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134th General Assembly  
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Sub. H. B. No. 430

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**A BILL**

To amend sections 153.64 and 3781.27 of the Revised Code relating to property development and protecting underground utility facilities during construction.

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

**Section 1.** That sections 153.64 and 3781.27 of the Revised Code be amended to read as follows:

**Sec. 153.64.** (A) As used in this section:

(1) "Public improvement" means any construction, reconstruction, improvement, enlargement, alteration, or repair of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, water works, and all other structures or works of any nature by a public authority.

(2) "Public authority" includes the following:

(a) The state, or a county, township, municipal corporation, school district, or other political subdivision;



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(b) Any public agency, authority, board, commission, instrumentality, or special district of or in the state or a county, township, municipal corporation, school district, or other political subdivision;

(c) A designer as defined in section 3781.25 of the Revised Code who is acting on behalf of any entity described in division (A)(2)(a) or (b) of this section.

(3) "Underground utility facilities" includes any item buried or placed below ground or submerged under water for use in connection with the storage or conveyance of water or sewage; or electronic, telephonic, or telegraphic communications; electricity; petroleum products; manufactured, mixed, or natural gas; synthetic or liquified natural gas; propane gas; or other substances. "Underground utility facilities" includes, but is not limited to, all operational underground pipes, sewers, tubing, conduits, cables, valves, lines, wires, manholes, and attachments, whether owned by any public or private or profit or nonprofit person, firm, partnership, company, corporation, joint stock association, joint venture, or voluntary association, wherever organized or incorporated, except for a private septic system in a single- or multi-family dwelling utilized only for that dwelling and not connected to any other system.

(4) "Protection service" means a notification center not an owner of an underground utility facility that complies with the following:

(a) It exists for the purpose of receiving notice from public authorities and from other persons that plan to prepare plans and specifications for, or engage in, public improvements involving digging, blasting, excavating, or other underground construction activities;

(b) It distributes the information described in division 47  
(A) (4) (a) of this section to its members and participants; 48

(c) It has registered by March 14, 1989, with the 49  
secretary of state and the public utilities commission under 50  
former division (F) of this section as it existed on that date. 51

(5) "Construction area" means the area delineated on the 52  
plans and specifications for the public improvement within which 53  
the work provided for in the contract will be performed. 54

(6) "Interstate gas pipeline" means an interstate gas 55  
pipeline subject to the "Natural Gas Pipeline Safety Act of 56  
1968," 49 U.S.C. 1671, as amended. 57

(7) "Interstate hazardous liquids pipeline" means an 58  
interstate hazardous liquids pipeline subject to the "Hazardous 59  
Liquid Pipeline Safety Act of 1979," 49 U.S.C. 2002, as amended. 60

(B) (1) In any public improvement which may involve 61  
underground utility facilities, the public authority, prior to 62  
preparing plans and specifications, shall contact a protection 63  
service and any owners of underground utility facilities that 64  
are not members of a protection service for the existence and 65  
location of all underground utility facilities within the 66  
construction area. 67

(2) If requested by the public authority, each owner of 68  
underground utility facilities within the construction area, 69  
other than real property owners listed in divisions (C) (1) to 70  
(4) of section 3781.25 of the Revised Code, shall do one of the 71  
following within ten days of receiving notice from the public 72  
authority or a protection service: 73

(a) Mark the location of the underground utility 74  
facilities, other than those facilities serving single-family or 75

two-, three-, or four-unit dwellings, within the construction 76  
area in accordance with the marking standards described in 77  
division (C) of section 3781.29 of the Revised Code; 78

(b) Provide digital or paper drawings, or both, that meet 79  
both of the following requirements: 80

(i) They are drawn to scale and include locatable items. 81  
Locatable items may include poles, pedestals, back of curb, 82  
sidewalk, edge of pavement, centerline of ditch, property lines, 83  
and other similar items. 84

(ii) They depict the location of the underground utility 85  
facilities. 86

(3) If the public improvement is within six hundred sixty 87  
feet of the center point of any interstate hazardous liquid 88  
pipeline or interstate gas pipeline, the pipeline operator shall 89  
provide to the public authority all of the following: 90

(a) A written notice of any special notification 91  
requirements; 92

(b) The location and description of any right-of-way 93  
associated with the pipeline as well as pipeline location 94  
information, such as providing documents reflecting the actual 95  
location of the pipeline, marking facilities on design drawings, 96  
and providing maps; 97

(c) Contact information for the primary contact person for 98  
the project area. 99

Compliance with ~~division~~ divisions (B) (2) and (3) of this 100  
section does not relieve an owner of underground utility 101  
facilities from compliance with the marking requirements of 102  
section 3781.29 of the Revised Code. 103

~~(3)~~-(4) The public authority shall include, in the plans 104  
and specifications for such improvement, the identity and 105  
location of the existing underground utility facilities located 106  
in the construction area as provided to the public authority by 107  
the owner of the underground utility facility and the name, 108  
address, and telephone number of each owner of any underground 109  
utility facilities in the construction area that does not 110  
subscribe to a protection service. 111

(a) If the public authority is notified that the 112  
improvement is within six hundred sixty feet of the center point 113  
of any interstate hazardous liquid pipeline or interstate gas 114  
pipeline, the public authority shall also include in the plans 115  
and specifications for the project all of the following: 116

(i) Any special notification requirements; 117

(ii) The name and contact information of the primary 118  
contact person for each pipeline operator who has provided 119  
notice to the public authority under division (B) (3) of this 120  
section; 121

(iii) Notice stating that the public authority has 122  
utilized reasonable means to contact the pipeline operator to 123  
verify the location of the pipeline and pipeline right-of-way; 124

(iv) Notice that the public authority has reviewed, or has 125  
attempted to review, preliminary information about the public 126  
improvement with the pipeline operator and incorporated the 127  
requested adjustments into the plans. 128

(b) For purposes of division (B) (4) (a) (iii) of this 129  
section, a public authority who provides notice to the 130  
protection service in accordance with division (B) (1) of this 131  
section is deemed to have utilized reasonable means to contact 132

the operator of the pipeline. 133

~~(4)~~ (5) Any anticipated temporary or permanent relocation 134  
of underground utility facilities deemed necessary by the public 135  
authority shall be negotiated or arranged by the public 136  
authority with the owners of the underground utility facilities 137  
prior to the start of construction. If a temporary or permanent 138  
relocation of utility facilities is necessary, the owner of the 139  
underground utility facility shall be given a reasonable time to 140  
move such utility facilities unless the contractor to whom the 141  
contract for a public improvement is awarded or its 142  
subcontractor agrees with the owner of the underground utility 143  
facility to coordinate relocation with construction operations. 144

~~(5)~~ (6) The public authority, within ten calendar days 145  
after award of a contract for a public improvement, shall notify 146  
in writing all owners of underground utility facilities known to 147  
be located in the construction area of the public improvement of 148  
the name and address of the contractor to whom the contract for 149  
the public improvement was awarded. Where notice is given in 150  
writing by certified mail, the return receipt, signed by any 151  
person to whom the notice is delivered, shall be conclusive 152  
proof of notice. 153

(C) The contractor to whom a contract for a public 154  
improvement is awarded or its subcontractor, at least two 155  
working days, excluding Saturdays, Sundays, and legal holidays, 156  
but no more than ten working days, prior to commencing 157  
construction operations in the construction area which may 158  
involve underground utility facilities, shall cause notice to be 159  
given to a protection service and the owners of underground 160  
utility facilities shown on the plans and specifications who are 161  
not members of a protection service. The owner of the 162

underground utility facility, within forty-eight hours, 163  
excluding Saturdays, Sundays, and legal holidays, after notice 164  
is received, shall stake, mark, or otherwise designate the 165  
location of the underground utility facilities in the 166  
construction area in such a manner as to indicate their course 167  
together with the approximate depth at which they were 168  
installed. 169

(D) If the public authority fails to comply with the 170  
requirements of division (B) of this section, the contractor to 171  
whom the work is awarded or its subcontractor complies with the 172  
requirements of division (C) of this section, and the contractor 173  
or its subcontractor encounters underground utility facilities 174  
in the construction area that would have been shown on the plans 175  
and specifications for such improvement had a protection service 176  
or owner of the underground utility facility who is not a member 177  
of a protection service whose name, address, and telephone 178  
number is provided by the public authority been contacted, then 179  
the contractor, upon notification to the public authority, is 180  
entitled to an increase to the contract price for itself or its 181  
subcontractor for any additional work that must be undertaken or 182  
additional time that will be required and is entitled to an 183  
extension of the completion date of the contract for the period 184  
of time of any delays to the construction of the public 185  
improvement. 186

In the event of a dispute as to the application of this 187  
section, procedures may be commenced under the applicable terms 188  
of the construction contract, or if the contract contains no 189  
provision for final resolution of the dispute, pursuant to the 190  
procedures for arbitration in Chapter 2711. of the Revised Code. 191

This section does not affect rights between the 192

contractors and the public authority for any increase in 193  
contract price or additional time to perform the contract when 194  
the public authority complies with division (B) of this section. 195

Any public authority who complies with the requirements of 196  
division (B) of this section and any contractor or its 197  
subcontractor who complies with the requirements of division (C) 198  
of this section shall not be responsible to the owner of the 199  
underground utility facility if underground utility lines are 200  
encountered not as marked in accordance with the provisions of 201  
division (C) of this section by the owner of the underground 202  
utility facility, unless the contractor or its subcontractor has 203  
actual notice of the underground utility facility. Except as 204  
noted in this division, this section does not affect rights 205  
between the contractor or its subcontractor and the owner of the 206  
underground utility facility for failure to mark or erroneously 207  
marking utility lines. The public authority shall not make as a 208  
requirement of any contract for public improvement any change in 209  
responsibilities between the public authority and the owners of 210  
the underground utility facilities in connection with damage, 211  
injury, or loss to any property in connection with underground 212  
utility facilities. 213

The contractor or its subcontractor shall alert 214  
immediately the occupants of nearby premises as to any emergency 215  
that the contractor or subcontractor may create or discover at 216  
or near such premises. The contractor or its subcontractor shall 217  
report immediately to the owner or operator of the underground 218  
facility any break or leak on its lines or any dent, gouge, 219  
groove, or other damage to such lines or to their coating or 220  
cathodic protection, made or discovered in the course of their 221  
excavation. 222



(E) This section does not affect rights between the public 223  
authority and the owners of the underground utility facilities 224  
for responsibility for costs involving removal, relocation, or 225  
protection of existing underground utility facilities, or for 226  
costs for delays occasioned thereby. 227

**Sec. 3781.27.** (A) In order to ascertain the name of each 228  
utility with underground utility facilities located at the 229  
proposed excavation site and the types and tolerance zones of 230  
those facilities based on current records of the utility, any 231  
developer who is planning a project that will require excavation 232  
or the designer employed by the developer for the project shall 233  
notify a protection service of the location of the proposed 234  
excavation site. 235

(B) Except in the case of limited basis participants, the 236  
protection service shall provide notice of the proposed 237  
excavation to each participant in the service that has 238  
underground utility facilities in the area of the proposed 239  
excavation site. Except as provided in section 3781.271 of the 240  
Revised Code, in the case of limited basis participants, the 241  
protection service shall notify the developer or the designer 242  
employed by the developer of the name of each limited basis 243  
participant with underground utility facilities within the 244  
municipal corporation or township and county of the proposed 245  
excavation site, and the developer or designer shall contact 246  
that utility. 247

(C) (1) Each utility that has any underground utility 248  
facilities in the area of the proposed excavation site shall 249  
notify the developer or the designer employed by the developer 250  
of the locations and description of the utility's underground 251  
utility facilities located at the proposed excavation site in 252

accordance with division (C) (2) of this section. The utility 253  
shall make this notification within ten working days of 254  
receiving a notice under division (B) of this section or by a 255  
later date acceptable to the developer or designer and utility. 256  
~~In~~ If the ease-proposed project is within six hundred sixty feet 257  
of the center point of an interstate hazardous liquid pipeline 258  
or an interstate gas pipeline, the utility ~~also~~ shall provide 259  
written notice to the developer or designer of any special 260  
notification requirements and identify its primary contact 261  
person for the project area. 262

(2) If requested by the developer or the designer employed 263  
by the developer, each utility shall do one of the following in 264  
order to comply with the notification requirements of division 265  
(C) (1) of this section: 266

(a) Mark the location of the underground utility 267  
facilities, other than those facilities serving single-family or 268  
two-, three-, or four-unit dwellings, at the proposed excavation 269  
site in accordance with the marking standards described in 270  
division (C) of section 3781.29 of the Revised Code; 271

(b) Provide digital or paper drawings, or both, that meet 272  
both of the following requirements: 273

(i) They are drawn to scale and include locatable items. 274  
Locatable items may include poles, pedestals, back of curb, 275  
sidewalk, edge of pavement, centerline of ditch, property lines, 276  
and other similar items. 277

(ii) They depict the location of the underground utility 278  
facilities. 279

(3) In the case of an interstate hazardous pipeline and an 280  
interstate gas pipeline, the utility shall also provide the 281

location and description of any right-of-way associated with the 282  
underground utility facilities as well as pipeline location 283  
information, such as providing documents reflecting the actual 284  
location of the pipeline, marking facilities on design drawings, 285  
and providing maps. 286

Compliance with ~~division~~divisions (C) (2) and (3) of this 287  
section does not relieve a utility from compliance with the 288  
marking requirements of section 3781.29 of the Revised Code. 289

(D) The utility shall determine if any relocation, 290  
support, or removal, or protective steps beyond those described 291  
in divisions (A) (1) to (5) of section 3781.30 of the Revised 292  
Code are required in order to prevent disturbance or 293  
interference with the underground utility facilities during 294  
excavation. The utility shall determine whether it will permit 295  
the developer or the designer employed by the developer to make 296  
those adjustments, and, if the adjustments are to be made by the 297  
utility, a reasonable amount of time necessary to make those 298  
adjustments. 299

(E) (1) Based on the information provided pursuant to 300  
division (C) of this section, the developer or the designer 301  
employed by the developer shall indicate the approximate 302  
locations of underground utility facilities either on or with 303  
the plans prepared for the project. The developer or designer 304  
shall include with the plans the names, addresses, and telephone 305  
numbers of utilities with underground facilities at the 306  
excavation site, indicating which utilities are limited basis 307  
participants; the name and telephone number of any appropriate 308  
protection service; and any required adjustments as described in 309  
division (D) of this section, including the reasonable time 310  
necessary for the utility to make those adjustments. In the case 311

of an interstate hazardous liquid pipeline or an interstate gas pipeline, the developer or designer also shall include ~~any~~ all of the following:

(a) Any special notification requirements;

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

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

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

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

(b) When the developer is a utility, the utility shall

provide either the plans or the approximate locations, 341  
identifying information on the utilities, information on 342  
required adjustments, and any special notification requirements 343  
to the excavator before excavation begins. 344

(3) The developer or designer shall design the project 345  
taking into account the approximate location of existing 346  
underground utility facilities in order to prevent, as far as is 347  
practicable, disturbance or interference with those facilities. 348

(4) When a project includes installation of new 349  
underground utility facilities, the developer or designer shall 350  
attempt to design the installation so that at least a twelve- 351  
inch clearance is provided between the facilities. No facility 352  
shall be installed with less than a twelve-inch clearance unless 353  
the owners of existing facilities are notified, in writing, 354  
prior to installation. 355

(F) (1) This section does not apply in the case of a 356  
utility making emergency repair to its own underground utility 357  
facility. 358

(2) This section does not apply in the case of the owner 359  
of the types of real property identified in divisions (C) (1) to 360  
(4) of section 3781.25 of the Revised Code, unless the owner 361  
employs a designer to make written plans for work that will 362  
involve excavation. If the owner employs a designer, the 363  
designer shall contact a protection service and utilities that 364  
are limited basis participants in accordance with divisions (A) 365  
and (B) of this section, and shall include in or with the plans 366  
the information required under division (E) of this section. The 367  
owner shall provide that information to the excavator. 368

(G) A public authority, as defined in section 153.64 of 369

the Revised Code, may withhold approval to a project until the 370  
requirements of this section have been satisfied by the 371  
developer and utility, as applicable. A public authority may 372  
rely solely upon the notice submitted under division (E) of this 373  
section when determining whether the requirements of this 374  
section have been satisfied for purposes of granting final 375  
approval of such development. A public authority is immune from 376  
liability related to the approval or construction of such 377  
development when the approval is based upon information as 378  
provided in this division. 379

**Section 2.** That existing sections 153.64 and 3781.27 of 380  
the Revised Code are hereby repealed. 381