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3781.25 [Effective 3/23/2015] One-call utility protection service definitions.

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, 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.

Amended by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

Amended by 129th General Assembly File No. 198, HB 458, §1, eff. 3/27/2013.

Effective Date: 07-02-1990

Note: *This section is set out twice. See also § [3781.25](#) , effective until 3/23/2015.*

3781.26 [Effective 3/27/2013] Protection service for underground utility facilities

(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.

Amended by 129th General Assembly File No. 198, HB 458, § 1, eff. 3/27/2013.

Effective Date: 03-14-1989

3781.261 [Effective 3/27/2013] Protection of underground utility facilities training.

An excavator, contractor, or utility that utilizes a protection service 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.

Added by 129th General Assembly File No. 198, HB 458, § 1, eff. 3/27/2013.

3781.27 [Effective 3/27/2013] Developer or designer notifying protection service of intended excavation

(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 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. In the case of an interstate hazardous liquid pipeline or an interstate gas pipeline, the utility also shall provide written notice to the developer or designer of any special notification requirements.

(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.

Compliance with division (C)(2) 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 any special notification requirements.

(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.

Amended by 129th General Assembly File No. 198, HB 458, § 1, eff. 3/27/2013.

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3781.271 [Effective 3/27/2013] Modification of one-call notification system.

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.

Added by 129th General Assembly File No. 198, HB 458, § 1, eff. 3/27/2013.

3781.28 [Effective 3/27/2013] Excavator notifying protection service or pipeline owner

(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, the excavator shall notify a 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.

Amended by 129th General Assembly File No. 198, HB 458, § 1, eff. 3/27/2013.

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3781.29 [Effective 3/27/2013] Marking location of facilities or give notice of no facilities at site

(A)

(1) Except as otherwise provided in division (A)(2) of this section, within forty-eight hours 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:

Type of Underground

Utility Facility

Color

Electric power transmission

Safety red

and distribution

Gas transmission and distribution High visibility safety yellow

Oil transmission and distribution High visibility safety yellow

Dangerous materials, product High visibility safety yellow

lines, and steam lines

Telephone and telegraph systems Safety alert orange

Police and fire communications Safety alert orange

Cable television

Safety alert orange

Water systems

Safety precaution blue

Slurry systems

Safety precaution purple

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 any telephone and facsimile 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.

Amended by 129th General Assembly File No. 198, HB 458, § 1, eff. 3/27/2013.

Effective Date: 07-02-1990

3781.30 [Effective 3/27/2013] Duties of excavator

(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 permit the utility a reasonable amount of time to make necessary repairs;

(7) Immediately report to the utility, the protection service, and, if necessary, to the appropriate law enforcement agencies and fire departments 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.

(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.

Amended by 129th General Assembly File No. 198, HB 458, § 1, eff. 3/27/2013.

Effective Date: 03-14-1989

3781.31 [Effective 3/27/2013] Notifying of commencement of excavation or of removal of markings

(A) When a utility marks its underground utility facilities in accordance with section 3781.29 of the Revised Code, the utility may request that the excavator provide prior notice to the utility of the actual commencement of the excavation. An excavator that receives a request for notice under this division shall provide the notice to the utility at least one full working day prior to the commencement of excavation. The excavator may make this notice by telephone.

(B) If the markings of underground utility facilities made under section 3781.29 of the Revised Code are destroyed or removed before excavation is completed, the excavator shall notify the utility through the protection service that the markings have been destroyed or removed, and the utility shall remark the facilities in accordance with section 3781.29 of the Revised Code.

Amended by 129th General Assembly File No. 198, HB 458, § 1, eff. 3/27/2013.

Effective Date: 03-14-1989

3781.32 [Effective 3/27/2013] Connections or tie-ins within right-of-way

(A) Any connections or tie-ins to existing utility services within a public right-of-way shall comply with permit requirements of the public authority that has jurisdiction over that right-of-way.

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

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

Amended by 129th General Assembly File No. 198, HB 458, § 1, eff. 3/27/2013.

Effective Date: 03-14-1989

3781.34 [Effective 3/23/2015] Underground technical committee.

(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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

3781.341 [Effective 3/23/2015] Conflicts of interest.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

3781.342 [Effective 3/23/2015] Meetings.

(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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

3781.343 [Effective 3/23/2015] Disclosure requirements.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

3781.36 [Effective 3/23/2015] Duties of committee.

(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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

3781.38 [Effective 3/23/2015] Member immunity.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4905.041 [Effective 3/23/2015] Exclusive jurisdiction of commission.

(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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.01 [Effective 3/23/2015] Definitions.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.03 [Effective 3/23/2015] Safety Registration.

(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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.05 [Effective 3/23/2015] Request for imposition of fine or penalty.

(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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.07 [Effective 3/23/2015] Response to request for inquiry.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.09 [Effective 3/23/2015] Conduct of inquiry.

(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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.13 [Effective 3/23/2015] Reports of inquiries.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.15 [Effective 3/23/2015] Review of reports by underground technical committee.

(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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.151 [Effective 3/23/2015] Determination of fine or penalty recommendation.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.152 [Effective 3/23/2015] Communications with knowledgeable persons.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.16 [Effective 3/23/2015] Failure to achieve majority or act.

(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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.17 [Effective 3/23/2015] Finding of persistent noncompliance.

(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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.171 [Effective 3/23/2015] Imposition of fine on persistent noncomplier.

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

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.19 [Effective 3/23/2015] Request for administrative hearing.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.20 [Effective 3/23/2015] Factors to be considered.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.21 [Effective 3/23/2015] Imposition of recommendations.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.22 [Effective 3/23/2015] Payment of fine; compliance with penalty.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.23 [Effective 3/23/2015] Notice.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.25 [Effective 3/23/2015] Application for reconsideration.

(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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.251 [Effective 3/23/2015] Reconsideration order; appeal.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.252 [Effective 3/23/2015] Hearings.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.26 [Effective 3/23/2015] Confidentiality.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.27 [Effective 3/23/2015] Disposition of fines.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.29 [Effective 3/23/2015] Underground facilities protection fund.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.30 [Effective 3/23/2015] Underground facilities protection administrative fund.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.31 [Effective 3/23/2015] Underground utility damage prevention grant program.

(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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.43 [Effective 3/23/2015] Annual report.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.45 [Effective 3/23/2015] Rules to carry out chapter.

(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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.47 [Effective 3/23/2015] Multiple fines for same failure.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

4913.50 [Effective 3/23/2015] Civil actions.

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.

Added by 130th General Assembly File No. TBD, SB 378, §1, eff. 3/23/2015.

153.64 Protecting underground utility facilities during construction of public improvement.

(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.

(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.

Compliance with division (B)(2) 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.

(3) 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.

(4) 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.

(5) 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, prior to commencing construction operations in the construction area which may involve underground utility facilities, shall cause notice to be given to a 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, 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.

Amended by 129th General Assembly File No. 198, HB 458, §1, eff. 3/27/2013.

Effective Date: 01-08-1993; 2007 SB117 09-24-2007