

As Introduced

**128th General Assembly
Regular Session
2009-2010**

S. B. No. 152

Senator Buehrer

Cosponsors: Senators Wagoner, Seitz, Sawyer

—

A B I L L

To amend sections 121.04, 153.64, 3781.25, 3781.26, 1
3781.27, 3781.28, 3781.29, 3781.30, 3781.31, and 2
3781.32 and to enact sections 3781.261, 3781.281, 3
and 3781.33 to 3781.38 of the Revised Code to 4
modify the call before you dig notification system 5
and to create the Underground Protection 6
Commission of Ohio and the State Underground 7
Protection Advisory Committee. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 121.04, 153.64, 3781.25, 3781.26, 9
3781.27, 3781.28, 3781.29, 3781.30, 3781.31, and 3781.32 be 10
amended and sections 3781.261, 3781.281, 3781.33, 3781.34, 11
3781.35, 3781.36, 3781.37, and 3781.38 of the Revised Code be 12
enacted to read as follows: 13

Sec. 121.04. Offices are created within the several 14
departments as follows: 15

In the department of commerce: 16
Commissioner of securities; 17
Superintendent of real estate and professional 18
licensing;

Superintendent of financial institutions;	19
State fire marshal;	20
Superintendent of labor and worker safety;	21
Superintendent of liquor control;	22
Superintendent of industrial compliance;	23
Superintendent of unclaimed funds;	24
<u>Underground protection commission of Ohio.</u>	25
In the department of administrative services:	26
State architect and engineer;	27
Equal employment opportunity coordinator.	28
In the department of agriculture:	29
Chiefs of divisions as follows:	30
Administration;	31
Animal industry;	32
Dairy;	33
Food safety;	34
Plant industry;	35
Markets;	36
Meat inspection;	37
Consumer analytical laboratory;	38
Amusement ride safety;	39
Enforcement;	40
Weights and measures.	41
In the department of natural resources:	42
Chiefs of divisions as follows:	43
Water;	44
Mineral resources management;	45
Forestry;	46
Natural areas and preserves;	47
Wildlife;	48
Geological survey;	49

Parks and recreation;	50
Watercraft;	51
Recycling and litter prevention;	52
Soil and water conservation;	53
Real estate and land management;	54
Engineering.	55
In the department of insurance:	56
Deputy superintendent of insurance;	57
Assistant superintendent of insurance, technical;	58
Assistant superintendent of insurance, administrative;	59
Assistant superintendent of insurance, research.	60
Sec. 153.64. (A) As used in this section:	61
(1) "Public improvement" means any construction,	62
reconstruction, improvement, enlargement, alteration, or repair of	63
a building, highway, drainage system, water system, road, street,	64
alley, sewer, ditch, sewage disposal plant, water works, and all	65
other structures or works of any nature by a public authority.	66
(2) "Public authority" includes the state, or a county,	67
township, municipal corporation, school district, or other	68
political subdivision, or any public agency, authority, board,	69
commission, instrumentality, or special district of or in the	70
state or a county, township, municipal corporation, school	71
district, or other political subdivision.	72
(3) "Underground utility facilities" includes any item buried	73
or placed below ground or submerged under water for use in	74
connection with the storage or conveyance of water or sewage; or	75
electronic, telephonic, or telegraphic communications;	76
electricity; electric energy; petroleum products; manufactured,	77
mixed, or natural gas; synthetic or liquified natural gas; propane	78
gas; or other substances. "Underground utility facilities"	79
includes, but is not limited to, all operational underground	80

pipes, sewers, tubing, conduits, cables, valves, lines, wires, 81
manholes, and attachments, whether owned by any public or private 82
or profit or nonprofit person, firm, partnership, company, 83
corporation, joint stock association, joint venture, or voluntary 84
association, wherever organized or incorporated, except for a 85
private septic system in a single- or ~~double~~ multi-family dwelling 86
utilized only for that dwelling and not connected to any other 87
system. 88

(4) "~~Underground utility protection~~ Protection service" means 89
a notification center not an owner of an underground utility 90
facility, ~~existing that complies with the following:~~ 91

(a) It exists for the purpose of receiving notice from public 92
authorities and from other persons that plan to prepare plans and 93
specifications for, or engage in, public improvements involving 94
digging, blasting, excavating, or other underground construction 95
activities ~~and distributing this;~~ 96

(b) It distributes the information described in division 97
(A)(4)(a) of this section to its members and participants; 98

(c) It has registered by March 14, 1989 with the secretary of 99
state and the public utilities commission under former division 100
(F) of this section as it existed on that date. "Registered 101
underground utility protection service" means an underground 102
utility protection service registered with the secretary of state 103
and the public utilities commission of Ohio pursuant to division 104
(F) of this section. 105

(5) "~~Owner of underground utility facility" does not include~~ 106
~~telephone companies classified as medium or small under rule~~ 107
~~4901-7-01 of the Ohio Administrative Code, owners of pipelines~~ 108
~~that conduct liquid petroleum products, or cable television~~ 109
~~companies to the extent that it requires membership in an~~ 110
~~underground utility protection service.~~ 111

~~(6)~~(5) "Construction area" means the area delineated on the 112
plans and specifications for the public improvement within which 113
the work provided for in the contract will be performed. 114

(B) In any public improvement which may involve underground 115
utility facilities, the public authority, prior to preparing plans 116
and specifications, shall contact ~~the registered underground~~ 117
~~utility~~ each protection ~~services~~ service and ~~the~~ any owners of 118
underground utility facilities that are not members of a 119
registered ~~underground utility~~ protection service for the 120
existence and location of all underground utility facilities 121
within the construction area. The public authority shall include, 122
in the plans and specifications for such improvement, the identity 123
and location of the existing underground utility facilities 124
located in the construction area as provided to the public 125
authority by the owner of the underground utility facility and the 126
name, address, and telephone number of each owner of any 127
underground utility facilities in the construction area that does 128
not subscribe to a ~~registered underground utility~~ protection 129
service. Any anticipated temporary or permanent relocation of 130
underground utility facilities deemed necessary by the public 131
authority shall be negotiated or arranged by the public authority 132
with the owners of the underground utility facilities prior to the 133
start of construction. If a temporary or permanent relocation of 134
utility facilities is necessary, the owner of the underground 135
utility facility shall be given a reasonable time to move such 136
utility facilities unless the contractor to whom the contract for 137
a public improvement is awarded or its subcontractor agrees with 138
the owner of the underground utility facility to coordinate 139
relocation with construction operations. The public authority, 140
within ten calendar days after award of a contract for a public 141
improvement, shall notify in writing all owners of underground 142
utility facilities known to be located in the construction area of 143
the public improvement of the name and address of the contractor 144

to whom the contract for the public improvement was awarded. Where 145
notice is given in writing by certified mail, the return receipt, 146
signed by any person to whom the notice is delivered, shall be 147
conclusive proof of notice. 148

~~(C) The contractor to whom a contract for a public 149
improvement is awarded or its subcontractor, at least two working 150
days, excluding Saturdays, Sundays, and legal holidays, prior to 151
commencing construction operations in the construction area which 152
may involve underground utility facilities, shall cause notice to 153
be given to the registered underground utility protection services 154
and the owners of underground utility facilities shown on the 155
plans and specifications who are not members of a registered 156
underground utility protection service, in writing, by telephone, 157
or in person. Where notice is given in writing by certified mail, 158
the return receipt, signed by any person to whom the notice is 159
delivered, shall be conclusive proof of notice. The owner of the 160
underground utility facility, within forty eight hours, excluding 161
Saturdays, Sundays, and legal holidays, after notice is received, 162
shall stake, mark, or otherwise designate the location of the 163
underground utility facilities in the construction area in such a 164
manner as to indicate their course together with the approximate 165
depth at which they were installed. The marking or locating shall 166
be coordinated to stay approximately two days ahead of the planned 167
construction Sections 3781.28 to 3781.31 of the Revised Code shall 168
govern public improvements to the extent they are applicable. 169~~

(D) If the public authority fails to comply with the 171
requirements of division (B) of this section, the contractor to 172
whom the work is awarded or its subcontractor complies with the 173
requirements of division (C) of this section, and the contractor 174
or its subcontractor encounters underground utility facilities in 175
the construction area that would have been shown on the plans and 176

specifications for such improvement had ~~the registered underground~~ 177
~~utility~~ a protection service or owner of the underground utility 178
facility who is not a member of a ~~registered underground utility~~ 179
protection service whose name, address, and telephone number is 180
provided by the public authority been contacted, then the 181
contractor, upon notification to the public authority, is entitled 182
to an increase to the contract price for itself or its 183
subcontractor for any additional work that must be undertaken or 184
additional time that will be required and is entitled to an 185
extension of the completion date of the contract for the period of 186
time of any delays to the construction of the public improvement. 187

In the event of a dispute as to the application of this 188
section, procedures may be commenced under the applicable terms of 189
the construction contract, or if the contract contains no 190
provision for final resolution of the dispute, pursuant to the 191
procedures for arbitration in Chapter 2711. of the Revised Code. 192

This section does not affect rights between the contractors 193
and the public authority for any increase in contract price or 194
additional time to perform the contract when the public authority 195
complies with division (B) of this section. 196

Any public authority who complies with the requirements of 197
division (B) of this section and any contractor or its 198
subcontractor who complies with the requirements of division (C) 199
of this section shall not be responsible to the owner of the 200
underground utility facility if underground utility lines are 201
encountered not as marked in accordance with the provisions of 202
division (C) of this section by the owner of the underground 203
utility facility, unless the contractor or its subcontractor has 204
actual notice of the underground utility facility. Except as noted 205
in this division, this section does not affect rights between the 206
contractor or its subcontractor and the owner of the underground 207
utility facility for failure to mark or erroneously marking 208

utility lines. The public authority shall not make as a 209
requirement of any contract for public improvement any change in 210
responsibilities between the public authority and the owners of 211
the underground utility facilities in connection with damage, 212
injury, or loss to any property in connection with underground 213
utility facilities. 214

The contractor or its subcontractor shall alert immediately 215
the occupants of nearby premises as to any emergency that the 216
contractor or subcontractor may create or discover at or near such 217
premises. The contractor or its subcontractor shall report 218
immediately to the owner or operator of the underground facility 219
any break or leak on its lines or any dent, gouge, groove, or 220
other damage to such lines or to their coating or cathodic 221
protection, made or discovered in the course of their excavation. 222

(E) This section does not affect rights between the public 223
authority and the owners of the underground utility facilities for 224
responsibility for costs involving removal, relocation, or 225
protection of existing underground utility facilities, or for 226
costs for delays occasioned thereby. 227

~~(F) An underground utility protection service shall register 228
with the secretary of state and the public utilities commission of 229
Ohio, identifying its name, address, telephone number, membership, 230
and other pertinent information. The secretary of state and 231
commission shall establish procedures for accepting such 232
registrations and providing information about registrants to 233
public authorities on request. 234~~

Sec. 3781.25. As used in sections 3781.25 to ~~3781.32~~ 3781.38 235
of the Revised Code: 236

(A) "Protection service" means a notification center, but not 237
an owner of an individual utility, that exists for the purpose of 238
receiving notice from persons that prepare plans and 239

specifications for or that engage in excavation work, that 240
distributes this information to its members and participants, and 241
that ~~is~~ has registered by March 14, 1989 with the secretary of 242
state and the public utilities commission of Ohio under former 243
division (F) of section 153.64 of the Revised Code as it existed 244
on ~~March 14, 1989~~ that date. 245

(B) "Underground utility facility" ~~means~~ includes any item 246
buried or placed below ~~the surface of the earth~~ ground or 247
submerged under water for use in connection with the storage or 248
conveyance of water or sewage; electronic, telephonic, or 249
telegraphic communications; television signals; electricity; 250
electric energy; crude oil; petroleum products; artificial or 251
liquefied petroleum; manufactured, mixed, or natural gas; 252
synthetic or liquefied natural gas; propane gas; coal; steam; hot 253
water; or other substances; ~~except that it does not include.~~ 254
"Underground utility facility" includes all operational 255
underground pipes, sewers, tubing, conduits, cables, valves, 256
lines, wires, worker access holes, and attachments, owned by any 257
person, firm, or company. "Underground utility facility" does not 258
include either of the following: 259

(1) A private septic ~~systems~~ system in a one-family or ~~two~~ 260
multi-family dwelling utilized only for that dwelling and not 261
connected to any other system; 262

(2) An oil or gas producing facility that is not regulated by 263
the "Natural Gas Pipeline Safety Act of 1968," 82 Stat. 720, 49 264
U.S.C. 1671, if the facility is not located in an "urbanized 265
area," as defined in section 1509.03 of the Revised Code. 266

(C) "Utility" means any owner or operator, or an agent of an 267
owner or operator, of an underground utility facility, including 268
any public authority ~~as defined in section 153.64 of the Revised~~ 269
Code, that owns or operates an underground utility facility, 270
~~except.~~ "Utility" does not include the owners of the following 271

types of real property with respect to any underground utility facility located on that property:	272
	273
(1) The owner of a single-family or two-, three-, or four-unit residential dwelling;	274
	275
(2) The owner of an apartment complex;	276
(3) The owner of a commercial or industrial building or complex of buildings, including but not limited to, factories and shopping centers;	277
	278
	279
(4) The owner of a farm.	280
(D) "Approximate location" <u>"Tolerance zone"</u> means the site of the underground utility facility including the width of the underground utility facility plus eighteen inches on each side <u>all sides</u> of the facility.	281
	282
	283
	284
(E) "Days Working days" excludes Saturdays, Sundays, and legal holidays as defined in section 1.14 of the Revised Code and "hours" excludes hours on Saturdays, Sundays, and legal holidays. <u>A single working day begins at midnight and has a duration of twenty-four hours.</u>	285
	286
	287
	288
	289
(F) "Designer" means an engineer, architect, landscape architect, contractor, or other person who develops plans or designs for real property improvement or any other activity that will involve excavation.	290
	291
	292
	293
(G) "Developer" means the person for whom the excavation is made and who will own or be the lessee of any improvement that is the object of the excavation.	294
	295
	296
(H) "Excavation" means the use of <u>hand</u> tools, powered equipment, or explosives to move earth, rock, or other materials in order to penetrate or bore or drill into the earth, or to demolish any structure whether or not it is intended that the demolition will disturb the earth. "Excavation" includes such	297
	298
	299
	300
	301

agricultural operations as the installation of drain tile, but 302
excludes agricultural operations such as tilling that do not 303
penetrate the earth to a depth of more than twelve inches. 304
~~"Excavation" excludes any activity by a governmental entity which 305
does not penetrate the earth to a depth of more than twelve 306
inches.~~ "Excavation" excludes any underground mining operations 307
that do not involve disturbance to the earth's surface. 308

(I) "Excavation site" means the area within which excavation 309
will be performed. 310

(J) "Excavator" means the ~~contractor or other person who is 311
or persons responsible for making the actual excavation.~~ 312

(K) "Interstate gas pipeline" means an interstate gas 313
pipeline subject to the "Natural Gas Pipeline Safety Act of 1968," 314
82 Stat. 720, 49 U.S.C. 1671, as amended. 315

(L) "Interstate hazardous liquids pipeline" means an 316
interstate hazardous liquids pipeline subject to the "Hazardous 317
Liquid Pipeline Safety Act of 1979," 93 Stat. 1003, 49 U.S.C. 318
2002, as amended. 319

(M) "Special notification requirements" means requirements 320
for notice to an owner of an interstate hazardous liquids pipeline 321
or an interstate gas pipeline that must be made prior to 322
commencing excavation and pursuant to the owner's public safety 323
program adopted under federal law. 324

(N) "Commercial excavator" means any excavator, excluding a 325
utility as defined in this section, that satisfies both of the 326
following: 327

(1) For compensation, performs, directs, supervises, or is 328
responsible for the excavation, construction, improvement, 329
renovation, repair, or maintenance on a construction project and 330
holds out or represents oneself as qualified or permitted to act 331
as such; 332

(2) Employs tradespersons who actually perform excavation construction, improvement, renovation, repair, or maintenance on a construction project. 333
334
335

(O) "Person" has the same meaning as in section 1.59 of the Revised Code and also includes a public authority. 336
337

(P) "Positive response system" means an automated system facilitated by a protection service allowing a utility to communicate to an excavator the presence or absence of any conflict between the existing underground utility facilities and the proposed excavation site. 338
339
340
341
342

(Q) "Project" means any undertaking by a private party of an improvement requiring excavation. 343
344

(R) "Public authority" has the same meaning as in section 153.64 of the Revised Code. 345
346

(S) "Improvement" means any construction, reconstruction, improvement, enlargement, alteration, or repair of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, water works, and all other structures or works of any nature. 347
348
349
350
351

(T) "Emergency" means an unexpected occurrence causing a disruption or damage to an underground utility facility that requires immediate repair or a situation that creates a clear and imminent danger that demands immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services. 352
353
354
355
356
357

(U) "Nondestructive manner" means using low-impact, low-risk technologies such as hand tools, or hydro or air vacuum excavation equipment. 358
359
360

(V) "Habitual or willful non-complier" means a person, utility, or commercial excavator that has consistently or 361
362

continually failed to comply with or purposefully or knowingly 363
disregarded the provisions set forth in sections 3781.25 to 364
3781.32 of the Revised Code. 365

Sec. 3781.26. (A) Each utility that owns or operates 366
underground utility facilities shall participate in and register 367
the location of its underground utility facilities with a 368
protection service that serves the area where the facilities are 369
located. A utility may elect to participate in the service on a 370
limited basis and if it does so, it shall register the location of 371
its underground utility facilities ~~only~~ by identifying the 372
municipal corporations, and outside the limits of a municipal 373
corporation, the townships by county and, where applicable, the 374
immediate geographic area in which it has facilities. The service 375
shall establish reasonable fees for limited basis participants. 376
Any utility that elects to participate on a limited basis shall 377
fully participate in and register the location of its underground 378
utility facilities with the appropriate protection service within 379
four years after the effective date of this amendment. 380

(B) Protection services, utilities, commercial excavators, 381
excavation equipment dealers, the public utilities commission of 382
Ohio, the board of building standards, local law enforcement 383
agencies, and fire departments should publicize the importance of 384
ascertaining the location of underground utility facilities before 385
excavating and the use of protection services to ascertain that 386
information. 387

(C) A protection service shall maintain records of 388
notifications received from developers, designers, and excavators, 389
and of its notifications made to utilities, developers, designers, 390
and excavators, under sections 3781.27 and 3781.28 of the Revised 391
Code. The records of a protection service shall identify by 392
reference number, the notifications it received regarding a 393

proposed excavation site, the notifications it provided regarding 394
a proposed excavation site, and the date and time of each 395
notification. 396

(D) Each utility fully participating in a protection service 397
pursuant to this section shall also participate in its affiliated 398
positive response system. Each utility participating in a 399
protection service on a limited basis shall directly communicate 400
to the excavator the presence or absence of any conflict between 401
the existing underground utility facilities and the proposed 402
excavation site. 403

Sec. 3781.261. Not later than four years after the effective 404
date of this section, every commercial excavator shall be a member 405
of a protection service, and that protection service shall impose 406
a reasonable membership fee. 407

Sec. 3781.27. Sections 3781.27 to 3781.32 do not apply to 408
"public improvements" as defined in section 153.64 of the Revised 409
Code. 410

(A) In order to ascertain the name of each utility with 411
underground utility facilities located at the proposed excavation 412
site and the types and ~~approximate location~~ tolerance zones of 413
those facilities based on up-to-date records of the utility, any 414
developer who is planning a project that will require excavation 415
shall notify ~~the~~ each protection service of the location of the 416
proposed excavation site. 417

(B) Except in the case of limited basis participants, ~~the~~ 418
each protection service shall provide notice of the proposed 419
excavation to each participant in the service that has underground 420
utility facilities in the area of the proposed excavation site. In 421
the case of limited basis participants, ~~the~~ each protection 422
service shall notify the developer of the name of each limited 423

basis participant with underground utility facilities within the 424
municipal corporation or township and county of the proposed 425
excavation site, and the developer shall contact that utility. 426

427

(C) Each utility that has any underground utility facilities 428
in the area of the proposed excavation site shall notify the 429
developer of the ~~approximate locations~~ tolerance zones and 430
description of the utility's underground utility facilities 431
located at the proposed excavation site, or that the utility does 432
not have any underground utility facilities at the site. The 433
utility shall make this notification within ten working days of 434
receiving a notice under division (B) of this section or by a 435
later date acceptable to the developer and utility. In the case of 436
an interstate hazardous liquid pipeline or an interstate gas 437
pipeline, the utility also shall provide written notice to the 438
developer of any special notification requirements. 439

(D) The utility shall determine if any relocation, support, 440
or removal, or protective steps beyond those described in 441
divisions (A)(1) to ~~(D)~~(4) of section 3781.30 of the Revised Code 442
are required in order to prevent disturbance or interference with 443
the underground utility facilities during excavation. The utility 444
shall determine whether it will permit the developer to make those 445
adjustments, and, if the adjustments are to be made by the 446
utility, a reasonable amount of time necessary to make those 447
adjustments. 448

(E)(1) Based on the information provided pursuant to division 449
(C) of this section, the developer shall indicate the ~~approximate~~ 450
~~locations~~ tolerance zones of underground utility facilities either 451
on or with the plans prepared for the project. The developer shall 452
include with the plans the names, addresses, and telephone numbers 453
of utilities with underground facilities at the excavation site, 454
indicating which utilities are limited basis participants; the 455

name and telephone number of ~~the~~ any appropriate protection 456
service; and any required adjustments as described in division (D) 457
of this section, including the reasonable time necessary for the 458
utility to make those adjustments. In the case of an interstate 459
hazardous liquid pipeline or an interstate gas pipeline, the 460
developer also shall include any special notification 461
requirements. 462

(2)(a) Except as otherwise provided in division (E)(2)(b) of 463
this section, the developer shall provide the plans to the 464
commercial excavator before excavation begins prior to entering 465
into a contract that involves such excavation. If the developer 466
does not prepare written plans or have any written plans prepared, 467
he the developer shall otherwise provide the ~~approximate locations~~ 468
tolerance zones, identifying information on the utilities, 469
information on required adjustments, and any special notification 470
requirements to the commercial excavator before excavation begins. 471
472

(b) When the developer is a utility, ~~he~~ the utility shall 473
provide either the plans or the ~~approximate locations~~ tolerance 474
zones, identifying information on the utilities, information on 475
required adjustments, and any special notification requirements to 476
the excavator before excavation begins. 477

(3) The developer shall design the project taking into 478
account the ~~approximate location~~ tolerance zone of existing 479
underground utility facilities in order to prevent, as far as is 480
practicable, disturbance or interference with those facilities. 481

(4) When a project includes installation of new underground 482
utility facilities, the developer shall attempt to design the 483
installation so that at least a twelve-inch clearance is provided 484
between the facilities. No facility shall be installed with less 485
than a twelve-inch clearance unless the owners of existing 486
facilities are notified, in writing, prior to installation. 487

(F)(1) This section does not apply in the case of a utility 488
making emergency repair to its own underground utility facility. 489

(2) This section does not apply in the case of the owner of 490
the types of real property identified in divisions (C)(1) to (4) 491
of section 3781.25 of the Revised Code, unless the owner employs a 492
designer to make written plans for work that will involve 493
excavation. If the owner employs a designer, the designer shall 494
contact the utility protection service and utilities that are 495
limited basis participants in accordance with divisions (A) and 496
(B) of this section, and shall include in or with the plans the 497
information required under division (E) of this section. The owner 498
shall provide that information to the excavator. 499

Sec. 3781.28. (A) Except as otherwise provided in divisions 500
(C), (D), (E), and (F) of this section, at least ~~forty-eight hours~~ 501
two working days, excluding the day the notice is given, but not 502
more than ten working days before commencing excavation, the 503
excavator shall notify ~~the~~ each protection service of the location 504
of the excavation site and the date on which excavation is planned 505
to commence. 506

(B) On receipt of notice under division (A) of this section, 507
~~the~~ each protection service shall provide to each utility with 508
underground utility facilities located at the excavation site, 509
notice of the proposed excavation, except that in the case of a 510
limited basis participant in the service, the service shall notify 511
the excavator of the name of each limited basis participant with 512
underground utility facilities located in the municipal 513
corporation or township and county of the proposed excavation 514
site, and the excavator shall notify the limited basis participant 515
of the proposed excavation at least ~~forty-eight hours~~ two working 516
days, excluding the day the notice is given, but not more than ten 517
working days before commencing excavation. The excavator may make 518

this notification by telephone. 519

(C) In the case of an interstate hazardous liquids pipeline 520
or interstate gas pipeline, the excavator shall comply with the 521
special notice requirements of the public safety program of the 522
owner of the pipeline as indicated in the plans or otherwise 523
provided to the excavator in accordance with division (E) or 524
(F)(2) of section 3781.27 of the Revised Code. 525

(D) If it has been determined pursuant to division (D) of 526
section 3781.27 of the Revised Code that relocation, support, 527
removal, or protective steps are necessary, the excavator shall 528
provide earlier notice to the utility in order to provide the 529
utility with reasonable time to coordinate making the adjustments 530
with actual excavation. 531

(E) If an excavation will cover a large area and will 532
progress from one area to the next over a period of time, the 533
excavator shall provide written notice of excavation with 534
projected timelines for segments of the excavation as the 535
excavation progresses in order to coordinate the marking of 536
~~approximate locations~~ tolerance zones with actual excavation 537
schedules. Under such circumstances, the utility and excavator 538
shall determine a mutually agreed upon marking schedule based on 539
the project schedule. Once such a schedule is established, the 540
marking and notification requirements set forth in division (A)(1) 541
of section 3781.29 of the Revised Code shall not apply. 542

(F)(1) In the case of a utility that is making an emergency 543
repair to its own underground utility system or a governmental 544
entity making an underground emergency repair to traffic control 545
devices, as defined in section 4511.01 of the Revised Code, used 546
on any street or highway under the entity's jurisdiction, the 547
utility or governmental entity shall notify ~~the~~ each protection 548
service and each limited basis participant of the excavation site. 549
This notice need not occur before commencing excavation. 550

(2) In the case of an excavation at the site of real property 551
of the type described in divisions (C)(1) to (4) of section 552
3781.25 of the Revised Code: 553

(a) If the owner of the property is the excavator, this 554
section does not apply unless the excavation is planned for an 555
area where a utility easement is located ~~or~~, a public 556
right-of-way, or where utility facilities are known to serve the 557
property. 558

(b) If the owner of the property employs an excavator, the 559
excavator shall comply with the requirements of this section. If 560
the owner did not employ a designer to make written plans, the 561
excavator shall provide the notice required under this section to 562
~~the~~ each protection service and to each utility that is a limited 563
basis participant in ~~the~~ a protection service that has underground 564
utility facilities within the municipal corporation or township 565
and county of the excavation site, as indicated by the protection 566
service. 567

Sec. 3781.281. Each protection service shall annually 568
allocate a portion of its revenue generated from membership fees 569
and deposit it in the state underground protection fund in 570
accordance with section 3781.38 of the Revised Code. The aggregate 571
revenue annually deposited in the fund from all protection 572
services pursuant to this section shall not exceed fifty thousand 573
dollars. 574

Sec. 3781.29. (A)(1) Except as otherwise provided in division 575
(A)(2) of this section, within ~~forty-eight hours~~ two working days, 576
excluding the day of receiving notice under section 3781.28 of the 577
Revised Code, each utility shall review the status of its 578
facilities within the excavation site, locate and mark the 579
~~approximate location~~ tolerance zone of its underground utility 580

facilities at the excavation site in such a manner as to indicate 581
their course, and report the appropriate information to the 582
protection service for its positive response system. If a utility 583
does not mark its underground utility facilities or contact the 584
excavator within ~~forty eight hours of receiving notice under~~ 585
~~section 3781.28 of the Revised Code~~ that time, the utility is 586
deemed to have given notice that it does not have any facilities 587
at the excavation site. If the utility cannot accurately mark the 588
~~approximate location~~ tolerance zone, the utility shall mark the 589
~~approximate location~~ tolerance zone to the best of its ability, 590
notify the excavator using the positive response system that the 591
markings may not be accurate, and provide additional guidance to 592
the excavator in locating the facilities as needed during the 593
excavation. If the utility cannot locate its underground utility 594
facilities or cannot estimate them with reasonable accuracy and 595
provide notice of their locations to the excavator, and any damage 596
occurs to the underground utility facility through the excavation, 597
the utility operating such an underground utility facility shall 598
be responsible for repairing such damages and shall be liable for 599
any injury of persons or property resulting from the damaged 600
underground utility facility. 601

(2) In the case of an interstate hazardous liquids pipeline 603
or an interstate gas pipeline, the owner of the pipeline shall 604
locate and mark the ~~approximate location~~ tolerance zone of its 605
pipeline within the time frame established in the public safety 606
program of the owner. 607

(B) Unless a facility actually is uncovered or probed by the 608
utility or excavator, any indications of the depth of the facility 609
shall be treated as estimates only. 610

(C) A utility shall mark the ~~approximate location~~ tolerance 611
zone of its underground facilities using the following color 612

codes:		613
Type of Underground		614
Utility Facility	Color	615
Electric power transmission and distribution	Safety red	616 617
Gas transmission and distribution	High visibility safety yellow	618
Oil transmission and distribution	High visibility safety yellow	619
Dangerous materials, product lines, and steam lines	High visibility safety yellow	620 621
Telephone and telegraph systems	Safety alert orange	622
Police and fire communications	Safety alert orange	623
Cable television	Safety alert orange	624
Water systems	Safety precaution blue	625
Slurry systems	Safety precaution blue	626
Sewer lines	Safety green.	627

(D) Except as otherwise provided in divisions (E) and (F) of this section, prior to notifying a protection service of the proposed excavation, an excavator shall define and pre-mark the immediate area and the perimeter of the proposed excavation site. 628
629
630
631
Proposed construction or excavation markings shall be made in 632
white through the use of an industry-recognized method such as 633
chalk-based paint, flags, stakes, or other method applicable to 634
the specific site and when possible shall indicate the excavator's 635
identity by name, abbreviation, or initial. 636

(E)(1) Before beginning an emergency excavation, or as soon as possible thereafter, an excavator shall make every effort to notify each protection service of the excavation. In providing notification, the excavator shall provide, at a minimum: 637
638
639
640

(a) The name of the individual notifying the protection service; 641
642

(b) The name, address, any electronic mail address, and any telephone and facsimile numbers of the excavator; 643
644

(c) The specific location of the excavation site; 645

(d) A description of the excavation. 646

(2) Upon receiving the information set forth in division 647
(E)(1) of this section, the protection service shall provide the 648
excavator with a reference number and a list of utilities that the 649
protection service intends to notify. The protection service shall 650
immediately notify each utility that according to the registration 651
information provided under section 3781.26 of the Revised Code has 652
facilities located within the designated area of the emergency 653
excavation. 654

(3) Any utility notified of an emergency excavation may 655
inspect all of its underground utility facilities located at the 656
emergency excavation site and may take any otherwise lawful action 657
it considers necessary to prevent disturbance to or interference 658
with its facilities during excavation. 659

(F) An excavator is not required to pre-mark a proposed 660
excavation as provided in division (D) of this section in any of 661
the following situations: 662

(1) The utility can determine the precise location, 663
direction, size, and length of the proposed excavation site by 664
referring to the notification provided by the protection service 665
pursuant to sections 3781.27 and 3781.28 of the Revised Code. 666

(2) The excavator and the affected utility have had an 667
on-site, pre-construction meeting for the purpose of pre-marking 668
the excavation site. 669

(3) The excavation involves replacing a pole that is within 670
five feet of the location of an existing pole. 671

(4) Pre-marking by the excavator would clearly interfere with 672
pedestrian or vehicular traffic control. 673

Sec. 3781.30. (A) When making excavations using traditional 674

or trenchless technologies, the excavator shall do all of the 675
following: 676

~~(A)~~(1) Maintain reasonable clearance between any underground 677
facility and the cutting edge or point of powered equipment; 678

~~(B)~~(2) Protect and preserve the markings of ~~approximate~~ 679
~~locations~~ tolerance zones of underground utility facilities until 680
those markings are no longer required for proper and safe 681
excavations; 682

~~(C)~~(3) When approaching and excavating within the tolerance 683
zone of underground utility facilities ~~while excavating~~ with 684
powered equipment, require an individual other than the equipment 685
operator, to ~~look~~ visually monitor the excavation activity for any 686
~~sign~~ indication of the underground utility facility; 687

~~(D)~~(4) Conduct the excavation ~~in~~ within the ~~vicinity of the~~ 688
~~underground utility facility~~ tolerance zone in a careful and, 689
prudent, and nondestructive manner, ~~excavating by hand, if when~~ 690
necessary, to determine and expose the precise location of the 691
facility and to prevent damage; 692

~~(E)~~(5) As soon as any damage is discovered, including gouges, 693
dents, or breaks to coatings, cable sheathes, and cathodic 694
protection anodes or wiring, report the type and location of the 695
damage to the utility and permit the utility a reasonable amount 696
of time to make necessary repairs; 697

~~(F)~~(6) Immediately report to the utility, the protection 698
service, and, if necessary, to the appropriate law enforcement 699
agencies and fire departments by calling 9-1-1, any damage to an 700
underground utility facility that results in escaping flammable, 701
corrosive, explosive, or toxic liquids or gas, and take reasonable 702
appropriate actions needed to protect persons and property and to 703
minimize safety hazards until those agencies and departments and 704
the utility arrive at the scene. 705

(B) When utilizing trenchless excavation methods, the excavator must comply with the following requirements, in a manner consistent with division (A) of this section: 706
707
708

(1) Expose and confirm all underground utility facilities at each crossing point by the proposed excavation in a nondestructive manner; 709
710
711

(2) Expose all parallel underground utility facilities in a nondestructive manner at the beginning and end of each trenchless excavation. Any parallel underground utility facility that is within five feet of the proposed alignment shall also be exposed every one hundred feet. Any parallel underground utility facility that is within three feet of the proposed alignment shall be exposed every fifty feet. 712
713
714
715
716
717
718

(3) Ensure that the final product installation maintains the proper clearances of existing underground utility facilities as determined pursuant to division (E)(4) of section 3781.27 of the Revised Code. 719
720
721
722

Sec. 3781.31. (A) When a utility marks the ~~approximate~~ location tolerance zone of its underground utility facilities in accordance with division (A) of section 3781.29 of the Revised Code, the utility may request that the excavator provide prior notice to the utility of the actual commencement of the excavation. An excavator that receives a request for notice under this division shall provide the notice to the utility at least ~~twenty-four hours~~ one full working day prior to the commencement of excavation. The excavator may make this notice by telephone. 723
724
725
726
727
728
729
730
731

(B) If the markings of ~~approximate locations~~ tolerance zones made under section 3781.29 of the Revised Code are destroyed or removed before excavation is completed, the excavator shall notify the utility through the protection service that the markings have been destroyed or removed, and the utility shall remark the 732
733
734
735
736

~~approximate locations within forty eight hours of the notice~~ 737
~~tolerance zones in accordance with division (A) of section 3781.29~~ 738
~~of the Revised Code.~~ 739

Sec. 3781.32. (A) Any connections or tie-ins to existing 740
utility services within a public right-of-way shall comply with 741
permit requirements of the public ~~agency~~ authority that has 742
jurisdiction over that right-of-way. 743

(B) A developer shall not require, as a condition for 744
entering into a contract for a project that will require 745
excavation, that responsibility for performance of duties imposed 746
under sections 3781.25 to 3781.32 of the Revised Code shall be 747
assumed by a person other than the person on whom those duties are 748
imposed under those sections. This division does not prohibit a 749
utility from entering into any contract for the performance of 750
duties that are imposed on a utility under those sections. 751

(C) Nothing in sections 3728.25 to 3728.32 of the Revised 752
Code shall be construed to require a utility to relocate its 753
underground utility facilities located at an excavation site. 754

Sec. 3781.33. (A)(1) There is hereby created the state 755
underground protection advisory committee consisting of nine 756
members as appointed pursuant to this section. Five members shall 757
constitute a quorum. The governor shall make initial appointments 758
within thirty days after the effective date of this section. Of 759
the initial appointments, three shall be for terms ending on 760
January 31, 2011, three shall be for terms ending on January 31, 761
2012, and three shall be for terms ending on January 31, 2013. 762
Thereafter, terms of office shall be for three years, with each 763
term ending on the same day of the same month as did the term it 764
succeeds. 765

(2) Each member shall hold office from the date of 766

appointment until the end of the term for which the member was 767
appointed. Members may be reappointed, provided that no more than 768
two terms can be served consecutively and a period equal to one 769
term must elapse before a member is eligible to serve another 770
term. 771

(3) Vacancies shall be filled in the manner provided for 772
original appointments. Any member appointed to fill a vacancy 773
occurring prior to the expiration date of the term for which the 774
member's predecessor was appointed shall hold office for the 775
remainder of the term. A member shall continue in office 776
subsequent to the expiration date of the member's term until a 777
successor takes office or until a period of sixty days has 778
elapsed, whichever occurs first. 779

(B) The committee shall consist of nine members appointed by 780
the governor in the following manner: 781

(1) The governor shall appoint one person to represent the 782
interests of commercial excavators from a list of at least three 783
provided to the governor by the Ohio contractors association or a 784
successor organization representing the interest of commercial 785
excavators in this state; 786

(2) The board of trustees of the Ohio utilities protection 787
service shall provide the governor with a list consisting of at 788
least nine representatives of utilities subject to regulation by 789
the public utilities commission and companies not subject to 790
regulation by the commission that are engaged in the 791
transportation of natural gas by pipeline. At least three 792
individuals on the list shall represent the interest of a gas 793
company, natural gas company, or company not subject to regulation 794
by the commission that is engaged in the transportation of natural 795
gas by pipeline; at least three individuals on the list shall 796
represent the interests of an electric light company; and at least 797
three individuals on the list shall represent the interest of a 798

telephone or telegraph company. For purposes of this division, 799
"gas company," "natural gas company," "electric light company," 800
"telephone company," and "telegraph company" have the same meaning 801
as in section 4905.03 of the Revised Code. The governor shall 802
appoint from the list one person representing a gas company, 803
natural gas company, or company not subject to regulation by the 804
commission that is engaged in the transportation of natural gas by 805
pipeline; one person representing an electric light company; and 806
one person representing a telephone or telegraph company to serve 807
on the committee. No member of the board of trustees of the Ohio 808
utilities protection service shall be appointed to the committee. 809

(3) The governor shall appoint one individual representing 811
the public utilities commission from a list of at least three such 812
individuals provided by the chairperson of the public utilities 813
commission. 814

(4) The governor shall appoint one individual representing 815
the interests of utilities not subject to regulation by the public 816
utilities commission from a list of at least three provided by the 817
Ohio oil and gas association or a successor organization. 818

(5) The governor shall appoint one individual representing 819
contract facility locators from a list of at least three such 820
individuals provided to the governor by the organization 821
representing their interests in this state. 822

(6) The governor shall appoint one individual from a list of 823
at least three such individuals provided to the governor by the 824
department of transportation in conjunction with the county 825
engineers association of Ohio or a successor organization. 826

(7) The governor shall appoint one individual from a list of 827
at least three provided by the organization representing the 828
interests of municipal governments in this state. 829

(C) The representative from the public utilities commission shall serve as the chairperson for the initial year of the committee's existence. Thereafter, the committee members shall elect the committee chairperson. 830
831
832
833

(D) Committee members shall not be subject to the requirements set forth in section 102.02 of the Revised Code. Absent willful misconduct, committee members shall be immune from civil liability for any act or omission in the performance of their duties while serving on the committee. 834
835
836
837
838

(E) Each committee member shall receive reimbursement for actual and necessary expenses incurred in the performance of official business and for each mile necessarily traveled in the performance of official duties. 839
840
841
842

Sec. 3781.34. (A) The state underground protection advisory committee shall provide enforcement recommendations for sections 3781.25 to 3781.32 of the Revised Code and recommend resolutions of complaints regarding discriminatory or unfair rates to the underground protection commission of Ohio pursuant to section 3781.37 of the Revised Code. 843
844
845
846
847
848

(B) The underground protection advisory committee shall meet at least four times per year and any additional times as, in its judgment, are necessary. The committee may hold meetings at the location and time it selects. 849
850
851
852

(C) As appropriate, each protection service and the department of commerce shall provide the committee with meeting space, staff services, and other technical and administrative assistance within their respective areas of expertise. Such assistance may include providing the committee with data, research, statistics, and analysis and providing the committee with investigators and hearing examiners. 853
854
855
856
857
858
859

The protection services, in conjunction with the underground protection commission of Ohio, shall maintain any and all records on behalf of the committee and make them available to the public upon proper request. 860
861
862
863

(D) The committee may, as necessary, adopt rules to govern its procedures and shall adopt rules to govern the procedure by which each protection service shall forward the complaints it receives to the committee pursuant to section 3781.37 of the Revised Code. 864
865
866
867
868

(E) The committee may adopt an identifying mark, such as a seal, logo, or brand. 869
870

Sec. 3781.35. (A)(1) There is hereby created within the department of commerce the underground protection commission of Ohio, consisting of three members appointed by the governor, with the advice and consent of the senate. Two members of the commission shall constitute a quorum. The governor shall make initial appointments to the commission within thirty days after the effective date of this section. Of the initial appointments, one shall be for a term ending January 31, 2011, one shall be for a term ending January 31, 2012, and one shall be for a term ending January 31, 2013. Thereafter, terms of office shall be for three years, with each term ending on the same day of the same month as did the term that it succeeds. 871
872
873
874
875
876
877
878
879
880
881
882

(2) Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Members may be reappointed, provided that not more than two terms can be served consecutively and a period equal to one term must elapse after two consecutive terms before a member is eligible to serve another term. 883
884
885
886
887
888

(3) Vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy 889
890

occurring prior to the expiration date of the term for which the 891
member's predecessor was appointed shall hold office for the 892
remainder of that term. A member shall continue in office 893
subsequent to the expiration date of the member's term until a 894
successor takes office or until a period of sixty days has 895
elapsed, whichever occurs first. 896

(B) The governor shall appoint members of the commission in 897
the following manner: 898

(1) One individual representing the office of the attorney 899
general; 900

(2) One individual representing the department of commerce; 901

(3) One individual representing the interests of the public. 902

(C) The commission shall elect its chairperson at its first 903
meeting to serve a one-year term. Thereafter, the commission 904
members shall annually elect the commission chairperson. 905

(D) Commission members shall not be subject to the 906
requirements set forth in section 102.02 of the Revised Code. 907
Absent willful misconduct, commission members shall be immune from 908
civil liability for any act or omission in the performance of 909
their duties while serving on the commission. 910

(E) Each commission member shall receive reimbursement for 911
actual and necessary expenses incurred in the performance of 912
official business and for each mile necessarily traveled in the 913
performance of official duties. 914

Sec. 3781.36. (A) The underground protection commission of 915
Ohio shall meet at any time that, in its judgment, is necessary. 916
The commission may hold meetings at the location and time that it 917
selects. 918

(B) The commission shall do the following: 919

(1) Review and assess, and if necessary investigate, all enforcement recommendations submitted by the state underground protection advisory committee. If, pursuant to section 3781.37 of the Revised Code and with a majority vote of its members, the commission finds reasonable grounds indicating that a party against whom a complaint has been filed is a habitual or willful non-complier, it shall impose corrective action and appropriate penalties. 920-927

(2) Review, assess, and mediate resolutions of all complaints made to the committee regarding discriminatory or unfair rates or fees charged by a protection service. 928-930

(C) The commission may do any of the following: 931

(1) Request and receive from the department of commerce meeting space, staff services, and other technical assistance. Such assistance may include providing the commission with data, research, statistics, and analysis and providing the commission with investigators and hearing examiners. 932-936

The commission shall maintain any and all of its records and make them available to the public upon proper request. 937-938

(2) Adopt and utilize an identifying mark, such as a seal or logo, for the authentication of its documents. 939-940

(3) Adopt rules to govern its procedures. 941

Sec. 3781.37. (A) A protection service shall forward all complaints it receives to the state underground protection advisory committee in accordance with rules adopted by the committee. 942-945

(B) The committee shall investigate and conduct review hearings regarding the complaints filed with a protection service. If, after an investigation and review hearing, and with a majority vote of its members, it finds reasonable grounds indicating that a 946-949

party against whom a complaint has been filed is a habitual or 950
willful non-complier, the committee shall provide its findings and 951
recommend corrective action and civil penalties to the underground 952
protection commission of Ohio, with such recommended civil 953
penalties not to exceed ten thousand dollars per violation 954
identified in the findings and recommendations. The commission 955
shall review any recommendations submitted by the committee 956
pursuant to this section, conduct a hearing in accordance with 957
Chapter 119. of the Revised Code, and issue a ruling regarding 958
each case. 959

(C) The committee shall investigate, review, and arbitrate 960
resolutions of any complaints about discriminatory or unfair rates 961
or fees charged by a protection service. Any party subject to 962
arbitration under this section may appeal the committee's 963
resolution of the complaint to the commission. 964

(D) In investigating complaints, the committee and commission 965
may accept information from any person appearing to show a 966
violation of any provision of sections 3781.25 to 3781.32 of the 967
Revised Code. 968

In the course of conducting an investigation, the committee 969
or commission may administer oaths, order the taking of 970
depositions, and issue subpoenas to compel the attendance and 971
testimony of persons and the production of books, accounts, 972
papers, documents, or other tangibles. 973

If a person subpoenaed pursuant to this division fails to 974
comply with the subpoena, the committee or commission may apply to 975
the court of common pleas in the county in which the person to be 976
subpoenaed resides for an order compelling compliance in the same 977
manner as compliance with a subpoena issued by the court is 978
compelled. 979

(E) Absent bad faith, any person reporting information or 980

testifying before the committee or the commission during any 981
hearing arising under sections 3781.25 to 3781.32 of the Revised 982
Code is not liable for any claims of civil damages that may arise 983
from providing such report or testimony. 984

(F)(1) The commission may impose and collect penalties for 985
violations of sections 3781.25 to 3781.32 of the Revised Code 986
brought pursuant to complaints addressed under section 3781.37 of 987
the Revised Code. Any penalty collected pursuant to this section 988
shall be deposited in the state underground protection fund as 989
provided in section 3781.38 of the Revised Code. 990

(2) No penalty imposed pursuant to this section shall exceed 991
ten thousand dollars per violation. 992

(G) The committee and commission may dismiss a complaint only 993
with a majority vote of its respective members. 994

(H) Commission decisions may be appealed to the Franklin 995
county court of common pleas. 996

Sec. 3781.38. There is hereby created the state underground 997
protection fund in the state treasury, which shall consist of 998
moneys deposited into the fund pursuant to section 3781.281 of the 999
Revised Code, from penalties imposed for violations of sections 1000
3781.25 to 3781.32 of the Revised Code, and from any money 1001
appropriated to it. 1002

The moneys in the fund shall be used at the discretion of the 1003
underground protection commission consistent with this section. 1004
The moneys shall first be used to pay the administration and 1005
enforcement costs incurred pursuant to sections 3781.35 to 3781.37 1006
of the Revised Code. Any moneys remaining in the fund shall be 1007
used at the discretion of the commission for activities to improve 1008
the state's underground utility facilities protection and to 1009
provide grants to organizations to fund public education and 1010

awareness programs promoting and advancing the mission and 1011
operations of the protection services. 1012

Section 2. That existing sections 121.04, 153.64, 3781.25, 1013
3781.26, 3781.27, 3781.28, 3781.29, 3781.30, 3781.31, and 3781.32 1014
of the Revised Code are hereby repealed. 1015