

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 1607** Session of
2013

INTRODUCED BY BAKER, PICKETT, EVERETT, R. MILLER, WATSON,
HARPER, MAJOR, GINGRICH, QUINN, HESS, M. K. KELLER, CLYMER,
BOBACK, COHEN, DENLINGER, GILLEN, GROVE, MUSTIO AND SONNEY,
JULY 10, 2013

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF
REPRESENTATIVES, AS AMENDED, JANUARY 13, 2014

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

1 disconnected from a line.

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

4 "Business day" means any day except a Saturday, Sunday or
5 legal holiday prescribed by statute. A business day begins at
6 12:00:00 a.m. and ends at 11:59:59 p.m.

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

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

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

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

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

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

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

1 ["Continuing property records" means a record required
2 pursuant to 66 Pa.C.S. § 1702 (relating to continuing property
3 records).]

4 "DAMAGE PREVENTION INVESTIGATOR" MEANS COMMISSION STAFF <--
5 ASSIGNED TO INVESTIGATE A REPORT OF AN ALLEGED VIOLATION AND
6 PREPARE FINDINGS AND RECOMMENDATIONS FOR CONSIDERATION BY THE
7 COMMITTEE.

8 "Demolition work" means the partial or complete destruction
9 of a structure, by any means, served by or adjacent to a line or
10 lines.

11 ["Department" means the Department of Labor and Industry of
12 the Commonwealth.]

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

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

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

1 to a depth of less than eighteen inches measured from the top of
2 the edge of the cartway or the top of the outer edge of an
3 improved shoulder, in addition to the performance of incidental
4 de minimis excavation associated with the routine maintenance
5 and the removal of sediment buildup, within the right-of-way of
6 public roads or employees of the Department of Transportation
7 performing within the scope of their employment work up to a
8 depth of twenty-four inches beneath the existing surface within
9 the right-of-way of a State highway] or the direct operations on
10 the well pad following construction of the well pad, necessary <--
11 or incidental BY OR UNDER THE DIRECTION OF THE OWNER OR OPERATOR <--
12 OF THE WELL PAD, AND THAT ARE NECESSARY OR OPERATIONS INCIDENTAL
13 to the extraction of oil or natural gas.

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

16 "Facility owner" means the public utility or agency,
17 political subdivision, municipality, authority, rural electric
18 cooperative or other person or entity who or which owns or
19 operates a line. [The term does not include the Department of
20 Transportation within a State highway right-of-way.] The term
21 does not include any of the following:

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

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

28 "Final design." means the engineering and construction
29 drawings that are provided to a bidder or other person who is
30 asked to initiate construction on the bid date or the date the

1 project is set for construction in the absence of a bid.

2 "Fiscal year" means the fiscal year utilized by the
3 commission.

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

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

9 "Injury" means a bodily harm to a person who, as a result of
10 the bodily harm, immediately receives medical attention away
11 from the scene of the incident.

12 "Lawful start date" means the scheduled start date as
13 provided under section 1.1.

14 "Line" or "facility" means an underground conductor or
15 underground pipe or structure used in providing electric or
16 communication service, or an underground pipe used in carrying,
17 gathering, transporting or providing natural or artificial gas,
18 petroleum, propane, oil or petroleum and production product,
19 sewage, water or other service to one or more transportation
20 carriers, consumers or customers of such service and the
21 appurtenances thereto, regardless of whether such line or
22 structure is located on land owned by a person or public agency
23 or whether it is located within an easement or right-of-way. The
24 term shall include unexposed storm drainage and traffic loops
25 that are not clearly visible. [The term shall not include crude
26 oil or natural gas production and gathering lines or facilities
27 unless the line or facility is a regulated onshore gathering
28 line as defined in regulations promulgated after January 1,
29 2006, by the United States Department of Transportation pursuant
30 to the Pipeline Safety Act of 1992 (Public Law 102-508, 49

1 U.S.C. § 60101 et seq.), if the regulated gathering line is
2 subject to the damage prevention program requirements of 49 CFR
3 § 192.614.]

4 "Locate request" means a communication between an excavator
5 or designer and the One Call System in which a request for
6 locating facilities is processed. Locate requests submitted by
7 an excavator performing work within the right-of-way of any
8 State highway, either under contract to the Department of
9 Transportation or under authority of a permit issued by the
10 Department of Transportation, shall include the number of the
11 Department of Transportation contract or permit.

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

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

30 "Operator" means any individual in physical control of

1 powered equipment or explosives when being used to perform
2 excavation or demolition work.

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

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

8 "Preconstruction meeting" means a scheduled event held by the
9 excavator, designer, project owner and facility owner, or an
10 agent of the excavator, designer, project owner and facility
11 owner, prior to the commencement of excavation or demolition
12 work in a complex project.

13 ["Preconstruction request" means a notification to facility
14 owners regarding a complex project.]

15 "Project owner" means any person who or which engages an
16 excavator for construction or any other project which requires
17 excavation or demolition work.

18 "Report of alleged violation" means a recorded account of an
19 alleged violation.

20 ["Secretary" means the Secretary of Labor and Industry of the
21 Commonwealth.

22 "Site" means the specific place denoted on the locate request
23 where excavation or demolition work is being or is planned to be
24 performed. A site should be denoted as a clearly defined,
25 bounded area, including relevant identifiable points of
26 reference such as the specific address with a specific
27 description as to the portion of the property, including
28 descriptions such as front, back, left side, right side and
29 direction such as N, S, E, W or variants. Where possible, the
30 points should also reference, without limitation, the size and

1 radius or circumference of the excavation, utility pad or
2 pedestal numbers, utility pole numbers, landmarks, including
3 trees, fountains, fences, railroads, highway and pipeline
4 markers, and latitude and longitude.]

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

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

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

14 "Well site PAD" means area, under the control of an oil or <--
15 natural gas company, occupied by equipment or facilities
16 necessary or required for the drilling, production or plugging
17 of an oil or natural gas well.

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

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

2 Section 1.1. The lawful start date shall be three business
3 days through ten business days following notification to the One
4 Call System.

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

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

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

12 (i) the legal name of the facility owner and their official
13 mailing address;

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

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

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

1 owner or the excavator or designer providing the information as
2 the agent of the facility owner; and

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

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

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

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

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

1 records or by use of standard locating techniques other than
2 excavation. Standard locating techniques shall include, at the
3 utility owner's discretion, the option to choose available
4 technologies suitable to each type of line or facility being
5 located at the work site, topography or soil conditions or to
6 assist the facility owner in locating its lines or facilities,
7 based on accepted engineering and operational practices.
8 Facility owners shall make reasonable efforts during the
9 excavation phase to locate or notify excavators of the existence
10 and type of abandoned lines [that remain on the continuing
11 property records of the facility owners].

12 (B) To maintain existing records of main lines abandoned on
13 or after the effective date of this clause and to mark, locate
14 or identify the main lines if possible, based upon the existing
15 records. The records shall include written or electronic
16 documents or drawings in the possession of the facility owner
17 that show the location of an existing line or facility.

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

28 (ii) To[, at its option,] timely elect to excavate around
29 its facilities in fulfillment of this [subparagraph] SUBCLAUSE, <--
30 at its option.

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

4 (v) To respond to all notices through the One Call System,
5 provided the request is made in the time frame set forth under
6 this act. The response shall be made not later than the end of
7 the second business day following receipt of the notification by
8 the One Call System, excluding the business day upon which the
9 notification is received, or not later than the day prior to the
10 [scheduled] lawful start date of excavation if the excavator
11 specifies a later date or, in the case of an emergency, to
12 respond through the One Call System as soon as practicable
13 following receipt of notification of the emergency by the One
14 Call System.

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

24 (vi) In marking the approximate position of underground
25 lines or facilities, [the facility owner shall] to follow the
26 Common Ground Alliance Best Practices for Temporary Marking set
27 forth in ANSI standard Z535.1. Should the Common Ground Alliance
28 Best Practices be amended, the amended guidelines shall be
29 applied and followed. If the Common Ground Alliance Best
30 Practices no longer publishes guidelines for temporary markings

1 or if the responsibility for publishing the guidelines is
2 transferred to or assumed by another entity, the facility owner
3 shall follow the guidelines approved by the One Call System's
4 board of directors.

5 (vii) To respond to emergency notifications as soon as
6 practicable following receipt of notification of such emergency.
7 The response by the facility owner shall be consistent with the
8 nature of the emergency information received by the facility
9 owner.

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

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

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

26 (10) [To submit an incident report to the department not
27 more than ten business days after receipt of notice that the
28 facility owner's lines have been damaged by excavation or
29 demolition activities that resulted in personal injury or in
30 property damage to parties other than the affected excavator or

1 facility owner. In addition, the incident report may likewise be
2 furnished to the Pennsylvania Public Utility Commission and the
3 Pennsylvania Emergency Management Agency pursuant to memoranda
4 of understanding negotiated between these agencies and the
5 department, which shall, at a minimum, provide for a common
6 reporting format for incident reports. The department shall
7 furnish to the One Call System, upon reasonable request,
8 statistical data pertaining to the number of incident reports
9 filed with the department and the type, number and results of
10 investigations for violations of this act.] To submit a report
11 of alleged violation to the commission through the One Call
12 System not more than ~~ten~~ THIRTY business days after receipt of <--
13 notice that the facility owner's lines have been damaged by
14 excavation or demolition work or if the facility owner believes
15 a violation of this act has been committed in association with
16 excavation or demolition work. The report of alleged violation
17 shall be in a form and manner as required by the commission. NO <--
18 REPORT MAY BE REQUIRED WHERE THE COST TO REPAIR THE DAMAGE TO
19 THE FACILITY OWNER'S LINES IS LESS THAN TWO THOUSAND FIVE
20 HUNDRED DOLLARS (\$2,500), UNLESS THE SAME PERSON DAMAGED THE
21 FACILITY OWNER'S LINES TWO OR MORE TIMES WITHIN A SIX-MONTH
22 PERIOD.

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

27 (12) To participate in the One Call System's Member Mapping
28 Solutions, as determined by the One Call System's board of
29 directors.

30 Section 3. Sections 3, 3.1, 4, 5 and 6.1 of the act, amended

1 or added November 29, 2006 (P.L.1593, No.181), are amended to
2 read:

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

5 (1.1) To assign one or more serial numbers and the date that
6 the work site may legally be excavated and to log the entire
7 voice transaction on logging recorders in appropriate digital
8 form and maintain these logs for five years. All records shall
9 be indexed and available to the parties involved at a reasonable
10 cost and at reasonable times set by the One Call System.

11 (1.2) [Perform] To perform the obligations, as set forth
12 under this section, on behalf of the facility owner, excavator
13 or designer as established by the board of directors of the One
14 Call System.

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

24 [(2) To make such lists under clause (1.3) available for
25 public inspection via the county recorder of deeds without
26 charge. A maximum copy fee of no more than twenty-five dollars
27 (\$25) may be charged per county list. Each facility owner change
28 shall be forwarded, at no charge, to the respective county
29 recorder of deeds for public access. The recorder of deeds shall
30 make such list available for public inspection based on the most

1 current information provided to it by the One Call System.]

2 (3) [Not more than ten business days after the receipt of a
3 clear and specific request from the department, to provide
4 access to or photocopies of specific One Call System response
5 records, tickets or other like information relating to matters
6 under investigation by the department pursuant to its
7 enforcement authority under this act.] To, per memoranda of
8 understanding between the commission and the One Call System,
9 provide reports of alleged violations and other information,
10 such as photographs, photocopies and drawings and other
11 supporting documentation, that are submitted with the report of
12 alleged violation. The One Call System shall provide access or
13 photocopies of specific One Call System response records,
14 tickets or other similar information related to matters covered
15 by this act under investigation by the commission, pursuant to
16 its enforcement authority under this act. The One Call System
17 may provide reports of alleged violations to the Pennsylvania
18 Emergency Management Agency, per memoranda of understanding.

19 (4) To determine the maximum geographic area that shall
20 constitute a valid single notification and to determine when
21 multiple notifications shall be required of any person,
22 including the method, the type and the number of notifications
23 in a complex project.

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

30 (6) Pursuant to policies adopted by the One Call System's

1 board of directors, to provide a secure repository for and
2 access to subsurface utility engineering data received from
3 project owners to affected facility owner members.

4 (7) To inquire, when an excavator has notified the One Call
5 System of the existence of a release of natural gas or other
6 hazardous substance or of potential danger to life, health or
7 property, whether the excavator has notified the 911 system. If
8 the 911 system has not been notified, the One Call System shall
9 notify the excavator of the excavator's responsibility to notify
10 the 911 system and shall make a record of the conversation.

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

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

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

27 (c) (Reserved).

28 (d) The One Call System shall be governed by a board of
29 directors[,] to be chosen by the facility owners. No less than
30 twenty percent of the seats on the board shall be held by

1 municipalities or municipal authorities. The board shall include
2 all of the following:

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

5 (2) The Director of the Pennsylvania Emergency Management
6 Agency or his designee.

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

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

9 (5) An excavator or excavation industry representative.

10 (6) A designer or designer industry representative.

11 (e) Operation costs for the One Call System shall be shared,
12 in an equitable manner for services received, by facility owner
13 members as determined by the One Call System's board of
14 directors. Political subdivisions with a population of less than
15 two thousand people or municipal authorities having an aggregate
16 population in the area served by the municipal authority of less
17 than five thousand people shall be exempt from the payment of
18 any service fee. The One Call System may be reimbursed for its
19 costs in providing this service from the contractor fees.

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

27 (f.1) An excavator, designer or operator who proposes to
28 commence excavation or demolition work and requests information
29 from the One Call System shall pay to the One Call System an
30 annual fee for the service provided by the One Call System under

1 section 3. The fee shall be set by the One Call System board of
2 directors and shall be used to offset a portion of the costs of
3 operations of the One Call System and a portion of the operation
4 costs levied on the One Call System's political subdivision and
5 municipal authority members. Failure to pay the fee shall
6 constitute a violation of this act and shall subject the
7 excavator, designer or operator to the enforcement authority of
8 the commission for the nonpayment.

9 [(g) An excavator, designer or operator who proposes to
10 commence excavation or demolition work and requests information
11 of the One Call System shall be charged a fee for the service
12 received from the One Call System. The fee shall be used to
13 offset the operation cost levied on the political subdivision
14 and municipal authority members in lieu of additional fees
15 charged for locations under this act.]

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

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

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

30 (2.1) To forward a copy of the project plans to each

1 facility owner who requests a copy. If a designer is unable to
2 provide a copy because of security of the project or proprietary
3 concerns regarding the design or the project, the designer shall
4 negotiate in a timely manner with the facility owner the means
5 of obtaining the necessary data.

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

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

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

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

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

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

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

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

14 (2.1) To request the location and type of facility owner
15 lines at each work site by notifying the facility owner through
16 the One Call System. Notification shall be not less than three
17 nor more than ten business days in advance of beginning
18 excavation or demolition work. No work shall begin earlier than
19 the [scheduled excavation] lawful start date which shall be on
20 or after the third business day after notification. The
21 [scheduled excavation] lawful start date shall exclude the date
22 upon which notification was received by the One Call System and
23 notification received on a Saturday, Sunday or holiday, which
24 shall be processed on the following business day. In the case of
25 a complex project, notification shall not be less than ten
26 business days in advance of the beginning of excavation or
27 demolition work.

28 (2.2) To provide the One Call System with [specific] exact
29 information to identify the work site so that facility owners
30 might provide indications of their lines. An excavator shall be

1 deemed to have met the obligations of clause (2.1) if he calls
2 the One Call System, provides the work site and other required
3 information and receives a serial number.

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

1 (3.1) To comply with the requirements established by the One
2 Call System as determined by the board of directors regarding
3 the maximum area that a notification may cover.

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

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

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

29 (i) Plan the excavation or demolition work to avoid damage
30 to or minimize interference with a facility owner's facilities

1 in the construction area. Excavation or demolition work which
2 requires temporary or permanent interruption of a facility
3 owner's service shall be coordinated with the affected facility
4 owner in all cases.

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

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

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

27 (9) The time requirements of clause (2.1) shall not apply to
28 a facility owner or excavator performing excavation or
29 demolition work in an emergency, as defined in section 1;
30 nonetheless, all facility owners shall be notified as soon as

1 possible before, during or after excavation or demolition work,
2 depending upon the circumstances.

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

6 (11.1) To assist a facility owner in determining involvement
7 of a facility owner's lines by disclosing additional available
8 information requested by the facility owner, including
9 dimensions and the direction of proposed excavations.

10 (11.2) If using horizontal directional drilling (HDD), at a
11 minimum, to utilize the best practices published by the HDD
12 Consortium.

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

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

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

1 the facilities contributed to the damage. Should the facility
2 owner or designer not have misidentified, mislocated or failed
3 to identify its facilities pursuant to this act, there shall be
4 no diminution of the facility owner's right of recovery.

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

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

15 (15) When the information required from the facility owner
16 under [clause (5)(i) of section 2] section 2(5)(i) cannot be
17 provided or, due to the nature of the information received from
18 the facility owner, it is reasonably necessary for the excavator
19 to ascertain the precise location of any line or abandoned or
20 unclaimed lines by prudent techniques, which may include hand-
21 dug test holes, vacuum excavation or other similar devices, the
22 excavator shall promptly notify the project owner or the project
23 owner's representative, either orally or in writing. If oral
24 notification is given, the notice shall be reduced to writing
25 within a reasonable time by the project owner or excavator.
26 After giving such notice, the excavator shall be entitled to
27 compensation from the project owner for this additional work as
28 provided in the latest edition of the Pennsylvania Department of
29 Transportation Form 408 specifications for extra work performed
30 on a force account basis. The provisions of this subsection

1 shall not be deemed to limit any other rights which the
2 excavator has under its contract with the project owner or
3 otherwise. Provisions in any contract, public or private, which
4 attempt to limit the rights of excavators under this section
5 shall not be valid for any reason, and any attempted waiver of
6 this section shall be void and unenforceable as against public
7 policy and any such attempted waiver shall be reported to the
8 [department] commission.

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

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

29 (18) To, if it chooses to do so and if working for a
30 facility owner, a municipality or a municipal authority,

1 delegate the power to discharge the duties set forth in clauses
2 (2.1) and (2.2) to its project owner, with the project owner's
3 consent. If the power is delegated pursuant to this clause, both
4 the excavator and the project owner shall be responsible for
5 providing the required notices.

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

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

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

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

27 (1) To utilize sufficient quality levels of subsurface
28 utility engineering or other similar techniques whenever
29 practicable to properly determine the existence and positions of
30 underground facilities when designing known complex projects

1 having an estimated cost of four hundred thousand dollars
2 (\$400,000) or more.

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

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

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

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

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

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

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

28 [Section 7.2. (a) Any person violating any of the
29 provisions of this act, except clauses (1) and (2) of section 2,
30 commits a summary offense and shall, upon conviction, be

1 sentenced to pay a fine of not less than two thousand five
2 hundred dollars (\$2,500) nor more than fifty thousand dollars
3 (\$50,000) or undergo imprisonment for not more than ninety days,
4 or both. The Attorney General of the Commonwealth or any
5 district attorney may enforce the provisions of this act in any
6 court of competent jurisdiction. The department, in consultation
7 with the Attorney General, may also enforce the provisions of
8 this act in any court of competent jurisdiction. A facility
9 owner may petition any court of competent jurisdiction to enjoin
10 any excavation or demolition work conducted in violation of this
11 act. Local law enforcement or emergency management personnel
12 may, in the interest of public safety, order excavators on a
13 site to stop further excavation if the excavation is being
14 conducted in violation of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (3) Where violations result in property damage that does not
30 exceed ten thousand dollars (\$10,000), the administrative

1 penalty may not exceed one thousand dollars (\$1,000).

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

5 (5) For violations that result in personal injury or death,
6 the administrative penalty may not exceed ten thousand dollars
7 (\$10,000).

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

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

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

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

27 Section 7.8. (a) (Reserved).

28 (b) A Damage Prevention Committee shall be established as
29 follows:

30 (1) The commission shall establish a Damage Prevention

1 Committee in accordance with subsection (c). <--

2 (2) THE COMMITTEE SHALL CONSIST OF THE FOLLOWING MEMBERS, <--
3 APPOINTED BY THE COMMISSION:

4 (I) THE EXECUTIVE DIRECTOR OF THE COMMISSION, OR HIS
5 DESIGNEE.

6 (II) THE PRESIDENT OF THE ONE CALL SYSTEM, OR HIS DESIGNEE
7 FROM THE ONE CALL SYSTEM PROFESSIONAL STAFF.

8 (III) ONE REPRESENTATIVE FROM EACH OF THE FOLLOWING
9 NONMUNICIPALLY OWNED OR AFFILIATED FACILITY OWNER INDUSTRIES:
10 ELECTRIC, NATURAL GAS OR PETROLEUM PIPELINES, TELEPHONE, WATER
11 OR WASTEWATER AND CABLE TELEVISION, NOMINATED BY FACILITY OWNERS
12 OR AFFILIATED ORGANIZATIONS.

13 (IV) THREE REPRESENTATIVES OF EXCAVATORS, NOMINATED BY
14 EXCAVATORS OR AFFILIATED ORGANIZATIONS.

15 (V) ONE REPRESENTATIVE OF MUNICIPAL GOVERNMENTS, NOMINATED
16 BY MUNICIPAL GOVERNMENTS OR AFFILIATED ORGANIZATIONS.

17 (VI) ONE REPRESENTATIVE OF MUNICIPAL AUTHORITIES, NOMINATED
18 BY MUNICIPAL AUTHORITIES OR AFFILIATED ORGANIZATIONS.

19 (3) A PERSON APPOINTED TO THE COMMITTEE MUST HAVE EXPERTISE
20 WITH THE OPERATION OF THIS ACT.

21 (4) A NOMINATION UNDER CLAUSE (2) (III), (IV), (V) AND (VI)
22 MUST BE FORWARDED TO THE SECRETARY OF THE COMMISSION. THE
23 EXECUTIVE DIRECTOR OF THE COMMISSION SHALL PROVIDE RECOMMENDED
24 CANDIDATES TO THE COMMISSION FOR APPROVAL.

25 (5) EXCEPT FOR AN UNEXPIRED TERM OR FOR COMMITTEE MEMBERS
26 UNDER CLAUSE (2) (I) AND (II), THE FOLLOWING SHALL APPLY:

27 (I) AN APPOINTMENT TO THE COMMITTEE SHALL BEGIN JANUARY 1.

28 (II) EXCEPT FOR INITIAL TERMS UNDER CLAUSE (6), A COMMITTEE
29 MEMBER'S TERM SHALL BE FOR A TERM OF THREE YEARS.

30 (6) THE INITIAL TERMS OF COMMITTEE MEMBERS SHALL BE AS

1 FOLLOWS:

2 (I) TWO REPRESENTATIVES OF FACILITY OWNERS SHALL SERVE THREE
3 YEARS, ONE REPRESENTATIVE SHALL SERVE TWO YEARS AND TWO
4 REPRESENTATIVES SHALL SERVE ONE YEAR.

5 (II) ONE REPRESENTATIVE OF EXCAVATORS SHALL SERVE THREE
6 YEARS, ONE REPRESENTATIVE SHALL SERVE TWO YEARS AND ONE
7 REPRESENTATIVE SHALL SERVE ONE YEAR.

8 (III) THE REPRESENTATIVE OF MUNICIPAL GOVERNMENTS SHALL
9 SERVE TWO YEARS.

10 (IV) THE REPRESENTATIVE OF MUNICIPAL AUTHORITIES SHALL SERVE
11 THREE YEARS.

12 (7) THE COMMISSION MEMBER SHALL SERVE AS THE CHAIRPERSON OF
13 THE COMMITTEE AND SHALL BE A NONVOTING MEMBER, EXCEPT IF THE
14 CHAIRPERSON'S VOTE IS NECESSARY TO BREAK A TIE. THE
15 CHAIRPERSON'S ATTENDANCE SHALL NOT BE COUNTED TO ESTABLISH A
16 QUORUM.

17 (8) AT LEAST SIX MEMBERS OF THE COMMITTEE WHO ARE PRESENT
18 SHALL CONSTITUTE A QUORUM FOR THE TRANSACTION OF BUSINESS. A
19 SIMPLE MAJORITY VOTE OF COMMITTEE MEMBERS PRESENT AT A MEETING
20 SHALL BE DEEMED TO BE THE POSITION OF THE COMMITTEE.

21 ~~(2)~~ (C) The committee shall regularly meet to carry out the <--
22 following purposes:

23 ~~(i)~~ (1) Review a report of an alleged violation of this act <--
24 and ~~commission staff~~ DAMAGE PREVENTION INVESTIGATOR findings and <--
25 recommendations concerning a violation.

26 ~~(ii)~~ (2) Issue a warning letter to a person, as deemed <--
27 appropriate by the committee or ~~the commission~~ AS RECOMMENDED BY <--
28 THE DAMAGE PREVENTION INVESTIGATOR.

29 ~~(iii)~~ (3) Issue an informal determination that imposes an <--
30 administrative penalty and ~~requires a person to attend a damage~~ <--

1 ~~prevention educational program.~~

2 (4) REQUIRE A PERSON TO ATTEND A DAMAGE PREVENTION <--
3 EDUCATIONAL PROGRAM.

4 ~~(iv)~~ (5) Issue an informal determination that modifies or <--
5 dismisses a recommendation of commission staff.

6 (D) THE FOLLOWING SHALL APPLY TO ALLEGED VIOLATIONS: <--

7 (1) A PERSON DETERMINED, IN A REPORT ISSUED BY A DAMAGE
8 PREVENTION INVESTIGATOR, TO HAVE COMMITTED AN ALLEGED VIOLATION
9 SHALL DO ONE OF THE FOLLOWING:

10 (I) PROVIDE A WRITTEN ACKNOWLEDGMENT OF THE FINDINGS AND
11 ADMINISTRATIVE PENALTY CONTAINED IN THE REPORT ISSUED BY A
12 DAMAGE PREVENTION INVESTIGATOR TO THE COMMITTEE.

13 (II) APPEAR BEFORE THE COMMITTEE TO PRESENT ITS POSITION.

14 (2) A PERSON WHO IS SUBJECT TO AN INFORMAL DETERMINATION OF
15 THE COMMITTEE MAY ACCEPT OR REJECT THE RESULT. IF AN INFORMAL
16 DETERMINATION IS REJECTED, THE MATTER SHALL BE RETURNED TO THE
17 DAMAGE PREVENTION INVESTIGATOR FOR FURTHER ACTION, IF
18 APPROPRIATE, INCLUDING REFERRING THE MATTER TO COMMISSION
19 PROSECUTORY STAFF FOR THE PURPOSE OF ISSUING A FORMAL COMPLAINT.

20 (E) EXCEPT FOR ALLEGED VIOLATIONS INVOLVING INJURY OR DEATH,
21 THE COMMITTEE PROCESS PROVIDED FOR UNDER SUBSECTION (C) MAY BE
22 USED IN ADVANCE OR INSTEAD OF FILING A FORMAL COMPLAINT AGAINST
23 A PERSON DETERMINED, IN A REPORT ISSUED BY A DAMAGE PREVENTION
24 INVESTIGATOR, TO HAVE COMMITTED AN ALLEGED VIOLATION. AN
25 INFORMAL DETERMINATION OF THE COMMITTEE SHALL BE BINDING ON THE
26 COMMISSION UNLESS A PERSON REJECTS IT.

27 (F) THE COMMITTEE SHALL HAVE THE FOLLOWING ADDITIONAL
28 DUTIES:

29 ~~(3)~~ (1) Upon the request of the commission, the committee <--
30 shall hold a special meeting to advise the commission on a

1 matter related to damage prevention of underground facilities
2 and this act.

3 ~~(4) (2) As soon as practical after establishment, the~~ <--
4 committee, with input from the One Call System, shall develop
5 and implement bylaws. The bylaws shall:

6 (I) ESTABLISH A SCHEDULE FOR THE FREQUENCY OF REGULAR <--
7 MEETINGS;

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

11 ~~(ii) (III) be approved by the commission.~~ <--

12 ~~(c) The following shall apply to appointment and terms of~~ <--
13 members of the Damage Prevention Committee:

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

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

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

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

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

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

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

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

30 ~~(3) A nomination under clause (1)(iii), (iv), (v) and (vi)~~

1 ~~must be forwarded to the secretary of the commission. The~~
2 ~~executive director of the commission shall provide recommended~~
3 ~~candidates to the commission for approval.~~

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

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

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

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

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

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

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

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

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

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

26 ~~(d) The following shall apply to alleged violations:~~

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

29 ~~(i) Present its position to the committee.~~

30 ~~(ii) Provide a written acknowledgment of the investigation~~

1 ~~findings and administrative penalty to the committee.~~

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

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

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

18 ~~(g) (H) The commission shall have the following powers to~~ <--
19 ~~carry out the purposes of this act:~~

20 ~~(1) To employ individuals.~~

21 ~~(2) To issue orders.~~

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

28 ~~(4) For one year following the effective date of this~~
29 ~~section, to promulgate temporary regulations. Regulations under~~
30 ~~this paragraph~~ CLAUSE shall: <--

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

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

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

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

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

12 (b) The fund shall be comprised of:

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

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

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

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

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

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

29 (B) Within ten days after the effective date of this
30 section, the commission shall, by registered or certified mail,

1 give notice to the One Call System of the amount assessed under
2 this subclause, which shall be paid by the One Call System
3 within ten days of receipt of the notice.

4 (ii) During each subsequent fiscal year:

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

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

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

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

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

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

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

29 (e) The following shall apply:

30 (1) Except as provided under clause (2), program costs for

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

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

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

20 (b) The following shall apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (2) Deprive a governmental agency, including a law

1 enforcement agency, the Auditor General and a district attorney,
2 of any jurisdictional power or duty.

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

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

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

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

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

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

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

28 (ii) This section.

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