



# NUCA of Ohio

National Utility Contractors Association of Ohio

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## Written Testimony

NUCA of Ohio

Ohio House of Representatives

Public Utilities Committee

Hearing on “Call Before you Dig Notification System”

November 28, 2012

Chairman Stautberg and honorable members of the committee, NUCA of Ohio represents contractors, engineers, manufacturers and suppliers who provide the workforce, equipment and services needed to build and maintain Ohio's underground infrastructure, including water, sewer, natural gas and telecommunications facilities. NUCA of Ohio appreciates the opportunity to submit testimony on Sub. H.B. No. 458 and provide our perspective on the important subject of improving Ohio's one-call system and damage prevention program.

NUCA of Ohio applauds this committee's efforts to update and improve Ohio's damage prevention law. However, while we support many provisions in the legislation, we believe the legislation could be improved by including provisions that directly address workplace safety and better comply with recent Federal mandates issued by the U.S. Congress.

Excavation activity across the country has grown in response to recent increases in civic improvement projects, utility infrastructure renewal work and federal projects funded by economic stimulus initiatives. The shale gas phenomenon has also played a significant role in creating projects in many parts of the country, including Ohio. This increase in excavation underscores the need for an effective process to prevent damages to underground facilities. Damage prevention requires that all stakeholders in the process understand and fulfill their responsibilities, and that enforcement of these responsibilities is provided by law and imposed as appropriate.

The Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act of 2006 authorized federal enforcement in states whose damage prevention laws are either inadequate or not sufficiently enforced. In response to that mandate, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) released a Notice of Proposed Rulemaking (NPRM) in April describing the circumstances and parameters of a federal enforcement role of state damage prevention law. As states evaluate and adjust their damage prevention laws and enforcement practices in response to this pending regulation, many have encouraged policymakers to avoid implementing or increasing stakeholder exemptions to the extent possible. Any exemptions should be narrowly defined and justified in writing, as prescribed in PHMSA's NPRM.

In 1999, the Common Ground Study of One-Call Systems and Damage Prevention Best Practices was developed by virtually all stakeholders in the damage prevention process, including underground facility operators, excavators, locators, one-call centers, and others. The study states that "the underlying premise for prevention damage for underground facilities, and the foundation for this Study, is that all underground facility owners/operators are members of one-call centers, and that it is always best to call before excavation."

The general responsibilities in the process are clear. Designers must request design information, facility owners must provide that information, excavators must call 811 before they dig, wait the required time before excavating, respect facility markings and dig with care. Equally important, all underground facility operators must belong to their respective one-call center and ensure that facilities are marked accurately and in a timely manner (according to state law). Any exemptions or failure to hold all parties accountable for their responsibilities in this process only compromises safety, and state law should address that.

Further, enforcement of damage prevention laws is critical to the process and a catalyst for federal action on this issue. The Federal PIPES Act calls for states to promote fair and consistent enforcement of the law. This is only possible if there is a fair and consistent enforcement mechanism in place. Additionally, effective enforcement should not be measured exclusively by the amount of fines issued or penalties levied. Other examples of enforcement actions could include mandatory training and warning letters issued.

NUCA of Ohio believes Ohio's damage prevention law should include provisions that:

- ensures construction workers can proceed with excavation having the correct information needed to work safely;
- enhances public safety by ensuring all damage prevention responsibilities are being met and are enforced accordingly;
- includes service line information provided in the design phase to eliminate/minimize required construction activity in the immediate area of the facility; and
- protects underground infrastructure through the utilization of new and available technologies for locating this infrastructure.

We will fully support legislation that improves workplace and public safety through increased communication and accountability. Improving communications between Ohio's one-call centers, which is fully addressed in H.B. 458, will absolutely improve Ohio's damage prevention program. Unfortunately, the current legislation is clouded by incorporation of exemptions, weak locating requirements, and the lack of an enforcement provision consistent with the pending Federal mandate. How can we continue to add provisions to our law without establishing an entity to enforce them? We should recognize efforts in other states that have implemented enforcement programs that have successfully led to a reduction in damage rates and compliance problems. We should also recognize the range of new technologies that provide for better utility locating and thereby enhance and improve workplace and public safety.

NUCA of Ohio understands the wish to get a bill done by the end of the year, and we recognize that no final bill is ever fully supported by all impacted stakeholders. We only ask how effective a law can be without ensuring its requirements are met. If the above provisions cannot be addressed in this legislation, we stand by to work with you to improve Ohio's damage prevention program in the next session. Again, we thank the committee for the opportunity to submit testimony. Please don't hesitate to contact us with any questions you might have.