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SB152 UNDERGROUND PROTECTION COMMISSION (Buehrer S)

To modify the call before you dig notification system and to create the Underground Protection Commission of Ohio and the State Underground Protection Advisory Committee.

Roger Lipscomb, president of the Ohio Utilities Protection Service (OUPS) said the lack of periodic updates to the Ohio Revised Code defining safe parameters for underground excavation of utility lines has left Ohioans vulnerable.

Not only are these provisions important to Ohio stakeholders, Lipscomb explained, the federal government as well has taken an interest in damage prevention laws. The primary concern for the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) has been enforcement. Ohio currently has no enforcement mechanism in place and as such PHMSA's interest in passing SB152 (Buehrer), he said.

OUPS' role, Lipscomb said, in this process has been one of a facilitator by encouraging stakeholder interests; a coordinator by compiling and organizing ideas relating to necessary changes; and an expert in the industry by understanding all aspects of underground damage prevention, not only in Ohio but nationwide.

John Williams, director of Service Monitoring and Enforcement Division of the Public Utilities Commission of Ohio (PUCO) said the PUCO's Gas Pipeline Safety Program is partially funded through a federal grant from the U.S. Department of Transportation (DOT). The amount of funding is determined through a formula that accounts for each state's adherence to prescribed standards. In the past, some federal funding for Ohio has been withheld because current Ohio law does not meet federal damage prevention standards.

The deficiencies would be corrected with the passage of SB152, he said. Ohio's program total is $1.5 million with a 60/40 split - the federal portion is $900,000 and the state portion is $600,000. However because Ohio does not have a law in place - which SB152 would satisfy - the state currently loses about $5,000 of this funding.

In addition, under the Federal Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act of 2006, U.S. DOT is required to develop rules to allow enforcement proceedings against an excavator for violation of one-call damage prevention laws in the event that a state damage prevention program is

determined to be "inadequate." Current Ohio law, Williams said, would be deemed "inadequate by the U.S. DOT since the law has no enforcement provisions currently.

The enactment of SB152 would not have any detrimental impact to PUCO's administration of the pipeline safety regulations with the exception of setting rules in state law.

Representing the Ohio Oil and Gas Association, Executive Vice President Thomas Stewart supported the bill. The Oil and Gas Association also serves as host, administrator and advisor for the Oil and Gas Producers Underground Protection Service (OGPUPS).

"I want to stress that SB152 is a leap of faith for small, private companies who are owners of non-utility, noneconomically regulated underground facilities," Stewart said. "These businesses are acutely cost-sensitive, particularly for exposure to uncontrolled costs. They cannot pass on or recover regulatory costs."

Since 1989, these small businesses have had access to OGPUPS, a cost-effective protection service that also equitably distributes liability among involved parties, he said.

"Should the General Assembly enact appropriate upgrades to Ohio law, OGPUPS will move forward with OUPS in negotiations to possibly merge the operations. If a merger happens, Ohio would have an authentic 'one call' underground protection service," Stewart stated.

"This is something excavators and large utility operators have persistently advocated for and sought to attain over the past 20 years, yet failed to achieve during two legislative campaigns, both designed to brutally enforce the concept."

"Coincidentally, if a merger were to happen, small private businesses, such as my members, would be left with only one legally-available choice for underground protection."

In a partnership with OUPS, Stewart said his members could receive more benefits than risk for a merger, and the wider public good may similarly benefit.