilize the best practices published by the HDD  
14 Consortium.

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

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

25 (ii) Where an excavator has failed to comply with the terms  
26 of this act or was otherwise negligent, and the facility owner  
27 or designer has misidentified, mislocated or failed to identify  
28 its facilities pursuant to this act, then in computing the  
29 amount of reimbursement to which the facility owner is entitled,  
30 the cost of repairing or replacing its facilities shall be

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

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

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

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

1 Transportation Form 408 specifications for extra work performed  
2 on a force account basis. The provisions of this subsection  
3 shall not be deemed to limit any other rights which the  
4 excavator has under its contract with the project owner or  
5 otherwise. Provisions in any contract, public or private, which  
6 attempt to limit the rights of excavators under this section  
7 shall not be valid for any reason, and any attempted waiver of  
8 this section shall be void and unenforceable as against public  
9 policy and any such attempted waiver shall be reported to the  
10 [department] commission.

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

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

1 (18) To, if it chooses to do so and if working for a  
2 facility owner, a municipality or a municipal authority,  
3 delegate the power to discharge the duties set forth in clauses  
4 (2.1) and (2.2) to its project owner, with the project owner's  
5 consent. If the power is delegated pursuant to this clause, both  
6 the excavator and the project owner shall be responsible for  
7 providing the required notices.

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

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

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

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

29 (1) To utilize sufficient quality levels of subsurface  
30 utility engineering or other similar techniques whenever

1 practicable to properly determine the existence and positions of  
2 underground facilities when designing known complex projects  
3 having an estimated cost of four hundred thousand dollars  
4 (\$400,000) or more.

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

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

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

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

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

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

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

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

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

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

19 (d) The One Call System shall cause a financial audit to be  
20 performed annually by a qualified auditing firm within this  
21 Commonwealth.

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

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



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

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

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

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

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

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

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

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

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

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

30 (c.1) In addition to any other sanctions provided by this

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

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

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

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

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

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

30 (5) For violations that result in personal injury or death,

1 the administrative penalty may not exceed ten thousand dollars  
2 (\$10,000).

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

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

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

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

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

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

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

28 (ii) The Secretary of Transportation or the secretary's  
29 designee.

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

1 from the One Call System professional staff.

2 (iv) One representative from each of the following  
3 nonmunicipally 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 (v) Three representatives of excavators, nominated by  
8 excavators or affiliated organizations.

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

11 (vii) 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)(iv), (v), (vi) and (vii)  
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 (iii), 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 seven 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 (3) Submit an annual report containing relevant damage  
4 prevention data to the commission, the Committee on Consumer  
5 Protection and Professional Licensure of the Senate and the  
6 Committee on Consumer Affairs of the House of Representatives.

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

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

13 (1) To employ individuals.

14 (2) To issue orders.

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

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

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

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

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

30 (B) The act of June 25, 1982 (P.L.633, No.181), known as the

1 Regulatory Review Act.

2 Section 7.9. (a) Program costs for commission enforcement <--  
3 of this act shall be included in the commission's proposed  
4 budget and shall be subject to the review and approval of the  
5 Governor and the General Assembly as described under 66 Pa.C.S.  
6 § 510(a) (relating to assessment for regulatory expenses upon  
7 public utilities). The assessment of the commission's program  
8 costs for commission enforcement of this act shall not include  
9 Federal and State funds provided for the enforcement of this act  
10 and shall be allocated in the following manner:

11 (1) Eighty percent of the program costs shall be included  
12 within the amount assessed to public utilities under 66 Pa.C.S.  
13 § 510.

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

22 (B) (RESERVED). <--

23 Section 7.10. (a) The commission may issue a warning and  
24 order requiring compliance with this act and may levy an  
25 administrative penalty for a violation of this act. A warning,  
26 order or penalty shall be served on the person or entity  
27 violating this act at the person's last known address. A party  
28 aggrieved by the imposition of an order or administrative  
29 penalty imposed by the commission may appeal the order or  
30 penalty as provided under 2 Pa.C.S. Chs. 5 Subch. A (relating to



1 practice and procedure of Commonwealth agencies) and 7 Subch. A  
2 (relating to judicial review of Commonwealth agency action).

3 (b) The following shall apply:

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

5 (i) an administrative penalty of not more than two thousand  
6 five hundred dollars (\$2,500) per violation; or

7 (ii) if the violation results in injury, death or property  
8 damage of twenty-five thousand dollars (\$25,000) or more, an  
9 administrative penalty of not more than fifty thousand dollars  
10 (\$50,000).

11 (2) The commission and committee shall consider the  
12 following factors in determining the administrative penalty to  
13 be assessed:

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

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

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

20 (iv) The party's proposed modification to internal practices  
21 and procedures to ensure future compliance with statutes and  
22 regulations.

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

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

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

29 (d) This act shall not affect a civil remedy for personal  
30 injury or property damage, except as provided for under this

1 act.

2 (e) The commission may issue a subpoena, on application of  
3 an attorney responsible for representing the Commonwealth in  
4 actions before the commission, for the purpose of investigating  
5 an alleged violation of this act. The commission shall have the  
6 power to subpoena witnesses and compel the production of books,  
7 records, papers and documents.

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

10 (1) Affect the ability of a district attorney or the  
11 Attorney General to investigate or file a claim for the same  
12 conduct.

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

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

22 Section 6. Section 8 of the act is amended to read:

23 Section 8. The One Call System shall have the authority to  
24 design, establish and administer a voluntary payment dispute  
25 resolution process which may be used by excavators, facility  
26 owners, designers, project owners and other involved persons.  
27 The process shall provide for dispute resolution panels selected  
28 from among a list of representatives of stakeholder groups,  
29 including facility owners, excavators, designers and regulators.  
30 The process established under this section may not be used to

1 settle or resolve alleged violations of this act nor may involve  
2 any issues related to the [department's] commission's  
3 enforcement activities.

4 Section 7. Section 39 of the act, amended November 4, 2016  
5 (~~P.L.852~~ P.L.1209, ~~No.287~~ NO.160), is amended to read: <--

6 Section 39. This act shall expire on December 31, [2017]  
7 2024.

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

9 (1) The following provisions shall take effect  
10 immediately:

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

12 (ii) The amendment of section 39 of the act.

13 (iii) This section.

14 (2) The remainder of this act shall take effect in 180  
15 days.