



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB2621

Introduced 1/20/2006, by Sen. Edward D. Maloney

SYNOPSIS AS INTRODUCED:

220 ILCS 50/2.12 new	
220 ILCS 50/2.13 new	
220 ILCS 50/2.14 new	
220 ILCS 50/2.15 new	
220 ILCS 50/4	from Ch. 111 2/3, par. 1604
220 ILCS 50/4.1 new	
220 ILCS 50/10	from Ch. 111 2/3, par. 1610
220 ILCS 50/11	from Ch. 111 2/3, par. 1611

Amends the Illinois Underground Utility Facilities Damage Prevention Act. Defines "joint meet", "no show request", "incomplete request", and "re-mark request". Provides that, if an excavator elects to use a joint meet, the joint meet requires a minimum of 48 hours' advance notice. Provides that, after a joint meet, the owners or operators of underground utility facilities or CATS facilities must respond within 48 hours or by the date and time agreed to in writing at the joint meet, whichever is later. Requires every person who engages in nonemergency excavation and demolition to exercise due care at all times to protect underground utility facilities and CATS facilities. Sets forth procedures for proper notification through the State-Wide One-Call Notice System and upon arrival at the site of a proposed excavation, if an excavator observes clear evidence of the presence of an unmarked or incompletely marked utility or CATS facility in the area of the proposed excavation. Prohibits an excavator from excavating in the affected area when certain outside factors at the excavation site have caused the utility markings to become indistinguishable, until an additional notice is made through the State-Wide One-Call Notice System requesting that the area be re-marked by only those facility owners that are affected. Provides that the owner or operator of underground utility facilities or CATS facilities shall cause a written record to be made of the notice made by a person engaged in excavation or demolition and shall mark the approximate location of facilities within 48 hours of receipt of the notice or by the requested date and time indicated on the notice, whichever is later (now, within 48 hours of receipt of the notice). Makes other changes. Effective immediately.

LRB094 16980 MKM 52260 b

1 AN ACT concerning regulation.

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 adding Sections 2.12, 2.13,
6 2.14, 2.15, and 4.1 and by changing Sections 4, 10, and 11 as
7 follows:

8 (220 ILCS 50/2.12 new)

9 Sec. 2.12. Joint meet. "Joint meet" means (i) a meeting
10 scheduled through the State-Wide One-Call Notice System for a
11 meeting to discuss a large or complicated excavation and an
12 opportunity to exchange information, such as maps, plans, or
13 schedules and (ii) a request processed through the State-Wide
14 One Call Notice System to have facility owners or operators
15 pick up maps, plans, or schedules.

16 (220 ILCS 50/2.13 new)

17 Sec. 2.13. No show request. "No show request" means a
18 subsequent notice initiated by an excavator through the
19 State-Wide One-Call Notice System to the owners or operators of
20 underground utility facilities or CATS facilities notified in
21 the prior locate request that either failed to mark their
22 facilities or to communicate their non-involvement with the
23 excavation prior to the requested dig start date and time.

24 (220 ILCS 50/2.14 new)

25 Sec. 2.14. Incomplete request. "Incomplete request" means
26 a subsequent notice initiated by an excavator through the
27 State-Wide One-Call Notice System to the owners or operators of
28 underground utility facilities or CATS facilities notified in
29 the prior locate request that did not completely mark the
30 entire extent or the entire segment of the proposed excavation,

1 as identified by the excavator in the initial notice prior to
2 the requested dig start date.

3 (220 ILCS 50/2.15 new)

4 Sec. 2.15. Re-mark request. "Re-mark request" means a
5 subsequent notice initiated by an excavator through the
6 State-Wide One-Call Notice System to the owners or operators of
7 underground utility facilities or CATS facilities notified in
8 the initial locate request requesting a re-mark of all or part
9 of the work area identified in that initial locate request
10 because facility markings have become indistinguishable due to
11 outside factors, including, but not limited to, weather,
12 construction activity, or vandalism.

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
25 inspecting the excavation while in progress until clear of
26 the existing marked facility;

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

29 (d) provide notice not less than 48 hours but no more
30 than 14 calendar days in advance of the start of the
31 excavation or demolition to the owners or operators of the
32 underground utility facilities or CATS facilities in and
33 near the excavation or demolition area through the
34 State-Wide One-Call Notice System or, in the case of

1 nonemergency excavation or demolition within the
2 boundaries of a municipality of at least one million
3 persons which operates its own one-call notice system,
4 through the one-call notice system which operates in that
5 municipality;

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

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

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

35 (h) exercise due care at all times to protect
36 underground utility facilities and CATS facilities. If,

1 after proper notification through the State-Wide One-Call
2 Notice System and upon arrival at the site of a proposed
3 excavation, the excavator observes clear evidence of the
4 presence of an unmarked or incompletely marked utility or
5 CATS facility in the area of the proposed excavation, the
6 excavator shall not begin excavating until all affected
7 facilities have been marked or 2 hours after an additional
8 call is made to the State-Wide One-Call Notice System for
9 the area and, only those facility owners that did not show
10 or did not completely mark, 2 hours after a no show request
11 or incomplete markings request is processed, whichever is
12 later. The operator of the utility or CATS facility shall
13 respond within 2 hours of the excavator's call to the
14 State-Wide One-Call Notice System.

15 When outside factors, including, but not limited to,
16 weather, construction activity, or vandalism, at the
17 excavation site have caused the utility markings to become
18 indistinguishable, the excavator shall not excavate in the
19 affected area until an additional notice is made through
20 the State-Wide One-Call Notice System requesting that the
21 area be re-marked by only those facility owners that are
22 affected. Excavation may resume in the affected area after
23 48 hours.

24 At a minimum, the notice required under clause (d) shall
25 provide:

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

29 (2) the start date of the planned excavation or
30 demolition;

31 (3) the address at which the excavation or demolition
32 will take place;

33 (4) the type and extent of the work involved; and

34 (5) section/quarter sections when the above
35 information does not allow the State-Wide One-Call Notice
36 System to determine the appropriate geographic

1 section/quarter sections. This item (5) does not apply to
2 residential property owners.

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

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

8 (220 ILCS 50/4.1 new)

9 Sec. 4.1. Use of joint meet. If an excavator elects to uses
10 a joint meet, the joint meet requires a minimum of 48 hours'
11 advance notice. After a joint meet, the owners or operators of
12 underground utility facilities or CATS facilities must respond
13 within 48 hours or by the date and time agreed to in writing at
14 the joint meet, whichever is later.

15 (220 ILCS 50/10) (from Ch. 111 2/3, par. 1610)

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

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

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

34 If a person owning or operating underground utility
35 facilities or CATS facilities receives a notice under this
36 Section but does not own or operate any underground utility

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

28 A person engaged in excavation or demolition may expressly
29 waive the right to notification from the owner or operator of
30 underground utility facilities or CATS facilities that the
31 owner or operator has no facilities located in the proposed
32 excavation or demolition area. Waiver of notice is only
33 permissible in the case of regular or nonemergency locate
34 requests. The waiver must be made at the time of the notice to
35 the State-Wide One-Call Notice System. A waiver made under this
36 Section is not admissible as evidence in any criminal or civil

1 action that may arise out of, or is in any way related to, the
2 excavation or demolition that is the subject of the waiver.

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

10 Underground Facility Identification Color

11 Facility Owner or Agent Use Only

12 Electric Power, Distribution and

- 13 Transmission Safety Red
- 14 Municipal Electric Systems Safety Red
- 15 Gas Distribution and Transmission High Visibility Safety
16 Yellow
- 17 Oil Distribution and Transmission High Visibility Safety
18 Yellow
- 19 Telephone and Telegraph Systems Safety Alert Orange
- 20 Community Antenna Television Systems .. Safety Alert Orange
- 21 Water Systems Safety Precaution Blue
- 22 Sewer Systems Safety Green
- 23 Non-potable Water and Slurry Lines Safety Purple

24 Excavator Use Only

- 25 Temporary Survey Safety Pink
- 26 Proposed Excavation Safety White (Black
27 when snow is on the
28 ground)

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

1 Sec. 11. Penalties; liability; fund.

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

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

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

31 (d) Every person who, while engaging in excavation or
32 demolition, provides notice to the owners or operators of the
33 underground utility facilities or CATS facilities through the
34 State-Wide One-Call Notice System as an emergency locate
35 request and the locate request is not an emergency locate
36 request as defined in Section 2.6 of this Act shall be subject

1 to a penalty of up to \$2,500 for each separate offense.

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

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

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

30 (h) Any person who is neither an agent, employee, or
31 authorized locating contractor of the owner or operator of the
32 underground utility facility or CATS facility nor an excavator
33 involved in the excavation activity who removes, alters, or
34 otherwise damages markings, flags, or stakes used to mark the
35 location of an underground utility or CATS facility other than
36 during the course of the excavation for which the markings were

1 made or before completion of the project shall be subject to a
2 penalty up to \$1,000 for each separate offense.

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

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

- 24 (1) gravity of noncompliance;
25 (2) culpability of offender;
26 (3) history of noncompliance for the 18 months prior to
27 the date of the incident;
28 (4) ability to pay penalty;
29 (5) show of good faith of offender;
30 (6) ability to continue business; and
31 (7) other special circumstances.

32 (k) There is hereby created in the State treasury a special
33 fund to be known as the Illinois Underground Utility Facilities
34 Damage Prevention Fund. All penalties recovered in any action
35 under this Section shall be paid into the Fund and shall be
36 distributed annually as a grant to the State-Wide One-Call

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

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

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

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

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

30 Section 99. Effective date. This Act takes effect upon
31 becoming law.