

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, 2.1.9, and 2.1.10 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 50/2.1.10 new)

23 Sec. 2.1.10. Internal electric grid of a wind turbine

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

4 (220 ILCS 50/2.2) (from Ch. 111 2/3, par. 1602.2)

5 Sec. 2.2. Underground utility facilities.

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

10 (1) a public utility as defined in the Public Utilities
11 Act;

12 (2) a municipally owned or mutually owned utility
13 providing a similar utility service;

14 (3) a pipeline entity transporting gases, crude oil,
15 petroleum products, or other hydrocarbon materials within
16 the State;

17 (4) a telecommunications carrier as defined in the
18 Universal Telephone Service Protection Law of 1985, or by a
19 company described in Section 1 of the Telephone Company
20 Act;

21 (5) a community antenna television system, as defined
22 in the Illinois Municipal Code or the Counties Code;

23 (6) a holder, as that term is defined in the Cable and
24 Video Competition Law of 2007;

25 (7) any other entity owning or operating underground

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

5 (8) an electric cooperative as defined in the Public
6 Utilities Act.

7 ~~"Underground utility facilities" or "facilities" means and~~
8 ~~includes wires, ducts, fiber optic cable, conduits, pipes,~~
9 ~~sewers, and cables and their connected appurtenances installed~~
10 ~~beneath the surface of the ground by a public utility (as is~~
11 ~~defined in the Illinois Public Utilities Act, as amended), or~~
12 ~~by a municipally owned or mutually owned utility providing a~~
13 ~~similar utility service, except an electric cooperative as~~
14 ~~defined in the Illinois Public Utilities Act, as amended, or by~~
15 ~~a pipeline entity transporting gases, crude oil, petroleum~~
16 ~~products, or other hydrocarbon materials within the State, or~~
17 ~~by a telecommunications carrier as defined in the Universal~~
18 ~~Telephone Service Protection Law of 1985, or by a company~~
19 ~~described in Section 1 of "An Act relating to the powers,~~
20 ~~duties and property of telephone companies", approved May 16,~~
21 ~~1903, as amended, or by a community antenna television system,~~
22 ~~hereinafter referred to as "CATS", as defined in the Illinois~~
23 ~~Municipal Code, as amended.~~

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

25 (220 ILCS 50/2.6)

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

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

7 (220 ILCS 50/4) (from Ch. 111 2/3, par. 1604)

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

10 (a) take reasonable action to inform himself of the
11 location of any underground utility facilities ~~or CATS~~
12 ~~facilities~~ in and near the area for which such operation is
13 to be conducted;

14 (b) plan the excavation or demolition to avoid or
15 minimize interference with underground utility facilities
16 ~~or CATS facilities~~ within the tolerance zone by utilizing
17 such precautions that include, but are not limited to, hand
18 excavation, vacuum excavation methods, and visually
19 inspecting the excavation while in progress until clear of
20 the existing marked facility;

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

23 (d) provide notice not less than 48 hours but no more
24 than 14 calendar days in advance of the start of the
25 excavation or demolition to the owners or operators of the

1 underground utility facilities ~~or CATS facilities~~ in and
2 near the excavation or demolition area through the
3 State-Wide One-Call Notice System or, in the case of
4 nonemergency excavation or demolition within the
5 boundaries of a municipality of at least one million
6 persons which operates its own one-call notice system,
7 through the one-call notice system which operates in that
8 municipality.

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

11 (1) the person's name, address, phone number at
12 which a person can be reached, and fax number, if
13 available;

14 (2) the start date and time of the planned
15 excavation or demolition;

16 (3) all counties, cities, or townships, or any
17 combination thereof, where the proposed excavation
18 shall take place;

19 (4) the address at which the excavation or
20 demolition shall take place;

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

22 (6) the section or quarter sections when the
23 information in items (1) through (5) of this subsection
24 (d) does not allow the State-Wide One-Call Notice
25 System to determine the appropriate excavation or
26 demolition site. This item (6) does not apply to

1 residential property owners;

2 (e) provide, during and following excavation or
3 demolition, such support for existing underground utility
4 facilities ~~or CATS facilities~~ in and near the excavation or
5 demolition area as may be reasonably necessary for the
6 protection of such facilities unless otherwise agreed to by
7 the owner or operator of the underground facility ~~or CATS~~
8 ~~facility;~~

9 (f) backfill all excavations in such manner and with
10 such materials as may be reasonably necessary for the
11 protection of existing underground utility facilities ~~or~~
12 ~~CATS facilities~~ in and near the excavation or demolition
13 area; ~~and~~

14 (g) after ~~After~~ February 29, 2004, when the excavation
15 or demolition project will extend past 28 calendar days
16 from the date of the original notice provided under clause
17 (d), the excavator shall provide a subsequent notice to the
18 owners or operators of the underground utility facilities
19 ~~or CATS facilities~~ in and near the excavation or demolition
20 area through the State-Wide One-Call Notice System or, in
21 the case of excavation or demolition within the boundaries
22 of a municipality having a population of at least 1,000,000
23 inhabitants that operates its own one-call notice system,
24 through the one-call notice system that operates in that
25 municipality informing utility owners and operators that
26 additional time to complete the excavation or demolition

1 project will be required. The notice will provide the
2 excavator with an additional 28 calendar days from the date
3 of the subsequent notification to continue or complete the
4 excavation or demolition project;~~;~~

5 (h) exercise due care at all times to protect
6 underground utility facilities. If, after proper
7 notification through the State-Wide One-Call Notice System
8 and upon arrival at the site of the proposed excavation,
9 the excavator observes clear evidence of the presence of an
10 unmarked or incompletely marked utility in the area of the
11 proposed excavation, the excavator shall not begin
12 excavating until all affected facilities have been marked
13 or 2 hours after an additional call is made to the
14 State-Wide One-Call Notice System for the area. The owner
15 or operator of the utility shall respond within 2 hours of
16 the excavator's call to the State-Wide One-Call Notice
17 System; and

18 (i) when factors, including, but not limited to,
19 weather, construction activity, or vandalism, at the
20 excavation site have caused the utility markings to become
21 faded or indistinguishable, the excavator shall provide an
22 additional notice through the State-Wide One-Call Notice
23 System requesting that only the affected areas where
24 excavation or demolition is to continue be re-marked.
25 Facility owners or operators must respond to the notice to
26 re-mark according to the requirements of Section 10 of this

1 Act.

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

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

7 ~~(2) the start date of the planned excavation or~~
8 ~~demolition;~~

9 ~~(3) the address at which the excavation or demolition~~
10 ~~will take place;~~

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

12 ~~(5) section/quarter sections when the above~~
13 ~~information does not allow the State Wide One Call Notice~~
14 ~~System to determine the appropriate geographic~~
15 ~~section/quarter sections. This item (5) does not apply to~~
16 ~~residential property owners.~~

17 Nothing in this Section prohibits the use of any method of
18 excavation if conducted in a manner that would avoid
19 interference with underground utility facilities ~~or CATS~~
20 ~~facilities.~~

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

22 (220 ILCS 50/6) (from Ch. 111 2/3, par. 1606)

23 Sec. 6. Emergency excavation or demolition.

24 (a) Every person who engages in emergency excavation or
25 demolition outside of the boundaries of a municipality of at

1 least one million persons which operates its own one-call
2 notice system shall take all reasonable precautions to avoid or
3 minimize interference between the emergency work and existing
4 underground utility facilities ~~or CATS facilities~~ in and near
5 the excavation or demolition area, through the State-Wide
6 One-Call Notice System, and shall notify, as far in advance as
7 possible, the owners or operators of such underground utility
8 facilities ~~or CATS facilities~~ in and near the emergency
9 excavation or demolition area, through the State-Wide One-Call
10 Notice System. At a minimum, the notice required under this
11 subsection (a) shall provide:

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

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

17 (3) the address at which the excavation or demolition
18 will take place; and

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

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

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

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

1 this Section.

2 (b) Every person who engages in emergency excavation or
3 demolition within the boundaries of a municipality of at least
4 one million persons which operates its own one-call notice
5 system shall take all reasonable precautions to avoid or
6 minimize interference between the emergency work and existing
7 underground utility facilities ~~or CATS facilities~~ in and near
8 the excavation or demolition area, through the municipality's
9 one-call notice system, and shall notify, as far in advance as
10 possible, the owners and operators of underground utility
11 facilities ~~or CATS facilities~~ in and near the emergency
12 excavation or demolition area, through the municipality's
13 one-call notice system.

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

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

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

19 (220 ILCS 50/7) (from Ch. 111 2/3, par. 1607)

20 Sec. 7. Damage or dislocation. In the event of any damage
21 to or dislocation of any underground utility facilities ~~or CATS~~
22 ~~facilities~~ in connection with any excavation or demolition,
23 emergency or nonemergency, the person responsible for the
24 excavation or demolition operations shall immediately cease
25 excavation in the area of the damage when the damaged facility

1 is a threat to life or property or if otherwise required by law
2 and notify the affected utility and the State-Wide One-Call
3 Notice System or, in the case of damage or dislocation in
4 connection with any excavation or demolition within the
5 boundaries of a municipality having a population of at least
6 1,000,000 inhabitants that operates its own one-call notice
7 system, notify the affected utility and the one-call notice
8 system that operates in that municipality. The person
9 responsible for the excavation or demolition shall not attempt
10 to repair, clamp, or constrict the damaged utility facility
11 unless directed to do so by the utility facility owner or
12 operator. In the event of any damage to any underground utility
13 facility that results in the escape of any flammable, toxic, or
14 corrosive gas or liquid, the person responsible for the
15 excavation or demolition shall call 9-1-1 and notify
16 authorities of the damage. Owners and operators of underground
17 utility facilities that are damaged and the excavator involved
18 shall work in a cooperative and expeditious manner to repair
19 the affected utility.

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

21 (220 ILCS 50/10) (from Ch. 111 2/3, par. 1610)

22 Sec. 10. Record of notice; marking of facilities. Upon
23 notice by the person engaged in excavation or demolition, the
24 person owning or operating underground utility facilities ~~or~~
25 ~~CATS facilities~~ in or near the excavation or demolition area

1 shall cause a written record to be made of the notice and shall
2 mark, within 48 hours of receipt of notice or by the requested
3 date and time indicated on the notice, whichever is later, the
4 approximate locations of such facilities so as to enable the
5 person excavating or demolishing to establish the location of
6 the underground utility facilities ~~or CATS facilities~~. Owners
7 and operators of underground sewer facilities that are located
8 outside the boundaries of a municipality having a population of
9 at least 1,000,000 inhabitants shall be required to respond and
10 mark the approximate location of those sewer facilities when
11 the excavator indicates, in the notice required in Section 4,
12 that the excavation or demolition project will exceed a depth
13 of 7 feet. "Depth", in this case, is defined as the distance
14 measured vertically from the surface of the ground to the top
15 of the sewer facility. Owners and operators of underground
16 sewer facilities that are located outside the boundaries of a
17 municipality having a population of at least 1,000,000
18 inhabitants shall be required at all times to locate the
19 approximate location of those sewer facilities when: (1)
20 directional boring is the indicated type of excavation work
21 being performed within the notice; (2) the underground sewer
22 facilities owned are non-gravity, pressurized force mains; or
23 (3) the excavation indicated will occur in the immediate
24 proximity of known underground sewer facilities that are less
25 than 7 feet deep. Owners or operators of underground sewer
26 facilities that are located outside the boundaries of a

1 municipality having a population of at least 1,000,000
2 inhabitants shall not hold an excavator liable for damages that
3 occur to sewer facilities that were not required to be marked
4 under this Section, provided that prompt notice of the damage
5 is made to the State-Wide One-Call Notice System and the
6 utility owner as required in Section 7.

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

23 If a person owning or operating underground utility
24 facilities ~~or CATS facilities~~ receives a notice under this
25 Section but does not own or operate any underground utility
26 facilities ~~or CATS facilities~~ within the proposed excavation or

1 demolition area described in the notice, that person, within 48
2 hours or by the requested date and time indicated on the
3 notice, whichever is later, after receipt of the notice, shall
4 so notify the person engaged in excavation or demolition who
5 initiated the notice, unless the person who initiated the
6 notice expressly waives the right to be notified that no
7 facilities are located within the excavation or demolition
8 area. The notification by the owner or operator of underground
9 utility facilities ~~or CATS facilities~~ to the person engaged in
10 excavation or demolition may be provided in any reasonable
11 manner including, but not limited to, notification in any one
12 of the following ways: by face-to-face communication; by phone
13 or phone message; by facsimile; by posting in the excavation or
14 demolition area; or by marking the excavation or demolition
15 area. The owner or operator of those facilities has discharged
16 the owner's or operator's obligation to provide notice under
17 this Section if the owner or operator attempts to provide
18 notice by telephone or by facsimile, if the person has supplied
19 a facsimile number, but is unable to do so because the person
20 engaged in the excavation or demolition does not answer his or
21 her telephone or does not have an answering machine or
22 answering service to receive the telephone call or does not
23 have a facsimile machine in operation to receive the facsimile
24 transmission. If the owner or operator attempts to provide
25 notice by telephone or by facsimile but receives a busy signal,
26 that attempt shall not serve to discharge the owner or operator

1 of the obligation to provide notice under this Section.

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

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

20 Underground Facility	Identification Color
21 Facility Owner or Agent Use Only	
22 Electric Power, Distribution and	
23 Transmission	Safety Red

- 1 Municipal Electric Systems Safety Red
- 2 Gas Distribution and Transmission High Visibility Safety
- 3 Yellow
- 4 Oil Distribution and Transmission High Visibility Safety
- 5 Yellow
- 6 Telephone and Telegraph Systems Safety Alert Orange
- 7 Community Antenna Television Systems .. Safety Alert Orange
- 8 Water Systems Safety Precaution Blue
- 9 Sewer Systems Safety Green
- 10 Non-potable Water and Slurry Lines Safety Purple

11 Excavator Use Only

- 12 Temporary Survey Safety Pink
- 13 Proposed Excavation Safety White (Black
- 14 when snow is on the
- 15 ground)

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

17 (220 ILCS 50/11) (from Ch. 111 2/3, par. 1611)

18 Sec. 11. Penalties; liability; fund.

19 (a) Every person who, while engaging in excavation or
 20 demolition, wilfully fails to comply with the Act by failing to
 21 provide the notice to the owners or operators of the
 22 underground facilities ~~or CATS facility~~ near the excavation or
 23 demolition area through the State-Wide One-Call Notice System

1 as required by Section 4 or 6 of this Act shall be subject to a
2 penalty of up to \$5,000 for each separate offense and shall be
3 liable for the damage caused to the owners or operators of the
4 facility. Every person who fails to provide notice and
5 willfully fails to comply with other provisions of this Act
6 shall be subject to additional penalties of up to \$2,500 for
7 each separate offense and shall be liable for the damage caused
8 to the owners or operators of the facility.

9 (b) 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 wilfully fails to comply with this Act,
15 shall be subject to a penalty of up to \$2,500 for each separate
16 offense and shall be liable for the damage caused to the owners
17 or operators of the facility.

18 (c) Every person who, while engaging in excavation or
19 demolition, has provided the notice to the owners or operators
20 of the underground utility facilities ~~or CATS facilities~~ in and
21 near the excavation or demolition area through the State-Wide
22 One-Call Notice System as required by Section 4 or 6 of this
23 Act, but otherwise, while acting reasonably, damages any
24 underground utility facilities ~~or CATS facilities,~~ shall not be
25 subject to a penalty, but shall be liable for the damage caused
26 to the owners or operators of the facility provided the

1 underground utility facility ~~or CATS facility~~ is properly
2 marked as provided in Section 10 of this Act.

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

10 (e) Owners and operators of underground utility facilities
11 who willfully fail to comply with this Act by a failure to
12 respond or mark the approximate location of an underground
13 utility as required by subsection (h) of Section 4, subsection
14 (a) of Section 6, or Section 10 of this Act after being
15 notified of planned excavation or demolition through the
16 State-Wide One-Call Notice System, shall be subject to a
17 penalty of up to \$5,000 for each separate offense. ~~Owners and~~
18 ~~operators of underground utility facilities or CATS facilities~~
19 ~~(i) who wilfully fail to comply with this Act by a failure to~~
20 ~~mark the location of an underground utility or CATS facility or~~
21 ~~a failure to provide notice that facilities are not within the~~
22 ~~proposed excavation or demolition area as required in Section~~
23 ~~10, or (ii) who willfully fail to respond as required in~~
24 ~~Section 6 to an emergency request, after being notified of~~
25 ~~planned excavation or demolition through the State-Wide~~
26 ~~One Call Notice System, shall be subject to a penalty of up to~~

1 ~~\$5,000 for each separate offense resulting from the failure to~~
2 ~~mark an underground utility facility or CATS facility.~~

3 (f) As provided in Section 3 of this Act, all owners or
4 operators of underground utility facilities ~~or CATS facilities~~
5 who fail to join the State-Wide One-Call Notice System by
6 January 1, 2003 shall be subject to a penalty of \$100 per day
7 for each separate offense. Every day an owner or operator fails
8 to join the State-Wide One-Call Notice System is a separate
9 offense. This subsection (f) does not apply to utilities
10 operating facilities ~~or CATS facilities~~ exclusively within the
11 boundaries of a municipality with a population of at least
12 1,000,000 persons.

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

19 (h) Any person who is neither an agent, employee, or
20 authorized locating contractor of the owner or operator of the
21 underground utility facility ~~or CATS facility~~ nor an excavator
22 involved in the excavation activity who removes, alters, or
23 otherwise damages markings, flags, or stakes used to mark the
24 location of an underground utility ~~or CATS facility~~ other than
25 during the course of the excavation for which the markings were
26 made or before completion of the project shall be subject to a

1 penalty up to \$1,000 for each separate offense.

2 (i) (Blank). ~~The excavator shall exercise due care at all~~
3 ~~times to protect underground utility facilities and CATS~~
4 ~~facilities. If, after proper notification through the~~
5 ~~State Wide One Call Notice System and upon arrival at the site~~
6 ~~of a proposed excavation, the excavator observes clear evidence~~
7 ~~of the presence of an unmarked utility or CATS facility in the~~
8 ~~area of the proposed excavation, the excavator shall not begin~~
9 ~~excavating until 2 hours after an additional call is made to~~
10 ~~the State Wide One Call Notice System for the area. The~~
11 ~~operator of the utility or CATS facility shall respond within 2~~
12 ~~hours of the excavator's call to the State Wide One Call Notice~~
13 ~~System.~~

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

23 (1) gravity of noncompliance;

24 (2) culpability of offender;

25 (3) history of noncompliance for the 18 months prior to
26 the date of the incident; however, when determining

1 non-compliance the alleged violator's roles as operator or
2 owner and the person engaged in excavating shall be treated
3 separately;

4 (4) ability to pay penalty;

5 (5) show of good faith of offender;

6 (6) ability to continue business; and

7 (7) other special circumstances.

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

23 (1) The Illinois Commerce Commission shall establish an
24 Advisory Committee consisting of a representative from each of
25 the following: utility operator, JULIE, excavator,
26 municipality, and the general public. The Advisory Committee

1 shall serve as a peer review panel for any contested penalties
2 resulting from the enforcement of this Act.

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

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

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

16 Section 99. Effective date. This Act takes effect January
17 1, 2010.