

**SENATE APPROPRIATIONS COMMITTEE  
FISCAL NOTE**

**BILL NO.** Senate Bill 1235

**PRINTER NO.** 1894

**AMOUNT**

See Fiscal Impact

**FUND**

General Fund Restricted Revenue Account

**DATE INTRODUCED**

May 25, 2016

**PRIME SPONSOR**

Senator Baker

**DESCRIPTION AND PURPOSE OF BILL**

Senate Bill 1235 extends the sunset provision of the Underground Utility Protection Law from December 31, 2016 to December 31, 2021 and moves oversight of the One Call System from the Department of Labor and Industry to the Pennsylvania Public Utility Commission (PUC).

The legislation amends the definition of "excavation work" by removing the exclusions for extracting natural resources, minor routine maintenance by political subdivisions, routine maintenance and removal of sediment buildup on public road rights-of-way and PennDOT work up to the depth of 24 inches beneath the existing surface of a right-of-way, and adds exclusions for work performed under the Surface Mining Conservation and Reclamation Act, the Bituminous Mine Subsidence and Land Conservation Act, and the Coal Refuse Disposal Control Act.

Senate Bill 1235 clarifies that the definition of "line" or "facility" includes crude oil or natural gas production and gathering lines or facilities unless regulated as an onshore gathering line.

The legislation establishes the "lawful start date" as three business days through ten business days following notification to the One Call System.

Senate Bill 1235 expands the duties of facility owners by adding the following additional requirements:

- Maintain existing records of abandoned main lines and locate or identify the main lines, if possible going forward.
- Communicate directly to the excavator within two hours after re-notification with information about its facility location when the facility owner has failed to respond to a locate request or a re-notification from the One Call System, and go to the proposed worksite to mark, state or locate its underground lines or verify that the lines are not within the area of the proposed worksite.

# SENATE APPROPRIATIONS COMMITTEE

## FISCAL NOTE

- Submit a report of alleged violations to the PUC through the One Call System within 30 business days after the receipt of notice that the facility owner's lines have been damaged where the cost to repair the lines is over \$2,500 or there has been repeat damage by the same person.
- To participate in the One Call System's Member Mapping Solutions as determined by the One Call System's board of directors.

The legislation provides that the One Call System may require the mapping of a line or facility installed prior to the effective date of this act if there are existing maps which meet the requirements of the One Call System's Member Mapping Solutions. The facility owner must prove the line or facility is not subject to this requirement at the time it was installed.

With regard to the duties of the One Call System, the legislation makes the following changes:

- Eliminates the requirement of the county recorder of deeds to maintain municipal lists to be made available for public inspection.
- Requires the One Call System to provide reports of alleged violations and related information per memoranda of understanding between the PUC and the One Call System. These reports may also be made available to the Pennsylvania Emergency Management Agency.
- Requires notification to a facility owner as soon as possible when an excavator has identified an unmarked or incorrectly marked facility and the facility owner's responsibilities.
- Removes the Secretary of Labor and Industry as a member of the One Call System's board of directors.
- Changes the fee structure for excavator, designer or operator use of One Call services from a fee per service to an annual fee set by the One Call System's board of directors. Failure to pay the annual fee will result in nonpayment enforcement action by the PUC. The fee is used to offset operation costs of the One Call System and the political subdivision and municipal authority members.

With regard to the duties of designers, the legislation makes the following changes:

- Designers must report an alleged violation to the PUC not more than 30 days after becoming aware of the violation.
- Designers must pay a request fee to the One Call System when requesting line and facility information.

# SENATE APPROPRIATIONS COMMITTEE

## FISCAL NOTE

With regard to the duties of excavators, the legislation makes the following changes:

- Requires the reporting of any incident where a facility owner's line is struck or damaged during excavation or demolition or if they believe a violation of this act has been committed within ten days.
- Requires that a locate request be made prior to excavation along with payment of the applicable fee.
- Requires re-notification of the One Call System of an unmarked or incorrectly marked facility. Excavation may not occur until the facility owner provides sufficient information to safely excavate. If the facility owner fails to provide the information, excavation may start after three hours.

With regard to the duties of project owners, the legislation makes the following change:

- Project owners must report an alleged violation not more than ten business days after striking or damaging a facility owner's line or if the project owner believes a violation has occurred.

Senate Bill 1235 establishes a damage prevention committee of members appointed by the PUC. The members include the chairman or his designee from the PUC's professional staff; the president of the One Call System or his designee from the One Call System's professional staff; one representative from each of a municipally owned electric, natural gas or petroleum pipelines, telephone, water or wastewater and cable television, nominated by facility owners; three representatives of excavators nominated by excavators; one representative of municipal governments nominated by municipal governments; one representative of municipal authorities nominated by municipal authorities. Persons appointed to the committee must have One Call expertise. Appointment to the committee begins on January 1 for a term of three years.

The PUC member shall serve as the non-voting chairman of the committee. Voting by the chairman is allowed only in the case of a tie. The chairman's attendance shall not be counted to establish a quorum. Upon formation, the committee must establish by-laws and hold special meetings at the PUC's request to advise the PUC on damage prevention matters for underground facilities. The by-laws must be approved by the PUC, contain a meeting schedule, and delineate the committee's practices and procedures.

The legislation provides that, except in the case of willful misconduct, committee members are immune from civil liability for their performance while serving on the committee.

# SENATE APPROPRIATIONS COMMITTEE

## FISCAL NOTE

The committee must review reports of alleged violations and the damage prevention investigator's findings and recommendations, issue warning letters, issue informal determinations that impose an administrative penalty, require a person to attend a damage prevention educational program, and issue informal determinations.

A person determined to have committed an alleged violation must provide a written acknowledgement of the findings and administrative penalty contained in the report issued by the damage prevention investigator and appear before the commission. The person may accept or reject the findings. An informal determination shall be binding unless it is rejected. Unless the alleged violation involved injury or death, rejection of the findings will result in returning the issue to the damage prevention investigator for further action with the possibility of referring the matter to the PUC prosecutor staff for issuing a formal complaint.

With regard to the Public Utility Commission, the legislation provides that the commission shall have the following powers in order to carry out this act:

- Employ individuals, issue orders, and promulgate regulations. Temporary regulations must be promulgated within one year and shall expire no later than two years after the effective date of the act. The regulations are exempt from the Commonwealth Documents Law and the Regulatory Review Act.
- May issue warnings, order compliance and levy administrative penalties for violations. Administrative penalties may not exceed \$2,500 per violation. If the violation results in injury, death or property damage over \$25,000, the administrative penalty can be up to \$50,000. Determination of administrative penalties is based on the party's history of compliance, the amount of the injury or property damage, the degree of threat to public safety, the party's measures to ensure future compliance, the degree of culpability and other facts as appropriate. Administrative penalties have no effect on civil remedies.
- To issue subpoenas and compel the production of necessary materials. In addition to these powers, a district attorney or the Attorney General may also investigate or file a claim for the same conduct. A facility owner may petition the court to enjoin excavation or demolition work in violation of this act.
- Include enforcement costs in the PUC's proposed budget, subject to review and approval of the Governor and General Assembly.

Senate Bill 1235 extends the sunset date of the act from December 31, 2016 to December 31, 2021.

Budgetary matters under section 7.9 take effect immediately, and the remainder of the act takes effect in 180 days.

# SENATE APPROPRIATIONS COMMITTEE

## FISCAL NOTE

### **FISCAL IMPACT:**

Senate Bill 1235 will have no fiscal impact on unrestricted funds of the Commonwealth.

Program costs for PUC enforcement of this act shall be included in the commission's proposed budget and shall be subject to the review and approval of the Governor and the General Assembly. The assessment of the PUC's program costs shall not include Federal and State funds provided for the enforcement of this act.

The legislation provides that eighty percent of the One Call System's program costs shall be included within the amount assessed to public utilities under 66 Pa.C.S. § 510 (relating to assessment for regulatory expenses upon public utilities). Twenty percent of the program costs shall be assessed as a fee upon the One Call System, with the fee to be paid to the PUC. The One Call System's board of directors shall determine the manner in which the fee may be recovered from facility owners, excavators, designers and other involved persons, provided that the manner of recovery may not include facility owners that are public utilities.

The PUC has provided information which indicates that the estimated start-up budget for the administration and enforcement of the One Call System in fiscal year 2016-17 will be \$1.26 million. This amount contemplates a full fiscal year and includes salary and benefits for six employees, computer software and hardware, software development, training, and travel expenses.

Because Senate Bill 1235 will not be enacted for a full fiscal year during 2016-17, the personnel costs of \$439,000 can be prorated for three-quarters of a fiscal year. Assuming an effective date of October 1, estimated personnel costs would be reduced to \$330,000. Therefore, total estimated costs for FY 2016-17 are \$1.15 million. Eighty percent of these estimated costs (\$920,000) will be assessed to public utilities and twenty percent (\$230,000) will be collected as fees upon the One Call System.