

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 242

PRINTER NO. 984

AMOUNT

See Fiscal Impact

FUND

General Fund Restricted Revenue Account

DATE INTRODUCED

January 26, 2017

PRIME SPONSOR

Senator Baker

DESCRIPTION AND PURPOSE OF BILL

Senate Bill 242 extends the sunset provision of the Underground Utility Protection Law from December 31, 2017 to December 31, 2024 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 the direct operations necessary or incidental to the purposes of finding or extracting natural resources. The existing exclusion for the performance of minor routine maintenance is no longer limited to political subdivisions, and the exclusion for work up to a depth of 24 inches beneath the existing surface within the right-of-way of a State highway is no longer limited to work performed by PennDOT. Senate Bill 242 further 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.

The legislation adds definitions of "conventional oil and gas well", "Federal pipeline safety laws", "stripper well", "stripper well lines", "unconventional formation" and "unconventional oil and gas well" to make clear which lines and facilities are included in the definition of "line" or "facility".

Senate Bill 242 provides that the definition of "line" or "facility" includes unconventional oil and gas well production and gathering lines or facilities, but the term does not include stripper well lines.

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

The One Call System may not require its members to locate lines or facilities installed before the effective date of the legislation unless the member has existing maps of the lines or facilities and the member's existing maps meet the specifications of the One Call System's Member Mapping Solutions.

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Senate Bill 242 expands the duties of facility owners by adding the following additional requirements:

- 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
- 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.
- Maintain existing records of abandoned main lines and locate or identify the main lines, if possible going forward.

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.

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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.

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 provides that 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 242 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 Secretary of Transportation or his designee; 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 committee shall submit an annual report containing relevant damage prevention data to the commission, the Committee on Consumer Protection and Professional Licensure of the Senate and the Committee on Consumer Affairs of the House of Representatives.

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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.

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 242 extends the sunset date of the act from December 31, 2017 to December 31, 2024.

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

FISCAL IMPACT:

Senate Bill 242 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 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. Eighty percent of these estimated costs (\$1,008,000) will be assessed to public utilities and twenty percent (\$252,000) will be collected as fees upon the One Call System.