Ohio Legislative Service Commission

Bill Analysis

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129th General Assembly
(As Reported by S. Energy & Public Utilities)

Reps. Sprague, Stautberg, Williams, Ashford, Cera, C. Hagan, Hall, Landis, O'Brien, Pillich, R. Adams, Anielski, Antonio, Beck, Boose, Bubp, Buchy, Budish, Carney, Celebrezze, Combs, Conditt, Damschroder, Derickson, DeVitis, Foley, Garland, Grossman, Hackett, Johnson, Kozlowski, Letson, Maag, Mallory, Martin, McClain, Milkovich, Murray, Ruhl, Stinziano, Thompson, Wachtmann, Winburn, Yuko, Batchelder

BILL SUMMARY

- Requires each utility that is fully participating in a protection service to also participate in its affiliated positive response system.
- Requires an excavator, contractor, or utility that uses a protection service to obtain training in the protection of underground utility facilities, but specifies that the individual is deemed to have training if the individual is a member of a protection service or association that provides training.
- Requires, beginning on July 1, 2013, each protection service to reasonably modify its one-call notification system to permit the reasonable identification of the location of a proposed excavation site in a manner in which the protection service may then notify any potentially affected limited basis participants.
- Eliminates a requirement that a protection service must notify the excavator of the names of each limited basis participant with underground utility facilities in the municipal corporation or township and county of the proposed excavation site.
- Eliminates the requirement that the excavator must contact the limited basis participants regarding the proposed excavation.

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* This analysis was prepared before the report of the Senate Energy and Public Utilities Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Requires, except in certain circumstances, excavators to define and premark the approximate location of a proposed excavation site before notifying a protection service about the proposed excavation and makes modifications to notification requirements.

- Requires that underground utility facilities be marked in accordance with the Ohio universal marking standards on file with the Ohio Utilities Protection Service, and appears to specify that the standards control if they are in conflict with the color code marking scheme specified in existing law.

- Requires, for excavation planning, that certain owners of underground utility facilities and utilities, if requested to do so, either mark underground utility facilities in accordance with the bill's requirements or provide digital or paper drawings (or both) that are to-scale and depict the location of the facilities.

- Establishes requirements for excavators utilizing trenchless excavation methods and modifies and establishes requirements for excavators utilizing traditional excavation technologies.

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CONTENT AND OPERATION

Definition changes

Protection services, underground utility facilities, and utilities

The bill changes the definitions of "protection service" and "underground utility facility" in the protection service law and the law governing public improvements protection service to make them more similar, but not exactly the same. The bill shortens the term "underground utility protection service" in the law governing public improvements protection service to "protection service" and changes it to match closely the definition in the protection service law in Chapter 3781. of the Revised Code.

The protection service law definition of underground utility facilities is expanded because it now "includes" items and no longer "means" those items. The definition is also expanded to include: manufactured and mixed natural gas; synthetic or liquefied natural gas; and propane gas. In addition, the bill specifies that a facility under the protection service law includes all operational underground pipes, sewers, tubing, conduits, cables, valves, lines, wires, worker access holes, and attachments, owned by any person, firm, or company. For the protection service law, the bill specifically excludes from the definition of an underground utility facility a private septic system in a one-family or multi-family dwelling utilized only for that dwelling and not connected to any other system. The only changes in the bill's definition of underground utility facilities in the law governing public improvements protection service are to replace "double-family" dwelling with "multi-family" dwelling, and to remove a reference to "electric energy" that appears in current law next to a reference to "electricity."[1]

The bill expands the definition of a "utility" for the general protection service law to include any "operator, or an agent of an owner or operator, of an underground utility facility, including any public authority that owns or operates an underground utility." The definition of a "utility" under current protection service law is "any owner of an underground utility facility, including any public authority that owns an underground utility facility." Under continuing law, "utility" does not include the owners of the following types of real property with respect to any underground utility facility on that property: (1) the owner of a single-family or two-, three-, or four-unit residential building, (2) the owner of an apartment complex, (3) the owner of a commercial or

[1] R.C. 153.64(A) and 3781.25(B).

industrial building or complex of buildings, including factories and shopping centers, and (4) the owner of a farm.[2]

Working days

The term "working day" replaces "day" regarding the time as to when various actions must take place under the law. The bill also changes the reference from 24 hours to "one full working day" regarding notice of excavation commencement to the utility after marking. "Working days" are defined to exclude Saturdays, Sundays, and legal holidays.[3]

Multiple protection services

References to the protection service are amended or enacted to allow for more than one protection service. The bill refers to "a" or "the" protection service or to "any appropriate" protection service.[4]

Changes to general protection service law

Limited basis participation

For utilities participating in a protection service on a limited basis, the bill specifies that they must identify not only the municipal corporation and townships by county in which they have underground utility facilities (as required under current law) but also, where applicable, the immediate geographic area in which they have facilities.[5]

Commercial excavators

The bill defines a "commercial excavator" as any excavator, excluding a utility, that (1) for compensation, performs, directs, supervises, or is responsible for the excavation, construction, improvement, renovation, repair, or maintenance on a construction project and holds out or represents oneself as qualified or permitted to act as such and (2) employs tradespersons who actually perform excavation, construction, improvement, renovation, repair, or maintenance on a construction project.[6] The bill defines "improvement" as any construction, reconstruction, improvement, enlargement, alteration, or repair of a building, highway, drainage system, water system, road, street,

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[2] R.C. 3781.25(C).

[3] R.C. 3781.25, 3781.27, 3781.28, and 3781.31.

[4] R.C. 153.64, 3781.25, 3781.27, 3781.28, 3781.29, 3781.30, and 3781.31.

[5] R.C. 3781.26(A).

[6] R.C. 3781.25(O).

alley, sewer, ditch, sewage disposal plant, water works, and all other structures or works of any nature.[7] "Project" means any undertaking by a private party of an improvement requiring excavation.[8] In addition, the bill adds commercial excavators to those who, under existing law, should publicize the importance of ascertaining the location of underground utility facilities before excavating and the use of protection services to ascertain that information.[9]

Notice for clearance under 12 inches

The bill requires *written* notice for certain narrow-clearance situations. Under current law, if a project includes the installation of new underground utility facilities, the developer must attempt to design their installation so that there is at least a 12-inch clearance between the new and existing facilities. No facility may be installed with clearance of less than 12 inches unless the owners of the existing facilities are notified by the developer prior to the installation of new facilities. The bill requires that this notification be in writing. The bill also permits the written notification to be made by a designer employed by the developer (see "**Designers**," below).[10]

Positive response system (and excavator and excavation definitions)

Under the bill, each utility that is fully participating in a protection service must also participate in its affiliated positive response system.[11] "Positive response system" is defined as an automated system facilitated by a protection service allowing a utility to communicate to an excavator the presence or absence of any conflict between the existing underground utility facilities and the proposed excavation site.[12] The bill expressly requires each utility participating on a limited basis to directly communicate with an excavator in the same manner as described in that definition.[13]

The term "excavator" is changed to mean "person or persons responsible for making the actual excavation" instead of "contractor or other person who is responsible for making the excavation."[14] In addition, the term "excavation," as changed by the bill,

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[7] R.C. 3781.25(U).

[8] R.C. 3781.25(S).

[9] R.C. 3781.26(B).

[10] R.C. 3781.27(E)(4).

[11] R.C. 3781.26(D).

[12] R.C. 3781.25(Q).

[13] R.C. 3781.26(D).

[14] R.C. 3781.25(K).

specifies that it means the use of "hand" tools rather than merely "tools." The bill also modifies an exclusion under the definition of "excavation," specifying that the term excludes "coal mining and reclamation operations" regulated under current law, rather than "any underground mining operations that do not involve disturbance to the earth's surface."[15]

Modification of one-call notification system

The bill specifies that beginning on July 1, 2013, each protection service must reasonably modify its one-call notification system to permit the reasonable identification of the location of a proposed excavation site in a manner in which the protection service may then notify any potentially affected limited basis participants. The bill specifies that each member of the protection service, including limited basis participants, is responsible for providing current contact information to the protection service.[16] Current law requires the protection service to notify the developer of the name of each limited basis participant with underground utility facilities within the municipal corporation or township and county of the proposed excavation site, and the developer must then contact the utility.[17]

The bill defines a one-call notification system as the software or communications system used by a protection system to notify its membership of proposed excavation sites.[18]

Training for excavators, contractors, and utilities

The bill requires an excavator, contractor, or utility that uses a protection service to obtain training in the protection of underground utility facilities. However, it specifies that an excavator, contractor, or utility shall be deemed to have that training if the excavator, contractor, or utility is a member of a protection service or a statewide association representing excavators, contractors, or utilities and the service or association provides that training. The bill also allows that an excavator, contractor, or utility may obtain the training from such a service or association without becoming a member.[19]

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[15] R.C. 3781.25(I).

[16] R.C. 3781.271.

[17] R.C. 3781.27(B).

[18] R.C. 3781.25(R).

[19] R.C. 3781.261.

Notification requirements

Planning

The bill changes a description of utility records to require them to be "current" in the context of a requirement that a developer (or designer, under the bill) notify a protection service of a proposed excavation site. The bill further changes the wording for the context of this requirement. Specifically, current law states "to ascertain the name of each utility with . . . facilities located at the . . . site and the types and *approximate location* of those facilities." The bill changes "approximate location" to "tolerance zone."[20] The bill uses the current law definition of "approximate location" for the term "tolerance zone": the site of an underground utility facility, including width, plus 18 inches on each side of the facility.[21] Therefore, the modification of this provision involves a change in terminology, but the meaning apparently remains the same. (See **COMMENT**.)

The bill modifies a requirement for notification by a utility of underground utility facilities at an excavation site. Current law requires each utility with any such facilities in the area of the site to notify the developer of the approximate locations "and description" of the facilities at the site, "or that the utility does not have any . . . facilities at the site." The bill removes the phrase "or that the utility does not have any . . . facilities at the site" and changes "approximate locations," currently defined as the site of an underground utility facility, including width, plus 18 inches on each side of the facility, to "locations," which is not defined.[22]

For developers other than utilities, current law requires the developer of proposed excavation projects to provide project plans to the excavator before excavation begins. The bill changes this provision to require the developer or the designer employed by the developer (see "**Designer**," below) to provide the plans to the commercial excavator prior to entering into a contract that involves excavation. Under current law, if the developer does not prepare written plans or does not have any written plans prepared, the developer must otherwise provide the approximate locations (see **COMMENT**), identifying information on the utilities, information on required adjustments, and any special notification requirements to the excavator before excavation begins. The bill requires that this information be provided to the commercial excavator. The bill defines the new term "approximate location" to mean

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[20] R.C. 3781.27(A).

[21] R.C. 3781.25(D) and (E).

[22] R.C. 3781.27(C)(1).

the immediate area within the perimeter of a proposed excavation site where the underground utility facilities are located.[23]

General notice requirement

Current law requires excavators to notify "the" protection service of the location of an excavation site at least 48 hours but not more than "ten days" before commencing excavation. Under the bill, the notice period is changed to be at least 48 hours but not more than ten *working* days. The notice is to be given to "a" protection service. Along the same lines, the bill eliminates the requirement that the protection service that is notified by the excavator must then notify the excavator of the names of each limited basis participant with underground utility facilities in the municipal corporation or township and county of the proposed excavation site. The bill likewise eliminates the requirement that the excavator must then notify the limited basis participants before commencing excavation.[24]

Large areas

Different notice requirements apply to excavations that cover a large area and progress from one area to the next over a period of time. In this case, the bill adds a new requirement that the notice of excavation that the excavator provides to each protection service or limited basis participant be written. This written notice must include projected timelines for segments of the excavation as it progresses thus allowing the coordination of the marking of underground utility facilities with actual excavation schedules. The bill further provides that under such circumstances, the utility and excavator must determine a mutually agreed upon marking schedule based on the project schedule. Once the schedule is established, the regular marking and notification requirements do not apply (see "**Excavation site marking**" below).[25]

Excavator owners of certain buildings or farms

Under current law, if the excavator is the owner of a single-family or two-, three-, or four-unit residential dwelling; the owner of an apartment complex; the owner of a commercial or industrial building or complex of buildings, including factories and shopping centers; or the owner of a farm, and the excavation is at the site of that property, the notice requirements of the protection service law described above do not apply unless the excavation is planned for an area where a utility easement is located or a public right-of-way. Under the bill, the notice provisions also apply to these owners

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[23] R.C. 3781.25(D) and 3781.27(E)(2)(a).

[24] R.C. 3781.28(A) and (B).

[25] R.C. 3781.28(E).

when the excavation is planned where utility facilities are known to serve the property.[26]

Emergencies

The bill requires an excavator to make every effort to notify a protection service of an emergency excavation before beginning the excavation, or as soon as possible thereafter. In providing this notification under the bill, the excavator must provide at a minimum: (1) the name of the individual notifying the protection service, (2) the name, address, any electronic mail address, and any telephone and facsimile numbers of the excavator, (3) the specific location of the excavation site, and (4) a description of the excavation.

When the protection service receives the notification of an emergency excavation, the protection service must provide the excavator with a reference number and a list of utilities that the protection service intends to notify. The protection service must immediately notify each utility that has facilities located within the designated area of the emergency excavation according to the registration information for the facilities received by the protection service. The bill permits any utility notified of an emergency excavation to inspect all of its underground utility facilities located at the emergency excavation site and to take any otherwise lawful action it considers necessary to prevent disturbance to or interference with its facilities during excavation.[27]

"Emergency" is defined as an unexpected occurrence causing a disruption or damage to an underground utility facility that requires immediate repair or a situation that creates a clear and imminent danger that demands immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services.[28]

Excavation site marking

The bill requires utilities to review the status of their underground utility facilities within an excavation site, in addition to locating and marking the facilities, within 48 hours of receiving notice from the excavator or protection service. In addition, the bill requires that the facilities be marked in such a manner as to indicate their course and that the utility report the appropriate information to the protection service for its positive response system. Current law requires utilities to locate and mark the approximate location of their underground utility facilities at the excavation

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[26] R.C. 3781.28(F)(2)(a).

[27] R.C. 3781.29(E).

[28] R.C. 3781.25(V).

site within 48 hours of receiving notice of a proposed excavation.[29] "Approximate location" is defined for purposes of current law as the site of an underground utility facility, including width, plus 18 inches on each side of the facility.[30]

The bill requires the utility to use the positive response system in notifying an excavator, as required under continuing law, that markings may not be accurate.[31]

The bill requires that underground utility facilities be marked in accordance with the Ohio universal marking standards on file with the Ohio Utilities Protection Service, and appears to specify that the standards control if they are in conflict with the color code marking scheme specified in existing law. It also requires industry representatives on the Ohio damage prevention councils to review the standards every two years. Finally, the bill modifies one color requirement in the existing color code marking scheme, changing "safety precaution blue" to "safety precaution purple" for slurry systems.[32]

Excavation site remarking

If markings are destroyed or removed before excavation is complete, the bill requires the excavator to notify the utility through the protection service and the utility must remark its underground utility facilities in accordance with the excavation site marking requirements described above. Current law requires the excavator to directly notify the utility and requires the utility to remark approximate locations within 48 hours.[33]

Premarking the excavation site

The bill adds the requirement that excavators define and premark the "approximate location" before notifying a protection service about a proposed excavation.[34] "Approximate location" is defined for purposes of the bill as the immediate area within the perimeter of a proposed excavation site where the underground utility facilities are located (see **COMMENT**).[35] Proposed construction and

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[29] R.C. 3781.29(A)(1).

[30] R.C. 3781.25(D) (in current law).

[31] R.C. 3781.29(A)(1).

[32] R.C. 3781.29(C).

[33] R.C. 3781.31(B).

[34] R.C. 3781.29(D).

[35] R.C. 3781.25(D).

excavation markings must be made in white under current law. The bill adds that the white marking must be through the use of an industry-recognized method such as chalk-based paint, flags, stakes, or other method applicable to the specific site. The bill requires that, when possible, the markings must indicate the excavator's identity by name, abbreviation, or initial.

Defining and premarking are not required under the following circumstances specified in the bill:

- The utility can determine the precise location, direction, size, and length of the proposed excavation site by referring to the notification provided by the protection service.
- The excavator and the affected utility have had an on-site, preconstruction meeting for the purpose of premarking the excavation site.
- The excavation involves replacing a pole that is within five feet of an existing pole.
- Premarking by the excavator would clearly interfere with pedestrian or vehicular traffic control.[36]

Excavation requirements

For traditional and trenchless excavations

The bill generally maintains current excavation requirements but specifies that these and a new requirement under the bill (described below) apply to both traditional and trenchless technologies. The current requirements on excavators are modified as follows. Excavators must:

- Maintain reasonable clearance between an underground utility facility and the cutting edge or point of powered equipment (unchanged, except regarding applicability as described above).
- Protect and preserve markings of approximate locations of underground utility facilities until they are no longer required for proper and safe excavations, changed in part to "markings of *tolerance zones* of underground utility facilities."[37] As discussed earlier, the bill uses the current law definition of "approximate location" for the term "tolerance

[36] R.C. 3781.29(D) and (F).

[37] R.C. 3781.30(A).

zone": the site of an underground utility facility, including width, plus 18 inches on each side of the facility.[38] Therefore, the modification of this provision involves a change in terminology, but the meaning apparently remains the same. (See **COMMENT**.)

- Require an individual other than the equipment operator to look (changed to "visually monitor the excavation activity") for any sign (changed to "indication") of an underground utility facility when approaching facilities while excavating with powered equipment (changed to "when approaching and excavating within the tolerance zone of underground utility facilities with powered equipment) (see definition above for "tolerance zone").

- Conduct the excavation in the vicinity of the underground utility facility in a careful and prudent manner, excavating by–hand, if necessary, to determine the precise location of the facility and to prevent damage. The bill changes this provision to require excavators to conduct the excavation within the tolerance zone (see definition above) of underground utility facilities "in a careful, prudent, and nondestructive manner, when necessary, in order to prevent damage."[39] The bill defines "nondestructive manner" to mean using low-impact, low-risk technologies such as hand tools, or hydro or air vacuum excavation equipment.[40]

- Report the type and location of any damage to the utility, and permit the utility a reasonable amount of time to make repairs (unchanged, except regarding applicability as described above).

- Immediately report to the utility and, if necessary, to the appropriate law enforcement agencies and fire departments, any damage to an underground utility facility that results in escaping flammable, corrosive, explosive, or toxic liquids or gas, and take reasonable appropriate actions needed to protect persons and property and to minimize safety hazards until those agencies and departments and the utility arrive at the scene. Under the bill, the excavator must also report such damage to the protection service and, if necessary, report to the appropriate law enforcement agencies or fire departments by calling 9-1-1.

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[38] R.C. 3781.25(D) and (E).

[39] R.C. 3781.30(A).

[40] R.C. 3781.25(W).

Finally, the bill creates the following new requirement on excavators for both traditional and trenchless excavations. It requires excavators to excavate up to the total depth of the excavation to either determine the precise location of underground utility facilities or verify that the total depth of excavation is free of such facilities.[41]

For trenchless excavations only

The bill includes additional requirements for an excavator utilizing trenchless excavation methods that must be met in a manner consistent with the requirements listed above for both traditional and trenchless technologies. Those requirements require the excavator to do the following:

- Expose and confirm all underground utility facilities at each crossing point by the proposed excavation in a nondestructive manner to the installation depth of the new facility;

- Expose all parallel underground utility facilities in a nondestructive manner at the beginning and end of each trenchless excavation to the installation depth of the new facility. The bill requires that if the proposed alignment is within the tolerance zone (see definition above) of any parallel underground utility facility, the facility must be exposed every 100 feet.

- Ensure that the final product installation maintains the proper 12-inch or other agreed upon clearance of existing underground utility facilities (see "**Notice for clearance under 12 inches**," above).[42]

Marking facilities vs. approximate locations of facilities

In various provisions regarding utility marking, the bill replaces references to marking the approximate locations of underground utility facilities with references to marking the underground utility facilities.[43] (See **COMMENT**.) As discussed earlier, the definition in current law of "approximate location" is the site of an underground utility facility, including width, plus 18 inches on each side of the facility.[44]

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[41] R.C. 3781.30(A).

[42] R.C. 3781.30(B).

[43] R.C. 3781.28(E), 3781.29(A) and (C), and 3781.31.

[44] R.C. 3781.25(D) (under current law).

Public authorities included as "persons"

The bill expands the definition of "person" for purposes of the general protection service law to include a public authority.[45] This could be interpreted as including public authorities as designers,[46] developers,[47] excavators,[48] and owners of underground utility facilities[49] under the protection service law.

Removal of exclusion for public improvements

The bill removes a provision in the general protection service law exempting its application to public improvements.[50]

Designers

The bill applies certain provisions of the general protection service law to the developer *or the designer employed by the developer*. Specifically, these provisions apply to a project developer regarding notification of proposed excavation, notification of and contacting limited basis participants, notification of underground utility facilities, adjustments for those facilities, project plans, designing new installations, and contract provisions.[51]

The bill also adds a "surveyor" to the definition of "designer," currently an engineer, architect, landscape architect, contractor, or other person who develops plans or designs for real property improvement or any other activity that will involve excavation.[52]

Changes to public improvements protection service law

The bill modifies slightly the requirement for public authorities to contact the protection service before preparing plans and specifications. Under current law, the public authority must contact "the registered underground utility protection service." The bill changes this to "a protection service." Current law also requires the public

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[45] R.C. 3781.25(P) and (T).

[46] R.C. 3781.25(G).

[47] R.C. 3781.25(H).

[48] R.C. 3781.25(K).

[49] R.C. 3781.25(B).

[50] R.C. 3781.27.

[51] R.C. 3781.27 and 3781.32(B).

[52] R.C. 3781.25(G).

authority to contact "the" owners of underground members that are nonmembers. The bill changes "the" to "any."[53]

Notification before commencing construction

The bill imposes a ten-working-day maximum on the time, before construction commences, when the required notice may be provided by contractors and subcontractors on public improvements. Continuing law requires the contractor or subcontractor to cause notice to be given to (1) the registered underground utility protection services (changed to "a protection service" in the bill) and (2) the owners, as shown on the plans and specifications for the project, of underground utility facilities who are not protection-service members. Current law requires this notice to be given at least two working days, excluding Saturdays, Sundays, and legal holidays, prior to commencing construction operations, and the bill adds "but no more than ten working days." The bill also removes provisions permitting the notice to be in writing, by telephone, or in person, and other provisions relating to sending written notice by certified mail.[54]

Excavation site marking

The bill removes a provision of current law requiring the marking or locating of underground utility facilities at an excavation site of a public improvement to be coordinated to stay approximately two days ahead of planned construction.[55]

Makes provisions applicable to designers

The bill makes certain provisions applicable to a designer acting on behalf of a public authority by defining a public authority to include designers. Specifically, these provisions apply to a public authority regarding notification of protection services and owners of underground utility facilities, plans and specifications, notice of winning contractors, relocation of facilities, certain rights not being affected, protection against responsibility, and contract terms. "Designer" is defined under the bill as 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.[56]

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[53] R.C. 153.64(B)(1).

[54] R.C. 153.64(C).

[55] R.C. 153.64(C).

[56] R.C. 153.64 and 3781.25(G).

Application of general protection service law

The bill, by removing a provision in the general protection service law exempting its application to public improvements and also by including public authorities as persons under that law, appears to apply the general protection service law to public improvements by public authorities to some extent.[57]

Registration requirement for telephone, pipeline, and cable companies

The bill removes a provision from the law governing public improvements protection service that currently exempts certain telephone companies, owners of pipelines that conduct petroleum products, and cable television companies from the requirement to register with an underground utility protection service.[58]

Facility marking at the project-planning stage for both types of law

The bill requires certain owners of underground utility facilities (for public improvements) and utilities (for excavations under the general protection service law) to do either of the following within ten days of receiving notice of a planned public improvement or excavation: (1) mark the underground utility facilities in the construction area or excavation, as applicable, other than facilities serving single-family or two-, three-, or four-unit dwellings, in accordance with the bill's marking requirements, or (2) provide digital or paper drawings (or both) that are to-scale and depict the location of the facilities. The bill requires the drawings to include locatable items, and specifies that locatable items may include poles, pedestals, back of curb, sidewalk, edge of pavement, centerline of ditch, property lines, and other similar items.

The bill makes this requirement contingent upon a request by the public authority or, in the context of general protection service law, the developer or the designer employed by the developer (see "**Designers**," above).

The bill specifies that the requirement does not relieve an owner of underground utility facilities or a utility of the requirement to mark facilities in the excavation or construction phase.[59]

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[57] R.C. 3781.25(P) and (T) and 3781.27.

[58] R.C. 153.64(A)(5) (under current law).

[59] R.C. 153.64(B)(2) and 3781.27(C)(2).

COMMENT

The bill contains some potentially ambiguous provisions in two respects: (1) regarding the term "approximate location" and (2) regarding provisions dealing with utility marking of underground utility facilities and tolerance zones of those facilities.

First, the bill defines "approximate location" as the immediate area within the perimeter of a proposed excavation site where the underground utility facilities are located.[60] This seems as though the term "approximate location" refers to the approximate location *of underground utility facilities*. But there are provisions in the bill that refer to "approximate location *of an excavation*."[61] Other provisions are ambiguous because they require providing "approximate locations," without specifying "of underground utility facilities" or "of an excavation."[62]

Second, with regard to marking of tolerance zones and underground utility facilities, the bill contains numerous references to marking underground utility facilities. But it also contains a reference, seemingly in the same context, to the marking of *tolerance zones of* underground utility facilities.[63] These provisions may conflict since marking the tolerance zone of a facility, under the bill, is likely not the same as marking the facility itself. As discussed in the analysis, "tolerance zone" is defined as the site of an underground utility facility, including its width, plus 18 inches on each side of the facility.[64]

HISTORY

ACTION	DATE
Introduced	02-15-12
Reported, H. Public Utilities	12-05-12
Passed House (89-0)	12-05-12
Reported by S. Energy & Public Utilities	---

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[60] R.C. 3781.25(D).

[61] See R.C. 3781.29(D) and (F).

[62] R.C. 3781.27(E)(2)(a) and (b).

[63] R.C. 3781.30(A)(2).

[64] R.C. 3781.25(D).