

No. 1986-172

## AN ACT

HB 1735

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 requirements for excavation or demolition work; and providing for a termination date for the act.

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

Section 1. Sections 1, 2, 3, 4, 5 and 6 of the act of December 10, 1974 (P.L.852, No.287), referred to as the Underground Utility Line Protection Law, 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.**

**"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.**

**"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 clear and present danger to life or property by reason of escaping gas, exposed wires, or other *similar and serious* breaks or defects in a user'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, digging, ditching, drilling, *driving-in*, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling; but shall not include such use in agricultural operations [or for the purpose] *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.***

**“Line”** means an underground conductor *or underground facility* 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.*

**“Minor routine maintenance”** means *shaping of or adding dust palliative to unpaved roads, patching of 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).*

**“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 other project which requires excavation or demolition work as herein defined.*

**“Person”** means an individual, partnership, corporation, [governmental agency] *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 to be performed.*

**“User”** means the public utility, [municipal corporation,] *political subdivision, municipality, authority, rural electric cooperative or its named representative trade association, or other person or entity who or which [uses] owns or operates a line [to provide service to one or more consumers]. 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:

(1) To give written notice to the recorder of deeds of each county in which its lines are located, which notice shall state:

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

(iii) the user's office address (by street, number and political subdivision), and the telephone number to which inquiries may be directed as to the location of such lines.

(2) To give 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 with a filing fee of five dollars (\$5) payable to and for the use of the county.

(4) Not more than **[two]** *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 **[approximate location]** *position* and type of the user's lines at such site *based on the information currently in the user's possession. If there are no lines at the site, the user 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.*

(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[, to inform him of:

(i) the location of any of the user's lines at such site;

(ii) the cooperative steps which the user may take, either at or off the excavation or demolition site, to assist him in avoiding damage to its lines;

(iii) suggestions for procedures that might be followed in avoiding such damage.]:

(i) *To mark, stake, locate or otherwise provide the position of the user'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 lines. This shall be done to the extent such information is available in the user's records or by use of standard locating techniques other than excavation.*

(ii) *A user, at its option, timely may 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:*

<i>Utility and Type of Product</i>	<i>Specific Group Identifying Color</i>
<i>Electric Power Distribution and Transmission</i>	<i>Safety Red</i>
<i>Municipal Electric Systems</i>	<i>Safety Red</i>
<i>Gas Distribution and Transmission</i>	<i>High Visibility Safety Yellow</i>

<i>Oil Distribution and Transmission</i>	<i>High Visibility Safety Yellow</i>
<i>Dangerous Materials, Product Lines, Steam Lines</i>	<i>High Visibility Safety Yellow</i>
<i>Telephone and Telecommunications</i>	<i>Safety Alert Orange</i>
<i>Police and Fire Communications</i>	<i>Safety Alert Orange</i>
<i>Cable Television</i>	<i>Safety Alert Orange</i>
<i>Water Systems</i>	<i>Safety Precaution Blue</i>
<i>Slurry Systems</i>	<i>Safety Precaution Blue</i>
<i>Sewer Lines</i>	<i>Safety Green</i>

(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 (2) 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.*

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 having lines in each [political subdivision,] *municipality, including wards as indicated in subclause (ii) of clause (1) of section 2,* and to maintain, for each [political subdivision] *municipality,* a list [showing as to such users the information prescribed by said subsection] *containing the information as required to be submitted by the user. Such list shall be updated as revised information is received from the users.*

(2) To make such lists available for public inspection without charge, and to provide a copy of the list [for] *pertaining to any [political subdivision] 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 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.*

Section 4. It shall be the duty of each designer preparing a drawing requiring excavation or demolition work [at a site] within [a political subdivision] *the Commonwealth:*

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

(2) To request the information prescribed by section 2, clause (4) from each user's office designated on such list, *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.*

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

(4) *Make a reasonable effort to prepare the construction drawings to avoid damage to and minimize interference with a user's facilities in the construction area.*

(5) *A designer shall be deemed to have met the obligations of clauses (1) and (2) if he calls a one-call system serving the location where the excavation is to be performed.*

Section 5. It shall be the duty of each contractor who intends to perform excavation or demolition work **[at a site within a political subdivision]** *within this Commonwealth:*

(1) To ascertain **[the location and type]** *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)]~~ (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 **[subclauses (ii) and (iii) of]** 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 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.*

(3) To inform each operator, employed by him at the site of such work, of the information obtained by him pursuant to clauses (1) and (2) of this section.

(4) To report immediately to the user 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.

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

(6) The requirement of clauses (1), (2) and (3) shall not apply to a user or contractor performing excavation or demolition work in an emergency.<sup>1</sup>

(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 pursuant to clause (5) of section 2. 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.

(5) If the user 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 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 in his endeavors, subject to the limitations contained in clause (6).

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

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

(ii) After consulting with a user, provide such support for known user's lines in the construction area, including during backfilling operations, as may be reasonably necessary for the protection of such utilities.

(7) To report immediately to the user 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) shall not apply to a user or contractor performing excavation or demolition work in an emergency, as defined in section 1; nonetheless, all users must 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 may use the color white to mark a proposed excavation site.

(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 facilities:

(i) Neither a contractor nor a designer who has complied with the terms of this act and who was not otherwise negligent shall be subject to liability or incur any obligation to users, 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.

(ii) 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 reimbursement to which the user is entitled, the cost of repairing or replacing its facilities shall be diminished in the same proportion that

*the user's misidentification, mislocation or failure to identify its facilities contributed to the damage. Should the user not have misidentified, mislocated or failed to identify its facilities pursuant to this act, there shall be no diminution of the user'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.*

Section 6. This act shall not be deemed to amend or repeal any other law, *Commonwealth regulation* or any local ordinance enacted pursuant to law concerning the same subject matter, it being the legislative intent that [both this act and] any such other law or local ordinance shall have full force and effect[. This act shall not preclude the establishment of one-call systems or other working agreements between users and contractors to effect compliance] where not inconsistent with this act.

Section 2. Section 7 of the act is repealed.

Section 3. The act is amended by adding sections to read:

*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) A one-call system shall be governed by a board of directors, to be chosen by the users. No less than twenty percent of the seats on the board shall be held by municipalities or municipal authorities, including the Commonwealth.*

*(c) (1) The Auditor General, for the purposes set forth in clause (2), and any contractor, user or member of 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 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.*

*(2) The Auditor General shall conduct an annual 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 copy of any audit conducted by the Auditor General under this paragraph shall be submitted to the General Assembly no later than sixty days following the end of the fiscal year of the one-call system or person being audited.*

**(3) Each 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 shall be charged a fee for the service received from the one-call system. Such fee shall be used to offset the operation cost levied on the political subdivision and municipal authority members.**

**Section 7.2. Any person violating any of the provisions of this act, except section 7.1, shall, upon conviction in a summary proceeding, be sentenced to pay a fine of not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) or undergo imprisonment for not more than ninety days, or both. A violation of section 7.1 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 may enforce the provisions of this act in any court of competent jurisdiction and shall act upon the petition of any user. A user 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.**

**Section 7.3. This act shall expire five years from the effective date of this section.**



Section 4. This act shall take effect as follows:

- (1) Section 7.3 of the act, as added by section 3 of this amendatory act, shall take effect immediately.
- (2) The remainder of this act shall take effect in 180 days.

APPROVED—The 12th day of December, A. D. 1986.

DICK THORNBURGH