

No. 2006-181

AN ACT

SB 1104

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 the title of the act, for definitions, for duties of facility owners and for the duties of the One Call System; providing for liability, fees and governance of the One Call System; further providing for applicability; providing for the duties of project owners and for rights of the Auditor General; further providing for the governing board of the One Call System, for fines and penalties and for applicability to certain pipeline systems and facilities; providing for a voluntary payment dispute resolution process, for best efforts, for removal or tampering with a marking, for determination of position and type of lines and for impairment of rights and immunities; further providing for expiration; repealing provisions of the act of June 19, 2002 (P.L.421, No.61), known as the Propane and Liquefied Petroleum Gas Act, concerning the prohibition of certain liquefied petroleum gas facilities or distributors from being subject to the Underground Utility Line Protection Law; and making an editorial change.

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

Section 1. The title of the act of December 10, 1974 (P.L.852, No.287), referred to as the Underground Utility Line Protection Law, is amended to read:

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, *propane*, 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.

Section 2. Section 1 of the act, amended November 30, 2004 (P.L.1567, No.199), is amended to read:

Section 1. As used in this act:

"Abandoned" means no longer in service and physically disconnected from a line.

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

“Cartway” means that portion of a street which is improved by surfacing with permanent or semipermanent material and is intended for vehicular traffic.

“Common Ground Alliance best practices” means the damage prevention industry recommended standards issued by the Common Ground Alliance, a not-for-profit corporation created pursuant to the issuance of the United States Department of Transportation’s Common Ground Task Force report in 1999.

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

“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.]

“Continuing property records” means a record required pursuant to 66 Pa.C.S. § 1702 (relating to continuing property records).

“Demolition work” means the partial or complete destruction of a structure, by any means, served by or adjacent to a line or lines.

“Department” means the Department of Labor and Industry of the Commonwealth.

“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 a sudden or unforeseen occurrence involving a clear and immediate danger to life [or], property *and the environment*, including, but not limited to, serious breaks or defects in a 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 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, *the direct* 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 *measured from the top of the edge of the cartway or the top of the outer edge of an improved shoulder, in addition to the performance of incidental de minimis excavation associated with the routine maintenance and the removal of sediment buildup*, within the right-of-way of *public* 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.

“Excavator” means any person who or which performs excavation or demolition work for himself or for another person.

“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. The term does not include any of the following:

(1) A person serving the person’s own property through the person’s own line if the person does not provide service to any other customer.

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

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

“Horizontal directional drilling” means the use of horizontal boring devices that can be guided between a launch point and a reception point beneath the earth’s surface.

“Line” or “facility” means an underground conductor or underground pipe or structure used in providing electric or communication service, or an underground pipe used in carrying, gathering, transporting or providing natural or artificial gas, petroleum, propane, oil or [oil] petroleum and production product, sewage, water or other service to one or more transportation carriers, consumers or customers of such service and the appurtenances thereto, 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.] The term shall include unexposed storm drainage and traffic loops that are not clearly visible. The term shall not include crude oil or natural gas production and gathering lines or facilities unless the line or facility is a regulated onshore gathering line as defined in regulations promulgated after January 1, 2006, by the United States Department of Transportation pursuant to the Pipeline Safety Act of 1992 (Public Law 102-508, 49 U.S.C. § 60101 et seq.), if the regulated gathering line is subject to the damage prevention program requirements of 49 CFR § 192.614.

“Locate request” means a communication between an excavator or designer and the One Call System in which a request for locating facilities is processed. Locate requests submitted by an excavator performing work within the right-of-way of any State highway, either under contract to the Department of Transportation or under authority of a permit issued by the

Department of Transportation, shall include the number of the Department of Transportation contract or permit.

“Minor routine maintenance” means shaping of or adding dust palliative to unpaved roads, 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 ***and cutting*** 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] the** communication system established within this Commonwealth to provide a single ***nationwide*** toll-free telephone number ***or 811 number*** for **[contractors] excavators** 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] The** 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 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.

“Preconstruction request” means a notification to facility owners regarding a complex project.

“Project owner” means any person who or which engages an excavator for construction or any other project which requires excavation or demolition work.

“Secretary” means the Secretary of Labor and Industry of the Commonwealth.

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

fountains, fences, railroads, highway and pipeline markers, and latitude and longitude.

“Subsurface utility engineering” or “SUE” means those techniques set forth in the American Society of Civil Engineers (ASCE) standard CI/ASCE 38-02, or its successor document as determined by the One Call System.

“Tolerance zone” means the horizontal space within eighteen inches of the outside wall or edge of a line or facility.

“Traffic loop” means a device that detects metal objects such as cars and bicycles based on the change in inductance that they induce in the device.

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

Section 3. Sections 2 and 3 of the act, amended November 30, 2004 (P.L.1567, No.199), are amended to read:

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

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

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

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

(iii) the 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 facility owner,]** the street identifications**,** *within or outside of the municipality] or like information within each of the municipalities* in which its lines are located. This information shall be in a form acceptable to **[a] the One Call System**. **[and shall include the names of streets bounding, crossing or adjacent to the facility owner’s lines.]** Upon **[receipt of a signed street identification list]** *acceptance of the information* from a facility owner, **[a] the One Call System** shall provide the facility owner with notification within the boundaries described **[in the street identification list]**. All facility owners **[which opt for this service]** shall agree to indemnify and hold harmless **[a] the One Call System** for any **[street identity]** errors and omissions on the part of the facility owner or the **[contractor]** *excavator* or designer providing **[street identifications.] the information as the agent of the facility owner; and**

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

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

(4) Not more than ten [working] *business 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 for information as to the position and type of the facility owner's lines at such site based on the information currently in the facility owner's possession[.] *or to mark the plans which have been provided to it by the designer by field location or by another method agreed to by the designer, excavator and facility owner, or their agent.* The facility owner shall so advise the person making the request of the facility owner's status at the site through [a] *the One Call System.*

(5) [Not more than two working days after] *After* receipt of a timely request [therefor] from [a contractor] *an excavator* or operator who identifies the site of excavation or demolition work he intends to perform[:]
and not later than the business day prior to the scheduled date of excavation:

(i) To mark, stake, locate or otherwise provide the position of the 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] *excavator*, where appropriate, to employ prudent techniques, which may include hand-dug test holes, to determine the precise position of the underground facility owner's lines. This shall be done to the extent such information is available in the facility owner's records or by use of standard locating techniques other than excavation. *Standard locating techniques shall include, at the utility owner's discretion, the option to choose available technologies suitable to each type of line or facility being located at the site, topography or soil conditions or to assist the facility owner in locating its lines or facilities, based on accepted engineering and operational practices. Facility owners shall make reasonable efforts during the excavation phase to locate or notify excavators of the existence and type of abandoned lines that remain on the continuing property records of the facility owners.*

(i.1) [A] *To, where contained on its continuing property records, [facility owner may] identify the location of [a known facility connected] an actually known facility's point of connection to its facilities[, but] where the point of connection is 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] *other facility's* identification.

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

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

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

(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.] *the Common Ground Alliance Best Practices for Temporary Marking set forth in ANSI standard Z535.1.* Should the [American Public Works Association and Utility Locating and Coordination Council Temporary Marking Standards] *Common Ground Alliance Best Practices* be amended, the amended [standards] *guidelines* shall be applied and followed. *If the Common Ground Alliance Best Practices no longer publishes guidelines for temporary markings or if the responsibility for publishing the guidelines is transferred to or assumed by another entity, the facility owner shall follow the guidelines approved by the One Call System's board of directors.*

(vii) To respond to [emergencies] *emergency notifications* as soon as [practical] *practicable* following receipt of notification of such emergency. *The response by the facility owner shall be consistent with the nature of the emergency information received by the facility owner.*

(viii) *To participate in preconstruction meetings for a complex project or as described in clause (3) of section 5.*

(ix) *If notification is received pursuant to clause (8) of section 5, to give priority to responding to notification as an 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] *the* One Call System in violation of this act and a line or lines of such nonmember facility owner are damaged by [a contractor] *an excavator* by reason of the [contractor's] *excavator's* failure to notify the facility owner because the facility owner was not a member of [a] *the* One Call System serving the location where the damage occurred, such facility owner shall have no right of recovery from the [contractor] *excavator* 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] excavator**.

(10) To submit an incident report to the department not more than ten **[working] business** days after receipt of notice that the facility owner's lines have been damaged by excavation or demolition activities that resulted in personal injury or in property damage to parties other than the affected excavator or facility owner. In addition, the incident report may likewise be furnished to the Pennsylvania Public Utility Commission and the Pennsylvania Emergency Management Agency pursuant to memoranda of understanding negotiated between these agencies and the department[.], **which shall, at a minimum, provide for a common reporting format for incident reports**. The department shall furnish to **[a] the One Call System**, upon reasonable request, statistical data pertaining to the number of incident reports filed with the department and the type, number and results of investigations for violations of this act.

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

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

(1.1) To assign **[a serial number and] one or more serial numbers and the date that the site may legally be excavated and to** 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] the One Call System**.

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

(1.3) Provide access to municipal lists provided to **[a] the One Call System** for those interested parties. This list shall contain facility owners having lines in 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 facility owner. Such list shall be updated as revised information is received from the facility owner within five **[working] business** days.

(2) To make such lists **under clause (1.3)** available for public inspection via the county recorder of deeds without charge. A maximum copy fee of no more than twenty-five dollars (\$25) may be charged per county list. Each 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[.] **based on the most current information provided to it by the One Call System**.

(3) Not more than ten **[working] business** days after the receipt of a **clear and specific** request from the department, to provide access to or

photocopies of specific One Call System response records, tickets or other like information relating to matters under investigation by the department pursuant to its enforcement authority under this act.

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

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

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

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

Section 4. The act is amended by adding a section to read:

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

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

(c) (Reserved).

(d) The One Call System shall be governed by a board of directors, to be chosen by the facility owners. No less than twenty percent of the seats on the board shall be held by municipalities or municipal authorities. The board shall include all of 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) An excavator or excavation industry representative.

(6) A designer or designer industry representative.

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

(f) All fees shall be set by the board of directors and shall be based on the latest annual audited cost factors of the 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, if the improvement receives a majority vote of the board of directors.

(g) An excavator, 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. The 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 under this act.

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

Section 5. Section 4 of the act, amended December 19, 1996 (P.L.1460, No.187), is amended to read:

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

(2) To request the line and facility information prescribed by section 2, clause (4) from **[a] the** One Call System not less than ten nor more than ninety **[working] business** 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.

(2.1) To forward a copy of the project plans to each facility owner who requests a copy. If a designer is unable to provide a copy because of security of the project or proprietary concerns regarding the design or the project, the designer shall negotiate in a timely manner with the facility owner the means of obtaining the necessary data.

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

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

(5) A designer shall be deemed to have met the obligations of clause (2) if he calls [a] ***the*** 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] ***the*** One Call System on the drawing near his serial number.

(6) If, after receiving information from the facility owners, the designer decides to change the site of a proposed excavation, the obligations imposed by this section shall apply to the new 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 6. Section 5 of the act, amended November 30, 2004 (P.L.1567, No.199), is amended to read:

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

(2.1) To request the location and type of facility owner lines at each site by notifying the facility owner through [a] ***the*** One Call System. Notification shall be not less than three nor more than ten [working] ***business*** days in advance of beginning excavation or demolition work. ***No work shall begin earlier than the scheduled excavation date which shall be on or after the third business day after notification. The scheduled excavation date shall exclude the date upon which notification was received by the One Call System and notification received on a Saturday, Sunday or holiday, which shall be processed on the following business day. In the case of a complex project, notification shall not be less than ten business days in advance of the beginning of excavation or demolition work.***

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

(3) [If a contractor] ***In a complex project or if an excavator*** intends to perform work at multiple sites or over a large area, he shall take reasonable steps to work with facility owners, including ***scheduling and conducting*** 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 for each phase of the work. ***A preconstruction meeting may take place at any time prior to the commencement of excavation or demolition work, and***

the excavator, facility owners and designer, or their agents, shall attend the meeting. Notice of the meeting shall be given sufficiently in advance so as to permit attendance, either in person or electronically, by the excavator, facility owners and designer, or their agents, and shall include information sufficient to identify the scope of work. If the excavator does not believe that a preconstruction meeting is necessary under the circumstances of this paragraph it shall indicate such belief in its notice, but any facility owner with facilities at the site may request a meeting with the excavator, and a meeting shall be held between the facility owner and the excavator. After commencement of excavation or demolition work, the [contractor] excavator 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] contacting the One Call System to request that the facilities be marked again in the event that the previous markings have been compromised or eliminated.

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

(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] excavator by the 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] the excavator shall employ prudent techniques, which may include hand-dug test holes, to ascertain the precise position of such facilities[.]. *If insufficient information to safely excavate is available pursuant to clause (5) of section 2, the excavator shall employ like prudent techniques* which shall be paid for by the project owner pursuant to clause (15) of this section.

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

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

(i) Plan the excavation or demolition to avoid damage to or minimize interference with a facility owner's facilities in the construction area.

Excavation or demolition work which requires temporary or permanent interruption of a facility owner's service shall be coordinated with the affected facility owner in all cases.

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

(7) To report immediately to the 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. *The One Call System board of directors may adopt procedures to permit reporting under this clause through the One Call System.*

(8) [To alert immediately the occupants of premises as to any emergency that such person may create or discover at or near such premises.] *To immediately notify 911 and the facility owner if the damage results in the escape of any flammable, toxic or corrosive gas or liquid which endangers life, health or property. The excavator shall take reasonable measures, based on its knowledge, training, resources, experience and understanding of the situation, to protect themselves and those in immediate danger, the general public, the property and the environment until the facility owner or emergency responders have arrived and completed their assessment and shall remain on site to convey any pertinent information to responders that may help them to safely mitigate the situation.*

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

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

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

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

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

(i) The [contractor] *excavator* 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, *project* owners or other

persons who sustain injury to person or property as a result of the [contractor's] *excavator's* excavation or demolition work damaging a facility owner's lines.

(ii) Where [a contractor] *an excavator* has failed to comply with the terms of this act or was otherwise negligent, and the 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 facility owner is entitled, the cost of repairing or replacing its facilities shall be diminished in the same proportion that the facility owner's or designer's misidentification, mislocation or failure to identify the facilities contributed to the damage. Should the 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 facility owner's right of recovery.

(13) If, after receiving information from [a] *the One Call System* or directly from a facility owner, the [contractor] *excavator* 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] *an excavator* removes its equipment and vacates a worksite for more than two [working] *business days*, he shall renotify [a] *the 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 (5)(i) of section 2 cannot be provided or, *due to the nature of the information received from the facility owner*, it is reasonably necessary for the [contractor] *excavator* to ascertain the precise location of any line *or abandoned or unclaimed lines* by prudent techniques, which may include hand-dug test holes, vacuum excavation or other similar devices, the [contractor] *excavator* shall promptly notify the *project* owner or the *project* owner's representative, either orally or in writing. *If oral notification is given, the notice shall be reduced to writing within a reasonable time by the project owner or excavator.* After giving such notice, the [contractor] *excavator* shall be entitled to compensation from the *project* 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] *excavator* has under its contract with the *project* owner or otherwise. Provisions in any contract, public or private, which attempt to limit the rights of [contractors] *excavators* under this section shall not be [waived] *valid* for any reason, and any attempted waiver *of this section* shall be void and unenforceable as against public policy and any such attempted waiver shall be reported to the [Department of Labor and Industry] *department*.

(16) To submit an incident report to the department not more than ten [working] *business days* after striking or otherwise damaging a facility owner's line during excavation or demolition activities that resulted in

personal injury or property damage to parties other than the affected **[contractor] excavator or facility owner**. In addition, the incident report may be furnished to the Pennsylvania Public Utility Commission and the Pennsylvania Emergency Management Agency pursuant to memoranda of understanding negotiated between these agencies and the department.

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

(18) To, if it chooses to do so and if working for a facility owner, a municipality or a municipal authority, delegate the power to discharge the duties set forth in clauses (2.1) and (2.2) to its project owner, with the project owner's consent. If the power is delegated pursuant to this clause, both the excavator and the project owner shall be responsible for providing the required notices.

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

Section 7. Section 6 of the act, amended December 12, 1986 (P.L.1574, No.172), is amended to read:

Section 6. **[This] Except as otherwise provided in this act, 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 any such other law or local ordinance shall have full force and effect where not inconsistent with this act.

Section 8. The act is amended by adding sections to read:

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

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

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

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

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

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

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

Section 7. *(a) The Auditor General may review management and financial audits of the One Call System, which audits shall be performed by a qualified auditing firm within this Commonwealth. A copy of the audit*

shall be submitted to the Auditor General upon its completion and to the General Assembly by October 31 of the year following the end of the audit period. The cost of reasonable expenses incurred by the Auditor General in performing the obligations under this section shall be reimbursed by the One Call System. The fees shall not be inconsistent with those of commercial auditing firms for similar work.

(b) The Auditor General, for the purposes set forth in subsection (a), and any contractor, excavator, facility owner or member of the One Call System shall have the right during regular business hours 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, at the cost determined by the board of directors.

(c) The One Call System shall submit an annual report to its members, and a copy of the report shall be submitted to the Auditor General.

Section 9. Section 7.1 of the act, amended December 19, 1996 (P.L.1460, No.187), is amended to read:

[Section 7.1.

(b) A One Call System shall be governed by a board of directors, to be chosen by the facility owners. No less than twenty percent of the seats on the board shall be held by municipalities or municipal authorities. 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.

(b.1) All fees are to be 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) The Auditor General, for the purposes set forth in subsection (c.1), and any contractor, facility owner 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 a One Call System at his own cost.

(c.1) The Auditor General shall conduct a biennial performance and financial audit of a One Call System. A copy of 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 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.

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

(g) Any contractor, designer or operator who proposes to commence excavation or demolition work and requests information of a One Call System shall be charged a fee for the service received from 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 10. Section 7.2 of the act, amended November 30, 2004 (P.L.1567, No.199), is amended to read:

Section 7.2. (a) Any person violating any of the provisions of this act, except clauses (1) and (2) of section 2, commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than two thousand five hundred dollars (\$2,500) nor more than **[twenty-five thousand dollars (\$25,000)]** *fifty thousand dollars (\$50,000)* or undergo imprisonment for not more than ninety days, or both. The Attorney General of the Commonwealth or any district attorney may enforce the provisions of this act in any court of competent jurisdiction. The department, 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. *Local law enforcement or emergency management personnel may, in the interest of public safety, order excavators on a site to stop further excavation if the excavation is being conducted in violation of this act.*

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

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

(2) Where violations result in property damage of more than three thousand dollars (\$3,000), the fine shall not exceed **[five thousand dollars (\$5,000)]** *ten thousand dollars (\$10,000)*.

(3) For violations which result in personal injury or death, the fine shall not exceed **[twenty-five thousand dollars (\$25,000)]** *fifty thousand dollars (\$50,000)*.

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

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

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

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

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

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

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

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

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

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

(4) Where violations result in property damage of more than ten thousand dollars (\$10,000), the administrative penalty may not exceed five thousand dollars (\$5,000).

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

(d) All fines and penalties recovered under this section shall be payable to the Attorney General, district attorney or the department, whichever brought the action, and collected in the manner provided for by law. **[To the extent that the expenses incurred by the department in enforcing this act exceed the fines collected by the department under this section, the department may assess a charge for the remaining reasonable expenses from a One Call System pursuant to a written agreement between the parties.]** *Administrative penalties collected by the department may be*

expended by the department for costs related to its enforcement activities and to sponsor damage prevention activities of the One Call System.

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

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

Section 11. Section 7.6 of the act, added December 19, 1996 (P.L.1460, No.187), is amended to read:

[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 12. The act is amended by adding sections to read:

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

Section 9. Except as otherwise provided for by this act, persons shall use their best efforts to comply with the Common Ground Alliance best practices.

Section 10. No person shall intentionally remove or tamper with a marking provided for under this act.

Section 11. Nothing in this act shall impair the rights or immunities provided to political subdivisions under 42 Pa.C.S. Ch. 85 Subch. C (relating to actions against local parties) or any other State law.

Section 13. Section 7.7 of the act, added December 19, 1996 (P.L.1460, No.187), is amended to read:

Section [7.7] **39.** This act shall expire on December 31, [2006] **2016.**

Section 14. Section 8 of the act is amended to read:

Section [8] **40.** This act shall take effect in one hundred twenty days.

Section 15. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the amendment of the title of the act and to cause certain liquefied petroleum gas facilities or distributors to be subject to this act.

(2) The provisions of section 19 of the act of June 19, 2002 (P.L.421, No.61), known as the Propane and Liquefied Petroleum Gas Act, are repealed to the extent that they prohibit certain liquefied petroleum gas facilities or distributors, other than facility owners as defined in section 1 of the act, from being subject to the act.

Section 16. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) The amendment of section 7.7 of the act.

(ii) This section.

(2) The remainder of this act shall take effect in 120 days.

APPROVED—The 29th day of November, A.D. 2006.

EDWARD G. RENDELL