

As Passed by the Senate

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Am. Sub. S. B. No. 378

Senator Coley

**Cosponsors: Senators Peterson, Hite, Eklund, Hughes, Kearney, LaRose,
Patton, Sawyer, Schiavoni, Seitz, Uecker**

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A B I L L

To amend sections 3781.25 and 4905.26 and to enact 1
sections 3781.34, 3781.341, 3781.342, 3781.343, 2
3781.36, 3781.38, 4905.041, 4913.01, 4913.03, 3
4913.05, 4913.07, 4913.09, 4913.13, 4913.15, 4
4913.151, 4913.152, 4913.16, 4913.17, 4913.171, 5
4913.19, 4913.20, 4913.21, 4913.22, 4913.23, 6
4913.25, 4913.251, 4913.252, 4913.26, 4913.27, 7
4913.29, 4913.30, 4913.31, 4913.43, 4913.45, 8
4913.47, 4913.50, and 4913.52 of the Revised Code 9
regarding the enforcement of the law governing the 10
protection of underground utility facilities. 11

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

Section 1. That sections 3781.25 and 4905.26 be amended and 12
sections 3781.34, 3781.341, 3781.342, 3781.343, 3781.36, 3781.38, 13
4905.041, 4913.01, 4913.03, 4913.05, 4913.07, 4913.09, 4913.13, 14
4913.15, 4913.151, 4913.152, 4913.16, 4913.17, 4913.171, 4913.19, 15
4913.20, 4913.21, 4913.22, 4913.23, 4913.25, 4913.251, 4913.252, 16
4913.26, 4913.27, 4913.29, 4913.30, 4913.31, 4913.43, 4913.45, 17
4913.47, 4913.50, and 4913.52 of the Revised Code be enacted to 18
read as follows: 19

Sec. 3781.25. As used in sections 3781.25 to ~~3781.32~~ 3781.38 20
of the Revised Code: 21

(A) "Protection service" means a notification center, but not 22
an owner of an individual utility, that exists for the purpose of 23
receiving notice from persons that prepare plans and 24
specifications for or that engage in excavation work, that 25
distributes this information to its members and participants, and 26
that has registered by March 14, 1989, with the secretary of state 27
and the public utilities commission of Ohio under former division 28
(F) of section 153.64 of the Revised Code as it existed on that 29
date. 30

(B) "Underground utility facility" includes any item buried 31
or placed below ground or submerged under water for use in 32
connection with the storage or conveyance of water or sewage; 33
electronic, telephonic, or telegraphic communications; television 34
signals; electricity; crude oil; petroleum products; artificial or 35
liquefied petroleum; manufactured, mixed, or natural gas; 36
synthetic or liquefied natural gas; propane gas; coal; steam; hot 37
water; or other substances. "Underground utility facility" 38
includes all operational underground pipes, sewers, tubing, 39
conduits, cables, valves, lines, wires, worker access holes, and 40
attachments, owned by any person, firm, or company. "Underground 41
utility facility" does not include a private septic system in a 42
one-family or multi-family dwelling utilized only for that 43
dwelling and not connected to any other system. 44

(C) "Utility" means any owner or operator, or an agent of an 45
owner or operator, of an underground utility facility, including 46
any public authority, that owns or operates an underground utility 47
facility. "Utility" does not include the owners of the following 48
types of real property with respect to any underground utility 49
facility located on that property: 50

(1) The owner of a single-family or two-, three-, or four-unit residential dwelling;	51 52
(2) The owner of an apartment complex;	53
(3) The owner of a commercial or industrial building or complex of buildings, including but not limited to, factories and shopping centers;	54 55 56
(4) The owner of a farm;	57
<u>(5) The owner of an exempt domestic well as defined in section 1509.01 of the Revised Code.</u>	58 59
(D) "Approximate location" means the immediate area within the perimeter of a proposed excavation site where the underground utility facilities are located.	60 61 62
(E) "Tolerance zone" means the site of the underground utility facility including the width of the underground utility facility plus eighteen inches on each side of the facility.	63 64 65
(F) "Working days" excludes Saturdays, Sundays, and legal holidays as defined in section 1.14 of the Revised Code and "hours" excludes hours on Saturdays, Sundays, and legal holidays.	66 67 68
(G) "Designer" means an engineer, architect, landscape architect, contractor, surveyor, or other person who develops plans or designs for real property improvement or any other activity that will involve excavation.	69 70 71 72
(H) "Developer" means the person for whom the excavation is made and who will own or be the lessee of any improvement that is the object of the excavation.	73 74 75
(I) "Excavation" means the use of hand tools, powered equipment, or explosives to move earth, rock, or other materials in order to penetrate or bore or drill into the earth, or to demolish any structure whether or not it is intended that the demolition will disturb the earth. "Excavation" includes such	76 77 78 79 80

agricultural operations as the installation of drain tile, but 81
excludes agricultural operations such as tilling that do not 82
penetrate the earth to a depth of more than twelve inches. 83
"Excavation" excludes any activity by a governmental entity which 84
does not penetrate the earth to a depth of more than twelve 85
inches. "Excavation" excludes coal mining and reclamation 86
operations regulated under Chapter 1513. of the Revised Code and 87
rules adopted under it. 88

(J) "Excavation site" means the area within which excavation 89
will be performed. 90

(K) "Excavator" means the person or persons responsible for 91
making the actual excavation. 92

(L) "Interstate gas pipeline" means an interstate gas 93
pipeline subject to the "Natural Gas Pipeline Safety Act of 1968," 94
82 Stat. 720, 49 U.S.C. 1671, as amended. 95

(M) "Interstate hazardous liquids pipeline" means an 96
interstate hazardous liquids pipeline subject to the "Hazardous 97
Liquid Pipeline Safety Act of 1979," 93 Stat. 1003, 49 U.S.C. 98
2002, as amended. 99

(N) "Special notification requirements" means requirements 100
for notice to an owner of an interstate hazardous liquids pipeline 101
or an interstate gas pipeline that must be made prior to 102
commencing excavation and pursuant to the owner's public safety 103
program adopted under federal law. 104

(O) "Commercial excavator" means any excavator, excluding a 105
utility as defined in this section, that satisfies both of the 106
following: 107

(1) For compensation, performs, directs, supervises, or is 108
responsible for the excavation, construction, improvement, 109
renovation, repair, or maintenance on a construction project and 110
holds out or represents oneself as qualified or permitted to act 111

as such;	112
(2) Employs tradespersons who actually perform excavation,	113
construction, improvement, renovation, repair, or maintenance on a	114
construction project.	115
(P) "Person" has the same meaning as in section 1.59 of the	116
Revised Code and also includes a public authority.	117
(Q) "Positive response system" means an automated system	118
facilitated by a protection service allowing a utility to	119
communicate to an excavator the presence or absence of any	120
conflict between the existing underground utility facilities and	121
the proposed excavation site.	122
(R) "One-call notification system" means the software or	123
communications system used by a protection system to notify its	124
membership of proposed excavation sites.	125
(S) "Project" means any undertaking by a private party of an	126
improvement requiring excavation.	127
(T) "Public authority" has the same meaning as in section	128
153.64 of the Revised Code.	129
(U) "Improvement" means any construction, reconstruction,	130
improvement, enlargement, alteration, or repair of a building,	131
highway, drainage system, water system, road, street, alley,	132
sewer, ditch, sewage disposal plant, water works, and all other	133
structures or works of any nature.	134
(V) "Emergency" means an unexpected occurrence causing a	135
disruption or damage to an underground utility facility that	136
requires immediate repair or a situation that creates a clear and	137
imminent danger that demands immediate action to prevent or	138
mitigate loss of or damage to life, health, property, or essential	139
public services.	140
(W) "Nondestructive manner" means using low-impact, low-risk	141

technologies such as hand tools, or hydro or air vacuum excavation 142
equipment. 143

(X) "Cable service provider" has the same meaning as in 144
section 1332.01 of the Revised Code. 145

(Y) "Electric cooperative" and "electric utility" have the 146
same meanings as in section 4928.01 of the Revised Code. 147

Sec. 3781.34. (A) There is hereby created the underground 148
technical committee. 149

(B) The committee shall consist of four members from the 150
stakeholder group of the commercial excavator industry, in 151
accordance with division (C) of this section, and one member from 152
each of the following stakeholder groups: 153

(1) The natural gas transmission pipeline industry, appointed 154
by the president of the senate; 155

(2) The natural gas distribution industry, appointed by the 156
speaker of the house of representatives; 157

(3) Electric utilities, appointed by the governor; 158

(4) Electric cooperatives, appointed by the speaker of the 159
house of representatives; 160

(5) A statewide organization representing independent oil and 161
gas producers, appointed by the president of the senate; 162

(6) The telephone industry, appointed by the governor; 163

(7) Cable service providers, appointed by the president of 164
the senate; 165

(8) Locators of underground utility facilities, appointed by 166
the speaker of the house of representatives; 167

(9) Municipal corporations, appointed by the governor; 168

(10) The department of transportation, appointed by the 169

<u>governor;</u>	170
<u>(11) The general public, appointed by the governor;</u>	171
<u>(12) The hazardous liquids pipeline industry, appointed by the governor;</u>	172 173
<u>(13) Designers, developers, or surveyors, appointed by the governor.</u>	174 175
<u>(C) The president of the senate, the speaker of the house of representatives, the minority leader of the senate, and the minority leader of the house of representatives shall each appoint one of the members from the stakeholder group of the commercial excavator industry.</u>	176 177 178 179 180
<u>(D) The terms of office for members initially appointed shall be staggered at two, three, and four years and determined by lot, except that the stakeholder group of the commercial excavator industry shall have only one member with an initial two-year term. The term of office for each member subsequently appointed shall be four years.</u>	181 182 183 184 185 186
<u>(E) Each member may be reappointed for an unlimited number of times.</u>	187 188
<u>(F) If a vacancy occurs during a member's term of office, a new member shall be appointed in the same manner as the original appointment.</u>	189 190 191
<u>Sec. 3781.341. A member of the underground technical committee who has a conflict of interest in a particular review under section 4913.15 of the Revised Code shall declare the conflict to the committee and recuse self from committee discussions and voting regarding that review.</u>	192 193 194 195 196
<u>Sec. 3781.342. (A) The underground technical committee may conduct meetings in person, by teleconference, or by video</u>	197 198

<u>conference.</u>	199
<u>(B) The committee shall establish a primary meeting location that is open and accessible to the public.</u>	200 201
<u>(C) Before convening a meeting by teleconference or video conference, the committee shall send, via electronic mail, facsimile, or United States postal service, a copy of meeting-related documents to each committee member.</u>	202 203 204 205
<u>(D) The minutes of each meeting shall specify who was attending by teleconference, who was attending by video conference, and who was physically present. Any vote taken in a meeting held by teleconference that is not unanimous shall be recorded as a roll call vote.</u>	206 207 208 209 210
<u>Sec. 3781.343. A member of the underground technical committee is not subject to the disclosure requirements of sections 102.02 and 102.021 of the Revised Code by virtue of membership on the committee.</u>	211 212 213 214
<u>Sec. 3781.36. (A) The underground technical committee shall do the following:</u>	215 216
<u>(1) Coordinate with the public utilities commission in carrying out its duties under Chapter 4913. of the Revised Code;</u>	217 218
<u>(2) Provide subject matter expertise when requested during inquiries conducted under section 4913.09 of the Revised Code;</u>	219 220
<u>(3) Review reports in accordance with section 4913.15 of the Revised Code;</u>	221 222
<u>(4) Make recommendations under sections 4913.15 and 4913.16 of the Revised Code;</u>	223 224
<u>(5) Perform any additional duties as may be required under this chapter.</u>	225 226

(B) The committee shall meet as necessary to carry out its 227
duties and meet the time-period requirements of division (B) of 228
section 4913.15 of the Revised Code, but not less than once every 229
three months. A majority of committee members constitutes a 230
quorum. 231

Sec. 3781.38. Every member of the underground technical 232
committee shall be immune, individually and jointly, from civil 233
liability for any act or omission done or made in performance of 234
the member's duties while serving as a member of the committee, 235
but only in the absence of willful misconduct. 236

Sec. 4905.041. (A) The public utilities commission has 237
exclusive jurisdiction to enforce, in accordance with Chapter 238
4913. of the Revised Code, section 153.64, divisions (A) and (B) 239
of section 3781.26, sections 3781.27 and 3781.28 to 3781.32, and 240
Chapter 4913. of the Revised Code. 241

(B) The commission's enforcement authority described in 242
division (A) of this section is limited to actions specifically 243
authorized by Chapter 4913. of the Revised Code. 244

(C) Nothing in this section or Chapter 4913. of the Revised 245
Code gives the commission or the underground technical committee, 246
created under section 3781.34 of the Revised Code, the authority 247
to determine the civil liability of any person for any compliance 248
failure as that term is defined in section 4913.01 of the Revised 249
Code. 250

Sec. 4905.26. Upon complaint in writing against any public 251
utility by any person, firm, or corporation, or upon the 252
initiative or complaint of the public utilities commission, that 253
any rate, fare, charge, toll, rental, schedule, classification, or 254
service, or any joint rate, fare, charge, toll, rental, schedule, 255
classification, or service rendered, charged, demanded, exacted, 256

or proposed to be rendered, charged, demanded, or exacted, is in 257
any respect unjust, unreasonable, unjustly discriminatory, 258
unjustly preferential, or in violation of law, or that any 259
regulation, measurement, or practice affecting or relating to any 260
service furnished by the public utility, or in connection with 261
such service, is, or will be, in any respect unreasonable, unjust, 262
insufficient, unjustly discriminatory, or unjustly preferential, 263
or that any service is, or will be, inadequate or cannot be 264
obtained, and, upon complaint of a public utility as to any matter 265
affecting its own product or service, if it appears that 266
reasonable grounds for complaint are stated, the commission shall 267
fix a time for hearing and shall notify complainants and the 268
public utility thereof. The notice shall be served not less than 269
fifteen days before hearing and shall state the matters complained 270
of. The commission may adjourn such hearing from time to time. 271

The parties to the complaint shall be entitled to be heard, 272
represented by counsel, and to have process to enforce the 273
attendance of witnesses. 274

This section does not apply to matters governed by Chapter 275
4913. of the Revised Code. 276

Sec. 4913.01. As used in this chapter: 277

(A) "Aggrieved person" means a person with duties and 278
obligations under sections 153.64, 3781.27, and 3781.28 to 3781.32 279
of the Revised Code and divisions (A) and (B) of section 3781.26 280
of the Revised Code and who is directly involved with or impacted 281
by the alleged compliance failure, as identified in the request 282
for inquiry, of another person with duties and obligations under 283
sections 153.64, 3781.27, and 3781.28 to 3781.32 of the Revised 284
Code and divisions (A) and (B) of section 3781.26 of the Revised 285
Code. 286

(B) "Compliance failure" means a failure to comply with any 287

provision of sections 153.64, 3781.27, and 3781.28 to 3781.32 of 288
the Revised Code and divisions (A) and (B) of section 3781.26 of 289
the Revised Code. 290

(C) "Designer," "developer," "excavation," "excavator," 291
"one-call notification system," "person," "protection service," 292
"underground utility facility", and "utility" have the same 293
meanings as in section 3781.25 of the Revised Code. 294

Sec. 4913.03. (A) Each utility, excavator, developer, and 295
designer who participates in the one-call notification system 296
shall register with the public utilities commission and pay a 297
safety registration not to exceed fifty dollars annually, which 298
the commission may lower if the commission determines lowering the 299
registration to be necessary. The commission shall administer and 300
oversee the registration process. Failure to register shall result 301
in a fine of not more than two thousand five hundred dollars. 302

(B) The commission shall deposit all safety registrations and 303
finances collected under this section in the underground facilities 304
protection administrative fund created under section 4913.30 of 305
the Revised Code. 306

Sec. 4913.05. (A) Beginning January 1, 2016, an aggrieved 307
person may request an inquiry with the staff of the public 308
utilities commission seeking the imposition, in accordance with 309
this chapter, of a fine or penalty on the person responsible for 310
the alleged compliance failure described in division (A) of 311
section 4913.01 of the Revised Code. The person shall make the 312
request not later than ninety days after discovering the alleged 313
compliance failure. The request shall not, by itself, cause the 314
creation of a formal proceeding at the commission. 315

(B) A request made under this section shall state, at a 316
minimum and with particularity, the name of the person responsible 317

for the alleged compliance failure, the date of the compliance failure, the nature of the compliance failure, the location of the compliance failure, and any other information that the requestor considers relevant. 318
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(C) The staff shall, not later than ten business days after receiving a request under this section, notify the person responsible for the alleged compliance failure that the request was made. 322
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Sec. 4913.07. If a request for an inquiry is made under section 4913.05 of the Revised Code, the person responsible for the alleged compliance failure may, not later than thirty days after being notified under that section, respond to the request, providing any information that the person considers relevant to the request. The response may include an admission of the compliance failure. 326
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Sec. 4913.09. (A) The staff of the public utilities commission shall conduct an inquiry upon receiving a request made under section 4913.05 of the Revised Code. The inquiry shall be limited to whether there was a compliance failure. 333
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(B) During an inquiry conducted under this section, the staff shall examine relevant facts regarding the alleged compliance failure and may request records verification, informal meetings, teleconferences, photo documentation, and any other documentation or information relevant to the inquiry. 337
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Sec. 4913.13. The staff of the public utilities commission shall make a report of each inquiry conducted under section 4913.09 of the Revised Code available to the underground technical committee, created under section 3781.34 of the Revised Code. The report shall contain any admission made under section 4913.07 of the Revised Code by the person who is the subject of the inquiry. 342
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This report shall not contain a recommendation as to the 348
imposition of a fine or penalty or as to whether no enforcement 349
action should be taken. 350

Sec. 4913.15. (A) The underground technical committee shall 351
review every report of the staff of the public utilities 352
commission made available under section 4913.13 of the Revised 353
Code or submitted under section 4913.16 of the Revised Code. 354

(B) Not later than ninety days after the committee obtains 355
the staff's report under section 4913.13 of the Revised Code, the 356
committee shall do any of the following: 357

(1) Make a written recommendation to the commission as to the 358
imposition of a fine, a penalty, or a combination of fines and 359
penalties, in accordance with section 4913.151 of the Revised 360
Code; 361

(2) Determine that no enforcement action should be taken and 362
notify the commission in writing of the determination; 363

(3) Request a hearing under section 4913.19 of the Revised 364
Code. 365

(C) There shall be a majority vote of the full committee, 366
with at least one of the commercial-excavator stakeholders voting 367
with the majority, for the committee to do any of the following: 368

(1) Recommend a fine, penalty, or a combination of fines and 369
penalties under this section or section 4913.16 of the Revised 370
Code; 371

(2) Determine, under this section or section 4913.16 of the 372
Revised Code, that no enforcement action should be taken; 373

(3) Request a hearing under section 4913.19 of the Revised 374
Code. 375

If the committee fails to achieve the required majority for 376

any action described in division (C) of this section, it shall 377
notify the commission. 378

Sec. 4913.151. In determining a fine or penalty 379
recommendation as required under section 4913.15 or 4913.16 of the 380
Revised Code: 381

(A) If the compliance failure is the first for the person 382
responsible, the underground technical committee may recommend a 383
penalty of a training requirement, an education requirement, or 384
another nonmonetary penalty, or may recommend a fine not exceeding 385
two thousand five hundred dollars, or may recommend a combination 386
of this fine and these penalties. 387

(B) If the compliance failure is a subsequent compliance 388
failure for the person responsible, the committee may recommend a 389
penalty of a training requirement, an education requirement, or 390
another nonmonetary penalty, or may recommend a fine not exceeding 391
five thousand dollars, or may recommend a combination of this fine 392
and these penalties. 393

(C) Any penalty recommended under this section shall be 394
appropriately related to enforcement of the provisions enumerated 395
in division (A) of section 4905.041 of the Revised Code. 396

Sec. 4913.152. The underground technical committee may 397
communicate with persons who have knowledge or information 398
concerning the alleged compliance failure as part of the 399
committee's review under section 4913.15 of the Revised Code and 400
to assist the committee in making recommendations under that 401
section and section 4913.16 of the Revised Code. 402

Sec. 4913.16. (A)(1) If the underground technical committee 403
votes during the ninety-day time period as required under division 404
(B) of section 4913.15 of the Revised Code but fails to achieve 405

the required majority as described in division (C) of that 406
section, no enforcement action shall be taken. 407

(2) If the committee, during the ninety-day time period, 408
fails to vote on any action as required under division (B) of 409
section 4913.15 of the Revised Code, the staff of the public 410
utilities commission shall make a recommendation as to a fine or 411
penalty or no enforcement. The staff shall cause the initial 412
report made available under section 4913.13 of the Revised Code to 413
be amended to add the recommendation, and shall submit the amended 414
report to the committee. 415

(B) Not later than thirty days after the committee receives 416
an amended report under division (A)(2) of this section, the 417
committee shall do any of the following, subject to division (C) 418
of section 4913.15 of the Revised Code: 419

(1) Make a written recommendation to the commission as to the 420
imposition of a fine, penalty, or a combination of fines and 421
penalties in accordance with section 4913.151 of the Revised Code; 422

(2) Determine that no enforcement action should be taken and 423
notify the commission in writing of the determination; 424

(3) Request a hearing under section 4913.19 of the Revised 425
Code. 426

(C)(1) If the committee votes during the thirty-day time 427
period as required under division (B) of this section but fails to 428
achieve the required majority as described in division (C) of 429
section 4913.15 of the Revised Code, no enforcement action shall 430
be taken. 431

(2) If the committee fails to vote on any action as required 432
under division (B) of this section, the commission shall impose a 433
fine or penalty consistent with section 4913.151 of the Revised 434
Code or take no enforcement action. The commission shall inform 435
the committee of its decision. 436

Sec. 4913.17. (A) Based upon the number and type of 437
compliance failures committed by a person, the underground 438
technical committee may find, as part of the committee's review 439
under section 4913.15 of the Revised Code, that the person is a 440
persistent noncomplier. 441

(B) The committee shall report a finding made under division 442
(A) of this section to the staff of the public utilities 443
commission. 444

(C) There shall be a majority vote of the full committee, 445
with at least one of the commercial-excavator stakeholders voting 446
with the majority, for the committee to make a finding under 447
division (A) of this section. 448

Sec. 4913.171. If the underground technical committee reports 449
that a person responsible for a compliance failure has been found 450
to be a persistent noncomplier under section 4913.17 of the 451
Revised Code, the public utilities commission may impose a fine on 452
the person not exceeding ten thousand dollars. A penalty 453
recommended by the committee under section 4913.15 or 4913.16 of 454
the Revised Code may also be imposed by the commission. 455

Sec. 4913.19. In lieu of making a recommendation of a fine or 456
penalty or a no-enforcement determination, the underground 457
technical committee may request an administrative hearing with the 458
public utilities commission if the committee believes that any 459
person responsible for a compliance failure should be subject to a 460
fine or penalty exceeding those described in section 4913.151 of 461
the Revised Code. As a result of the hearing, the commission shall 462
impose a fine or penalty or take no enforcement action. 463

Sec. 4913.20. In determining a fine or penalty recommendation 464
or imposition or whether no enforcement action should be taken 465

under section 4913.15, 4913.16, 4913.171, 4913.19, or 4913.25 of 466
the Revised Code, the underground technical committee, the public 467
utilities commission, and the commission staff, as applicable, 468
shall consider the following factors, as they apply: 469

(A) The person's demonstrated history of one-call, design, 471
and excavation practices, including the following: 472

(1) The number of locate requests received and responded to; 473

(2) The number of locates completed; 474

(3) The number of one calls placed; 475

(4) The number of excavations completed; 476

(5) The number of design or development projects. 477

(B) The nature, circumstances, and gravity of the compliance 478
failure, including the amount of damage involved in relation to 479
the compliance failure, and whether it resulted in death, serious 480
injury, dismemberment, or a significant threat to public safety; 481

(C) The organizational size of the responsible person; 482

(D) The prospective effect of a fine on the person's ability 483
to pay business obligations and otherwise conduct business; 484

(E) The history or number of compliance failures by the 485
person; 486

(F) The good faith effort on the person's part in attempting 487
to achieve compliance after the compliance failure was identified. 488

Sec. 4913.21. Except as provided in sections 4913.171 and 489
4913.19 of the Revised Code, the public utilities commission shall 490
impose every recommendation made under section 4913.15 or 4913.16 491
of the Revised Code by the underground technical committee. 492

Sec. 4913.22. A person subject to a fine imposed under 493

section 4913.171, 4913.19, or 4913.21 of the Revised Code or 494
division (C)(2) of section 4913.16 of the Revised Code shall pay 495
the fine not later than sixty days after the fine or penalty is 496
imposed. A person subject to a penalty imposed under any of those 497
sections or that division shall begin compliance with the penalty 498
not later than thirty days after the penalty is imposed. 499

Sec. 4913.23. The public utilities commission shall, by 500
letter, promptly notify the person that requested the inquiry and 501
the person responsible for the compliance failure of any fine or 502
penalty imposed under section 4913.171, 4913.19, or 4913.21 of the 503
Revised Code or division (C)(2) of section 4913.16 of the Revised 504
Code, or of a no-enforcement determination under section 4913.15 505
or 4913.19 of the Revised Code or division (A)(1) or (C)(1) of 506
section 4913.16 of the Revised Code. The notice shall include all 507
of the following, as applicable: 508

(A) The date of the compliance failure; 509

(B) The citation to the statute that was not complied with; 510

(C) A brief description of the compliance failure; 511

(D) The fine or penalty to be imposed, if any; 512

(E) Instructions on how to remit payment of a fine or to 513
comply with a penalty; 514

(F) Instructions on how the person may file for 515
reconsideration under section 4913.25 of the Revised Code and how 516
to make a timely filing; 517

(G) A statement that failure to file for reconsideration 518
under section 4913.25 of the Revised Code will make any findings 519
final and enforceable. 520

Sec. 4913.25. (A) If either the person that requested the 521

inquiry or the person responsible for the compliance failure 522
disagrees with either a finding or a no-enforcement determination 523
made by the underground technical committee under section 4913.15, 524
4913.16, 4913.17, or 4913.19 of the Revised Code, either person 525
may, not later than thirty days after receiving notice under 526
section 4913.23 of the Revised Code, file a written application 527
with the public utilities commission for reconsideration of the 528
committee's finding. The application for reconsideration must 529
state with particularity the grounds for reconsideration. 530

(B) Upon the filing of an application for reconsideration 531
under this section, the commission shall formally review the 532
finding of the committee. 533

(C) The commission may hold a hearing on the application for 534
reconsideration. 535

(D) The commission shall affirm, reject, or modify the 536
finding of the committee and shall impose any fine or penalty 537
authorized under this chapter or take no enforcement action. The 538
person responsible for the compliance failure shall pay any fine 539
not later than sixty days after the fine is imposed by the 540
commission. A person subject to a penalty shall begin compliance 541
with the penalty not later than thirty days after the penalty is 542
imposed by the commission. 543

Sec. 4913.251. A reconsideration order issued under section 544
4913.25 of the Revised Code is subject to the rehearing and appeal 545
process under Chapter 4903. of the Revised Code. 546

Sec. 4913.252. All hearings conducted by the public utilities 547
commission under this chapter and under the process described in 548
section 4913.251 of the Revised Code shall be conducted in a 549
manner consistent with Chapter 4903. of the Revised Code. 550

Sec. 4913.26. Any documentation obtained pursuant to an inquiry conducted under section 4913.09 of the Revised Code, communications described in section 4913.152 of the Revised Code, or an administrative hearing conducted under section 4913.19 of the Revised Code shall be treated as confidential until a formal proceeding is commenced under section 4913.25 of the Revised Code, at which time the parties to the proceeding shall be bound by the rules of the public utilities commission governing discovery in matters pending before it.

Sec. 4913.27. Except for safety registrations and fines collected under section 4913.03 of the Revised Code, the public utilities commission shall deposit all fines collected under this chapter into the underground facilities protection fund created under section 4913.29 of the Revised Code.

Sec. 4913.29. There is hereby created in the state treasury the underground facilities protection fund. The fund shall consist of all fines collected under this chapter, except for safety registrations and fines collected under section 4913.03 of the Revised Code. The fund shall retain the interest earned. The amounts in the fund shall be used solely to fund grants under section 4913.31 of the Revised Code.

Sec. 4913.30. There is hereby created in the state treasury the underground facilities protection administrative fund to be administered by the public utilities commission. The fund shall consist of all safety registrations and fines collected under section 4913.03 of the Revised Code. The fund shall retain the interest earned. The amounts in the fund shall be used for the operation of the underground technical committee, created under section 3781.34 of the Revised Code, and the commission in the performance of its duties under this chapter.

Sec. 4913.31. (A) The public utilities commission may 581
administer an underground utility damage prevention grant program 582
to provide grants for any of the following purposes: 583

(1) Public awareness programs established by a protection 584
service; 585

(2) Training and education programs for excavators, 586
operators, designers, persons who locate underground utility 587
facilities, or other persons; 588

(3) Programs providing incentives for excavators, operators, 589
persons who locate underground utility facilities, or other 590
persons to reduce the number and severity of compliance failures. 591

(B) The commission shall determine the appropriate amount of 592
any grant issued under this section. 593

Sec. 4913.43. The public utilities commission shall submit to 594
the general assembly an annual report of the previous year's 595
activities under this chapter. Each report shall be submitted on 596
or before April 1. Each report shall be made publicly available on 597
the commission's web site. 598

Sec. 4913.45. (A) The public utilities commission shall, in 599
consultation with the underground technical committee, adopt rules 600
under section 111.15 of the Revised Code to carry out this 601
chapter. The rules shall include all of the following: 602

(1) Guidelines for consistent application of fines and 603
penalties under this chapter; 604

(2) Tracking compliance of persons on whom fines or penalties 605
have been imposed under this chapter; 606

(3) The required contents of the underground utility damage 607
prevention grant program established under section 4913.31 of the 608

<u>Revised Code;</u>	609
<u>(4) The gathering, review, and acceptance of applications for a grant under section 4913.31 of the Revised Code;</u>	610 611
<u>(5) The dispensation and tracking of money from the underground facilities protection fund;</u>	612 613
<u>(6) The committee's duties, including rules that establish the committee's operation, meeting schedule, and voting procedures;</u>	614 615 616
<u>(7) The contents of the annual report required under section 4913.43 of the Revised Code;</u>	617 618
<u>(8) The process related to collecting the registration under section 4913.03 of the Revised Code.</u>	619 620
<u>(B) The commission may adopt rules establishing the following:</u>	621 622
<u>(1) Procedures for conducting inquiries under section 4913.09 of the Revised Code;</u>	623 624
<u>(2) Any other duties for the underground technical committee pursuant to section 3781.36 of the Revised Code.</u>	625 626
<u>Sec. 4913.47. Notwithstanding any provision of the Revised Code to the contrary, if a person is subject to more than one fine for the same compliance failure, and one fine is imposed under this chapter and one or more other fines are imposed under federal law, rules, or regulations, the person shall not be required to pay the fine imposed under this chapter.</u>	627 628 629 630 631 632
<u>Sec. 4913.50. Any proceeding held under this chapter, any no-enforcement determination under this chapter, and any fine or penalty imposed under this chapter shall neither prevent nor preempt the right of any party to obtain civil damages for personal injury or property damage in a private cause of action.</u>	633 634 635 636 637

No finding, determination, or recommendation of the underground 638
technical committee, no decision of the public utilities 639
commission under this chapter, and no no-enforcement determination 640
under this chapter shall be determinative of civil liability in a 641
private cause of action for personal injury or property damage. 642

Sec. 4913.52. A person with a permit for excavation from the 643
state or a local governmental unit is subject to this chapter. 644
This chapter does not affect or impair local ordinances, charters, 645
or other provisions of law requiring permits to be obtained before 646
excavating. 647

Section 2. That existing sections 3781.25 and 4905.26 of the 648
Revised Code are hereby repealed. 649