

ESHB 1539 - S AMD 473

By Senators Poulsen, Morton

ADOPTED 04/11/2005

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 include the date and time it was issued.

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

27 ((+6)) (7) "Gas" means natural gas, flammable gas, or toxic or
28 corrosive gas.

29 ((+7)) (8) "Hazardous liquid" means: (a) Petroleum, petroleum
30 products, or anhydrous ammonia as those terms are defined in 49 C.F.R.

1 Part 195 as in effect on March 1, 1998; and (b) carbon dioxide. The
2 utilities and transportation commission may by rule incorporate by
3 reference other substances designated as hazardous by the secretary of
4 transportation.

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

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

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

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

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

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

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

29 ~~((+13))~~ (16) "Pipeline" or "pipeline system" means all or parts of
30 a pipeline facility through which hazardous liquid or gas moves in
31 transportation, including, but not limited to, line pipe, valves, and
32 other appurtenances connected to line pipe, pumping units, fabricated
33 assemblies associated with pumping units, metering and delivery
34 stations and fabricated assemblies therein, and breakout tanks.
35 "Pipeline" or "pipeline system" does not include process or transfer
36 pipelines as defined in RCW 81.88.010.

37 ~~((+14))~~ (17) "Pipeline company" means a person or entity
38 constructing, owning, or operating a pipeline for transporting

1 hazardous liquid or gas. A pipeline company does not include: (a)
2 Distribution systems owned and operated under franchise for the sale,
3 delivery, or distribution of natural gas at retail; or (b) excavation
4 contractors or other contractors that contract with a pipeline company.

5 ~~((+15+))~~ (18) "Reasonable accuracy" means location within twenty-
6 four inches of the outside dimensions of both sides of an underground
7 facility.

8 ~~((+16+))~~ (19) "Transmission pipeline" means a pipeline that
9 transports hazardous liquid or gas within a storage field, or
10 transports hazardous liquid or gas from an interstate pipeline or
11 storage facility to a distribution main or a large volume hazardous
12 liquid or gas user, or operates at a hoop stress of twenty percent or
13 more of the specified minimum yield strength.

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

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

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

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

34 (2) The utilities and transportation commission, in consultation
35 with the Washington utilities coordinating council, shall establish
36 minimum standards and best management practices for one-number locator
37 services ~~((consistent with the recommendations of the governor's fuel~~

1 ~~accident prevention and response team issued in December 1999. By~~
2 ~~December 31, 2000, the commission shall provide its recommendations to~~
3 ~~the appropriate standing committees of the house of representatives and~~
4 ~~the senate)).~~

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

7 **Sec. 3.** RCW 19.122.030 and 2000 c 191 s 17 are each amended to
8 read as follows:

9 (1) Before commencing any excavation, excluding agriculture tilling
10 less than twelve inches in depth, ~~((the excavator shall provide))~~
11 notice shall be provided of the scheduled commencement of excavation to
12 all owners of underground facilities through a one-number locator
13 service.

14 (2) All owners of underground facilities within a one-number
15 locator service area shall subscribe to the service. One-number
16 locator service rates for cable television companies will be based on
17 the amount of their underground facilities. If no one-number locator
18 service is available, notice shall be provided individually to those
19 owners of underground facilities known to or suspected of having
20 underground facilities within the area of proposed excavation. The
21 notice shall be communicated to the owners of underground facilities
22 not less than two business days or more than ten business days before
23 the scheduled date for commencement of excavation, unless otherwise
24 agreed by the parties.

25 (3) Upon receipt of the notice provided for in this section, the
26 owner of the underground facility shall provide the excavator with
27 reasonably accurate information as to its locatable underground
28 facilities by surface-marking the location of the facilities. If there
29 are identified but unlocatable underground facilities, the owner of
30 such facilities shall provide the excavator with the best available
31 information as to their locations. The owner of the underground
32 facility providing the information shall respond no later than two
33 business days after the receipt of the notice or before the excavation
34 time, at the option of the owner, unless otherwise agreed by the
35 parties.

36 (4) Excavators shall not excavate until notice has been provided
37 under subsection (1) of this section and all known facilities have been

1 marked. Once marked by the owner of the underground facility, the
2 excavator is responsible for maintaining the markings. Excavators
3 shall have the right to receive compensation from the owner of the
4 underground facility for costs incurred if the owner of the underground
5 facility does not locate its facilities in accordance with this
6 section.

7 ((+4)) (5) The owner of the underground facility shall have the
8 right to receive compensation for costs incurred in responding to
9 excavation notices given less than two business days prior to the
10 excavation from the excavator.

11 ((+5)) (6) An owner of underground facilities is not required to
12 indicate the presence of existing service laterals or appurtenances if
13 the presence of existing service laterals or appurtenances on the site
14 of the construction project can be determined from the presence of
15 other visible facilities, such as buildings, manholes, or meter and
16 junction boxes on or adjacent to the construction site.

17 ((+6)) (7) Emergency excavations are exempt from the time
18 requirements for notification provided in this section.

19 ((+7)) (8) If the excavator, while performing the contract,
20 discovers underground facilities which are not identified, the
21 excavator shall cease excavating in the vicinity of the facility and
22 immediately notify the owner or operator of such facilities, or the
23 one-number locator service.

24 **Sec. 4.** RCW 19.122.033 and 2000 c 191 s 18 are each amended to
25 read as follows:

26 (1) Before commencing any excavation, excluding agricultural
27 tilling less than twelve inches in depth, ~~((an excavator shall notify))~~
28 notice shall be provided to pipeline companies of the scheduled
29 commencement of excavation through a one-number locator service in the
30 same manner as is required for notifying owners of underground
31 facilities of excavation work under RCW 19.122.030. Pipeline companies
32 shall have the same rights and responsibilities as owners of
33 underground facilities under RCW 19.122.030 regarding excavation work.
34 Excavators have the same rights and responsibilities under this section
35 as they have under RCW 19.122.030.

36 (2) Project owners, excavators, and pipeline companies have the

1 same rights and responsibilities relating to excavation near pipelines
2 that they have for excavation near underground facilities as provided
3 in RCW 19.122.040.

4 **Sec. 5.** RCW 19.122.035 and 2000 c 191 s 19 are each amended to
5 read as follows:

6 (1) After a pipeline company has been notified (~~(by an excavator)~~)
7 pursuant to RCW 19.122.033 that excavation work will uncover any
8 portion of the pipeline, the pipeline company shall ensure that the
9 pipeline section in the vicinity of the excavation is examined for
10 damage prior to being reburied.

11 (2) Immediately upon receiving information of third-party damage to
12 a hazardous liquid pipeline, the company that operates the pipeline
13 shall terminate the flow of hazardous liquid in that pipeline until it
14 has visually inspected the pipeline. After visual inspection, the
15 operator of the hazardous liquid pipeline shall determine whether the
16 damaged pipeline section should be replaced or repaired, or whether it
17 is safe to resume pipeline operation. Immediately upon receiving
18 information of third-party damage to a gas pipeline, the company that
19 operates the pipeline shall conduct a visual inspection of the pipeline
20 to determine whether the flow of gas through that pipeline should be
21 terminated, and whether the damaged pipeline should be replaced or
22 repaired. A record of the pipeline company's inspection report and
23 test results shall be provided to the utilities and transportation
24 commission consistent with reporting requirements under 49 C.F.R. 195
25 Subpart B.

26 (3) Pipeline companies shall immediately notify local first
27 responders and the department of any reportable release of a hazardous
28 liquid from a pipeline. Pipeline companies shall immediately notify
29 local first responders and the commission of any blowing gas leak from
30 a gas pipeline that has ignited or represents a probable hazard to
31 persons or property. Pipeline companies shall take all appropriate
32 steps to ensure the public safety in the event of a release of
33 hazardous liquid or gas under this subsection.

34 (4) No damaged pipeline may be buried until it is repaired or
35 relocated. The pipeline company shall arrange for repairs or
36 relocation of a damaged pipeline as soon as is practical or may permit

1 the excavator to do necessary repairs or relocation at a mutually
2 acceptable price.

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

5 (1)(a) Any person who (~~(fails to notify)~~) excavates without first
6 obtaining a valid excavation confirmation code from the one-number
7 locator service and causes damage to a hazardous liquid or gas pipeline
8 is subject to a civil penalty of not more than ten thousand dollars for
9 each violation.

10 (b) The civil penalty in this subsection may also be imposed on any
11 person who violates section 8 or 9 of this act.

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

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

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

21 (2) Any excavator who willfully or maliciously damages a field-
22 marked underground facility shall be liable for treble the costs
23 incurred in repairing or relocating the facility. In those cases in
24 which (~~(an excavator)~~) a person fails to notify known underground
25 facility owners or excavates without first obtaining a valid excavation
26 confirmation code from the one-number locator service, any damage to
27 the underground facility shall be deemed willful and malicious and
28 shall be subject to treble damages for costs incurred in repairing or
29 relocating the facility.

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

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

1 Any person who excavates, without a valid excavation confirmation
2 code when required under this chapter, within thirty-five feet of a
3 transmission pipeline, and causes damage to the transmission pipeline,
4 is guilty of a gross misdemeanor.

5 NEW SECTION. **Sec. 9.** A new section is added to chapter 19.122 RCW
6 to read as follows:

7 Any person who excavates, without a valid excavation confirmation
8 code when required under this chapter, within thirty-five feet of a
9 transmission pipeline is guilty of a misdemeanor.

10 NEW SECTION. **Sec. 10.** A new section is added to chapter 19.122
11 RCW to read as follows:

12 If charged with a violation of section 8 or 9 of this act, an
13 excavator will be deemed to have established an affirmative defense to
14 such charges if:

- 15 (1) The excavator was provided a valid excavation confirmation
16 code;
17 (2) The excavation was performed in an emergency situation;
18 (3) The excavator was provided a false confirmation code by an
19 identifiable third party; or
20 (4) Notice of the excavation was not required under this chapter.

21 NEW SECTION. **Sec. 11.** A new section is added to chapter 19.122
22 RCW to read as follows:

23 Any person who intentionally provides an excavator with a false
24 excavation confirmation code is guilty of a misdemeanor.

25 NEW SECTION. **Sec. 12.** A new section is added to chapter 19.122
26 RCW to read as follows:

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

ESHB 1539 - S AMD 473

By Senators Poulsen, Morton

ADOPTED 04/11/2005

1 On page 1, line 2 of the title, after "pipeline;" strike the
2 remainder of the title and insert "amending RCW 19.122.020, 19.122.027,
3 19.122.030, 19.122.033, 19.122.035, 19.122.055, and 19.122.070; adding
4 new sections to chapter 19.122 RCW; and prescribing penalties."

--- END ---