

SENATE BILL 378

On December 19, 2014, Governor John Kasich signed Senate Bill 378 into law. The bill contained language that improves Ohio's current damage prevention law. The legislation, which becomes effective January 1, 2016, is designed to increase public safety by providing accountability of all stakeholders.

DISCLAIMER: This document is for informational purposes only. For further information, seek legal counsel.

What is Senate Bill 378?

SB 378 provides for the enforcement of Ohio's underground damage prevention laws.

Will all sections of the damage prevention law be enforced?

The following sections of the Ohio Revised Code will be enforced: ORC 153.64, divisions (A) and (B) of 3781.26, sections 3781.27 and 3781.28 to 3781.32 and Chapter 4913.

- 153.64 – The protection of underground facilities during public improvement projects.
- 3781.26 (A) – Requires all utilities who own and operate underground facilities to register with a protection service.
- 3781.26 (B) – Requires protection services, utilities, excavators, equipment dealers, PUCO, etc. to publicize the importance of contacting a protection service prior to excavation.
- 3781.27 – Developer or designer notifying protection service of intended excavation.
- 3781.28 – Excavator notifying protection service.
- 3781.29 – Marking location of facilities or give indication of no facilities at site.
- 3781.30 – Duties of excavator.
- 3781.31 – Notifying of commencement of excavation or of removal of markings.
- 3781.32 – Corrections or tie-ins within right-of-way.
- 4913 – Rules surrounding enforcement process.

When will Senate Bill 378 go into effect?

The new enforcement provisions of Ohio's damage prevention law will become effective on January 1, 2016.

Who will be the enforcement agent in Ohio?

The Public Utilities Commission of Ohio (PUCO) will have authority for enforcing Ohio's damage prevention laws. They will do so in conjunction and cooperation with the Underground Technical Committee (UTC).

Does the enforcement process determine liability for a damage?

SB 378 does not address any liability for damages or related incidents. The enforcement process will only determine whether or not a compliance failure of the Ohio Revised Code has occurred, regardless of whether or not there was a damage. Any liability related to a damage must be determined within a court of law.

How will the enforcement process work?

Details surrounding the logistics of the enforcement process will be sharpened over the course of the coming year. However, here is the basic framework of the enforcement process...

An aggrieved party of an alleged compliance failure of an enforceable section of the Ohio Revised Code may file a request for inquiry with the PUCO (likely via telephone or electronic means). The PUCO may notify the alleged responsible party and will gather information about the request for inquiry. The PUCO will then forward all information onto the UTC for review and recommendation of a fine, penalty or dismissal. The PUCO will then enforce the recommendation of the UTC.

If the alleged responsible party disagrees with the decision of the PUCO, they will have the opportunity to file for reconsideration.

Please see the attached flow chart for more information about the enforcement process.

What is the Underground Technical Committee (UTC) and what is its purpose?

The UTC is a group of seventeen industry experts, appointed from a list provided by the industry, who are tasked with reviewing all reported violations of Ohio's damage prevention law.

These representatives are chosen from a list of candidates vetted by the states underground protection and damage prevention industry. They are appointed as follows...

- Four members from the commercial excavator industry, one appointed by each of the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader and the House of Representatives Minority Leader
- One member of the natural gas transmission pipeline industry, appointed by the President of the Senate
- One member of the natural gas distribution industry, appointed by the Speaker of the House of Representatives
- One member of the electric utilities industry, appointed by the Governor
- One member of the electric cooperatives industry, appointed by the Speaker of the House of Representatives
- One member of a statewide organization representing independent oil and gas producers, appointed by the President of the Senate

- One member of the telephone industry, appointed by the Governor
- One member of the cable service providers industry, appointed by the President of the Senate
- One member of the locators of underground utility facilities industry, appointed by the Speaker of the House of Representatives
- One member of the municipal corporations industry, appointed by the Governor
- One member of the Department of Transportation, appointed by the Governor
- One member of the general public, appointed by the Governor
- One member of the hazardous liquids pipeline industry, appointed by the Governor
- One member of the designers, developers or surveyors industry, appointed by the Governor

The purpose of the UTC is to provide industry knowledge and insight during the review of reported violations.

What are the fines/penalties that can be assessed for failing to comply with Ohio's damage prevention law?

For first time violations, the assessed penalties may range from a training or education requirement to another non-monetary penalty. The PUCO may also impose a fine not exceeding \$2500. Please note, assessed penalties may be a combination of all of these.

For subsequent violations, the assessed penalties may range from a training or education requirement to another non-monetary penalty. The PUCO may also impose a fine not exceeding \$5000. Please note, assessed penalties may be a combination of all of these.

If the violator is found to be a persistent non-complier, the PUCO may impose a fine not exceeding \$10,000.

How will the enforcement process be funded?

All utilities, commercial excavators, developers and designers who participate in the one-call system will pay an annual fee not to exceed \$50. This fee will be paid to the PUCO.

Those entities who do not meet the definition of "utility" under ORC 3781.25(C) are not subject to this fee.

What happens to the monies collected as a result of fines?

All fines collected as a result of failures to comply with Ohio's damage prevention law will be deposited into the underground facilities protection fund. These monies will be used solely to fund grants for underground utility damage prevention education awareness programs.