

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

AS AMENDED ON SECOND CONSIDERATION, JUNE 19, 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

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 "CONVENTIONAL OIL AND GAS WELL" MEANS A CONVENTIONAL OIL AND <--
17 GAS WELL AS DEFINED IN SECTION 2 OF THE ACT OF JUNE 23, 2016
18 (P.L.375, NO.52), KNOWN AS THE "PENNSYLVANIA GRADE CRUDE
19 DEVELOPMENT ACT."

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

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

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

28 "Emergency" means a sudden or unforeseen occurrence involving
29 a clear and immediate danger to life, property and the
30 environment, including, but not limited to, serious breaks or

1 defects in a facility owner's lines.

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

1 well pad and that are necessary or operations incidental to the
2 extraction of oil or natural gas.

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

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

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

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

17 "FEDERAL PIPELINE SAFETY LAWS" MEANS THE PROVISIONS OF 49 <--
18 U.S.C. CH. 601 (RELATING TO SAFETY), INCLUDING THE REGULATIONS
19 PROMULGATED UNDER 49 U.S.C. CH. 601.

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

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

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

29 "Injury" means a bodily harm to a person, who as a result of
30 the bodily harm, immediately receives medical attention away

1 from the scene of the incident.

2 "Lawful start date" means the scheduled start date as
3 provided under section 1.1.

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

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

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

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

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

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

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

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

30 ["Preconstruction request" means a notification to facility

1 owners regarding a complex project.]

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

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

10 ["Secretary" means the Secretary of Labor and Industry of the
11 Commonwealth.

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

25 "Report of alleged violation" means a recorded account of an
26 alleged violation.

27 "STRIPPER WELL" MEANS A CONVENTIONAL OIL AND GAS WELL WITH A <--
28 MAXIMUM DAILY AVERAGE PRODUCTION WHICH DOES NOT EXCEED FIFTEEN
29 (15) BARRELS OF OIL AND NINETY THOUSAND (90,000) CUBIC FEET OF
30 NATURAL GAS DURING ANY TWELVE-MONTH CONSECUTIVE TIME PERIOD.

1 "STRIPPER WELL LINES" MEANS A PRODUCTION OR GATHERING LINE OR
2 FACILITY THAT HAS A NOMINAL INSIDE DIAMETER OF EIGHT (8) INCHES
3 OR LESS, ONLY CARRIES OIL OR NATURAL GAS PRODUCED EXCLUSIVELY
4 FROM ONE OR MORE STRIPPER WELLS AND IS NOT REGULATED UNDER THE
5 FEDERAL PIPELINE SAFETY LAWS AND SUBJECT TO THE PIPELINE DAMAGE
6 PREVENTION REQUIREMENTS IN 49 C.F.R. § 192.614 (RELATING TO
7 DAMAGE PREVENTION PROGRAM) OR 49 C.F.R. § 195.442 (RELATING TO
8 DAMAGE PREVENTION PROGRAM).

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

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

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

18 "UNCONVENTIONAL FORMATION" MEANS A GEOLOGICAL SHALE FORMATION <--
19 EXISTING BELOW THE BASE OF THE ELK SANDSTONE OR ITS GEOLOGIC
20 EQUIVALENT STRATIGRAPHIC INTERVAL WHERE OIL OR NATURAL GAS
21 GENERALLY CANNOT BE PRODUCED AT ECONOMIC FLOW RATES OR IN
22 ECONOMIC VOLUMES EXCEPT BY VERTICAL OR HORIZONTAL WELL BORES
23 STIMULATED BY HYDRAULIC FRACTURE TREATMENTS OR BY USING
24 MULTILATERAL WELL BORES OR OTHER TECHNIQUES TO EXPOSE MORE OF
25 THE FORMATION TO THE WELL BORE.

26 "UNCONVENTIONAL OIL AND GAS WELL" MEANS A BORE HOLE DRILLED
27 OR BEING DRILLED FOR THE PURPOSE OF OR TO BE USED FOR THE
28 PRODUCTION OF OIL OR NATURAL GAS FROM AN UNCONVENTIONAL
29 FORMATION.

30 "Well pad" means area, under the control of an oil or natural

1 gas company, occupied by equipment or facilities necessary or
2 required for the drilling, production or plugging of an oil or
3 natural gas well.

4 "Work site" means the specific place denoted on the locate
5 request where excavation or demolition work is being or is
6 planned to be performed. A work site should be denoted as a
7 clearly defined, bounded area, including relevant identifiable
8 points of 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 Section 2. The act is amended by adding a section to read:

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

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

23 Section 2. ~~(a)~~ It shall be the duty of each facility owner: <--

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

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

29 ~~(ii) the names of the counties and municipalities, down to <--~~

30 (II) AS FOLLOWS: <--

1 [THE] (A) THE NAMES OF THE COUNTIES AND MUNICIPALITIES, DOWN
2 TO and including wards in Philadelphia, Pittsburgh, Allentown
3 and Erie, in which its lines are located and other related
4 information as may be required by the One Call System regarding
5 the location of a member's facilities[;]. <--

6 (B) THE ONE CALL SYSTEM MAY NOT REQUIRE ITS MEMBERS TO
7 LOCATE LINES OR FACILITIES INSTALLED BEFORE THE EFFECTIVE DATE
8 OF THIS CLAUSE UNLESS THE MEMBER HAS EXISTING MAPS OF THE LINES
9 OR FACILITIES AND THE MEMBER'S EXISTING MAPS MEET THE
10 SPECIFICATIONS OF THE ONE CALL SYSTEM'S MEMBER MAPPING
11 SOLUTIONS. NOTHING UNDER THIS CLAUSE SHALL PROHIBIT THE ONE-CALL
12 SYSTEM MEMBERS FROM VOLUNTARILY SUBMITTING TO THE ONE CALL
13 SYSTEM MAPS OF LINES OR FACILITIES INSTALLED BEFORE THE
14 EFFECTIVE DATE OF THIS CLAUSE.

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

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

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

30 (2) To provide the One Call System, within five business

1 days, with any revised information required under this section.

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

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

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

1 located at the work site, topography or soil conditions or to
2 assist the facility owner in locating its lines or facilities,
3 based on accepted engineering and operational practices.
4 Facility owners shall make reasonable efforts during the
5 excavation phase to locate or notify excavators of the existence
6 and type of abandoned lines [that remain on the continuing
7 property records of the facility owners].

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

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

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

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

30 (v) To respond to all notices through the One Call System,

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

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

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

1 (vii) To respond to emergency notifications as soon as
2 practicable following receipt of notification of such emergency.
3 The response by the facility owner shall be consistent with the
4 nature of the emergency information received by the facility
5 owner.

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

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

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

22 (10) [To submit an incident report to the department not
23 more than ten business days after receipt of notice that the
24 facility owner's lines have been damaged by excavation or
25 demolition activities that resulted in personal injury or in
26 property damage to parties other than the affected excavator or
27 facility owner. In addition, the incident report may likewise be
28 furnished to the Pennsylvania Public Utility Commission and the
29 Pennsylvania Emergency Management Agency pursuant to memoranda
30 of understanding negotiated between these agencies and the

1 department, which shall, at a minimum, provide for a common
2 reporting format for incident reports. The department shall
3 furnish to the One Call System, upon reasonable request,
4 statistical data pertaining to the number of incident reports
5 filed with the department and the type, number and results of
6 investigations for violations of this act.] To submit a report
7 of alleged violation to the commission through the One Call
8 System not more than thirty business days after receipt of
9 notice that the facility owner's lines have been damaged by
10 excavation or demolition work or if the facility owner believes
11 a 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. No
14 report may be required where the cost to repair the damage to
15 the facility owner's lines is less than two thousand five
16 hundred dollars (\$2,500), unless the same person damaged the
17 facility owner's lines two or more times within a six-month
18 period.

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

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

26 ~~(b) The following provisions shall apply to a line or~~ <--
27 ~~facility installed prior to the effective date of this~~
28 ~~subsection:~~

29 ~~(1) The One Call System may require the mapping of the line~~
30 ~~or facility only if the facility owner has existing maps of the~~

1 ~~line or facility and the existing maps meet the requirements of~~
2 ~~the One Call System's Member Mapping Solutions.~~

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

6 (13) TO MAINTAIN EXISTING RECORDS OF MAIN LINES ABANDONED ON <--
7 OR AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH AND TO MARK,
8 LOCATE OR IDENTIFY THE MAIN LINES IF POSSIBLE, BASED UPON THE
9 EXISTING RECORDS. THE RECORDS SHALL INCLUDE WRITTEN OR
10 ELECTRONIC DOCUMENTS OR DRAWINGS IN THE POSSESSION OF THE
11 FACILITY OWNER THAT SHOW THE LOCATION OF AN EXISTING LINE OR
12 FACILITY.

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

15 (1.1) To assign one or more serial numbers and the date that
16 the work site may legally be excavated and to log the entire
17 voice transaction on logging recorders in appropriate digital
18 form and maintain these logs for five years. All records shall
19 be indexed and available to the parties involved at a reasonable
20 cost and at reasonable times set by the One Call System.

21 (1.2) [Perform] To perform the obligations, as set forth
22 under this section, on behalf of the facility owner, excavator
23 or designer as established by the board of directors of the One
24 Call System.

25 (1.3) [Provide] To provide access to municipal lists
26 provided to the One Call System for those interested parties.
27 This list shall contain facility owners having lines in the
28 municipality, including wards as indicated in [subclause (ii) of
29 clause (1) of section 2] section 2(1)(ii), and to maintain, for
30 each municipality, a list containing the information as required

1 to be submitted by the facility owner. Such list shall be
2 updated as revised information is received from the facility
3 owner within five business days.

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

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

29 (4) To determine the maximum geographic area that shall
30 constitute a valid single notification and to determine when

1 multiple notifications shall be required of any person,
2 including the method, the type and the number of notifications
3 in a complex project.

4 (5) If approved by the board of directors of the One Call
5 System, to offer a service for the application and obtaining of
6 State or municipal permits for excavation work. Issuance of the
7 required permits shall be the responsibility of the appropriate
8 State or municipal agency which has jurisdiction over the type
9 of excavation work being performed.

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

14 (7) To inquire, when an excavator has notified the One Call
15 System of the existence of a release of natural gas or other
16 hazardous substance or of potential danger to life, health or
17 property, whether the excavator has notified the 911 system. If
18 the 911 system has not been notified, the One Call System shall
19 notify the excavator of the excavator's responsibility to notify
20 the 911 system and shall make a record of the conversation.

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

25 Section 3.1. (a) The duties of the One Call System are
26 those duties as set forth in section 3. Duties assigned to other
27 parties in other sections of this act shall be the duties of
28 those parties and shall not be imputed to the One Call System,
29 including the duty to provide accurate information to the One
30 Call System concerning proposed excavation and the duty to

1 locate facilities at a work site.

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

7 (c) (Reserved).

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

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

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

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

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

19 (5) An excavator or excavation industry representative.

20 (6) A designer or designer industry representative.

21 (e) Operation costs for the One Call System shall be shared,
22 in an equitable manner for services received, by facility owner
23 members as determined by the One Call System's board of
24 directors. Political subdivisions with a population of less than
25 two thousand people or municipal authorities having an aggregate
26 population in the area served by the municipal authority of less
27 than five thousand people shall be exempt from the payment of
28 any service fee. The One Call System may be reimbursed for its
29 costs in providing this service from the contractor fees.

30 (f) All fees shall be set by the board of directors and

1 shall be based on the latest annual audited cost factors of the
2 One Call System. Fees shall be set and adjusted to a rate not
3 more than five percent above the audited cost factor plus the
4 current average published Consumer Price Index for Pennsylvania.
5 Costs of capital improvements may be added, if the improvement
6 receives a majority vote of the board of directors.

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

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

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

29 Section 4. It shall be the duty of each designer preparing a
30 drawing which requires excavation or demolition work within

1 [the] this Commonwealth:

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

10 (2.1) To forward a copy of the project plans to each
11 facility owner who requests a copy. If a designer is unable to
12 provide a copy because of security of the project or proprietary
13 concerns regarding the design or the project, the designer shall
14 negotiate in a timely manner with the facility owner the means
15 of obtaining the necessary data.

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

20 (4) To make a reasonable effort to prepare the construction
21 drawings to avoid damage to and minimize interference with a
22 facility owner's facilities in the construction area by
23 maintaining the clearance as provided for in the applicable
24 easement condition or an eighteen-inch clearance of the facility
25 owner's facilities if no easement restriction exists.

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

1 (6) If, after receiving information from the facility
2 owners, the designer decides to change the work site of a
3 proposed excavation, the obligations imposed by this section
4 shall apply to the new work site.

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

11 (8) To submit a report of alleged violation to the
12 commission through the One Call System not more than thirty
13 business days from the time the designer becomes aware that a
14 violation of this act may have been committed in association
15 with excavation or demolition work. The report of alleged
16 violation shall be in a form and manner as required by the
17 commission.

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

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

24 (2.1) To request the location and type of facility owner
25 lines at each work site by notifying the facility owner through
26 the One Call System. Notification shall be not less than three
27 nor more than ten business days in advance of beginning
28 excavation or demolition work. No work shall begin earlier than
29 the [scheduled excavation date] lawful start date which shall be
30 on or after the third business day after notification. The

1 [scheduled excavation date] lawful start date shall exclude the
2 date upon which notification was received by the One Call System
3 and notification received on a Saturday, Sunday or holiday,
4 which shall be processed on the following business day. In the
5 case of a complex project, notification shall not be less than
6 ten business days in advance of the beginning of excavation or
7 demolition work.

8 (2.2) To provide the One Call System with [specific] exact
9 information to identify the work site so that facility owners
10 might provide indications of their lines. An excavator shall be
11 deemed to have met the obligations of clause (2.1) if he calls
12 the One Call System, provides the work site and other required
13 information and receives a serial number.

14 (3) In a complex project or if an excavator intends to
15 perform work at multiple work sites or over a large area, [he
16 shall] to take reasonable steps to work with facility owners,
17 including scheduling and conducting a preconstruction meeting,
18 so that they may locate their facilities at a time reasonably in
19 advance of the actual start of excavation or demolition work for
20 each phase of the work. A preconstruction meeting may take place
21 at any time prior to the commencement of excavation or
22 demolition work, and the excavator, facility owners and
23 designer, or their agents, shall attend the meeting. Notice of
24 the meeting shall be given sufficiently in advance so as to
25 permit attendance, either in person or electronically, by the
26 excavator, facility owners and designer, or their agents, and
27 shall include information sufficient to identify the scope of
28 work. If the excavator does not believe that a preconstruction
29 meeting is necessary under the circumstances of this [paragraph]
30 clause it shall indicate such belief in its notice, but any

1 facility owner with facilities at the work site may request a
2 meeting with the excavator, and a meeting shall be held between
3 the facility owner and the excavator. After commencement of
4 excavation or demolition work, the excavator shall be
5 responsible for protecting and preserving the staking, marking
6 or other designation until no longer required for proper and
7 safe excavation or demolition work at or near the underground
8 facility[,] or by contacting the One Call System to request that
9 the facilities be marked again in the event that the previous
10 markings have been compromised or eliminated.

11 (3.1) To comply with the requirements established by the One
12 Call System as determined by the board of directors regarding
13 the maximum area that a notification may cover.

14 (4) To exercise due care[;] and to take all reasonable steps
15 necessary to avoid injury to or otherwise interfere with all
16 lines where positions have been provided to the excavator by the
17 facility owners pursuant to [clause (5) of section 2] section
18 2(5). Within the tolerance zone the excavator shall employ
19 prudent techniques, which may include hand-dug test holes,
20 VACUUM EXCAVATION OR SIMILAR DEVICES to ascertain the precise <--
21 position of such facilities. If insufficient information to
22 safely excavate is available pursuant to [clause (5) of section
23 2] section 2(5), the excavator shall employ like prudent
24 techniques which shall be paid for by the project owner pursuant
25 to clause (15) [of this section].

26 (5) If the facility owner fails to respond to the
27 excavator's timely request as provided under [clause (5) of
28 section 2] section 2(5) or the facility owner notifies the
29 excavator that the line cannot be marked within the time frame
30 and a mutually agreeable date for marking cannot be arrived at,

1 the excavator may proceed with excavation as scheduled, but not
2 earlier than the lawful dig date, provided he exercises due care
3 in his endeavors, subject to the limitations contained in this
4 clause and clauses (2.1) through (4) and (20).

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

9 (i) Plan the excavation or demolition work to avoid damage
10 to or minimize interference with a facility owner's facilities
11 in the construction area. Excavation or demolition work which
12 requires temporary or permanent interruption of a facility
13 owner's service shall be coordinated with the affected facility
14 owner in all cases.

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

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

26 (8) To immediately notify 911 and the facility owner if the
27 damage results in the escape of any flammable, toxic or
28 corrosive gas or liquid which endangers life, health or
29 property. The excavator shall take reasonable measures, based on
30 its knowledge, training, resources, experience and understanding

1 of the situation, to protect themselves and those in immediate
2 danger, the general public, the property and the environment
3 until the facility owner or emergency responders have arrived
4 and completed their assessment and shall remain on the work site
5 to convey any pertinent information to responders that may help
6 them to safely mitigate the situation.

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

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

16 (11.1) To assist a facility owner in determining involvement
17 of a facility owner's lines by disclosing additional available
18 information requested by the facility owner, including
19 dimensions and the direction of proposed excavations.

20 (11.2) If using horizontal directional drilling (HDD), at a
21 minimum, to utilize the best practices published by the HDD
22 Consortium.

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

27 (i) The excavator who has complied with the terms of this
28 act and who was not otherwise negligent shall not be subject to
29 liability or incur any obligation to facility owners, operators,
30 project owners or other persons who sustain injury to person or

1 property as a result of the excavator's excavation or demolition
2 work damaging a facility owner's lines.

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

15 (13) If, after receiving information from the One Call
16 System or directly from a facility owner, the excavator decides
17 to change the location, scope or duration of a proposed
18 excavation, the obligations imposed by this section shall apply
19 to the new location.

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

25 (15) When the information required from the facility owner
26 under [clause (5) (i) of section 2] section 2(5) (i) cannot be
27 provided or, due to the nature of the information received from
28 the facility owner, it is reasonably necessary for the excavator
29 to ascertain the precise location of any line or abandoned or
30 unclaimed lines by prudent techniques, which may include hand-

1 dug test holes, vacuum excavation or other similar devices, the
2 excavator shall promptly notify the project owner or the project
3 owner's representative, either orally or in writing. If oral
4 notification is given, the notice shall be reduced to writing
5 within a reasonable time by the project owner or excavator.
6 After giving such notice, the excavator shall be entitled to
7 compensation from the project owner for this additional work as
8 provided in the latest edition of the Pennsylvania Department of
9 Transportation Form 408 specifications for extra work performed
10 on a force account basis. The provisions of this subsection
11 shall not be deemed to limit any other rights which the
12 excavator has under its contract with the project owner or
13 otherwise. Provisions in any contract, public or private, which
14 attempt to limit the rights of excavators under this section
15 shall not be valid for any reason, and any attempted waiver of
16 this section shall be void and unenforceable as against public
17 policy and any such attempted waiver shall be reported to the
18 [department] commission.

19 (16) [To submit an incident report to the department not
20 more than ten business days after striking or otherwise damaging
21 a facility owner's line during excavation or demolition
22 activities that resulted in personal injury or property damage
23 to parties other than the affected excavator or facility owner.
24 In addition, the incident report may be furnished to the
25 Pennsylvania Public Utility Commission and the Pennsylvania
26 Emergency Management Agency pursuant to memoranda of
27 understanding negotiated between these agencies and the
28 department.] To submit a report of alleged violation to the
29 commission through the One Call System not more than ten
30 business days after striking or damaging a facility owner's line

1 during excavation or demolition or if the excavator believes a
2 violation of this act has been committed in association with
3 excavation or demolition work. The report of alleged violation
4 shall be in a form and manner as required by the commission.

5 (17) 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 (18) To, if it chooses to do so and if working for a
10 facility owner, a municipality or a municipal authority,
11 delegate the power to discharge the duties set forth in clauses
12 (2.1) and (2.2) to its project owner, with the project owner's
13 consent. If the power is delegated pursuant to this clause, both
14 the excavator and the project owner shall be responsible for
15 providing the required notices.

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

18 (20) To renotify the One Call System of an unmarked or
19 incorrectly marked facility, if an original, proper,
20 nonemergency locate request has been made to the One Call System
21 and, upon initial arrival at the proposed work site, it is
22 apparent to the excavator that there is an unmarked or
23 incorrectly marked facility. An excavator may not begin
24 excavating in the affected area of the work site until after
25 receiving sufficient information from the facility owner to
26 safely excavate. If the facility owner fails to provide
27 sufficient information to the excavator within three hours after
28 the excavator has notified the One Call System of the unmarked
29 or incorrectly marked facility, the excavator may proceed with
30 excavation subject to the limitations under clause (5).

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

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

7 (1) To utilize sufficient quality levels of subsurface
8 utility engineering or other similar techniques whenever
9 practicable to properly determine the existence and positions of
10 underground facilities when designing known complex projects
11 having an estimated cost of four hundred thousand dollars
12 (\$400,000) or more.

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

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

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

19 (5) To furnish the pertinent data obtained through
20 subsurface utility engineering to the One Call System in a
21 mutually agreeable format.

22 (6) For new construction and where practicable in the
23 opinion of the project owner, to install color-coded permanent
24 markers to indicate the type and location of all laterals
25 installed by the project owner.

26 (7) To submit a report of alleged violation to the
27 commission through the One Call System not more than ten
28 business days after striking or damaging a facility owner's line
29 during excavation or demolition work activities, after a project
30 owner's contracted excavator strikes or damages a facility

1 owner's line during excavation or demolition activities or if
2 the project owner believes a violation of this act has been
3 committed in association with excavation or demolition. The
4 report of alleged violation shall be in a form and manner as
5 required by the commission.

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

17 (b) The Auditor General, for the purposes set forth in
18 subsection (a), and any contractor, excavator, facility owner or
19 member of the One Call System shall have the right during
20 regular business hours to inspect and copy any record, book,
21 account, document or any other information relating to the
22 provision of one call services by the One Call System, at the
23 cost determined by the board of directors.

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

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

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

1 [Section 7.2. (a) Any person violating any of the
2 provisions of this act, except clauses (1) and (2) of section 2,
3 commits a summary offense and shall, upon conviction, be
4 sentenced to pay a fine of not less than two thousand five
5 hundred dollars (\$2,500) nor more than fifty thousand dollars
6 (\$50,000) or undergo imprisonment for not more than ninety days,
7 or both. The Attorney General of the Commonwealth or any
8 district attorney may enforce the provisions of this act in any
9 court of competent jurisdiction. The department, in consultation
10 with the Attorney General, may also enforce the provisions of
11 this act in any court of competent jurisdiction. A facility
12 owner may petition any court of competent jurisdiction to enjoin
13 any excavation or demolition work conducted in violation of this
14 act. Local law enforcement or emergency management personnel
15 may, in the interest of public safety, order excavators on a
16 site to stop further excavation if the excavation is being
17 conducted in violation of this act.

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

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

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

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

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

30 (1) The degree of the party's compliance with the statute

1 prior to date of the violation.

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

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

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

8 (c.1) In addition to any other sanctions provided by this
9 act, the department shall have the authority to issue warnings
10 and orders requiring compliance with this act and may levy
11 administrative penalties for violations of this act. Any
12 warning, order or penalty shall be served on the person or
13 entity violating the act at their last known address. The
14 department shall consider the factors set forth in subsection
15 (c) in determining the administrative penalty to be assessed.

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

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

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

29 (2) Any person or entity receiving three or more warnings in
30 a calendar year may be subject to an administrative penalty not

1 to exceed five hundred dollars (\$500).

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

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

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

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

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

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

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

30 Section 7.8. (a) A damage prevention committee shall be

1 established as follows:

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

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

6 (ii) THE SECRETARY OF TRANSPORTATION OR THE SECRETARY'S <--
7 DESIGNEE.

8 (III) The president of the One Call System, or his designee
9 from the One Call System professional staff.

10 ~~(iii)~~ (IV) One representative from each of the following <--
11 nonmunicipally owned or affiliated facility owner industries:
12 electric, natural gas or petroleum pipelines, telephone, water
13 or wastewater and cable television, nominated by facility owners
14 or affiliated organizations.

15 ~~(iv)~~ (V) Three representatives of excavators, nominated by <--
16 excavators or affiliated organizations.

17 ~~(v)~~ (VI) One representative of municipal governments, <--
18 nominated by municipal governments or affiliated organizations.

19 ~~(vi)~~ (VII) One representative of municipal authorities, <--
20 nominated by municipal authorities or affiliated organizations.

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

23 (3) A nomination under clause ~~(1)(iii)~~ (1)(iv), (v) and, <--
24 (vi) AND (VII) shall be forwarded to the secretary of the <--
25 commission. The executive director of the commission shall
26 provide recommended candidates to the commission for approval.

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

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

30 (ii) Except for initial terms under clause (5), a committee

1 member's term shall be for a term of three years.

2 (5) The initial term of committee members shall be as
3 follows:

4 (i) Two representatives of facility owners shall serve three
5 years, one representative shall serve two years and two
6 representatives shall serve one year.

7 (ii) One representative of excavators shall serve three
8 years, one representative shall serve two years and one
9 representative shall serve one year.

10 (iii) The representative of municipal governments shall
11 serve two years.

12 (iv) The representative of municipal authorities shall serve
13 three years.

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

18 (7) At least ~~six~~ SEVEN members of the committee who are <--
19 present shall constitute a quorum for the transaction of
20 business. A simple majority vote of the committee members
21 present at a meeting shall be deemed to be the position of the
22 committee.

23 (b) The committee shall meet regularly to carry out the
24 following purposes:

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

27 (2) Issue a warning letter to a person as deemed appropriate
28 by the committee or as recommended by the damage prevention
29 investigator.

30 (3) Issue an informal determination that imposes an

1 administrative penalty.

2 (4) Require a person to attend a damage prevention
3 educational program.

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

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

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

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

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

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

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

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

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

1 related to damage prevention for underground facilities under
2 this act.

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

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

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

11 (iii) Be approved by the commission.

12 (3) SUBMIT AN ANNUAL REPORT CONTAINING RELEVANT DAMAGE <--
13 PREVENTION DATA TO THE COMMISSION, THE COMMITTEE ON CONSUMER
14 PROTECTION AND PROFESSIONAL LICENSURE OF THE SENATE AND THE
15 COMMITTEE ON CONSUMER AFFAIRS OF THE HOUSE OF REPRESENTATIVES.

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

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

22 (1) To employ individuals.

23 (2) To issue orders.

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

30 (4) For one year following the effective date of this

1 section, to promulgate temporary regulations. Regulations under
2 this clause shall:

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

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

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

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

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

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

23 (2) Twenty percent of the program costs shall be assessed as
24 a fee upon the One Call System, with the fee to be paid to the
25 commission. The One Call System's board of directors shall
26 determine the manner in which the fee may be recovered from
27 facility owners, excavators, designers and other involved
28 persons, provided that the One Call System's board of directors'
29 manner of recovery may not include facility owners that are
30 public utilities.

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

11 (b) The following shall apply:

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

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

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

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

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

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

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

28 (iv) The party's proposed modification to internal practices
29 and procedures to ensure future compliance with statutes and
30 regulations.

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

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

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

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

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

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

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

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

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

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

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

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

14 Section 39. This act shall expire on December 31, [2017]
15 2024.

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

17 (1) The following provisions shall take effect
18 immediately:

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

20 (ii) THE AMENDMENT OF SECTION 39 OF THE ACT. <--

21 (III) This section.

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