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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 445 Session of  
2015

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INTRODUCED BY BAKER, COHEN, PICKETT, WATSON, READSHAW, GILLEN,  
SAYLOR, EVERETT, GINGRICH, M. K. KELLER, MAJOR AND SONNEY,  
FEBRUARY 11, 2015

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REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, FEBRUARY 11, 2015

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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  
23 disconnected from a line.

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

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

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

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

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

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

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

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

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

30       ["Continuing property records" means a record required

1 pursuant to 66 Pa.C.S. § 1702 (relating to continuing property  
2 records).]

3 "Conventional oil and gas well" means a bore hole drilled for  
4 the purpose of producing oil or gas from a conventional  
5 formation. Irrespective of technology or design, the term  
6 includes any of the following:

7 (1) A well drilled to produce oil.

8 (2) A well drilled to produce natural gas from formations  
9 other than shale formations.

10 (3) A well drilled to produce natural gas from shale  
11 formations located above the base of the Elk Group or its  
12 stratigraphic equivalent.

13 (4) A well drilled to produce natural gas from shale  
14 formations located below the base of the Elk Group where natural  
15 gas can be produced at economic flow rates or in economic  
16 volumes without the use of vertical or nonvertical well bores  
17 stimulated by hydraulic fracture treatments or by using  
18 multilateral well bores or other techniques to expose more of  
19 the formation to the well bore.

20 (5) Irrespective of formation, a well drilled for collateral  
21 purposes, such as monitoring, geologic logging, secondary and  
22 tertiary recovery or disposal injection.

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

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

30 ["Department" means the Department of Labor and Industry of

1 the Commonwealth.]

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

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

9 "Excavation work" means the use of powered equipment or  
10 explosives in the movement of earth, rock or other material, and  
11 includes, but is not limited to, anchoring, augering,  
12 backfilling, blasting, boring, digging, ditching, drilling,  
13 driving-in, grading, plowing-in, pulling-in, ripping, scraping,  
14 trenching and tunneling, but does not include soft excavation  
15 technology such as vacuum, high pressure air or water, tilling  
16 of soil for agricultural purposes to a depth of less than  
17 eighteen inches[, the direct operations necessary or incidental  
18 to the purposes of finding or extracting natural resources,  
19 political subdivisions performing minor routine maintenance up  
20 to a depth of less than eighteen inches measured from the top of  
21 the edge of the cartway or the top of the outer edge of an  
22 improved shoulder, in addition to the performance of incidental  
23 de minimis excavation associated with the routine maintenance  
24 and the removal of sediment buildup, within the right-of-way of  
25 public roads or employees of the Department of Transportation  
26 performing within the scope of their employment work up to a  
27 depth of twenty-four inches beneath the existing surface within  
28 the right-of-way of a State highway], work performed by persons  
29 whose activities must comply with the requirements of and  
30 regulations promulgated under the act of May 31, 1945 (P.L.1198,

1 No.418), known as the Surface Mining Conservation and  
2 Reclamation Act, the act of April 27, 1966 (1st Sp.Sess.,  
3 P.L.31, No.1), known as The Bituminous Mine Subsidence and Land  
4 Conservation Act, or the act of September 24, 1968 (P.L.1040,  
5 No.318), known as the Coal Refuse Disposal Control Act, which  
6 relate to the protection of utility facilities, or the direct  
7 operations on the well pad following construction of the well  
8 pad, by or under the direction of the owner or operator of the  
9 well pad, and that are necessary or operations incidental to the  
10 extraction of oil or natural gas.

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

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

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

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

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

29 "Fiscal year" means the fiscal year utilized by the  
30 commission.

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

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

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

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

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

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

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

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

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

30 "Person" means an individual, partnership, corporation,

1 political subdivision, a municipal authority, the Commonwealth  
2 and its agencies and instrumentalities, or any other entity.

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

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

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

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

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

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

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

1 markers, and latitude and longitude.]

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

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

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

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

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

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

29 Section 1.1. The lawful start date shall be three business  
30 days through ten business days following notification to the One

1 Call System.

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

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

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

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

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

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

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

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

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

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

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 [scheduled] lawful start date of  
19 excavation:

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

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

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

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

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

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

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

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

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

1 board of directors.

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

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

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

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

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

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

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

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

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

30 Section 3. It shall be the duty of the One Call System [to

1 do the following]:

2 (1.1) To assign one or more serial numbers and the date that  
3 the work site may legally be excavated and to log the entire  
4 voice transaction on logging recorders in appropriate digital  
5 form and maintain these logs for five years. All records shall  
6 be indexed and available to the parties involved at a reasonable  
7 cost and at reasonable times set by the One Call System.

8 (1.2) [Perform] To perform the obligations, as set forth  
9 under this section, on behalf of the facility owner, excavator  
10 or designer as established by the board of directors of the One  
11 Call System.

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

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

29 (3) [Not more than ten business days after the receipt of a  
30 clear and specific request from the department, to provide

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

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

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

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

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

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

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

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

24 (c) (Reserved).

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

30 (1) The [Chairman of the Pennsylvania Public Utility

1 Commission] chairman or his designee.

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

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

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

6 (5) An excavator or excavation industry representative.

7 (6) A designer or designer industry representative.

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

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

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

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

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

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

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

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

27 (2.1) To forward a copy of the project plans to each  
28 facility owner who requests a copy. If a designer is unable to  
29 provide a copy because of security of the project or proprietary  
30 concerns regarding the design or the project, the designer shall

1 negotiate in a timely manner with the facility owner the means  
2 of obtaining the necessary data.

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

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

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

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

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

28 (8) To submit a report of alleged violation to the  
29 commission through the One Call System not more than thirty  
30 business days from the time the designer becomes aware that a

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

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

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

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

25 (2.2) To provide the One Call System with [specific] exact  
26 information to identify the work site so that facility owners  
27 might provide indications of their lines. An excavator shall be  
28 deemed to have met the obligations of clause (2.1) if he calls  
29 the One Call System, provides the work site and other required  
30 information and receives a serial number.

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

28 (3.1) To comply with the requirements established by the One  
29 Call System as determined by the board of directors regarding  
30 the maximum area that a notification may cover.

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

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

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

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

1 owner in all cases.

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

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

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

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

30 (11) [An excavator shall] To use the color white to mark a

1 proposed excavation work site when exact work site information  
2 cannot be provided.

3 (11.1) To assist a facility owner in determining involvement  
4 of a facility owner's lines by disclosing additional available  
5 information requested by the facility owner, including  
6 dimensions and the direction of proposed excavations.

7 (11.2) If using horizontal directional drilling (HDD), at a  
8 minimum, to utilize the best practices published by the HDD  
9 Consortium.

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

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

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

1 no diminution of the facility owner's right of recovery.

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

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

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

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

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

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

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

1 the excavator and the project owner shall be responsible for  
2 providing the required notices.

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

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

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

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

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

30 (2) To timely respond to notifications received from

1 excavators pursuant to [clause (15) of section 5] section 5(15).

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

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

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

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

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

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

25 [Section 7.2. (a) Any person violating any of the  
26 provisions of this act, except clauses (1) and (2) of section 2,  
27 commits a summary offense and shall, upon conviction, be  
28 sentenced to pay a fine of not less than two thousand five  
29 hundred dollars (\$2,500) nor more than fifty thousand dollars  
30 (\$50,000) or undergo imprisonment for not more than ninety days,

1 or both. The Attorney General of the Commonwealth or any  
2 district attorney may enforce the provisions of this act in any  
3 court of competent jurisdiction. The department, in consultation  
4 with the Attorney General, may also enforce the provisions of  
5 this act in any court of competent jurisdiction. A facility  
6 owner may petition any court of competent jurisdiction to enjoin  
7 any excavation or demolition work conducted in violation of this  
8 act. Local law enforcement or emergency management personnel  
9 may, in the interest of public safety, order excavators on a  
10 site to stop further excavation if the excavation is being  
11 conducted in violation of this act.

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

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

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

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

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

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

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

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

30 (4) The party's plans and procedures to insure future

1 compliance with statutes and regulations.

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

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

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

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

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

29 (4) Where violations result in property damage of more than  
30 ten thousand dollars (\$10,000), the administrative penalty may

1 not exceed five thousand dollars (\$5,000).

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

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

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

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

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

24 Section 7.8. (a) A Damage Prevention Committee shall be  
25 established as follows:

26 (1) The commission shall establish a Damage Prevention  
27 Committee.

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

30 (i) The executive director of the commission, or his

1 designee.

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

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

9 (iv) Three representatives of excavators, nominated by  
10 excavators or affiliated organizations.

11 (v) One representative of municipal governments, nominated  
12 by municipal governments or affiliated organizations.

13 (vi) One representative of municipal authorities, nominated  
14 by municipal authorities or affiliated organizations.

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

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

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

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

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

26 (6) The initial terms of committee members shall be as  
27 follows:

28 (i) Two representatives of facility owners shall serve three  
29 years, one representative shall serve two years and two  
30 representatives shall serve one year.

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

4 (iii) The representative of municipal governments shall  
5 serve two years.

6 (iv) The representative of municipal authorities shall serve  
7 three years.

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

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

17 (b) The committee shall regularly meet to carry out the  
18 following purposes:

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

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

25 (3) Issue an informal determination that imposes an  
26 administrative penalty.

27 (4) Require a person to attend a damage prevention  
28 educational program.

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

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

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

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

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

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

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

22 (e) The committee shall have the following additional  
23 duties:

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

28 (2) As soon as practical after establishment, the committee,  
29 with input from the One Call System, shall develop and implement  
30 bylaws. The bylaws shall:

1 (i) establish a schedule for the frequency of regular  
2 meetings;

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

6 (iii) be approved by the commission.

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

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

13 (1) To employ individuals.

14 (2) To issue orders.

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

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

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

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

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

30 (B) The act of June 25, 1982 (P.L.633, No.181), known as the

1 "Regulatory Review Act."

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

5 (b) The fund shall be comprised of:

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

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

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

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

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

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

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

27 (ii) During each subsequent fiscal year:

28 (A) The annual assessment shall be calculated by subtracting  
29 the amount of uncommitted money, as defined by generally  
30 accepted accounting principles, present at the conclusion of the

1 prior fiscal year within the fund, from the current year's  
2 projected program costs for commission enforcement of this act.

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

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

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

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

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

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

22 (e) The following shall apply:

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

29 (2) Program costs for commission enforcement of this act may  
30 not be included within the amount assessed to public utilities

1 under 66 Pa.C.S. § 510. Program costs for commission enforcement  
2 of this act shall be paid from the fund.

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

13 (b) The following shall apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Section 39. This act shall expire on December 31, [2016]  
16 2021.

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

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

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

21 (ii) This section.

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