

## Underground Utility Line Protection Statute

73 P.S. Sec. 176 et seq.

### Note to Interested Parties Regarding Municipal Fees

PA 811 has been made aware that a few municipalities have considered or proposed billing excavators for locating their facilities. By way of background, as with each of the other States and the District of Columbia, Pennsylvania, as a matter of public safety, mandates that affected parties work together to minimize the likelihood of damage to underground facilities, with the attendant destruction of property, personal injury, and death. Often, this is referred to as an exercise of a State's police powers.

The PA statute has been in effect since 1974 and has been amended on several occasions since 1986. Municipalities and municipal authorities have been obliged to locate and mark their facilities since inception 46 years ago. As a part of the 1986 amendments the Commonwealth mandated the participation of municipal entities as what are termed "facility owners" in the law, as members of PA 811. In addition, municipalities may also be "project owners," "designers," and/or "excavators," under the law, depending upon what they are doing.

With particular reference to a municipality's role as a facility owner, its duties are set forth in Section 2 of the statute, which ascribes the same duties to all facility owners, beginning with the phrase, "**It shall be the duty of each facility owner. . . .**" The primary duty of a facility owner is to locate its lines or facilities (also a defined term) in certain ways and to certain tolerances. This is not optional, but rather a statutory duty, and, as a matter of law, one may not charge for the performance of a statutory duty. Moreover, failure to perform the assigned duties is an

offense under Section 7 of the law, punishable by fine, and municipalities have no immunity from this section.

In 1986, when municipalities were made covered parties regarding membership, the General Assembly specifically exempted small municipalities and small municipal authorities from paying PA 811 for excavator locate requests received by them. It also provided that larger municipalities and larger municipal authorities would receive a partial rebate of their membership costs to comply with locate requests. This was done by requiring non facility-owner excavators to pay a fee for the use of the PA811 system. A portion of that fee has been rebated to these municipalities for over 34 years.

In sum, as with all other facility owners, no municipality or municipal authority has the legal right to decline or condition the performance of its statutory duty as a facility owner upon the payment by the excavator of any fee charged by the municipality or authority. And, unlike any other State with which PA 811 is familiar, the PA General Assembly provides such municipalities and authorities with a partial offset of the cost of participation.

This issue has come up from time to time since 1986, and the advice and result have never changed.

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