

HOUSE BILL REPORT

ESHB 1539

As Amended by the Senate

Title: An act relating to failure to notify the one-number locator service when excavating near a transmission pipeline.

Brief Description: Making it a crime to excavate without notification near a transmission pipeline.

Sponsors: By House Committee on Technology, Energy & Communications (originally sponsored by Representatives Linville, Roach, Morris, DeBolt, Ericksen, Williams and Upthegrove).

Brief History:

Committee Activity:

Technology, Energy & Communications: 2/8/05, 2/17/05 [DPS].

Floor Activity:

Passed House: 3/10/05, 94-0.

Senate Amended.

Passed Senate: 4/11/05, 49-0.

Brief Summary of Engrossed Substitute Bill

- Provides that it is a gross misdemeanor to excavate within 50 feet of a transmission pipeline without notifying the one-number locator service as required under law.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Morris, Chair; Kilmer, Vice Chair; Crouse, Ranking Minority Member; Haler, Assistant Ranking Minority Member; Ericks, Hudgins, Nixon, P. Sullivan, Sump, Takko and Wallace.

Staff: Sarah Dylag (786-7109).

Background:

Under current law, a single statewide telephone number exists for referring excavators to the appropriate one-number locator service. A one-number locator service is operated by non-governmental entities and is a means by which a person can notify utilities of excavation and request field marking of underground facilities. In general, a one-number locator service

receives requests for the location of buried utility facilities and relays those requests to member utilities and governmental agencies. The Washington Utilities and Transportation Commission, in consultation with the Washington Utilities Coordinating Council, establishes minimum standards and best management practices for one-number services.

Before conducting any excavation, excluding agricultural tilling less than 12 inches in depth, a person must notify pipeline companies of the scheduled excavation through the one-number locator service. Notification must occur in a window of not less than two business days but not more than 10 business days before beginning the excavation. If a pipeline company is notified that excavation work will occur near a pipeline, a representative of the company must consult with the excavator on-site prior to excavation.

A civil penalty of not more than \$10,000 applies when a person fails to notify the one-number locator service and causes damage to a hazardous liquid or gas pipeline.

Summary of Engrossed Substitute Bill:

Any person who fails to notify the one-number locator service, as required under law, before excavating within 50 feet of a transmission pipeline is guilty of a gross misdemeanor. A fine of not more than \$10,000 applies to each offense.

A civil penalty of not more than \$10,000 also applies when a person fails to notify the one-number locator service and causes damage to a hazardous liquid or gas pipeline.

A transmission pipeline is defined as a pipeline that transports hazardous liquid or gas within a storage field, or transports hazardous liquid or gas from an interstate pipeline or storage facility to a distribution main or a large volume hazardous liquid or gas user, or operates at a hoop stress of 20 percent or more of the specified minimum yield strength.

EFFECT OF SENATE AMENDMENT(S):

Upon receiving notice of an intended excavation, the one-number locator service must provide an excavation confirmation code containing the date and time that the confirmation code was issued.

Notice is defined as contact in person or by telephone or other electronic methods that results in the receipt of a valid excavation confirmation code.

The excavator is not the specific person required to give notice. Instead, anyone can call and obtain the excavation confirmation code, but the excavator must have the excavation confirmation code prior to conducting an excavation. A person who intentionally provides an excavator with a false excavation confirmation code is guilty of a misdemeanor.

Two criminal offenses are established instead of one. Any person who excavates within 35 feet of a transmission pipeline without obtaining a valid excavation confirmation code and

causes damage to a transmission pipeline is guilty of a gross misdemeanor. Any person who excavates within 35 feet of a transmission pipeline without obtaining a valid excavation confirmation code is guilty of a misdemeanor. Civil penalties of not more than ten thousand dollars may also apply, in addition to any criminal penalties, when a person excavates without obtaining a valid excavation confirmation code and causes damage to a hazardous liquid or gas pipeline.

Affirmative defenses are created for the excavator. Those affirmative defenses are: (1) The excavator was provided a valid excavation confirmation code; (2) The excavation was performed in an emergency situation; (3) The excavator was provided a false confirmation code by an identifiable third party; or (4) Notice of the excavation was not required.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) Pipelines can be damaged internally and externally. Time and money is spent inspecting and analyzing pipeline systems for safety. Those efforts are focused on internal forces. This bill protects against external issues that can affect pipelines. A person does not need to hit a pipeline to cause forces that will cause a pipeline to fail. Under current law, there is a system to notify all utilities of an excavation. Everyone is required to make the call. But there are not penalties assessed until damages occur. This bill targets those individuals who fail to notify before excavating. There are not new burdens on the public.

Near-miss incidents do occur, when excavators dig within 100 feet of a pipeline without calling the one-call number. Pipeline companies must conduct additional safety inspections when these incidents occur. Under current law, there are no consequences unless damages occur. Additional strength is needed in the law to stop the near-miss incidents.

Public education efforts are not sufficient to get people to call the one-number locator service. This bill will help get people to call the one-number locator service. The current system is inadequate and the bill is an improvement. The bill is about public safety and encourages everyone to pay attention and know that there could be pipelines underground.

(With concerns) There is a concern about imposing the penalty for excavation beyond the pipeline right-of-way. Although current penalties are inadequate to convince certain contractors to obey the law, the 100 foot distance could make it a crime for a homeowner to dig on their own property. One hundred feet is a long way. The distance should be limited to the right-of-way, although right-of-ways tend to vary so a different distance may be more appropriate.

Testimony Against: None.

Persons Testifying: (In support) Brad Tower and Dave Barnes, Olympic Pipeline Company; Katie Hansen and Richard Rupremiz, Washington Citizens Committee on Pipeline Safety; Mark Greenberg, One-Call Concepts, Inc.; and Dan Coyne, Williams.

(With concerns) Pete Kmet, Tumwater City Council and Washington Citizens Committee on Pipeline Safety; and Dave Ducharme, Utility Contractors Association of Washington; and Rick Slunaker, Associated General Contractors.

Persons Signed In To Testify But Not Testifying: None.