

ESHB 1539 - S AMD
By Senator

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 19.122.020 and 2000 c 191 s 15 are each amended to
4 read as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter:

7 (1) "Business day" means any day other than Saturday, Sunday, or a
8 legal local, state, or federal holiday.

9 (2) "Damage" includes the substantial weakening of structural or
10 lateral support of an underground facility, penetration, impairment, or
11 destruction of any underground protective coating, housing, or other
12 protective device, or the severance, partial or complete, of any
13 underground facility to the extent that the project owner or the
14 affected utility owner determines that repairs are required.

15 (3) "Emergency" means any condition constituting a clear and
16 present danger to life or property, or a customer service outage.

17 (4) "Excavation" means any operation in which earth, rock, or other
18 material on or below the ground is moved or otherwise displaced by any
19 means, except the tilling of soil less than twelve inches in depth for
20 agricultural purposes, or road and ditch maintenance that does not
21 change the original road grade or ditch flowline.

22 (5) "Excavation confirmation code" means a code or ticket issued by
23 the one-number locator service for the site where an excavation is
24 planned. The code must be accompanied by the date and time it was
25 issued.

26 (6) "Excavator" means any person who engages directly in
27 excavation.

28 ((+6)) (7) "Gas" means natural gas, flammable gas, or toxic or
29 corrosive gas.

30 ((+7)) (8) "Hazardous liquid" means: (a) Petroleum, petroleum
31 products, or anhydrous ammonia as those terms are defined in 49 C.F.R.
32 Part 195 as in effect on March 1, 1998; and (b) carbon dioxide. The
33 utilities and transportation commission may by rule incorporate by

1 reference other substances designated as hazardous by the secretary of
2 transportation.

3 ~~((+8+))~~ (9) "Identified facility" means any underground facility
4 which is indicated in the project plans as being located within the
5 area of proposed excavation.

6 ~~((+9+))~~ (10) "Identified but unlocatable underground facility"
7 means an underground facility which has been identified but cannot be
8 located with reasonable accuracy.

9 ~~((+10+))~~ (11) "Locatable underground facility" means an underground
10 facility which can be field-marked with reasonable accuracy.

11 ~~((+11+))~~ (12) "Marking" means the use of stakes, paint, or other
12 clearly identifiable materials to show the field location of
13 underground facilities, in accordance with the current color code
14 standard of the American public works association. Markings shall
15 include identification letters indicating the specific type of the
16 underground facility.

17 ~~((+12+))~~ (13) "Notice" or "notify" means contact in person or by
18 telephone or other electronic methods that results in the receipt of a
19 valid excavation confirmation code.

20 (14) "One-number locator service" means a service through which a
21 person can notify utilities and request field-marking of underground
22 facilities.

23 (15) "Operator" means the individual conducting the excavation.

24 (16) "Person" means an individual, partnership, franchise holder,
25 association, corporation, a state, a city, a county, or any subdivision
26 or instrumentality of a state, and its employees, agents, or legal
27 representatives.

28 ~~((+13+))~~ (17) "Pipeline" or "pipeline system" means all or parts of
29 a pipeline facility through which hazardous liquid or gas moves in
30 transportation, including, but not limited to, line pipe, valves, and
31 other appurtenances connected to line pipe, pumping units, fabricated
32 assemblies associated with pumping units, metering and delivery
33 stations and fabricated assemblies therein, and breakout tanks.
34 "Pipeline" or "pipeline system" does not include process or transfer
35 pipelines as defined in RCW 81.88.010.

36 ~~((+14+))~~ (18) "Pipeline company" means a person or entity
37 constructing, owning, or operating a pipeline for transporting
38 hazardous liquid or gas. A pipeline company does not include: (a)
39 Distribution systems owned and operated under franchise for the sale,

1 delivery, or distribution of natural gas at retail; or (b) excavation
2 contractors or other contractors that contract with a pipeline company.

3 ~~((15))~~ (19) "Reasonable accuracy" means location within twenty-
4 four inches of the outside dimensions of both sides of an underground
5 facility.

6 ~~((16))~~ (20) "Transmission pipeline" means a pipeline that
7 transports hazardous liquid or gas within a storage field, or
8 transports hazardous liquid or gas from an interstate pipeline or
9 storage facility to a distribution main or a large volume hazardous
10 liquid or gas user, or operates at a hoop stress of twenty percent or
11 more of the specified minimum yield strength.

12 (21) "Underground facility" means any item buried or placed below
13 ground for use in connection with the storage or conveyance of water,
14 sewage, electronic, telephonic or telegraphic communications,
15 cablevision, electric energy, petroleum products, gas, gaseous vapors,
16 hazardous liquids, or other substances and including but not limited to
17 pipes, sewers, conduits, cables, valves, lines, wires, manholes,
18 attachments, and those parts of poles or anchors below ground. This
19 definition does not include pipelines as defined in subsection ~~((13))~~
20 (17) of this section, but does include distribution systems owned and
21 operated under franchise for the sale, delivery, or distribution of
22 natural gas at retail.

23 ~~((17) "One-number locator service" means a service through which~~
24 ~~a person can notify utilities and request field-marking of underground~~
25 ~~facilities.))~~

26 **Sec. 2.** RCW 19.122.027 and 2000 c 191 s 16 are each amended to
27 read as follows:

28 (1) ~~((By December 31, 2000,))~~ The utilities and transportation
29 commission shall cause to be established a single statewide toll-free
30 telephone number to be used for referring excavators to the appropriate
31 one-number locator service.

32 (2) The utilities and transportation commission, in consultation
33 with the Washington utilities coordinating council, shall establish
34 minimum standards and best management practices for one-number locator
35 services ~~((consistent with the recommendations of the governor's fuel~~
36 ~~accident prevention and response team issued in December 1999. By~~
37 ~~December 31, 2000, the commission shall provide its recommendations to~~

1 ~~the appropriate standing committees of the house of representatives and~~
2 ~~the senate)).~~

3 (3) One-number locator services shall be operated by
4 nongovernmental agencies.

5 **Sec. 3.** RCW 19.122.055 and 2001 c 238 s 5 are each amended to read
6 as follows:

7 (1)(a) Any ((~~person~~)) excavator who fails to notify the one-number
8 locator service and causes damage to a hazardous liquid or gas pipeline
9 is subject to a civil penalty of not more than ten thousand dollars for
10 each violation.

11 (b) The civil penalty in this subsection may also be imposed on any
12 excavator who violates section 5 of this act.

13 (2) All civil penalties recovered under this section shall be
14 deposited into the pipeline safety account created in RCW 81.88.050.

15 **Sec. 4.** RCW 19.122.070 and 1984 c 144 s 7 are each amended to read
16 as follows:

17 (1) Any person who violates any provision of this chapter not
18 amounting to a violation of RCW 19.122.055, and which violation results
19 in damage to underground facilities, is subject to a civil penalty of
20 not more than one thousand dollars for each violation. All penalties
21 recovered in such actions shall be deposited in the general fund.

22 (2) Any excavator who willfully or maliciously damages a field-
23 marked underground facility shall be liable for treble the costs
24 incurred in repairing or relocating the facility. In those cases in
25 which an excavator fails to notify known underground facility owners or
26 the one-number locator service, any damage to the underground facility
27 shall be deemed willful and malicious and shall be subject to treble
28 damages for costs incurred in repairing or relocating the facility.

29 (3) This chapter does not affect any civil remedies for personal
30 injury or for property damage, including that to underground
31 facilities, nor does this chapter create any new civil remedies for
32 such damage.

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

1 Any excavator who excavates, without a valid excavation
2 confirmation code when required under this chapter, within thirty-five
3 feet of a transmission pipeline is guilty of a misdemeanor.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 19.122 RCW
5 to read as follows:

6 If charged with a violation of section 5 of this act, an operator
7 will be deemed to have established an affirmative defense to such
8 charges if:

9 (1) The operator was provided a valid excavation confirmation code;

10 (2) The excavation was performed in an emergency situation;

11 (3) The operator was provided a false confirmation code by an
12 identifiable third party; or

13 (4) Notice of the excavation was not required under this chapter.

14 NEW SECTION. **Sec. 7.** A new section is added to chapter 19.122 RCW
15 to read as follows:

16 Any person who intentionally provides an operator with a false
17 excavation confirmation code is guilty of a misdemeanor.

18 NEW SECTION. **Sec. 8.** A new section is added to chapter 19.122 RCW
19 to read as follows:

20 Upon receipt, during normal business hours, of notice of an
21 intended excavation, the one-number locator service shall provide an
22 excavation confirmation code."

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25 On page 1, line 2 of the title, after "pipeline;" strike the
26 remainder of the title and insert "amending RCW 19.122.020, 19.122.027,
27 19.122.055, and 19.122.070; adding new sections to chapter 19.122 RCW;
28 and prescribing penalties."

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