

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1607 Session of 2013

INTRODUCED BY BAKER, PICKETT, EVERETT, R. MILLER, WATSON, HARPER, MAJOR, GINGRICH, QUINN, HESS, M. K. KELLER, CLYMER, BOBACK, COHEN, DENLINGER, GILLEN, GROVE, MUSTIO AND SONNEY, JULY 10, 2013

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 26, 2014

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, the One Call System, other parties, designers,
12 excavators and project owners and for penalties; providing
13 for enforcement, compliance and penalties; and further
14 providing for expiration.

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

17 Section 1. Section 1 of the act of December 10, 1974
18 (P.L.852, No.287), referred to as the Underground Utility Line
19 Protection Law, amended November 29, 2006 (P.L.1593, No.181), is
20 amended to read:

21 Section 1. As used in this act:

22 "Abandoned" means no longer in service and physically

1 disconnected from a line.

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

4 "Business day" means any day except a Saturday, Sunday or
5 legal holiday prescribed by statute. A business day begins at
6 12:00:00 a.m. and ends at 11:59:59 p.m.

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

10 "Chairman" means the Chairman of the Pennsylvania Public
11 Utility Commission.

12 "Commission" means the Pennsylvania Public Utility
13 Commission.

14 "Committee" means the Damage Prevention Committee established
15 under section 7.8(b).

16 "Common Ground Alliance best practices" means the damage
17 prevention industry recommended standards issued by the Common
18 Ground Alliance, a not-for-profit corporation created pursuant
19 to the issuance of the United States Department of
20 Transportation's Common Ground Task Force report in 1999.

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

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

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

4 "CONVENTIONAL OIL AND GAS WELL" MEANS A BORE HOLE DRILLED FOR <--
5 THE PURPOSE OF PRODUCING OIL OR GAS FROM A CONVENTIONAL
6 FORMATION. IRRESPECTIVE OF TECHNOLOGY OR DESIGN, THE TERM
7 INCLUDES ANY OF THE FOLLOWING:

8 (1) A WELL DRILLED TO PRODUCE OIL.

9 (2) A WELL DRILLED TO PRODUCE NATURAL GAS FROM FORMATIONS
10 OTHER THAN SHALE FORMATIONS.

11 (3) A WELL DRILLED TO PRODUCE NATURAL GAS FROM SHALE
12 FORMATIONS LOCATED ABOVE THE BASE OF THE ELK GROUP OR ITS
13 STRATIGRAPHIC EQUIVALENT.

14 (4) A WELL DRILLED TO PRODUCE NATURAL GAS FROM SHALE
15 FORMATIONS LOCATED BELOW THE BASE OF THE ELK GROUP WHERE NATURAL
16 GAS CAN BE PRODUCED AT ECONOMIC FLOW RATES OR IN ECONOMIC
17 VOLUMES WITHOUT THE USE OF VERTICAL OR NONVERTICAL WELL BORES
18 STIMULATED BY HYDRAULIC FRACTURE TREATMENTS OR BY USING
19 MULTILATERAL WELL BORES OR OTHER TECHNIQUES TO EXPOSE MORE OF
20 THE FORMATION TO THE WELL BORE.

21 (5) IRRESPECTIVE OF FORMATION, A WELL DRILLED FOR COLLATERAL
22 PURPOSES, SUCH AS MONITORING, GEOLOGIC LOGGING, SECONDARY AND
23 TERTIARY RECOVERY OR DISPOSAL INJECTION.

24 "Damage prevention investigator" means commission staff
25 assigned to investigate a report of an alleged violation and
26 prepare findings and recommendations for consideration by the
27 committee.

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

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

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

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

10 "Excavation work" means the use of powered equipment or
11 explosives in the movement of earth, rock or other material, and
12 includes, but is not limited to, anchoring, augering,
13 backfilling, blasting, boring, digging, ditching, drilling,
14 driving-in, grading, plowing-in, pulling-in, ripping, scraping,
15 trenching and tunneling, but does not include soft excavation
16 technology such as vacuum, high pressure air or water, tilling
17 of soil for agricultural purposes to a depth of less than
18 eighteen inches[, the direct operations necessary or incidental
19 to the purposes of finding or extracting natural resources,
20 political subdivisions performing minor routine maintenance up
21 to a depth of less than eighteen inches measured from the top of
22 the edge of the cartway or the top of the outer edge of an
23 improved shoulder, in addition to the performance of incidental
24 de minimis excavation associated with the routine maintenance
25 and the removal of sediment buildup, within the right-of-way of
26 public roads or employes of the Department of Transportation
27 performing within the scope of their employment work up to a
28 depth of twenty-four inches beneath the existing surface within
29 the right-of-way of a State highway], WORK PERFORMED BY PERSONS <--
30 WHOSE ACTIVITIES MUST COMPLY WITH THE REQUIREMENTS OF AND

1 REGULATIONS PROMULGATED UNDER THE ACT OF MAY 31, 1945 (P.L.1198,
2 NO.418), KNOWN AS THE SURFACE MINING CONSERVATION AND
3 RECLAMATION ACT, THE ACT OF APRIL 27, 1966 (1ST SP.SESS.,
4 P.L.31, NO.1), KNOWN AS THE BITUMINOUS MINE SUBSIDENCE AND LAND
5 CONSERVATION ACT, OR THE ACT OF SEPTEMBER 24, 1968 (P.L.1040,
6 NO.318), KNOWN AS THE COAL REFUSE DISPOSAL CONTROL ACT, WHICH
7 RELATE TO THE PROTECTION OF UTILITY FACILITIES, or the direct
8 operations on the well pad following construction of the well
9 pad, by or under the direction of the owner or operator of the
10 well pad, and that are necessary or operations incidental to the
11 extraction of oil or natural gas.

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

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

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

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

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

30 "Fiscal year" means the fiscal year utilized by the

1 commission.

2 "Fund" means the Underground Utility Line Protection Fund
3 established under section 7.9(a).

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

7 "Injury" means a bodily harm to a person who, as a result of
8 the bodily harm, immediately receives medical attention away
9 from the scene of the incident.

10 "Lawful start date" means the scheduled start date as
11 provided under section 1.1.

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

1 prevention program requirements of 49 CFR § 192.614.†

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

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

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

28 "Operator" means any individual in physical control of
29 powered equipment or explosives when being used to perform
30 excavation or demolition work.

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

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

6 "Preconstruction meeting" means a scheduled event held by the
7 excavator, designer, project owner and facility owner, or an
8 agent of the excavator, designer, project owner and facility
9 owner, prior to the commencement of excavation or demolition
10 work in a complex project.

11 ["Preconstruction request" means a notification to facility
12 owners regarding a complex project.]

13 "Project owner" means any person who or which engages an
14 excavator for construction or any other project which requires
15 excavation or demolition work.

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

18 ["Secretary" means the Secretary of Labor and Industry of the
19 Commonwealth.

20 "Site" means the specific place denoted on the locate request
21 where excavation or demolition work is being or is planned to be
22 performed. A site should be denoted as a clearly defined,
23 bounded area, including relevant identifiable points of
24 reference such as the specific address with a specific
25 description as to the portion of the property, including
26 descriptions such as front, back, left side, right side and
27 direction such as N, S, E, W or variants. Where possible, the
28 points should also reference, without limitation, the size and
29 radius or circumference of the excavation, utility pad or
30 pedestal numbers, utility pole numbers, landmarks, including

1 trees, fountains, fences, railroads, highway and pipeline
2 markers, and latitude and longitude.]

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

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

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

12 "Well pad" means area, under the control of an oil or natural
13 gas company, occupied by equipment or facilities necessary or
14 required for the drilling, production or plugging of an oil or
15 natural gas well.

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

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

30 Section 1.1. The lawful start date shall be three business

1 days through ten business days following notification to the One
2 Call System.

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

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

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

10 (i) the legal name of the facility owner and their official
11 mailing address;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 facilities.

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

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

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

1 shall follow the guidelines approved by the One Call System's
2 board of directors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (3) [Not more than ten business days after the receipt of a

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

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

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

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

1 project owners to affected facility owner members.

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

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

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

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

25 (c) (Reserved).

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

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

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

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

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

7 (5) An excavator or excavation industry representative.

8 (6) A designer or designer industry representative.

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

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

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

1 operations of the One Call System and a portion of the operation
2 costs levied on the One Call System's political subdivision and
3 municipal authority members. Failure to pay the fee shall
4 constitute a violation of this act and shall subject the
5 excavator, designer or operator to the enforcement authority of
6 the commission for the nonpayment.

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

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

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

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

1 concerns regarding the design or the project, the designer shall
2 negotiate in a timely manner with the facility owner the means
3 of obtaining the necessary data.

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

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

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

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

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

29 (8) To submit a report of alleged violation to the
30 commission through the One Call System not more than thirty

1 business days from the time the designer becomes aware that a
2 violation of this act may have been committed in association
3 with excavation or demolition work. The report of alleged
4 violation shall be in a form and manner as required by the
5 commission.

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

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

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

26 (2.2) To provide the One Call System with [specific] exact
27 information to identify the work site so that facility owners
28 might provide indications of their lines. An excavator shall be
29 deemed to have met the obligations of clause (2.1) if he calls
30 the One Call System, provides the work site and other required

1 information and receives a serial number.

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

29 (3.1) To comply with the requirements established by the One
30 Call System as determined by the board of directors regarding

1 the maximum area that a notification may cover.

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

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

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

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

1 owner's service shall be coordinated with the affected facility
2 owner in all cases.

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

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

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

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

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

4 (11.1) To assist a facility owner in determining involvement
5 of a facility owner's lines by disclosing additional available
6 information requested by the facility owner, including
7 dimensions and the direction of proposed excavations.

8 (11.2) If using horizontal directional drilling (HDD), at a
9 minimum, to utilize the best practices published by the HDD
10 Consortium.

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

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

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

1 to identify its facilities pursuant to this act, there shall be
2 no diminution of the facility owner's right of recovery.

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

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

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

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

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

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

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

1 consent. If the power is delegated pursuant to this clause, both
2 the excavator and the project owner shall be responsible for
3 providing the required notices.

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

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

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

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

25 (1) To utilize sufficient quality levels of subsurface
26 utility engineering or other similar techniques whenever
27 practicable to properly determine the existence and positions of
28 underground facilities when designing known complex projects
29 having an estimated cost of four hundred thousand dollars
30 (\$400,000) or more.

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

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

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

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

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

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

24 Section 4. Section 7.2 of the act, amended November 29, 2006
25 (P.L.1593, No.181), is repealed:

26 [Section 7.2. (a) Any person violating any of the
27 provisions of this act, except clauses (1) and (2) of section 2,
28 commits a summary offense and shall, upon conviction, be
29 sentenced to pay a fine of not less than two thousand five
30 hundred dollars (\$2,500) nor more than fifty thousand dollars

1 (\$50,000) or undergo imprisonment for not more than ninety days,
2 or both. The Attorney General of the Commonwealth or any
3 district attorney may enforce the provisions of this act in any
4 court of competent jurisdiction. The department, in consultation
5 with the Attorney General, may also enforce the provisions of
6 this act in any court of competent jurisdiction. A facility
7 owner may petition any court of competent jurisdiction to enjoin
8 any excavation or demolition work conducted in violation of this
9 act. Local law enforcement or emergency management personnel
10 may, in the interest of public safety, order excavators on a
11 site to stop further excavation if the excavation is being
12 conducted in violation of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (4) Where violations result in property damage of more than

1 ten thousand dollars (\$10,000), the administrative penalty may
2 not exceed five thousand dollars (\$5,000).

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

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

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

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

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

25 Section 7.8. (a) (Reserved).

26 (b) A Damage Prevention Committee shall be established as
27 follows:

28 (1) The commission shall establish a Damage Prevention
29 Committee.

30 (2) The committee shall consist of the following members,

1 appointed by the commission:

2 (i) The executive director of the commission, or his
3 designee.

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

6 (iii) One representative from each of the following
7 nonmunicipally owned or affiliated facility owner industries:
8 electric, natural gas or petroleum pipelines, telephone, water
9 or wastewater and cable television, nominated by facility owners
10 or affiliated organizations.

11 (iv) Three representatives of excavators, nominated by
12 excavators or affiliated organizations.

13 (v) One representative of municipal governments, nominated
14 by municipal governments or affiliated organizations.

15 (vi) One representative of municipal authorities, nominated
16 by municipal authorities or affiliated organizations.

17 (3) A person appointed to the committee must have expertise
18 with the operation of this act.

19 (4) A nomination under clause (2) (iii), (iv), (v) and (vi)
20 must be forwarded to the secretary of the commission. The
21 executive director of the commission shall provide recommended
22 candidates to the commission for approval.

23 (5) Except for an unexpired term or for committee members
24 under clause (2) (i) and (ii), the following shall apply:

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

26 (ii) Except for initial terms under clause (6), a committee
27 member's term shall be for a term of three years.

28 (6) The initial terms of committee members shall be as
29 follows:

30 (i) Two representatives of facility owners shall serve three

1 years, one representative shall serve two years and two
2 representatives shall serve one year.

3 (ii) One representative of excavators shall serve three
4 years, one representative shall serve two years and one
5 representative shall serve one year.

6 (iii) The representative of municipal governments shall
7 serve two years.

8 (iv) The representative of municipal authorities shall serve
9 three years.

10 (7) The commission member shall serve as the chairperson of
11 the committee and shall be a nonvoting member, except if the
12 chairperson's vote is necessary to break a tie. The
13 chairperson's attendance shall not be counted to establish a
14 quorum.

15 (8) At least six members of the committee who are present
16 shall constitute a quorum for the transaction of business. A
17 simple majority vote of committee members present at a meeting
18 shall be deemed to be the position of the committee.

19 (c) The committee shall regularly meet to carry out the
20 following purposes:

21 (1) Review a report of an alleged violation of this act and
22 damage prevention investigator findings and recommendations
23 concerning a violation.

24 (2) Issue a warning letter to a person, as deemed
25 appropriate by the committee or as recommended by the damage
26 prevention investigator.

27 (3) Issue an informal determination that imposes an
28 administrative penalty.

29 (4) Require a person to attend a damage prevention
30 educational program.

1 (5) Issue an informal determination that modifies or
2 dismisses a recommendation of commission staff.

3 (d) The following shall apply to alleged violations:

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

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

10 (ii) Appear before the committee to present its position.

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

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

24 (f) The committee shall have the following additional
25 duties:

26 (1) Upon the request of the commission, the committee shall
27 hold a special meeting to advise the commission on a matter
28 related to damage prevention of underground facilities and this
29 act.

30 (2) As soon as practical after establishment, the committee,

1 with input from the One Call System, shall develop and implement
2 bylaws. The bylaws shall:

3 (i) establish a schedule for the frequency of regular
4 meetings;

5 (ii) delineate the committee's practice and procedure
6 concerning the performance of duties assigned under this act and
7 commission orders and regulations; and

8 (iii) be approved by the commission.

9 (g) Except for willful misconduct, members of the committee
10 shall be immune, individually and jointly, from civil liability
11 for an act or omission done or made in performance of the
12 members' duties while serving as members of the committee.

13 (h) The commission shall have the following powers to carry
14 out the purposes of this act:

15 (1) To employ individuals.

16 (2) To issue orders.

17 (3) To promulgate regulations, if the commission promulgates
18 regulations which limit reporting to a specific type of
19 incident, including contact with a line, damage to a line or
20 line coating, personal injury, third-party damage and failure to
21 comply with this act, the commission may consider the resources
22 available for enforcement and other factors.

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

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

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

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

1 Law.

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

4 Section 7.9. (a) The Underground Utility Line Protection
5 Fund is established as a revolving fund to be used by the
6 commission for administering the enforcement of this act.

7 (b) The fund shall be comprised of:

8 (1) Administrative penalties collected by use of the
9 committee process under subsection (c).

10 (2) Funds received by the commission as a result of
11 enforcing this act.

12 (3) Federal or State grants received by the commission for
13 the purpose of this act.

14 (4) An annual assessment, if required under subclause (ii)
15 (A), paid by the One Call System for each fiscal year as
16 follows:

17 (i) Beginning on the effective date of this section the
18 following shall apply to the initial fiscal year, or a portion
19 of the initial fiscal year:

20 (A) An initial assessment of five hundred fifty thousand
21 dollars (\$550,000) shall be paid, which shall be prorated if the
22 effective date of this section occurs after the first day of the
23 initial fiscal year.

24 (B) Within ten days after the effective date of this
25 section, the commission shall, by registered or certified mail,
26 give notice to the One Call System of the amount assessed under
27 this subclause, which shall be paid by the One Call System
28 within ten days of receipt of the notice.

29 (ii) During each subsequent fiscal year:

30 (A) The annual assessment shall be calculated by subtracting

1 the amount of uncommitted money, as defined by generally
2 accepted accounting principles, present at the conclusion of the
3 prior fiscal year within the fund, from the current year's
4 projected program costs for commission enforcement of this act.

5 (B) The annual amount assessed to the One Call System may
6 not exceed five hundred fifty thousand dollars (\$550,000).

7 (C) Within thirty days of the start of each fiscal year, the
8 commission shall, by registered or certified mail, give notice
9 to the One Call System of the amount assessed under this
10 subclause. The One Call System shall pay:

11 (I) Fifty percent of the assessment to the commission within
12 thirty days of receipt of the notice.

13 (II) The balance of the assessment within one hundred eighty
14 days of receipt of the notice.

15 (c) Except as provided under subsection (d), administrative
16 penalties, grant money and assessments paid by the One Call
17 System shall be deposited into the fund. Interest earned on the
18 fund shall be credited to the fund. Any money remaining in the
19 fund at the end of the fiscal year shall not lapse and shall
20 remain in the fund.

21 (d) Administrative penalties collected through the issuance
22 of an adjudication by the commission under this act shall be
23 deposited in the General Fund.

24 (e) The following shall apply:

25 (1) Except as provided under clause (2), program costs for
26 commission enforcement of this act shall be a line item in the
27 commission's proposed budget and shall be subject to the review
28 and approval of the Governor and the General Assembly as
29 described under 66 Pa.C.S. § 510(a) (relating to assessment for
30 regulatory expenses upon public utilities).

1 (2) Program costs for commission enforcement of this act may
2 not be included within the amount assessed to public utilities
3 under 66 Pa.C.S. § 510. Program costs for commission enforcement
4 of this act shall be paid from the fund.

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

15 (b) The following shall apply:

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

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

19 (ii) if the violation results in injury, death or property
20 damage of twenty-five thousand dollars (\$25,000) or more, an
21 administrative penalty of not more than fifty thousand dollars
22 (\$50,000).

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

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

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

30 (iii) The degree of threat to the public safety and

1 inconvenience caused by the party's noncompliance.

2 (iv) The party's proposed modification to internal practices
3 and procedures to insure future compliance with statutes and
4 regulations.

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

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

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

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

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

20 (f) Nothing under this act shall be construed or interpreted
21 to do any of the following:

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

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

28 (g) A facility owner may petition a court of competent
29 jurisdiction to enjoin excavation or demolition work conducted
30 in violation of this act. Local law enforcement or emergency

1 management personnel may, in the interest of public safety,
2 order an excavator on a work site to stop further excavation if
3 the excavation is being conducted in violation of this act.

4 Section 6. Sections 8 and 39 of the act, amended or added
5 November 29, 2006 (P.L.1593, No.181), are amended to read:

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

17 Section 39. This act shall expire on December 31, [2016]
18 2021.

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

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

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

23 (ii) This section.

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