



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1357

Introduced 2/10/2009, by Sen. Dale E. Risinger

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Underground Utility Facilities Damage Prevention Act. Removes all references to "CATS facilities". Removes "personal representative" from, and adds "employee or agent" to, the definition of "person". Contains provisions concerning a joint meet for certain parties. Contains provisions concerning a no show request initiated by an excavator through the State-Wide One-Call Notice System. Contains provisions concerning the initiation of an incomplete request by an excavator. Defines the terms "residential property owner" and "JULIE Excavator Handbook". Removes community antenna television systems from certain requirements concerning nonemergency excavation or demolition, emergency excavation or demolition, and certain records of notice. Adds certain requirements concerning nonemergency excavation or demolition. Contains provisions concerning requests of drawings of the job site by the owner or operator. Adds language (1) providing that excavation shall cease in the area of the damage when the damaged facility is a threat to life or property or if otherwise required by law and (2) prohibiting the excavator from engaging in specified activities. Provides that every person that fails to provide notice and willfully fails to comply with other provisions of the Act shall be subject to specified penalties. Contains provisions concerning penalties for owners and operators of underground utility facilities. Makes other changes. Effective January 1, 2010.

LRB096 05751 MJR 15822 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning utilities.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Underground Utility Facilities
5 Damage Prevention Act is amended by changing Sections 1, 2.1,
6 2.2, 2.6, 4, 6, 7, 10, and 11 and by adding Sections 2.1.3,
7 2.1.4, 2.1.5, 2.1.6, and 2.1.9 as follows:

8 (220 ILCS 50/1) (from Ch. 111 2/3, par. 1601)

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

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

16 (220 ILCS 50/2.1) (from Ch. 111 2/3, par. 1602.1)

17 Sec. 2.1. "Person" means an individual, firm, joint
18 venture, partnership, corporation, association, municipality
19 or other governmental unit, department or agency, utility
20 cooperative, or joint stock association, and includes any
21 trustee, receiver, or assignee or employee or agent ~~or personal~~
22 ~~representative~~ thereof.

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

2 (220 ILCS 50/2.1.3 new)

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

10 (220 ILCS 50/2.1.4 new)

11 Sec. 2.1.4. Incomplete request. "Incomplete request"
12 means a notice initiated by an excavator through the State-Wide
13 One-Call Notice System to the owners or operators of
14 underground utility facilities notified in a prior locate
15 request that such facility owners or operators, as identified
16 by the person excavating, did not completely mark the entire
17 extent or the entire segment of the proposed excavation, as
18 identified by the excavator in the prior notice.

19 (220 ILCS 50/2.1.5 new)

20 Sec. 2.1.5. Re-mark request. "Re-mark request" means a
21 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 the initial locate

1 request requesting facility owners or operators to re-mark all
2 or part of the work area identified in the initial locate
3 request, because facility markings are becoming or have become
4 indistinguishable due to factors, including, but not limited
5 to, weather, fading, construction activity, or vandalism.

6 (220 ILCS 50/2.1.6 new)

7 Sec. 2.1.6. Residential property owner. "Residential
8 property owner" means any individual or entity that owns or
9 leases real property, which property is zoned residential and
10 used by such individual or entity as its residence or dwelling.
11 Residential property owner does not include any persons who own
12 or lease residential property for the purpose of holding or
13 developing such property or for any other business or
14 commercial purposes.

15 (220 ILCS 50/2.1.9 new)

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

22 (220 ILCS 50/2.2) (from Ch. 111 2/3, par. 1602.2)

23 Sec. 2.2. Underground utility facilities.

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

5 (1) a public utility as defined in the Public Utilities
6 Act;

7 (2) a municipally owned or mutually owned utility
8 providing a similar utility service;

9 (3) a pipeline entity transporting gases, crude oil,
10 petroleum products, or other hydrocarbon materials within
11 the State;

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

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

18 (6) any other entity owning or operating underground
19 facilities that transport generated electrical power to
20 other utility owners or operators.

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

24 ~~"Underground utility facilities" or "facilities" means and~~
25 ~~includes wires, ducts, fiber optic cable, conduits, pipes,~~
26 ~~sewers, and cables and their connected appurtenances installed~~

1 ~~beneath the surface of the ground by a public utility (as is~~
2 ~~defined in the Illinois Public Utilities Act, as amended), or~~
3 ~~by a municipally owned or mutually owned utility providing a~~
4 ~~similar utility service, except an electric cooperative as~~
5 ~~defined in the Illinois Public Utilities Act, as amended, or by~~
6 ~~a pipeline entity transporting gases, crude oil, petroleum~~
7 ~~products, or other hydrocarbon materials within the State, or~~
8 ~~by a telecommunications carrier as defined in the Universal~~
9 ~~Telephone Service Protection Law of 1985, or by a company~~
10 ~~described in Section 1 of "An Act relating to the powers,~~
11 ~~duties and property of telephone companies", approved May 16,~~
12 ~~1903, as amended, or by a community antenna television system,~~
13 ~~hereinafter referred to as "CATS", as defined in the Illinois~~
14 ~~Municipal Code, as amended.~~

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

16 (220 ILCS 50/2.6)

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

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

23 (220 ILCS 50/4) (from Ch. 111 2/3, par. 1604)

24 Sec. 4. Required activities. Every person who engages in

1 nonemergency excavation or demolition shall:

2 (a) take reasonable action to inform himself of the
3 location of any underground utility facilities ~~or CATS~~
4 ~~facilities~~ in and near the area for which such operation is
5 to be conducted;

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

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

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

26 At a minimum, the notice required under this subsection

1 (d) shall provide:

2 (1) the person's name, address, phone number at
3 which a person can be reached, and fax number, if
4 available;

5 (2) the start date and time of the planned
6 excavation or demolition;

7 (3) all counties, cities, or townships, or any
8 combination thereof, where the proposed excavation
9 shall take place;

10 (4) the address at which the excavation or
11 demolition shall take place;

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

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

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

26 (f) backfill all excavations in such manner and with

1 such materials as may be reasonably necessary for the
2 protection of existing underground utility facilities ~~or~~
3 ~~CATS facilities~~ in and near the excavation or demolition
4 area; ~~and~~

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

22 (h) exercise due care at all times to protect
23 underground utility facilities. If, after proper
24 notification through the State-Wide One-Call Notice System
25 and upon arrival at the site of the proposed excavation,
26 the excavator observes clear evidence of the presence of an

1 unmarked or incompletely marked utility in the area of the
2 proposed excavation, the excavator shall not begin
3 excavating until all affected facilities have been marked
4 or 2 hours after an additional call is made to the
5 State-Wide One-Call Notice System for the area. The owner
6 or operator of the utility shall respond within 2 hours of
7 the excavator's call to the State-Wide One-Call Notice
8 System; and

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

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

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

24 ~~(2) the start date of the planned excavation or~~
25 ~~demolition;~~

26 ~~(3) the address at which the excavation or demolition~~

1 ~~will take place;~~
2 ~~(4) the type and extent of the work involved; and~~
3 ~~(5) section/quarter sections when the above~~
4 ~~information does not allow the State-Wide One-Call Notice~~
5 ~~System to determine the appropriate geographic~~
6 ~~section/quarter sections. This item (5) does not apply to~~
7 ~~residential property owners.~~

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

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

13 (220 ILCS 50/6) (from Ch. 111 2/3, par. 1606)

14 Sec. 6. Emergency excavation or demolition.

15 (a) Every person who engages in emergency excavation or
16 demolition outside of the boundaries of a municipality of at
17 least one million persons which operates its own one-call
18 notice 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 State-Wide
22 One-Call Notice System, and shall notify, as far in advance as
23 possible, the owners or operators of such underground utility
24 facilities ~~or CATS facilities~~ in and near the emergency
25 excavation or demolition area, through the State-Wide One-Call

1 Notice System. At a minimum, the notice required under this
2 subsection (a) shall provide:

3 (1) the person's name, address, and (i) phone number at
4 which a person can be reached and (ii) fax number, if
5 available;

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

8 (3) the address at which the excavation or demolition
9 will take place; and

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

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

18 Upon notice by the person engaged in emergency excavation
19 or demolition, the owner or operator of an underground utility
20 facility ~~or CATS facility~~ in or near the excavation or
21 demolition area shall communicate with the person engaged in
22 emergency excavation or demolition within 2 hours or by the
23 date and time requested on the notice, whichever is longer by
24 (1) marking the approximate location of underground
25 facilities; (2) advising the person excavating that their
26 underground facilities are not in conflict with the emergency

1 excavation; or (3) notifying the person excavating that the
2 owner or operator shall be delayed in marking because of
3 conditions as referenced in subsection (g) of Section 11 of
4 this Act.

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

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

1 possible, the owners and operators of underground utility
2 facilities ~~or CATS facilities~~ in and near the emergency
3 excavation or demolition area, through the municipality's
4 one-call notice system.

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

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

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

10 (220 ILCS 50/7) (from Ch. 111 2/3, par. 1607)

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

1 to repair, clamp, or constrict the damaged utility facility
2 unless directed to do so by the utility facility owner or
3 operator. In the event of any damage to any underground utility
4 facility that results in the escape of any flammable, toxic, or
5 corrosive gas or liquid, the person responsible for the
6 excavation or demolition shall call 9-1-1 and notify
7 authorities of the damage. Owners and operators of underground
8 utility facilities that are damaged and the excavator involved
9 shall work in a cooperative and expeditious manner to repair
10 the affected utility.

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

12 (220 ILCS 50/10) (from Ch. 111 2/3, par. 1610)

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

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

24 All persons subject to the requirements of this Act shall
25 plan and conduct their work consistent with reasonable business
26 practices. Conditions may exist making it unreasonable to

1 request that locations be marked within 48 hours or by the
2 requested date and time indicated on the notice, whichever is
3 later. It is unreasonable to request owners and operators of
4 underground utility facilities ~~and CATS facilities~~ to locate
5 all of their facilities in an affected area upon short notice
6 in advance of a large or extensive nonemergency project, or to
7 request extensive locates in excess of a reasonable excavation
8 or demolition work schedule, or to request locates under
9 conditions where a repeat request is likely to be made because
10 of the passage of time or adverse job conditions. Owners and
11 operators of underground utility facilities ~~and CATS~~
12 ~~facilities~~ must reasonably anticipate seasonal fluctuations in
13 the number of locate requests and staff accordingly.

14 If a person owning or operating underground utility
15 facilities ~~or CATS facilities~~ receives a notice under this
16 Section but does not own or operate any underground utility
17 facilities ~~or CATS facilities~~ within the proposed excavation or
18 demolition area described in the notice, that person, within 48
19 hours or by the requested date and time indicated on the
20 notice, whichever is later, after receipt of the notice, shall
21 so notify the person engaged in excavation or demolition who
22 initiated the notice, unless the person who initiated the
23 notice expressly waives the right to be notified that no
24 facilities are located within the excavation or demolition
25 area. The notification by the owner or operator of underground
26 utility facilities ~~or CATS facilities~~ to the person engaged in

1 excavation or demolition may be provided in any reasonable
2 manner including, but not limited to, notification in any one
3 of the following ways: by face-to-face communication; by phone
4 or phone message; by facsimile; by posting in the excavation or
5 demolition area; or by marking the excavation or demolition
6 area. The owner or operator of those facilities has discharged
7 the owner's or operator's obligation to provide notice under
8 this Section if the owner or operator attempts to provide
9 notice by telephone or by facsimile, if the person has supplied
10 a facsimile number, but is unable to do so because the person
11 engaged in the excavation or demolition does not answer his or
12 her telephone or does not have an answering machine or
13 answering service to receive the telephone call or does not
14 have a facsimile machine in operation to receive the facsimile
15 transmission. If the owner or operator attempts to provide
16 notice by telephone or by facsimile but receives a busy signal,
17 that attempt shall not serve to discharge the owner or operator
18 of the obligation to provide notice under this Section.

19 A person engaged in excavation or demolition may expressly
20 waive the right to notification from the owner or operator of
21 underground utility facilities ~~or CATS facilities~~ that the
22 owner or operator has no facilities located in the proposed
23 excavation or demolition area. Waiver of notice is only
24 permissible in the case of regular or nonemergency locate
25 requests. The waiver must be made at the time of the notice to
26 the State-Wide One-Call Notice System. A waiver made under this

1 Section is not admissible as evidence in any criminal or civil
 2 action that may arise out of, or is in any way related to, the
 3 excavation or demolition that is the subject of the waiver.

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

11 Underground Facility	Identification Color
12 Facility Owner or Agent Use Only	
13 Electric Power, Distribution and	
14 Transmission	Safety Red
15 Municipal Electric Systems	Safety Red
16 Gas Distribution and Transmission	High Visibility Safety Yellow
18 Oil Distribution and Transmission	High Visibility Safety Yellow
20 Telephone and Telegraph Systems	Safety Alert Orange
21 Community Antenna Television Systems ..	Safety Alert Orange
22 Water Systems	Safety Precaution Blue
23 Sewer Systems	Safety Green

1 Non-potable Water and Slurry Lines Safety Purple

2 Excavator Use Only

3 Temporary Survey Safety Pink

4 Proposed Excavation Safety White (Black
5 when snow is on the
6 ground)

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

8 (220 ILCS 50/11) (from Ch. 111 2/3, par. 1611)

9 Sec. 11. Penalties; liability; fund.

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

23 (b) Every person who, ~~while engaging in excavation or~~

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

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

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

1 (e) Owners and operators of underground utility facilities
2 who willfully fail to comply with this Act by a failure to
3 respond or mark the approximate location of an underground
4 utility as required by subsection (h) of Section 4, subsection
5 (a) of Section 6, or Section 10 of this Act after being
6 notified of planned excavation or demolition through the
7 State-Wide One-Call Notice System, shall be subject to a
8 penalty of up to \$5,000 for each separate offense. ~~Owners and~~
9 ~~operators of underground utility facilities or CATS facilities~~
10 ~~(i) who wilfully fail to comply with this Act by a failure to~~
11 ~~mark the location of an underground utility or CATS facility or~~
12 ~~a failure to provide notice that facilities are not within the~~
13 ~~proposed excavation or demolition area as required in Section~~
14 ~~10, or (ii) who willfully fail to respond as required in~~
15 ~~Section 6 to an emergency request, after being notified of~~
16 ~~planned excavation or demolition through the State Wide~~
17 ~~One Call Notice System, shall be subject to a penalty of up to~~
18 ~~\$5,000 for each separate offense resulting from the failure to~~
19 ~~mark an underground utility facility or CATS facility.~~

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

1 operating facilities ~~or CATS facilities~~ exclusively within the
2 boundaries of a municipality with a population of at least
3 1,000,000 persons.

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

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

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

1 ~~the State Wide One Call Notice System for the area. The~~
2 ~~operator of the utility or CATS facility shall respond within 2~~
3 ~~hours of the excavator's call to the State Wide One Call Notice~~
4 ~~System.~~

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

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

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

25 (k) There is hereby created in the State treasury a special
26 fund to be known as the Illinois Underground Utility Facilities

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

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

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

25 (m) If, after the Advisory Committee has considered a
26 particular contested penalty and performed its review

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

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

7 Section 99. Effective date. This Act takes effect January
8 1, 2010.

1		INDEX
2		Statutes amended in order of appearance
3	220 ILCS 50/1	from Ch. 111 2/3, par. 1601
4	220 ILCS 50/2.1	from Ch. 111 2/3, par. 1602.1
5	220 ILCS 50/2.1.3 new	
6	220 ILCS 50/2.1.4 new	
7	220 ILCS 50/2.1.5 new	
8	220 ILCS 50/2.1.6 new	
9	220 ILCS 50/2.1.9 new	
10	220 ILCS 50/2.2	from Ch. 111 2/3, par. 1602.2
11	220 ILCS 50/2.6	
12	220 ILCS 50/4	from Ch. 111 2/3, par. 1604
13	220 ILCS 50/6	from Ch. 111 2/3, par. 1606
14	220 ILCS 50/7	from Ch. 111 2/3, par. 1607
15	220 ILCS 50/10	from Ch. 111 2/3, par. 1610
16	220 ILCS 50/11	from Ch. 111 2/3, par. 1611