

AMENDMENTS TO HOUSE BILL NO. 2189

Sponsor: SENATOR STEFANO

Printer's No. 3697

1 Amend Bill, page 1, lines 1 through 16, by striking out all
2 of said lines and inserting

3 Amending the act of December 10, 1974 (P.L.852, No.287),
4 entitled "An act to protect the public health and safety by
5 preventing excavation or demolition work from damaging
6 underground lines used in providing electricity,
7 communication, gas, propane, oil delivery, oil product
8 delivery, sewage, water or other service; imposing duties
9 upon the providers of such service and persons and other
10 entities preparing drawings or performing excavation or
11 demolition work; and prescribing penalties," further
12 providing for definitions, for duties of facility owners, for
13 duties of designers, for duties of excavators, for duties of
14 project owners, for damage prevention committee, for
15 compliance orders and for administrative penalties; providing
16 for action for recovery of penalty or forfeiture; and further
17 providing for expiration of act.

18 Amend Bill, page 1, lines 19 through 22; pages 2 through 15,
19 lines 1 through 30; page 16, lines 1 through 10; by striking out
20 all of said lines on said pages and inserting

21 Section 1. The definitions of "alleged violation,"
22 "emergency," "excavation work," "horizontal directional
23 drilling," "injury," "locate request" and "subsurface utility
24 engineering" or "SUE" in section 1 of the act of December 10,
25 1974 (P.L.852, No.287), referred to as the Underground Utility
26 Line Protection Law, are amended and the section is amended by
27 adding definitions to read:

28 Section 1. The following words and phrases when used in this
29 act shall have the meanings given to them in this section unless
30 the context clearly indicates otherwise:

31 * * *

32 "Alleged violation" means an instance when a person by action
33 or inaction [fails] is alleged to have failed to fulfill the
34 obligations of this act.

35 * * *

1 "Damage prevention investigator" means an employee of the
2 commission tasked with reviewing and investigating an alleged
3 violation reported to the commission under sections 2(10), 4(8),
4 5(16) and 6.1(7) and offering recommendations to the committee
5 to address the alleged violation in the form of a warning
6 letter, administrative penalty or participation in an
7 educational program established by the commission.

8 * * *

9 "Drawing" means a type of technical plan that shows
10 information about existing and proposed underground facilities,
11 grading, landscaping or other site details for the purpose of
12 providing a clear picture of construction to the excavator. The
13 term does not include sketches made for the purpose of obtaining
14 excavation related to permits.

15 "Emergency" means a sudden or unforeseen occurrence involving
16 a clear and immediate danger to life, property [and] or the
17 environment, including, but not limited to, serious breaks or
18 defects in a facility owner's lines.

19 "Excavation work" means the use of powered equipment or
20 explosives in the movement of earth, rock or other material, and
21 includes, but is not limited to, anchoring, augering,
22 backfilling, blasting, boring, digging, ditching, dredging,
23 drilling, driving-in, grading, plowing-in, pulling-in, ripping,
24 scraping, trenching and tunneling. The term does not include
25 soft excavation technology such as vacuum, high pressure air or
26 water, tilling of soil for agricultural purposes to a depth of
27 less than eighteen inches, performing minor routine maintenance
28 up to a depth of less than eighteen inches measured from the top
29 of the edge of the cartway or the top of the outer edge of an
30 improved shoulder, in addition to the performance of incidental
31 de minimis excavation associated with the routine maintenance
32 and the removal of sediment buildup, within the right-of-way of
33 public roads or work up to a depth of twenty-four inches beneath
34 the existing surface within the right-of-way of a State highway,
35 work performed by persons whose activities must comply with the
36 requirements of and regulations promulgated under the act of May
37 31, 1945 (P.L.1198, No.418), known as the Surface Mining
38 Conservation and Reclamation Act, the act of April 27, 1966 (1st
39 Sp.Sess., P.L.31, No.1), known as The Bituminous Mine Subsidence
40 and Land Conservation Act, or the act of September 24, 1968
41 (P.L.1040, No.318), known as the Coal Refuse Disposal Control
42 Act, that relate to the protection of utility facilities or the
43 direct operations on a well pad following construction of the
44 well pad and that are necessary or operations incidental to the
45 extraction of oil or natural gas.

46 * * *

47 ["Horizontal directional drilling" means the use of
48 horizontal boring devices that can be guided between a launch
49 point and a reception point beneath the earth's surface.]

50 "Injury" means a bodily harm to a person, who, as a result of
51 the bodily harm, immediately receives medical attention at a

1 health care facility away from the scene of the incident.

2 * * *

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

11 * * *

12 "Sketch" means a physical depiction of a work site generally
13 for permitting purposes and not solely or specifically
14 applicable to design requirements.

15 * * *

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

20 * * *

21 "Trenchless technology" means a family of construction
22 techniques for installing or rehabilitating underground
23 infrastructure with minimal disruption to surface traffic,
24 businesses and residents.

25 * * *

26 "Violation" means an instance when it has been determined by
27 the commission that a person by action or inaction has failed to
28 fulfill the obligations of this act.

29 * * *

30 Section 2. Section 2(1)(ii) and (iv), (5)(i), (10) and (13)
31 of the act are amended, clause (5) is amended by adding
32 subparagraphs and the section is amended by adding a clause to
33 read:

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

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

38 * * *

39 (ii) as follows:

40 (A) The names of the counties and municipalities, down to
41 and including wards in Philadelphia, Pittsburgh, Allentown and
42 Erie, in which its lines are located and other related
43 information as may be required by the One Call System regarding
44 the location of a member's facilities.

45 [(B) The One Call System may not require its members to
46 locate lines or facilities installed before the effective date
47 of this clause unless the member has existing maps of the lines
48 or facilities and the member's existing maps meet the
49 specifications of the One Call System's Member Mapping
50 Solutions. Nothing under this clause shall prohibit the One Call
51 System members from voluntarily submitting to the One Call

1 System maps of lines or facilities installed before the
2 effective date of this clause.]

3 (C) A facility owner may not be required to locate lines or
4 facilities installed before April 30, 2018, unless the facility
5 owner has existing maps of the lines or facilities and the
6 facility owner's existing maps meet the specifications of the
7 One Call System's Member Mapping Solutions. Nothing under this
8 clause shall prohibit a facility owner as a member of the One
9 Call System from voluntarily submitting to the One Call System
10 maps of lines or facilities installed before April 30, 2018.

11 * * *

12 (iv) the street identifications or like information within
13 each of the municipalities in which its lines are located. This
14 information shall be in a form acceptable to the One Call
15 System. Upon acceptance of the information from a facility
16 owner, the One Call System shall provide the facility owner with
17 notification within the boundaries described. All facility
18 owners shall agree to indemnify and hold harmless the One Call
19 System for any errors and omissions on the part of the facility
20 owner or the excavator or designer providing the information as
21 the agent of the facility owner or member mapping information as
22 required by the One Call System; and

23 * * *

24 (5) After receipt of a timely request from an excavator or
25 operator who identifies the work site of excavation or
26 demolition work he intends to perform and not later than the
27 business day prior to the lawful start date of excavation:

28 (i) To mark, stake, locate or otherwise provide the position
29 of the facility owner's underground lines at the work site
30 within eighteen inches horizontally from the outside wall of
31 such line in a manner so as to enable the excavator, where
32 appropriate, to employ prudent techniques, which may include
33 hand-dug test holes, to determine the precise position of the
34 underground facility owner's lines. This shall be done to the
35 extent such information is available in the facility owner's
36 records or by use of standard locating techniques other than
37 excavation. Standard locating techniques shall include, at the
38 utility owner's discretion, the option to choose available
39 technologies suitable to each type of line or facility being
40 located at the work site, topography or soil conditions or to
41 assist the facility owner in locating its lines or facilities,
42 based on accepted engineering and operational practices.

43 [Facility owners shall make reasonable efforts during the
44 excavation phase to locate or notify excavators of the existence
45 and type of abandoned lines.] Facility owners shall make
46 reasonable efforts during the excavation phase to locate or
47 notify excavators of the existence of any known lines and
48 abandoned lines.

49 * * *

50 (i.2) To document communications between a facility owner
51 and the excavator to ensure that the excavator is aware of a

1 facility owner's inability to locate its facilities.

2 * * *

3 (v.2) To timely enter a final response to all locate
4 requests.

5 * * *

6 (10) To submit a report of alleged violation to the
7 commission through the One Call System not more than thirty
8 business days after receipt of notice that the facility owner's
9 lines have been damaged by excavation or demolition work or if
10 the facility owner believes a violation of this act has been
11 committed in association with excavation or demolition work. The
12 report of alleged violation shall be in a form and manner as
13 required by the commission. [No report may be required where the
14 cost to repair the damage to the facility owner's lines is less
15 than two thousand five hundred dollars (\$2,500), unless the same
16 person damaged the facility owner's lines two or more times
17 within a six-month period.]

18 * * *

19 (13) To maintain existing records of main lines abandoned on
20 or after the effective date of this paragraph and to mark,
21 locate [or] and identify the main lines if possible, based upon
22 the existing records. The records shall include written or
23 electronic documents or drawings in the possession of the
24 facility owner that show the location of an existing line or
25 facility.

26 (14) To comply with all requests for information by the
27 commission relating to the commission's enforcement authority
28 under this act within thirty days of receipt of the request.

29 Section 3. Sections 4(5), 5(2.1), (8), (11.2), (15), (16)
30 and (20) and 6.1(1), (2) and (7) of the act are amended and the
31 sections are amended by adding clauses to read:

32 Section 4. It shall be the duty of each designer preparing a
33 drawing which requires excavation or demolition work within this
34 Commonwealth:

35 * * *

36 (2.2) To submit a design notification through the One Call
37 System when a design drawing is completed.

38 (2.3) To timely respond to notifications received from
39 excavators in accordance with section 5(15).

40 (2.4) To inform the project owner of the project owner's
41 duties under sections 5(15) and 6.1(1).

42 (2.5) To comply with all requests for information by the
43 commission relating to the commission's enforcement authority
44 under this act within thirty days of written receipt of the
45 request.

46 * * *

47 (4.1) To depict lines or facilities with the appropriate
48 quality levels based on the complexity of the design and
49 construction activities obtained through the SUE process in the
50 planning and design phases in accordance with the American
51 Society of Civil Engineers (ASCE) most recently published

1 standard CI/ASCE 38.

2 (4.2) In the event that as-builts are required during the
3 construction phase, to prepare the as-builts in accordance with
4 the most recently published standard of CI/ASCE 75.

5 (5) A designer shall be deemed to have met the obligations
6 of clause (2) if he [calls] notifies the One Call System and
7 shows, as proof, the serial number of one call notice on
8 drawings. The designer shall also show the toll-free number of
9 the One Call System on the drawing near his serial number.

10 * * *

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

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

28 * * *

29 (8) To immediately notify 911 and the facility owner if the
30 damage results in the escape of any flammable, toxic or
31 corrosive gas or liquid [which endangers life, health or
32 property]. The excavator shall take reasonable measures, based
33 on its knowledge, training, resources, experience and
34 understanding of the situation, to protect themselves and those
35 in immediate danger, the general public, the property and the
36 environment until the facility owner or emergency responders
37 have arrived and completed their assessment and shall remain on
38 the work site to convey any pertinent information to responders
39 that may help them to safely mitigate the situation.

40 * * *

41 (11.2) [If using horizontal directional drilling (HDD), at]
42 If using trenchless technology, at a minimum, to utilize the
43 best practices published by the [HDD Consortium] Common Ground
44 Alliance.

45 * * *

46 (15) When the information required from the facility owner
47 under section 2(5)(i) cannot be provided or, due to the nature
48 of the information received from the facility owner, it is
49 reasonably necessary for the excavator to ascertain the precise
50 location of any line or abandoned or unclaimed lines by prudent
51 techniques, which may include hand-dug test holes, vacuum

1 excavation or other similar devices, the excavator shall
2 promptly notify the project owner or the project owner's
3 representative, either orally or in writing. If oral
4 notification is given, the notice shall be reduced to writing
5 within a reasonable time by the project owner or excavator.
6 After giving such notice, the excavator shall be entitled to
7 compensation from the project owner for this additional work as
8 provided in the latest edition of the Pennsylvania Department of
9 Transportation Form 408 specifications for extra work performed
10 on a force account basis. The provisions of this subsection
11 shall not be deemed to limit any other rights which the
12 excavator has under its contract with the project owner or
13 otherwise. Provisions in any contract, public or private, which
14 attempt to limit the rights of excavators under this section
15 shall not be valid for any reason, and any attempted waiver of
16 this section shall be void and unenforceable as against public
17 policy and any such attempted waiver shall be reported to the
18 commission prosecutor staff for appropriate action, including
19 the imposition of an administrative penalty under section 7.10.

20 (16) To submit a report of an alleged violation to the
21 commission through the One Call System not more than [ten
22 business] thirty days after striking or damaging a facility
23 owner's line during excavation or demolition or if the excavator
24 believes a violation of this act has been committed in
25 association with excavation or demolition work. The report of an
26 alleged violation shall be in a form and manner as required by
27 the commission.

28 * * *

29 (20) To renotify the One Call System of an unmarked or
30 incorrectly marked facility, if an original, proper[,
31 nonemergency] locate request has been made to the One Call
32 System and, upon initial arrival at the proposed work site, it
33 is apparent to the excavator that there is an unmarked or
34 incorrectly marked facility. An excavator may not begin
35 excavating in the affected area of the work site until after
36 receiving sufficient information from the facility owner to
37 safely excavate. If the facility owner fails to provide
38 sufficient information to the excavator within three hours after
39 the excavator has notified the One Call System of the unmarked
40 or incorrectly marked facility, the excavator may proceed with
41 excavation subject to the limitations under clause (5). This
42 clause shall apply to an emergency or nonemergency locate
43 request.

44 * * *

45 (22) To not provide a misrepresentation of an emergency
46 excavation, subject to an administrative penalty imposed under
47 section 7.10.

48 (23) To not delegate the excavator's duty to submit a locate
49 request to the One Call System to another person. The excavator
50 shall have the sole responsibility to submit each locate request
51 to the One Call System.

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

4 (1) To utilize [sufficient quality levels of] subsurface
5 utility engineering or other similar techniques whenever
6 practicable to properly determine the existence and positions of
7 underground facilities when designing known complex projects
8 having an estimated cost of four hundred thousand dollars
9 (\$400,000) or more.

10 (2) To timely respond to notifications received from
11 excavators pursuant to section 5(15). Provisions in any
12 contract, public or private, which attempt to limit the rights
13 of excavators under section 5 shall not be valid for any reason,
14 and any attempted waiver of section 5 shall be void and
15 unenforceable as against public policy and any such attempted
16 waiver shall be reported to the commission prosecutor staff for
17 appropriate action, including the imposition of an
18 administrative penalty under section 7.10.

19 * * *

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

30 (8) To comply with all requests for information by the
31 commission relating to the commission's enforcement authority
32 under this act within thirty days of receipt of the written
33 request.

34 Section 4. Section 7.8(a)(2) and (5)(i), (b)(1) and (5), (c)
35 (1)(ii) and (2), (d) and (e)(3) of the act are amended,
36 subsection (c) is amended by adding a clause and the section is
37 amended by adding a subsection to read:

38 Section 7.8. (a) A damage prevention committee shall be
39 established as follows:

40 * * *

41 (2) A person appointed to the committee must have expertise
42 within the operation of this act related to the industry
43 represented.

44 * * *

45 (5) The initial term of committee members shall be as
46 follows:

47 (i) Two representatives of facility owners under clause (1)
48 (iv) shall serve three years, one representative shall serve two
49 years and two representatives shall serve one year.

50 * * *

51 (b) The committee shall meet regularly to carry out the

1 following purposes:

2 (1) Review a report of an alleged violation of this act and
3 damage prevention investigator findings [and recommendations.]
4 concerning the basis or root cause of the alleged violation
5 reported and recommendations proposed to address the alleged
6 violation.

7 * * *

8 (5) Issue an informal determination that modifies or
9 dismisses a recommendation of [committee staff] the damage
10 prevention investigator.

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

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

15 * * *

16 (ii) Appear before the [commission] committee to present its
17 position.

18 (2) A person who is subject to an informal determination of
19 the committee may accept or reject the result. If [an informal
20 determination is rejected,] a person who is subject to an
21 informal determination opts to reject the informal
22 determination, the person shall reject the informal
23 determination in writing within thirty days of the date when the
24 informal determination is made by the committee and the matter
25 shall be [returned to the damage prevention investigator for
26 further action, if appropriate, including referring the matter]
27 referred to the commission prosecutor staff for [the purpose of
28 issuing a formal complaint.] an action resulting in a formal
29 complaint before the commission. An action resulting in a formal
30 complaint before the commission must be brought by commission
31 prosecutor staff within the time limits specified under 66
32 Pa.C.S. § 3314(a) (relating to limitation of actions and
33 cumulation of remedies).

34 (3) When a written rejection of an informal determination
35 under clause (2) results in a formal complaint before the
36 commission, the commission shall conduct a de novo review of the
37 alleged violation. The informal determination of the committee
38 shall not be binding upon the commission.

39 (d) Except for alleged violations involving injury or death,
40 the provisions of subsection (c) [may] shall be applied in
41 advance or instead of filing a formal complaint against a person
42 determined, in a report issued by a damage prevention
43 investigator, to have committed an alleged violation. An
44 informal determination of the committee shall be binding on the
45 commission unless the person rejects the informal determination.

46 (d.1) Notwithstanding any other provision of this act, the
47 committee shall only have the powers and duties enumerated in
48 subsections (b) and (c) if the committee completes its review of
49 an alleged violation and issues an informal determination within
50 two hundred seventy days of the occurrence of the alleged
51 violation.

1 (e) The committee shall have the following additional
2 duties:

3 * * *

4 (3) Submit an annual report containing relevant damage
5 prevention data to the commission, the Committee on Consumer
6 Protection and Professional Licensure of the Senate and the
7 Committee on Consumer [Affairs] Protection, Technology and
8 Utilities of the House of Representatives. The report shall
9 include relevant metrics to demonstrate how the damage
10 prevention committee's actions advance the goal of minimizing
11 the occurrence of line hits and enhance public safety.

12 * * *

13 Section 5. Section 7.10(c) of the act is amended to read:
14 Section 7.10. * * *

15 (c) The following shall apply:

16 (1) An administrative penalty recovered under this section
17 shall be payable to the commission and collected in the manner
18 provided for by law.

19 (2) A person or entity violating this act must pay an
20 administrative penalty to the commission within sixty days of
21 issuance of the informal determination, unless the person or
22 entity subject to the informal determination rejects the
23 informal determination within thirty days in accordance with
24 section 7.8(c) (2).

25 (3) The commission shall assess an additional administrative
26 penalty of one hundred dollars (\$100) per day, not to exceed a
27 total of five thousand dollars (\$5,000), for an administrative
28 penalty not paid within the period specified under paragraph
29 (2).

30 (4) A person or entity subject to an informal determination
31 of the committee requiring a damage prevention educational
32 program under section 7.8(b) (4) shall successfully complete the
33 program within sixty days of issuance of the informal
34 determination. The commission shall assess an additional
35 administrative penalty of one hundred dollars (\$100) per day,
36 not to exceed a total of five thousand dollars (\$5,000), on a
37 person or entity that fails to comply with this clause.

38 * * *

39 Section 6. The act is amended by adding a section to read:
40 Section 7.11. Except as otherwise provided in this act, an
41 action for the recovery of any penalty or forfeiture incurred
42 under the provisions of this act or a prosecution on account of
43 any matter or thing mentioned in this act may not be maintained
44 unless brought within three years from the date at which the
45 liability arose.

46 Section 7. Section 39 of the is amended to read:

47 Section 39. This act shall expire on December 31, [2024]
48 2031.

49 Section 8. This act shall take effect immediately.