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Representative Cross

Cosponsors: Representatives Johnson, Holmes, Fraizer, Carruthers, Edwards, Galonski, Ghanbari, Hillyer, Humphrey, Ingram, John, Jones, Lanese, LaRe, Lightbody, Loychik, Miller, A., Miller, J., O'Brien, Patton, Riedel, Stephens, White

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 12
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authority. 17

(2) "Public authority" includes the following: 18

(a) The state, or a county, township, municipal 19
corporation, school district, or other political subdivision; 20

(b) Any public agency, authority, board, commission, 21
instrumentality, or special district of or in the state or a 22
county, township, municipal corporation, school district, or 23
other political subdivision; 24

(c) A designer as defined in section 3781.25 of the 25
Revised Code who is acting on behalf of any entity described in 26
division (A) (2) (a) or (b) of this section. 27

(3) "Underground utility facilities" includes any item 28
buried or placed below ground or submerged under water for use 29
in connection with the storage or conveyance of water or sewage; 30
or electronic, telephonic, or telegraphic communications; 31
electricity; petroleum products; manufactured, mixed, or natural 32
gas; synthetic or liquified natural gas; propane gas; or other 33
substances. "Underground utility facilities" includes, but is 34
not limited to, all operational underground pipes, sewers, 35
tubing, conduits, cables, valves, lines, wires, manholes, and 36
attachments, whether owned by any public or private or profit or 37
nonprofit person, firm, partnership, company, corporation, joint 38
stock association, joint venture, or voluntary association, 39
wherever organized or incorporated, except for a private septic 40
system in a single- or multi-family dwelling utilized only for 41
that dwelling and not connected to any other system. 42

(4) "Protection service" means a notification center not 43
an owner of an underground utility facility that complies with 44
the following: 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 ease-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 facilities. 282
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(3) In the case of an interstate hazardous pipeline and an interstate gas pipeline, the utility shall also provide the location and description of any right-of-way associated with the underground utility facilities as well as pipeline location information, such as providing documents reflecting the actual location of the pipeline, marking facilities on design drawings, and providing maps. 284
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Compliance with ~~division~~divisions (C) (2) and (3) of this section does not relieve a utility from compliance with the marking requirements of section 3781.29 of the Revised Code. 291
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(D) The utility shall determine if any relocation, support, or removal, or protective steps beyond those described in divisions (A) (1) to (5) of section 3781.30 of the Revised Code are required in order to prevent disturbance or interference with the underground utility facilities during excavation. The utility shall determine whether it will permit the developer or the designer employed by the developer to make those adjustments, and, if the adjustments are to be made by the utility, a reasonable amount of time necessary to make those adjustments. 294
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(E) (1) Based on the information provided pursuant to division (C) of this section, the developer or the designer employed by the developer shall indicate the approximate locations of underground utility facilities either on or with the plans prepared for the project. The developer or designer shall include with the plans the names, addresses, and telephone numbers of utilities with underground facilities at the excavation site, indicating which utilities are limited basis 304
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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