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135th General Assembly
Regular Session
2023-2024

. B. No.

A BILL

To amend sections 3781.25, 3781.26, 3781.27,
3781.271, and 3781.28 of the Revised Code to
modify excavation requirements.

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

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

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

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(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.

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(B) "Underground utility facility" includes any item 18
buried or placed below ground or submerged under water for use 19
in connection with the storage or conveyance of water or sewage; 20
electronic, or telephonic communications; television signals; 21
electricity; crude oil; petroleum products; artificial or 22
liquefied petroleum; manufactured, mixed, or natural gas; 23
synthetic or liquefied natural gas; propane gas; coal; steam; 24
hot water; or other substances. "Underground utility facility" 25
includes all operational underground pipes, sewers, tubing, 26
conduits, cables, valves, lines, wires, worker access holes, and 27
attachments, owned by any person, firm, or company. "Underground 28
utility facility" does not include a private septic system in a 29
one-family or multi-family dwelling utilized only for that 30
dwelling and not connected to any other system. 31

(C) "Utility" means any owner or operator, or an agent of 32
an owner or operator, of an underground utility facility, 33
including any public authority, that owns or operates an 34
underground utility facility. "Utility" does not include the 35
owners of the following types of real property with respect to 36
any underground utility facility located on that property: 37

(1) The owner of a single-family or two-, three-, or four- 38
unit residential dwelling; 39

(2) The owner of an apartment complex; 40

(3) The owner of a commercial or industrial building or 41
complex of buildings, including but not limited to, factories 42
and shopping centers; 43

(4) The owner of a farm; 44

(5) The owner of an exempt domestic well as defined in 45
section 1509.01 of the Revised Code. 46

(D) "Approximate location" means the immediate area within 47
the perimeter of a proposed excavation site where the 48
underground utility facilities are located. 49

(E) "Tolerance zone" means the site of the underground 50
utility facility including the width of the underground utility 51
facility plus eighteen inches on each side of the facility. 52

(F) "Working days" excludes Saturdays, Sundays, and legal 53
holidays as defined in section 1.14 of the Revised Code and 54
"hours" excludes hours on Saturdays, Sundays, and legal 55
holidays. 56

(G) "Designer" means an engineer, architect, landscape 57
architect, contractor, surveyor, or other person who develops 58
plans or designs for real property improvement or any other 59
activity that will involve excavation. 60

(H) "Developer" means the person for whom the excavation 61
is made and who will own or be the lessee of any improvement 62
that is the object of the excavation. 63

(I) "Excavation" means the use of hand tools, powered 64
equipment, or explosives to move earth, rock, or other materials 65
in order to penetrate or bore or drill into the earth, or to 66
demolish any structure whether or not it is intended that the 67
demolition will disturb the earth. "Excavation" includes such 68
agricultural operations as the installation of drain tile, but 69
excludes agricultural operations such as tilling that do not 70
penetrate the earth to a depth of more than twelve inches. 71
~~"Excavation" excludes any activity by a governmental entity~~ 72
~~which does not penetrate the earth to a depth of more than~~ 73
~~twelve inches.~~ "Excavation" excludes coal mining and reclamation 74
operations regulated under Chapter 1513. of the Revised Code and 75

rules adopted under it. "Excavation" excludes all of the 76
following activities when performed in the public right-of-way: 77

(1) Milling and grinding of asphalt road surfaces without 78
penetrating the earth to a depth greater than four inches, 79
except for pulverizing activities, activities at signalized 80
intersections, and activities where signal or environmental 81
sensors may be present; 82

(2) Utility wood pole inspection utilizing hand tools to 83
excavate to a depth that does not penetrate the earth more than 84
twelve inches and working on the clear side of poles, greater 85
than ninety degrees from any risers; 86

(3) Tilling for sowing of grass and wildflower coverings 87
to a depth that does not penetrate the earth more than four 88
inches for erosion control or beautification purposes; 89

(4) Placement of temporary signage, without penetrating 90
the earth more than four inches. 91

(J) "Excavation site" means the area within which 92
excavation will be performed. 93

(K) "Excavator" means the person or persons responsible 94
for making the actual excavation. 95

(L) "Interstate gas pipeline" means an interstate gas 96
pipeline subject to the "Natural Gas Pipeline Safety Act of 97
1968," 82 Stat. 720, 49 U.S.C. 1671, as amended. 98

(M) "Interstate hazardous liquids pipeline" means an 99
interstate hazardous liquids pipeline subject to the "Hazardous 100
Liquid Pipeline Safety Act of 1979," 93 Stat. 1003, 49 U.S.C. 101
2002, as amended. 102

(N) "Special notification requirements" means requirements 103

for notice to an owner of an interstate hazardous liquids 104
pipeline or an interstate gas pipeline that must be made prior 105
to commencing excavation and pursuant to the owner's public 106
safety program adopted under federal law. 107

(O) "Commercial excavator" means any excavator, excluding 108
a utility as defined in this section, that satisfies both of the 109
following: 110

(1) For compensation, performs, directs, supervises, or is 111
responsible for the excavation, construction, improvement, 112
renovation, repair, or maintenance on a construction project and 113
holds out or represents oneself as qualified or permitted to act 114
as such; 115

(2) Employs tradespersons who actually perform excavation, 116
construction, improvement, renovation, repair, or maintenance on 117
a construction project. 118

(P) "Person" has the same meaning as in section 1.59 of 119
the Revised Code and also includes a public authority. 120

(Q) "Positive response system" means an automated system 121
facilitated by a protection service allowing a utility to 122
communicate to an excavator the presence or absence of any 123
conflict between the existing underground utility facilities and 124
the proposed excavation site. 125

(R) "One-call notification system" means the software or 126
communications system used by a protection system to notify its 127
membership of proposed excavation sites. 128

(S) "Project" means any undertaking by a private party of 129
an improvement requiring excavation. 130

(T) "Public authority" has the same meaning as in section 131

153.64 of the Revised Code. 132

(U) "Improvement" means any construction, reconstruction, 133
improvement, enlargement, alteration, or repair of a building, 134
highway, drainage system, water system, road, street, alley, 135
sewer, ditch, sewage disposal plant, water works, and all other 136
structures or works of any nature. 137

(V) "Emergency" means an unexpected occurrence causing a 138
disruption or damage to an underground utility facility that 139
requires immediate repair or a situation that creates a clear 140
and imminent danger that demands immediate action to prevent or 141
mitigate loss of or damage to life, health, property, or 142
essential public services. 143

(W) "Nondestructive manner" means using low-impact, low- 144
risk technologies such as hand tools, or hydro or air vacuum 145
excavation equipment. 146

(X) "Cable service provider" has the same meaning as in 147
section 1332.01 of the Revised Code. 148

(Y) "Electric cooperative" and "electric utility" have the 149
same meanings as in section 4928.01 of the Revised Code. 150

Sec. 3781.26. (A) Each utility that owns or operates 151
underground utility facilities shall participate in and register 152
the location of its underground utility facilities with a 153
protection service that serves the area where the facilities are 154
located. ~~A utility may elect to participate in the service on a~~ 155
~~limited basis and if it does so, it shall register the location~~ 156
~~of its underground utility facilities by identifying the~~ 157
~~municipal corporations, and outside the limits of a municipal~~ 158
~~corporation, the townships by county and, where applicable, the~~ 159
~~immediate geographic area in which it has facilities. The~~ 160

~~service shall establish reasonable fees for limited basis~~ 161
~~participants.~~ 162

(B) Protection services, utilities, commercial excavators, 163
excavation equipment dealers, the public utilities commission of 164
Ohio, the board of building standards, local law enforcement 165
agencies, and fire departments should publicize the importance 166
of ascertaining the location of underground utility facilities 167
before excavating and the use of protection services to 168
ascertain that information. 169

(C) A protection service shall maintain records of 170
notifications received from developers, designers, and 171
excavators, and of its notifications made to utilities, 172
developers, designers, and excavators, under sections 3781.27 173
and 3781.28 of the Revised Code. The records of a protection 174
service shall identify by reference number, the notifications it 175
received regarding a proposed excavation site, the notifications 176
it provided regarding a proposed excavation site, and the date 177
and time of each notification. 178

(D) Each utility fully participating in a protection 179
service pursuant to this section shall also participate in its 180
affiliated positive response system. ~~Each utility participating~~ 181
~~in a protection service on a limited basis shall directly~~ 182
~~communicate to the excavator the presence or absence of any~~ 183
~~conflict between the existing underground utility facilities and~~ 184
~~the proposed excavation site.~~ 185

Sec. 3781.27. (A) In order to ascertain the name of each 186
utility with underground utility facilities located at the 187
proposed excavation site and the types and tolerance zones of 188
those facilities based on current records of the utility, any 189
developer who is planning a project that will require excavation 190

or the designer employed by the developer for the project shall 191
notify a protection service of the location of the proposed 192
excavation site. 193

(B) ~~Except in the case of limited basis participants, the~~ 194
~~The~~ protection service shall provide notice of the proposed 195
excavation to each participant in the service that has 196
underground utility facilities in the area of the proposed 197
excavation site. ~~Except as provided in section 3781.271 of the~~ 198
~~Revised Code, in the case of limited basis participants, the~~ 199
~~protection service shall notify the developer or the designer~~ 200
~~employed by the developer of the name of each limited basis~~ 201
~~participant with underground utility facilities within the~~ 202
~~municipal corporation or township and county of the proposed~~ 203
~~excavation site, and the developer or designer shall contact~~ 204
~~that utility.~~ 205

(C) (1) Each utility that has any underground utility 206
facilities in the area of the proposed excavation site shall 207
notify the developer or the designer employed by the developer 208
of the locations and description of the utility's underground 209
utility facilities located at the proposed excavation site in 210
accordance with division (C) (2) of this section. The utility 211
shall make this notification within ten working days of 212
receiving a notice under division (B) of this section or by a 213
later date acceptable to the developer or designer and utility. 214
If the proposed project is within six hundred sixty feet of the 215
center point of an interstate hazardous liquid pipeline or an 216
interstate gas pipeline, the utility shall provide written 217
notice to the developer or designer of any special notification 218
requirements and identify its primary contact person for the 219
project area. 220

(2) If requested by the developer or the designer employed 221
by the developer, each utility shall do one of the following in 222
order to comply with the notification requirements of division 223
(C) (1) of this section: 224

(a) Mark the location of the underground utility 225
facilities, other than those facilities serving single-family or 226
two-, three-, or four-unit dwellings, at the proposed excavation 227
site in accordance with the marking standards described in 228
division (C) of section 3781.29 of the Revised Code; 229

(b) Provide digital or paper drawings, or both, that meet 230
both of the following requirements: 231

(i) They are drawn to scale and include locatable items. 232
Locatable items may include poles, pedestals, back of curb, 233
sidewalk, edge of pavement, centerline of ditch, property lines, 234
and other similar items. 235

(ii) They depict the location of the underground utility 236
facilities. 237

(3) In the case of an interstate hazardous pipeline and an 238
interstate gas pipeline, the utility shall also provide the 239
location and description of any right-of-way associated with the 240
underground utility facilities as well as pipeline location 241
information, such as providing documents reflecting the actual 242
location of the pipeline, marking facilities on design drawings, 243
and providing maps. 244

Compliance with divisions (C) (2) and (3) of this section 245
does not relieve a utility from compliance with the marking 246
requirements of section 3781.29 of the Revised Code. 247

(D) The utility shall determine if any relocation, 248
support, or removal, or protective steps beyond those described 249

in divisions (A) (1) to (5) of section 3781.30 of the Revised 250
Code are required in order to prevent disturbance or 251
interference with the underground utility facilities during 252
excavation. The utility shall determine whether it will permit 253
the developer or the designer employed by the developer to make 254
those adjustments, and, if the adjustments are to be made by the 255
utility, a reasonable amount of time necessary to make those 256
adjustments. 257

(E) (1) Based on the information provided pursuant to 258
division (C) of this section, the developer or the designer 259
employed by the developer shall indicate the approximate 260
locations of underground utility facilities either on or with 261
the plans prepared for the project. The developer or designer 262
shall include with the plans the names, addresses, and telephone 263
numbers of utilities with underground facilities at the 264
excavation site, ~~indicating which utilities are limited basis~~ 265
~~participants~~; the name and telephone number of any appropriate 266
protection service; and any required adjustments as described in 267
division (D) of this section, including the reasonable time 268
necessary for the utility to make those adjustments. In the case 269
of an interstate hazardous liquid pipeline or an interstate gas 270
pipeline, the developer or designer also shall include all of 271
the following: 272

(a) Any special notification requirements; 273

(b) The name and contact information of the primary 274
contact person for each pipeline operator who has provided 275
notice to the developer or designer under division (C) (1) of 276
this section; 277

(c) Notice stating that the developer or designer has 278
utilized reasonable means to contact the pipeline operator to 279

verify the location of the pipeline and pipeline rights-of-way. 280
Developers and designers who provide notice to the protection 281
service in accordance with division (A) of this section are 282
deemed to have complied with the notification requirement under 283
this division. 284

(d) Notice that the developer or designer has reviewed, or 285
attempted to review, preliminary information about the proposed 286
development with the pipeline operator and incorporated 287
requested adjustments into the plans. 288

(2) (a) Except as otherwise provided in division (E) (2) (b) 289
of this section, the developer or designer shall provide the 290
plans to the commercial excavator prior to entering into a 291
contract that involves such excavation. If the developer does 292
not prepare written plans or have any written plans prepared, 293
the developer shall otherwise provide the approximate locations, 294
identifying information on the utilities, information on 295
required adjustments, and any special notification requirements 296
to the commercial excavator before excavation begins. 297

(b) When the developer is a utility, the utility shall 298
provide either the plans or the approximate locations, 299
identifying information on the utilities, information on 300
required adjustments, and any special notification requirements 301
to the excavator before excavation begins. 302

(3) The developer or designer shall design the project 303
taking into account the approximate location of existing 304
underground utility facilities in order to prevent, as far as is 305
practicable, disturbance or interference with those facilities. 306

(4) When a project includes installation of new 307
underground utility facilities, the developer or designer shall 308

attempt to design the installation so that at least a twelve- 309
inch clearance is provided between the facilities. No facility 310
shall be installed with less than a twelve-inch clearance unless 311
the owners of existing facilities are notified, in writing, 312
prior to installation. 313

(F) (1) This section does not apply in the case of a 314
utility making emergency repair to its own underground utility 315
facility. 316

(2) This section does not apply in the case of the owner 317
of the types of real property identified in divisions (C) (1) to 318
(4) of section 3781.25 of the Revised Code, unless the owner 319
employs a designer to make written plans for work that will 320
involve excavation. If the owner employs a designer, the 321
designer shall contact a protection service ~~and utilities that~~ 322
~~are limited basis participants~~ in accordance with divisions (A) 323
and (B) of this section, and shall include in or with the plans 324
the information required under division (E) of this section. The 325
owner shall provide that information to the excavator. 326

(G) A public authority, as defined in section 153.64 of 327
the Revised Code, may withhold approval to a project until the 328
requirements of this section have been satisfied by the 329
developer and utility, as applicable. A public authority may 330
rely solely upon the notice submitted under division (E) of this 331
section when determining whether the requirements of this 332
section have been satisfied for purposes of granting final 333
approval of such development. A public authority is immune from 334
liability related to the approval or construction of such 335
development when the approval is based upon information as 336
provided in this division. 337

Sec. 3781.271. Beginning on July 1, 2013, each protection 338

service shall reasonably modify its one-call notification system 339
so as to permit the reasonable identification of the location of 340
a proposed excavation site ~~in a manner in which the protection~~ 341
~~service may then notify any potentially affected limited basis~~ 342
~~participants.~~ Each member of a protection service, ~~including~~ 343
~~limited basis participants,~~ shall be responsible for providing 344
current contact information to the protection service. 345

Sec. 3781.28. (A) Except as otherwise provided in 346
divisions (C), (D), (E), and (F) of this section, ~~at least~~ 347
~~forty eight hours but not more than ten working days before~~ 348
~~commencing excavation,~~ the excavator shall notify ~~a the~~ 349
protection service of the location of the excavation site and 350
the date on which excavation is planned to commence, not less 351
than two working days, beginning one minute after midnight the 352
next working day after the notification is generated, but not 353
more than sixteen calendar days before commencing excavation. 354

(B) On receipt of notice under division (A) of this 355
section, the protection service shall provide to each utility 356
with underground utility facilities located at the excavation 357
site, notice of the proposed excavation. 358

(C) In the case of an interstate hazardous liquids 359
pipeline or interstate gas pipeline, the excavator shall comply 360
with the special notice requirements of the public safety 361
program of the owner of the pipeline as indicated in the plans 362
or otherwise provided to the excavator in accordance with 363
division (E) or (F) (2) of section 3781.27 of the Revised Code. 364

(D) If it has been determined pursuant to division (D) of 365
section 3781.27 of the Revised Code that relocation, support, 366
removal, or protective steps are necessary, the excavator shall 367
provide earlier notice to the utility in order to provide the 368

utility with reasonable time to coordinate making the 369
adjustments with actual excavation. 370

(E) If an excavation will cover a large area and will 371
progress from one area to the next over a period of time, the 372
excavator shall provide written notice of excavation with 373
projected timelines for segments of the excavation as the 374
excavation progresses in order to coordinate the marking of 375
underground utility facilities with actual excavation schedules. 376
Under such circumstances, the utility and excavator shall 377
determine a mutually agreed upon marking schedule based on the 378
project schedule. Once such a schedule is established, the 379
marking and notification requirements set forth in division (A) 380
(1) of section 3781.29 of the Revised Code shall not apply. 381

(F) (1) In the case of a utility that is making an 382
emergency repair to its own underground utility system or a 383
governmental entity making an underground emergency repair to 384
traffic control devices, as defined in section 4511.01 of the 385
Revised Code, used on any street or highway under the entity's 386
jurisdiction, the utility or governmental entity shall notify a 387
protection service ~~and each limited basis participant~~ of the 388
excavation site. This notice need not occur before commencing 389
excavation. 390

(2) In the case of an excavation at the site of real 391
property of the type described in divisions (C) (1) to (4) of 392
section 3781.25 of the Revised Code: 393

(a) If the owner of the property is the excavator, this 394
section does not apply unless the excavation is planned for an 395
area where a utility easement is located, a public right-of-way, 396
or where utility facilities are known to serve the property. 397

(b) If the owner of the property employs an excavator, the 398
excavator shall comply with the requirements of this section. If 399
the owner did not employ a designer to make written plans, the 400
excavator shall provide the notice required under this section 401
to a protection service ~~and to each utility that is a limited~~ 402
~~basis participant in a protection service that has underground~~ 403
~~utility facilities within the municipal corporation or township~~ 404
~~and county of the excavation site, as indicated by the~~ 405
~~protection service.~~ 406

Section 2. That existing sections 3781.25, 3781.26, 407
3781.27, 3781.271, and 3781.28 of the Revised Code are hereby 408
repealed. 409