



Sen. Dale E. Risinger

Filed: 3/25/2009

09600SB1357sam001

LRB096 05751 MJR 24384 a

1 AMENDMENT TO SENATE BILL 1357

2 AMENDMENT NO. _____. Amend Senate Bill 1357 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Underground Utility Facilities
5 Damage Prevention Act is amended by changing Sections 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.)

1 (220 ILCS 50/2.1) (from Ch. 111 2/3, par. 1602.1)

2 Sec. 2.1. "Person" means an individual, firm, joint
3 venture, partnership, corporation, association, municipality
4 or other governmental unit, department or agency, utility
5 cooperative, or joint stock association, and includes any
6 trustee, receiver, or assignee or employee or agent ~~or personal~~
7 ~~representative~~ thereof.

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

9 (220 ILCS 50/2.1.3 new)

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

17 (220 ILCS 50/2.1.4 new)

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

1 identified by the excavator in the prior notice.

2 (220 ILCS 50/2.1.5 new)

3 Sec. 2.1.5. Re-mark request. "Re-mark 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 initial locate
7 request requesting facility owners or operators to re-mark all
8 or part of the work area identified in the initial locate
9 request, because facility markings are becoming or have become
10 indistinguishable due to factors, including, but not limited
11 to, weather, fading, construction activity, or vandalism.

12 (220 ILCS 50/2.1.6 new)

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

21 (220 ILCS 50/2.1.9 new)

22 Sec. 2.1.9. JULIE Excavator Handbook. "JULIE Excavator
23 Handbook" means the handbook periodically updated and

1 published by the State-Wide One-Call Notice System that
2 provides information for excavators and facility owners and
3 operators on the use and services of the State-Wide One-Call
4 Notice System.

5 (220 ILCS 50/2.1.10 new)

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

10 (220 ILCS 50/2.2) (from Ch. 111 2/3, par. 1602.2)

11 Sec. 2.2. Underground utility facilities.

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

16 (1) a public utility as defined in the Public Utilities
17 Act;

18 (2) a municipally owned or mutually owned utility
19 providing a similar utility service;

20 (3) a pipeline entity transporting gases, crude oil,
21 petroleum products, or other hydrocarbon materials within
22 the State;

23 (4) a telecommunications carrier as defined in the
24 Universal Telephone Service Protection Law of 1985, or by a

1 company described in Section 1 of the Telephone Company
2 Act;

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

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

7 (7) any other entity owning or operating underground
8 facilities that transport generated electrical power to
9 other utility owners or operators or transport generated
10 electrical power within the internal electric grid of a
11 wind turbine generation farm; and

12 (8) an electric cooperative as defined in the Public
13 Utilities Act.

14 ~~"Underground utility facilities" or "facilities" means and~~
15 ~~includes wires, ducts, fiber optic cable, conduits, pipes,~~
16 ~~sewers, and cables and their connected appurtenances installed~~
17 ~~beneath the surface of the ground by a public utility (as is~~
18 ~~defined in the Illinois Public Utilities Act, as amended), or~~
19 ~~by a municipally owned or mutually owned utility providing a~~
20 ~~similar utility service, except an electric cooperative as~~
21 ~~defined in the Illinois Public Utilities Act, as amended, or by~~
22 ~~a pipeline entity transporting gases, crude oil, petroleum~~
23 ~~products, or other hydrocarbon materials within the State, or~~
24 ~~by a telecommunications carrier as defined in the Universal~~
25 ~~Telephone Service Protection Law of 1985, or by a company~~
26 ~~described in Section 1 of "An Act relating to the powers,~~

1 ~~duties and property of telephone companies", approved May 16,~~
2 ~~1903, as amended, or by a community antenna television system,~~
3 ~~hereinafter referred to as "CATS", as defined in the Illinois~~
4 ~~Municipal Code, as amended.~~

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

6 (220 ILCS 50/2.6)

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

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

13 (220 ILCS 50/4) (from Ch. 111 2/3, par. 1604)

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

16 (a) take reasonable action to inform himself of the
17 location of any underground utility facilities ~~or CATS~~
18 ~~facilities~~ in and near the area for which such operation is
19 to be conducted;

20 (b) plan the excavation or demolition to avoid or
21 minimize interference with underground utility facilities
22 ~~or CATS facilities~~ within the tolerance zone by utilizing
23 such precautions that include, but are not limited to, hand
24 excavation, vacuum excavation methods, and visually

1 inspecting the excavation while in progress until clear of
2 the existing marked facility;

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

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

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

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

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

23 (3) all counties, cities, or townships, or any
24 combination thereof, where the proposed excavation
25 shall take place;

26 (4) the address at which the excavation or

1 demolition shall take place;

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

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

9 (e) provide, during and following excavation or
10 demolition, such support for existing underground utility
11 facilities ~~or CATS facilities~~ in and near the excavation or
12 demolition area as may be reasonably necessary for the
13 protection of such facilities unless otherwise agreed to by
14 the owner or operator of the underground facility ~~or CATS~~
15 ~~facility;~~

16 (f) backfill all excavations in such manner and with
17 such materials as may be reasonably necessary for the
18 protection of existing underground utility facilities ~~or~~
19 ~~CATS facilities~~ in and near the excavation or demolition
20 area; ~~and~~

21 (g) after ~~After~~ February 29, 2004, when the excavation
22 or demolition project will extend past 28 calendar days
23 from the date of the original notice provided under clause
24 (d), the excavator shall provide a subsequent notice to the
25 owners or operators of the underground utility facilities
26 ~~or CATS facilities~~ in and near the excavation or demolition

1 area through the State-Wide One-Call Notice System or, in
2 the case of excavation or demolition within the boundaries
3 of a municipality having a population of at least 1,000,000
4 inhabitants that operates its own one-call notice system,
5 through the one-call notice system that operates in that
6 municipality informing utility owners and operators that
7 additional time to complete the excavation or demolition
8 project will be required. The notice will provide the
9 excavator with an additional 28 calendar days from the date
10 of the subsequent notification to continue or complete the
11 excavation or demolition project;:-

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

25 (i) when factors, including, but not limited to,
26 weather, construction activity, or vandalism, at the

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

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

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

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

16 ~~(3) the address at which the excavation or demolition~~
17 ~~will take place;~~

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

19 ~~(5) section/quarter sections when the above~~
20 ~~information does not allow the State Wide One Call Notice~~
21 ~~System to determine the appropriate geographic~~
22 ~~section/quarter sections. This item (5) does not apply to~~
23 ~~residential property owners.~~

24 Nothing in this Section prohibits the use of any method of
25 excavation if conducted in a manner that would avoid
26 interference with underground utility facilities ~~or CATS~~

1 ~~facilities.~~

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

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

4 Sec. 6. Emergency excavation or demolition.

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

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

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

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

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

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

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

21 The notice by the owner or operator to the person engaged
22 in emergency excavation or demolition may be provided by phone
23 or phone message or by marking the excavation or demolition
24 area. The owner or operator has discharged the owner's or
25 operator's obligation to provide notice under this Section if
26 the owner or operator attempts to provide notice by telephone

1 but is unable to do so because the person engaged in the
2 emergency excavation or demolition does not answer his or her
3 telephone or does not have an answering machine or answering
4 service to receive the telephone call. If the owner or operator
5 attempts to provide notice by telephone or by facsimile but
6 receives a busy signal, that attempt shall not discharge the
7 owner or operator from the obligation to provide notice under
8 this Section.

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

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

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

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

1 (220 ILCS 50/7) (from Ch. 111 2/3, par. 1607)

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

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

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

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

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

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

1 operators of underground utility facilities ~~and CATS~~
2 ~~facilities~~ must reasonably anticipate seasonal fluctuations in
3 the number of locate requests and staff accordingly.

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

1 engaged in the excavation or demolition does not answer his or
2 her telephone or does not have an answering machine or
3 answering service to receive the telephone call or does not
4 have a facsimile machine in operation to receive the facsimile
5 transmission. If the owner or operator attempts to provide
6 notice by telephone or by facsimile but receives a busy signal,
7 that attempt shall not serve to discharge the owner or operator
8 of the obligation to provide notice under this Section.

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

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

1	Underground Facility	Identification Color
2	Facility Owner or Agent Use Only	
3	Electric Power, Distribution and	
4	Transmission	Safety Red
5	Municipal Electric Systems	Safety Red
6	Gas Distribution and Transmission	High Visibility Safety
7		Yellow
8	Oil Distribution and Transmission	High Visibility Safety
9		Yellow
10	Telephone and Telegraph Systems	Safety Alert Orange
11	Community Antenna Television Systems ..	Safety Alert Orange
12	Water Systems	Safety Precaution Blue
13	Sewer Systems	Safety Green
14	Non-potable Water and Slurry Lines	Safety Purple
15	Excavator Use Only	
16	Temporary Survey	Safety Pink
17	Proposed Excavation	Safety White (Black
18		when snow is on the
19		ground)
20	(Source: P.A. 93-430, eff. 8-5-03; 94-623, eff. 8-18-05.)	

1 (220 ILCS 50/11) (from Ch. 111 2/3, par. 1611)

2 Sec. 11. Penalties; liability; fund.

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

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

25 (c) Every person who, while engaging in excavation or
26 demolition, has provided the notice to the owners or operators

1 of the underground utility facilities ~~or CATS facilities~~ in and
2 near the excavation or demolition area through the State-Wide
3 One-Call Notice System as required by Section 4 or 6 of this
4 Act, but otherwise, while acting reasonably, damages any
5 underground utility facilities ~~or CATS facilities~~, shall not be
6 subject to a penalty, but shall be liable for the damage caused
7 to the owners or operators of the facility provided the
8 underground utility facility ~~or CATS facility~~ is properly
9 marked as provided in Section 10 of this Act.

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

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

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

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

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

26 (h) Any person who is neither an agent, employee, or

1 authorized locating contractor of the owner or operator of the
2 underground utility facility ~~or CATS facility~~ nor an excavator
3 involved in the excavation activity who removes, alters, or
4 otherwise damages markings, flags, or stakes used to mark the
5 location of an underground utility ~~or CATS facility~~ other than
6 during the course of the excavation for which the markings were
7 made or before completion of the project shall be subject to a
8 penalty up to \$1,000 for each separate offense.

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

21 (j) The Illinois Commerce Commission shall have the power
22 and jurisdiction to, and shall, enforce the provisions of this
23 Act. The Illinois Commerce Commission may impose
24 administrative penalties as provided in this Section. The
25 Illinois Commerce Commission may promulgate rules and develop
26 enforcement policies in the manner provided by the Public

1 Utilities Act in order to implement compliance with this Act.
2 When a penalty is warranted, the following criteria shall be
3 used in determining the magnitude of the penalty:

4 (1) gravity of noncompliance;

5 (2) culpability of offender;

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

11 (4) ability to pay penalty;

12 (5) show of good faith of offender;

13 (6) ability to continue business; and

14 (7) other special circumstances.

15 (k) There is hereby created in the State treasury a special
16 fund to be known as the Illinois Underground Utility Facilities
17 Damage Prevention Fund. All penalties recovered in any action
18 under this Section shall be paid into the Fund and shall be
19 distributed annually as a grant to the State-Wide One-Call
20 Notice System to be used in safety and informational programs
21 to reduce the number of incidents of damage to underground
22 utility facilities ~~and CATS facilities~~ in Illinois. The
23 distribution shall be made during January of each calendar year
24 based on the balance in the Illinois Underground Utility
25 Facilities Damage Prevention Fund as of December 31 of the
26 previous calendar year. In all such actions under this Section,

1 the procedure and rules of evidence shall conform with the Code
2 of Civil Procedure, and with rules of courts governing civil
3 trials.

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

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

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

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

23 Section 99. Effective date. This Act takes effect January
24 1, 2010."