



THE OHIO ARCHAEOLOGICAL COUNCIL
P.O. Box 82012 • COLUMBUS, OHIO 43202

December 1, 2014

Written Testimony Concerning HB 659, 130th General Assembly

Alan C. Tonetti

Trustee, Government Affairs Committee Chair, Ohio Archaeological Council
(614)-266-6059, atonetti@ascgroup.net

Chairman Stautberg and members of the House Public Utilities Committee, the Ohio Archaeological Council is a private, non-profit, charitable, scientific, and educational membership organization incorporated with the state of Ohio in 1975. Our mission is to promote the advancement of archaeology in Ohio through research, conservation, education, and consultation with government agencies and the public. Our members include professional archaeologists working in private for-profit businesses, in private non-profit museums, in state and federal government agencies, and in academia. The Ohio Archaeological Council is an interested party pertaining to SB 378.

This bill will greatly affect our industry. Archaeologists conduct many excavations in Ohio, primarily in advance of public improvement and private development projects that require compliance with various federal and state laws and regulations. Many of these excavations are completed by small archaeological consulting firms based in Ohio. Our excavations are generally undertaken outside of public-rights-of-way, often requiring the excavation of small holes at shallow depths (generally less than 18 inches) using non-powered hand-held tools such as shovels, trowels, and soil augers. Although we do not seek delay in passing the enforcement provisions of the bill, and have included some comments on them below, we believe the current underground utility protection law's definition of an excavation [ORC 3781.25 (I)] is too broad. For our industry it is costly, cumbersome, and unreasonable, and does little to increase excavation safety.

The current definition of an excavation includes digging small, shallow excavations with non-powered hand tools such as shovels and soil augers. These excavations are of extremely low risk to safety and property. In the more than 40 years our industry has been conducting archaeological excavations in advance of development projects, we can only document a few instances where underground utilities were encountered during archaeological excavations, and none of a serious nature. We strongly encourage revising this bill, or taking the matter up next year in a separate bill if doing so this year will delay SB 378's passage, by exempting extremely low risk excavations such as the use of non-powered hand tools at shallow depths outside of public-rights-of-way, as some of our neighboring states have done. Michigan and Pennsylvania exempt the use of non-powered equipment (hand tools) during excavations. Even the Pipeline and Hazardous Materials Safety Administration, a federal agency working to protect certain types of underground infrastructure, acknowledges that call before you dig laws exempting very low risk activities are appropriate.

Recently, one of our member firms located in central Ohio wrote about Ohio's call before you dig process. We think it accurately reflects many of our concerns:

Before the requirement to mark the proposed excavation area and/or have an on-site meeting, the process typically took no more than 1 hour per project (get map, figure out cross roads, call or enter through the Newtin online system, log responses, make copy of dig ticket for field paperwork box, etc.). Now, not only do we go through the process of figuring out what we need to tell OUPS when we call, but we also have to drive to the site to mark the project area. The time it takes to do that depends on where in the state of Ohio the project is and how big the area to mark is. I have budgeted up to 10 hours for the trip when the project area is in the farthest corner of the state.

When we first learned of the new requirements, we were doing the on-site meetings because we thought that was what we were supposed to do. Now we just go mark the area (centerline or boundaries) with white spray paint and/or stakes with white flagging tape because one of the call center representatives told us we could do that instead of trying to arrange a meeting. The meetings were a huge annoyance because people didn't show up and no one seemed to know what the point was when they did show up.

The increase in level of effort is anywhere from 3x to 10x, depending on where the project is, how big/complex the area is, and how competent the call center representative is. That is a huge increase when you are trying to be competitive, especially if other firms don't follow the call before you dig process.

This requirement is detrimental to environmental consulting companies, especially small ones. If we didn't have to go out and mark, we would have no problem calling in our dig tickets like we did before – that cost was typically minimal in the grander scheme of the project. The call before you dig process now costs real money and can negatively impact our ability to be competitive on low bid projects. Regarding being able to dig more safely, it has made no difference.

Ohio's call before you dig law should require that *reasonable* precautions be taken before and during moderate and high risk excavation activities, including *all* excavations using power tools, *based on reliable industry-specific incident data, not speculation*. Extremely low risk excavations such as the use of non-powered hand tools at shallow depths outside public rights-of-way should be exempt. The approach taken in Ohio with respect to extremely low risk excavation is a classic example of a costly and unnecessary solution in search of a problem,

where one size does not fit all.

With regard to the proposed enforcement provisions of HB 659, we make the following comments:

- Although it is our understanding that these enforcement provisions do not apply to individual homeowners, the bill should clearly state that this is the case.
- 4913.05 (A). The bill should define “aggrieved” to prevent frivolous complaints being filed.
- 4913.05 (B). The complaint should require explanation of how the complainant has been aggrieved.
- 4913.09 (A). The PUCO’s authority should be expanded to include whether the complainant has been aggrieved.
- There are sections [e.g., 4913.13, 4913.15 (B), 4913.16 (A), 4913.16 (C), 4913.17 (B), 4913.171, 4913.19 (A), 4913.23, 4913.25 (D)] where time frames for actions by the PUCO or the UTC are not specified. Time limits for taking such actions should be included. The open-endedness for completing such actions does little to promote safety.
- 4913.151 (A) (2). In determining a penalty or fine recommendation, the UTC should also consider how the complainant was aggrieved.



Shawn M. Lyon
Vice President, Operations

November 21, 2014

The Honorable Bill Seitz, Chairman
Chairman, Senate Public Utilities Committee
Ohio Statehouse, Ohio Senate
1 Capitol Square
Columbus, Ohio 43215

Marathon Pipe Line LLC

539 South Main Street
Findlay, OH 45840
Direct No. 419/421-4002
Main No. 419/422-2121
Fax 419/421-3125

Dear Chairman Seitz:

On behalf of Marathon Pipe Line, I wish to express support for Senate Bill 378 sponsored by Senator Bill Coley. Marathon Pipe Line is headquartered in Findlay, Ohio, and operates approximately 6,000 miles of underground pipeline in 14 states mainly in the South and throughout the Midwest. Marathon transports crude oil and petroleum products to and from terminals, refineries and to other pipelines. The company safely delivers by pipeline an average of 120 million gallons of crude oil and petroleum products daily. In Ohio, Marathon operates over 800 miles of hazardous liquid and highly volatile liquid transmission pipelines and hundreds of miles of pipe associated with pipeline stations, terminals, and a refinery. Additionally, Marathon is poised to invest millions of dollars in Ohio by developing the underground infrastructure required to meet the State's and the Region's energy needs.

With regard to Ohio's damage prevention laws, Marathon Pipe Line is both a utility and an excavator as we place and respond to one-calls, as well as complete excavations. We are abundantly aware of the obligations that the current one-call requirements entail and have unfortunately seen firsthand the damage that can result from failure to comply with these statutory obligations. Failures to call, mark, and or excavate prudently, in addition to having exemptions from participating in the one call process, have all contributed to damages to our facilities. Moreover, Ohio's current one call laws lack any enforcement provisions which would hold violators of damage prevention laws accountable for their behavior.

SB 378, as introduced, is a good first step in eliminating this statutory deficiency by establishing enforcement provisions and naming an enforcement authority, the Public Utilities Commission. The ultimate goal of enforcement is to change behavior as violations of the statutory requirements which do not result in damages or injuries are only governed by chance. Each violation has the potential to be or become a catastrophic event for utilities, workers, excavators, and the general public. Marathon Pipe Line, along with other stakeholders, recognizes that there will be additional work required to meet the Department of Transportation Pipeline and Hazardous Materials Safety Administration's expectations for an effective state damage prevention program. However, SB 378 addresses significant issues and represents progress toward protecting all those who live and work in Ohio.

Senator Coley's efforts to develop a broad coalition of support from many stakeholder groups are evident in the as-introduced version of SB 378. Marathon Pipe Line respectfully requests that you and the members of Senate Public Utilities Committee return a favorable report on SB 378.

Sincerely,

Shawn M. Lyon
Vice President, Operations
Marathon Pipe Line LLC



AMERICAN PETROLEUM INSTITUTE

Ohio

December 2, 2014

The Honorable Peter Stautberg
Chairman, House Public Utilities Committee
Ohio House of Representatives
77 S. High Street, 11th Floor
Columbus, Ohio 43215

Dear Chairman Stautberg:

On behalf of the members of the American Petroleum Institute (API) Ohio, I wish to express support for the as introduced version of House Bill 659 sponsored by State Representative Robert Sprague. API Ohio is a state affiliate office of the American Petroleum Institute (API), a national trade association representing over 600 members companies involved in all aspects of the oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies and contractors that support all segments of the industry.

API Ohio members operate tens of thousands of miles of pipeline throughout Ohio and their underground assets continue to grow as these companies invest billions of dollars in new infrastructure due to the development of Ohio's shale resources. Consequently, our industry is a strong supporter of Ohio's 811 Call Before You Dig law which protects Ohioans from potentially life threatening incidents caused by companies, governments or others hitting oil and natural gas pipelines, as well as electric, water, sewer, cable, or phone lines when they excavate or otherwise dig, drill or bore underground. Nevertheless, Ohio is just one of two states currently lacking the ability to hold violators accountable for failing to comply with existing call before you dig statutory obligations.

HB 659 seeks to close this long, overdue regulatory gap, by establishing an enforcement mechanism for Ohio's 25-year old one-call law requiring: (1) utilities to be members of a statutorily recognized one-call center; (2) one-call centers providing utilities notice of excavations; (3) designers and developers participating in the one-call process and considering the location of current facilities in new design; (4) excavators calling at least two days prior to the proposed excavation; (5) utilities marking the location of their underground assets; and (6) reporting any damage to a utility owner immediately.

We applaud Representative Sprague's efforts to work with a diverse group of stakeholders to achieve the delicate compromise reflected in the as introduced version of HB 659 in order to create a safer Ohio, and accordingly, we respectfully urge you and members of House Public Utilities Committee to favorably report this legislation.

Sincerely,

A handwritten signature in blue ink that reads "CZ" followed by three dots.

Chris Zeigler
Executive Director

CZ/chp

cc: Members of House Public Utilities Committee
Speaker William Batchelder
The Honorable Robert Sprague
Majority Caucus Policy Director Heather Mann
Majority Caucus Policy Aide Lisa Griffin

**Ohio Gas Association
Jimmy Stewart, President
December 2, 2014
Proponent Testimony – H.B. 659 (Representative Sprague)**

Chairman Stautberg, Vice-Chair Roegner, Ranking Member Williams and members of the House Public Utilities Committee, my name is Jimmy Stewart and I am the President of the Ohio Gas Association (OGA). Thank you for the opportunity to testify today in support of H.B. 659 which would establish “enforcement” provisions relative to Ohio’s underground utility damage prevention laws.

The Ohio Gas Association is a natural gas trade organization which represents more than 30 local distribution companies and cooperatives, many other affiliated members, and the vast majority of intra and inter-state gas transmission companies in Ohio. Collectively, OGA members serve more than 3.6 million Ohio customers and maintain and manage over 50,000 miles of distribution and transmission pipeline throughout the state.

As President of the OGA, I am responsible for promoting and supporting laws, regulations and programs that will enhance and improve safety for the natural gas industry. That is why I am proud to support H.B. 659 which will place into law the most significant improvements to excavation practices on underground infrastructure and public safety in more than two decades.

For the last two and a half years I have participated in the Ohio Underground Damage Prevention Coalition (OUDPC). This group is comprised of dozens of statewide stakeholders, roughly split between contractors and utilities. This group contributed a great deal towards the contents of H.B. 458 (129th - Sprague) which passed the Legislature back in 2012, and was an important step towards modernizing Ohio’s damage prevention laws. Similarly, the OUDPC has worked to suggest content for H.B. 659 – providing guidance as to the most robust enforcement mechanism that could be established in Ohio law and still be supported by such a large group of diverse stakeholders. As such, the provisions included in this legislation are the product of debate and discussion among well intended parties to get to compromises that will significantly improve public safety in Ohio. Further, it is important to note that in developing H.B. 659 the Pipeline & Hazardous Materials Safety Administration (PHMSA), which is part of the United States Department of Transportation, participated in nearly all of the OUDPC meetings as well as at least one of the Interested Party meetings. PHMSA has made it clear that Ohio is one of a minority of states that has not passed enforcement legislation and that they will take steps to force compliance upon Ohio if we do not act ourselves.

Today, while Ohio maintains clear statutes regarding the roles of excavators and utilities when it comes to underground excavation practices, there is no mechanism to enforce these laws. This is as if Ohio had an array of traffic laws, but no means to write a ticket for someone who is driving over the legal speed limit. H.B. 659 corrects this deficiency.

H.B. 659 establishes the Public Utilities Commission of Ohio as the “Enforcement Agent” for alleged violations of Ohio’s damage prevention laws. The PUCO is uniquely suited for this role as it already administers similar programs. The intent of the legislation, however, is for the enforcement process to be, at least partially, industry driven. Therefore an enforcement body called the Underground Technical Committee (UTC) is created. While the UTC will be affiliated

with and an adjunct to the PUCO, the legislation intends for the initial UTC process to be separate and distinct from the traditional PUCO rate case/ratemaking process.

Ohio's UTC, which is modeled after several other industry led enforcement bodies created in other states, would include participants from a wide array of stakeholders including utilities/facility owners, contractors and the general public. Further, the legislation establishes that the UTC must meet regularly, can act only under certain conditions, must work collaboratively with the PUCO to establish rules and cannot determine civil liability more aptly decided by the court system.

The legislation also establishes a complaint driven process that accomplishes a couple very important things. First, it establishes a strong system of checks and balances between the UTC and PUCO in which the UTC is fully empowered in the front end, while affording the PUCO the final word at the conclusion of the process. This approach will allow the industries to "police" themselves while still affording full due process to a party (alleged violator or aggrieved party) that wishes to avail themselves of the PUCO hearing procedure. Second, the legislation is designed to target "bad actors". It is clear that most excavators in Ohio want to do their work safely. It is also clear that there are bad actors that would simply violate Ohio's damage laws in order to do work quickly. By establishing a process to weed out "persistent non-compliers", this legislation will make it harder for those who would intentionally bypass Ohio law.

H.B. 659 provides clear guidance for the UTC as to many considerations it must make prior to assigning a non-monetary penalty, fine or dismissing a case. It further limits the size of the fines that the UTC can assess for initial and subsequent violations or non-compliances with Ohio law. The legislation establishes how the UTC and PUCO administrative processes will be funded and creates a training and education fund for using the fines that are collected from the enforcement process.

Mr. Chairman and members of the committee, H.B. 659 will indeed create a new process inside of government. As other states have experienced, standing up an enforcement process is not easy. This stated, H.B. 659 creates an enforcement system that is modeled on other states that were able to achieve nearly unanimous support from utilities, contractors and other stakeholders. To the best of my knowledge, H.B. 659 enjoys that same type of support in Ohio – and it is important to act now so that we can make Ohio safer for our excavators, utility owners and the general public.

I ask for your support of H.B. 659 and I would be happy to answer any questions you may have at this time.



Ohio Contractors Association

1313 Dublin Road • P.O. Box 909 • Columbus, Ohio 43216
(614) 488-0724 • (800) 229-1388 • FAX (614) 488-0728 • www.ohiocontractors.org

HB 659 PROPONENT TESTIMONY

HOUSE PUBLIC UTILITIES COMMITTEE

MARK POTNICK, DIRECTOR, LABOR RELATIONS & SAFETY AFFAIRS

OHIO CONTRACTORS ASSOCIATION

12/2/2014

Chairman Stautberg and members of the Committee, the Ohio Contractors Association is submitting this testimony today in support of HB659.

The Ohio Contractors Association is a professional, state-wide trade association representing the Highway, Heavy and Utility Construction Industry. Our contractor member companies and their employees are at the critical point of service when underground construction operations intersect and interact with underground utility lines and facilities. Our member contractors expose, remove, upgrade, install and work around all types of underground utilities. Maintaining the safety of our workers and the public while protecting the integrity of underground facilities are our highest priorities when such work is part of our excavation projects.

The OCA is a founding member of Ohio's Underground Damage Prevention Coalition, formed nearly 4 years ago to improve our underground damage prevention laws. One of OCA's contractor members has co-chaired the coalition for nearly all of that time. I stood at Governor Kasich's side on December 20, 2012 as he signed House Bill 458, which increased public safety by enhancing communications and cooperation amongst stakeholders in the realm of underground utilities. At the time, it was the first improvement to Ohio's underground damage laws in more than two decades.

HB 458 did not improve all critical aspects of Ohio's underground damage prevention laws, but it was a good consensus effort to begin the process. At that

time, the law's sponsors committed to return to the "drawing board" with us to make further improvements as warranted. Here we are!

For more than 35 years, I have heard representatives of the construction industry clamor for "teeth in the law". Our contractors know that if we fail to include at least basic enforcement provisions in the law, many will continue to take risks that ultimately result in damages, injury and in the worst instances, fatalities to workers and/or the public. The OCA and its contractor members have always supported enforcement of the basic provisions of the underground damage prevention laws: 1. Underground utility facility owners must be members of the utilities protection service; 2. Excavators must call the utilities protection service before they dig; 3. Owners must positively respond and mark the utilities in a timely fashion; 4. Excavators must wait the proper amount of time for marking before they proceed to dig; and, 5. Excavators must dig prudently and cautiously when encountering underground facilities.

The sponsors of HB 458 have kept their word. They returned to the table with us to craft the provisions of House Bill 659. It contains a good framework to begin enforcement of Ohio's underground damage prevention laws. Enforcement will bring greater compliance with the law, and ultimately improve safety in many of the basic, but most critical aspects of work involving underground utilities. HB659 is not the end all of laws for the underground utilities industry, but it is another positive step in the process of improving safety for Ohio's workers and citizens. The Ohio Contractors Association urges passage of House Bill 659.

Thank you.

November 28, 2014

The Honorable Peter Stautberg
Chairman, Public Utilities Committee
Ohio House of Representatives
77 S High St
Columbus, Ohio 43215

RE: Interested Party Testimony – HB 659 (Representative Sprague)

Chairman Stautberg, Ranking Member Williams and Members of the Committee,

My name is Roger Lipscomb and, as the President/Executive Director of the Ohio Utilities Protection Service (O.U.P.S.), I am thankful for the opportunity to speak with you regarding HB 659.

O.U.P.S. is a member-driven, 501C(6) not-for-profit corporation that has, since 1972, served Ohio as the communications link between parties with a need to excavate and those parties who own and/or operate underground utility facilities. We are often referred to as “OUPS”, “One-Call Center” or “Protection Service”. Our membership is a diverse, multi-stakeholder one and includes utility companies, municipal/governmental entities, utility co-ops, excavation companies, contracting companies, engineering/design firms, contract locating firms and industry trade associations.

Since its inception 42 years ago, O.U.P.S. has developed and/or implemented multiple public education and awareness programs, materials and advertising campaigns designed to promote public safety by protecting Ohio’s underground utility infrastructure. Our continual investment in advanced call center technologies has lead to an extremely efficient notification process. A process, that each year, within the State of Ohio, receives over one million excavation requests for markings (tickets) and distributes approximately seven million notices to facility owners/operators. O.U.P.S.’ diverse membership, experience and position at the center of the process has allowed it to emerge as one of the primary damage prevention resources for the State of Ohio.

It is our belief and experience that education, awareness, communication, accountability and enforcement are the keys to public safety and damage prevention. Recognizing the importance of stakeholder involvement with regards to achieving these ideals, O.U.P.S., in February of 2011, hosted an industry wide, multi-stakeholder meeting to discuss a safer Ohio. We advocated and eventually facilitated the formation of the Ohio Underground Damage Prevention Coalition

*The O.U.P.S. mission is to serve the customers' needs by providing a quality one call process to:
protect the public; protect the underground infrastructure; protect the environment.*

www.oups.org

(OUDPC). The effectiveness of the multi-stakeholder coalition concept was clearly demonstrated on December 20, 2012 when Governor Kasich signed HB 458 into law. It was the first time in 22 years that Ohio's damage prevention laws were successfully updated. Representative Robert Sprague and Senator Bill Coley were instrumental in the success of those efforts.

Representative Sprague, recognizing the need to continually improve Ohio's damage prevention laws has worked closely with the OUDPC to develop fair and effective enforcement language...the result of which is HB 659. This bill will enhance public safety by establishing an enforcement process that demands accountability from all stakeholders. The bill designates the Public Utilities Commission of Ohio (PUCO) as the "enforcement agent" for Ohio's damage prevention laws. It provides, with the formation of the Underground Technical Committee (UTC), a mechanism through which the industry has the opportunity to police its own ranks.

In addition, HB 659 helps to address national concerns regarding enforcement of damage prevention laws, particularly those from the Pipeline Hazardous Materials Administration (PHMSA). PHMSA has been monitoring damage prevention enforcement efforts throughout the nation. They created a characterization tool that rated the effectiveness of each state's damage prevention programs. Through that process, PHMSA determined that Ohio would not be eligible to receive federal one-call/damage prevention grants until an exception for governmental entities was eliminated from the ORC. PHMSA also entered a Notice of Proposed Rule Making (NPRM) into the Federal Register that would give them the ability to enforce federal damage prevention laws in any state that does not have an effective enforcement of its damage prevention laws; the final rules are expected to be published soon. In the case of Ohio, PHMSA has recognized the efforts of the OUDPC and legislators and, as such, has adopted a wait and see posture.

Although HB 659 does not address all of the issues facing Ohio's excavation and underground facilities protection industry, it is the right step forward and will contribute substantially to making Ohio a safer place to live and work.

O.U.P.S. continually promotes and supports legislative efforts that are inclusive of all stakeholders and their special interests. It is with that understanding that we have also encouraged all stakeholders to rise above their special interests and serve the collective interest of public safety when necessary. There are over 11 million citizens in Ohio counting on all of us to ensure they are safe from the potential consequences of excavation damages to Ohio's underground utility infrastructure.

Thank you for your continued support of a safer Ohio.