

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1235 Session of
2015

INTRODUCED BY BAKER, TOMLINSON, BARTOLOTTA, GREENLEAF, SCAVELLO,
VANCE, RESCHENTHALER, RAFFERTY AND VULAKOVICH, MAY 25, 2016

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
MAY 25, 2016

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, for duties of the One Call System, for duties of
12 excavators, for duties of designers, for duties of project
13 owners and for penalties; providing for enforcement, for
14 underground utility line protection fund and for compliance;
15 and further providing for One Call System authority and for
16 expiration.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. The title and section 1 of the act of December
20 10, 1974 (P.L.852, No.287), referred to as the Underground
21 Utility Line Protection Law, amended November 29, 2006
22 (P.L.1593, No.181), are amended to read:

AN ACT

24 To protect the public health and safety by preventing

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

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

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

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

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

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

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

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

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

29 "Common Ground Alliance best practices" means the damage
30 prevention industry recommended standards issued by the Common

Ground Alliance, a not-for-profit corporation created pursuant to the issuance of the United States Department of Transportation's Common Ground Task Force report in 1999.

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

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

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

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

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

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

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

"Excavation work" means the use of powered equipment or explosives in the movement of earth, rock or other material, and

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

30 "Excavator" means any person who or which performs excavation

1 or demolition work for himself or for another person.

2 "Facility owner" means the public utility or agency,
3 political subdivision, municipality, authority, rural electric
4 cooperative or other person or entity who or which owns or
5 operates a line. [The term does not include the Department of
6 Transportation within a State highway right-of-way.] The term
7 does not include any of the following:

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

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

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

18 "Fiscal year" means the fiscal year utilized by the
19 commission.

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

23 "Injury" means a bodily harm to a person, who as a result of
24 the bodily harm, immediately receives medical attention away
25 from the scene of the incident.

26 "Lawful start date" means the scheduled start date as
27 provided under section 1.1.

28 "Line" or "facility" means an underground conductor or
29 underground pipe or structure used in providing electric or
30 communication service, or an underground pipe used in carrying,

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

18 "Locate request" means a communication between an excavator
19 or designer and the One Call System in which a request for
20 locating facilities is processed. Locate requests submitted by
21 an excavator performing work within the right-of-way of any
22 State highway, either under contract to the Department of
23 Transportation or under authority of a permit issued by the
24 Department of Transportation, shall include the number of the
25 Department of Transportation contract or permit.

26 ["Minor routine maintenance" means shaping of or adding dust
27 palliative to unpaved roads, removal and application of patches
28 to the surface or base of flexible base, rigid base or rigid
29 surface roads by either manual or mechanized method to the
30 extent of the existing exposed base material, crack and joint

1 sealing, adding dust palliative to road shoulders, patching and
2 cutting of shoulders and shoulder bases by either manual or
3 mechanized methods to the extent of the existing exposed base,
4 and cleaning of inlets and drainage pipes and ditches.]

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

14 "Operator" means any individual in physical control of
15 powered equipment or explosives when being used to perform
16 excavation or demolition work.

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

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

22 ["Preconstruction request" means a notification to facility
23 owners regarding a complex project.]

24 "Preconstruction meeting" means a scheduled event held by the
25 excavator, designer, project owner and facility owner, or an
26 agent of the excavator, designer, project owner and facility
27 owner, prior to the commencement of excavation or demolition
28 work in a complex project.

29 "Project owner" means any person who or which engages an
30 excavator for construction or any other project which requires

1 excavation or demolition work.

2 ["Secretary" means the Secretary of Labor and Industry of the
3 Commonwealth.

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

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

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

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

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

28 "Well pad" means area, under the control of an oil or natural
29 gas company, occupied by equipment or facilities necessary or
30 required for the drilling, production or plugging of an oil or

1 natural gas well.

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

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

16 Section 1.1. The lawful start date shall be three business
17 days through ten business days following notification to the One
18 Call System.

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

22 Section 2. (a) It shall be the duty of each facility owner:

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

26 (i) the legal name of the facility owner and their official
27 mailing address;

28 (ii) the names of the counties and municipalities, down to
29 and including wards in Philadelphia, Pittsburgh, Allentown and
30 Erie, in which its lines are located and other related

1 information as may be required by the One Call System regarding
2 the location of a member's facilities;

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

7 (iv) the street identifications or like information within
8 each of the municipalities in which its lines are located. This
9 information shall be in a form acceptable to the One Call
10 System. Upon acceptance of the information from a facility
11 owner, the One Call System shall provide the facility owner with
12 notification within the boundaries described. All facility
13 owners shall agree to indemnify and hold harmless the One Call
14 System for any errors and omissions on the part of the facility
15 owner or the excavator or designer providing the information as
16 the agent of the facility owner; and

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

18 (1.1) To participate in the One Call System's Member Mapping
19 Solutions as determined by the One Call System's board of
20 directors.

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

23 (4) Not more than ten business days after receipt of a
24 request from a designer who identifies the work site of
25 excavation or demolition work for which he is preparing a
26 drawing, to initially respond to his request for information as
27 to the position and type of the facility owner's lines at such
28 work site based on the information currently in the facility
29 owner's possession or to mark the plans which have been provided
30 to it by the designer by field location or by another method

1 agreed to by the designer, excavator and facility owner, or
2 their agent. The facility owner shall so advise the person
3 making the request of the facility owner's status at the work
4 site through the One Call System.

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

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

29 (B) To maintain existing records of main lines abandoned on
30 or after the effective date of this clause and to mark, locate

or identify the main lines if possible, based upon the existing records. The records shall include written or electronic documents or drawings in the possession of the facility owner that show the location of an existing line or facility.

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

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

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

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

1 Call System.

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

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

22 (vii) To respond to emergency notifications as soon as
23 practicable following receipt of notification of such emergency.
24 The response by the facility owner shall be consistent with the
25 nature of the emergency information received by the facility
26 owner.

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

30 (ix) If notification is received pursuant to [clause (8) of

1 section 5] section 5(8), to give priority to responding to
2 notification as an emergency.

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

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

excavation or demolition work or if the facility owner believes
a violation of this act has been committed in association with
excavation or demolition work. The report of alleged violation
shall be in a form and manner as required by the commission. No
report may be required where the cost to repair the damage to
the facility owner's lines is less than two thousand five
hundred dollars (\$2,500), unless the same person damaged the
facility owner's lines two or more times within a six-month
period.

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

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

(b) The following provisions shall apply to a line or
facility installed prior to the effective date of this
subsection:

(1) The One Call System may require the mapping of the line
or facility only if the facility owner has existing maps of the
line or facility and the existing maps meet the requirements of
the One Call System's Member Mapping Solutions.

(2) The facility owner has the burden of proving the line or
facility was not subject to the requirements of this act at the
time the line or facility was installed.

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

Section 3. It shall be the duty of the One Call System [to

1 do the following]:

2 (1.1) To assign one or more serial numbers and the date that
3 the work site may legally be excavated and to log the entire
4 voice transaction on logging recorders in appropriate digital
5 form and maintain these logs for five years. All records shall
6 be indexed and available to the parties involved at a reasonable
7 cost and at reasonable times set by the One Call System.

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

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

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

29 (3) [Not more than ten business days after the receipt of a
30 clear and specific request from the department, to provide

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

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

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

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

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

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

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

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

24 (c) (Reserved).

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

30 (1) The [Chairman of the Pennsylvania Public Utility

1 Commission] chairman or his designee.

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

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

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

6 (5) An excavator or excavation industry representative.

7 (6) A designer or designer industry representative.

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

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

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

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

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

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

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

27 (2.1) To forward a copy of the project plans to each
28 facility owner who requests a copy. If a designer is unable to
29 provide a copy because of security of the project or proprietary
30 concerns regarding the design or the project, the designer shall

1 negotiate in a timely manner with the facility owner the means
2 of obtaining the necessary data.

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

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

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

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

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

28 (8) To submit a report of alleged violation to the
29 commission through the One Call System not more than thirty
30 business days from the time the designer becomes aware that a

violation of this act may have been committed in association with excavation or demolition work. The report of alleged violation shall be in a form and manner as required by the commission.

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

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

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

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

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

28 (3.1) To comply with the requirements established by the One
29 Call System as determined by the board of directors regarding
30 the maximum area that a notification may cover.

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

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

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

26 (i) Plan the excavation or demolition work to avoid damage
27 to or minimize interference with a facility owner's facilities
28 in the construction area. Excavation or demolition work which
29 requires temporary or permanent interruption of a facility
30 owner's service shall be coordinated with the affected facility

owner in all cases.

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

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

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

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

(11) [An excavator shall] To use the color white to mark a

proposed excavation work site when exact work site information cannot be provided.

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

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

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

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

(ii) Where an excavator has failed to comply with the terms of this act or was otherwise negligent, and the facility owner or designer has misidentified, mislocated or failed to identify its facilities pursuant to this act, then in computing the amount of reimbursement to which the facility owner is entitled, the cost of repairing or replacing its facilities shall be diminished in the same proportion that the facility owner's or designer's misidentification, mislocation or failure to identify the facilities contributed to the damage. Should the facility owner or designer not have misidentified, mislocated or failed to identify its facilities pursuant to this act, there shall be

1 no diminution of the facility owner's right of recovery.

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

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

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

1 attempt to limit the rights of excavators under this section
2 shall not be valid for any reason, and any attempted waiver of
3 this section shall be void and unenforceable as against public
4 policy and any such attempted waiver shall be reported to the
5 [department] commission.

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

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

26 (18) To, if it chooses to do so and if working for a
27 facility owner, a municipality or a municipal authority,
28 delegate the power to discharge the duties set forth in clauses
29 (2.1) and (2.2) to its project owner, with the project owner's
30 consent. If the power is delegated pursuant to this clause, both

1 the excavator and the project owner shall be responsible for
2 providing the required notices.

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

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

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

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

24 (1) To utilize sufficient quality levels of subsurface
25 utility engineering or other similar techniques whenever
26 practicable to properly determine the existence and positions of
27 underground facilities when designing known complex projects
28 having an estimated cost of four hundred thousand dollars
29 (\$400,000) or more.

30 (2) To timely respond to notifications received from

1 excavators pursuant to [clause (15) of section 5] section 5(15).

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

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

6 (5) To furnish the pertinent data obtained through
7 subsurface utility engineering to the One Call System in a
8 mutually agreeable format.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (5) For violations that result in personal injury or death,
2 the administrative penalty may not exceed ten thousand dollars
3 (\$10,000).

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

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

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

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

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

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

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

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

1 (iii) One representative from each of the following
2 municipally owned or affiliated facility owner industries:
3 electric, natural gas or petroleum pipelines, telephone, water
4 or wastewater and cable television, nominated by facility owners
5 or affiliated organizations.

6 (iv) Three representatives of excavators, nominated by
7 excavators or affiliated organizations.

8 (v) One representative of municipal governments, nominated
9 by municipal governments or affiliated organizations.

10 (vi) One representative of municipal authorities, nominated
11 by municipal authorities or affiliated organizations.

12 (2) A person appointed to the committee must have expertise
13 within the operation of this act.

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

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

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

21 (ii) Except for initial terms under clause (5), a committee
22 member's term shall be for a term of three years.

23 (5) The initial term of committee members shall be as
24 follows:

25 (i) Two representatives of facility owners shall serve three
26 years, one representative shall serve two years and two
27 representatives shall serve one year.

28 (ii) One representative of excavators shall serve three
29 years, one representative shall serve two years and one
30 representative shall serve one year.

1 (iii) The representative of municipal governments shall
2 serve two years.

3 (iv) The representative of municipal authorities shall serve
4 three years.

5 (6) The commission member shall serve as the chairman of the
6 committee and shall be a nonvoting member, except if the
7 chairman's vote is necessary to break a tie. The chairman's
8 attendance shall not be counted to establish a quorum.

9 (7) At least six members of the committee who are present
10 shall constitute a quorum for the transaction of business. A
11 simple majority vote of the committee members present at a
12 meeting shall be deemed to be the position of the committee.

13 (b) The committee shall meet regularly to carry out the
14 following purposes:

15 (1) Review a report of an alleged violation of this act and
16 damage prevention investigator findings and recommendations.

17 (2) Issue a warning letter to a person as deemed appropriate
18 by the committee or as recommended by the damage prevention
19 investigator.

20 (3) Issue an informal determination that imposes an
21 administrative penalty.

22 (4) Require a person to attend a damage prevention
23 educational program.

24 (5) Issue an informal determination that modifies or
25 dismisses a recommendation of committee staff.

26 (c) The following shall apply to alleged violations:

27 (1) A person determined, in a report issued by a damage
28 prevention investigator, to have committed an alleged violation
29 shall do one of the following:

30 (i) Provide a written acknowledgment of the findings and

administrative penalty contained in the report issued by the
damage prevention investigator to the committee.

(ii) Appear before the commission to present its position.

(2) A person who is subject to an informal determination of
the committee may accept or reject the result. If an informal
determination is rejected, the matter shall be returned to the
damage prevention investigator for further action, if
appropriate, including referring the matter to the commission
prosecutor staff for the purpose of issuing a formal complaint.

(d) Except for alleged violations involving injury or death,
the provisions of subsection (c) may be applied in advance or
instead of filing a formal complaint against a person
determined, in a report issued by a damage prevention
investigator, to have committed an alleged violation. An
informal determination of the committee shall be binding on the
commission unless the person rejects the informal determination.

(e) The committee shall have the following additional
duties:

(1) Upon the request of the commission, the committee shall
hold a special meeting to advise the commission on a matter
related to damage prevention for underground facilities under
this act.

(2) As soon as practicable after establishment, the
committee, with input from the One Call System, shall develop
and implement bylaws. The bylaws shall:

(i) Establish a schedule for the frequency of regular
meetings.

(ii) Delineate the committee's practice and procedure
concerning the performance of duties assigned under this act and
commission orders and regulations.

1 (iii) Be approved by the commission.

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

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

8 (1) To employ individuals.

9 (2) To issue orders.

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

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

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

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

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

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

27 Section 7.9 (a) Program costs for commission enforcement of
28 this act shall be included in the commission's proposed budget
29 and shall be subject to the review and approval of the Governor
30 and the General Assembly as described under 66 Pa.C.S. § 510(a)

1 (relating to assessment for regulatory expenses upon public
2 utilities). The assessment of the commission's program costs for
3 commission enforcement of this act shall not include Federal and
4 State funds provided for the enforcement of this act and shall
5 be allocated in the following manner:

6 (1) Eighty percent of the program costs shall be included
7 within the amount assessed to public utilities under 66 Pa.C.S.
8 § 510.

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

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

27 (b) The following shall apply:

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

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

1 (ii) if the violation results in injury, death or property
2 damage of twenty-five thousand dollars (\$25,000) or more, an
3 administrative penalty of not more than fifty thousand dollars
4 (\$50,000).

5 (2) The commission and committee shall consider the
6 following factors in determining the administrative penalty to
7 be assessed:

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

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

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

14 (iv) The party's proposed modification to internal practices
15 and procedures to ensure future compliance with statutes and
16 regulations.

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

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

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

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

26 (e) The commission may issue a subpoena, on application of
27 an attorney responsible for representing the Commonwealth in
28 actions before the commission, for the purpose of investigating
29 an alleged violation of this act. The commission shall have the
30 power to subpoena witnesses and compel the production of books,

1 records, papers and documents.

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

4 (1) Affect the ability of a district attorney or the
5 Attorney General to investigate or file a claim for the same
6 conduct.

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

10 (g) A facility owner may petition a court of competent
11 jurisdiction to enjoin excavation or demolition work conducted
12 in violation of this act. Local law enforcement or emergency
13 management personnel may, in the interest of public safety,
14 order an excavator on a work site to stop further excavation if
15 the excavation is being conducted in violation of this act.

16 Section 6. Section 8 of the act, added November 29, 2006
17 (P.L.1593, No.181), is amended to read:

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

29 Section 7. Section 39 of the act, amended November 29, 2006
30 (P.L.1593, No.181), is amended to read:

1 Section 39. This act shall expire on December 31, [2016]
2 2021.

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

4 (1) The following provisions shall take effect
5 immediately:

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

7 (ii) This section.

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