
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 242 Session of
2017

INTRODUCED BY BAKER, TOMLINSON, GREENLEAF, SCAVELLO, BREWSTER,
EICHELBERGER, RESCHENTHALER, SCHWANK AND RAFFERTY,
JANUARY 26, 2017

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
JANUARY 26, 2017

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, are amended to read:

AN ACT

22
23 To protect the public health and safety by preventing
24 excavation or demolition work from damaging underground

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

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

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

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

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

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

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

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

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

28 "Common Ground Alliance best practices" means the damage
29 prevention industry recommended standards issued by the Common
30 Ground Alliance, a not-for-profit corporation created pursuant

1 to the issuance of the United States Department of
2 Transportation's Common Ground Task Force report in 1999.

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

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

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

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

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

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

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

28 "Excavation work" means the use of powered equipment or
29 explosives in the movement of earth, rock or other material, and
30 includes, but is not limited to, anchoring, augering,

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

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

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

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

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

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

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

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

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

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

27 "Line" or "facility" means an underground conductor or
28 underground pipe or structure used in providing electric or
29 communication service, or an underground pipe used in carrying,
30 gathering, transporting or providing natural or artificial gas,

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

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

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

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

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

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

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

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

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

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

28 "Project owner" means any person who or which engages an
29 excavator for construction or any other project which requires
30 excavation or demolition work.

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

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

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

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

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

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

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

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

14 Section 2. The act is amended by adding a section to read:

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

18 Section 3. Sections 2, 3, 3.1, 4, 5, 6.1 and 7 of the act,
19 are amended to read:

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

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

24 (i) the legal name of the facility owner and their official
25 mailing address;

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

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

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

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

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

18 (4) Not more than ten business days after receipt of a
19 request from a designer who identifies the work site of
20 excavation or demolition work for which he is preparing a
21 drawing, to initially respond to his request for information as
22 to the position and type of the facility owner's lines at such
23 work site based on the information currently in the facility
24 owner's possession or to mark the plans which have been provided
25 to it by the designer by field location or by another method
26 agreed to by the designer, excavator and facility owner, or
27 their agent. The facility owner shall so advise the person
28 making the request of the facility owner's status at the work
29 site through the One Call System.

30 (5) After receipt of a timely request from an excavator or

1 operator who identifies the work site of excavation or
2 demolition work he intends to perform and not later than the
3 business day prior to the [scheduled] lawful start date of
4 excavation:

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

24 (B) To maintain existing records of main lines abandoned on
25 or after the effective date of this clause and to mark, locate
26 or identify the main lines if possible, based upon the existing
27 records. The records shall include written or electronic
28 documents or drawings in the possession of the facility owner
29 that show the location of an existing line or facility.

30 (i.1) To[, where contained on its continuing property

1 records,] identify the location of an actually known facility's
2 point of connection to its facilities, where the point of
3 connection is not owned or operated by the facility owner. A
4 facility owner may identify the location of a known facility
5 connected to its facilities, but not owned or operated by the
6 facility owner, as a helpful guide to the excavator or owner.
7 The identification shall not be deemed to impose any liability
8 upon the facility owner for the accuracy of the other facility's
9 identification.

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

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

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

27 (v.1) To, if a facility owner failed to respond to an
28 original, proper, nonemergency locate request from the One Call
29 System or to a renotification under section 5(20), communicate
30 directly to the excavator within two hours after renotification

1 of the information about its facility location and, if necessary
2 and possible, go to the proposed work site to mark, stake or
3 locate its underground lines or to verify to the excavator that
4 the facility owner's underground lines are not within the area
5 of the proposed work site.

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

17 (vii) To respond to emergency notifications as soon as
18 practicable following receipt of notification of such emergency.
19 The response by the facility owner shall be consistent with the
20 nature of the emergency information received by the facility
21 owner.

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

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

28 (9) If a facility owner fails to become a member of the One
29 Call System in violation of this act and a line or lines of such
30 nonmember facility owner are damaged by an excavator by reason

1 of the excavator's failure to notify the facility owner because
2 the facility owner was not a member of the One Call System
3 serving the location where the damage occurred, such facility
4 owner shall have no right of recovery from the excavator of any
5 costs associated with the damage to its lines. The right herein
6 granted shall not be in limitation of any other rights of the
7 excavator.

8 (10) [To submit an incident report to the department not
9 more than ten business days after receipt of notice that the
10 facility owner's lines have been damaged by excavation or
11 demolition activities that resulted in personal injury or in
12 property damage to parties other than the affected excavator or
13 facility owner. In addition, the incident report may likewise be
14 furnished to the Pennsylvania Public Utility Commission and the
15 Pennsylvania Emergency Management Agency pursuant to memoranda
16 of understanding negotiated between these agencies and the
17 department, which shall, at a minimum, provide for a common
18 reporting format for incident reports. The department shall
19 furnish to the One Call System, upon reasonable request,
20 statistical data pertaining to the number of incident reports
21 filed with the department and the type, number and results of
22 investigations for violations of this act.] To submit a report
23 of alleged violation to the commission through the One Call
24 System not more than thirty business days after receipt of
25 notice that the facility owner's lines have been damaged by
26 excavation or demolition work or if the facility owner believes
27 a violation of this act has been committed in association with
28 excavation or demolition work. The report of alleged violation
29 shall be in a form and manner as required by the commission. No
30 report may be required where the cost to repair the damage to

1 the facility owner's lines is less than two thousand five
2 hundred dollars (\$2,500), unless the same person damaged the
3 facility owner's lines two or more times within a six-month
4 period.

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

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

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

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

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

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

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

30 (1.2) [Perform] To perform the obligations, as set forth

1 under this section, on behalf of the facility owner, excavator
2 or designer as established by the board of directors of the One
3 Call System.

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

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

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

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

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

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

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

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

30 (8) To notify the facility owner as soon as possible that an

1 excavator has identified an unmarked or incorrectly marked
2 facility and of the facility owner's responsibilities under
3 section 2(5)(v.1).

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

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

16 (c) (Reserved).

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

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

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

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

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

28 (5) An excavator or excavation industry representative.

29 (6) A designer or designer industry representative.

30 (e) Operation costs for the One Call System shall be shared,

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

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

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

23 (f.1) An excavator, designer or operator who proposes to
24 commence excavation or demolition work and requests information
25 from the One Call System shall pay to the One Call System an
26 annual fee for the service provided by the One Call System under
27 section 3. The fee shall be set by the One Call System board of
28 directors and shall be used to offset a portion of the operation
29 costs of the One Call System and a portion of the operation
30 costs levied on the One Call System's political subdivision and

1 municipal authority members. Failure to pay the fee shall
2 constitute a violation of this act and shall subject the
3 excavator, designer or operator to the enforcement authority of
4 the commission for the nonpayment.

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

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

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

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

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

29 (4) To make a reasonable effort to prepare the construction
30 drawings to avoid damage to and minimize interference with a

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

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

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

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

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

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

30 Section 5. It shall be the duty of each excavator who

1 intends to perform excavation or demolition work within this
2 Commonwealth:

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

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

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

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

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

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

1 pursuant to [clause (5) of section 2] section 2(5), the
2 excavator shall employ like prudent techniques which shall be
3 paid for by the project owner pursuant to clause (15) [of this
4 section].

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

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

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

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

29 (7) To report immediately to the facility owner any break or
30 leak on its lines, or any dent, gouge, groove or other damage to

1 such lines or to their coating or cathodic protection, made or
2 discovered in the course of the excavation or demolition work.
3 The One Call System board of directors may adopt procedures to
4 permit reporting under this clause through the One Call System.

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

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

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

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

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

1 Consortium.

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

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

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

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

29 (14) If an excavator removes its equipment and vacates a
30 [worksite] work site for more than two business days, [he shall]

1 to renotify the One Call System unless other arrangements have
2 been made directly with the facility owners involved in his
3 [worksite] work site.

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

28 (16) [To submit an incident report to the department not
29 more than ten business days after striking or otherwise damaging
30 a facility owner's line during excavation or demolition

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

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

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

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

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

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

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

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

16 (1) To utilize sufficient quality levels of subsurface
17 utility engineering or other similar techniques whenever
18 practicable to properly determine the existence and positions of
19 underground facilities when designing known complex projects
20 having an estimated cost of four hundred thousand dollars
21 (\$400,000) or more.

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

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

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

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

1 (6) For new construction and where practicable in the
2 opinion of the project owner, to install color-coded permanent
3 markers to indicate the type and location of all laterals
4 installed by the project owner.

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

15 Section 7. (a) The Auditor General may review management
16 and financial audits of the One Call System, which audits shall
17 be performed by a qualified auditing firm within this
18 Commonwealth. A copy of the audit shall be submitted to the
19 Auditor General upon its completion and to the General Assembly
20 by October 31 of the year following the end of the audit period.
21 The cost of reasonable expenses incurred by the Auditor General
22 in performing the obligations under this section shall be
23 reimbursed by the One Call System. The fees shall not be
24 inconsistent with those of commercial auditing firms for similar
25 work.

26 (b) The Auditor General, for the purposes set forth in
27 subsection (a), and any contractor, excavator, facility owner or
28 member of the One Call System shall have the right during
29 regular business hours to inspect and copy any record, book,
30 account, document or any other information relating to the

1 provision of one call services by the One Call System, at the
2 cost determined by the board of directors.

3 (c) The One Call System shall submit an annual report to its
4 members, and a copy of the report shall be submitted to the
5 Auditor General.

6 (d) The One Call System shall cause a financial audit to be
7 performed annually by a qualified auditing firm within this
8 Commonwealth.

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

10 [Section 7.2. (a) Any person violating any of the
11 provisions of this act, except clauses (1) and (2) of section 2,
12 commits a summary offense and shall, upon conviction, be
13 sentenced to pay a fine of not less than two thousand five
14 hundred dollars (\$2,500) nor more than fifty thousand dollars
15 (\$50,000) or undergo imprisonment for not more than ninety days,
16 or both. The Attorney General of the Commonwealth or any
17 district attorney may enforce the provisions of this act in any
18 court of competent jurisdiction. The department, in consultation
19 with the Attorney General, may also enforce the provisions of
20 this act in any court of competent jurisdiction. A facility
21 owner may petition any court of competent jurisdiction to enjoin
22 any excavation or demolition work conducted in violation of this
23 act. Local law enforcement or emergency management personnel
24 may, in the interest of public safety, order excavators on a
25 site to stop further excavation if the excavation is being
26 conducted in violation of this act.

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

29 (1) Where violations result in property damage that does not
30 exceed three thousand dollars (\$3,000), the fine shall not

1 exceed five thousand dollars (\$5,000).

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

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

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

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

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

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

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

17 (c.1) In addition to any other sanctions provided by this
18 act, the department shall have the authority to issue warnings
19 and orders requiring compliance with this act and may levy
20 administrative penalties for violations of this act. Any
21 warning, order or penalty shall be served on the person or
22 entity violating the act at their last known address. The

23 department shall consider the factors set forth in subsection
24 (c) in determining the administrative penalty to be assessed.

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

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

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

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

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

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

17 (5) For violations that result in personal injury or death,
18 the administrative penalty may not exceed ten thousand dollars
19 (\$10,000).

20 (d) All fines and penalties recovered under this section
21 shall be payable to the Attorney General, district attorney or
22 the department, whichever brought the action, and collected in
23 the manner provided for by law. Administrative penalties
24 collected by the department may be expended by the department
25 for costs related to its enforcement activities and to sponsor
26 damage prevention activities of the One Call System.

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

30 (f) The secretary or his designee shall have the authority

1 to issue subpoenas, upon application of an attorney responsible
2 for representing the Commonwealth in actions before the
3 department, for the purpose of investigating alleged violations
4 of this act. The department shall have the power to subpoena
5 witnesses and compel the production of books, records, papers
6 and documents as it deems necessary or pertinent to an
7 investigation or hearing.]

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

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

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

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

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

17 (iii) One representative from each of the following
18 nonmunicipally owned or affiliated facility owner industries:
19 electric, natural gas or petroleum pipelines, telephone, water
20 or wastewater and cable television, nominated by facility owners
21 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 within the operation of this act.

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

1 shall 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 three years.

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

11 (i) Two representatives of facility owners shall serve three
12 years, one representative shall serve two years and two
13 representatives shall serve one year.

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

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

19 (iv) The representative of municipal authorities shall serve
20 three years.

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

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

29 (b) The committee shall meet regularly to carry out the
30 following purposes:

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

3 (2) Issue a warning letter to a person as deemed appropriate
4 by the committee or as recommended by the damage prevention
5 investigator.

6 (3) Issue an informal determination that imposes an
7 administrative penalty.

8 (4) Require a person to attend a damage prevention
9 educational program.

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

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

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

16 (i) Provide a written acknowledgment of the findings and
17 administrative penalty contained in the report issued by the
18 damage prevention investigator to the committee.

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

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

26 (d) Except for alleged violations involving injury or death,
27 the provisions of subsection (c) may be applied in advance or
28 instead of filing a formal complaint against a person
29 determined, in a report issued by a damage prevention
30 investigator, to have committed an alleged violation. An

1 informal determination of the committee shall be binding on the
2 commission unless the person rejects the informal determination.

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

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

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

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

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

17 (iii) Be approved by the commission.

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

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

24 (1) To employ individuals.

25 (2) To issue orders.

26 (3) To promulgate regulations. If the commission promulgates
27 regulations that limit reporting to a specific type of incident,
28 including contact with a line, damage to a line or line coating,
29 personal injury, third-party damage and failure to comply with
30 this act, the commission may consider the resources available

1 for enforcement and other factors.

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

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

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

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

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

13 Section 7.9 (a) Program costs for commission enforcement of
14 this act shall be included in the commission's proposed budget
15 and shall be subject to the review and approval of the Governor
16 and the General Assembly as described under 66 Pa.C.S. § 510(a)
17 (relating to assessment for regulatory expenses upon public
18 utilities). The assessment of the commission's program costs for
19 commission enforcement of this act shall not include Federal and
20 State funds provided for the enforcement of this act and shall
21 be allocated in the following manner:

22 (1) Eighty percent of the program costs shall be included
23 within the amount assessed to public utilities under 66 Pa.C.S.
24 § 510.

25 (2) Twenty percent of the program costs shall be assessed as
26 a fee upon the One Call System, with the fee to be paid to the
27 commission. The One Call System's board of directors shall
28 determine the manner in which the fee may be recovered from
29 facility owners, excavators, designers and other involved
30 persons, provided that the One Call System's board of directors'

1 manner of recovery may not include facility owners that are
2 public utilities.

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

13 (b) The following shall apply:

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

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

17 (ii) if the violation results in injury, death or property
18 damage of twenty-five thousand dollars (\$25,000) or more, an
19 administrative penalty of not more than fifty thousand dollars
20 (\$50,000).

21 (2) The commission and committee shall consider the
22 following factors in determining the administrative penalty to
23 be assessed:

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

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

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

30 (iv) The party's proposed modification to internal practices

1 and procedures to ensure future compliance with statutes and
2 regulations.

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

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

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

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

12 (e) The commission may issue a subpoena, on application of
13 an attorney responsible for representing the Commonwealth in
14 actions before the commission, for the purpose of investigating
15 an alleged violation of this act. The commission shall have the
16 power to subpoena witnesses and compel the production of books,
17 records, papers and documents.

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

20 (1) Affect the ability of a district attorney or the
21 Attorney General to investigate or file a claim for the same
22 conduct.

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

26 (g) A facility owner may petition a court of competent
27 jurisdiction to enjoin excavation or demolition work conducted
28 in violation of this act. Local law enforcement or emergency
29 management personnel may, in the interest of public safety,
30 order an excavator on a work site to stop further excavation if

1 the excavation is being conducted in violation of this act.

2 Section 6. Section 8 of the act is amended to read:

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

14 Section 7. Section 39 of the act, amended November 4, 2016
15 (P.L.852, No.287), is amended to read:

16 Section 39. This act shall expire on December 31, [2017]
17 2024.

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

19 (1) The following provisions shall take effect
20 immediately:

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

22 (ii) This section.

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