

No. 1996-187

AN ACT

HB 2627

Amending the act of December 10, 1974 (P.L.852, No.287), entitled "An act to protect the public health and safety by preventing excavation or demolition work from damaging underground lines used in providing electricity, communication, gas, oil delivery, oil product delivery, sewage, water or other service; imposing duties upon the providers of such service, recorders of deeds, and persons and other entities preparing drawings or performing excavation or demolition work; and prescribing penalties," further providing for definitions, for duties of facility owners, for a One Call System, and for designers and contractors for a One Call System; and providing for penalties.

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

Section 1. Sections 1 and 2 of the act of December 10, 1974 (P.L.852, No.287), referred to as the Underground Utility Line Protection Law, amended December 12, 1986 (P.L.1574, No.172) and December 12, 1991 (P.L.364, No.38), are amended to read:

Section 1. As used in this act:

["Communications expenses" means the direct telecommunications costs incurred by a one-call system in notifying a user of a potential excavation, including any costs billed directly to a user by a telecommunications company other than a one-call system.]

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

"Contractor" means any person who or which performs excavation or demolition work for himself or for another person.

"Demolition work" means the [use of powered equipment or explosives to destroy or raze any structure.] *partial or complete destruction of a structure, by any means, served by or adjacent to a line or lines.*

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

"Emergency" means [any condition constituting] *a sudden or unforeseen occurrence involving* a clear and [present] *immediate* danger to life or property [by reason of escaping gas, exposed wires, or other similar and], *including, but not limited to*, serious breaks or defects in a [user's] *facility owner's* lines.

"Excavation work" means the use of powered equipment or explosives in the movement of earth, rock or other material, and includes but is not limited to anchoring, augering, backfilling, blasting, *boring*, digging, ditching,

drilling, driving-in, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling[; but shall not include such use in agricultural operations nor operations necessary or incidental to the purposes of finding or extracting natural resources including all well site operations and shall not include work within a State highway right-of-way, performed by employes of the Commonwealth acting within the scope of their employment, which does not extend more than twenty-four inches beneath the existing surface or political subdivisions performing minor routine maintenance within the right-of-way of roads within their jurisdiction.], *but does not include soft excavation technology such as vacuum, high pressure air or water, tilling of soil for agricultural purposes to a depth of less than eighteen inches, operations necessary or incidental to the purposes of finding or extracting natural resources, political subdivisions performing minor routine maintenance up to a depth of less than eighteen inches within the right-of-way of roads or employes of the Department of Transportation performing within the scope of their employment work up to a depth of twenty-four inches beneath the existing surface within the right-of-way of a State highway.*

“Facility owner” means the public utility or agency, political subdivision, municipality, authority, rural electric cooperative or other person or entity who or which owns or operates a line. The term does not include the Department of Transportation within a State highway right-of-way.

“Line” or “facility” means an underground conductor or underground [facility] pipe or structure used in providing electric or communication service, or an underground pipe used in carrying or providing gas, oil or oil product [delivery], sewage, water or other service to one or more consumers or customers of such service and the appurtenances thereto[. The term does not include storm drainage facilities which are located within a public highway right-of-way. The term shall not include oil and gas production and gathering pipeline systems designed principally to collect oil or gas production from wells located in this Commonwealth provided such systems are marked or staked where they cross a public highway right-of-way.], regardless of whether such line or structure is located on land owned by a person or public agency or whether it is located within an easement or right-of-way. The term includes storm drainage and traffic loops.

“Minor routine maintenance” means shaping of or adding dust palliative to unpaved roads, [patching of] removal and application of patches to the surface or base of flexible base, rigid base or rigid surface roads by either manual or mechanized method to the extent of the existing exposed base material, crack and joint sealing, adding dust palliative to road shoulders, patching of shoulders and shoulder bases by either manual or mechanized methods to the extent of the existing exposed base, and cleaning of inlets and drainage pipes and ditches.

["One-call system" means a communication system established within this Commonwealth to provide a single telephone number for contractors or designers or any other person covered by this act to call to notify users of underground lines and pipe of the caller's intent to use powered equipment for excavating, tunneling, demolition or similar work. A one-call system shall be incorporated and operated as a nonprofit corporation pursuant to 15 Pa.C.S. Part III (relating to corporations not-for-profit).]

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

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

"Owner" means any person who or which engages a contractor for [a] construction or *any* other project which requires excavation or demolition work as herein defined.

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

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

"Site" means the specific place [or places] where excavation or demolition work is being or is *planned* to be performed.

"Tolerance zone" means [that] *the horizontal* space within eighteen inches [horizontally from] *of* the outside wall *or edge* of a line *or facility*.

["User" means the public utility, political subdivision, municipality, authority, rural electric cooperative or its named representative trade association, or other person or entity who or which owns or operates a line. The term does not include the Commonwealth or its agencies.]

"Working day" means any day except a Saturday, Sunday or legal holiday prescribed by act of the General Assembly.

Section 2. It shall be the duty of each [user] *facility owner*:

(1) *To be a member of and* give written notice to [the recorder of deeds of each county in which its lines are located and to any one-call system serving that county, which notice shall state:] *a One Call System. Such notice shall be in a form acceptable to a One Call System and include:*

(i) *the legal name of the [user] facility owner;*

(ii) *the names of the [county's] counties and municipalities, down to and including wards in Philadelphia, Pittsburgh, Allentown and Erie, in which its lines are located;*

(iii) *the [user's office] facility owner's address (by street, number and political subdivision), and the telephone number and fax number, if*

available, to which inquiries may be directed as to the location of such lines; and

(iv) at the option of any **[municipal user] facility owner**, the street identifications, within or outside of the municipality, **for location of its lines] in which its lines are located**. This **[identification also] information shall be in a form acceptable to a One Call System** and shall include the names of streets bounding, crossing or adjacent to the **[user's] facility owner's** lines. Upon receipt of a signed street identification list from a **[municipal user] facility owner, [the one-call system] a One Call System** shall provide the **[municipal user] facility owner** with notification within the boundaries described in the street identification list. All **[municipal users] facility owners** which opt for this service shall agree to indemnify and hold harmless **[the recorder of deeds and the one-call system] a One Call System** for any street identity errors and omissions on the part of the **[user] facility owner or the contractor or designer** providing street identifications.

(2) To give to a *One Call System* like written notice within five working days after any of the matters stated in the last previous notice shall have changed.

[(3) To accompany each such written notice to the recorder of deeds with a filing fee of five dollars (\$5) payable to and for the use of the county. No fee is required to accompany the written notice supplied to any one-call system.]

(4) Not more than ten working days after receipt of a request therefor from a designer who identifies the site of excavation or demolition work for which he is preparing a drawing, to initially respond to his request, **[orally or by mail,]** for information as to the position and type of the **[user's] facility owner's** lines at such site based on the information currently in the **[user's] facility owner's** possession. **[If there are no lines at the site, the user] The facility owner** shall so advise the person making the request; **if there are lines at the site, the user shall follow up such initial response.** **In either instance, such response shall be in writing when requested by the designer.] of the facility owner's status at the site through a One Call System.**

(5) Not more than two working days after receipt of a timely request therefor from a contractor or operator who identifies the site of excavation or demolition work he intends to perform:

(i) To mark, stake, locate or otherwise provide the position of the **[user's] facility owner's** underground lines at the site within eighteen inches horizontally from the outside wall of such line in a manner so as to enable the contractor, where appropriate, to employ prudent techniques, which may include hand-dug test holes, to determine the precise position of the underground **[user's] facility owner's** lines. This shall be done to the extent such information is available in the **[user's] facility owner's** records or by use of standard locating techniques other than excavation.

(i.1) A facility owner may identify the location of a known facility connected to its facilities, but not owned or operated by the facility owner, as a helpful guide to the excavator or owner. The identification shall not be deemed to impose any liability upon the facility owner for the accuracy of the private facility identification.

(ii) [A user] A *facility owner*, at its option, [timely] may *timely* elect to excavate around its facilities in fulfillment of this subparagraph.

[(iii) In marking the approximate position of underground utilities, the user shall follow the color coding described herein:

Utility and Type of Product	Specific Group Identifying Color
Electric Power Distribution and Transmission	Safety Red
Municipal Electric Systems	Safety Red
Gas Distribution and Transmission	High Visibility Safety Yellow
Oil Distribution and Transmission	High Visibility Safety Yellow
Dangerous Materials, Product Lines, Steam Lines	High Visibility Safety Yellow
Telephone and Telecommunications	Safety Alert Orange
Police and Fire Communications	Safety Alert Orange
Cable Television	Safety Alert Orange
Water Systems	Safety Precaution Blue
Slurry Systems	Safety Precaution Blue
Sewer Lines	Safety Green

(iv) If there are no lines at the site, make a reasonable effort to so advise the person making the request, providing the request is made in the time frame set forth in clause (3) of section 5 or notify the one-call system to which it belongs.

(6) Upon receipt of a request pursuant to clauses (4) or (5), to assign such request a serial number, inform the requestor of such number, and to maintain a register showing the name, address and telephone number of the requestor, the site to which the request pertains, and the assigned serial number.

(7) The one-call system shall perform the obligations, as set forth under this section, on behalf of the user and under circumstances as established by the board of directors of the one-call system.]

(v) To respond to all notices through a One Call System, provided the request is made in the time frame set forth under this act.

(vi) In marking the approximate position of underground lines or facilities, the facility owner shall follow American Public Works Association and Utility Locating and Coordination Council Temporary Marking Standards. Should the American Public Works Association and Utility

Locating and Coordination Council Temporary Marking Standards be amended, the amended standards shall be applied and followed.

(vii) To respond to emergencies as soon as practical following receipt of notification of such emergency.

(8) Operation costs for a One Call System shall be shared, in an equitable manner for services received, by facility owner members as determined by a One Call System's board of directors. Political subdivisions with a population of less than two thousand persons or municipal authorities having an aggregate population in the area served by the municipal authority of less than five thousand persons shall be exempt from payment of any service fee.

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

Section 2. Section 3 and 4 of the act, amended December 12, 1986 (P.L.1574, No.172), are amended to read:

Section 3. It shall be the duty of [the recorder of deeds of each county:

(1) To ascertain from the notices received pursuant to clause (1) of section 2, the identity of all users] a One Call System to do the following:

(1.1) To assign a serial number and log the entire voice transaction on logging recorders in appropriate digital form and maintain these logs for five years. All records shall be indexed and available to the parties involved at a reasonable cost and at reasonable times set by a One Call System.

(1.2) Perform the obligations, as set forth under this section, on behalf of the facility owner, contractor or designer as established by the board of directors of a One Call System.

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

(2) [To make] To make such lists available for public inspection via the county recorder of deeds without charge[, and to provide a copy of the list pertaining to any municipality to anyone who requests it for a copy fee of one dollar (\$1) per page payable to and for the use of the county]. A maximum copy fee of no more than twenty-five dollars (\$25) may be charged per county list. Each [recorder shall provide a copy of such list and revisions thereto, at no charge, to any one-call system servicing any

portion of such recorder's county.] *facility owner change shall be forwarded, at no charge, to the respective county recorder of deeds for public access. The recorder of deeds shall make such list available for public inspection.*

Section 4. It shall be the duty of each designer preparing a drawing requiring excavation or demolition work within the Commonwealth:

(1) To inspect or obtain a copy of the list of users prescribed by section 3.]

(2) To request the *line and facility* information prescribed by section 2, clause (4) from [each user's office designated on such list,] *a One Call System* not less than ten nor more than ninety working days before final design is to be completed. This clause is not intended to prohibit designers from obtaining such information more than ninety days before final design is to be completed[.]; *however, they shall state in their requirements that such work is preliminary.*

(3) To show upon the drawing the position and type of each *facility owner's* line, [as] derived pursuant to the request made as required by clause (2), and the name of the [user] *facility owner*, and the [user's] *facility owner's* designated office address and *the* telephone number as shown on the list referred to in [clause (1)] *section 3.*

(4) [Make] *To make* a reasonable effort to prepare the construction drawings to avoid damage to and minimize interference with a [user's] *facility owner's* facilities in the construction area *by maintaining an eighteen-inch clearance of the facility owner's facilities.*

(5) A designer shall be deemed to have met the obligations of [clauses (1) and (2)] *clause (2)* if he calls [a one-call system serving the location where the excavation is to be performed.] *a One Call System and shows as proof the serial number of one call notice on drawings. The designer shall also show the toll-free number of a One Call System on the drawing near his serial number.*

(6) If, after receiving information [from a one-call system or directly from a user] *from the facility owners*, the designer decides to change the [location] *site* of a proposed excavation, the obligations imposed by this section shall apply to the new [location] *site.*

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

Section 3. Sections 5 and 7.1 of the act, amended or added December 12, 1986 (P.L.1574, No.172) and December 12, 1991 (P.L.364, No.38), are amended to read:

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

[(1) To ascertain types of users' lines at such site, either by inspection of the designer's drawing made pursuant to section 4 or, if there be no such drawing, then by the same manner as that prescribed for a designer in clauses (1) and (2) of section 4.

(2) To secure all necessary municipal permits relating to road occupancy prior to commencing excavation.]

(2.1) To request the location and type of facility owner lines at each site by notifying the facility owner through a One Call System. Notification shall be not less than three nor more than ten working days in advance of beginning excavation or demolition work.

(2.2) To provide a One Call System with specific information to identify the site so that facility owners might provide indications of their lines. A contractor shall be deemed to have met the obligations of clause (2.1) if he calls a One Call System, provides the required information and receives a serial number.

(3) [Not less than three nor more than ten working days prior to the day of beginning such work, to notify each user of the contractor's intent to perform such work at its site or sites, and to request the information prescribed by clause (5) of section 2, from each such user's office designated on the designer's drawing or on the list of users obtained pursuant to clause (1) of section 4.] If a contractor intends to perform work at multiple sites or over a large area, he shall take reasonable steps to work with [users] facility owners, including a preconstruction meeting, so that they may locate their facilities at a time reasonably in advance of the actual start of excavation or demolition work [at each site. A contractor shall be deemed to have given the notice described in this clause if he calls a one-call system serving the location where the excavation is to be performed.] for each phase of the work. After commencement of excavation or demolition work, the contractor shall be responsible for protecting and preserving the staking, marking or other designation until no longer required for proper and safe excavation or demolition work at or near the underground facility, or by calling for an additional relocation in the event that the previous markings have been compromised or eliminated.

(4) To exercise due care; and to take all reasonable steps necessary to avoid injury to or otherwise interfere with all lines where positions have been provided to the contractor by the [users] facility owners pursuant to clause (5) of section 2. Within the tolerance zone or if insufficient information is available pursuant to clause (5) of section 2, the contractor shall employ prudent techniques, which may include hand-dug test holes, to ascertain the precise position of such facilities, which shall be paid for by the owner pursuant to [subsection (e) of section 7.1.] clause (15) of this section.

(5) If the [user] facility owner fails to respond to the contractor's timely request within the two work days as provided under clause (5) of section 2 or the [user] facility owner notifies the contractor that the line cannot be marked within the time frame and a mutually agreeable date for marking

cannot be arrived at, the contractor may proceed with excavation[, **providing he exercises due care**] *at the end of three working days, provided he exercises due care* in his endeavors, subject to the limitations contained in [clause (6)] *this clause and clauses (2.1) through (4)*.

(6) To inform each operator employed by [him at the location] *the contractor at the site* of such work of the information obtained by [him] *the contractor* pursuant to clauses [(1), (3) and (4)] *(2.1) through (5)*, and the contractor and operator shall:

(i) Plan the excavation or demolition to avoid damage to or minimize interference with a [user's] *facility owner's* facilities in the construction area. Excavation or demolition work which requires temporary or permanent interruption of a [user's] *facility owner's* service shall be coordinated with the affected [user] *facility owner* in all cases.

(ii) After consulting with a [user] *facility owner*, provide such support *and mechanical protection* for known [user's] *facility owner's* lines [in] *at the construction [area] site during the excavation or demolition work*, including during backfilling operations, as may be reasonably necessary for the protection of such [utilities] *lines*.

(7) To report immediately to the [user] *facility owner* any break or leak on its lines, or any dent, gouge, groove or other damage to such lines or to their coating or cathodic protection, made or discovered in the course of the excavation or demolition work.

(8) To alert immediately the occupants of premises as to any emergency that such person may create or discover at or near such premises.

(9) The time requirements of clause [(3)] *(2.1)* shall not apply to a [user] *facility owner* or contractor performing excavation or demolition work in an emergency, as defined in section 1; nonetheless, all [users must] *facility owners shall* be notified as soon as possible before, during or after excavation or demolition, depending upon the circumstances.

[(10) A contractor or operator should give such notices as are called for above through a one-call system, as available.]

(11) A contractor shall use the color white to mark a proposed excavation site when exact site information cannot be provided.

(12) The following standards shall be applied in determining whether a contractor [or designer] shall incur any obligation or be subject to liability as a result of a contractor's demolition or excavation work damaging a [user's] *facility owner's* facilities:

(i) [Neither a] *The* contractor [nor a designer] who has complied with the terms of this act and who was not otherwise negligent shall *not* be subject to liability or incur any obligation to [users] *facility owners*, operators, owners or other persons who sustain injury to person or property as a result of the contractor's excavation or demolition work damaging a [user's] *facilities] facility owner's lines*.

(ii) Where a contractor [or designer] has failed to comply with the terms of this act or was otherwise negligent, and the [user] *facility owner or*

designer has misidentified, mislocated or failed to identify its facilities pursuant to this act, then in computing the amount of reimbursement to which the [user] *facility owner* is entitled, the cost of repairing or replacing its facilities shall be diminished in the same proportion that the [user's] *facility owner's or designer's* misidentification, mislocation or failure to identify [its] *the* facilities contributed to the damage. Should the [user] *facility owner or designer* not have misidentified, mislocated or failed to identify its facilities pursuant to this act, there shall be no diminution of the [user's] *facility owner's* right of recovery.

[(iii) Where a contractor or designer has failed to comply with the terms of this act or was otherwise negligent, and the user has misidentified, mislocated or failed to identify its facilities pursuant to this act, then in computing the amount of damages to which the contractor or designer is entitled from the user, the contractor's or designer's total damages shall be diminished in the same proportion that the contractor's or designer's failure to comply with the terms of this act and/or other negligence contributed to the damages. Should the contractor or designer not have failed to comply with the terms of this act or been otherwise negligent, there shall be no diminution of the contractor's or designer's right of recovery.]

(13) If, after receiving information from [a one-call system] *a One Call System* or directly from a [user] *facility owner*, the contractor decides to change the location, *scope or duration* of a proposed excavation, the obligations imposed by this section shall apply to the new location.

(14) *If a contractor removes its equipment and vacates a worksite for more than two working days, he shall renotify a One Call System unless other arrangements have been made directly with the facility owners involved in his worksite.*

(15) *When the information required from the facility owner under clause (4)(1) of section 2 cannot be provided or it is reasonably necessary for the contractor to ascertain the precise location of any line by prudent techniques, which may include hand-dug test holes, vacuum excavation or other similar devices, the contractor shall promptly notify the owner or the owner's representative, either orally or in writing. After giving such notice, the contractor shall be entitled to compensation from the owner for this additional work as provided in the latest edition of the Pennsylvania Department of Transportation Form 408 specifications for extra work performed on a force account basis. The provisions of this subsection shall not be deemed to limit any other rights which the contractor has under its contract with the owner or otherwise.*

Section 7.1. [(a) All users shall be required to be members of a one-call system. Operation costs for a one-call system shall be shared, in an equitable manner for services received, by user members. Political subdivisions with a population of less than two thousand persons or municipal authorities having an aggregate population in the area served

by the municipal authority of less than five thousand persons shall be exempt from payment of any service fee other than for actual communications to the political subdivision.]

(b) [(1) A one-call system] A *One Call System* shall be governed by a board of directors, to be chosen by the [users] *facility owners*. No less than twenty percent of the seats on the board shall be held by municipalities or municipal authorities[, including the Commonwealth]. *The board shall include the following:*

(1) *The Chairman of the Pennsylvania Public Utility Commission or his designee.*

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

(3) *The Secretary of Labor and Industry or his designee.*

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

(5) *A contractor or industry representative.*

(6) *A designer or industry representative.*

[(2)] (b.1) All fees are to be [based on the latest available audited cost factors] *set by the board of directors and shall be based on the latest annual audited cost factors of a One Call System*. Fees shall be set and adjusted to a rate not more than five percent above the audited cost factor plus the current average published Consumer Price Index for Pennsylvania. Costs of capital improvements may be added, provided the improvement receives a majority vote of the board of directors.

(c) [(1)] The Auditor General, for the purposes set forth in [clause (2)] *subsection (c.1)*, and any contractor, [user] *facility owner* or member of [a one-call system] *a One Call System* shall have the right at any time to inspect and copy any record, book, account, document or any other information relating to the provision of [one-call] *one call* services by [the one-call system or by a person with whom the one-call system contracts for the provision of such services in Pennsylvania] *a One Call System at his own cost*.

[(2)] (c.1) The Auditor General shall conduct [an annual] *a biennial* performance and financial audit of [each one-call system. If a one-call system does not provide the actual one-call services, the Auditor General shall also conduct such an audit of the person with whom the one-call system contracts for provision of one-call services in Pennsylvania] *a One Call System*. A copy of [any] *the* audit conducted by the Auditor General under this paragraph shall be submitted to the General Assembly no later than one hundred and eighty days following the end of the [fiscal year of the one-call system or person being audited.] *audit period*. *The actual cost of reasonable expenses incurred by the Auditor General in performing his obligations under this section shall be reimbursed by a One Call System. Such fees shall not be inconsistent with those of commercial auditing firms for similar work.*

[(3) Each one-call system]

(c.2) A *One Call System* shall submit an annual report to its [users and] members, and a copy of the report shall be submitted to the General Assembly.

(d) If a user fails to become a member of a one-call system in violation of this act and a line or lines of such nonmember user are damaged by a contractor by reason of the contractor's failure to notify the user because the user was not a member of a one-call system serving the location where the damage occurred, such user shall have no right of recovery from the contractor of any costs associated with the damage to its lines. The right herein granted shall not be in limitation of any other rights of the contractor.

(e) When the information required from the user under section 2 cannot be provided or it is reasonably necessary for the contractor to ascertain the location of any line by prudent techniques, which may include hand-dug test holes, the contractor shall promptly notify the owner or the owner's representative, either orally or in writing. After giving such notice, the contractor shall be entitled to compensation from the owner for this additional work on the basis as provided in the latest edition of the Pennsylvania Department of Transportation Form 408 specifications for extra work performed on a force account basis, if the owner is the Commonwealth or a political subdivision or municipal authority, or public utility. Otherwise, payment will be made as provided in the contract between the parties. The provisions of this subsection shall not be deemed to limit any other rights which the contractor has under its contract with the owner or otherwise.

(f) No user shall be liable for any costs or expenses of a one-call system which were incurred prior to such user becoming a member, unless such costs were incurred on the user's behalf in anticipation of the user's membership.]

(g) Any contractor, designer or operator who proposes to commence excavation or demolition work and requests information of [the one-call system] a *One Call System* shall be charged a fee for the service received from [the one-call system] a *One Call System*. Such fee shall be used to offset the operation cost levied on the political subdivision and municipal authority members *in lieu of additional fees charged for locations specifically related to this act*.

Section 4. Section 7.2 of the act, added December 12, 1986 (P.L.1574, No.172), is amended to read:

Section 7.2. (a) Any person violating any of the provisions of this act, except [section 7.1] *clause (1) of section 2*, shall, upon conviction in a summary proceeding, be sentenced to pay a fine of not less than [five hundred dollars (\$500)] *two thousand five hundred dollars (\$2,500)* nor more than [two thousand five hundred dollars (\$2,500)] *twenty-five thousand dollars (\$25,000)* or undergo imprisonment for not more than ninety days, or both. A violation of [section 7.1] *clause (1) of section 2* shall

be a civil offense punishable by a fine of not more than five hundred dollars (\$500) per day for each day of the offense. The Attorney General of the Commonwealth or any district attorney *or magistrate* may enforce the provisions of this act in any court of competent jurisdiction [and shall act upon the petition of any user. A user]. *The Department of Labor and Industry, in consultation with the Attorney General, may also enforce the provisions of this act in any court of competent jurisdiction. A facility owner may petition any court of competent jurisdiction to enjoin any excavation or demolition work conducted in violation of this act. This act does not affect any civil remedies for personal injury or property damage except as otherwise specifically provided for in this act.*

(b) Fines shall be determined according to the following schedule:

(1) Where damages or violations have not exceeded three thousand dollars (\$3,000), the civil penalty shall not exceed three thousand dollars (\$3,000).

(2) Where violations result in property damage of more than three thousand dollars (\$3,000), a civil penalty of not more than five thousand dollars (\$5,000).

(3) For violations which result in personal injury or death, a civil penalty not to exceed twenty-five thousand dollars (\$25,000).

(c) The following factors shall be considered in determining the civil penalty to be assessed:

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

(2) The amount of damage caused.

(3) The degree of threat to the public safety and inconvenience caused.

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

(d) All fines recovered under this section shall be payable to the Attorney General, district attorney, magistrate or the Department of Labor and Industry, whichever brought the action. To the extent that the expenses incurred by the Department of Labor and Industry in enforcing this act exceed the fines collected by the Department of Labor and Industry under this section, the Department of Labor and Industry may assess a charge for the remaining reasonable expenses from a One Call System pursuant to a written agreement between the parties.

Section 5. Section 7.4 of the act is repealed.

Section 6. The act is amended by adding sections to read:

Section 7.5. In addition to the provisions of section 7.2, the Secretary of Labor and Industry or his designee may issue warnings to those violating any provision of this act and may issue a summary offense citation of one hundred dollars (\$100) to five hundred dollars (\$500) to any person receiving more than three warnings in a calendar year.

Section 7.6. This act shall not apply to any of the following pipeline systems and facilities:

(1) Oil and gas production or gathering pipeline systems constructed with pipe measuring less than three inches inside diameter which are designed to collect and transport crude oil or natural gas from the wellhead to the point of custody transfer, provided such systems are permanently marked or staked where they cross public highway rights-of-way or the boundary of property which is owned in fee by the owner of the gathering pipeline system.

(2) Any continuous one-mile length of a crude oil or natural gas production or gathering pipeline system constructed with pipe measuring three inches inside diameter or larger which is designed principally to collect and transport crude oil or natural gas from the wellhead to the point of custody transfer where no more than fifty buildings intended for permanent residential occupancy are located within two hundred twenty yards on either side of the center line of the one-mile length of pipeline.

Section 7.7. This act shall expire on December 31, 2006.

Section 7. This act shall take effect immediately.

APPROVED—The 19th day of December, A.D. 1996.

THOMAS J. RIDGE