

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1237 Session of 2024

INTRODUCED BY BAKER, BARTOLOTTA, SANTARSIERO, COSTA, SCHWANK, J. WARD, MILLER AND CULVER, JUNE 6, 2024

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, OCTOBER 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 for administrative penalties; and <--
14 ~~repealing provisions relating to expiration of act.~~ <--
15 PROVIDING FOR ACTION FOR RECOVERY OF PENALTY OR FORFEITURE;
16 AND FURTHER PROVIDING FOR EXPIRATION OF ACT.

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

19 Section 1. The definitions of "alleged violation,"
20 "emergency," "excavation work," "horizontal directional
21 drilling," "injury," "locate request" and "subsurface utility
22 engineering" or "SUE" in section 1 of the act of December 10,
23 1974 (P.L.852, No.287), referred to as the Underground Utility
24 Line Protection Law, are amended and the section is amended by

1 adding definitions to read:

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

5 * * *

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

9 * * *

10 "Damage prevention investigator" means an employee of the
11 commission tasked with reviewing and investigating an alleged
12 violation reported to the commission under sections 2(10), 4(8),
13 5(16) and 6.1(7) and offering recommendations to the committee
14 to address the alleged violation in the form of a warning
15 letter, administrative penalty or participation in an
16 educational program established by the commission.

17 * * *

18 "Drawing" means a type of technical plan that shows
19 information about existing and proposed underground facilities,
20 grading, landscaping or other site details for the purpose of
21 providing a clear picture of construction to the excavator. The
22 term does not include sketches made for the purpose of obtaining
23 excavation related to permits.

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

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

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

25 * * *

26 ["Horizontal directional drilling" means the use of
27 horizontal boring devices that can be guided between a launch
28 point and a 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 at a

1 health care facility away from the scene of the incident.

2 * * *

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

11 * * *

12 "Sketch" means a physical depiction of a work site generally
13 for permitting purposes and not solely or specifically
14 applicable to design requirements.

15 * * *

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

20 * * *

21 "Trenchless technology" means a family of construction
22 techniques for installing or rehabilitating underground
23 infrastructure with minimal disruption to surface traffic,
24 businesses and residents.

25 * * *

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

29 * * *

30 Section 2. Section 2(1)(ii) and (iv), (5)(i), (10) and (13)

1 of the act are amended, clause (5) is amended by adding
2 subparagraphs and the section is amended by adding a clause to
3 read:

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

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

8 * * *

9 (ii) as follows:

10 (A) The names of the counties and municipalities, down to
11 and including wards in Philadelphia, Pittsburgh, Allentown and
12 Erie, in which its lines are located and other related
13 information as may be required by the One Call System regarding
14 the location of a member's facilities.

15 [(B) The One Call System may not require its members to
16 locate lines or facilities installed before the effective date
17 of this clause unless the member has existing maps of the lines
18 or facilities and the member's existing maps meet the
19 specifications of the One Call System's Member Mapping
20 Solutions. Nothing under this clause shall prohibit the One Call
21 System members from voluntarily submitting to the One Call
22 System maps of lines or facilities installed before the
23 effective date of this clause.]

24 (C) A facility owner may not be required to locate lines or
25 facilities installed before April 30, 2018, unless the facility
26 owner has existing maps of the lines or facilities and the
27 facility owner's existing maps meet the specifications of the
28 One Call System's Member Mapping Solutions. Nothing under this
29 clause shall prohibit a facility owner as a member of the One
30 Call System from voluntarily submitting to the One Call System

1 maps of lines or facilities installed before April 30, 2018.

2 * * *

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

14 * * *

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

19 (i) To mark, stake, locate or otherwise provide the position
20 of the facility owner's underground lines at the work site
21 within eighteen inches horizontally from the outside wall of
22 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.] Facility owners shall make
7 reasonable efforts during the excavation phase to locate or
8 notify excavators of the existence of any known lines and
9 abandoned lines.

10 * * *

11 (i.2) To document communications between a facility owner
12 and the excavator to ensure that the excavator is aware of a
13 facility owner's inability to locate its facilities.

14 * * *

15 (v.2) To timely enter a final response to all locate
16 requests.

17 * * *

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

30 * * *

1 (13) To maintain existing records of main lines abandoned on
2 or after the effective date of this paragraph and to mark,
3 locate [or] and identify the main lines if possible, based upon
4 the existing records. The records shall include written or
5 electronic documents or drawings in the possession of the
6 facility owner that show the location of an existing line or
7 facility.

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

11 Section 3. Sections 4(5), 5(2.1), (8), (11.2), (15), (16)
12 and (20) and 6.1(1), (2) and (7) of the act are amended and the
13 sections are amended by adding clauses to read:

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

17 * * *

18 (2.2) To submit a design notification through the One Call
19 System when a design drawing is completed.

20 (2.3) To timely respond to notifications received from
21 excavators in accordance with section 5(15).

22 (2.4) To inform the project owner of the project owner's
23 duties under sections 5(15) and 6.1(1).

24 (2.5) To comply with all requests for information by the
25 commission relating to the commission's enforcement authority
26 under this act within thirty days of written receipt of the
27 request.

28 * * *

29 (4.1) To depict lines or facilities with the appropriate
30 quality levels based on the complexity of the design and

1 construction activities obtained through the SUE process in the
2 planning and design phases in accordance with the American
3 Society of Civil Engineers (ASCE) most recently published
4 standard CI/ASCE 38.

5 (4.2) In the event that as-builts are required during the
6 construction phase, to prepare the as-builts in accordance with
7 the most recently published standard of CI/ASCE 75.

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

13 * * *

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

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

1 * * *

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

13 * * *

14 (11.2) [If using horizontal directional drilling (HDD), at]
15 If using trenchless technology, at a minimum, to utilize the
16 best practices published by the [HDD Consortium] Common Ground
17 Alliance.

18 * * *

19 (15) When the information required from the facility owner
20 under section 2(5)(i) cannot be provided or, due to the nature
21 of the information received from the facility owner, it is
22 reasonably necessary for the excavator to ascertain the precise
23 location of any line or abandoned or unclaimed lines by prudent
24 techniques, which may include hand-dug test holes, vacuum
25 excavation or other similar devices, the excavator shall
26 promptly notify the project owner or the project owner's
27 representative, either orally or in writing. If oral
28 notification is given, the notice shall be reduced to writing
29 within a reasonable time by the project owner or excavator.
30 After giving such notice, the excavator shall be entitled to

1 compensation from the project owner for this additional work as
2 provided in the latest edition of the Pennsylvania Department of
3 Transportation Form 408 specifications for extra work performed
4 on a force account basis. The provisions of this subsection
5 shall not be deemed to limit any other rights which the
6 excavator has under its contract with the project owner or
7 otherwise. Provisions in any contract, public or private, which
8 attempt to limit the rights of excavators under this section
9 shall not be valid for any reason, and any attempted waiver of
10 this section shall be void and unenforceable as against public
11 policy and any such attempted waiver shall be reported to the
12 commission prosecutor staff for appropriate action, including
13 the imposition of an administrative penalty under section 7.10.

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

22 * * *

23 (20) To renotify the One Call System of an unmarked or
24 incorrectly marked facility, if an original, proper[,
25 nonemergency] locate request has been made to the One Call
26 System and, upon initial arrival at the proposed work site, it
27 is apparent to the excavator that there is an unmarked or
28 incorrectly marked facility. An excavator may not begin
29 excavating in the affected area of the work site until after
30 receiving sufficient information from the facility owner to

1 safely excavate. If the facility owner fails to provide
2 sufficient information to the excavator within three hours after
3 the excavator has notified the One Call System of the unmarked
4 or incorrectly marked facility, the excavator may proceed with
5 excavation subject to the limitations under clause (5). This
6 clause shall apply to an emergency or nonemergency locate
7 request.

8 * * *

9 (22) To not provide a misrepresentation of an emergency
10 excavation, subject to an administrative penalty imposed under
11 section 7.10.

12 (23) To not delegate the excavator's duty to submit a locate
13 request to the One Call System to another person. The excavator
14 shall have the sole responsibility to submit each locate request
15 to the One Call System.

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

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

25 (2) To timely respond to notifications received from
26 excavators pursuant to section 5(15). Provisions in any
27 contract, public or private, which attempt to limit the rights
28 of excavators under section 5 shall not be valid for any reason,
29 and any attempted waiver of section 5 shall be void and
30 unenforceable as against public policy and any such attempted

1 waiver shall be reported to the commission prosecutor staff for
2 appropriate action, including the imposition of an
3 administrative penalty under section 7.10.

4 * * *

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

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

19 ~~Section 4. Section 7.8(a) (2) and (5) (i), (b) (1) and (5), (c) <--~~
20 ~~(1) (ii) and (2), (d) and (e) (3) of the act are amended and~~
21 ~~subsection (c) is amended by adding a clause to read:~~

22 SECTION 4. SECTION 7.8(A) (2) AND (5) (I), (B) (1) AND (5), (C) <--
23 (1) (II) AND (2), (D) AND (E) (3) OF THE ACT ARE AMENDED,
24 SUBSECTION (C) IS AMENDED BY ADDING A CLAUSE AND THE SECTION IS
25 AMENDED BY ADDING A SUBSECTION TO READ:

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

28 * * *

29 (2) A person appointed to the committee must have expertise
30 within the operation of this act related to the industry

1 represented.

2 * * *

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

5 (i) Two representatives of facility owners under clause (1)
6 (iv) shall serve three years, one representative shall serve two
7 years and two representatives shall serve one year.

8 * * *

9 (b) The committee shall meet regularly to carry out the
10 following purposes:

11 (1) Review a report of an alleged violation of this act and
12 damage prevention investigator findings [and recommendations.]
13 concerning the basis or root cause of the alleged violation
14 reported and recommendations proposed to address the alleged
15 violation.

16 * * *

17 (5) Issue an informal determination that modifies or
18 dismisses a recommendation of [committee staff] the damage
19 prevention investigator.

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

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

24 * * *

25 (ii) Appear before the [commission] committee to present its
26 position.

27 (2) A person who is subject to an informal determination of
28 the committee may accept or reject the result. If [an informal
29 determination is rejected,] a person who is subject to an
30 informal determination opts to reject the informal

1 determination, the person shall reject the informal
2 determination in writing within thirty days of the date when the
3 informal determination is made by the committee and the matter
4 shall be [returned to the damage prevention investigator for
5 further action, if appropriate, including referring the matter]
6 referred to the commission prosecutor staff for [the purpose of
7 issuing a formal complaint.] an action resulting in a formal
8 complaint before the commission. An action resulting in a formal
9 complaint before the commission must be brought by commission
10 prosecutor staff within the time limits specified under 66
11 Pa.C.S. § 3314(a) (relating to limitation of actions and
12 cumulation of remedies).

13 (3) When a written rejection of an informal determination
14 under clause (2) results in a formal complaint before the
15 commission, the commission shall conduct a de novo review of the
16 alleged violation. The informal determination of the committee
17 shall not be binding upon the commission.

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

25 (D.1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, THE <--
26 COMMITTEE SHALL ONLY HAVE THE POWERS AND DUTIES ENUMERATED IN
27 SUBSECTIONS (B) AND (C) IF THE COMMITTEE COMPLETES ITS REVIEW OF
28 AN ALLEGED VIOLATION AND ISSUES AN INFORMAL DETERMINATION WITHIN
29 TWO HUNDRED SEVENTY DAYS OF THE OCCURRENCE OF THE ALLEGED
30 VIOLATION.

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

3 * * *

4 (3) Submit an annual report containing relevant damage
5 prevention data to the commission, the Committee on Consumer
6 Protection and Professional Licensure of the Senate and the
7 Committee on Consumer [Affairs] Protection, Technology and
8 Utilities of the House of Representatives. The report shall
9 include relevant metrics to demonstrate how the damage
10 prevention committee's actions advance the goal of minimizing
11 the occurrence of line hits and enhance public safety.

12 * * *

13 Section 5. Section 7.10(c) of the act is amended to read:

14 Section 7.10. * * *

15 (c) The following shall apply:

16 (1) An administrative penalty recovered under this section
17 shall be payable to the commission and collected in the manner
18 provided for by law.

19 (2) A person or entity violating this act must pay an
20 administrative penalty to the commission within sixty days of
21 issuance of the informal determination, unless the person or
22 entity subject to the informal determination rejects the
23 informal determination within thirty days in accordance with
24 section 7.8(c) (2).

25 (3) The commission shall assess an additional administrative
26 penalty of one hundred dollars (\$100) per day, not to exceed a
27 total of five thousand dollars (\$5,000), for an administrative
28 penalty not paid within the period specified under paragraph
29 (2).

30 (4) A person or entity subject to an informal determination

1 of the committee requiring a damage prevention educational
2 program under section 7.8(b)(4) shall successfully complete the
3 program within sixty days of issuance of the informal
4 determination. The commission shall assess an additional
5 administrative penalty of one hundred dollars (\$100) per day,
6 not to exceed a total of five thousand dollars (\$5,000), on a
7 person or entity that fails to comply with this clause.

8 * * *

9 ~~Section 6. Section 39 of the act is repealed:~~ <--

10 ~~{Section 39. This act shall expire on December 31, 2024.}~~

11 SECTION 6. THE ACT IS AMENDED BY ADDING A SECTION TO READ: <--

12 SECTION 7.11. EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, AN
13 ACTION FOR THE RECOVERY OF ANY PENALTY OR FORFEITURE INCURRED
14 UNDER THE PROVISIONS OF THIS ACT OR A PROSECUTION ON ACCOUNT OF
15 ANY MATTER OR THING MENTIONED IN THIS ACT MAY NOT BE MAINTAINED
16 UNLESS BROUGHT WITHIN THREE YEARS FROM THE DATE AT WHICH THE
17 LIABILITY AROSE.

18 SECTION 7. SECTION 39 OF THE ACT IS AMENDED TO READ:

19 SECTION 39. THIS ACT SHALL EXPIRE ON DECEMBER 31, [2024]
20 2031.

21 Section 7 8. This act shall take effect immediately. <--