

SB 378 (as Enacted)

- 3781.25 Includes “cable service provider” as defined in 1332.01 (“means any person or group of persons that is engaged in the provision of cable service over a cable system and directly or indirectly owns a significant interest in the cable system, or that through any arrangement otherwise controls or is responsible for the management and operation of the cable system”). Cable service providers are to have a seat on the underground technical committee (UTC). The cable representative is to be appointed by the Senate President.
- 3781.34 – 3781.36 Underground technical committee (UTC).
 - UTC consists of 17 members appointed by either the governor or the various legislative leaders for four year terms.
 - **Cable service providers have a seat on the UTC.** The cable representative is to be appointed by the Senate President.
 - Members must recuse from cases where a conflict of interest is posed.
 - UTC is to coordinate its duties with PUCO, provide subject matter expertise, and review reports and make recommendations under 4913.15 and 4913.16.
- 4905.041 PUCO has sole enforcement authority for 153.64, 3781.27, 3781.28 - .32, and 3781.26(A) and (B), and Chapter 4913; PUCO authority limited to actions specified in chapter 4913. Makes clear that PUCO can’t determine civil liability.
- 4913.01 Definitional section.
 - “Aggrieved Person” means a person with duties and obligations under the underground facilities protection statute and who is directly involved with the alleged compliance failure.
 - “Compliance failure” includes violations of 153.64, 3781.27, and .28 - .32, and 3781.26(A) and (B).
- 4913.03 Each participant in a one-call system shall register with the PUCO and pay a registration fee not to exceed \$50 annually (PUCO may adjust lower). Amounts raised shall be used to fund the duties under 4913. Failure to register shall result in a fine of not more than \$2500.
- 4913.05 **Beginning on January 1, 2016**, an aggrieved person may request an inquiry be made with the PUCO staff. The request must be made within 90 days of discovery of the alleged compliance failure. Defines what is to be in the request. The PUCO is to notify alleged violator within ten business days of the complaint.

- 4913.07 Alleged violator may respond to the request for inquiry, not later than 30 days after receiving notice, and provide any further information deemed relevant. The response may include an admission.
- 4913.09 The PUCO staff shall conduct an inquiry which is limited to whether there was a compliance failure. The staff shall examine relevant facts and may request records verification, informal meetings, teleconferences and other documentation or information relevant to the inquiry.
- 4913.13 PUCO staff to make a report on each inquiry conducted under 4913.09 to the UTC. The report shall not contain a recommendation as to the imposition of a fine or penalty or whether no action should be taken.
- 4913.15 UTC to review every report made under 4913.13 and 4913.16.
 - For reports under 4913.13, the UTC has **90 days** to either recommend to the PUCO a fine/penalty, determine that no action should be taken, or request a hearing under 4913.19. It takes a majority vote of the full committee (with at least one commercial excavator member) to do any of the above. If UTC fails to reach the required majority, it shall notify the PUCO.

- 4913.151 In determining the fine/penalty under 4913.13 or 4913.16, the UTC may recommend:

First compliance failure, penalty may be training, education, or another non-monetary penalty, or fine not exceeding \$2500, or a combination.

Subsequent compliance failures, penalty may be training, education or another non-monetary penalty, or fine not exceeding \$5000, or a combination.

- 4913.152 UTC may communicate with responsible persons as part of the committee's review.
- 4913.16 If the UTC votes during the 90 days outlined in 4913.15 and fails to obtain the required majority to make a recommendation, no enforcement action shall be taken.

If the UTC during the 90 days fails to take a vote, the staff shall amend its report to make a recommendation as to a fine/penalty or no action, which shall be submitted to the UTC.

Not later than 30 days after the UTC receives the amended report, the UTC shall either 1) make a recommendation to the PUCO as to the imposition of a fine/penalty in accordance with 4913.151, or 2) determine no enforcement action should be taken, or 3) request a hearing under 4913.19.

If the UTC votes during this 30 day period, but fails to reach the requisite majority, no enforcement action is taken. If the UTC again fails to vote, the PUCO shall impose a fine/penalty or take no action.

- 4913.17 The UTC, based on number and type of compliance failures committed by any person, may find the person to be a “persistent noncomplier” and report the finding to the PUCO staff. It takes a majority vote (including on excavator) to make this finding.
- 4913.171 For a “persistent noncomplier,” the PUCO, at its discretion, may impose a fine not exceeding \$10,000. A penalty recommended by the UTC under 4913.15 or .16 may also be imposed.
- 4913.19 In lieu of recommending a fine/penalty or no enforcement, the UTC may request a hearing with PUCO if the UTC believes that the violator should be subject to penalties/fines exceeding those in 4913.151. As a result of the hearing, the PUCO shall impose a fine/penalty or take no action.
- 4913.20 In determining the enforcement action to be taken, the UTC, PUCO and PUCO staff shall consider the person’s history of one-call, design and excavation practices; including number of locate requests, one calls placed, excavations and designs completed; nature, circumstances and gravity of the failure, including amount of damage, death, serious injury or significant public threat; organizational size; prospective effect of fine on persons’ business, history of compliance failures, and good faith in achieving compliance after the failure was identified.
- 4913.21 The PUCO shall impose every recommendation made under 4913.15 and .16, except if acting under 4913.171 and 4913.19.
- 4913.22 Fines are to be paid within 60 days; compliance with penalties is to begin within 30 days.
- 4913.23 The PUCO shall notify the person requesting the inquiry and the person responsible for the compliance failure, of any fine/penalty imposed or of a no-enforcement determination. This is to include instructions on how to file for reconsideration under 4913.25, and that failure to request reconsideration will make the findings final and enforceable.
- 4913.25 If either the party requesting the inquiry or violator disagrees with a UTC finding, they have 30 days to file for reconsideration with the PUCO. The PUCO shall review the UTC finding, and may hold a hearing. The PUCO shall affirm, reject or modify the UTC finding and impose any fines/penalties allowed under chapter 4913.

- 4913.251 A reconsideration order issued under 4913.25 is subject to the rehearing and appeal processes under Chapter 4903.
- 4913.252 All hearings conducted by the PUCO under chapter 4913 and the process in 4913.251 shall be conducted consistent with Chapter 4903.
- 4916.26 Any documentation obtained pursuant to an inquiry under 4913.09, pursuant to 4913.152, or an administrative hearing under 4913.19 shall be treated as confidential until a formal proceeding is commenced under 4913.25 at which time the proceeding is governed by the rules of the PUCO regarding discovery in matters before it.
- 4913.27 All fines, except those collected under 4913.03 regarding registration, collected go to the underground facilities protection fund.
- 4913.29 Underground facilities protection fund money shall be used to fund grants under 4913.31.
- 4913.30 Also creates the underground facilities protection administrative fund consisting of registration fees and registration fines and to be used by the UTC and PUCO for the performance of duties under this chapter.
- 4913.31 PUCO may administer a grant program for public awareness, training, etc.
- 4913.43 PUCO to submit annual report of the previous year's activities by April 1 of each year, to be made available on the PUCO's website.
- 4913.45 PUCO shall, in consultation with the UTC, adopt rules regarding guidelines for consistent application of fines/ penalties; tracking compliance with fines/penalties; contents of grant program and dispensation of monies from the fund; UTC's duties and rules of operation; contents of the annual report. The PUCO may adopt rules establishing procedures for conducting inquiries under 4913.09 and any other duties for the UTC.
- 4913.47 If a person is subject to more than one fine for the same compliance failure, and one of the fines is imposed under federal law, the person is not required to pay the state fine.
- 4913.50 Any proceeding under this chapter or enforcement action taken does not prevent or preempt civil damages in a private cause of action. No decision shall be determinative of civil liability in a private cause of action.
- 4913.52 A person with a permit from government for excavation is still subject to this chapter. This chapter doesn't affect local ordinances requiring permits.