

AN ACT

To amend sections 3781.25 and 4905.26 and to enact sections 3781.34, 3781.341, 3781.342, 3781.343, 3781.36, 3781.38, 4905.041, 4913.01, 4913.03, 4913.05, 4913.07, 4913.09, 4913.13, 4913.15, 4913.151, 4913.152, 4913.16, 4913.17, 4913.171, 4913.19, 4913.20, 4913.21, 4913.22, 4913.23, 4913.25, 4913.251, 4913.252, 4913.26, 4913.27, 4913.29, 4913.30, 4913.31, 4913.43, 4913.45, 4913.47, 4913.50, and 4913.52 of the Revised Code regarding the enforcement of the law governing the protection of underground utility facilities.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 3781.25 and 4905.26 be amended and sections 3781.34, 3781.341, 3781.342, 3781.343, 3781.36, 3781.38, 4905.041, 4913.01, 4913.03, 4913.05, 4913.07, 4913.09, 4913.13, 4913.15, 4913.151, 4913.152, 4913.16, 4913.17, 4913.171, 4913.19, 4913.20, 4913.21, 4913.22, 4913.23, 4913.25, 4913.251, 4913.252, 4913.26, 4913.27, 4913.29, 4913.30, 4913.31, 4913.43, 4913.45, 4913.47, 4913.50, and 4913.52 of the Revised Code be enacted to read as follows:

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

(A) "Protection service" means a notification center, but not an owner of an individual utility, that exists for the purpose of receiving notice from persons that prepare plans and specifications for or that engage in excavation work, that distributes this information to its members and participants, and that has registered by March 14, 1989, with the secretary of state and the public utilities commission of Ohio under former division (F) of section 153.64 of the Revised Code as it existed on that date.

(B) "Underground utility facility" includes any item buried or placed below ground or submerged under water for use in connection with the storage or conveyance of water or sewage; electronic, telephonic, or

telegraphic communications; television signals; electricity; crude oil; petroleum products; artificial or liquefied petroleum; manufactured, mixed, or natural gas; synthetic or liquefied natural gas; propane gas; coal; steam; hot water; or other substances. "Underground utility facility" includes all operational underground pipes, sewers, tubing, conduits, cables, valves, lines, wires, worker access holes, and attachments, owned by any person, firm, or company. "Underground utility facility" does not include a private septic system in a one-family or multi-family dwelling utilized only for that dwelling and not connected to any other system.

(C) "Utility" means any owner or operator, or an agent of an owner or operator, of an underground utility facility, including any public authority, that owns or operates an underground utility facility. "Utility" does not include the owners of the following types of real property with respect to any underground utility facility located on that property:

(1) The owner of a single-family or two-, three-, or four-unit residential dwelling;

(2) The owner of an apartment complex;

(3) The owner of a commercial or industrial building or complex of buildings, including but not limited to, factories and shopping centers;

(4) The owner of a farm;

(5) The owner of an exempt domestic well as defined in section 1509.01 of the Revised Code.

(D) "Approximate location" means the immediate area within the perimeter of a proposed excavation site where the underground utility facilities are located.

(E) "Tolerance zone" means the site of the underground utility facility including the width of the underground utility facility plus eighteen inches on each side of the facility.

(F) "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.

(G) "Designer" means an engineer, architect, landscape architect, contractor, surveyor, or other person who develops plans or designs for real property improvement or any other activity that will involve excavation.

(H) "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.

(I) "Excavation" means the use of hand 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 agricultural operations as the installation of drain tile, but excludes agricultural operations such as tilling that do not penetrate the earth to a depth of more than twelve inches. "Excavation" excludes any activity by a governmental entity which does not penetrate the earth to a depth of more than twelve inches. "Excavation" excludes coal mining and reclamation operations regulated under Chapter 1513. of the Revised Code and rules adopted under it.

(J) "Excavation site" means the area within which excavation will be performed.

(K) "Excavator" means the person or persons responsible for making the actual excavation.

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

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

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

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

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

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

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

(Q) "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.

(R) "One-call notification system" means the software or communications system used by a protection system to notify its membership of proposed excavation sites.

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

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

(U) "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.

(V) "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.

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

(X) "Cable service provider" has the same meaning as in section 1332.01 of the Revised Code.

(Y) "Electric cooperative" and "electric utility" have the same meanings as in section 4928.01 of the Revised Code.

Sec. 3781.34. (A) There is hereby created the underground technical committee.

(B) The committee shall consist of four members from the stakeholder group of the commercial excavator industry, in accordance with division (C) of this section, and one member from each of the following stakeholder groups:

(1) The natural gas transmission pipeline industry, appointed by the president of the senate;

(2) The natural gas distribution industry, appointed by the speaker of the house of representatives;

(3) Electric utilities, appointed by the governor;

(4) Electric cooperatives, appointed by the speaker of the house of representatives;

(5) A statewide organization representing independent oil and gas producers, appointed by the president of the senate;

(6) The telephone industry, appointed by the governor;

(7) Cable service providers, appointed by the president of the senate;

(8) Locators of underground utility facilities, appointed by the speaker of the house of representatives;

(9) Municipal corporations, appointed by the governor;

(10) The department of transportation, appointed by the governor;

(11) The general public, appointed by the governor;

(12) The hazardous liquids pipeline industry, appointed by the governor;

(13) Designers, developers, or surveyors, appointed by the governor.

(C) The president of the senate, the speaker of the house of representatives, the minority leader of the senate, and the minority leader of the house of representatives shall each appoint one of the members from the stakeholder group of the commercial excavator industry.

(D) The terms of office for members initially appointed shall be staggered at two, three, and four years and determined by lot, except that the stakeholder group of the commercial excavator industry shall have only one member with an initial two-year term. The term of office for each member subsequently appointed shall be four years.

(E) Each member may be reappointed for an unlimited number of times.

(F) If a vacancy occurs during a member's term of office, a new member shall be appointed in the same manner as the original appointment.

Sec. 3781.341. A member of the underground technical committee who has a conflict of interest in a particular review under section 4913.15 of the Revised Code shall declare the conflict to the committee and recuse self from committee discussions and voting regarding that review.

Sec. 3781.342. (A) The underground technical committee may conduct meetings in person, by teleconference, or by video conference.

(B) The committee shall establish a primary meeting location that is open and accessible to the public.

(C) Before convening a meeting by teleconference or video conference, the committee shall send, via electronic mail, facsimile, or United States postal service, a copy of meeting-related documents to each committee member.

(D) The minutes of each meeting shall specify who was attending by teleconference, who was attending by video conference, and who was physically present. Any vote taken in a meeting held by teleconference that is not unanimous shall be recorded as a roll call vote.

Sec. 3781.343. A member of the underground technical committee is not subject to the disclosure requirements of sections 102.02 and 102.021 of the Revised Code by virtue of membership on the committee.

Sec. 3781.36. (A) The underground technical committee shall do the following:

(1) Coordinate with the public utilities commission in carrying out its duties under Chapter 4913. of the Revised Code;

(2) Provide subject matter expertise when requested during inquiries

conducted under section 4913.09 of the Revised Code:

(3) Review reports in accordance with section 4913.15 of the Revised Code;

(4) Make recommendations under sections 4913.15 and 4913.16 of the Revised Code;

(5) Perform any additional duties as may be required under this chapter.

(B) The committee shall meet as necessary to carry out its duties and meet the time-period requirements of division (B) of section 4913.15 of the Revised Code, but not less than once every three months. A majority of committee members constitutes a quorum.

Sec. 3781.38. Every member of the underground technical committee shall be immune, individually and jointly, from civil liability for any act or omission done or made in performance of the member's duties while serving as a member of the committee, but only in the absence of willful misconduct.

Sec. 4905.041. (A) The public utilities commission has exclusive jurisdiction to enforce, in accordance with Chapter 4913. of the Revised Code, section 153.64, divisions (A) and (B) of section 3781.26, sections 3781.27 and 3781.28 to 3781.32, and Chapter 4913. of the Revised Code.

(B) The commission's enforcement authority described in division (A) of this section is limited to actions specifically authorized by Chapter 4913. of the Revised Code.

(C) Nothing in this section or Chapter 4913. of the Revised Code gives the commission or the underground technical committee, created under section 3781.34 of the Revised Code, the authority to determine the civil liability of any person for any compliance failure as that term is defined in section 4913.01 of the Revised Code.

Sec. 4905.26. Upon complaint in writing against any public utility by any person, firm, or corporation, or upon the initiative or complaint of the public utilities commission, that any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained, and, upon complaint of a public utility as to any matter affecting its own product or service, if it appears that

reasonable grounds for complaint are stated, the commission shall fix a time for hearing and shall notify complainants and the public utility thereof. The notice shall be served not less than fifteen days before hearing and shall state the matters complained of. The commission may adjourn such hearing from time to time.

The parties to the complaint shall be entitled to be heard, represented by counsel, and to have process to enforce the attendance of witnesses.

This section does not apply to matters governed by Chapter 4913. of the Revised Code.

Sec. 4913.01. As used in this chapter:

(A) "Aggrieved person" means a person with duties and obligations under sections 153.64, 3781.27, and 3781.28 to 3781.32 of the Revised Code and divisions (A) and (B) of section 3781.26 of the Revised Code and who is directly involved with or impacted by the alleged compliance failure, as identified in the request for inquiry, of another person with duties and obligations under sections 153.64, 3781.27, and 3781.28 to 3781.32 of the Revised Code and divisions (A) and (B) of section 3781.26 of the Revised Code.

(B) "Compliance failure" means a failure to comply with any provision of sections 153.64, 3781.27, and 3781.28 to 3781.32 of the Revised Code and divisions (A) and (B) of section 3781.26 of the Revised Code.

(C) "Designer," "developer," "excavation," "excavator," "one-call notification system," "person," "protection service," "underground utility facility", and "utility" have the same meanings as in section 3781.25 of the Revised Code.

Sec. 4913.03. (A) Each utility, excavator, developer, and designer who participates in the one-call notification system shall register with the public utilities commission and pay a safety registration not to exceed fifty dollars annually, which the commission may lower if the commission determines lowering the registration to be necessary. The commission shall administer and oversee the registration process. Failure to register shall result in a fine of not more than two thousand five hundred dollars.

(B) The commission shall deposit all safety registrations and fines collected under this section in the underground facilities protection administrative fund created under section 4913.30 of the Revised Code.

Sec. 4913.05. (A) Beginning January 1, 2016, an aggrieved person may request an inquiry with the staff of the public utilities commission seeking the imposition, in accordance with this chapter, of a fine or penalty on the person responsible for the alleged compliance failure described in division (A) of section 4913.01 of the Revised Code. The person shall make the

request not later than ninety days after discovering the alleged compliance failure. The request shall not, by itself, cause the creation of a formal proceeding at the commission.

(B) A request made under this section shall state, at a minimum and with particularity, the name of the person responsible for the alleged compliance failure, the date of the compliance failure, the nature of the compliance failure, the location of the compliance failure, and any other information that the requestor considers relevant.

(C) The staff shall, not later than ten business days after receiving a request under this section, notify the person responsible for the alleged compliance failure that the request was made.

Sec. 4913.07. If a request for an inquiry is made under section 4913.05 of the Revised Code, the person responsible for the alleged compliance failure may, not later than thirty days after being notified under that section, respond to the request, providing any information that the person considers relevant to the request. The response may include an admission of the compliance failure.

Sec. 4913.09. (A) The staff of the public utilities commission shall conduct an inquiry upon receiving a request made under section 4913.05 of the Revised Code. The inquiry shall be limited to whether there was a compliance failure.

(B) During an inquiry conducted under this section, the staff shall examine relevant facts regarding the alleged compliance failure and may request records verification, informal meetings, teleconferences, photo documentation, and any other documentation or information relevant to the inquiry.

Sec. 4913.13. The staff of the public utilities commission shall make a report of each inquiry conducted under section 4913.09 of the Revised Code available to the underground technical committee, created under section 3781.34 of the Revised Code. The report shall contain any admission made under section 4913.07 of the Revised Code by the person who is the subject of the inquiry. This report shall not contain a recommendation as to the imposition of a fine or penalty or as to whether no enforcement action should be taken.

Sec. 4913.15. (A) The underground technical committee shall review every report of the staff of the public utilities commission made available under section 4913.13 of the Revised Code or submitted under section 4913.16 of the Revised Code.

(B) Not later than ninety days after the committee obtains the staff's report under section 4913.13 of the Revised Code, the committee shall do

any of the following:

(1) Make a written recommendation to the commission as to the imposition of a fine, a penalty, or a combination of fines and penalties, in accordance with section 4913.151 of the Revised Code;

(2) Determine that no enforcement action should be taken and notify the commission in writing of the determination;

(3) Request a hearing under section 4913.19 of the Revised Code.

(C) There shall be a majority vote of the full committee, with at least one of the commercial-excavator stakeholders voting with the majority, for the committee to do any of the following:

(1) Recommend a fine, penalty, or a combination of fines and penalties under this section or section 4913.16 of the Revised Code;

(2) Determine, under this section or section 4913.16 of the Revised Code, that no enforcement action should be taken;

(3) Request a hearing under section 4913.19 of the Revised Code.

If the committee fails to achieve the required majority for any action described in division (C) of this section, it shall notify the commission.

Sec. 4913.151. In determining a fine or penalty recommendation as required under section 4913.15 or 4913.16 of the Revised Code:

(A) If the compliance failure is the first for the person responsible, the underground technical committee may recommend a penalty of a training requirement, an education requirement, or another nonmonetary penalty, or may recommend a fine not exceeding two thousand five hundred dollars, or may recommend a combination of this fine and these penalties.

(B) If the compliance failure is a subsequent compliance failure for the person responsible, the committee may recommend a penalty of a training requirement, an education requirement, or another nonmonetary penalty, or may recommend a fine not exceeding five thousand dollars, or may recommend a combination of this fine and these penalties.

(C) Any penalty recommended under this section shall be appropriately related to enforcement of the provisions enumerated in division (A) of section 4905.041 of the Revised Code.

Sec. 4913.152. The underground technical committee may communicate with persons who have knowledge or information concerning the alleged compliance failure as part of the committee's review under section 4913.15 of the Revised Code and to assist the committee in making recommendations under that section and section 4913.16 of the Revised Code.

Sec. 4913.16. (A)(1) If the underground technical committee votes during the ninety-day time period as required under division (B) of section

4913.15 of the Revised Code but fails to achieve the required majority as described in division (C) of that section, no enforcement action shall be taken.

(2) If the committee, during the ninety-day time period, fails to vote on any action as required under division (B) of section 4913.15 of the Revised Code, the staff of the public utilities commission shall make a recommendation as to a fine or penalty or no enforcement. The staff shall cause the initial report made available under section 4913.13 of the Revised Code to be amended to add the recommendation, and shall submit the amended report to the committee.

(B) Not later than thirty days after the committee receives an amended report under division (A)(2) of this section, the committee shall do any of the following, subject to division (C) of section 4913.15 of the Revised Code:

(1) Make a written recommendation to the commission as to the imposition of a fine, penalty, or a combination of fines and penalties in accordance with section 4913.151 of the Revised Code;

(2) Determine that no enforcement action should be taken and notify the commission in writing of the determination;

(3) Request a hearing under section 4913.19 of the Revised Code.

(C)(1) If the committee votes during the thirty-day time period as required under division (B) of this section but fails to achieve the required majority as described in division (C) of section 4913.15 of the Revised Code, no enforcement action shall be taken.

(2) If the committee fails to vote on any action as required under division (B) of this section, the commission shall impose a fine or penalty consistent with section 4913.151 of the Revised Code or take no enforcement action. The commission shall inform the committee of its decision.

Sec. 4913.17. (A) Based upon the number and type of compliance failures committed by a person, the underground technical committee may find, as part of the committee's review under section 4913.15 of the Revised Code, that the person is a persistent noncomplier.

(B) The committee shall report a finding made under division (A) of this section to the staff of the public utilities commission.

(C) There shall be a majority vote of the full committee, with at least one of the commercial-excavator stakeholders voting with the majority, for the committee to make a finding under division (A) of this section.

Sec. 4913.171. If the underground technical committee reports that a person responsible for a compliance failure has been found to be persistent

noncomplier under section 4913.17 of the Revised Code, the public utilities commission may impose a fine on the person not exceeding ten thousand dollars. A penalty recommended by the committee under section 4913.15 or 4913.16 of the Revised Code may also be imposed by the commission.

Sec. 4913.19. In lieu of making a recommendation of a fine or penalty or a no-enforcement determination, the underground technical committee may request an administrative hearing with the public utilities commission if the committee believes that any person responsible for a compliance failure should be subject to a fine or penalty exceeding those described in section 4913.151 of the Revised Code. As a result of the hearing, the commission shall impose a fine or penalty or take no enforcement action.

Sec. 4913.20. In determining a fine or penalty recommendation or imposition or whether no enforcement action should be taken under section 4913.15, 4913.16, 4913.171, 4913.19, or 4913.25 of the Revised Code, the underground technical committee, the public utilities commission, and the commission staff, as applicable, shall consider the following factors, as they apply:

(A) The person's demonstrated history of one-call, design, and excavation practices, including the following:

(1) The number of locate requests received and responded to;

(2) The number of locates completed;

(3) The number of one calls placed;

(4) The number of excavations completed;

(5) The number of design or development projects.

(B) The nature, circumstances, and gravity of the compliance failure, including the amount of damage involved in relation to the compliance failure, and whether it resulted in death, serious injury, dismemberment, or a significant threat to public safety;

(C) The organizational size of the responsible person;

(D) The prospective effect of a fine on the person's ability to pay business obligations and otherwise conduct business;

(E) The history or number of compliance failures by the person;

(F) The good faith effort on the person's part in attempting to achieve compliance after the compliance failure was identified.

Sec. 4913.21. Except as provided in sections 4913.171 and 4913.19 of the Revised Code, the public utilities commission shall impose every recommendation made under section 4913.15 or 4913.16 of the Revised Code by the underground technical committee.

Sec. 4913.22. A person subject to a fine imposed under section 4913.171, 4913.19, or 4913.21 of the Revised Code or division (C)(2) of

section 4913.16 of the Revised Code shall pay the fine not later than sixty days after the fine or penalty is imposed. A person subject to a penalty imposed under any of those sections or that division shall begin compliance with the penalty not later than thirty days after the penalty is imposed.

Sec. 4913.23. The public utilities commission shall, by letter, promptly notify the person that requested the inquiry and the person responsible for the compliance failure of any fine or penalty imposed under section 4913.171, 4913.19, or 4913.21 of the Revised Code or division (C)(2) of section 4913.16 of the Revised Code, or of a no-enforcement determination under section 4913.15 or 4913.19 of the Revised Code or division (A)(1) or (C)(1) of section 4913.16 of the Revised Code. The notice shall include all of the following, as applicable:

(A) The date of the compliance failure;

(B) The citation to the statute that was not complied with;

(C) A brief description of the compliance failure;

(D) The fine or penalty to be imposed, if any;

(E) Instructions on how to remit payment of a fine or to comply with a penalty;

(F) Instructions on how the person may file for reconsideration under section 4913.25 of the Revised Code and how to make a timely filing;

(G) A statement that failure to file for reconsideration under section 4913.25 of the Revised Code will make any findings final and enforceable.

Sec. 4913.25. (A) If either the person that requested the inquiry or the person responsible for the compliance failure disagrees with either a finding or a no-enforcement determination made by the underground technical committee under section 4913.15, 4913.16, 4913.17, or 4913.19 of the Revised Code, either person may, not later than thirty days after receiving notice under section 4913.23 of the Revised Code, file a written application with the public utilities commission for reconsideration of the committee's finding. The application for reconsideration must state with particularity the grounds for reconsideration.

(B) Upon the filing of an application for reconsideration under this section, the commission shall formally review the finding of the committee.

(C) The commission may hold a hearing on the application for reconsideration.

(D) The commission shall affirm, reject, or modify the finding of the committee and shall impose any fine or penalty authorized under this chapter or take no enforcement action. The person responsible for the compliance failure shall pay any fine not later than sixty days after the fine is imposed by the commission. A person subject to a penalty shall begin

compliance with the penalty not later than thirty days after the penalty is imposed by the commission.

Sec. 4913.251. A reconsideration order issued under section 4913.25 of the Revised Code is subject to the rehearing and appeal process under Chapter 4903. of the Revised Code.

Sec. 4913.252. All hearings conducted by the public utilities commission under this chapter and under the process described in section 4913.251 of the Revised Code shall be conducted in a manner consistent with Chapter 4903. of the Revised Code.

Sec. 4913.26. Any documentation obtained pursuant to an inquiry conducted under section 4913.09 of the Revised Code, communications described in section 4913.152 of the Revised Code, or an administrative hearing conducted under section 4913.19 of the Revised Code shall be treated as confidential until a formal proceeding is commenced under section 4913.25 of the Revised Code, at which time the parties to the proceeding shall be bound by the rules of the public utilities commission governing discovery in matters pending before it.

Sec. 4913.27. Except for safety registrations and fines collected under section 4913.03 of the Revised Code, the public utilities commission shall deposit all fines collected under this chapter into the underground facilities protection fund created under section 4913.29 of the Revised Code.

Sec. 4913.29. There is hereby created in the state treasury the underground facilities protection fund. The fund shall consist of all fines collected under this chapter, except for safety registrations and fines collected under section 4913.03 of the Revised Code. The fund shall retain the interest earned. The amounts in the fund shall be used solely to fund grants under section 4913.31 of the Revised Code.

Sec. 4913.30. There is hereby created in the state treasury the underground facilities protection administrative fund to be administered by the public utilities commission. The fund shall consist of all safety registrations and fines collected under section 4913.03 of the Revised Code. The fund shall retain the interest earned. The amounts in the fund shall be used for the operation of the underground technical committee, created under section 3781.34 of the Revised Code, and the commission in the performance of its duties under this chapter.

Sec. 4913.31. (A) The public utilities commission may administer an underground utility damage prevention grant program to provide grants for any of the following purposes:

- (1) Public awareness programs established by a protection service;
- (2) Training and education programs for excavators, operators,

designers, persons who locate underground utility facilities, or other persons:

(3) Programs providing incentives for excavators, operators, persons who locate underground utility facilities, or other persons to reduce the number and severity of compliance failures.

(B) The commission shall determine the appropriate amount of any grant issued under this section.

Sec. 4913.43. The public utilities commission shall submit to the general assembly an annual report of the previous year's activities under this chapter. Each report shall be submitted on or before April 1. Each report shall be made publicly available on the commission's web site.

Sec. 4913.45. (A) The public utilities commission shall, in consultation with the underground technical committee, adopt rules under section 111.15 of the Revised Code to carry out this chapter. The rules shall include all of the following:

(1) Guidelines for consistent application of fines and penalties under this chapter;

(2) Tracking compliance of persons on whom fines or penalties have been imposed under this chapter;

(3) The required contents of the underground utility damage prevention grant program established under section 4913.31 of the Revised Code;

(4) The gathering, review, and acceptance of applications for a grant under section 4913.31 of the Revised Code;

(5) The dispensation and tracking of money from the underground facilities protection fund;

(6) The committee's duties, including rules that establish the committee's operation, meeting schedule, and voting procedures;

(7) The contents of the annual report required under section 4913.43 of the Revised Code;

(8) The process related to collecting the registration under section 4913.03 of the Revised Code.

(B) The commission may adopt rules establishing the following:

(1) Procedures for conducting inquiries under section 4913.09 of the Revised Code;

(2) Any other duties for the underground technical committee pursuant to section 3781.36 of the Revised Code.

Sec. 4913.47. Notwithstanding any provision of the Revised Code to the contrary, if a person is subject to more than one fine for the same compliance failure, and one fine is imposed under this chapter and one or more other fines are imposed under federal law, rules, or regulations, the

person shall not be required to pay the fine imposed under this chapter.

Sec. 4913.50. Any proceeding held under this chapter, any no-enforcement determination under this chapter, and any fine or penalty imposed under this chapter shall neither prevent nor preempt the right of any party to obtain civil damages for personal injury or property damage in a private cause of action. No finding, determination, or recommendation of the underground technical committee, no decision of the public utilities commission under this chapter, and no no-enforcement determination under this chapter shall be determinative of civil liability in a private cause of action for personal injury or property damage.

Sec. 4913.52. A person with a permit for excavation from the state or a local governmental unit is subject to this chapter. This chapter does not affect or impair local ordinances, charters, or other provisions of law requiring permits to be obtained before excavating.

SECTION 2. That existing sections 3781.25 and 4905.26 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Am. Sub. S. B. No. 378

130th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____