

## **(220 ILCS 50/) Illinois Underground Utility Facilities Damage Prevention Act.**

(220 ILCS 50/1) (from Ch. 111 2/3, par. 1601)

Sec. 1. This Act shall be known and may be cited as the Illinois Underground Utility Facilities Damage Prevention Act, and for the purposes of participating in the State of Illinois Joint Purchasing Program, the State-Wide One-Call Notice System, commonly referred to as "JULIE, Inc.", shall be considered as created by this Act.

(Source: P.A. 96-714, eff. 1-1-10.)

(220 ILCS 50/2) (from Ch. 111 2/3, par. 1602)

Sec. 2. Definitions. As used in this Act, unless the context clearly otherwise requires, the terms specified in Sections 2.1 through 2.11 have the meanings ascribed to them in those Sections.

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

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

Sec. 2.1. "Person" means an individual, firm, joint venture, partnership, corporation, association, municipality or other governmental unit, department or agency, utility cooperative, or joint stock association, and includes any trustee, receiver, or assignee or employee or agent thereof.

(Source: P.A. 96-714, eff. 1-1-10.)

(220 ILCS 50/2.1.3)

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

(Source: P.A. 96-714, eff. 1-1-10.)

(220 ILCS 50/2.1.4)

Sec. 2.1.4. Incomplete request. "Incomplete request" means a notice initiated by an excavator through the State-Wide One-Call Notice System to the owners or operators of underground utility facilities notified in a prior locate request that such facility owners or operators, as identified by the

person excavating, did not completely mark the entire extent or the entire segment of the proposed excavation, as identified by the excavator in the prior notice.

(Source: P.A. 96-714, eff. 1-1-10.)

(220 ILCS 50/2.1.5)

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

(Source: P.A. 96-714, eff. 1-1-10.)

(220 ILCS 50/2.1.6)

Sec. 2.1.6. Residential property owner. "Residential property owner" means any individual or entity that owns or leases real property that is used by such individual or entity as its residence or dwelling. Residential property owner does not include any persons who own or lease residential property for the purpose of holding or developing such property or for any other business or commercial purposes.

(Source: P.A. 96-714, eff. 1-1-10.)

(220 ILCS 50/2.1.9)

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

(Source: P.A. 96-714, eff. 1-1-10.)

(220 ILCS 50/2.1.10)

Sec. 2.1.10. Internal electric grid of a wind turbine generation farm. "Internal electric grid of a wind turbine generation farm" means those facilities located within a wind generation farm from a tower to a substation.

(Source: P.A. 96-714, eff. 1-1-10.)

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

Sec. 2.2. Underground utility facilities.

(a) "Underground utility facilities" or "facilities" means and includes wires, ducts, fiber optic cable, conduits, pipes, sewers, and cables and their connected appurtenances installed beneath the surface of the ground by:

(1) a public utility as defined in the Public

Utilities Act;

(2) a municipally owned or mutually owned utility

providing a similar utility service;

(3) a pipeline entity transporting gases, crude oil,

petroleum products, or other hydrocarbon materials within the State;

(4) a telecommunications carrier as defined in the

Universal Telephone Service Protection Law of 1985, or by a company described in Section 1 of the Telephone Company Act;

(5) a community antenna television system, as defined

in the Illinois Municipal Code or the Counties Code;

(6) a holder, as that term is defined in the Cable

and Video Competition Law of 2007;

(7) any other entity owning or operating underground

facilities that transport generated electrical power to other utility owners or operators or transport generated electrical power within the internal electric grid of a wind turbine generation farm; and

(8) an electric cooperative as defined in the Public

Utilities Act.

(Source: P.A. 96-714, eff. 1-1-10.)

(220 ILCS 50/2.3) (from Ch. 111 2/3, par. 1602.3)

Sec. 2.3. Excavation. "Excavation" means any operation in which earth, rock, or other material in or on the ground is moved, removed, or otherwise displaced by means of any tools, power equipment or explosives, and includes, without limitation, grading, trenching, digging, ditching, drilling, augering, boring, tunneling, scraping, cable or pipe plowing, and driving but does not include farm tillage operations or railroad right-of-way maintenance or operations or coal mining operations regulated under the Federal Surface Mining Control and Reclamation Act of 1977 or any State law or rules or regulations adopted under the federal statute, or land surveying operations as defined in the Illinois Professional Land Surveyor Act of 1989 when not using power equipment, or roadway surface milling.

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

(220 ILCS 50/2.4) (from Ch. 111 2/3, par. 1602.4)

Sec. 2.4. "Demolition" means the wrecking, razing, rending, moving, or removing of a structure by means of any power tool, power equipment (exclusive of transportation equipment) or explosives.

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

(220 ILCS 50/2.5) (from Ch. 111 2/3, par. 1602.5)

Sec. 2.5. "Damage" means the contact or dislocation of any underground utility facility or CATS facility during excavation or demolition which necessitates immediate or subsequent repair by the owner of such facility.

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

(220 ILCS 50/2.6)

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

(Source: P.A. 96-714, eff. 1-1-10.)

(220 ILCS 50/2.7)

Sec. 2.7. Tolerance zone. "Tolerance zone" means the approximate location of underground utility facilities or CATS facilities defined as a strip of land at least 3 feet wide, but not wider than the width of the underground facility or CATS facility plus 1-1/2 feet on either side of such facility based upon the markings made by the owner or operator of the facility. Excavation within the tolerance zone requires extra care and precaution including, but not limited to, as set forth in Section 4.

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

(220 ILCS 50/2.8)

Sec. 2.8. Approximate location. "Approximate location" means a strip of land at least 3 feet wide, but not wider than the width of the underground facility or CATS facility plus 1.5 feet on either side of the facility.

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

(220 ILCS 50/2.9)

Sec. 2.9. "Forty-eight hours" means 2 business days beginning at 8 a.m. and ending at 4 p.m. (exclusive of Saturdays, Sundays, and holidays recognized by the State-Wide One-Call Notice System or the municipal one-call notice system). All requests for locates received after 4 p.m. will be processed as if received at 8 a.m. the next business day.

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

(220 ILCS 50/2.10)

Sec. 2.10. "Open cut utility locate" means a method of locating underground utility facilities that requires excavation by the owner, operator, or agent of the underground facility.

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

(220 ILCS 50/2.11)

Sec. 2.11. "Roadway surface milling" means the removal of a uniform pavement section by rotomilling, grinding, or other means not including the base or subbase.

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

(220 ILCS 50/3) (from Ch. 111 2/3, par. 1603)

Sec. 3. The owners or operators of underground utility facilities or CATS facilities that are not currently participants in the State-Wide One-Call Notice System shall, within 6 months of the effective date of this Act, join the State-Wide One-Call Notice System. This Section shall not apply to utilities operating facilities or CATS facilities exclusively within the boundaries of a municipality with a population of at least one million persons.

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

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

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

(a) take reasonable action to inform himself of the

location of any underground utility facilities in and near the area for which such operation is to be conducted;

(b) plan the excavation or demolition to avoid or

minimize interference with underground utility facilities within the tolerance zone by utilizing such precautions that include, but are not limited to, hand excavation, vacuum excavation methods, and visually inspecting the excavation while in progress until clear of the existing marked facility;

(c) if practical, use white paint, flags, stakes, or

both, to outline the dig site;

(d) provide notice not less than 48 hours but no

more than 14 calendar days in advance of the start of the excavation or demolition to the owners or operators of the underground utility facilities in and near the excavation or demolition area through the State-Wide One-Call Notice System or, in the case of nonemergency excavation or demolition within the boundaries of a municipality of at least one million persons which operates its own one-call notice system, through the one-call notice system which operates in that municipality.

At a minimum, the notice required under this

subsection (d) shall provide:

(1) the person's name, address, phone number at

which a person can be reached, and fax number, if available;

(2) the start date and time of the planned

excavation or demolition;

(3) all counties, cities, or townships, or any

combination thereof, where the proposed excavation shall take place;

(4) the address at which the excavation or

demolition shall take place;

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

(6) the section or quarter sections when the

information in items (1) through (5) of this subsection (d) does not allow the State-Wide One-Call Notice System to determine the appropriate excavation or demolition site. This item (6) does not apply to residential property owners;

(e) provide, during and following excavation or

demolition, such support for existing underground utility facilities in and near the excavation or demolition area as may be reasonably necessary for the protection of such facilities unless otherwise agreed to by the owner or operator of the underground facility;

(f) backfill all excavations in such manner and with

such materials as may be reasonably necessary for the protection of existing underground utility facilities in and near the excavation or demolition area;

(g) after February 29, 2004, when the excavation or

demolition project will extend past 28 calendar days from the date of the original notice provided under clause (d), the excavator shall provide a subsequent notice to the owners or operators of the underground utility facilities in and near the excavation or demolition area through the State-Wide One-Call Notice System or, in the case of excavation or demolition within the boundaries of a municipality having a population of at least 1,000,000 inhabitants that operates its own one-call notice system, through the one-call notice system that operates in that municipality informing utility owners and operators that additional time to complete the excavation or demolition project will be required. The notice will provide the excavator with an additional 28 calendar days from the date of the subsequent notification to continue or complete the excavation or demolition project;

(h) exercise due care at all times to protect

underground utility facilities. If, after proper notification through the State-Wide One-Call Notice System and upon arrival at the site of the proposed excavation, the excavator observes clear evidence of the presence of an unmarked or incompletely marked utility in the area of the proposed excavation, the excavator shall not begin excavating until all affected facilities have been marked or 2 hours after an additional call is made to the State-Wide One-Call Notice System for the area. The owner or operator of the utility shall respond within 2 hours of the excavator's call to the State-Wide One-Call Notice System; and

(i) when factors, including, but not limited to,



weather, construction activity, or vandalism, at the excavation site have caused the utility markings to become faded or indistinguishable, the excavator shall provide an additional notice through the State-Wide One-Call Notice System requesting that only the affected areas where excavation or demolition is to continue be re-marked. Facility owners or operators must respond to the notice to re-mark according to the requirements of Section 10 of this Act.

Nothing in this Section prohibits the use of any method of excavation if conducted in a manner that would avoid interference with underground utility facilities.

(Source: P.A. 96-714, eff. 1-1-10.)

(220 ILCS 50/5) (from Ch. 111 2/3, par. 1605)

Sec. 5. Notice of preconstruction conference. When the Illinois Department of Transportation notifies an owner or operator of an underground utility facility or CATS facility that the Department will conduct a preconstruction conference concerning new construction, reconstruction, or maintenance of State highways in and near the area in which such owner or operator has placed underground utility facilities, such notification shall, except as otherwise provided in this Section constitute compliance by the Department or its contractors with paragraphs (a), (b), and (d) of Section 4 of this Act. In instances when notification of a preconstruction conference is provided to the owner or operator of an underground utility facility or CATS facility but no specific date is established at the preconstruction conference for the new construction, reconstruction or maintenance of State highways in and near the area in which the owner or operator has placed underground utility facilities or CATS facilities, then the Department or its contractors shall later comply with paragraph (d) of Section 4 of this Act.

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

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

Sec. 6. Emergency excavation or demolition.

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

(1) the person's name, address, and (i) phone number

at which a person can be reached and (ii) fax number, if available;

(2) the start date of the planned emergency

excavation or demolition;

(3) the address at which the excavation or demolition

will take place; and

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

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

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

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

(b) Every person who engages in emergency excavation or demolition within the boundaries of a municipality of at least one million persons which operates its own one-call notice system shall take all reasonable precautions to avoid or minimize interference between the emergency work and existing

underground utility facilities in and near the excavation or demolition area, through the municipality's one-call notice system, and shall notify, as far in advance as possible, the owners and operators of underground utility facilities in and near the emergency excavation or demolition area, through the municipality's one-call notice system.

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

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

(Source: P.A. 96-714, eff. 1-1-10.)

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

Sec. 7. Damage or dislocation. In the event of any damage to or dislocation of any underground utility facilities in connection with any excavation or demolition, emergency or nonemergency, the person responsible for the excavation or demolition operations shall immediately notify the affected utility and the State-Wide One-Call Notice System and cease excavation in the area of the damage when the damaged facility is a threat to life or property or if otherwise required by law or, in the case of damage or dislocation in connection with any excavation or demolition within the boundaries of a municipality having a population of at least 1,000,000 inhabitants that operates its own one-call notice system, notify the affected utility and the one-call notice system that operates in that municipality. The person responsible for the excavation or demolition shall not attempt to repair, clamp, or constrict the damaged utility facility unless under the supervision or advisement of the utility facility owner or operator. At no time shall a person under this Act be required by a utility facility owner or operator to attempt to repair, clamp, or constrict a damaged utility facility. In the event of any damage to any underground utility facility that results in the escape of any flammable, toxic, or corrosive gas or liquid, the person responsible for the excavation or demolition shall call 9-1-1 and notify authorities of the damage. Owners and operators of underground utility facilities that are damaged and the excavator involved shall work in a cooperative and expeditious manner to repair the affected utility.

(Source: P.A. 96-714, eff. 1-1-10.)

(220 ILCS 50/8) (from Ch. 111 2/3, par. 1608)

Sec. 8. Liability or financial responsibility.

(a) Nothing in this Act shall be deemed to affect or determine the financial responsibility for any operation under this Act or liability of any person for any damages that occur unless specifically stated otherwise.

(b) Nothing in this Act shall be deemed to provide for liability or financial responsibility of the Department of Transportation, its officers and employees concerning any underground utility facility or CATS facility located on highway right-of-way by permit issued under the provisions of Section 9-113 of the Illinois Highway Code. It is not the intent of this Act to change any remedies in law regarding the duty of providing lateral support.

(c) Neither the State-Wide One-Call Notice System nor any of its officers, agents, or employees shall be liable for damages for injuries or death to persons or damage to property caused by acts or omissions in the receipt, recording, or transmission of locate requests or other information in the performance of its duties as the State-Wide One-Call Notice System, unless the act or omission was the result of willful and wanton misconduct.

(d) Any residential property owner who fails to comply with any provision of this Act and damages underground utility facilities or CATS facilities while engaging in excavation or demolition on such residential property shall not be subject to a penalty under this Act, but shall be liable for the damage caused to the owner or operator of the damaged underground utility facilities or CATS facilities.

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

(220 ILCS 50/9) (from Ch. 111 2/3, par. 1609)

Sec. 9. When it is shown by competent evidence in any action for damages to underground utility facilities or CATS facilities that such damages resulted from excavation or demolition and that the person engaged in such excavation or demolition failed to comply with the provisions of this Act, that person shall be deemed prima facie guilty of negligence. When it is shown by competent evidence in any action for damages to persons, material or equipment brought by persons undertaking excavation or demolition acting in compliance with the provisions of this Act that such damages resulted from the failure of owners and operators of underground facilities or CATS facilities to comply with the provisions of this Act, those owners and operators shall be deemed prima facie guilty of negligence.

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

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

Sec. 10. Record of notice; marking of facilities. Upon notice by the person engaged in excavation or demolition, the person owning or operating underground utility facilities in or near the excavation or demolition area shall cause a written record to be made of the notice and shall mark, within 48 hours of receipt of notice or by the requested date and time indicated on the notice, whichever is later, the approximate locations of such facilities so as to enable the person excavating or demolishing to establish the location of the underground utility facilities. Owners and operators of underground sewer facilities that are located outside the boundaries of a municipality having a population of at least 1,000,000

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

All persons subject to the requirements of this Act shall plan and conduct their work consistent with reasonable business practices. Conditions may exist making it unreasonable to request that locations be marked within 48 hours or by the requested date and time indicated on the notice, whichever is later. It is unreasonable to request owners and operators of underground utility facilities to locate all of their facilities in an affected area upon short notice in advance of a large or extensive nonemergency project, or to request extensive locates in excess of a reasonable excavation or demolition work schedule, or to request locates under conditions where a repeat request is likely to be made because of the passage of time or adverse job conditions. Owners and operators of underground utility facilities must reasonably anticipate seasonal fluctuations in the number of locate requests and staff accordingly.

If a person owning or operating underground utility facilities receives a notice under this Section but does not own or operate any underground utility facilities within the proposed excavation or demolition area described in the notice, that person, within 48 hours or by the requested date and time indicated on the notice, whichever is later, after receipt of the notice, shall so notify the person engaged in excavation or demolition who initiated the notice, unless the person who initiated the notice expressly waives the right to be notified that no facilities are located within the excavation or demolition area. The notification by the owner or operator of underground utility facilities to the person engaged in excavation or demolition may be provided in any reasonable manner including, but not limited to, notification in any one of the following ways: by face-to-face communication; by phone or phone message; by facsimile; by posting in the excavation or demolition area; or by marking the excavation or demolition area. The owner or operator of those facilities has discharged the owner's or operator's obligation to provide notice under this Section if the owner or operator attempts to provide notice by telephone or by facsimile, if the person has supplied a facsimile number, but is unable to do so because the person engaged in the excavation or demolition does not answer his or her telephone or does not have an answering machine or answering service to receive the telephone call or does not have a facsimile machine in operation to receive the facsimile transmission. If the owner or operator attempts

to provide notice by telephone or by facsimile but receives a busy signal, that attempt shall not serve to discharge the owner or operator of the obligation to provide notice under this Section.

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

For the purposes of this Act, underground facility operators may utilize a combination of flags, stakes, and paint when possible on non-paved surfaces and when dig site and seasonal conditions warrant. If the approximate location of an underground utility facility is marked with stakes or other physical means, the following color coding shall be employed:

#### Underground Facility Identification Color

#### Facility Owner or Agent Use Only

#### Electric Power, Distribution and

Transmission..... Safety Red

Municipal Electric Systems.....Safety Red

Gas Distribution and Transmission.....

High Visibility Safety

Yellow

Oil Distribution and Transmission.....

High Visibility Safety

Yellow

Telephone and Telegraph Systems..... Safety Alert Orange

Community Antenna Television Systems... Safety Alert Orange

Water Systems.....

Safety Precaution Blue

Sewer Systems..... Safety Green

Non-potable Water and Slurry Lines.... Safety Purple

Excavator Use Only

Temporary Survey..... Safety Pink

Proposed Excavation..... Safety White (Black

when snow is on the

ground)

(Source: P.A. 96-714, eff. 1-1-10.)

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

Sec. 11. Penalties; liability; fund.

(a) Every person who, while engaging in excavation or demolition, wilfully fails to comply with the Act by failing to provide the notice to the owners or operators of the underground facilities near the excavation or demolition area through the State-Wide One-Call Notice System as required by Section 4 or 6 of this Act shall be subject to a penalty of up to \$5,000 for each separate offense and shall be liable

for the damage caused to the owners or operators of the facility. Every person who fails to provide notice and willfully fails to comply with other provisions of this Act shall be subject to additional penalties of up to \$2,500 for each separate offense and shall be liable for the damage caused to the owners or operators of the facility.

(b) Every person who has provided the notice to the owners or operators of the underground utility facilities in and near the excavation or demolition area through the State-Wide One-Call Notice System as required by Section 4 or 6 of this Act, but otherwise willfully fails to comply with this Act, shall be subject to a penalty of up to \$2,500 for each separate offense and shall be liable for the damage caused to the owners or operators of the facility.

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

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

(e) Owners and operators of underground utility facilities who willfully fail to comply with this Act by a failure to respond or mark the approximate location of an underground utility as required by subsection (h) of Section 4, subsection (a) of Section 6, or Section 10 of this Act after being notified of planned excavation or demolition through the State-Wide One-Call Notice System, shall be subject to a penalty of up to \$5,000 for each separate offense.

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

(g) No owner or operator of underground utility facilities shall be subject to a penalty where a delay in marking or a failure to mark or properly mark the location of an underground utility is caused by conditions beyond the reasonable control of such owner or operator.

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



(i) (Blank).

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

- (1) gravity of noncompliance;
- (2) culpability of offender;
- (3) history of noncompliance for the 18 months prior

to the date of the incident; however, when determining non-compliance the alleged violator's roles as operator or owner and the person engaged in excavating shall be treated separately;

- (4) ability to pay penalty;
- (5) show of good faith of offender;
- (6) ability to continue business; and
- (7) other special circumstances.

(k) There is hereby created in the State treasury a special fund to be known as the Illinois Underground Utility Facilities Damage Prevention Fund. All penalties recovered in any action under this Section shall be paid into the Fund and shall be distributed annually as a grant to the State-Wide One-Call Notice System to be used in safety and informational programs to reduce the number of incidents of damage to underground utility facilities in Illinois. The distribution shall be made during January of each calendar year based on the balance in the Illinois Underground Utility Facilities Damage Prevention Fund as of December 31 of the previous calendar year. In all such actions under this Section, the procedure and rules of evidence shall conform with the Code of Civil Procedure, and with rules of courts governing civil trials.

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

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

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

(Source: P.A. 96-714, eff. 1-1-10.)

(220 ILCS 50/11.3)

Sec. 11.3. Emergency telephone system outages; reimbursement. Any person who negligently damages an underground facility or CATS facility causing an emergency telephone system outage must reimburse the public safety agency that provides personnel to answer calls or to maintain or operate an emergency telephone system during the outage for the agency's costs associated with answering calls or maintaining or operating the system during the outage. For the purposes of this Section, "public safety agency" means the same as in Section 2.02 of the Emergency Telephone System Act.

(Source: P.A. 92-149, eff. 1-1-02.)

(220 ILCS 50/11.5)

Sec. 11.5. Limitation on liability.

(a) In joining the State-Wide One-Call Notice System, a municipality's liability, under any membership agreement rules and regulations, for the indemnification of (i) the entity that is in charge of or managing the System or any officer, agent, or employee of that entity or (ii) a member of the System or any officer, agent, or employee of a member of the System shall be limited to claims arising as a result of the acts or omissions of the municipality or its officers, agents, or employees or arising out of the operations of the municipality's underground utility facilities.

(b) Subsection (a) shall not be construed to create any additional liability for a municipality in relation to any member of the System with which the municipality may have entered into a franchise agreement. If a municipality's liability for indemnification under a franchise agreement is narrower than under this Section, the franchise agreement controls.

(Source: P.A. 90-481, eff. 8-17-97.)

(220 ILCS 50/12) (from Ch. 111 2/3, par. 1612)

Sec. 12. No action may be brought under Section 11 of this Act unless commenced within 2 years after the date of violation of this Act.

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

(220 ILCS 50/13) (from Ch. 111 2/3, par. 1613)

Sec. 13. Mandamus or injunction. Where public safety or the preservation of uninterrupted, necessary utility service or community antenna television system service is endangered by any person engaging in excavation or demolition in a negligent or unsafe manner which has resulted in or is likely to result in damage to underground utility facilities or CATS facilities or proposing to use procedures for excavation or demolition which are likely to result in damage to underground utility facilities or CATS facilities, or where the owner or operator of underground utility facilities or CATS facilities endangers an excavator by willfully failing to respond to a locate request, the owner or operator of such facilities or the excavator or the State's Attorney or the Illinois Commerce Commission at the request of the owner or operator of such facilities or the excavator may commence an action in the circuit court for the county in which the excavation or demolition is occurring or is to occur, or in which the person complained of has his principal place of business or resides, for the purpose of having such negligent or unsafe excavation or demolition stopped and prevented or to compel the marking of underground utilities facilities or CATS facilities, either by mandamus or injunction.

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

(220 ILCS 50/14) (from Ch. 111 2/3, par. 1614)

Sec. 14. Home rule. The regulation of underground utility facilities and CATS facilities damage prevention, as provided for in this Act, is an exclusive power and function of the State. A home rule unit may not regulate underground utility facilities and CATS facilities damage prevention, as provided for in this Act. All units of local government, including home rule units, must comply with the provisions of this Act. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

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