
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2189 Session of
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KINSEY, GREEN, KENYATTA AND ISAACSON, APRIL 8, 2024

REFERRED TO COMMITTEE ON CONSUMER PROTECTION, TECHNOLOGY AND
UTILITIES, APRIL 8, 2024

AN ACT

1 Amending the act of December 10, 1974 (P.L.852, No.287),
2 entitled "An act to protect the public health and safety by
3 preventing excavation or demolition work from damaging
4 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 and persons and other
8 entities preparing drawings or performing excavation or
9 demolition work; and prescribing penalties," further
10 providing for definitions, for duties of facility owners, for
11 duties of designers, for duties of excavators, for duties of
12 project owners, for damage prevention committee, for
13 compliance orders and administrative penalties and for
14 expiration.

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

17 Section 1. The definitions of "alleged violation,"
18 "emergency," "excavation work," "facility owner," "injury,"
19 "line" or "facility," "locate request," "minor routine
20 maintenance" and "subsurface utility engineering" or "SUE" in
21 section 1 of the act of December 10, 1974 (P.L.852, No.287),
22 referred to as the Underground Utility Line Protection Law, are

1 amended and the section is amended by adding definitions to
2 read:

3 Section 1. The following words and phrases when used in this
4 act shall have the meanings given to them in this section unless
5 the context clearly indicates otherwise:

6 * * *

7 "Alleged violation" means an instance when a person by action
8 or inaction [fails] is alleged to have failed to fulfill the
9 obligations of this act.

10 * * *

11 "Drawing" means a type of technical plan that shows
12 information about existing and proposed underground facilities,
13 grading, landscaping or other site details for the purpose of
14 providing a clear picture of construction to an excavator. The
15 term does not include a sketch made for the purpose of obtaining
16 a permit relating to excavation work.

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

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

1 of the edge of the cartway or the top of the outer edge of an
2 improved shoulder, in addition to the performance of incidental
3 de minimis excavation associated with the routine maintenance
4 and the removal of sediment buildup, within the right-of-way of
5 public roads or work up to a depth of twenty-four inches beneath
6 the existing surface within the right-of-way of a State
7 highway,] work performed by persons whose activities must comply
8 with the requirements of and regulations promulgated under the
9 act of May 31, 1945 (P.L.1198, No.418), known as the Surface
10 Mining Conservation and Reclamation Act, the act of April 27,
11 1966 (1st Sp.Sess., P.L.31, No.1), known as The Bituminous Mine
12 Subsidence and Land Conservation Act, or the act of September
13 24, 1968 (P.L.1040, No.318), known as the Coal Refuse Disposal
14 Control Act, that relate to the protection of utility facilities
15 or the direct operations on a well pad following construction of
16 the well pad and that are necessary or operations incidental to
17 the extraction of oil or natural gas.

18 * * *

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

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

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

1 * * *

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

5 * * *

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

28 "Locate request" means a communication or notification
29 between an excavator or designer and the One Call System in
30 which a request for locating facilities is processed. Locate

1 requests submitted by an excavator performing work within the
2 right-of-way of any State highway, either under contract to the
3 Department of Transportation or under authority of a permit
4 issued by the Department of Transportation, shall include the
5 number of the Department of Transportation contract or permit.

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

15 * * *

16 "Sketch" means a physical depiction of a work site generally
17 for permitting purposes and not solely or specifically
18 applicable to design requirements.

19 * * *

20 "Subsurface utility engineering" or "SUE" means those
21 techniques set forth in the American Society of Civil Engineers
22 (ASCE) most recently published standard CI/ASCE [38-02] 38-22
23 and 75-22, or its successor document as determined by the One
24 Call System.

25 * * *

26 "Violation" means an instance when the commission determines
27 that a person by action or inaction has failed to fulfill the
28 obligations of this act.

29 * * *

30 Section 2. Section 2(1)(ii)(B) and (iv), (10), (11) and (13)

1 of the act are amended and clause (5) is amended by adding a
2 subparagraph to read:

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

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

7 * * *

8 (ii) as follows:

9 * * *

10 [(B) The One Call System may not require its members to
11 locate lines or facilities installed before the effective date
12 of this clause unless the member has existing maps of the lines
13 or facilities and the member's existing maps meet the
14 specifications of the One Call System's ing Solutions. Nothing
15 under this clause shall prohibit the One Call System members
16 from voluntarily submitting to the One Call System maps of lines
17 or facilities installed before the effective date of this
18 clause.]

19 * * *

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

1 * * *

2 (5) After receipt of a timely request from an excavator or
3 operator who identifies the work site of excavation or
4 demolition work he intends to perform and not later than the
5 business day prior to the lawful start date of excavation:

6 * * *

7 (x) To document communications between the facility owner
8 and the excavator to ensure that the excavator is aware of a
9 facility owner's inability to locate its facilities.

10 * * *

11 (10) To submit a report of alleged violation to the
12 commission through the One Call System not more than thirty
13 business days after receipt of notice that the facility owner's
14 lines have been damaged by excavation or demolition work or if
15 the facility owner believes a violation of this act has been
16 committed in association with excavation or demolition work. The
17 report of alleged violation shall be in a form and manner as
18 required by the commission. [No report may be required where the
19 cost to repair the damage to the facility owner's lines is less
20 than two thousand five hundred dollars (\$2,500), unless the same
21 person damaged the facility owner's lines two or more times
22 within a six-month period.]

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

27 * * *

28 (13) To maintain existing records of main lines abandoned on
29 or after the effective date of this paragraph and to mark,
30 locate or identify the main lines if [possible] practicable,

1 based upon the existing records. The records shall include
2 written or electronic documents or drawings in the possession of
3 the facility owner that show the location of an existing line or
4 facility.

5 Section 3. Sections 4(4) and (5), 5(2.1), (15), (16) and
6 (17) and 6.1(1), (2) and (7) of the act are amended and the
7 sections are amended by adding clauses to read:

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

11 * * *

12 (2.2) To submit a design ticket notification through the One
13 Call System when a design drawing is completed.

14 (2.3) To timely respond to notifications received from
15 excavators in accordance with section 5(15).

16 (2.4) To inform the project owner of the project owner's
17 duties under section 5(15) and 6.1(1).

18 (2.5) To comply with all requests for information by the
19 commission relating to the commission's enforcement authority
20 under this act within thirty business days of receipt of the
21 request.

22 * * *

23 (4) To make a reasonable effort to prepare the construction
24 drawings to depict all lines or facilities and quality levels
25 obtained through the subsurface utility engineering process in
26 the planning and design phases, including test hole data sheet
27 details for all lines or facilities crossing existing lines or
28 facilities in accordance with the American Society of Civil
29 Engineers (ASCE) most recently published standard CI/ASCE 38-22
30 and 75-22 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] notifies the One Call System and
7 shows, as proof, the serial number of one call notice on
8 drawings. The designer shall also show the toll-free number of
9 the One Call System on the drawing near his serial number.

10 * * *

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

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

27 * * *

28 (15) When the information required from the facility owner
29 under section 2(5)(i) cannot be provided or, due to the nature
30 of the information received from the facility owner, it is

1 reasonably necessary for the excavator to ascertain the precise
2 location of any line or abandoned or unclaimed lines by prudent
3 techniques, which may include hand-dug test holes, vacuum
4 excavation or other similar devices, the excavator shall
5 promptly notify the project owner or the project owner's
6 representative, either orally or in writing. If oral
7 notification is given, the notice shall be reduced to writing
8 within a reasonable time by the project owner or excavator.
9 After giving such notice, the excavator shall be entitled to
10 compensation from the project owner for this additional work as
11 provided in the latest edition of the Pennsylvania Department of
12 Transportation Form 408 specifications for extra work performed
13 on a force account basis. The provisions of this subsection
14 shall not be deemed to limit any other rights which the
15 excavator has under its contract with the project owner or
16 otherwise. Provisions in any contract, public or private, which
17 attempt to limit the rights of excavators under this section
18 shall not be valid for any reason, and any attempted waiver of
19 this section shall be void and unenforceable as against public
20 policy and any such attempted waiver shall be reported to the
21 [commission.] commission's prosecutorial staff for appropriate
22 action, including the imposition of administrative penalties
23 under section 7.10.

24 (16) To submit a report of an alleged violation to the
25 commission through the One Call System not more than [ten]
26 thirty business days after striking or damaging a facility
27 owner's line during excavation or demolition or if the excavator
28 believes a violation of this act has been committed in
29 association with excavation or demolition work. The report of an
30 alleged violation shall be in a form and manner as required by

1 the commission.

2 (17) To comply with all requests for information by the
3 commission relating to the commission's enforcement authority
4 under this act within thirty business days of the receipt of the
5 request.

6 * * *

7 (22) To not delegate the excavator's duty to submit a locate
8 request under clause (21) to another person. The excavator shall
9 have the sole duty to submit a locate request under clause (21).

10 (23) To not repair a damaged underground facility without
11 having first obtained authorization from the facility owner.

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

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

21 (2) To timely respond to notifications received from
22 excavators pursuant to section 5(15). Provisions in any
23 contract, public or private, which attempt to limit the rights
24 of excavators under this section shall not be valid for any
25 reason, and any attempted waiver of this section shall be void
26 and unenforceable as against public policy and any such
27 attempted waiver shall be reported to the commission's
28 prosecutorial staff for appropriate action, including the
29 imposition of administrative penalties under section 7.10.

30 * * *

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

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

15 Section 4. Section 7.8(a) (2) and (d) of the act are amended
16 to read:

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

19 * * *

20 (2) A person appointed to the committee must maintain
21 employment within the industry the person represents and have
22 expertise within the operation of this act.

23 * * *

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

1 * * *

2 Section 5. Section 7.10 of the act is amended by adding a
3 subsection to read:

4 Section 7.10. * * *

5 (e.1) The following shall apply:

6 (1) A party violating this act shall pay an administrative
7 penalty recovered under this section to the commission within
8 sixty days of issuance of an informal determination under
9 section 7.8(b)(2), unless the party rejects the informal
10 determination within thirty days in accordance with section
11 7.8(c)(2).

12 (2) The commission shall impose an additional administrative
13 penalty of one hundred dollars (\$100) per day, not to exceed a
14 total of five thousand dollars (\$5,000), for each day that a
15 party fails to pay an administrative penalty to the commission
16 within the time period specified under clause (1).

17 (3) A party subject to an informal determination under
18 section 7.8(b)(2) that requires the party to attend a damage
19 prevention educational program under section 7.8(b)(4) shall
20 successfully complete the program within sixty days of issuance
21 of the informal determination. The commission shall impose the
22 additional administrative penalty specified under clause (2) for
23 each day the party fails to successfully complete the program
24 within sixty days of issuance of the informal determination.

25 * * *

26 Section 6. Section 39 of the act is amended to read:

27 Section 39. This act shall expire on December 31, [2024]
28 2031.

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

30 (1) The following shall take effect immediately:

1 (i) The amendment of section 39 of the act.

2 (ii) This section.

3 (2) The remainder of this act shall take effect in 60
4 days.