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LRB095 04955 LCT 33837 a

1 AMENDMENT TO HOUSE BILL 1309

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1309 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 Section 11 as  
6 follows:

7 (220 ILCS 50/11) (from Ch. 111 2/3, par. 1611)

8 Sec. 11. Penalties; liability; fund.

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

1 facility.

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

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

22 (d) Every person who, while engaging in excavation or  
23 demolition, provides notice to the owners or operators of the  
24 underground utility facilities or CATS facilities through the  
25 State-Wide One-Call Notice System as an emergency locate  
26 request and the locate request is not an emergency locate

1 request as defined in Section 2.6 of this Act shall be subject  
2 to a penalty of up to \$2,500 for each separate offense.

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

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

25 (g) No owner or operator of underground utility facilities  
26 or CATS facilities shall be subject to a penalty where a delay

1 in marking or a failure to mark or properly mark the location  
2 of an underground utility or CATS facility is caused by  
3 conditions beyond the reasonable control of such owner or  
4 operator.

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

14 (h-5) In addition to the liability provided for in this  
15 Section, any person who, while engaging in excavation or  
16 demolition, damages any underground utility facility or CATS  
17 facility shall be liable for the cost of any public service,  
18 such as police, fire, or other emergency provider, that  
19 responds because of the damage to the underground utility  
20 facility or CATS facility.

21 (i) The excavator shall exercise due care at all times to  
22 protect underground utility facilities and CATS facilities.  
23 If, after proper notification through the State-Wide One-Call  
24 Notice System and upon arrival at the site of a proposed  
25 excavation, the excavator observes clear evidence of the  
26 presence of an unmarked utility or CATS facility in the area of

1 the proposed excavation, the excavator shall not begin  
2 excavating until 2 hours after an additional call is made to  
3 the State-Wide One-Call Notice System for the area. The  
4 operator of the utility or CATS facility shall respond within 2  
5 hours of the excavator's call to the State-Wide One-Call Notice  
6 System.

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

16 (1) gravity of noncompliance;

17 (2) culpability of offender;

18 (3) history of noncompliance for the 18 months prior to  
19 the date of the incident;

20 (4) ability to pay penalty;

21 (5) show of good faith of offender;

22 (6) ability to continue business; and

23 (7) other special circumstances.

24 (k) There is hereby created in the State treasury a special  
25 fund to be known as the Illinois Underground Utility Facilities  
26 Damage Prevention Fund. All penalties recovered in any action

1 under this Section shall be paid into the Fund and shall be  
2 distributed annually as a grant to the State-Wide One-Call  
3 Notice System to be used in safety and informational programs  
4 to reduce the number of incidents of damage to underground  
5 utility facilities and CATS facilities in Illinois. The  
6 distribution shall be made during January of each calendar year  
7 based on the balance in the Illinois Underground Utility  
8 Facilities Damage Prevention Fund as of December 31 of the  
9 previous calendar year. In all such actions under this Section,  
10 the procedure and rules of evidence shall conform with the Code  
11 of Civil Procedure, and with rules of courts governing civil  
12 trials.

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

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

24 (m) If, after the Advisory Committee has considered a  
25 particular contested penalty and performed its review  
26 functions under this Act and the Commission's rules, there

1 remains a dispute as to whether the Commission should impose a  
2 penalty under this Act, the matter shall proceed in the manner  
3 set forth in Article X of the Public Utilities Act, including  
4 the provisions governing judicial review.

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