

1 AMENDMENT TO HOUSE BILL 2138

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2138, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Illinois Underground Utility Facilities  
6 Damage Prevention Act is amended by changing Sections 2, 2.2,  
7 2.3, 4, 5, 6, 7, 8, 10, 11, 13, and 14 and adding Sections  
8 2.6, 2.7, and 2.8 as follows:

9 (220 ILCS 50/2) (from Ch. 111 2/3, par. 1602)

10 Sec. 2. Definitions. As used in this Act, unless the  
11 context clearly otherwise requires, the terms specified in  
12 Sections 2.1 through 2.8 have the meanings ascribed to  
13 them in those Sections.

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

15 (220 ILCS 50/2.2) (from Ch. 111 2/3, par. 1602.2)

16 Sec. 2.2. Underground utility facilities. "Underground  
17 utility facilities" or "facilities" means and includes wires,  
18 ducts, fiber optic cable, conduits, pipes, sewers, and cables  
19 and their connected appurtenances installed beneath the  
20 surface of the ground by a public utility (as is defined in  
21 the Illinois Public Utilities Act, as amended), or by a

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

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

14 (220 ILCS 50/2.3) (from Ch. 111 2/3, par. 1602.3)

15 Sec. 2.3. Excavation. "Excavation" means any operation  
16 in which earth, rock, or other material in or on the ground  
17 is moved, removed, or otherwise displaced by means of any  
18 tools, power equipment or explosives, and includes, without  
19 limitation, grading, trenching, digging, ditching, drilling,  
20 augering, boring, tunneling, scraping, cable or pipe plowing,  
21 and driving but does not include farm tillage operations or  
22 railroad right-of-way maintenance or operations or coal  
23 mining operations regulated under the Federal Surface Mining  
24 Control and Reclamation Act of 1977 or any State law or rules  
25 or regulations adopted under the federal statute, or land  
26 surveying operations as defined in the Illinois Professional  
27 Land Surveyor Act of 1989 when not using power equipment.

28 (Source: P.A. 86-674; 86-1195; 87-125.)

29 (220 ILCS 50/2.6 new)

30 Sec. 2.6. Emergency locate request. "Emergency locate  
31 request" means a locate request for any condition  
32 constituting an imminent danger to life, health, or property,

1 or a utility service outage, and which requires immediate  
2 repair or action.

3 (220 ILCS 50/2.7 new)

4 Sec. 2.7. Tolerance zone. "Tolerance zone" means the  
5 approximate location of underground utility facilities or  
6 CATS facilities defined as a strip of land at least 3 feet  
7 wide, but not wider than the width of the underground  
8 facility or CATS facility plus 1-1/2 feet on either side of  
9 such facility based upon the markings made by the owner or  
10 operator of the facility. Excavation within the tolerance  
11 zone requires extra care and precaution including, but not  
12 limited to, as set forth in Section 4.

13 (220 ILCS 50/2.8 new)

14 Sec. 2.8. Approximate location. "Approximate location"  
15 means a strip of land at least 3 feet wide, but not wider  
16 than the width of the underground facility or CATS facility  
17 plus 1.5 feet on either side of the facility.

18 (220 ILCS 50/4) (from Ch. 111 2/3, par. 1604)

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

21 (a) take reasonable action to inform himself of the  
22 location of any underground utility facilities or CATS  
23 facilities in and near the area for which such operation is  
24 to be conducted;

25 (b) plan the excavation or demolition to avoid or  
26 minimize interference with underground utility facilities or  
27 CATS facilities within the tolerance zone by utilizing such  
28 precautions that include, but are not limited to, hand  
29 excavation, vacuum excavation methods, and visually  
30 inspecting the excavation while in progress until clear of  
31 the existing marked facility in-and-near-the-construction

1 area;

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

4 (d) (e) provide notice not more than 14 days nor less  
5 than 48 hours (exclusive of Saturdays, Sundays and holidays)  
6 in advance of the start of the excavation or demolition to  
7 the owners or operators of the underground utility facilities  
8 or CATS facilities in and near the excavation or demolition  
9 area through the State-Wide One-Call Notice System or, in the  
10 case of nonemergency excavation or demolition within the  
11 boundaries of a municipality of at least one million persons  
12 which operates its own one-call notice system, through the  
13 one-call notice system which operates in that municipality;

14 (e) (d) provide, during and following excavation or  
15 demolition, such support for existing underground utility  
16 facilities or CATS facilities in and near the excavation or  
17 demolition area as may be reasonably necessary for the  
18 protection of such facilities unless otherwise agreed to by  
19 the owner or operator of the underground facility or CATS  
20 facility; and

21 (f) (e) backfill all excavations in such manner and with  
22 such materials as may be reasonably necessary for the  
23 protection of existing underground utility facilities or CATS  
24 facilities in and near the excavation or demolition area.

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

27 (1) the person's name, address, and (i) phone  
28 number at which a person message can be reached and left  
29 or (ii) fax number;

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

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

34 (4) the type and extent of the work involved; and-

1           (5) section/quarter sections when the above  
2           information does not allow the State-Wide One-Call Notice  
3           System to determine the appropriate geographic  
4           section/quarter sections. This item (5) does not apply  
5           to residential property owners.

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

10          (Source: P.A. 87-125; 88-578, effective date changed to  
11          7-1-95 by P.A. 88-681.)

12          (220 ILCS 50/5) (from Ch. 111 2/3, par. 1605)

13          Sec. 5. Notice of preconstruction conference. When the  
14          Illinois Department of Transportation notifies an owner or  
15          operator of an underground utility facility or CATS facility  
16          that the Department will conduct a preconstruction conference  
17          concerning new construction, reconstruction, or maintenance  
18          of State highways in and near the area in which such owner or  
19          operator has placed underground utility facilities, such  
20          notification shall, except as otherwise provided in this  
21          Section constitute compliance by the Department or its  
22          contractors with paragraphs (a), (b), and (d) ~~(e)~~ of Section  
23          4 of this Act. In instances when notification of a  
24          preconstruction conference is provided to the owner or  
25          operator of an underground utility facility or CATS facility  
26          but no specific date is established at the preconstruction  
27          conference for the new construction, reconstruction or  
28          maintenance of State highways in and near the area in which  
29          the owner or operator has placed underground utility  
30          facilities or CATS facilities, then the Department or its  
31          contractors shall later comply with paragraph (d) ~~(e)~~ of  
32          Section 4 of this Act.

33          (Source: P.A. 86-674.)

1 (220 ILCS 50/6) (from Ch. 111 2/3, par. 1606)

2 Sec. 6. Emergency excavation or demolition.

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

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

19 (2) the start date of the planned emergency  
20 excavation or demolition;

21 (3) the address at which the excavation or  
22 demolition will take place; and

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

24 A 2-hour wait time exists after an emergency locate  
25 notification request is made through the State-Wide One-Call  
26 Notice System. If the conditions at the site dictate an  
27 earlier start than the 2-hour wait time, it is the  
28 responsibility of the excavator to demonstrate that site  
29 conditions warranted this earlier start time.

30 (b) Every person who engages in emergency excavation or  
31 demolition within the boundaries of a municipality of at  
32 least one million persons which operates its own one-call  
33 notice system shall take all reasonable precautions to avoid  
34 or minimize interference between the emergency work and

1 existing underground utility facilities or CATS facilities in  
 2 and near the excavation or demolition area, through the  
 3 municipality's one-call notice system, and shall notify, as  
 4 far in advance as possible, the owners and operators of  
 5 underground utility facilities or CATS facilities in and near  
 6 the emergency excavation or demolition area, through the  
 7 municipality's one-call notice system.

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

10 (Source: P.A. 86-674; 87-125.)

11 (220 ILCS 50/7) (from Ch. 111 2/3, par. 1607)

12 Sec. 7. Damage or dislocation. In the event of any  
 13 damage to or dislocation of any underground utility  
 14 facilities or CATS facilities in connection with any  
 15 excavation or demolition, emergency or nonemergency, the  
 16 person responsible for the excavation or demolition  
 17 operations shall immediately notify the affected utility and  
 18 the State-Wide One-Call Notice System owner---of---such  
 19 facilities.

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

21 (220 ILCS 50/8) (from Ch. 111 2/3, par. 1608)

22 Sec. 8. Liability or financial responsibility.

23 (a) Nothing in this Act shall be deemed to affect or  
 24 determine the financial responsibility for any operation  
 25 under this Act or liability of any person for any damages  
 26 that occur unless specifically stated otherwise.

27 (b) Nothing in this Act shall be deemed to provide for  
 28 liability or financial responsibility of the Department of  
 29 Transportation, its officers and employees concerning any  
 30 underground utility facility or CATS facility located on  
 31 highway right-of-way by permit issued under the provisions of  
 32 Section 9-113 of the Illinois Highway Code. It is not the

1 intent of this Act to change any remedies in law regarding  
2 the duty of providing lateral support.

3 (c) Neither the State-Wide One-Call Notice System nor  
4 any of its officers, agents, or employees shall be liable for  
5 damages for injuries or death to persons or damage to  
6 property caused by acts or omissions in the receipt,  
7 recording, or transmission of locate requests or other  
8 information in the performance of its duties as the  
9 State-Wide One-Call Notice System, unless the act or omission  
10 was the result of willful and wanton misconduct.

11 (d) Any residential property owner who fails to comply  
12 with any provision of this Act and damages underground  
13 utility facilities or CATS facilities while engaging in  
14 excavation or demolition on such residential property shall  
15 not be subject to a penalty under this Act, but shall be  
16 liable for the damage caused to the owner or operator of the  
17 damaged underground utility facilities or CATS facilities.

18 (Source: P.A. 86-674; 87-125.)

19 (220 ILCS 50/10) (from Ch. 111 2/3, par. 1610)

20 Sec. 10. Record of notice; marking of facilities. Upon  
21 notice by the person engaged in excavation or demolition, the  
22 person owning or operating underground utility facilities or  
23 CATS facilities in or near the excavation or demolition area  
24 shall cause a written record to be made of the notice and  
25 shall mark, within 48 hours (excluding Saturdays, Sundays and  
26 holidays) of receipt of notice, the approximate locations of  
27 such facilities so as to enable the person excavating or  
28 demolishing to establish the location of the underground  
29 utility facilities or CATS facilities.

30 All persons subject to the requirements of this Act shall  
31 plan and conduct their work consistent with reasonable  
32 business practices. Conditions may exist making it  
33 unreasonable to request that locations be marked within 48



1 hours. It is unreasonable to request owners and operators of  
2 underground utility facilities and CATS facilities to locate  
3 all of their facilities in an affected area upon short notice  
4 in advance of a large or extensive nonemergency project, or  
5 to request extensive locates in excess of a reasonable  
6 excavation or demolition work schedule, or to request locates  
7 under conditions where a repeat request is likely to be made  
8 because of the passage of time or adverse job conditions.  
9 Owners and operators of underground utility facilities and  
10 CATS facilities must reasonably anticipate seasonal  
11 fluctuations in the number of locate requests and staff  
12 accordingly. Marking--need--not--be--accomplished--more--than--48  
13 hours--in--advance--of--the--time--excavation--or--demolition--of  
14 daily--segments--of--the--excavation--or--demolition--are--scheduled  
15 to--begin--

16 If a person owning or operating underground utility  
17 facilities or CATS facilities receives a notice under this  
18 Section but does not own or operate any underground utility  
19 facilities or CATS facilities within the proposed excavation  
20 or demolition area described in the notice, that person,  
21 within 48 hours (excluding Saturdays, Sundays, and holidays)  
22 after receipt of the notice, shall so notify the person  
23 engaged in excavation or demolition who initiated the notice,  
24 unless the person who initiated the notice expressly waives  
25 the right to be notified that no facilities are located  
26 within the excavation or demolition area. The notification  
27 by the owner or operator of underground utility facilities or  
28 CATS facilities to the person engaged in excavation or  
29 demolition may be provided in any reasonable manner  
30 including, but not limited to, notification in any one of the  
31 following ways: by face-to-face communication; by phone or  
32 phone message; by facsimile; by posting in the excavation or  
33 demolition area; or by marking the excavation or demolition  
34 area. The owner or operator of those facilities has

1 discharged the owner's or operator's obligation to provide  
2 notice under this Section if the owner or operator attempts  
3 to provide notice by telephone or by facsimile, if the person  
4 has supplied a facsimile number, but is unable to do so  
5 because the person engaged in the excavation or demolition  
6 does not answer his or her telephone or does not have an  
7 answering machine or answering service to receive the  
8 telephone call or does not have a facsimile machine in  
9 operation to receive the facsimile transmission. If the  
10 owner or operator attempts to provide notice by telephone or  
11 by facsimile but receives a busy signal, that attempt shall  
12 not serve to discharge the owner or operator of the  
13 obligation to provide notice under this Section.

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

26 For the purposes of this Act, underground facility  
27 operators may utilize a combination of flags, stakes, and  
28 paint when possible on non-paved surfaces and when dig site  
29 and seasonal conditions warrant the-"approximate-location"-of  
30 underground--utility-facilities-or-CATS-facilities-is-defined  
31 as-a-strip-of-land-at-least-3-feet-wide-but--not--wider--than  
32 the-width-of-the-underground-facility-or-CATS-facility-plus-1  
33 1/2-feet-on-either-side-of-such-facility. If the approximate  
34 location of an underground utility facility or CATS facility

1 is marked with stakes or other physical means, the following  
2 color coding shall be employed:

3	Utility or Community Antenna	Identification Color
4	Television Systems and Type	
5	of Product	

6 Electric Power, Distribution and

7 Transmission..... Safety Red

8 Municipal Electric Systems..... Safety Red

9 Gas Distribution and Transmission..... High Visibility

10 Safety Yellow

11 Oil Distribution and Transmission..... High Visibility

12 Safety Yellow

13 Telephone and Telegraph Systems..... Safety Alert Orange

14 Community Antenna Television Systems.. Safety Alert Orange

15 Water Systems..... Safety

16 Precaution Blue

17 Sewer Systems..... Safety Green

18 Non-potable Water and Slurry Lines..... Safety Purple

19 Temporary Survey..... Safety Pink

20 Proposed Excavation..... Safety White

21 (Source: P.A. 86-674; 88-578 (effective date changed to  
22 7-1-95 by P.A. 88-681); 88-681, eff. 7-1-95.)

23 (220 ILCS 50/11) (from Ch. 111 2/3, par. 1611)

24 Sec. 11. Penalties; liability; fund.

25 (a) Every person who, while engaging in excavation or  
26 demolition, wilfully fails to comply with the Act by failing  
27 to provide the notice to the owners or operators of the  
28 underground facilities or CATS facility near the excavation  
29 or demolition area through the State-Wide One-Call Notice  
30 System as required by Section 4 of this Act and-damages-any  
31 underground-utility-facilities-or-CATS-facilities, shall be  
32 subject to a penalty fine of up to \$5,000 no-more-than-\$200  
33 for each separate offense and shall be liable for the damage

1 caused to the owners or operators of the facility.

2 (b) Every person who, while engaging in excavation or  
3 demolition, and has provided the notice to the owners or  
4 operators of the underground utility facilities or CATS  
5 facilities in and near the excavation or demolition area  
6 through the State-Wide One-Call Notice System as required by  
7 Section 4 of this Act, but otherwise wilfully fails to comply  
8 with this Act ~~and damages any underground utility facilities~~  
9 ~~or CATS facilities~~, shall be subject to a penalty fine of up  
10 to \$2,500 ~~no more than \$100~~ for each separate offense and  
11 shall be liable for the damage caused to the owners or  
12 operators of the facility.

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

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

33 (e) Owners and operators of underground utility  
34 facilities or CATS ~~community--antenna--television--systems~~

1 facilities who wilfully fail to comply with this Act by a  
2 failure to mark ~~or--to--properly--mark~~ the location of an  
3 underground utility or CATS facility, after being notified of  
4 planned excavation or demolition through the State-Wide  
5 One-Call Notice System, shall be subject to a penalty fine of  
6 up to \$5,000 ~~no-more-than-\$200~~ for each separate offense each  
7 violation resulting from the failure to mark ~~or--properly--mark~~  
8 an underground utility facility or CATS facility. ~~No person~~  
9 ~~shall-be-subject-to-such-fine-if-the-owner-or-operator-of-the~~  
10 ~~underground-utility-facilities-erred-in-marking-or-failed--to~~  
11 ~~mark--such--facilities--as-provided-in-Section-10-of-this-Act~~  
12 ~~and-no-willful-damage-has-been-committed-~~

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

23 (g) No owner or operator of underground utility  
24 facilities or CATS ~~community--antenna--television--systems~~  
25 facilities shall be subject to a penalty fine 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  
32 the underground utility facility or CATS facility nor an  
33 excavator involved in the excavation activity who removes,  
34 alters, or otherwise damages markings, flags, or stakes used

1 to mark the location of an underground utility or CATS  
2 facility other than during the course of the excavation for  
3 which the markings were made or before completion of the  
4 project shall be subject to a penalty up to \$1,000 for each  
5 separate offense.

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

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

- 27 (1) gravity of noncompliance;
- 28 (2) culpability of offender;
- 29 (3) history of noncompliance;
- 30 (4) ability to pay penalty;
- 31 (5) show of good faith of offender;
- 32 (6) ability to continue business; and
- 33 (7) other special circumstances.

34 In--the--event--that--a--person--has--given--proper--notice,--the

1 owner-or-operator-of-the-underground-utility-facility-or-CATS  
 2 facility-has-marked-the-approximate-location-and-that-person  
 3 is-unable-to-physically-locate-the-underground-utility  
 4 facility-or-CATS-facility,--where-other-than-an-"open-cut"  
 5 method-of-locating-must-be-used,--within-a-reasonable-time-due  
 6 to-conditions-beyond-his-control-and-that-person-has-notified  
 7 the-State-Wide-One-Call-notice-system-of-the-owner-or  
 8 operator-of-the-underground-utility-facility-or-CATS-facility  
 9 of-the-need-for-additional-and-more-precise-markings-of  
 10 approximate-locations-and-the-owner-or-operator-has-not  
 11 further-and-more-precisely-marked-or-located-the-underground  
 12 utility-facility-or-CATS-facility-within-48-hours-of  
 13 receiving-such-notice,--then-the-person-excavating-or  
 14 demolishing,--exercising-reasonable-care,--shall-not-be-liable  
 15 for-damages-to-the-facilities.---Actions-to-recover-the  
 16 penalty-provided-for-in-this-Section-shall-be-brought-by-the  
 17 State's-Attorney-of-the-county-where-the-damage-occurred,--at  
 18 the-request-of-the-owner-or-operator-of-the-underground  
 19 utility-facilities-or-CATS-facilities-damaged,--or-at-the  
 20 request-of-any-person-when-the-owner-or-operator-fails-to  
 21 comply-with-this-Act,--or-at-the-request-of-the-Illinois  
 22 Commerce-Commission-in-the-name-of-the-People-of-the-State-of  
 23 Illinois,--in-the-circuit-court-for-that-county,--or-for-the  
 24 county-in-which-the-person-complained-of-has-its-principal  
 25 place-of-business-or-resides.

26 (k) There is hereby created in the State treasury a  
 27 special fund to be known as the Illinois Underground Utility  
 28 Facilities Damage Prevention Fund. All penalties recovered  
 29 in any action under this Section shall be paid into the Fund  
 30 and shall be distributed annually as a grant to the  
 31 State-Wide One-Call Notice System to be used in safety and  
 32 informational programs to reduce the number of incidents of  
 33 damage to underground utility facilities and CATS facilities  
 34 in Illinois. The distribution shall be made during January

1 of each calendar year based on the balance in the Illinois  
 2 Underground Utility Facilities Damage Prevention Fund as of  
 3 December 31 of the previous calendar year. In all such  
 4 actions under this Section, the procedure and rules of  
 5 evidence shall conform with the Code of Civil Procedure, and  
 6 with rules of courts governing civil trials.

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

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

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

25 ~~Any--residential-property-owner-that-fails-to-comply-with~~  
 26 ~~any-provision-of-this-Act--and--damages--underground--utility~~  
 27 ~~faeilities-or-CATS-faeilities-while-engaging-in-exeavation-or~~  
 28 ~~demolition--on--land--owned-by-the-residential-property-owner~~  
 29 ~~shall-not-be-subject-to-a-fine-but-shall-be--liable--for--the~~  
 30 ~~damage--caused--to--the--owner-or-operator-of-the-underground~~  
 31 ~~utility-faeilities-or-CATS-faeilities-~~

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

33 (220 ILCS 50/13) (from Ch. 111 2/3, par. 1613)



1           Sec. 13. Mandamus or injunction. Where public safety or  
2 the preservation of uninterrupted, necessary utility service  
3 or community antenna television system service is endangered  
4 by any person engaging in excavation or demolition in a  
5 negligent or unsafe manner which has resulted in or is likely  
6 to result in damage to underground utility facilities or CATS  
7 facilities, or is proposing to use procedures for excavation  
8 or demolition which are likely to result in damage to  
9 underground utility facilities or CATS facilities, or where  
10 the owner or operator of underground utility facilities or  
11 CATS facilities endangers an excavator by willfully failing  
12 to respond to a locate request, the owner or operator of such  
13 facilities or the excavator or the State's Attorney or the  
14 Illinois Commerce Commission at the request of the owner or  
15 operator of such facilities or the excavator may commence an  
16 action, ~~or the State's Attorney, at the request of the owner~~  
17 ~~or operator of such facilities or the Illinois Commerce~~  
18 ~~Commission, shall commence an action,~~ in the circuit court  
19 for the county in which the excavation or demolition is  
20 occurring or is to occur, or in which the person complained  
21 of has his principal place of business or resides, for the  
22 purpose of having such negligent or unsafe excavation or  
23 demolition stopped and prevented or to compel the marking of  
24 underground utilities facilities or CATS facilities, either  
25 by mandamus or injunction.

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

27 (220 ILCS 50/14) (from Ch. 111 2/3, par. 1614)

28           Sec. 14. Home rule. The regulation of underground  
29 utility facilities and CATS facilities damage prevention, as  
30 provided for in this Act, is an exclusive power and function  
31 of the State. A home rule unit may not regulate underground  
32 utility facilities and CATS facilities damage prevention, as  
33 provided for in this Act. All units of local government,

1 including home rule units, must comply with the provisions of  
2 this Act. This Section is a denial and limitation of home  
3 rule powers and functions under subsection (h) of Section 6  
4 of Article VII of the Illinois Constitution.  
5 (Source: P.A. 86-674.)

6 Section 99. Effective date. This Act takes effect July  
7 1, 2002."