



Sen. A. J. Wilhelmi

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09500SB2129sam001

LRB095 16977 MJR 49161 a

1 AMENDMENT TO SENATE BILL 2129

2 AMENDMENT NO. _____. Amend Senate Bill 2129 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Underground Utility Facilities
5 Damage Prevention Act is amended by changing Sections 2.1, 2.2,
6 2.6, 4, 6, 7, 10, and 11 and by adding Sections 2.1.2, 2.1.3,
7 2.1.4, 2.1.5, 2.1.6, 2.1.7, 2.1.8, 2.1.9, 4.1, 4.2, 4.3, 4.4,
8 4.5, and 4.6 as follows:

9 (220 ILCS 50/2.1) (from Ch. 111 2/3, par. 1602.1)

10 Sec. 2.1. "Person" means an individual, firm, joint
11 venture, partnership, corporation, association, municipality
12 or other governmental unit, department or agency, utility
13 cooperative, or joint stock association, and includes any
14 trustee, receiver, or assignee or employee or agent ~~or personal~~
15 ~~representative~~ thereof.

16 (Source: P.A. 86-674.)

1 (220 ILCS 50/2.1.2 new)

2 Sec. 2.1.2. Joint meet. "Joint meet" means (i) a meeting
3 scheduled through the State-Wide One-Call Notice System for
4 excavators, owners, or operators of underground utility
5 facilities, utility facility locators, or other necessary
6 parties to discuss a large or complicated excavation or as an
7 opportunity to exchange information, such as maps, plans, or
8 schedules and (ii) a request processed through the State-Wide
9 One-Call Notice System to have facility owners or operators
10 pick up maps, plans, or schedules.

11 (220 ILCS 50/2.1.3 new)

12 Sec. 2.1.3. No show request. "No show request" means a
13 notice initiated by an excavator through the State-Wide
14 One-Call Notice System to the owners or operators of
15 underground utility facilities notified in the prior locate
16 request that either failed to mark their facilities or to
17 communicate their non-involvement with the excavation prior to
18 the requested dig start date and time.

19 (220 ILCS 50/2.1.4 new)

20 Sec. 2.1.4. Incomplete request. "Incomplete request"
21 means a notice initiated by an excavator through the State-Wide
22 One-Call Notice System to the owners or operators of
23 underground utility facilities notified in a prior locate

1 request that such facility owners or operators, as identified
2 by the person excavating, did not completely mark the entire
3 extent or the entire segment of the proposed excavation, as
4 identified by the excavator in the prior notice.

5 (220 ILCS 50/2.1.5 new)

6 Sec. 2.1.5. Re-mark request. "Re-mark request" means a
7 notice initiated by an excavator through the State-Wide
8 One-Call Notice System to the owners or operators of
9 underground utility facilities notified in the initial locate
10 request requesting facility owners or operators to re-mark all
11 or part of the work area identified in the initial locate
12 request, because facility markings are becoming or have become
13 indistinguishable due to factors, including, but not limited
14 to, weather, fading, construction activity, or vandalism.

15 (220 ILCS 50/2.1.6 new)

16 Sec. 2.1.6. Residential property owner. "Residential
17 property owner" means any individual or entity that owns or
18 leases real property, which property is zoned residential and
19 used by such individual or entity as its residence or dwelling.
20 Residential property owner does not include any persons who own
21 or lease residential property for the purpose of holding or
22 developing such property or for any other business or
23 commercial purposes.

1 (220 ILCS 50/2.1.7 new)

2 Sec. 2.1.7. Designer. "Designer" means any person involved
3 in the preparation of plans for a construction or improvement
4 project that may require excavation or demolition and who has
5 been registered to utilize the design stage request process
6 through the State-Wide One-Call Notice System.

7 (220 ILCS 50/2.1.8 new)

8 Sec. 2.1.8. Design stage request. "Design stage request"
9 means a request for the approximate location of underground
10 utility facilities by a designer who is in the design stage of
11 a project and excavation is not intended in the immediate
12 future.

13 (220 ILCS 50/2.1.9 new)

14 Sec. 2.1.9. JULIE Excavator Manual. "JULIE Excavator
15 Manual" means the handbook periodically updated and published
16 by the State-Wide One-Call Notice System that provides
17 information for excavators and facility owners and operators on
18 the use and services of the State-Wide One-Call Notice System.

19 (220 ILCS 50/2.2) (from Ch. 111 2/3, par. 1602.2)

20 Sec. 2.2. Underground utility facilities.

21 (a) "Underground utility facilities" or "facilities" means
22 and includes wires, ducts, fiber optic cable, conduits, pipes,
23 sewers, and cables and their connected appurtenances installed

1 beneath the surface of the ground by:

2 (1) a public utility as defined in the Public Utilities
3 Act;

4 (2) a municipally owned or mutually owned utility
5 providing a similar utility service;

6 (3) a pipeline entity transporting gases, crude oil,
7 petroleum products, or other hydrocarbon materials within
8 the State;

9 (4) a telecommunications carrier as defined in the
10 Universal Telephone Service Protection Law of 1985, or by a
11 company described in Section 1 of the Telephone Company
12 Act;

13 (5) a community antenna television system, as defined
14 in the Illinois Municipal Code; and

15 (6) any other entity owning or operating underground
16 facilities that transport generated electrical power to
17 other utility owners or operators.

18 (b) "Underground utility facilities" or "facilities" does
19 not mean underground utility facilities operated by an electric
20 cooperative as defined in the Public Utilities Act.

21 ~~"Underground utility facilities" or "facilities" means and~~
22 ~~includes wires, ducts, fiber optic cable, conduits, pipes,~~
23 ~~sewers, and cables and their connected appurtenances installed~~
24 ~~beneath the surface of the ground by a public utility (as is~~
25 ~~defined in the Illinois Public Utilities Act, as amended), or~~
26 ~~by a municipally owned or mutually owned utility providing a~~

1 ~~similar utility service, except an electric cooperative as~~
2 ~~defined in the Illinois Public Utilities Act, as amended, or by~~
3 ~~a pipeline entity transporting gases, crude oil, petroleum~~
4 ~~products, or other hydrocarbon materials within the State, or~~
5 ~~by a telecommunications carrier as defined in the Universal~~
6 ~~Telephone Service Protection Law of 1985, or by a company~~
7 ~~described in Section 1 of "An Act relating to the powers,~~
8 ~~duties and property of telephone companies", approved May 16,~~
9 ~~1903, as amended, or by a community antenna television system,~~
10 ~~hereinafter referred to as "CATS", as defined in the Illinois~~
11 ~~Municipal Code, as amended.~~

12 (Source: P.A. 94-623, eff. 8-18-05.)

13 (220 ILCS 50/2.6)

14 Sec. 2.6. Emergency locate request. "Emergency locate
15 request" means a locate request for any condition constituting
16 an imminent danger to life, health, or property, or a utility
17 service outage, and which requires immediate repair or action
18 before the expiration of 48 hours.

19 (Source: P.A. 92-179, eff. 7-1-02.)

20 (220 ILCS 50/4) (from Ch. 111 2/3, par. 1604)

21 Sec. 4. Required activities. Every person who engages in
22 nonemergency excavation or demolition shall:

23 (a) take reasonable action to inform himself of the
24 location of any underground utility facilities ~~or CATS~~

1 ~~facilities~~ in and near the area for which such operation is
2 to be conducted;

3 (b) plan the excavation or demolition to avoid or
4 minimize interference with underground utility facilities
5 ~~or CATS facilities~~ within the tolerance zone by utilizing
6 such precautions that include, but are not limited to, hand
7 excavation, vacuum excavation methods, and visually
8 inspecting the excavation while in progress until clear of
9 the existing marked facility;

10 (c) if practical, use white paint, flags, stakes, or
11 both, to outline the dig site;

12 (d) provide notice not less than 48 hours but no more
13 than 14 calendar days in advance of the start of the
14 excavation or demolition to the owners or operators of the
15 underground utility facilities ~~or CATS facilities~~ in and
16 near the excavation or demolition area through the
17 State-Wide One-Call Notice System or, in the case of
18 nonemergency excavation or demolition within the
19 boundaries of a municipality of at least one million
20 persons which operates its own one-call notice system,
21 through the one-call notice system which operates in that
22 municipality.

23 At a minimum, the notice required under this subsection
24 (d) shall provide:

25 (1) the person's name address, phone number at
26 which a person can be reached, and fax number, if

1 available;

2 (2) the start date and time if the planned
3 excavation or demolition;

4 (3) all counties, cities, or townships, or any
5 combination thereof, where the proposed excavation
6 shall take place;

7 (4) the address at which the excavation or
8 demolition shall take place;

9 (5) the type and extent of the work involved; and

10 (6) the section or quarter sections when the
11 information in items (1) through (5) of this subsection
12 (d) does not allow the State-Wide One-Call Notice
13 System to determine the appropriate excavation or
14 demolition site. This item (6) does not apply to
15 residential property owners;

16 (e) provide, during and following excavation or
17 demolition, such support for existing underground utility
18 facilities ~~or CATS facilities~~ in and near the excavation or
19 demolition area as may be reasonably necessary for the
20 protection of such facilities unless otherwise agreed to by
21 the owner or operator of the underground facility ~~or CATS~~
22 ~~facility;~~

23 (f) backfill all excavations in such manner and with
24 such materials as may be reasonably necessary for the
25 protection of existing underground utility facilities ~~or~~
26 ~~CATS facilities~~ in and near the excavation or demolition

1 area; ~~and~~

2 (g) after ~~After~~ February 29, 2004, when the excavation
3 or demolition project will extend past 28 calendar days
4 from the date of the original notice provided under clause
5 (d), the excavator shall provide a subsequent notice to the
6 owners or operators of the underground utility facilities
7 ~~or CATS facilities~~ in and near the excavation or demolition
8 area through the State-Wide One-Call Notice System or, in
9 the case of excavation or demolition within the boundaries
10 of a municipality having a population of at least 1,000,000
11 inhabitants that operates its own one-call notice system,
12 through the one-call notice system that operates in that
13 municipality informing utility owners and operators that
14 additional time to complete the excavation or demolition
15 project will be required. The notice will provide the
16 excavator with an additional 28 calendar days from the date
17 of the subsequent notification to continue or complete the
18 excavation or demolition project;~~;~~

19 (h) exercise due care at all times to protect
20 underground utility facilities. If, after proper
21 notification through the State-Wide One-Call Notice System
22 and upon arrival at the site of the proposed excavation,
23 the excavator observes clear evidence of the presence of an
24 unmarked or incompletely marked utility in the area of the
25 proposed excavation, the excavator shall not begin
26 excavating until all affected facilities have been marked

1 or 2 hours after an additional call is made to the
2 State-Wide One-Call Notice System for the area. The owner
3 or operator of the utility shall respond within 2 hours of
4 the excavator's call to the State-Wide One-Call Notice
5 System; and

6 (i) when factors, including, but not limited to,
7 weather, construction activity, or vandalism, at the
8 excavation site have caused the utility markings to become
9 faded or indistinguishable, the excavator shall provide an
10 additional notice through the State-Wide One-Call Notice
11 System requesting that only the affected areas where
12 excavation or demolition is to continue be re-marked.
13 Facility owners or operators must respond to the notice to
14 re-mark according to the requirements of Section 10 of this
15 Act.

16 ~~At a minimum, the notice required under clause (d) shall~~
17 ~~provide:~~

18 ~~(1) the person's name, address, and (i) phone number at~~
19 ~~which a person can be reached and (ii) fax number, if~~
20 ~~available;~~

21 ~~(2) the start date of the planned excavation or~~
22 ~~demolition;~~

23 ~~(3) the address at which the excavation or demolition~~
24 ~~will take place;~~

25 ~~(4) the type and extent of the work involved; and~~

26 ~~(5) section/quarter sections when the above~~

1 ~~information does not allow the State Wide One Call Notice~~
2 ~~System to determine the appropriate geographic~~
3 ~~section/quarter sections. This item (5) does not apply to~~
4 ~~residential property owners.~~

5 Nothing in this Section prohibits the use of any method of
6 excavation if conducted in a manner that would avoid
7 interference with underground utility facilities ~~or CATS~~
8 ~~facilities.~~

9 (Source: P.A. 93-430, eff. 8-5-03; 94-623, eff. 8-18-05.)

10 (220 ILCS 50/4.1 new)

11 Sec. 4.1. Use of joint meet.

12 (a) If a person engaged in excavation elects to use a joint
13 meet, the joint meet requires a minimum of 48 hours' advance
14 notice. After a joint meet, the owners or operators of
15 underground utility facilities must respond within 48 hours or
16 by the date and time agreed to in writing at the joint meet,
17 whichever is later.

18 At a minimum, the information required to be given to the
19 State-Wide One-Call Notice System at the time the joint meet is
20 requested shall include the following:

21 (1) the requester's name, address, phone number at
22 which a person can be reached, and fax number, if
23 available;

24 (2) the start date and time of the joint meet;

25 (3) the address at which the joint meet will take

1 place;

2 (4) the type of work involved;

3 (5) all counties, cities, or townships where the
4 proposed excavation shall take place; and

5 (6) the street names involved in the project; or the
6 north, south, east, and west boundaries of the project; or
7 the section or quarter sections, or both, of the project.

8 (b) Persons using the joint meet process are encouraged to
9 the refer to the JULIE Excavator Manual for additional
10 information on the use of a joint meet request.

11 (220 ILCS 50/4.2 new)

12 Sec. 4.2. Design stage request.

13 (a) Beginning on January 1, 2009, persons desiring to
14 utilize the design stage request process are required to
15 complete and submit the "Design Stage Registration Form &
16 Confidentiality Agreement" through the State-Wide One-Call
17 Notice System prior to initiating a design stage request.

18 (b) In connection with any design stage request, designers
19 shall comply with the following:

20 (1) Follow the guidelines set forth in CJIASCE 3 8-02,
21 also known as the "Standard Guidelines for the Collection
22 and Depiction of Existing Subsurface Utility Data".

23 (2) Make a reasonable effort to prepare the
24 construction drawings to minimize interference with
25 existing and proposed underground utility facilities in

1 the construction area.

2 (3) Provide the following information to the State Wide
3 One-Call Notice System at the time of the design stage
4 request:

5 (A) the name, address, and telephone number,
6 either office or cell, of the person making the
7 request;

8 (B) the name, address, and telephone number of the
9 business requesting the facility location information;

10 (C) the approximate date when the facility
11 information is required;

12 (D) the type and extent of the informational
13 request;

14 (E) the location of the required facility
15 information, specified as follows:

16 (i) a specific street or rural address, which
17 has a numbered address on a marked street or avenue
18 that is publicly recorded; or

19 (ii) latitude and longitude coordinates or a
20 specific quarter section by tier, range, section,
21 and quarter section; and

22 (F) the reason for requesting the facility data.

23 (4) Provide site-specific information to qualified
24 bidders of the project.

25 (c) Designers are encouraged to refer to the JULIE
26 Excavator Manual for other information prior to initiating a

1 design stage request.

2 (220 ILCS 50/4.3 new)

3 Sec. 4.3. Design stage request response. The State-Wide
4 One-Call Notice System shall provide designers with
5 engineering contact information for the owners or operators in
6 the area of the design stage projects. Owners or operators
7 shall respond to a design stage request upon notification by
8 the designer to the State Wide One-Call Notification System of
9 a design stage request. The facility owner or operator shall
10 provide information regarding the location and type of
11 facilities at the site based on the best information currently
12 available to the facility owner or operator.

13 (220 ILCS 50/4.4 new)

14 Sec. 4.4. Contact is made. After contact is made with the
15 owner or operator by the designer, the owner or operator shall
16 respond in one of the following 3 ways within 15 working days,
17 excluding Saturdays, Sundays, and State-Wide One-Call
18 Notification System-recognized holidays:

19 (1) actual field location shall be performed at the job
20 site;

21 (2) drawings or prints, or both, of the location of the
22 buried facilities at the proposed site shall be provided;

23 or

24 (3) the designer may be requested to send drawings or

1 prints, or both, of the job site to the member.

2 (220 ILCS 50/4.5 new)

3 Sec. 4.5. Owner or operator request. If the owner or
4 operator requests drawings of the job site, then the owner or
5 operator shall mark existing facilities on drawings or prints,
6 or both, or provide copies of the facility owner's record
7 information and return the documents to the designer.

8 (220 ILCS 50/6) (from Ch. 111 2/3, par. 1606)

9 Sec. 6. Emergency excavation or demolition.

10 (a) Every person who engages in emergency excavation or
11 demolition outside of the boundaries of a municipality of at
12 least one million persons which operates its own one-call
13 notice system shall take all reasonable precautions to avoid or
14 minimize interference between the emergency work and existing
15 underground utility facilities ~~or CATS facilities~~ in and near
16 the excavation or demolition area, through the State-Wide
17 One-Call Notice System, and shall notify, as far in advance as
18 possible, the owners or operators of such underground utility
19 facilities ~~or CATS facilities~~ in and near the emergency
20 excavation or demolition area, through the State-Wide One-Call
21 Notice System. At a minimum, the notice required under this
22 subsection (a) shall provide:

23 (1) the person's name, address, and (i) phone number at
24 which a person can be reached and (ii) fax number, if

1 available;

2 (2) the start date of the planned emergency excavation
3 or demolition;

4 (3) the address at which the excavation or demolition
5 will take place; and

6 (4) the type and extent of the work involved.

7 There is a wait time of 2 hours or the date and time
8 requested on the notice, whichever is longer, after an
9 emergency locate notification request is made through the
10 State-Wide One-Call Notice System. If the conditions at the
11 site dictate an earlier start than the required wait time, it
12 is the responsibility of the excavator to demonstrate that site
13 conditions warranted this earlier start time.

14 Upon notice by the person engaged in emergency excavation
15 or demolition, the owner or operator of an underground utility
16 facility ~~or CATS facility~~ in or near the excavation or
17 demolition area shall communicate with the person engaged in
18 emergency excavation or demolition within 2 hours or by the
19 date and time requested on the notice, whichever is longer by
20 (1) marking the approximate location of underground
21 facilities; (2) advising the person excavating that their
22 underground facilities are not in conflict with the emergency
23 excavation; or (3) notifying the person excavating that the
24 owner or operator shall be delayed in marking because of
25 conditions as referenced in subsection (g) of Section 11 of
26 this Act.

1 The notice by the owner or operator to the person engaged
2 in emergency excavation or demolition may be provided by phone
3 or phone message or by marking the excavation or demolition
4 area. The owner or operator has discharged the owner's or
5 operator's obligation to provide notice under this Section if
6 the owner or operator attempts to provide notice by telephone
7 but is unable to do so because the person engaged in the
8 emergency excavation or demolition does not answer his or her
9 telephone or does not have an answering machine or answering
10 service to receive the telephone call. If the owner or operator
11 attempts to provide notice by telephone or by facsimile but
12 receives a busy signal, that attempt shall not discharge the
13 owner or operator from the obligation to provide notice under
14 this Section.

15 (b) Every person who engages in emergency excavation or
16 demolition within the boundaries of a municipality of at least
17 one million persons which operates its own one-call notice
18 system shall take all reasonable precautions to avoid or
19 minimize interference between the emergency work and existing
20 underground utility facilities ~~or CATS facilities~~ in and near
21 the excavation or demolition area, through the municipality's
22 one-call notice system, and shall notify, as far in advance as
23 possible, the owners and operators of underground utility
24 facilities ~~or CATS facilities~~ in and near the emergency
25 excavation or demolition area, through the municipality's
26 one-call notice system.

1 (c) The reinstallation of traffic control devices shall be
2 deemed an emergency for purposes of this Section.

3 (d) An open cut utility locate shall be deemed an emergency
4 for purposes of this Section.

5 (Source: P.A. 94-623, eff. 8-18-05.)

6 (220 ILCS 50/7) (from Ch. 111 2/3, par. 1607)

7 Sec. 7. Damage or dislocation. In the event of any damage
8 to or dislocation of any underground utility facilities ~~or CATS~~
9 ~~facilities~~ in connection with any excavation or demolition,
10 emergency or nonemergency, the person responsible for the
11 excavation or demolition operations shall immediately cease
12 excavation in the area of the damage when the damaged facility
13 is a threat to life or property or if otherwise required by law
14 and notify the affected utility and the State-Wide One-Call
15 Notice System or, in the case of damage or dislocation in
16 connection with any excavation or demolition within the
17 boundaries of a municipality having a population of at least
18 1,000,000 inhabitants that operates its own one-call notice
19 system, notify the affected utility and the one-call notice
20 system that operates in that municipality. The person
21 responsible for the excavation or demolition shall not attempt
22 to repair, clamp, or constrict the damaged utility facility
23 unless directed to do so by the utility facility owner or
24 operator. In the event of any damage to any underground utility
25 facility that results in the escape of any flammable, toxic, or

1 corrosive gas or liquid, the person responsible for the
2 excavation or demolition shall call 9-1-1 and notify
3 authorities of the damage. Owners and operators of underground
4 utility facilities that are damaged and the excavator involved
5 shall work in a cooperative and expeditious manner to repair
6 the affected utility.

7 (Source: P.A. 92-179, eff. 7-1-02; 93-430, eff. 8-5-03.)

8 (220 ILCS 50/10) (from Ch. 111 2/3, par. 1610)

9 Sec. 10. Record of notice; marking of facilities. Upon
10 notice by the person engaged in excavation or demolition, the
11 person owning or operating underground utility facilities ~~or~~
12 ~~CATS facilities~~ in or near the excavation or demolition area
13 shall cause a written record to be made of the notice and shall
14 mark, within 48 hours of receipt of notice or by the requested
15 date and time indicated on the notice, whichever is later,, the
16 approximate locations of such facilities so as to enable the
17 person excavating or demolishing to establish the location of
18 the underground utility facilities ~~or CATS facilities~~. Owners
19 and operators of underground sewer facilities that are located
20 outside the boundaries of a municipality having a population of
21 at least 1,000,000 inhabitants shall be required to respond and
22 mark the approximate location of those sewer facilities when
23 the excavator indicates, in the notice required in Section 4,
24 that the excavation or demolition project will exceed a depth
25 of 7 feet. "Depth", in this case, is defined as the distance

1 measured vertically from the surface of the ground to the top
2 of the sewer facility. Owners and operators of underground
3 sewer facilities that are located outside the boundaries of a
4 municipality having a population of at least 1,000,000
5 inhabitants shall be required at all times to locate the
6 approximate location of those sewer facilities when: (1)
7 directional boring is the indicated type of excavation work
8 being performed within the notice; (2) the underground sewer
9 facilities owned are non-gravity, pressurized force mains; or
10 (3) the excavation indicated will occur in the immediate
11 proximity of known underground sewer facilities that are less
12 than 7 feet deep. Owners or operators of underground sewer
13 facilities that are located outside the boundaries of a
14 municipality having a population of at least 1,000,000
15 inhabitants shall not hold an excavator liable for damages that
16 occur to sewer facilities that were not required to be marked
17 under this Section, provided that prompt notice of the damage
18 is made to the State-Wide One-Call Notice System and the
19 utility owner as required in Section 7.

20 All persons subject to the requirements of this Act shall
21 plan and conduct their work consistent with reasonable business
22 practices. Conditions may exist making it unreasonable to
23 request that locations be marked within 48 hours or by the
24 requested date and time indicated on the notice, whichever is
25 later. It is unreasonable to request owners and operators of
26 underground utility facilities ~~and CATS facilities~~ to locate

1 all of their facilities in an affected area upon short notice
2 in advance of a large or extensive nonemergency project, or to
3 request extensive locates in excess of a reasonable excavation
4 or demolition work schedule, or to request locates under
5 conditions where a repeat request is likely to be made because
6 of the passage of time or adverse job conditions. Owners and
7 operators of underground utility facilities ~~and CATS~~
8 ~~facilities~~ must reasonably anticipate seasonal fluctuations in
9 the number of locate requests and staff accordingly.

10 If a person owning or operating underground utility
11 facilities ~~or CATS facilities~~ receives a notice under this
12 Section but does not own or operate any underground utility
13 facilities ~~or CATS facilities~~ within the proposed excavation or
14 demolition area described in the notice, that person, within 48
15 hours or by the requested date and time indicated on the
16 notice, whichever is later, after receipt of the notice, shall
17 so notify the person engaged in excavation or demolition who
18 initiated the notice, unless the person who initiated the
19 notice expressly waives the right to be notified that no
20 facilities are located within the excavation or demolition
21 area. The notification by the owner or operator of underground
22 utility facilities ~~or CATS facilities~~ to the person engaged in
23 excavation or demolition may be provided in any reasonable
24 manner including, but not limited to, notification in any one
25 of the following ways: by face-to-face communication; by phone
26 or phone message; by facsimile; by posting in the excavation or

1 demolition area; or by marking the excavation or demolition
2 area. The owner or operator of those facilities has discharged
3 the owner's or operator's obligation to provide notice under
4 this Section if the owner or operator attempts to provide
5 notice by telephone or by facsimile, if the person has supplied
6 a facsimile number, but is unable to do so because the person
7 engaged in the excavation or demolition does not answer his or
8 her telephone or does not have an answering machine or
9 answering service to receive the telephone call or does not
10 have a facsimile machine in operation to receive the facsimile
11 transmission. If the owner or operator attempts to provide
12 notice by telephone or by facsimile but receives a busy signal,
13 that attempt shall not serve to discharge the owner or operator
14 of the obligation to provide notice under this Section.

15 A person engaged in excavation or demolition may expressly
16 waive the right to notification from the owner or operator of
17 underground utility facilities ~~or CATS facilities~~ that the
18 owner or operator has no facilities located in the proposed
19 excavation or demolition area. Waiver of notice is only
20 permissible in the case of regular or nonemergency locate
21 requests. The waiver must be made at the time of the notice to
22 the State-Wide One-Call Notice System. A waiver made under this
23 Section is not admissible as evidence in any criminal or civil
24 action that may arise out of, or is in any way related to, the
25 excavation or demolition that is the subject of the waiver.

26 For the purposes of this Act, underground facility

1 operators may utilize a combination of flags, stakes, and paint
 2 when possible on non-paved surfaces and when dig site and
 3 seasonal conditions warrant. If the approximate location of an
 4 underground utility facility ~~or CATS facility~~ is marked with
 5 stakes or other physical means, the following color coding
 6 shall be employed:

7 Underground Facility Identification Color

8 Facility Owner or Agent Use Only

9 Electric Power, Distribution and

10 Transmission Safety Red

11 Municipal Electric Systems Safety Red

12 Gas Distribution and Transmission High Visibility Safety
 13 Yellow

14 Oil Distribution and Transmission High Visibility Safety
 15 Yellow

16 Telephone and Telegraph Systems Safety Alert Orange

17 Community Antenna Television Systems .. Safety Alert Orange

18 Water Systems Safety Precaution Blue

19 Sewer Systems Safety Green

20 Non-potable Water and Slurry Lines Safety Purple

21 Excavator Use Only

1 Temporary Survey Safety Pink
 2 Proposed Excavation..... Safety White (Black
 3 when snow is on the
 4 ground)

5 (Source: P.A. 93-430, eff. 8-5-03; 94-623, eff. 8-18-05.)

6 (220 ILCS 50/11) (from Ch. 111 2/3, par. 1611)

7 Sec. 11. Penalties; liability; fund.

8 (a) Every person who, while engaging in excavation or
 9 demolition, wilfully fails to comply with the Act by failing to
 10 provide the notice to the owners or operators of the
 11 underground facilities ~~or CATS facility~~ near the excavation or
 12 demolition area through the State-Wide One-Call Notice System
 13 as required by Section 4 or 6 of this Act shall be subject to a
 14 penalty of up to \$5,000 for each separate offense and shall be
 15 liable for the damage caused to the owners or operators of the
 16 facility. Every person who fails to provide notice and
 17 willfully fails to comply with other provisions of this Act
 18 shall be subject to additional penalties of up to \$2,500 for
 19 each separate offense and shall be liable for the damage caused
 20 to the owners or operators of the facility.

21 (b) Every person who, ~~while engaging in excavation or~~
 22 ~~demolition,~~ has provided the notice to the owners or operators
 23 of the underground utility facilities ~~or CATS facilities~~ in and
 24 near the excavation or demolition area through the State-Wide
 25 One-Call Notice System as required by Section 4 or 6 of this

1 Act, but otherwise wilfully fails to comply with this Act,
2 shall be subject to a penalty of up to \$2,500 for each separate
3 offense and shall be liable for the damage caused to the owners
4 or operators of the facility.

5 (c) Every person who, while engaging in excavation or
6 demolition, has provided the notice to the owners or operators
7 of the underground utility facilities ~~or CATS facilities~~ in and
8 near the excavation or demolition area through the State-Wide
9 One-Call Notice System as required by Section 4 or 6 of this
10 Act, but otherwise, while acting reasonably, damages any
11 underground utility facilities ~~or CATS facilities~~, shall not be
12 subject to a penalty, but shall be liable for the damage caused
13 to the owners or operators of the facility provided the
14 underground utility facility ~~or CATS facility~~ is properly
15 marked as provided in Section 10 of this Act.

16 (d) Every person who, ~~while engaging in excavation or~~
17 ~~demolition~~, provides notice to the owners or operators of the
18 underground utility facilities ~~or CATS facilities~~ through the
19 State-Wide One-Call Notice System as an emergency locate
20 request and the locate request is not an emergency locate
21 request as defined in Section 2.6 of this Act shall be subject
22 to a penalty of up to \$2,500 for each separate offense.

23 (e) Owners and operators of underground utility facilities
24 who willfully fail to comply with this Act by a failure to
25 respond or mark the approximate location of an underground
26 utility as required by subsection (h) of Section 4, subsection

1 (a) of Section 6, or Section 10 of this Act after being
2 notified of planned excavation or demolition through the
3 State-Wide One-Call Notice System, shall be subject to a
4 penalty of up to \$5,000 for each separate offense. ~~Owners and~~
5 ~~operators of underground utility facilities or CATS facilities~~
6 ~~(i) who wilfully fail to comply with this Act by a failure to~~
7 ~~mark the location of an underground utility or CATS facility or~~
8 ~~a failure to provide notice that facilities are not within the~~
9 ~~proposed excavation or demolition area as required in Section~~
10 ~~10, or (ii) who willfully fail to respond as required in~~
11 ~~Section 6 to an emergency request, after being notified of~~
12 ~~planned excavation or demolition through the State-Wide~~
13 ~~One-Call Notice System, shall be subject to a penalty of up to~~
14 ~~\$5,000 for each separate offense resulting from the failure to~~
15 ~~mark an underground utility facility or CATS facility.~~

16 (f) As provided in Section 3 of this Act, all owners or
17 operators of underground utility facilities ~~or CATS facilities~~
18 who fail to join the State-Wide One-Call Notice System by
19 January 1, 2003 shall be subject to a penalty of \$100 per day
20 for each separate offense. Every day an owner or operator fails
21 to join the State-Wide One-Call Notice System is a separate
22 offense. This subsection (f) does not apply to utilities
23 operating facilities ~~or CATS facilities~~ exclusively within the
24 boundaries of a municipality with a population of at least
25 1,000,000 persons.

26 (g) No owner or operator of underground utility facilities

1 ~~or CATS facilities~~ shall be subject to a penalty where a delay
2 in marking or a failure to mark or properly mark the location
3 of an underground utility ~~or CATS facility~~ is caused by
4 conditions beyond the reasonable control of such owner or
5 operator.

6 (h) Any person who is neither an agent, employee, or
7 authorized locating contractor of the owner or operator of the
8 underground utility facility ~~or CATS facility~~ nor an excavator
9 involved in the excavation activity who removes, alters, or
10 otherwise damages markings, flags, or stakes used to mark the
11 location of an underground utility ~~or CATS facility~~ other than
12 during the course of the excavation for which the markings were
13 made or before completion of the project shall be subject to a
14 penalty up to \$1,000 for each separate offense.

15 (i) (Blank). ~~The excavator shall exercise due care at all~~
16 ~~times to protect underground utility facilities and CATS~~
17 ~~facilities. If, after proper notification through the~~
18 ~~State Wide One Call Notice System and upon arrival at the site~~
19 ~~of a proposed excavation, the excavator observes clear evidence~~
20 ~~of the presence of an unmarked utility or CATS facility in the~~
21 ~~area of the proposed excavation, the excavator shall not begin~~
22 ~~excavating until 2 hours after an additional call is made to~~
23 ~~the State Wide One Call Notice System for the area. The~~
24 ~~operator of the utility or CATS facility shall respond within 2~~
25 ~~hours of the excavator's call to the State Wide One Call Notice~~
26 ~~System.~~

1 (j) The Illinois Commerce Commission shall have the power
2 and jurisdiction to, and shall, enforce the provisions of this
3 Act. The Illinois Commerce Commission may impose
4 administrative penalties as provided in this Section. The
5 Illinois Commerce Commission may promulgate rules and develop
6 enforcement policies in the manner provided by the Public
7 Utilities Act in order to implement compliance with this Act.
8 When a penalty is warranted, the following criteria shall be
9 used in determining the magnitude of the penalty:

10 (1) gravity of noncompliance;

11 (2) culpability of offender;

12 (3) history of noncompliance for the 18 months prior to
13 the date of the incident; however, when determining
14 non-compliance the alleged violator's roles as operator or
15 owner and the person engaged in excavating shall be treated
16 separately;

17 (4) ability to pay penalty;

18 (5) show of good faith of offender;

19 (6) ability to continue business; and

20 (7) other special circumstances.

21 (k) There is hereby created in the State treasury a special
22 fund to be known as the Illinois Underground Utility Facilities
23 Damage Prevention Fund. All penalties recovered in any action
24 under this Section shall be paid into the Fund and shall be
25 distributed annually as a grant to the State-Wide One-Call
26 Notice System to be used in safety and informational programs

1 to reduce the number of incidents of damage to underground
2 utility facilities ~~and CATS facilities~~ in Illinois. The
3 distribution shall be made during January of each calendar year
4 based on the balance in the Illinois Underground Utility
5 Facilities Damage Prevention Fund as of December 31 of the
6 previous calendar year. In all such actions under this Section,
7 the procedure and rules of evidence shall conform with the Code
8 of Civil Procedure, and with rules of courts governing civil
9 trials.

10 (l) The Illinois Commerce Commission shall establish an
11 Advisory Committee consisting of a representative from each of
12 the following: utility operator, JULIE, excavator,
13 municipality, and the general public. The Advisory Committee
14 shall serve as a peer review panel for any contested penalties
15 resulting from the enforcement of this Act.

16 The members of the Advisory Committee shall be immune,
17 individually and jointly, from civil liability for any act or
18 omission done or made in performance of their duties while
19 serving as members of such Advisory Committee, unless the act
20 or omission was the result of willful and wanton misconduct.

21 (m) If, after the Advisory Committee has considered a
22 particular contested penalty and performed its review
23 functions under this Act and the Commission's rules, there
24 remains a dispute as to whether the Commission should impose a
25 penalty under this Act, the matter shall proceed in the manner
26 set forth in Article X of the Public Utilities Act, including

1 the provisions governing judicial review.

2 (Source: P.A. 94-623, eff. 8-18-05.)

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.".