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Sub. H. B. No. 227

To amend sections 153.64, 3781.25, 3781.26, 3781.261, 3781.27, 3781.271, 3781.28, 3781.29, 3781.30, and 4913.01 of the Revised Code to modify excavation requirements.

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

Section 1. That sections 153.64, 3781.25, 3781.26, 3781.261, 3781.27, 3781.271, 3781.28, 3781.29, 3781.30, and 4913.01 of the Revised Code be amended to read as follows:

Sec. 153.64. (A) As used in this section:

(1) "Public 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 by a public authority.

(2) "Public authority" includes the following:

(a) The state, or a county, township, municipal corporation, school district, or other political subdivision;

(b) Any public agency, authority, board, commission, instrumentality, or special district of or in the state or a county, township, municipal corporation, school district, or other political subdivision;

(c) A designer as defined in section 3781.25 of the Revised Code who is acting on behalf of any entity described in division (A)(2)(a) or (b) of this section.

(3) "Underground utility facilities" 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; or electronic, telephonic, or telegraphic communications; electricity; petroleum products; manufactured, mixed, or natural gas; synthetic or liquified natural gas; propane gas; or other substances. "Underground utility facilities" includes, but is not limited to, all operational underground pipes, sewers, tubing, conduits, cables, valves, lines, wires, manholes, and attachments, whether owned by any public or private or profit or nonprofit person, firm, partnership, company, corporation, joint stock association, joint venture, or voluntary association, wherever organized or incorporated, except for a private septic system in a single- or multi-family dwelling utilized only for that dwelling and not connected to any other system.

(4) "Protection service" means a notification center not an owner of an underground utility facility that complies with the following:

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

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

(c) It has registered by March 14, 1989, with the secretary of state and the public utilities commission under former division (F) of this section as it existed on that date.

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

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

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

(B)(1) In any public improvement which may involve underground utility facilities, the public authority, prior to preparing plans and specifications, shall contact a protection service ~~and any owners of underground utility facilities that are not members of a protection service~~ for the existence and location of all underground utility facilities within the construction area.

(2) If requested by the public authority, each owner of underground utility facilities within the construction area, other than real property owners listed in divisions (C)(1) to (4) of section 3781.25 of the Revised Code, shall do one of the following within ten days of receiving notice from the public authority or a protection service:

(a) Mark the location of the underground utility facilities, other than those facilities serving single-family or

two-, three-, or four-unit dwellings, within the construction area in accordance with the marking standards described in division (C) of section 3781.29 of the Revised Code;

(b) Provide digital or paper drawings, or both, that meet both of the following requirements:

(i) They are drawn to scale and include locatable items. Locatable items may include poles, pedestals, back of curb, sidewalk, edge of pavement, centerline of ditch, property lines, and other similar items.

(ii) They depict the location of the underground utility facilities.

(3) If the public improvement is within six hundred sixty feet of the center point of any interstate hazardous liquid pipeline or interstate gas pipeline, the pipeline operator shall provide to the public authority all of the following:

(a) A written notice of any special notification requirements;

(b) The location and description of any right-of-way associated with the pipeline as well as pipeline location information, such as providing documents reflecting the actual location of the pipeline, marking facilities on design drawings, and providing maps;

(c) Contact information for the primary contact person for the project area.

Compliance with divisions (B)(2) and (3) of this section does not relieve an owner of underground utility facilities from compliance with the marking requirements of section 3781.29 of the Revised Code.

(4) The public authority shall include, in the plans and specifications for such improvement, the identity and location of the existing underground utility facilities located in the construction area as provided to the public authority by the owner of the underground utility facility and the name, address, and telephone number of each owner of any underground utility facilities in the construction area ~~that does not subscribe to a protection service~~.

(a) If the public authority is notified that the improvement is within six hundred sixty feet of the center point of any interstate hazardous liquid pipeline or interstate gas pipeline, the public authority shall also include in the plans and specifications for the project all of the following:

(i) Any special notification requirements;

(ii) The name and contact information of the primary contact person for each pipeline operator who has provided notice to the public authority under division (B)(3) of this section;

(iii) Notice stating that the public authority has utilized reasonable means to contact the pipeline operator to verify the location of the pipeline and pipeline right-of-way;

(iv) Notice that the public authority has reviewed, or has attempted to review, preliminary information about the public improvement with the pipeline operator and incorporated the requested adjustments into the plans.

(b) For purposes of division (B)(4)(a)(iii) of this section, a public authority who provides notice to the protection service in accordance with division (B)(1) of this section is deemed to have utilized reasonable means to contact

the operator of the pipeline.

(5) Any anticipated temporary or permanent relocation of underground utility facilities deemed necessary by the public authority shall be negotiated or arranged by the public authority with the owners of the underground utility facilities prior to the start of construction. If a temporary or permanent relocation of utility facilities is necessary, the owner of the underground utility facility shall be given a reasonable time to move such utility facilities unless the contractor to whom the contract for a public improvement is awarded or its subcontractor agrees with the owner of the underground utility facility to coordinate relocation with construction operations.

(6) The public authority, within ten calendar days after award of a contract for a public improvement, shall notify in writing all owners of underground utility facilities known to be located in the construction area of the public improvement of the name and address of the contractor to whom the contract for the public improvement was awarded. Where notice is given in writing by certified mail, the return receipt, signed by any person to whom the notice is delivered, shall be conclusive proof of notice.

(C) The contractor to whom a contract for a public improvement is awarded or its subcontractor, at least two working days, ~~excluding Saturdays, Sundays, and legal holidays, but no more than ten working days,~~not including the day of the notification, but not more than sixteen calendar days prior to commencing construction operations in the construction area which may involve underground utility facilities, shall cause notice to be given to ~~a~~ the protection service ~~and the owners of underground utility facilities shown on the plans and~~

~~specifications who are not members of a protection service~~. The owner of the underground utility facility, within ~~forty-eight hours, excluding Saturdays, Sundays, and legal holidays, after notice is received~~at least two working days, not including the day of the notification, shall stake, mark, or otherwise designate the location of the underground utility facilities in the construction area in such a manner as to indicate their course together with the approximate depth at which they were installed.

(D) If the public authority fails to comply with the requirements of division (B) of this section, the contractor to whom the work is awarded or its subcontractor complies with the requirements of division (C) of this section, and the contractor or its subcontractor encounters underground utility facilities in the construction area that would have been shown on the plans and specifications for such improvement had a protection service ~~or owner of the underground utility facility who is not a member of a protection service whose name, address, and telephone number is provided by the public authority~~ been contacted, then the contractor, upon notification to the public authority, is entitled to an increase to the contract price for itself or its subcontractor for any additional work that must be undertaken or additional time that will be required and is entitled to an extension of the completion date of the contract for the period of time of any delays to the construction of the public improvement.

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

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

Any public authority who complies with the requirements of division (B) of this section and any contractor or its subcontractor who complies with the requirements of division (C) of this section shall not be responsible to the owner of the underground utility facility if underground utility lines are encountered not as marked in accordance with the provisions of division (C) of this section by the owner of the underground utility facility, unless the contractor or its subcontractor has actual notice of the underground utility facility. Except as noted in this division, this section does not affect rights between the contractor or its subcontractor and the owner of the underground utility facility for failure to mark or erroneously marking utility lines. The public authority shall not make as a requirement of any contract for public improvement any change in responsibilities between the public authority and the owners of the underground utility facilities in connection with damage, injury, or loss to any property in connection with underground utility facilities.

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

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

Sec. 3781.25. As used in sections 3781.25 to 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, or telephonic 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,~~ begin at midnight, end at eleven fifty-nine p.m. on the same date, and exclude weekends and legal holidays as defined in section 1.14 of the Revised Code and "hours" excludes hours on ~~Saturdays, Sundays,~~ weekends 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~~ Chapters 1513. and 1514. of the Revised Code and rules adopted under it. "Excavation" excludes all of the following activities when performed in the public or utility right-of-way:

(1) Milling and grinding of road surfaces up to the following depths without penetrating the earth or sub-base:

(a) For interstate routes, twelve inches;

(b) For multi-lane routes outside of municipal corporations, whether divided or undivided, six inches;

(c) For multi-lane divided routes inside municipal corporations, six inches;

(d) For all other roadways, six inches.

(2) Utility wood pole inspection utilizing hand tools to excavate to a depth that does not penetrate the earth more than twelve inches and working on the clear side of poles, greater than ninety degrees from any risers;

(3) Tilling for sowing of grass and wildflower coverings to a depth that does not penetrate the earth more than four inches for erosion control or beautification purposes;

(4) Placement of temporary signage, without penetrating the earth more than four inches;

(5) Localized pavement repairs on all areas outside municipal corporations, without penetrating the earth or sub-base, to a depth not greater than twelve inches;

(6) Any activity conducted solely in response to a valid notification, provided that such activity is performed exclusively by means of hand tools. This exemption shall apply irrespective of whether the activity occurs within or outside the boundaries of a road right-of-way. If a transmission facility is within the scope of the notification, coordination between the responding party and the transmission facility owner must take place for this exemption to exist.

(7) Activities conducted entirely within twelve inches in any horizontal direction and twelve inches in any vertical direction from an existing, exposed, or visible utility appurtenances, as defined in division (Z) of this section, provided such activities are performed exclusively with hand tools and do not otherwise disturb the surrounding subsurface area. This exemption shall apply irrespective of whether the activity occurs within or outside the boundaries of the road right-of-way.

(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.

(Z) "Utility appurtenances" means the physical components and legal rights attached to a property that are necessary for providing utility services such as water, electricity, gas, communications, and sewage. These include items like, but not limited to, utility poles, meters, valves, and electrical boxes, as well as easements that allow utility companies to access the property for installation, maintenance, and repair. They are essential for the property's use and typically transfer with ownership.

(AA) "Localized pavement repair" means repair of areas of pavement requiring deeper removal in order to correct a pavement deficiency that is not common or cannot be sufficiently repaired in the overall pavement milling area of work.

Sec. 3781.26. (A) Each utility that owns or operates underground utility facilities shall participate in and register the location of its underground utility facilities with a protection service that serves the area where the facilities are located. ~~A utility may elect to participate in the service on a limited basis and if it does so, it shall register the location of its underground utility facilities by identifying the municipal corporations, and outside the limits of a municipal corporation, the townships by county and, where applicable, the immediate geographic area in which it has facilities. The service shall establish reasonable fees for limited basis participants.~~

(B) Protection services, utilities, commercial excavators,

excavation equipment dealers, the public utilities commission of Ohio, the board of building standards, local law enforcement agencies, and fire departments should publicize the importance of ascertaining the location of underground utility facilities before excavating and the use of protection services to ascertain that information.

(C) A protection service shall maintain records of notifications received from developers, designers, and excavators, and of its notifications made to utilities, developers, designers, and excavators, under sections 3781.27 and 3781.28 of the Revised Code. The records of a protection service shall identify by reference number, the notifications it received regarding a proposed excavation site, the notifications it provided regarding a proposed excavation site, and the date and time of each notification.

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

Sec. 3781.261. (A) An excavator, contractor, utility, designer, engineer, developer, or utility locator ~~that utilizes a protection service~~ who has responsibility to the 811 notification process shall obtain training in the protection of underground utility facilities. ~~An excavator, contractor, or utility shall be deemed to have obtained that training if the excavator, contractor, or utility is a member of a protection service or a statewide association representing excavators,~~

~~contractors, or utilities and the service or association provides that training. An excavator, contractor, or utility also may obtain the training from such a service or association without becoming a member.~~

(B) Employers shall provide training at the time of initial assignment. Retraining of each employee shall occur every five years thereafter, or whenever changes occur to Chapters 3781. or 4913. of the Revised Code.

(C) Employee training provided and training successfully completed shall be documented and retained by the employer. Employee training requirements shall include the following topics:

(1) The one-call OHIO811 notification process;

(2) Responsibilities of utilities and excavators;

(3) Positive response system;

(4) The Ohio universal marking standards;

(5) The laws and regulations described in sections 153.64 and 3781.25 to 3781.34 of the Revised Code.

Sec. 3781.27. (A) In order to ascertain the name of each utility with underground utility facilities located at the proposed excavation site and the types and tolerance zones of those facilities based on current records of the utility, any developer who is planning a project that will require excavation or the designer employed by the developer for the project shall notify a protection service of the location of the proposed excavation site.

(B) ~~Except in the case of limited basis participants, the~~ The protection service shall provide notice of the proposed

excavation to each participant in the service that has underground utility facilities in the area of the proposed excavation site. ~~Except as provided in section 3781.271 of the Revised Code, in the case of limited basis participants, the protection service shall notify the developer or the designer employed by the developer of the name of each limited basis participant with underground utility facilities within the municipal corporation or township and county of the proposed excavation site, and the developer or designer shall contact that utility.~~

(C)(1) Each utility that has any underground utility facilities in the area of the proposed excavation site shall notify the developer or the designer employed by the developer of the locations and description of the utility's underground utility facilities located at the proposed excavation site in accordance with division (C)(2) of this section. The utility shall make this notification within ten working days of receiving a notice under division (B) of this section or by a later date acceptable to the developer or designer and utility. If the proposed project is within six hundred sixty feet of the center point of an interstate hazardous liquid pipeline or an interstate gas pipeline, the utility shall provide written notice to the developer or designer of any special notification requirements and identify its primary contact person for the project area.

(2) If requested by the developer or the designer employed by the developer, each utility shall do one of the following in order to comply with the notification requirements of division (C)(1) of this section:

(a) Mark the location of the underground utility

facilities, other than those facilities serving single-family or two-, three-, or four-unit dwellings, at the proposed excavation site in accordance with the marking standards described in division (C) of section 3781.29 of the Revised Code;

(b) Provide digital or paper drawings, or both, that meet both of the following requirements:

(i) They are drawn to scale and include locatable items. Locatable items may include poles, pedestals, back of curb, sidewalk, edge of pavement, centerline of ditch, property lines, and other similar items.

(ii) They depict the location of the underground utility facilities.

(3) In the case of an interstate hazardous pipeline and an interstate gas pipeline, the utility shall also provide the location and description of any right-of-way associated with the underground utility facilities as well as pipeline location information, such as providing documents reflecting the actual location of the pipeline, marking facilities on design drawings, and providing maps.

Compliance with divisions (C)(2) and (3) of this section does not relieve a utility from compliance with the marking requirements of section 3781.29 of the Revised Code.

(D) The utility shall determine if any relocation, support, or removal, or protective steps beyond those described in divisions (A)(1) to (5) of section 3781.30 of the Revised Code are required in order to prevent disturbance or interference with the underground utility facilities during excavation. The utility shall determine whether it will permit the developer or the designer employed by the developer to make

those adjustments, and, if the adjustments are to be made by the utility, a reasonable amount of time necessary to make those adjustments.

(E)(1) Based on the information provided pursuant to division (C) of this section, the developer or the designer employed by the developer shall indicate the approximate locations of underground utility facilities either on or with the plans prepared for the project. The developer or designer shall include with the plans the names, addresses, and telephone numbers of utilities with underground facilities at the excavation site~~, indicating which utilities are limited basis participants~~; the name and telephone number of any appropriate protection service; and any required adjustments as described in division (D) of this section, including the reasonable time necessary for the utility to make those adjustments. In the case of an interstate hazardous liquid pipeline or an interstate gas pipeline, the developer or designer also shall include all of the following:

(a) Any special notification requirements;

(b) The name and contact information of the primary contact person for each pipeline operator who has provided notice to the developer or designer under division (C)(1) of this section;

(c) Notice stating that the developer or designer has utilized reasonable means to contact the pipeline operator to verify the location of the pipeline and pipeline rights-of-way. Developers and designers who provide notice to the protection service in accordance with division (A) of this section are deemed to have complied with the notification requirement under this division.

(d) Notice that the developer or designer has reviewed, or attempted to review, preliminary information about the proposed development with the pipeline operator and incorporated requested adjustments into the plans.

(2)(a) Except as otherwise provided in division (E)(2)(b) of this section, the developer or designer shall provide the plans to the commercial excavator prior to entering into a contract that involves such excavation. If the developer does not prepare written plans or have any written plans prepared, the developer shall otherwise provide the approximate locations, identifying information on the utilities, information on required adjustments, and any special notification requirements to the commercial excavator before excavation begins.

(b) When the developer is a utility, the utility shall provide either the plans or the approximate locations, identifying information on the utilities, information on required adjustments, and any special notification requirements to the excavator before excavation begins.

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

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

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

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

(G) A public authority, as defined in section 153.64 of the Revised Code, may withhold approval to a project until the requirements of this section have been satisfied by the developer and utility, as applicable. A public authority may rely solely upon the notice submitted under division (E) of this section when determining whether the requirements of this section have been satisfied for purposes of granting final approval of such development. A public authority is immune from liability related to the approval or construction of such development when the approval is based upon information as provided in this division.

Sec. 3781.271. (A) Beginning on July 1, 2013, each protection service shall reasonably modify its one-call notification system so as to permit the reasonable identification of the location of a proposed excavation site ~~in a manner in which the protection service may then notify any potentially affected limited basis participants~~. Each member of

a protection service~~, including limited basis participants,~~ shall be responsible for providing current contact information to the protection service.

(B) The protection service shall create and maintain a centralized database for the purpose of collecting and tracking underground facility damage notifications made in accordance with divisions (A)(6), (7), and (8) of section 3781.30 of the Revised Code.

(C) Compiled, nonconfidential damage data shall be made publicly available on the protection service's web site for the purpose of improving excavation safety, damage prevention education, and transparency.

(D)(1) All reports made pursuant to divisions (A)(6) and (8) of section 3781.30 of the Revised Code shall be made available to the public utilities commission upon request.

(2) Information contained in such reports provided to the commission shall be held as confidential, except when disclosed under section 4901.16 of the Revised Code or when requested by the underground technical committee as part of a report prepared pursuant to section 4913.13 of the Revised Code.

Sec. 3781.28. (A) Except as otherwise provided in divisions (C), (D), (E), and (F) of this section, ~~at least forty-eight hours but not more than ten working days before commencing excavation,~~ at least two working days, not including the day of the notification, but not more than sixteen calendar days before commencing excavation, the excavator shall notify ~~a~~ the protection service of the location of the excavation site and the date on which excavation is planned to commence.

(B) On receipt of notice under division (A) of this

section, the protection service shall provide to each utility with underground utility facilities located at the excavation site, notice of the proposed excavation.

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

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

(E) If an excavation will cover a large area and will progress from one area to the next over a period of time, the excavator shall provide written notice of excavation with projected timelines for segments of the excavation as the excavation progresses in order to coordinate the marking of underground utility facilities with actual excavation schedules. Under such circumstances, the utility and excavator shall determine a mutually agreed upon marking schedule based on the project schedule. Once such a schedule is established, the marking and notification requirements set forth in division (A)(1) of section 3781.29 of the Revised Code shall not apply.

(F)(1) In the case of a utility that is making an emergency repair to its own underground utility system or a governmental entity making an underground emergency repair to traffic control devices, as defined in section 4511.01 of the

Revised Code, used on any street or highway under the entity's jurisdiction, the utility or governmental entity shall notify a protection service ~~and each limited basis participant~~ of the excavation site. This notice need not occur before commencing excavation.

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

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

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

Sec. 3781.29. (A)(1) Except as otherwise provided in division (A)(2) of this section, within ~~forty-eight hours~~ at least two working days, not including the day of the notification, of receiving notice under section 3781.28 of the Revised Code, each utility shall review the status of its facilities within the excavation site, locate and mark its underground utility facilities at the excavation site in such a manner as to indicate their course, and report the appropriate information to the protection service for its positive response

system. If a utility does not mark its underground utility facilities or contact the excavator within that time, the utility is deemed to have given notice that it does not have any facilities at the excavation site. If the utility cannot accurately mark the facilities, the utility shall mark them to the best of its ability, notify the excavator using the positive response system that the markings may not be accurate, and provide additional guidance to the excavator in locating the facilities as needed during the excavation.

(2) In the case of an interstate hazardous liquids pipeline or an interstate gas pipeline, the owner of the pipeline shall locate and mark its pipeline within the time frame established in the public safety program of the owner.

(B) Unless a facility actually is uncovered or probed by the utility or excavator, any indications of the depth of the facility shall be treated as estimates only. (C)(1) Except as provided in division (C)(2) of this section, a utility shall mark its underground facilities using the following color codes:

	1	2
A	Type of Underground Utility Facility	Color
B	Electric power transmission and distribution	Safety red
C	Gas transmission and distribution	High visibility safety yellow
D	Oil transmission and	High visibility safety yellow

	distribution	
E	Dangerous materials, product lines, and steam lines	High visibility safety yellow
F	Telephone systems	Safety alert orange
G	Police and fire communications	Safety alert orange
H	Cable television	Safety alert orange
I	Water systems	Safety precaution blue
J	Slurry systems	Safety precaution purple
K	Sewer lines	Safety green.

(2) All underground facilities shall be marked in accordance with the Ohio universal marking standards that are on file with the Ohio utilities protection service. Industry representatives serving on Ohio damage prevention councils shall review the marking standards every two years.

(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 premark the approximate location. Proposed construction or excavation markings shall be made in white through the use of an industry-recognized method such as chalk-based paint, flags, stakes, or other method applicable to the specific site and when possible shall indicate the excavator's identity by name, abbreviation, or initial.

(E)(1) Before beginning an emergency excavation, or as

soon as possible thereafter, an excavator shall make every effort to notify a protection service of the excavation. In providing notification, the excavator shall provide, at a minimum:

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

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

(c) The specific location of the excavation site;

(d) A description of the excavation.

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

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

(F) An excavator is not required to premark the approximate location of an excavation as provided in division (D) of this section in any of the following situations:

(1) The utility can determine the precise location, direction, size, and length of the proposed excavation site by

referring to the notification provided by the protection service pursuant to sections 3781.27 and 3781.28 of the Revised Code.

(2) The excavator and the affected utility have had an on-site, preconstruction meeting for the purpose of premarking the excavation site.

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

(4) Premarking by the excavator would clearly interfere with pedestrian or vehicular traffic control.

Sec. 3781.30. (A) When making excavations using traditional or trenchless technologies, the excavator shall do all of the following:

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

(2) Protect and preserve the markings of tolerance zones of underground utility facilities until those markings are no longer required for proper and safe excavations;

(3) When approaching and excavating within the tolerance zone of underground utility facilities with powered equipment, require an individual other than the equipment operator, to visually monitor the excavation activity for any indication of the underground utility facility;

(4) Conduct the excavation within the tolerance zone of underground utility facilities in a careful, prudent, and nondestructive manner, when necessary, in order to prevent damage;

(5) Excavate up to the total depth of the excavation to either determine the precise location of underground utility

facilities or verify that the total depth of excavation is free of such facilities;

(6) As soon as any damage is discovered, including gouges, dents, or breaks to coatings, cable sheathes, and cathodic protection anodes or wiring, report the type and location of the damage to the utility and the protection service and permit the utility a reasonable amount of time to make necessary repairs~~;~~. If the owner or operator of the utility facility is unknown, notification to the protection service satisfies the excavator's reporting requirement to the utility under this section.

(7) Immediately report to the utility, the protection service, and, if necessary, to the appropriate ~~law enforcement agencies and fire departments~~ emergency response agencies by calling 9-1-1, any damage to an underground utility facility that results in escaping flammable, corrosive, explosive, or toxic liquids or gas, and take reasonable appropriate actions needed to protect persons and property and to minimize safety hazards until those agencies and departments and the utility arrive at the scene. If the owner or operator of the utility facility is unknown, notification to the protection service satisfies the excavator's reporting requirement to the utility under this section.

(8) In complying with divisions (A)(6) and (7) of this section, damage information reporting shall, at a minimum, include all of the following:

(a) The location or address where the damaged underground facility is located;

(b) The type of underground utility facility damaged, including the approximate size, material type and color, if

available;

(c) The approximate depth at which the damaged underground utility facility was encountered.

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

(1) Expose and confirm all underground utility facilities at each crossing point by the proposed excavation in a nondestructive manner to the installation depth of the new facility;

(2) Expose all parallel underground utility facilities in a nondestructive manner at the beginning and end of each trenchless excavation to the installation depth of the new facility. If the proposed alignment is within the tolerance zone of any parallel underground utility facility, the underground utility facility shall be exposed every one hundred feet.

(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.

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~~ and 3781.25 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~~ and 3781.25 to 3781.32 of the Revised Code~~ and~~

~~divisions (A) and (B) of section 3781.26 of the Revised Code~~._ "Aggrieved person" includes any person when the alleged compliance failure is a failure to comply with the reporting requirements prescribed in divisions (A)(6) and (8) of section 3781.30 of the Revised Code.

(B) "Compliance failure" means a failure to comply with any provision of sections 153.64~~, 3781.27, and 3781.28~~ and 3781.25 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.

Section 2. That existing sections 153.64, 3781.25, 3781.26, 3781.261, 3781.27, 3781.271, 3781.28, 3781.29, 3781.30, and 4913.01 of the Revised Code are hereby repealed.