

**As Passed by the Senate**

**130th General Assembly  
Regular Session  
2013-2014**

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

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| 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

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

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| <u>conference.</u>   | 199                             |
| <u>(B) The committee shall establish a primary meeting location that is open and accessible to the public.</u>   | 200<br>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<br>203<br>204<br>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<br>207<br>208<br>209<br>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<br>212<br>213<br>214        |
| <u>Sec. 3781.36. (A) The underground technical committee shall do the following:</u>   | 215<br>216                      |
| <u>(1) Coordinate with the public utilities commission in carrying out its duties under Chapter 4913. of the Revised Code;</u>   | 217<br>218                      |
| <u>(2) Provide subject matter expertise when requested during inquiries conducted under section 4913.09 of the Revised Code;</u>   | 219<br>220                      |
| <u>(3) Review reports in accordance with section 4913.15 of the Revised Code;</u>  | 221<br>222                      |
| <u>(4) Make recommendations under sections 4913.15 and 4913.16 of the Revised Code;</u>  | 223<br>224                      |
| <u>(5) Perform any additional duties as may be required under this chapter.</u>  | 225<br>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 551  
inquiry conducted under section 4913.09 of the Revised Code, 552  
communications described in section 4913.152 of the Revised Code, 553  
or an administrative hearing conducted under section 4913.19 of 554  
the Revised Code shall be treated as confidential until a formal 555  
proceeding is commenced under section 4913.25 of the Revised Code, 556  
at which time the parties to the proceeding shall be bound by the 557  
rules of the public utilities commission governing discovery in 558  
matters pending before it. 559

Sec. 4913.27. Except for safety registrations and fines 560  
collected under section 4913.03 of the Revised Code, the public 561  
utilities commission shall deposit all fines collected under this 562  
chapter into the underground facilities protection fund created 563  
under section 4913.29 of the Revised Code. 564

Sec. 4913.29. There is hereby created in the state treasury 565  
the underground facilities protection fund. The fund shall consist 566  
of all fines collected under this chapter, except for safety 567  
registrations and fines collected under section 4913.03 of the 568  
Revised Code. The fund shall retain the interest earned. The 569  
amounts in the fund shall be used solely to fund grants under 570  
section 4913.31 of the Revised Code. 571

Sec. 4913.30. There is hereby created in the state treasury 572  
the underground facilities protection administrative fund to be 573  
administered by the public utilities commission. The fund shall 574  
consist of all safety registrations and fines collected under 575  
section 4913.03 of the Revised Code. The fund shall retain the 576  
interest earned. The amounts in the fund shall be used for the 577  
operation of the underground technical committee, created under 578  
section 3781.34 of the Revised Code, and the commission in the 579  
performance of its duties under this chapter. 580

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<br>611                             |
| <u>(5) The dispensation and tracking of money from the underground facilities protection fund;</u>  | 612<br>613                             |
| <u>(6) The committee's duties, including rules that establish the committee's operation, meeting schedule, and voting procedures;</u>   | 614<br>615<br>616                      |
| <u>(7) The contents of the annual report required under section 4913.43 of the Revised Code;</u>  | 617<br>618                             |
| <u>(8) The process related to collecting the registration under section 4913.03 of the Revised Code.</u>  | 619<br>620                             |
| <u>(B) The commission may adopt rules establishing the following:</u>   | 621<br>622                             |
| <u>(1) Procedures for conducting inquiries under section 4913.09 of the Revised Code;</u>   | 623<br>624                             |
| <u>(2) Any other duties for the underground technical committee pursuant to section 3781.36 of the Revised Code.</u>  | 625<br>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<br>628<br>629<br>630<br>631<br>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<br>634<br>635<br>636<br>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