
SENATE BILL 6680

State of Washington 55th Legislature 1998 Regular Session

By Senators Haugen, Johnson, Brown and Rossi

Read first time 01/27/98. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to damage caused by excavating activity; and adding
2 a new section to chapter 19.122 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 19.122 RCW
5 to read as follows:

6 (1) For the purposes of this section:

7 (a) "Residential property" means a single or multihousehold
8 structure used exclusively as a dwelling.

9 (b) "Liability" means property damage and personal injury to
10 owners, occupiers, and guests.

11 (c) "Occupier" means someone entitled to possession of the premises
12 under a lease or similar right, and does not include trespassers.

13 (d) "Prevailing party" means the party that improves his or her
14 position as a result of an arbitrator's award or a trial de novo
15 following such an award.

16 (2) In addition to other duties under this chapter, an excavator is
17 liable to the owner, occupier, or any guest of any owner or occupier of
18 residential property for any damage that is the direct proximate cause
19 of its excavating activity without regard to fault, compliance with

1 this chapter, or whether the damage was caused in part by the act of
2 another.

3 (3) In the event of such damage or personal injury, the excavator
4 shall make payment within thirty days of a written demand from the
5 party entitled to payment of such amounts as the parties are able to
6 agree. The written demand shall clearly set forth each item for which
7 reimbursement is sought, including medical treatment payments known at
8 the time of the demand, and where appropriate, the method used to
9 calculate the demand amount. The demand shall also indicate whether
10 further amounts will be demanded due to costs expected to be incurred,
11 but not yet known by the party seeking payment.

12 (4) As to those amounts to which the parties are unable to agree,
13 the claimant is entitled to submit the claim to arbitration under the
14 mandatory arbitration provisions of chapter 7.06 RCW, without regard to
15 the monetary limits in that chapter. However, if the amount in
16 controversy exceeds those limits, the claimant has the option of
17 proceeding with an action in the appropriate superior court.

18 (5) The excavator is liable for interest on all amounts eventually
19 awarded by an arbitrator or court in excess of amounts paid to the
20 claimant prior to award or entry of a judgment at the rate of ten
21 percent per annum from the time of the demand until payment.

22 (6) In any proceeding under this section where the arbitrator or
23 judge makes written findings that a defense to a demand by a claimant
24 was frivolous and advanced without reasonable cause, the claimant is
25 entitled to an additional award equal to the amount proved at the
26 arbitration proceeding or at trial, in addition to other relief
27 available under this section. If the arbitrator or judge finds that
28 the claim is frivolous and advanced without reasonable cause, the
29 excavator defendant is entitled to a reasonable attorney's fee and
30 costs. This finding shall be made upon motion by the prevailing party
31 after final award or judgment or other proceeding terminating the claim
32 as to the prevailing party. In no event may such a motion be filed
33 more than thirty days after the entry of a final order or award.

34 (7) In any action or arbitration proceedings brought under this
35 section, the prevailing party is entitled to reasonable attorneys'
36 fees.

37 (8) This section does not affect the rights of an excavator to
38 obtain contribution or indemnification from a third party for amounts
39 paid or owing to a claimant under this section. However, any action

1 for contribution or indemnification is independent of proceedings under
2 this section.

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