

**As Reported by the House Energy and Natural Resources Committee**

**134th General Assembly**

**Regular Session**

**2021-2022**

**Sub. H. B. No. 430**

**Representative Cross**

**Cosponsors: Representatives Johnson, Holmes, Fraizer**

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**A BILL**

To amend sections 153.64 and 3781.27 and to enact  
section 5.248 of the Revised Code relating to  
property development and protecting underground  
utility facilities during construction and to  
designate April as "Ohio Work Zone Safety  
Awareness Month." 1  
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**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 153.64 and 3781.27 be amended and  
section 5.248 of the Revised Code be enacted to read as follows: 7  
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**Sec. 5.248.** The month of April is designated as "Ohio Work  
Zone Safety Awareness Month." 9  
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**Sec. 153.64.** (A) As used in this section: 11

(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. 12  
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(2) "Public authority" includes the following:	18
(a) The state, or a county, township, municipal corporation, school district, or other political subdivision;	19 20
(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;	21 22 23 24
(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.	25 26 27
(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.	28 29 30 31 32 33 34 35 36 37 38 39 40 41 42
(4) "Protection service" means a notification center not an owner of an underground utility facility that complies with the following:	43 44 45
(a) It exists for the purpose of receiving notice from	46

public authorities and from other persons that plan to prepare 47  
plans and specifications for, or engage in, public improvements 48  
involving digging, blasting, excavating, or other underground 49  
construction activities; 50

(b) It distributes the information described in division 51  
(A) (4) (a) of this section to its members and participants; 52

(c) It has registered by March 14, 1989, with the 53  
secretary of state and the public utilities commission under 54  
former division (F) of this section as it existed on that date. 55

(5) "Construction area" means the area delineated on the 56  
plans and specifications for the public improvement within which 57  
the work provided for in the contract will be performed. 58

(6) "Interstate gas pipeline" means an interstate gas 59  
pipeline subject to the "Natural Gas Pipeline Safety Act of 60  
1968," 49 U.S.C. 1671, as amended. 61

(7) "Interstate hazardous liquids pipeline" means an 62  
interstate hazardous liquids pipeline subject to the "Hazardous 63  
Liquid Pipeline Safety Act of 1979," 49 U.S.C. 2002, as amended. 64

(B) (1) In any public improvement which may involve 65  
underground utility facilities, the public authority, prior to 66  
preparing plans and specifications, shall contact a protection 67  
service and any owners of underground utility facilities that 68  
are not members of a protection service for the existence and 69  
location of all underground utility facilities within the 70  
construction area. 71

(2) If requested by the public authority, each owner of 72  
underground utility facilities within the construction area, 73  
other than real property owners listed in divisions (C) (1) to 74  
(4) of section 3781.25 of the Revised Code, shall do one of the 75

following within ten days of receiving notice from the public 76  
authority or a protection service: 77

(a) Mark the location of the underground utility 78  
facilities, other than those facilities serving single-family or 79  
two-, three-, or four-unit dwellings, within the construction 80  
area in accordance with the marking standards described in 81  
division (C) of section 3781.29 of the Revised Code; 82

(b) Provide digital or paper drawings, or both, that meet 83  
both of the following requirements: 84

(i) They are drawn to scale and include locatable items. 85  
Locatable items may include poles, pedestals, back of curb, 86  
sidewalk, edge of pavement, centerline of ditch, property lines, 87  
and other similar items. 88

(ii) They depict the location of the underground utility 89  
facilities. 90

(3) If the public improvement is within six hundred sixty 91  
feet of the center point of any interstate hazardous liquid 92  
pipeline or interstate gas pipeline, the pipeline operator shall 93  
provide to the public authority all of the following: 94

(a) A written notice of any special notification 95  
requirements; 96

(b) The location and description of any right-of-way 97  
associated with the pipeline as well as pipeline location 98  
information, such as providing documents reflecting the actual 99  
location of the pipeline, marking facilities on design drawings, 100  
and providing maps; 101

(c) Contact information for the primary contact person for 102  
the project area. 103

Compliance with ~~division~~divisions (B) (2) and (3) of this 104  
section does not relieve an owner of underground utility 105  
facilities from compliance with the marking requirements of 106  
section 3781.29 of the Revised Code. 107

~~(3)~~(4) The public authority shall include, in the plans 108  
and specifications for such improvement, the identity and 109  
location of the existing underground utility facilities located 110  
in the construction area as provided to the public authority by 111  
the owner of the underground utility facility and the name, 112  
address, and telephone number of each owner of any underground 113  
utility facilities in the construction area that does not 114  
subscribe to a protection service. 115

(a) If the public authority is notified that the 116  
improvement is within six hundred sixty feet of the center point 117  
of any interstate hazardous liquid pipeline or interstate gas 118  
pipeline, the public authority shall also include in the plans 119  
and specifications for the project all of the following: 120

(i) Any special notification requirements; 121

(ii) The name and contact information of the primary 122  
contact person for each pipeline operator who has provided 123  
notice to the public authority under division (B) (3) of this 124  
section; 125

(iii) Notice stating that the public authority has 126  
utilized reasonable means to contact the pipeline operator to 127  
verify the location of the pipeline and pipeline right-of-way; 128

(iv) Notice that the public authority has reviewed, or has 129  
attempted to review, preliminary information about the public 130  
improvement with the pipeline operator and incorporated the 131  
requested adjustments into the plans. 132

(b) For purposes of division (B) (4) (a) (iii) of this 133  
section, a public authority who provides notice to the 134  
protection service in accordance with division (B) (1) of this 135  
section is deemed to have utilized reasonable means to contact 136  
the operator of the pipeline. 137

~~(4)~~(5) Any anticipated temporary or permanent relocation 138  
of underground utility facilities deemed necessary by the public 139  
authority shall be negotiated or arranged by the public 140  
authority with the owners of the underground utility facilities 141  
prior to the start of construction. If a temporary or permanent 142  
relocation of utility facilities is necessary, the owner of the 143  
underground utility facility shall be given a reasonable time to 144  
move such utility facilities unless the contractor to whom the 145  
contract for a public improvement is awarded or its 146  
subcontractor agrees with the owner of the underground utility 147  
facility to coordinate relocation with construction operations. 148

~~(5)~~(6) The public authority, within ten calendar days 149  
after award of a contract for a public improvement, shall notify 150  
in writing all owners of underground utility facilities known to 151  
be located in the construction area of the public improvement of 152  
the name and address of the contractor to whom the contract for 153  
the public improvement was awarded. Where notice is given in 154  
writing by certified mail, the return receipt, signed by any 155  
person to whom the notice is delivered, shall be conclusive 156  
proof of notice. 157

(C) The contractor to whom a contract for a public 158  
improvement is awarded or its subcontractor, at least two 159  
working days, excluding Saturdays, Sundays, and legal holidays, 160  
but no more than ten working days, prior to commencing 161  
construction operations in the construction area which may 162

involve underground utility facilities, shall cause notice to be 163  
given to a protection service and the owners of underground 164  
utility facilities shown on the plans and specifications who are 165  
not members of a protection service. The owner of the 166  
underground utility facility, within forty-eight hours, 167  
excluding Saturdays, Sundays, and legal holidays, after notice 168  
is received, shall stake, mark, or otherwise designate the 169  
location of the underground utility facilities in the 170  
construction area in such a manner as to indicate their course 171  
together with the approximate depth at which they were 172  
installed. 173

(D) If the public authority fails to comply with the 174  
requirements of division (B) of this section, the contractor to 175  
whom the work is awarded or its subcontractor complies with the 176  
requirements of division (C) of this section, and the contractor 177  
or its subcontractor encounters underground utility facilities 178  
in the construction area that would have been shown on the plans 179  
and specifications for such improvement had a protection service 180  
or owner of the underground utility facility who is not a member 181  
of a protection service whose name, address, and telephone 182  
number is provided by the public authority been contacted, then 183  
the contractor, upon notification to the public authority, is 184  
entitled to an increase to the contract price for itself or its 185  
subcontractor for any additional work that must be undertaken or 186  
additional time that will be required and is entitled to an 187  
extension of the completion date of the contract for the period 188  
of time of any delays to the construction of the public 189  
improvement. 190

In the event of a dispute as to the application of this 191  
section, procedures may be commenced under the applicable terms 192  
of the construction contract, or if the contract contains no 193

provision for final resolution of the dispute, pursuant to the 194  
procedures for arbitration in Chapter 2711. of the Revised Code. 195

This section does not affect rights between the 196  
contractors and the public authority for any increase in 197  
contract price or additional time to perform the contract when 198  
the public authority complies with division (B) of this section. 199

Any public authority who complies with the requirements of 200  
division (B) of this section and any contractor or its 201  
subcontractor who complies with the requirements of division (C) 202  
of this section shall not be responsible to the owner of the 203  
underground utility facility if underground utility lines are 204  
encountered not as marked in accordance with the provisions of 205  
division (C) of this section by the owner of the underground 206  
utility facility, unless the contractor or its subcontractor has 207  
actual notice of the underground utility facility. Except as 208  
noted in this division, this section does not affect rights 209  
between the contractor or its subcontractor and the owner of the 210  
underground utility facility for failure to mark or erroneously 211  
marking utility lines. The public authority shall not make as a 212  
requirement of any contract for public improvement any change in 213  
responsibilities between the public authority and the owners of 214  
the underground utility facilities in connection with damage, 215  
injury, or loss to any property in connection with underground 216  
utility facilities. 217

The contractor or its subcontractor shall alert 218  
immediately the occupants of nearby premises as to any emergency 219  
that the contractor or subcontractor may create or discover at 220  
or near such premises. The contractor or its subcontractor shall 221  
report immediately to the owner or operator of the underground 222  
facility any break or leak on its lines or any dent, gouge, 223



groove, or other damage to such lines or to their coating or 224  
cathodic protection, made or discovered in the course of their 225  
excavation. 226

(E) This section does not affect rights between the public 227  
authority and the owners of the underground utility facilities 228  
for responsibility for costs involving removal, relocation, or 229  
protection of existing underground utility facilities, or for 230  
costs for delays occasioned thereby. 231

**Sec. 3781.27.** (A) In order to ascertain the name of each 232  
utility with underground utility facilities located at the 233  
proposed excavation site and the types and tolerance zones of 234  
those facilities based on current records of the utility, any 235  
developer who is planning a project that will require excavation 236  
or the designer employed by the developer for the project shall 237  
notify a protection service of the location of the proposed 238  
excavation site. 239

(B) Except in the case of limited basis participants, the 240  
protection service shall provide notice of the proposed 241  
excavation to each participant in the service that has 242  
underground utility facilities in the area of the proposed 243  
excavation site. Except as provided in section 3781.271 of the 244  
Revised Code, in the case of limited basis participants, the 245  
protection service shall notify the developer or the designer 246  
employed by the developer of the name of each limited basis 247  
participant with underground utility facilities within the 248  
municipal corporation or township and county of the proposed 249  
excavation site, and the developer or designer shall contact 250  
that utility. 251

(C) (1) Each utility that has any underground utility 252  
facilities in the area of the proposed excavation site shall 253

notify the developer or the designer employed by the developer 254  
of the locations and description of the utility's underground 255  
utility facilities located at the proposed excavation site in 256  
accordance with division (C) (2) of this section. The utility 257  
shall make this notification within ten working days of 258  
receiving a notice under division (B) of this section or by a 259  
later date acceptable to the developer or designer and utility. 260  
~~In~~ If the case proposed project is within six hundred sixty feet 261  
of the center point of an interstate hazardous liquid pipeline 262  
or an interstate gas pipeline, the utility ~~also~~ shall provide 263  
written notice to the developer or designer of any special 264  
notification requirements and identify its primary contact 265  
person for the project area. 266

(2) If requested by the developer or the designer employed 267  
by the developer, each utility shall do one of the following in 268  
order to comply with the notification requirements of division 269  
(C) (1) of this section: 270

(a) Mark the location of the underground utility 271  
facilities, other than those facilities serving single-family or 272  
two-, three-, or four-unit dwellings, at the proposed excavation 273  
site in accordance with the marking standards described in 274  
division (C) of section 3781.29 of the Revised Code; 275

(b) Provide digital or paper drawings, or both, that meet 276  
both of the following requirements: 277

(i) They are drawn to scale and include locatable items. 278  
Locatable items may include poles, pedestals, back of curb, 279  
sidewalk, edge of pavement, centerline of ditch, property lines, 280  
and other similar items. 281

(ii) They depict the location of the underground utility 282

facilities. 283

(3) In the case of an interstate hazardous pipeline and an 284  
interstate gas pipeline, the utility shall also provide the 285  
location and description of any right-of-way associated with the 286  
underground utility facilities as well as pipeline location 287  
information, such as providing documents reflecting the actual 288  
location of the pipeline, marking facilities on design drawings, 289  
and providing maps. 290

Compliance with ~~division~~divisions (C) (2) and (3) of this 291  
section does not relieve a utility from compliance with the 292  
marking requirements of section 3781.29 of the Revised Code. 293

(D) The utility shall determine if any relocation, 294  
support, or removal, or protective steps beyond those described 295  
in divisions (A) (1) to (5) of section 3781.30 of the Revised 296  
Code are required in order to prevent disturbance or 297  
interference with the underground utility facilities during 298  
excavation. The utility shall determine whether it will permit 299  
the developer or the designer employed by the developer to make 300  
those adjustments, and, if the adjustments are to be made by the 301  
utility, a reasonable amount of time necessary to make those 302  
adjustments. 303

(E) (1) Based on the information provided pursuant to 304  
division (C) of this section, the developer or the designer 305  
employed by the developer shall indicate the approximate 306  
locations of underground utility facilities either on or with 307  
the plans prepared for the project. The developer or designer 308  
shall include with the plans the names, addresses, and telephone 309  
numbers of utilities with underground facilities at the 310  
excavation site, indicating which utilities are limited basis 311  
participants; the name and telephone number of any appropriate 312

protection service; and any required adjustments as described in 313  
division (D) of this section, including the reasonable time 314  
necessary for the utility to make those adjustments. In the case 315  
of an interstate hazardous liquid pipeline or an interstate gas 316  
pipeline, the developer or designer also shall include ~~any~~all 317  
of the following: 318

(a) Any special notification requirements; 319

(b) The name and contact information of the primary 320  
contact person for each pipeline operator who has provided 321  
notice to the developer or designer under division (C) (1) of 322  
this section; 323

(c) Notice stating that the developer or designer has 324  
utilized reasonable means to contact the pipeline operator to 325  
verify the location of the pipeline and pipeline rights-of-way. 326  
Developers and designers who provide notice to the protection 327  
service in accordance with division (A) of this section are 328  
deemed to have complied with the notification requirement under 329  
this division. 330

(d) Notice that the developer or designer has reviewed, or 331  
attempted to review, preliminary information about the proposed 332  
development with the pipeline operator and incorporated 333  
requested adjustments into the plans. 334

(2) (a) Except as otherwise provided in division (E) (2) (b) 335  
of this section, the developer or designer shall provide the 336  
plans to the commercial excavator prior to entering into a 337  
contract that involves such excavation. If the developer does 338  
not prepare written plans or have any written plans prepared, 339  
the developer shall otherwise provide the approximate locations, 340  
identifying information on the utilities, information on 341

required adjustments, and any special notification requirements 342  
to the commercial excavator before excavation begins. 343

(b) When the developer is a utility, the utility shall 344  
provide either the plans or the approximate locations, 345  
identifying information on the utilities, information on 346  
required adjustments, and any special notification requirements 347  
to the excavator before excavation begins. 348

(3) The developer or designer shall design the project 349  
taking into account the approximate location of existing 350  
underground utility facilities in order to prevent, as far as is 351  
practicable, disturbance or interference with those facilities. 352

(4) When a project includes installation of new 353  
underground utility facilities, the developer or designer shall 354  
attempt to design the installation so that at least a twelve- 355  
inch clearance is provided between the facilities. No facility 356  
shall be installed with less than a twelve-inch clearance unless 357  
the owners of existing facilities are notified, in writing, 358  
prior to installation. 359

(F) (1) This section does not apply in the case of a 360  
utility making emergency repair to its own underground utility 361  
facility. 362

(2) This section does not apply in the case of the owner 363  
of the types of real property identified in divisions (C) (1) to 364  
(4) of section 3781.25 of the Revised Code, unless the owner 365  
employs a designer to make written plans for work that will 366  
involve excavation. If the owner employs a designer, the 367  
designer shall contact a protection service and utilities that 368  
are limited basis participants in accordance with divisions (A) 369  
and (B) of this section, and shall include in or with the plans 370

the information required under division (E) of this section. The 371  
owner shall provide that information to the excavator. 372

(G) A public authority, as defined in section 153.64 of 373  
the Revised Code, may withhold approval to a project until the 374  
requirements of this section have been satisfied by the 375  
developer and utility, as applicable. A public authority may 376  
rely solely upon the notice submitted under division (E) of this 377  
section when determining whether the requirements of this 378  
section have been satisfied for purposes of granting final 379  
approval of such development. A public authority is immune from 380  
liability related to the approval or construction of such 381  
development when the approval is based upon information as 382  
provided in this division. 383

**Section 2.** That existing sections 153.64 and 3781.27 of 384  
the Revised Code are hereby repealed. 385