

As Introduced

136th General Assembly

Regular Session

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H. B. No. 227

Representatives Robb Blasdel, Johnson

Cosponsor: Representative Daniels

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
buried or placed below ground or submerged under water for use

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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, begin at~~ 53
~~midnight, end at eleven fifty-nine p.m. on the same date, and~~ 54
~~exclude weekends~~ and legal holidays as defined in section 1.14 55
of the Revised Code and "hours" excludes hours on ~~Saturdays,~~ 56
~~Sundays, weekends~~ and legal holidays. 57

(G) "Designer" means an engineer, architect, landscape 58
architect, contractor, surveyor, or other person who develops 59
plans or designs for real property improvement or any other 60
activity that will involve excavation. 61

(H) "Developer" means the person for whom the excavation 62
is made and who will own or be the lessee of any improvement 63
that is the object of the excavation. 64

(I) "Excavation" means the use of hand tools, powered 65
equipment, or explosives to move earth, rock, or other materials 66
in order to penetrate or bore or drill into the earth, or to 67
demolish any structure whether or not it is intended that the 68
demolition will disturb the earth. "Excavation" includes such 69
agricultural operations as the installation of drain tile, but 70
excludes agricultural operations such as tilling that do not 71
penetrate the earth to a depth of more than twelve inches. 72
~~"Excavation" excludes any activity by a governmental entity~~ 73
~~which does not penetrate the earth to a depth of more than~~ 74
~~twelve inches.~~ "Excavation" excludes coal mining and reclamation 75
operations regulated under Chapter 1513. of the Revised Code and 76
rules adopted under it. "Excavation" excludes all of the 77

<u>following activities when performed in the public right-of-way:</u>	78
<u>(1) Milling and grinding of asphalt road surfaces without</u>	79
<u>penetrating the earth to a depth greater than four inches,</u>	80
<u>except for pulverizing activities, activities at signalized</u>	81
<u>intersections, and activities where signal or environmental</u>	82
<u>sensors may be present;</u>	83
<u>(2) Utility wood pole inspection utilizing hand tools to</u>	84
<u>excavate to a depth that does not penetrate the earth more than</u>	85
<u>twelve inches and working on the clear side of poles, greater</u>	86
<u>than ninety degrees from any risers;</u>	87
<u>(3) Tilling for sowing of grass and wildflower coverings</u>	88
<u>to a depth that does not penetrate the earth more than four</u>	89
<u>inches for erosion control or beautification purposes;</u>	90
<u>(4) Placement of temporary signage, without penetrating</u>	91
<u>the earth more than four inches.</u>	92
(J) "Excavation site" means the area within which	93
excavation will be performed.	94
(K) "Excavator" means the person or persons responsible	95
for making the actual excavation.	96
(L) "Interstate gas pipeline" means an interstate gas	97
pipeline subject to the "Natural Gas Pipeline Safety Act of	98
1968," 82 Stat. 720, 49 U.S.C. 1671, as amended.	99
(M) "Interstate hazardous liquids pipeline" means an	100
interstate hazardous liquids pipeline subject to the "Hazardous	101
Liquid Pipeline Safety Act of 1979," 93 Stat. 1003, 49 U.S.C.	102
2002, as amended.	103
(N) "Special notification requirements" means requirements	104
for notice to an owner of an interstate hazardous liquids	105

pipeline or an interstate gas pipeline that must be made prior 106
to commencing excavation and pursuant to the owner's public 107
safety program adopted under federal law. 108

(O) "Commercial excavator" means any excavator, excluding 109
a utility as defined in this section, that satisfies both of the 110
following: 111

(1) For compensation, performs, directs, supervises, or is 112
responsible for the excavation, construction, improvement, 113
renovation, repair, or maintenance on a construction project and 114
holds out or represents oneself as qualified or permitted to act 115
as such; 116

(2) Employs tradespersons who actually perform excavation, 117
construction, improvement, renovation, repair, or maintenance on 118
a construction project. 119

(P) "Person" has the same meaning as in section 1.59 of 120
the Revised Code and also includes a public authority. 121

(Q) "Positive response system" means an automated system 122
facilitated by a protection service allowing a utility to 123
communicate to an excavator the presence or absence of any 124
conflict between the existing underground utility facilities and 125
the proposed excavation site. 126

(R) "One-call notification system" means the software or 127
communications system used by a protection system to notify its 128
membership of proposed excavation sites. 129

(S) "Project" means any undertaking by a private party of 130
an improvement requiring excavation. 131

(T) "Public authority" has the same meaning as in section 132
153.64 of the Revised Code. 133

(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.

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

~~participants.~~ 163

(B) Protection services, utilities, commercial excavators, 164
excavation equipment dealers, the public utilities commission of 165
Ohio, the board of building standards, local law enforcement 166
agencies, and fire departments should publicize the importance 167
of ascertaining the location of underground utility facilities 168
before excavating and the use of protection services to 169
ascertain that information. 170

(C) A protection service shall maintain records of 171
notifications received from developers, designers, and 172
excavators, and of its notifications made to utilities, 173
developers, designers, and excavators, under sections 3781.27 174
and 3781.28 of the Revised Code. The records of a protection 175
service shall identify by reference number, the notifications it 176
received regarding a proposed excavation site, the notifications 177
it provided regarding a proposed excavation site, and the date 178
and time of each notification. 179

(D) Each utility fully participating in a protection 180
service pursuant to this section shall also participate in its 181
affiliated positive response system. ~~Each utility participating~~ 182
~~in a protection service on a limited basis shall directly~~ 183
~~communicate to the excavator the presence or absence of any~~ 184
~~conflict between the existing underground utility facilities and~~ 185
~~the proposed excavation site.~~ 186

Sec. 3781.27. (A) In order to ascertain the name of each 187
utility with underground utility facilities located at the 188
proposed excavation site and the types and tolerance zones of 189
those facilities based on current records of the utility, any 190
developer who is planning a project that will require excavation 191
or the designer employed by the developer for the project shall 192

notify a protection service of the location of the proposed 193
excavation site. 194

(B) ~~Except in the case of limited basis participants, the~~ 195
The protection service shall provide notice of the proposed 196
excavation to each participant in the service that has 197
underground utility facilities in the area of the proposed 198
excavation site. ~~Except as provided in section 3781.271 of the~~ 199
~~Revised Code, in the case of limited basis participants, the~~ 200
~~protection service shall notify the developer or the designer~~ 201
~~employed by the developer of the name of each limited basis~~ 202
~~participant with underground utility facilities within the~~ 203
~~municipal corporation or township and county of the proposed~~ 204
~~excavation site, and the developer or designer shall contact~~ 205
~~that utility.~~ 206

(C) (1) Each utility that has any underground utility 207
facilities in the area of the proposed excavation site shall 208
notify the developer or the designer employed by the developer 209
of the locations and description of the utility's underground 210
utility facilities located at the proposed excavation site in 211
accordance with division (C) (2) of this section. The utility 212
shall make this notification within ten working days of 213
receiving a notice under division (B) of this section or by a 214
later date acceptable to the developer or designer and utility. 215
If the proposed project is within six hundred sixty feet of the 216
center point of an interstate hazardous liquid pipeline or an 217
interstate gas pipeline, the utility shall provide written 218
notice to the developer or designer of any special notification 219
requirements and identify its primary contact person for the 220
project area. 221

(2) If requested by the developer or the designer employed 222

by the developer, each utility shall do one of the following in 223
order to comply with the notification requirements of division 224
(C) (1) of this section: 225

(a) Mark the location of the underground utility 226
facilities, other than those facilities serving single-family or 227
two-, three-, or four-unit dwellings, at the proposed excavation 228
site in accordance with the marking standards described in 229
division (C) of section 3781.29 of the Revised Code; 230

(b) Provide digital or paper drawings, or both, that meet 231
both of the following requirements: 232

(i) They are drawn to scale and include locatable items. 233
Locatable items may include poles, pedestals, back of curb, 234
sidewalk, edge of pavement, centerline of ditch, property lines, 235
and other similar items. 236

(ii) They depict the location of the underground utility 237
facilities. 238

(3) In the case of an interstate hazardous pipeline and an 239
interstate gas pipeline, the utility shall also provide the 240
location and description of any right-of-way associated with the 241
underground utility facilities as well as pipeline location 242
information, such as providing documents reflecting the actual 243
location of the pipeline, marking facilities on design drawings, 244
and providing maps. 245

Compliance with divisions (C) (2) and (3) of this section 246
does not relieve a utility from compliance with the marking 247
requirements of section 3781.29 of the Revised Code. 248

(D) The utility shall determine if any relocation, 249
support, or removal, or protective steps beyond those described 250
in divisions (A) (1) to (5) of section 3781.30 of the Revised 251

Code are required in order to prevent disturbance or 252
interference with the underground utility facilities during 253
excavation. The utility shall determine whether it will permit 254
the developer or the designer employed by the developer to make 255
those adjustments, and, if the adjustments are to be made by the 256
utility, a reasonable amount of time necessary to make those 257
adjustments. 258

(E) (1) Based on the information provided pursuant to 259
division (C) of this section, the developer or the designer 260
employed by the developer shall indicate the approximate 261
locations of underground utility facilities either on or with 262
the plans prepared for the project. The developer or designer 263
shall include with the plans the names, addresses, and telephone 264
numbers of utilities with underground facilities at the 265
excavation site, ~~indicating which utilities are limited basis-~~ 266
~~participants;~~ the name and telephone number of any appropriate 267
protection service; and any required adjustments as described in 268
division (D) of this section, including the reasonable time 269
necessary for the utility to make those adjustments. In the case 270
of an interstate hazardous liquid pipeline or an interstate gas 271
pipeline, the developer or designer also shall include all of 272
the following: 273

(a) Any special notification requirements; 274

(b) The name and contact information of the primary 275
contact person for each pipeline operator who has provided 276
notice to the developer or designer under division (C) (1) of 277
this section; 278

(c) Notice stating that the developer or designer has 279
utilized reasonable means to contact the pipeline operator to 280
verify the location of the pipeline and pipeline rights-of-way. 281

Developers and designers who provide notice to the protection 282
service in accordance with division (A) of this section are 283
deemed to have complied with the notification requirement under 284
this division. 285

(d) Notice that the developer or designer has reviewed, or 286
attempted to review, preliminary information about the proposed 287
development with the pipeline operator and incorporated 288
requested adjustments into the plans. 289

(2) (a) Except as otherwise provided in division (E) (2) (b) 290
of this section, the developer or designer shall provide the 291
plans to the commercial excavator prior to entering into a 292
contract that involves such excavation. If the developer does 293
not prepare written plans or have any written plans prepared, 294
the developer shall otherwise provide the approximate locations, 295
identifying information on the utilities, information on 296
required adjustments, and any special notification requirements 297
to the commercial excavator before excavation begins. 298

(b) When the developer is a utility, the utility shall 299
provide either the plans or the approximate locations, 300
identifying information on the utilities, information on 301
required adjustments, and any special notification requirements 302
to the excavator before excavation begins. 303

(3) The developer or designer shall design the project 304
taking into account the approximate location of existing 305
underground utility facilities in order to prevent, as far as is 306
practicable, disturbance or interference with those facilities. 307

(4) When a project includes installation of new 308
underground utility facilities, the developer or designer shall 309
attempt to design the installation so that at least a twelve- 310

inch clearance is provided between the facilities. No facility 311
shall be installed with less than a twelve-inch clearance unless 312
the owners of existing facilities are notified, in writing, 313
prior to installation. 314

(F) (1) This section does not apply in the case of a 315
utility making emergency repair to its own underground utility 316
facility. 317

(2) This section does not apply in the case of the owner 318
of the types of real property identified in divisions (C) (1) to 319
(4) of section 3781.25 of the Revised Code, unless the owner 320
employs a designer to make written plans for work that will 321
involve excavation. If the owner employs a designer, the 322
designer shall contact a protection service ~~and utilities that~~ 323
~~are limited basis participants~~ in accordance with divisions (A) 324
and (B) of this section, and shall include in or with the plans 325
the information required under division (E) of this section. The 326
owner shall provide that information to the excavator. 327

(G) A public authority, as defined in section 153.64 of 328
the Revised Code, may withhold approval to a project until the 329
requirements of this section have been satisfied by the 330
developer and utility, as applicable. A public authority may 331
rely solely upon the notice submitted under division (E) of this 332
section when determining whether the requirements of this 333
section have been satisfied for purposes of granting final 334
approval of such development. A public authority is immune from 335
liability related to the approval or construction of such 336
development when the approval is based upon information as 337
provided in this division. 338

Sec. 3781.271. Beginning on July 1, 2013, each protection 339
service shall reasonably modify its one-call notification system 340

so as to permit the reasonable identification of the location of 341
a proposed excavation site ~~in a manner in which the protection~~ 342
~~service may then notify any potentially affected limited basis~~ 343
~~participants.~~ Each member of a protection service, ~~including~~ 344
~~limited basis participants,~~ shall be responsible for providing 345
current contact information to the protection service. 346

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