
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1607 Session of
2013

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BOBACK, COHEN, DENLINGER, GILLEN, GROVE AND MUSTIO,
JULY 10, 2013

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JULY 10, 2013

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 definitions, for duties of facility
11 owners, the One Call System, other parties, designers,
12 excavators and project owners and for penalties; providing
13 for enforcement, compliance and penalties; and further
14 providing for expiration.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Section 1 of the act of December 10, 1974
18 (P.L.852, No.287), referred to as the Underground Utility Line
19 Protection Law, amended November 29, 2006 (P.L.1593, No.181), is
20 amended to read:

21 Section 1. As used in this act:

22 "Abandoned" means no longer in service and physically
23 disconnected from a line.

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

3 "Business day" means any day except a Saturday, Sunday or
4 legal holiday prescribed by statute. A business day begins at
5 12:00:00 a.m. and ends at 11:59:59 p.m.

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

9 "Chairman" means the Chairman of the Pennsylvania Public
10 Utility Commission.

11 "Commission" means the Pennsylvania Public Utility
12 Commission.

13 "Committee" means the Damage Prevention Committee established
14 under section 7.8(b).

15 "Common Ground Alliance best practices" means the damage
16 prevention industry recommended standards issued by the Common
17 Ground Alliance, a not-for-profit corporation created pursuant
18 to the issuance of the United States Department of
19 Transportation's Common Ground Task Force report in 1999.

20 "Complex project" means an excavation that involves more work
21 than properly can be described in a single locate request or any
22 project designated as such by the excavator or facility owner as
23 a consequence of its complexity or its potential to cause
24 significant disruption to lines or facilities and the public,
25 including excavations that require scheduling locates over an
26 extended time frame.

27 "Consumer Price Index" means the index of consumer prices
28 developed and updated by the Bureau of Labor Statistics of the
29 United States Department of Labor.

30 ["Continuing property records" means a record required

1 pursuant to 66 Pa.C.S. § 1702 (relating to continuing property
2 records).]

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

6 ["Department" means the Department of Labor and Industry of
7 the Commonwealth.]

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

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

15 "Excavation work" means the use of powered equipment or
16 explosives in the movement of earth, rock or other material, and
17 includes, but is not limited to, anchoring, augering,
18 backfilling, blasting, boring, digging, ditching, drilling,
19 driving-in, grading, plowing-in, pulling-in, ripping, scraping,
20 trenching and tunneling, but does not include soft excavation
21 technology such as vacuum, high pressure air or water, tilling
22 of soil for agricultural purposes to a depth of less than
23 eighteen inches[, the direct operations necessary or incidental
24 to the purposes of finding or extracting natural resources,
25 political subdivisions performing minor routine maintenance up
26 to a depth of less than eighteen inches measured from the top of
27 the edge of the cartway or the top of the outer edge of an
28 improved shoulder, in addition to the performance of incidental
29 de minimis excavation associated with the routine maintenance
30 and the removal of sediment buildup, within the right-of-way of

1 public roads or employes of the Department of Transportation
2 performing within the scope of their employment work up to a
3 depth of twenty-four inches beneath the existing surface within
4 the right-of-way of a State highway] or the direct operations on
5 the well pad following construction of the well pad, necessary
6 or incidental to the extraction of oil or natural gas.

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

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

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

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

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

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

27 "Fund" means the Underground Utility Line Protection Fund
28 established under section 7.9(a).

29 "Horizontal directional drilling." means the use of
30 horizontal boring devices that can be guided between a launch

1 point and a reception point beneath the earth's surface.

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

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

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

27 "Locate request" means a communication between an excavator
28 or designer and the One Call System in which a request for
29 locating facilities is processed. Locate requests submitted by
30 an excavator performing work within the right-of-way of any

1 State highway, either under contract to the Department of
2 Transportation or under authority of a permit issued by the
3 Department of Transportation, shall include the number of the
4 Department of Transportation contract or permit.

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

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

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

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

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

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

6 ["Preconstruction request" means a notification to facility
7 owners regarding a complex project.]

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

11 "Report of alleged violation" means a recorded account of an
12 alleged violation.

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

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

28 "Subsurface utility engineering" or "SUE" means those
29 techniques set forth in the American Society of Civil Engineers
30 (ASCE) most recently published standard CI/ASCE 38-02, or its

1 successor document as determined by the One Call System.

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

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

7 "Well site" means area, under the control of an oil or
8 natural gas company, occupied by equipment or facilities
9 necessary or required for the drilling, production or plugging
10 of an oil or natural gas well.

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

24 Section 1.1. The act is amended by adding a section to read:

25 Section 1.1. The lawful start date shall be three business
26 days through ten business days following notification to the One
27 Call System.

28 Section 2. Section 2 of the act, amended November 29, 2006
29 (P.L.1593, No.181) and October 9, 2008 (P.L.1507, No.121), is
30 amended to read:

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

2 (1) To be a member of and give written notice to the One
3 Call System. Such notice shall be in a form acceptable to the
4 One Call System and include:

5 (i) the legal name of the facility owner and their official
6 mailing address;

7 (ii) the names of the counties and municipalities, down to
8 and including wards in Philadelphia, Pittsburgh, Allentown and
9 Erie, in which its lines are located and other related
10 information as may be required by the One Call System regarding
11 the location of a member's facilities;

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

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

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

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

29 (4) Not more than ten business days after receipt of a
30 request from a designer who identifies the work site of

1 excavation or demolition work for which he is preparing a
2 drawing, to initially respond to his request for information as
3 to the position and type of the facility owner's lines at such
4 work site based on the information currently in the facility
5 owner's possession or to mark the plans which have been provided
6 to it by the designer by field location or by another method
7 agreed to by the designer, excavator and facility owner, or
8 their agent. The facility owner shall so advise the person
9 making the request of the facility owner's status at the work
10 site through the One Call System.

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

16 (i) (A) To mark, stake, locate or otherwise provide the
17 position of the facility owner's underground lines at the work
18 site within eighteen inches horizontally from the outside wall
19 of such line in a manner so as to enable the excavator, where
20 appropriate, to employ prudent techniques, which may include
21 hand-dug test holes, to determine the precise position of the
22 underground facility owner's lines. This shall be done to the
23 extent such information is available in the facility owner's
24 records or by use of standard locating techniques other than
25 excavation. Standard locating techniques shall include, at the
26 utility owner's discretion, the option to choose available
27 technologies suitable to each type of line or facility being
28 located at the work site, topography or soil conditions or to
29 assist the facility owner in locating its lines or facilities,
30 based on accepted engineering and operational practices.

1 Facility owners shall make reasonable efforts during the
2 excavation phase to locate or notify excavators of the existence
3 and type of abandoned lines [that remain on the continuing
4 property records of the facility owners].

5 (B) To maintain existing records of main lines abandoned on
6 or after the effective date of this clause and to mark, locate
7 or identify the main lines if possible, based upon the existing
8 records. The records shall include written or electronic
9 documents or drawings in the possession of the facility owner
10 that show the location of an existing line or facility.

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

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

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

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

1 the One Call System, excluding the business day upon which the
2 notification is received, or not later than the day prior to the
3 [scheduled] lawful start date of excavation if the excavator
4 specifies a later date or, in the case of an emergency, to
5 respond through the One Call System as soon as practicable
6 following receipt of notification of the emergency by the One
7 Call System.

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

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

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

1 nature of the emergency information received by the facility
2 owner.

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

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

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

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

1 statistical data pertaining to the number of incident reports
2 filed with the department and the type, number and results of
3 investigations for violations of this act.] To submit a report
4 of alleged violation to the commission through the One Call
5 System not more than ten business days after receipt of notice
6 that the facility owner's lines have been damaged by excavation
7 or demolition work or if the facility owner believes a violation
8 of this act has been committed in association with excavation or
9 demolition work. The report of alleged violation shall be in a
10 form and manner as required by the commission.

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

15 (12) To participate in the One Call System's Member Mapping
16 Solutions, as determined by the One Call System's board of
17 directors.

18 Section 3. Sections 3, 3.1, 4, 5 and 6.1 of the act, amended
19 or added November 29, 2006 (P.L.1593, No.181), are amended to
20 read:

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

23 (1.1) To assign one or more serial numbers and the date that
24 the work site may legally be excavated and to log the entire
25 voice transaction on logging recorders in appropriate digital
26 form and maintain these logs for five years. All records shall
27 be indexed and available to the parties involved at a reasonable
28 cost and at reasonable times set by the One Call System.

29 (1.2) [Perform] To perform the obligations, as set forth
30 under this section, on behalf of the facility owner, excavator

1 or designer as established by the board of directors of the One
2 Call System.

3 (1.3) [Provide] To provide access to municipal lists
4 provided to the One Call System for those interested parties.
5 This list shall contain facility owners having lines in the
6 municipality, including wards as indicated in [subclause (ii) of
7 clause (1) of section 2] section 2(1)(ii), and to maintain, for
8 each municipality, a list containing the information as required
9 to be submitted by the facility owner. Such list shall be
10 updated as revised information is received from the facility
11 owner within five business days.

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

20 (3) [Not more than ten business days after the receipt of a
21 clear and specific request from the department, to provide
22 access to or photocopies of specific One Call System response
23 records, tickets or other like information relating to matters
24 under investigation by the department pursuant to its
25 enforcement authority under this act.] To, per memoranda of
26 understanding between the commission and the One Call System,
27 provide reports of alleged violations and other information,
28 such as photographs, photocopies and drawings and other
29 supporting documentation, that are submitted with the report of
30 alleged violation. The One Call System shall provide access or

1 photocopies of specific One Call System response records,
2 tickets or other similar information related to matters covered
3 by this act under investigation by the commission, pursuant to
4 its enforcement authority under this act. The One Call System
5 may provide reports of alleged violations to the Pennsylvania
6 Emergency Management Agency, per memoranda of understanding.

7 (4) To determine the maximum geographic area that shall
8 constitute a valid single notification and to determine when
9 multiple notifications shall be required of any person,
10 including the method, the type and the number of notifications
11 in a complex project.

12 (5) If approved by the board of directors of the One Call
13 System, to offer a service for the application and obtaining of
14 State or municipal permits for excavation work. Issuance of the
15 required permits shall be the responsibility of the appropriate
16 State or municipal agency which has jurisdiction over the type
17 of excavation work being performed.

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

22 (7) To inquire, when an excavator has notified the One Call
23 System of the existence of a release of natural gas or other
24 hazardous substance or of potential danger to life, health or
25 property, whether the excavator has notified the 911 system. If
26 the 911 system has not been notified, the One Call System shall
27 notify the excavator of the excavator's responsibility to notify
28 the 911 system and shall make a record of the conversation.

29 (8) To notify the facility owner as soon as possible that an
30 excavator has identified an unmarked or incorrectly marked

1 facility and of the facility owner's responsibilities under
2 section 2(5)(v.1).

3 Section 3.1. (a) The duties of the One Call System are
4 those duties as set forth in section 3. Duties assigned to other
5 parties in other sections of this act shall be the duties of
6 those parties and shall not be imputed to the One Call System,
7 including the duty to provide accurate information to the One
8 Call System concerning proposed excavation and the duty to
9 locate facilities at a work site.

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

15 (c) (Reserved).

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

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

23 (2) The Director of the Pennsylvania Emergency Management
24 Agency or his designee.

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

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

27 (5) An excavator or excavation industry representative.

28 (6) A designer or designer industry representative.

29 (e) Operation costs for the One Call System shall be shared,
30 in an equitable manner for services received, by facility owner

1 members as determined by the One Call System's board of
2 directors. Political subdivisions with a population of less than
3 two thousand people or municipal authorities having an aggregate
4 population in the area served by the municipal authority of less
5 than five thousand people shall be exempt from the payment of
6 any service fee. The One Call System may be reimbursed for its
7 costs in providing this service from the contractor fees.

8 (f) All fees shall be set by the board of directors and
9 shall be based on the latest annual audited cost factors of the
10 One Call System. Fees shall be set and adjusted to a rate not
11 more than five percent above the audited cost factor plus the
12 current average published Consumer Price Index for Pennsylvania.
13 Costs of capital improvements may be added, if the improvement
14 receives a majority vote of the board of directors.

15 (f.1) An excavator, designer or operator who proposes to
16 commence excavation or demolition work and requests information
17 from the One Call System shall pay to the One Call System an
18 annual fee for the service provided by the One Call System under
19 section 3. The fee shall be set by the One Call System board of
20 directors and shall be used to offset a portion of the costs of
21 operations of the One Call System and a portion of the operation
22 costs levied on the One Call System's political subdivision and
23 municipal authority members. Failure to pay the fee shall
24 constitute a violation of this act and shall subject the
25 excavator, designer or operator to the enforcement authority of
26 the commission for the nonpayment.

27 [(g) An excavator, designer or operator who proposes to
28 commence excavation or demolition work and requests information
29 of the One Call System shall be charged a fee for the service
30 received from the One Call System. The fee shall be used to

1 offset the operation cost levied on the political subdivision
2 and municipal authority members in lieu of additional fees
3 charged for locations under this act.]

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

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

10 (2) To request the line and facility information prescribed
11 by [section 2, clause (4)] section 2(4) from the One Call System
12 not less than ten nor more than ninety business days before
13 final design is to be completed. This clause is not intended to
14 prohibit designers from obtaining such information more than
15 ninety days before final design is to be completed; however,
16 they shall state in their requirements that such work is
17 preliminary.

18 (2.1) To forward a copy of the project plans to each
19 facility owner who requests a copy. If a designer is unable to
20 provide a copy because of security of the project or proprietary
21 concerns regarding the design or the project, the designer shall
22 negotiate in a timely manner with the facility owner the means
23 of obtaining the necessary data.

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

28 (4) To make a reasonable effort to prepare the construction
29 drawings to avoid damage to and minimize interference with a
30 facility owner's facilities in the construction area by

1 maintaining the clearance as provided for in the applicable
2 easement condition or an eighteen-inch clearance of the facility
3 owner's facilities if no easement restriction exists.

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

9 (6) If, after receiving information from the facility
10 owners, the designer decides to change the work site of a
11 proposed excavation, the obligations imposed by this section
12 shall apply to the new work site.

13 (7) The designer who has complied with the terms of this act
14 and who was not otherwise negligent shall not be subject to
15 liability or incur any obligation to facility owners, operators,
16 owners or other persons who sustain injury to person or property
17 as a result of the excavation or demolition planning work of the
18 designer.

19 (8) To submit a report of alleged violation to the
20 commission through the One Call System not more than ten
21 business days from the time the designer becomes aware that a
22 violation of this act may have been committed in association
23 with excavation or demolition work. The report of alleged
24 violation shall be in a form and manner as required by the
25 commission.

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

29 Section 5. It shall be the duty of each excavator who
30 intends to perform excavation or demolition work within this

1 Commonwealth:

2 (2.1) To request the location and type of facility owner
3 lines at each work site by notifying the facility owner through
4 the One Call System. Notification shall be not less than three
5 nor more than ten business days in advance of beginning
6 excavation or demolition work. No work shall begin earlier than
7 the [scheduled excavation] lawful start date which shall be on
8 or after the third business day after notification. The
9 [scheduled excavation] lawful start date shall exclude the date
10 upon which notification was received by the One Call System and
11 notification received on a Saturday, Sunday or holiday, which
12 shall be processed on the following business day. In the case of
13 a complex project, notification shall not be less than ten
14 business days in advance of the beginning of excavation or
15 demolition work.

16 (2.2) To provide the One Call System with [specific] exact
17 information to identify the work site so that facility owners
18 might provide indications of their lines. An excavator shall be
19 deemed to have met the obligations of clause (2.1) if he calls
20 the One Call System, provides the work site and other required
21 information and receives a serial number.

22 (3) In a complex project or if an excavator intends to
23 perform work at multiple work sites or over a large area, [he
24 shall] to take reasonable steps to work with facility owners,
25 including scheduling and conducting a preconstruction meeting,
26 so that they may locate their facilities at a time reasonably in
27 advance of the actual start of excavation or demolition work for
28 each phase of the work. A preconstruction meeting may take place
29 at any time prior to the commencement of excavation or
30 demolition work, and the excavator, facility owners and

1 designer, or their agents, shall attend the meeting. Notice of
2 the meeting shall be given sufficiently in advance so as to
3 permit attendance, either in person or electronically, by the
4 excavator, facility owners and designer, or their agents, and
5 shall include information sufficient to identify the scope of
6 work. If the excavator does not believe that a preconstruction
7 meeting is necessary under the circumstances of this [paragraph]
8 clause it shall indicate such belief in its notice, but any
9 facility owner with facilities at the work site may request a
10 meeting with the excavator, and a meeting shall be held between
11 the facility owner and the excavator. After commencement of
12 excavation or demolition work, the excavator shall be
13 responsible for protecting and preserving the staking, marking
14 or other designation until no longer required for proper and
15 safe excavation or demolition work at or near the underground
16 facility[,] or by contacting the One Call System to request that
17 the facilities be marked again in the event that the previous
18 markings have been compromised or eliminated.

19 (3.1) To comply with the requirements established by the One
20 Call System as determined by the board of directors regarding
21 the maximum area that a notification may cover.

22 (4) To exercise due care[;] and to take all reasonable steps
23 necessary to avoid injury to or otherwise interfere with all
24 lines where positions have been provided to the excavator by the
25 facility owners pursuant to [clause (5) of section 2] section
26 2(5). Within the tolerance zone the excavator shall employ
27 prudent techniques, which may include hand-dug test holes, to
28 ascertain the precise position of such facilities. If
29 insufficient information to safely excavate is available
30 pursuant to [clause (5) of section 2] section 2(5), the

1 excavator shall employ like prudent techniques which shall be
2 paid for by the project owner pursuant to clause (15) [of this
3 section].

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

13 (6) To inform each operator employed by the excavator at the
14 work site of such work of the information obtained by the
15 excavator pursuant to clauses (2.1) through (5), and the
16 excavator and operator shall:

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

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

28 (7) To report immediately to the facility owner any break or
29 leak on its lines, or any dent, gouge, groove or other damage to
30 such lines or to their coating or cathodic protection, made or

1 discovered in the course of the excavation or demolition work.
2 The One Call System board of directors may adopt procedures to
3 permit reporting under this clause through the One Call System.

4 (8) To immediately notify 911 and the facility owner if the
5 damage results in the escape of any flammable, toxic or
6 corrosive gas or liquid which endangers life, health or
7 property. The excavator shall take reasonable measures, based on
8 its knowledge, training, resources, experience and understanding
9 of the situation, to protect themselves and those in immediate
10 danger, the general public, the property and the environment
11 until the facility owner or emergency responders have arrived
12 and completed their assessment and shall remain on the work site
13 to convey any pertinent information to responders that may help
14 them to safely mitigate the situation.

15 (9) The time requirements of clause (2.1) shall not apply to
16 a facility owner or excavator performing excavation or
17 demolition work in an emergency, as defined in section 1;
18 nonetheless, all facility owners shall be notified as soon as
19 possible before, during or after excavation or demolition work,
20 depending upon the circumstances.

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

24 (11.1) To assist a facility owner in determining involvement
25 of a facility owner's lines by disclosing additional available
26 information requested by the facility owner, including
27 dimensions and the direction of proposed excavations.

28 (11.2) If using horizontal directional drilling (HDD), at a
29 minimum, to utilize the best practices published by the HDD
30 Consortium.

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

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

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

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

28 (14) If an excavator removes its equipment and vacates a
29 [worksite] work site for more than two business days, [he shall]
30 to renotify the One Call System unless other arrangements have

1 been made directly with the facility owners involved in his
2 [worksite] work site.

3 (15) When the information required from the facility owner
4 under [clause (5)(i) of section 2] section 2(5)(i) cannot be
5 provided or, due to the nature of the information received from
6 the facility owner, it is reasonably necessary for the excavator
7 to ascertain the precise location of any line or abandoned or
8 unclaimed lines by prudent techniques, which may include hand-
9 dug test holes, vacuum excavation or other similar devices, the
10 excavator shall promptly notify the project owner or the project
11 owner's representative, either orally or in writing. If oral
12 notification is given, the notice shall be reduced to writing
13 within a reasonable time by the project owner or excavator.
14 After giving such notice, the excavator shall be entitled to
15 compensation from the project owner for this additional work as
16 provided in the latest edition of the Pennsylvania Department of
17 Transportation Form 408 specifications for extra work performed
18 on a force account basis. The provisions of this subsection
19 shall not be deemed to limit any other rights which the
20 excavator has under its contract with the project owner or
21 otherwise. Provisions in any contract, public or private, which
22 attempt to limit the rights of excavators under this section
23 shall not be valid for any reason, and any attempted waiver of
24 this section shall be void and unenforceable as against public
25 policy and any such attempted waiver shall be reported to the
26 [department] commission.

27 (16) [To submit an incident report to the department not
28 more than ten business days after striking or otherwise damaging
29 a facility owner's line during excavation or demolition
30 activities that resulted in personal injury or property damage

1 to parties other than the affected excavator or facility owner.
2 In addition, the incident report may be furnished to the
3 Pennsylvania Public Utility Commission and the Pennsylvania
4 Emergency Management Agency pursuant to memoranda of
5 understanding negotiated between these agencies and the
6 department.] To submit a report of alleged violation to the
7 commission through the One Call System not more than ten
8 business days after striking or damaging a facility owner's line
9 during excavation or demolition or if the excavator believes a
10 violation of this act has been committed in association with
11 excavation or demolition work. The report of alleged violation
12 shall be in a form and manner as required by the commission.

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

17 (18) To, if it chooses to do so and if working for a
18 facility owner, a municipality or a municipal authority,
19 delegate the power to discharge the duties set forth in clauses
20 (2.1) and (2.2) to its project owner, with the project owner's
21 consent. If the power is delegated pursuant to this clause, both
22 the excavator and the project owner shall be responsible for
23 providing the required notices.

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

26 (20) To renotify the One Call System of an unmarked or
27 incorrectly marked facility, if an original, proper,
28 nonemergency locate request has been made to the One Call System
29 and, upon initial arrival at the proposed work site, it is
30 apparent to the excavator that there is an unmarked or

1 incorrectly marked facility. An excavator may not begin
2 excavating in the affected area of the work site until after
3 receiving sufficient information from the facility owner to
4 safely excavate. If the facility owner fails to provide
5 sufficient information to the excavator within three hours after
6 the excavator has notified the One Call System of the unmarked
7 or incorrectly marked facility, the excavator may proceed with
8 excavation subject to the limitations under clause (5).

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

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

15 (1) To utilize sufficient quality levels of subsurface
16 utility engineering or other similar techniques whenever
17 practicable to properly determine the existence and positions of
18 underground facilities when designing known complex projects
19 having an estimated cost of four hundred thousand dollars
20 (\$400,000) or more.

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

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

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

27 (5) To furnish the pertinent data obtained through
28 subsurface utility engineering to the One Call System in a
29 mutually agreeable format.

30 (6) For new construction and where practicable in the

1 opinion of the project owner, to install color-coded permanent
2 markers to indicate the type and location of all laterals
3 installed by the project owner.

4 (7) To submit a report of alleged violation to the
5 commission through the One Call System not more than ten
6 business days after striking or damaging a facility owner's line
7 during excavation or demolition work activities, after a project
8 owner's contracted excavator strikes or damages a facility
9 owner's line during excavation or demolition activities or if
10 the project owner believes a violation of this act has been
11 committed in association with excavation or demolition. The
12 report of alleged violation shall be in a form and manner as
13 required by the commission.

14 Section 4. Section 7.2 of the act, amended November 29, 2006
15 (P.L.1593, No.181), is repealed:

16 [Section 7.2. (a) Any person violating any of the
17 provisions of this act, except clauses (1) and (2) of section 2,
18 commits a summary offense and shall, upon conviction, be
19 sentenced to pay a fine of not less than two thousand five
20 hundred dollars (\$2,500) nor more than fifty thousand dollars
21 (\$50,000) or undergo imprisonment for not more than ninety days,
22 or both. The Attorney General of the Commonwealth or any
23 district attorney may enforce the provisions of this act in any
24 court of competent jurisdiction. The department, in consultation
25 with the Attorney General, may also enforce the provisions of
26 this act in any court of competent jurisdiction. A facility
27 owner may petition any court of competent jurisdiction to enjoin
28 any excavation or demolition work conducted in violation of this
29 act. Local law enforcement or emergency management personnel
30 may, in the interest of public safety, order excavators on a

1 site to stop further excavation if the excavation is being
2 conducted in violation of this act.

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

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

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

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

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

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

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

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

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

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

1 Any party aggrieved by the imposition of an order or
2 administrative penalty imposed by the department may appeal such
3 order or penalty as provided in 2 Pa.C.S. Ch. 5 Subch. A
4 (relating to practice and procedure of Commonwealth agencies)
5 and Ch. 7 Subch. A (relating to review of Commonwealth agency
6 action).

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

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

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

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

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

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

26 (d) All fines and penalties recovered under this section
27 shall be payable to the Attorney General, district attorney or
28 the department, whichever brought the action, and collected in
29 the manner provided for by law. Administrative penalties
30 collected by the department may be expended by the department

1 for costs related to its enforcement activities and to sponsor
2 damage prevention activities of the One Call System.

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

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

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

15 Section 7.8. (a) (Reserved).

16 (b) A Damage Prevention Committee shall be established as
17 follows:

18 (1) The commission shall establish a Damage Prevention
19 Committee in accordance with subsection (c).

20 (2) The committee shall regularly meet to carry out the
21 following purposes:

22 (i) Review a report of an alleged violation of this act and
23 commission staff findings and recommendations concerning a
24 violation.

25 (ii) Issue a warning letter to a person, as deemed
26 appropriate by the committee or the commission.

27 (iii) Issue an informal determination that imposes an
28 administrative penalty and requires a person to attend a damage
29 prevention educational program.

30 (iv) Issue an informal determination that modifies or

1 dismisses a recommendation of commission staff.

2 (3) Upon the request of the commission, the committee shall
3 hold a special meeting to advise the commission on a matter
4 related to damage prevention of underground facilities and this
5 act.

6 (4) As soon as practical after establishment, the committee,
7 with input from the One Call System, shall develop and implement
8 bylaws. The bylaws shall:

9 (i) delineate the committee's practice and procedure
10 concerning the performance of duties assigned under this act and
11 commission orders and regulations; and

12 (ii) be approved by the commission.

13 (c) The following shall apply to appointment and terms of
14 members of the Damage Prevention Committee:

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

17 (i) The executive director of the commission, or his
18 designee.

19 (ii) The president of the One Call System, or his designee
20 from the One Call System professional staff.

21 (iii) Two representatives of facility owners, nominated by
22 facility owners or affiliated organizations.

23 (iv) Three representatives of excavators, nominated by
24 excavators or affiliated organizations.

25 (v) One representative of municipal governments, nominated
26 by municipal governments or affiliated organizations.

27 (vi) One representative of municipal authorities, nominated
28 by municipal authorities or affiliated organizations.

29 (2) A person appointed to the committee must have expertise
30 with the operation of this act.

1 (3) A nomination under clause (1)(iii), (iv), (v) and (vi)
2 must be forwarded to the secretary of the commission. The
3 executive director of the commission shall provide recommended
4 candidates to the commission for approval.

5 (4) Except for an unexpired term or for committee members
6 under clause (1)(i) and (ii), the following shall apply:

7 (i) An appointment to the committee shall begin January 1.

8 (ii) Except for initial terms under clause (5), a committee
9 member's term shall be for a term of two years.

10 (5) The initial terms of committee members shall be as
11 follows:

12 (i) One representative of facility owners shall serve two
13 years and one shall serve one year.

14 (ii) One representative of excavators shall serve two years
15 and two shall serve one year.

16 (iii) The representative of municipal governments shall
17 serve two years.

18 (iv) The representative of municipal authorities shall serve
19 one year.

20 (6) The commission member shall serve as the chairperson of
21 the committee and shall be a nonvoting member, except if the
22 chairperson's vote is necessary to break a tie.

23 (7) At least five members of the committee who are present
24 shall constitute a quorum for the transaction of business. A
25 simple majority vote of committee members present at a meeting
26 shall be deemed to be the position of the committee.

27 (d) The following shall apply to alleged violations:

28 (1) A person declared to have committed an alleged violation
29 shall do one of the following:

30 (i) Present its position to the committee.

1 (ii) Provide a written acknowledgment of the investigation
2 findings and administrative penalty to the committee.

3 (2) A person who is subject to an informal determination of
4 the committee may accept or reject the result. If an informal
5 determination is rejected, the matter shall be returned to the
6 prosecutory staff of the commission for further action if
7 appropriate, including the issuance of a formal complaint.

8 (e) Except for alleged violations involving injury or death,
9 the prosecutory staff of the commission may use the committee
10 process under subsection (d) in advance or instead of filing a
11 formal complaint against a person declared to have committed an
12 alleged violation. An informal determination of the committee
13 shall be binding on the prosecutory staff of the commission
14 unless a person rejects it.

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

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

21 (1) To employ individuals.

22 (2) To issue orders.

23 (3) To promulgate regulations, if the commission promulgates
24 regulations which limit reporting to a specific type of
25 incident, including contact with a line, damage to a line or
26 line coating, personal injury, third-party damage and failure to
27 comply with this act, the commission may consider the resources
28 available for enforcement and other factors.

29 (4) For one year following the effective date of this
30 section, to promulgate temporary regulations. Regulations under

1 this paragraph shall:

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

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

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

8 (B) The act of June 25, 1982 (P.L.633, No.181), known as the
9 Regulatory Review Act.

10 Section 7.9. (a) The Underground Utility Line Protection
11 Fund is established as a revolving fund to be used by the
12 commission for administering the enforcement of this act.

13 (b) The fund shall be comprised of:

14 (1) Administrative penalties collected by use of the
15 committee process under subsection (c).

16 (2) Funds received by the commission as a result of
17 enforcing this act.

18 (3) Federal or State grants received by the commission for
19 the purpose of this act.

20 (4) An annual assessment, if required under subparagraph
21 (ii) (A), paid by the One Call System for each fiscal year as
22 follows:

23 (i) Beginning on the effective date of this section the
24 following shall apply to the initial fiscal year, or a portion
25 of the initial fiscal year:

26 (A) An initial assessment of five hundred fifty thousand
27 dollars (\$550,000) shall be paid, which shall be prorated if the
28 effective date of this section occurs after the first day of the
29 initial fiscal year.

30 (B) Within ten days after the effective date of this

1 section, the commission shall, by registered or certified mail,
2 give notice to the One Call System of the amount assessed under
3 this subclause, which shall be paid by the One Call System
4 within ten days of receipt of the notice.

5 (ii) During each subsequent fiscal year:

6 (A) The annual assessment shall be calculated by subtracting
7 the amount of uncommitted money, as defined by generally
8 accepted accounting principles, present at the conclusion of the
9 prior fiscal year within the fund, from the current year's
10 projected program costs for commission enforcement of this act.

11 (B) The annual amount assessed to the One Call System may
12 not exceed five hundred fifty thousand dollars (\$550,000).

13 (C) Within thirty days of the start of each fiscal year, the
14 commission shall, by registered or certified mail, give notice
15 to the One Call System of the amount assessed under this
16 subclause. The One Call System shall pay:

17 (I) Fifty percent of the assessment to the commission within
18 thirty days of receipt of the notice.

19 (II) The balance of the assessment within one hundred eighty
20 days of receipt of the notice.

21 (c) Except as provided under subsection (d), administrative
22 penalties, grant money and assessments paid by the One Call
23 System shall be deposited into the fund. Interest earned on the
24 fund shall be credited to the fund. Any money remaining in the
25 fund at the end of the fiscal year shall not lapse and shall
26 remain in the fund.

27 (d) Administrative penalties collected through the issuance
28 of an adjudication by the commission under this act shall be
29 deposited in the General Fund.

30 (e) The following shall apply:

1 (1) Except as provided under clause (2), program costs for
2 commission enforcement of this act shall be a line item in the
3 commission's proposed budget and shall be subject to the review
4 and approval of the Governor and the General Assembly as
5 described under 66 Pa.C.S. § 510(a) (relating to assessment for
6 regulatory expenses upon public utilities).

7 (2) Program costs for commission enforcement of this act may
8 not be included within the amount assessed to public utilities
9 under 66 Pa.C.S. § 510. Program costs for commission enforcement
10 of this act shall be paid from the fund.

11 Section 7.10. (a) The commission may issue a warning and
12 order requiring compliance with this act and may levy an
13 administrative penalty for a violation of this act. A warning,
14 order or penalty shall be served on the person or entity
15 violating this act at the person's last known address. A party
16 aggrieved by the imposition of an order or administrative
17 penalty imposed by the commission may appeal the order or
18 penalty as provided under 2 Pa.C.S. Chs. 5 Subch. A (relating to
19 practice and procedure of Commonwealth agencies) and 7 Subch. A
20 (relating to judicial review of Commonwealth agency action).

21 (b) The following shall apply:

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

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

25 (ii) if the violation results in injury, death or property
26 damage of twenty-five thousand dollars (\$25,000) or more, an
27 administrative penalty of not more than fifty thousand dollars
28 (\$50,000).

29 (2) The commission and committee shall consider the
30 following factors in determining the administrative penalty to

1 be assessed:

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

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

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

8 (iv) The party's proposed modification to internal practices
9 and procedures to insure future compliance with statutes and
10 regulations.

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

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

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

17 (d) This act shall not affect a civil remedy for personal
18 injury or property damage, except as provided for under this
19 act.

20 (e) The commission may issue a subpoena, on application of
21 an attorney responsible for representing the Commonwealth in
22 actions before the commission, for the purpose of investigating
23 an alleged violation of this act. The commission shall have the
24 power to subpoena witnesses and compel the production of books,
25 records, papers and documents.

26 (f) Nothing under this act shall be construed or interpreted
27 to do any of the following:

28 (1) Affect the ability of a district attorney or the
29 Attorney General to investigate or file a claim for the same
30 conduct.

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

4 (g) A facility owner may petition a court of competent
5 jurisdiction to enjoin excavation or demolition work conducted
6 in violation of this act. Local law enforcement or emergency
7 management personnel may, in the interest of public safety,
8 order an excavator on a work site to stop further excavation if
9 the excavation is being conducted in violation of this act.

10 Section 6. Sections 8 and 39 of the act, amended or added
11 November 29, 2006 (P.L.1593, No.181), are amended to read:

12 Section 8. The One Call System shall have the authority to
13 design, establish and administer a voluntary payment dispute
14 resolution process which may be used by excavators, facility
15 owners, designers, project owners and other involved persons.
16 The process shall provide for dispute resolution panels selected
17 from among a list of representatives of stakeholder groups,
18 including facility owners, excavators, designers and regulators.
19 The process established under this section may not be used to
20 settle or resolve alleged violations of this act nor may involve
21 any issues related to the [department's] commission's
22 enforcement activities.

23 Section 39. This act shall expire on December 31, [2016]
24 2021.

25 Section 7. This act shall take effect as follows:

26 (1) The following provisions shall take effect
27 immediately:

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

29 (ii) This section.

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