

**E2SHB 1634** - S COMM AMD

By Committee on Environment, Water & Energy

NOT ADOPTED 04/06/2011

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

3 "Sec. 1. RCW 19.122.010 and 1984 c 144 s 1 are each amended to  
4 read as follows:

5 ~~((It is the intent of the legislature in enacting this chapter to  
6 assign responsibilities for locating and keeping accurate records of  
7 utility locations, protecting and repairing damage to existing  
8 underground facilities, and protecting the public health and safety  
9 from interruption in utility services caused by damage to existing  
10 underground utility facilities.))~~ In this chapter, the underground  
11 utility damage prevention act, the legislature intends to:

12 (1) Protect public health and safety and prevent disruption of  
13 vital utility services by establishing a comprehensive damage  
14 prevention program;

15 (2) Establish authority to enforce the act; and

16 (3) Assign responsibilities for locating underground facilities,  
17 for providing accurate location records, and for repairing damage.

18 **Sec. 2.** RCW 19.122.020 and 2007 c 142 s 9 are each amended to read  
19 as follows:

20 ~~((Unless the context clearly requires otherwise,))~~ The definitions  
21 in this section apply throughout this chapter((+)) unless the context  
22 clearly requires otherwise.

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

25 (2) "Damage" includes the substantial weakening of structural or  
26 lateral support of an underground facility, penetration, impairment, or  
27 destruction of any underground protective coating, housing, or other  
28 protective device, or the severance, partial or complete, of any

1 underground facility to the extent that the project owner or the  
2 affected utility owner determines that repairs are required.

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

5 (4) "Excavation" and "excavate" means any operation including the  
6 installation of signs, except for installation of official traffic  
7 signs, in which earth, rock, or other material on or below the ground  
8 is moved or otherwise displaced by any means(~~(, except the tilling of~~  
9 ~~soil less than twelve inches in depth for agricultural purposes, or~~  
10 ~~road and ditch maintenance that does not change the original road grade~~  
11 ~~or ditch flowline))~~).

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

16 (6) "Excavator" means any person who engages directly in  
17 excavation.

18 (7) "Gas" means natural gas, flammable gas, or toxic or corrosive  
19 gas.

20 (8) "Hazardous liquid" means:

21 (a) Petroleum, petroleum products, or anhydrous ammonia as those  
22 terms are defined in 49 C.F.R. Part 195 as in effect on March 1, 1998;  
23 (~~and~~)

24 (b) Carbon dioxide(~~(. The utilities and transportation commission~~  
25 ~~may by rule incorporate by reference))~~); and

26 (c) Other substances designated as hazardous by the secretary of  
27 transportation and incorporated by reference by the commission by rule.

28 (9) (~~("Identified facility" means any underground facility which is~~  
29 ~~indicated in the project plans as being located within the area of~~  
30 ~~proposed excavation.~~

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

34 (~~(+11))~~) (10) "Locatable underground facility" means an underground  
35 facility which can be field-marked with reasonable accuracy.

36 (~~(+12))~~) (11) "Marking" means the use of stakes, paint, or other  
37 clearly identifiable materials to show the field location of  
38 underground facilities, in accordance with the current color code

1 standard of the American public works association. Markings shall  
2 include identification letters indicating the specific type of the  
3 underground facility.

4 ((+13+)) (12) "Notice" or "notify" means contact in person or by  
5 telephone or other electronic methods that results in the receipt of a  
6 valid excavation confirmation code.

7 ((+14+)) (13) "One-number locator service" means a service through  
8 which a person can notify utilities and request field-marking of  
9 underground facilities.

10 ~~((+15+)) "Operator" means the individual conducting the excavation.~~  
11 ~~(+16+))~~ (14) "Person" means an individual, partnership, franchise  
12 holder, association, corporation, a state, a city, a county, or any  
13 subdivision or instrumentality of a state, and its employees, agents,  
14 or legal representatives.

15 ((+17+)) (15) "Pipeline" or "pipeline system" means all or parts of  
16 a pipeline facility through which hazardous liquid or gas moves in  
17 transportation, including, but not limited to, line pipe, valves, and  
18 other appurtenances connected to line pipe, pumping units, fabricated  
19 assemblies associated with pumping or compressor units, metering and  
20 delivery stations and fabricated assemblies therein, and breakout  
21 tanks. "Pipeline" or "pipeline system" does not include process or  
22 transfer pipelines.

23 ((+18+)) (16) "Pipeline company" means a person or entity  
24 constructing, owning, or operating a pipeline for transporting  
25 hazardous liquid or gas. A pipeline company does not include: (a)  
26 Distribution systems owned and operated under franchise for the sale,  
27 delivery, or distribution of natural gas at retail; or (b) excavation  
28 contractors or other contractors that contract with a pipeline company.

29 ((+19+)) (17) "Reasonable accuracy" means location within twenty-  
30 four inches of the outside dimensions of both sides of an underground  
31 facility.

32 ((+20+)) (18) "Transfer pipeline" means a buried or aboveground  
33 pipeline used to carry hazardous liquid between a tank vessel or  
34 transmission pipeline and the first valve inside secondary containment  
35 at the facility provided that any discharge on the facility side of  
36 that first valve will not directly impact waters of the state. A  
37 transfer pipeline includes valves, and other appurtenances connected to  
38 the pipeline, pumping units, and fabricated assemblies associated with

1 pumping units. A transfer pipeline does not include process pipelines,  
2 pipelines carrying ballast or bilge water, transmission pipelines, or  
3 tank vessel or storage tanks.

4 ~~((+21+))~~ (19) "Transmission pipeline" means a pipeline that  
5 transports hazardous liquid or gas within a storage field, or  
6 transports hazardous liquid or gas from an interstate pipeline or  
7 storage facility to a distribution main or a large volume hazardous  
8 liquid or gas user, or operates at a hoop stress of twenty percent or  
9 more of the specified minimum yield strength.

10 ~~((+22+))~~ (20) "Underground facility" means any item buried or  
11 placed below ground for use in connection with the storage or  
12 conveyance of water, sewage, electronic, telephonic or telegraphic  
13 communications, cablevision, electric energy, petroleum products, gas,  
14 gaseous vapors, hazardous liquids, or other substances and including  
15 but not limited to pipes, sewers, conduits, cables, valves, lines,  
16 wires, manholes, attachments, and those parts of poles or anchors below  
17 ground. This definition does not include pipelines as defined in  
18 subsection ~~((+17+))~~ (15) of this section, but does include distribution  
19 systems owned and operated under franchise for the sale, delivery, or  
20 distribution of natural gas at retail.

21 (21) "Bar hole" means a hole made in the soil or pavement with a  
22 bar for the specific purpose of testing the subsurface atmosphere with  
23 a combustible gas indicator.

24 (22) "Commission" means the utilities and transportation  
25 commission.

26 (23) "Easement" or "utility easement" means a right held by a  
27 facility operator to enter or cross with in-place assets, property  
28 owned by another for the purpose of providing utility service, or  
29 maintaining assets that provide utility service.

30 (24) "End user" means any utility customer or consumer of utility  
31 services or commodities provided by a facility operator.

32 (25) "Equipment operator" means the individual conducting the  
33 excavation.

34 (26) "Facility operator" means any person who owns underground  
35 facilities or is in the business of supplying any utility service or  
36 commodity for compensation. "Facility operator" does not include a  
37 utility customer who owns a service lateral that terminates at a  
38 facility operator's main utility line.

1 (27) "Large project" means a project that exceeds seven hundred  
2 linear feet.

3 (28) "Service lateral" means an underground water, storm water, or  
4 sewer facility located in a public right-of-way or utility easement  
5 that connects an end user's building or property to a facility  
6 operator's underground facility, and terminates beyond the public  
7 right-of-way or utility easement.

8 (29) "Unlocatable underground facility" means, subject to the  
9 provisions of RCW 19.122.030, an underground facility that cannot be  
10 field-marked with reasonable accuracy using best available information  
11 to designate the location of underground facilities. "Unlocatable  
12 underground facility" includes, but is not limited to, service  
13 laterals, storm drains, and nonconductive and nonmetallic underground  
14 facilities that do not contain trace wires.

15 **Sec. 3.** RCW 19.122.027 and 2005 c 448 s 2 are each amended to read  
16 as follows:

17 (1) The ~~((utilities and transportation commission shall cause to be~~  
18 ~~established)) commission must establish a single statewide toll-free~~  
19 telephone number to be used for referring excavators to the appropriate  
20 one-number locator service.

21 (2) The ~~((utilities and transportation))~~ commission, in  
22 consultation with the Washington utilities coordinating council,  
23 ~~((shall)) must establish minimum standards and best management~~  
24 practices for one-number locator services.

25 (3) One-number locator services ~~((shall)) must be operated by~~  
26 nongovernmental agencies.

27 (4) All facility operators within a one-number locator service area  
28 must subscribe to the service.

29 (5) Failure to subscribe to the one-number locator service  
30 constitutes willful intent to avoid compliance with this chapter.

31 **Sec. 4.** RCW 19.122.030 and 2000 c 191 s 17 are each amended to  
32 read as follows:

33 (1)(a) Unless exempted under section 5 of this act, before  
34 commencing any excavation, ~~((excluding agriculture tilling less than~~  
35 twelve inches in depth, the excavator shall)) an excavator must mark  
36 the boundary of the excavation area with white paint applied on the

1 ground of the worksite, then provide notice of the scheduled  
2 commencement of excavation to all (~~owners of underground facilities~~)  
3 facility operators through a one-number locator service.

4 (b) If boundary marking required by (a) of this subsection is  
5 infeasible, an excavator must communicate directly with affected  
6 facility operators to ensure that the boundary of the excavation area  
7 is accurately identified.

8 (~~(2) (All owners of underground facilities within a one-number~~  
9 ~~locator service area shall subscribe to the service. One-number~~  
10 ~~locator service rates for cable television companies will be based on~~  
11 ~~the amount of their underground facilities. If no one-number locator~~  
12 ~~service is available, notice shall be provided individually to those~~  
13 ~~owners of underground facilities known to or suspected of having~~  
14 ~~underground facilities within the area of proposed excavation. The~~  
15 ~~notice shall be communicated to the owners of underground facilities)~~)  
16 An excavator must provide the notice required by subsection (1) of this  
17 section to a one-number locator service not less than two business days  
18 (~~or~~) and not more than ten business days before the scheduled date  
19 for commencement of excavation, unless otherwise agreed (~~by the~~  
20 parties) to by the excavator and facility operators. If an excavator  
21 intends to work at multiple sites or at a large project, the excavator  
22 must take reasonable steps to confer with facility operators to enable  
23 them to locate underground facilities reasonably in advance of the  
24 start of excavation for each phase of the work.

25 (3) Upon receipt of the notice provided for in (~~this section, the~~  
26 ~~owner of the underground facility shall~~) subsection (1) of this  
27 section, a facility operator must, with respect to:

28 (a) The operator's locatable underground facilities, provide the  
29 excavator with reasonably accurate information (~~as to its locatable~~  
30 underground facilities by surface marking the location of the  
31 facilities. If there are) by surface-marking their location;

32 (b) The operator's unlocatable or identified but unlocatable  
33 underground facilities, (~~the owner of such facilities shall~~) provide  
34 the excavator with (~~the best~~) available information as to their  
35 (~~locations. The owner of the underground facility providing the~~  
36 information shall respond) location; and

37 (c) Service laterals, designate their presence or location, if the  
38 service laterals:

1 (i) Connect end users to the facility operator's main utility line;  
2 and  
3 (ii) Are within a public right-of-way or utility easement and the  
4 boundary of the excavation area identified under subsection (1) of this  
5 section.  
6 (4)(a) A facility operator must provide information to an excavator  
7 pursuant to subsection (3) of this section no later than two business  
8 days after the receipt of the notice or before the excavation time, at  
9 the option of the ((owner)) facility operator, unless otherwise agreed  
10 by the parties. ((Excavators shall not excavate until all known  
11 facilities have been marked. Once marked by the owner of the  
12 underground facility, the excavator is responsible for maintaining the  
13 markings. Excavators shall have the right to receive compensation from  
14 the owner of the underground facility for costs incurred if the owner  
15 of the underground facility does not locate its facilities in  
16 accordance with this section.  
17 ~~(4) The owner of the underground facility shall have))~~  
18 (b) A facility operator may comply with subsection (3)(b) and (c)  
19 of this section in a manner that includes, but is not limited to, any  
20 one of the following methods:  
21 (i) Placing within a proposed excavation area a triangular green  
22 mark at the main utility line pointing at an address in question,  
23 indicating the presence of an unlocatable or identified but unlocatable  
24 underground facility, including a service lateral;  
25 (ii) Arranging to meet an excavator at a worksite to provide  
26 available information about the location of service laterals; or  
27 (iii) Providing available information through other means if  
28 agreeable to both the excavator and facility operator.  
29 (c) A facility operator's good faith attempt to designate the  
30 presence or location of a service lateral using available information:  
31 (i) Is deemed to comply with the requirements of this section; and  
32 (ii) Does not constitute any assertion of ownership or operation of  
33 the service lateral by the facility operator.  
34 (d) An end user is responsible for determining the location of  
35 service laterals on their property or service laterals that they own.  
36 Nothing in this section may be interpreted to require an end user to  
37 subscribe to a one-number locator service or to locate a service  
38 lateral within a right-of-way or easement.

1 (5) An excavator must not excavate until all known facility  
2 operators have marked or provided information regarding underground  
3 facilities as provided in this section.

4 (6)(a) Once marked by a facility operator, an excavator is  
5 responsible for maintaining the accuracy of the facility operator's  
6 markings of underground utilities for the lesser of:

7 (i) Forty-five calendar days from the date that the excavator  
8 provided notice to the one-number locator service pursuant to  
9 subsection (1) of this section; or

10 (ii) The duration of the project.

11 (b) An excavator that makes repeated requests for location of  
12 underground utilities due to its failure to maintain the accuracy of a  
13 facility operator's markings of underground facilities as required by  
14 this subsection (6) may be charged for services provided.

15 (c) A facility operator's markings of underground utilities expire  
16 forty-five calendar days from the date that the excavator provided  
17 notice to the one-number locator service pursuant to subsection (1) of  
18 this section. For excavation occurring after that date, an excavator  
19 must provide additional notice to a one-number locator service pursuant  
20 to subsection (1) of this section.

21 (7) An excavator has the right to receive compensation from a  
22 facility operator for costs incurred if the facility operator does not  
23 locate its underground facilities in accordance with the requirements  
24 specified in this section.

25 (8) A facility operator has the right to receive compensation for  
26 costs incurred in responding to excavation notices given less than two  
27 business days prior to the excavation from the excavator.

28 ~~((5) An owner of underground facilities is not required to~~  
29 ~~indicate the presence of existing service laterals or appurtenances if~~  
30 ~~the presence of existing service laterals or appurtenances on the site~~  
31 ~~of the construction project can be determined from the presence of~~  
32 ~~other visible facilities, such as buildings, manholes, or meter and~~  
33 ~~junction boxes on or adjacent to the construction site.~~

34 ~~(6))~~ (9) Emergency excavations are exempt from the time  
35 requirements for notification provided in this section. With respect  
36 to creating bar holes twelve inches or more in depth during emergency  
37 leak investigations, excavators must take reasonable measures to  
38 eliminate electrical arc hazards.



1        ~~((7) If the excavator, while performing the contract,))~~ (10) If an  
2 excavator discovers underground facilities ~~((which))~~ that are not  
3 identified, the excavator ~~((shall))~~ must cease excavating in the  
4 vicinity of the ~~((facility))~~ underground facilities and immediately  
5 notify the ~~((owner or))~~ facility operator ~~((of such facilities,))~~ or  
6 the one-number locator service. If an excavator discovers identified  
7 but unlocatable underground facilities, the excavator must notify the  
8 facility operator. Upon notification by the one-number locator service  
9 or an excavator, a facility operator must allow for location of the  
10 uncovered portion of an underground facility identified by the  
11 excavator, and may accept location information from the excavator for  
12 marking of the underground facility.

13        NEW SECTION. Sec. 5. A new section is added to chapter 19.122 RCW  
14 to read as follows:

15        (1) The requirements specified in RCW 19.122.030 do not apply to  
16 any of the following described activities:

17        (a) An excavation of less than twelve inches in depth on private  
18 noncommercial property, if the excavation is performed by the person or  
19 an employee of the person who owns or occupies the property on which  
20 the excavation is being performed;

21        (b) The tilling of soil less than twenty inches in depth for  
22 agricultural purposes;

23        (c) Road maintenance activities involving excavation less than six  
24 inches in depth below the original road grade and ditch maintenance  
25 activities involving excavation less than six inches in depth below the  
26 original ditch flowline or alteration of the original ditch horizontal  
27 alignment;

28        (d) The creation of bar holes with hand-operated equipment during  
29 emergency leak investigations;

30        (e) The creation of bar holes less than twelve inches in depth; or

31        (f) Construction, operation, or maintenance activities by an  
32 irrigation district on rights-of-way, easements, or facilities owned by  
33 the federal bureau of reclamation in federal reclamation projects.

34        (2) Any activity described under subsection (1) of this section is  
35 subject to the requirements specified in RCW 19.122.050.

1       **Sec. 6.** RCW 19.122.033 and 2000 c 191 s 18 are each amended to  
2 read as follows:

3       (1) Before commencing any excavation, (~~excluding agricultural~~  
4 ~~tilling less than twelve inches in depth,~~) an excavator (~~shall~~) must  
5 notify pipeline companies of the scheduled commencement of excavation  
6 through a one-number locator service in the same manner as is required  
7 for notifying (~~owners of underground facilities~~) facility operators  
8 of excavation work under RCW 19.122.030. Pipeline companies (~~shall~~)  
9 have the same rights and responsibilities as (~~owners of underground~~  
10 ~~facilities~~) facility operators under RCW 19.122.030 regarding  
11 excavation work. Excavators have the same rights and responsibilities  
12 under this section as they have under RCW 19.122.030.

13       (2) Project owners, excavators, and pipeline companies have the  
14 same rights and responsibilities relating to excavation near pipelines  
15 that they have for excavation near underground facilities as provided  
16 in RCW 19.122.040.

17       (3) The state or any of its political subdivisions undertaking or  
18 permitting construction or excavation activity under chapter 19.27 RCW  
19 within one hundred feet, or greater distance if defined by local  
20 ordinance, of a right-of-way or easement that contains a transmission  
21 pipeline must:

22       (a) Notify the transmission pipeline company of the proposed  
23 construction activity before such a permit is approved; or

24       (b) Require consultation between the person proposing the  
25 construction activity and the transmission pipeline company as a  
26 condition of receiving the permit.

27       **Sec. 7.** RCW 19.122.035 and 2000 c 191 s 19 are each amended to  
28 read as follows:

29       (1) After a pipeline company has been notified by an excavator  
30 pursuant to RCW 19.122.033 that excavation work will uncover any  
31 portion of the pipeline, the pipeline company shall ensure that the  
32 pipeline section in the vicinity of the excavation is examined for  
33 damage prior to being reburied.

34       (2) Immediately upon receiving information of third-party damage to  
35 a hazardous liquid pipeline, the company that operates the pipeline  
36 shall terminate the flow of hazardous liquid in that pipeline until it  
37 has visually inspected the pipeline. After visual inspection, the

1 ((operator of the hazardous liquid)) pipeline company shall determine  
2 whether the damaged pipeline section should be replaced or repaired, or  
3 whether it is safe to resume pipeline operation. Immediately upon  
4 receiving information of third-party damage to a gas pipeline, the  
5 ((company that operates the)) pipeline company shall conduct a visual  
6 inspection of the pipeline to determine whether the flow of gas through  
7 that pipeline should be terminated, and whether the damaged pipeline  
8 should be replaced or repaired. A record of the pipeline company's  
9 inspection report and test results shall be provided to the ((utilities  
10 and transportation)) commission consistent with reporting requirements  
11 under 49 C.F.R. 195 Subpart B.

12 (3) Pipeline companies shall immediately notify local first  
13 responders and the department of any reportable release of a hazardous  
14 liquid from a pipeline. Pipeline companies shall immediately notify  
15 local first responders and the commission of any blowing gas leak from  
16 a gas pipeline that has ignited or represents a probable hazard to  
17 persons or property. Pipeline companies shall take all appropriate  
18 steps to ensure the public safety in the event of a release of  
19 hazardous liquid or gas under this subsection.

20 (4) No damaged pipeline may be buried until it is repaired or  
21 relocated. The pipeline company shall arrange for repairs or  
22 relocation of a damaged pipeline as soon as is practical or may permit  
23 the excavator to do necessary repairs or relocation at a mutually  
24 acceptable price.

25 **Sec. 8.** RCW 19.122.040 and 1984 c 144 s 4 are each amended to read  
26 as follows:

27 (1) Project owners shall indicate in bid or contract documents the  
28 existence of underground facilities known by the project owner to be  
29 located within the proposed area of excavation. The following ((shall  
30 be)) are deemed changed or differing site conditions:

31 (a) An underground facility not identified as required by this  
32 chapter or other provision of law; ((and)) or

33 (b) An underground facility not located, as required by this  
34 chapter or other provision of law, by the project owner, facility  
35 operator, or excavator if the project owner or excavator is also a  
36 ((utility)) facility operator.

1 (2) An excavator shall use reasonable care to avoid damaging  
2 underground facilities. An excavator (~~(shall)~~) must:

3 (a) Determine the precise location of underground facilities which  
4 have been marked;

5 (b) Plan the excavation to avoid damage to or minimize interference  
6 with underground facilities in and near the excavation area; and

7 (c) Provide such support for underground facilities in and near the  
8 construction area, including during backfill operations, as may be  
9 reasonably necessary for the protection of such facilities.

10 (3) If an underground facility is damaged and such damage is the  
11 consequence of the failure to fulfill an obligation under this chapter,  
12 the party failing to perform that obligation (~~(shall be)~~) is liable for  
13 any damages. Any clause in an excavation contract which attempts to  
14 allocate liability, or requires indemnification to shift the economic  
15 consequences of liability, different from the provisions of this  
16 chapter is against public policy and unenforceable. Nothing in this  
17 chapter prevents the parties to an excavation contract from contracting  
18 with respect to the allocation of risk for changed or differing site  
19 conditions.

20 (4) In any action brought under this section, the prevailing party  
21 is entitled to reasonable attorneys' fees.

22 **Sec. 9.** RCW 19.122.050 and 1984 c 144 s 5 are each amended to read  
23 as follows:

24 (1) An excavator who, in the course of excavation, contacts or  
25 damages an underground facility shall notify the (~~(utility owning or~~  
26 ~~operating such)) facility operator and the one-number locator service,  
27 and report the damage as required under section 20 of this act. If the  
28 damage causes an emergency condition, the excavator causing the damage  
29 shall also alert the appropriate local public safety agencies and take  
30 all appropriate steps to ensure the public safety. No damaged  
31 underground facility may be buried until it is repaired or relocated.~~

32 (2) (~~The owner of the underground facilities damaged~~) A facility  
33 operator notified in accordance with subsection (1) of this section  
34 shall arrange for repairs or relocation as soon as is practical or may  
35 permit the excavator to do necessary repairs or relocation at a  
36 mutually acceptable price.

1       **Sec. 10.** RCW 19.122.055 and 2005 c 448 s 3 are each amended to  
2 read as follows:

3       (1)(a) Any excavator who fails to notify the one-number locator  
4 service and causes damage to a hazardous liquid or gas pipeline is  
5 subject to a civil penalty of not more than ten thousand dollars for  
6 each violation.

7       (b) The civil penalty in this subsection may also be imposed on any  
8 excavator who violates RCW 19.122.090.

9       (2) All civil penalties recovered under this section (~~((shall))~~) must  
10 be deposited into the (~~((pipeline safety))~~) damage prevention account  
11 created in (~~((RCW 81.88.050))~~) section 12 of this act.

12       **Sec. 11.** RCW 19.122.070 and 2005 c 448 s 4 are each amended to  
13 read as follows:

14       (1) Any person who violates any provision of this chapter not  
15 amounting to a violation of RCW 19.122.055(~~((, and which violation~~  
16 ~~results in damage to underground facilities,))~~) is subject to a civil  
17 penalty of not more than one thousand dollars for (~~((each violation.~~  
18 ~~All penalties recovered in such actions shall be deposited in the~~  
19 ~~general fund))~~) an initial violation, and not more than five thousand  
20 dollars for each subsequent violation within a three-year period. All  
21 penalties recovered in such actions must be used for education and  
22 training of excavators and facility operators regarding best practices  
23 and compliance with this chapter. All penalties recovered in such  
24 actions must be deposited in the damage prevention account created in  
25 section 12 of this act.

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

34       (3) This chapter does not affect any civil remedies for personal  
35 injury or for property damage, including that to underground  
36 facilities, nor does this chapter create any new civil remedies for  
37 such damage.

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

3        The damage prevention account is created in the custody of the  
4    state treasurer.    All receipts from moneys directed by law or the  
5    commission to be deposited to the account must be deposited in the  
6    account.    Expenditures from the account may be used only for purposes  
7    designated in section 13 of this act.    Only the commission or the  
8    commission's designee may authorize expenditures from the account.    The  
9    account is subject to allotment procedures under chapter 43.88 RCW.

10       NEW SECTION.    **Sec. 13.**    A new section is added to chapter 19.122  
11    RCW to read as follows:

12       The commission may use money deposited in the damage prevention  
13    account created in section 12 of this act to:

14       (1) Develop and disseminate educational programming designed to  
15    improve worker and public safety relating to excavation and underground  
16    facilities; and

17       (2) Provide grants to persons who have developed educational  
18    programming that the commission and the safety committee created  
19    pursuant to section 18 of this act deem appropriate for improving  
20    worker and public safety relating to excavation and underground  
21    facilities.

22       **Sec. 14.**    RCW 19.122.075 and 2000 c 191 s 23 are each amended to  
23    read as follows:

24       Any person who willfully damages or removes a permanent marking  
25    used to identify an underground facility or pipeline, or a temporary  
26    marking prior to its intended use, is subject to a civil penalty of not  
27    more than one thousand dollars for ~~((each act))~~ an initial violation,  
28    and not more than five thousand dollars for each subsequent violation  
29    within a three-year period.

30       **Sec. 15.**    RCW 19.122.080 and 1984 c 144 s 8 are each amended to  
31    read as follows:

32       The notification and marking provisions of this chapter may be  
33    waived for one or more designated persons by ~~((an underground))~~ a  
34    facility ~~((owner))~~ operator with respect to all or part of that

1 ((underground)) facility ((owner's)) operator's own underground  
2 facilities.

3 **Sec. 16.** RCW 19.122.100 and 2005 c 448 s 6 are each amended to  
4 read as follows:

5 If charged with a violation of RCW 19.122.090, an equipment  
6 operator ((will-be)) is deemed to have established an affirmative  
7 defense to such charges if:

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

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

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

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

14 **Sec. 17.** RCW 19.122.110 and 2005 c 448 s 7 are each amended to  
15 read as follows:

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

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

20 (1) The commission must contract with a statewide, nonprofit entity  
21 whose purpose is to reduce damages to underground and above ground  
22 facilities, promote safe excavation practices, and review complaints of  
23 alleged violations of this chapter. The contract does not obligate  
24 funding by the commission for activities performed by the nonprofit  
25 entity or the safety committee under this section, and therefore is  
26 exempt under RCW 39.29.040(1) from the requirements of chapter 39.29  
27 RCW.

28 (2) The contracting entity must create a safety committee to:

29 (a) Advise the commission and other state agencies, the  
30 legislature, and local government agencies and officials on best  
31 practices and training to prevent damage to underground utilities, and  
32 policies to enhance worker and public safety and protection of  
33 underground facilities; and

34 (b) Review complaints alleging violations of this chapter involving  
35 practices related to underground facilities.

1 (3) The safety committee consists of thirteen members, who must be  
2 nominated by represented groups and appointed by the contracting entity  
3 to staggered three-year terms. The safety committee must include  
4 representatives of:

5 (a) Local governments;

6 (b) An investor-owned natural gas utility subject to regulation  
7 under Titles 80 and 81 RCW;

8 (c) Contractors;

9 (d) Excavators;

10 (e) An investor-owned electric utility subject to regulation under  
11 Title 80 RCW;

12 (f) A consumer-owned utility;

13 (g) A pipeline company;

14 (h) The insurance industry;

15 (i) The commission; and

16 (j) A telecommunications company.

17 (4) The safety committee must meet at least once every three  
18 months.

19 (5) The safety committee may review complaints of alleged  
20 violations of this chapter involving practices related to underground  
21 facilities. Any person may bring a complaint to the safety committee  
22 regarding an alleged violation.

23 (6) To review complaints of alleged violations, the safety  
24 committee must appoint at least three and no more than five members as  
25 a review committee. The review committee must represent a balance of  
26 excavators, facility operators, and the insurance industry, and must  
27 include at least one representative of a pipeline company or natural  
28 gas distribution company.

29 (7) Before reviewing a complaint alleging a violation of this  
30 chapter, the review committee must notify the person making the  
31 complaint and the alleged violator of its review and the opportunity to  
32 participate.

33 (8) The safety committee may provide written notification to the  
34 commission, with supporting documentation, that a person has likely  
35 committed a violation of this chapter, and recommend remedial action  
36 that may include a penalty amount, training, or education to improve  
37 public safety, or some combination of penalty, training, and education.

38 (9) This section expires December 31, 2020.



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

3        (1) The commission may enforce the civil penalties authorized in  
4    RCW 19.122.070 or 19.122.075 when it receives written notification from  
5    the safety committee created under section 18 of this act indicating  
6    that a violation of this chapter has likely been committed by a person  
7    subject to regulation by the commission, or involving the underground  
8    facilities of such a person.

9        (2) If the commission receives written notification from the safety  
10   committee pursuant to section 18 of this act that a violation of this  
11   chapter has likely been committed by a person who is not subject to  
12   regulation by the commission, and in which the underground facility  
13   involved is also not subject to regulation by the commission, the  
14   commission may refer the matter to the attorney general for enforcement  
15   of a civil penalty under RCW 19.122.070 or 19.122.075. The commission  
16   must provide funding for such enforcement. However, any costs and fees  
17   recovered by the attorney general pursuant to subsection (3) of this  
18   section must be deposited by the commission in the fund that paid those  
19   costs and fees.

20        (3) In a matter referred to it by the commission pursuant to  
21   subsection (2) of this section, the attorney general may bring an  
22   action to enforce the penalties authorized in RCW 19.122.070 or  
23   19.122.075. In any action brought under this subsection, the court may  
24   award the state all costs of investigation and trial, including a  
25   reasonable attorneys' fee fixed by the court.

26        (4) This section expires December 31, 2020.

27        NEW SECTION.    **Sec. 20.**    A new section is added to chapter 19.122  
28    RCW to read as follows:

29        (1) Facility operators and excavators who observe or cause damage  
30    to an underground facility must report the event to the commission.

31        (2)(a) Facility operators and excavators who observe or cause  
32    damage must report whenever the event results in scrapes, gouges,  
33    cracks, dents, or other visible damage to a utility, pipeline, or cable  
34    casing or other external protection of any underground facility.

35        (b) A nonpipeline facility operator conducting excavations, or a  
36    subcontractor conducting excavations on the facility operator's behalf,

1 that strikes the facility operator's own underground facilities is not  
2 required to report that damage event to the commission.

3 (3) Reports must be made to the commission's office of pipeline  
4 safety within forty-five days of the event, or sooner if required by  
5 law using the commission's virtual private damage information reporting  
6 tool (DIRT) report form or other similar form if it reports:

7 (a) The name of the person submitting the report and whether the  
8 person is an excavator, a representative of a one-number locator  
9 service, or a facility operator;

10 (b) The date and time of the damage event;

11 (c) The address where the damage occurred;

12 (d) The type of right-of-way, where the damage occurred, including  
13 but not limited to city street, state highway, or private easement;

14 (e) The type of underground facility damaged, including but not  
15 limited to pipes, transmission pipelines, distribution lines, sewers,  
16 conduits, cables, valves, lines, wires, manholes, attachments, or parts  
17 of poles or anchors below ground;

18 (f) The type of utility service or commodity the underground  
19 facility stores or conveys, including but not limited to electronic,  
20 telephonic or telegraphic communications, water, sewage, cablevision,  
21 electric energy, petroleum products, gas, gaseous vapors, hazardous  
22 liquids, or other substances;

23 (g) The type of excavator, including but not limited to contractors  
24 or facility operators;

25 (h) The excavation equipment used, including but not limited to  
26 augers, bulldozers, backhoes, or hand tools;

27 (i) The type of work being performed, including but not limited to  
28 drainage, grading, or landscaping;

29 (j) Whether a one-number locator service was notified before  
30 excavation commenced, and, if so, the excavation confirmation code  
31 provided by the one-number locator service;

32 (k) The person who located the underground facility, and their  
33 employer;

34 (l) Whether underground facility marks were visible in the proposed  
35 excavation area before excavation commenced;

36 (m) Whether underground facilities were marked correctly;

37 (n) Whether an excavator experienced interruption of work as a  
38 result of the damage;

- 1 (o) A description of the damage; and
- 2 (p) Whether the damage caused an interruption of underground
- 3 facility service.
- 4 (4) The commission must use reported data to evaluate the
- 5 effectiveness of the damage prevention program.

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

8 (1) The commission may investigate and enforce violations of RCW  
9 19.122.055, 19.122.075, and 19.122.090 relating to pipeline facilities  
10 without initial referral to the safety committee created under section  
11 18 of this act.

12 (2) If the commission's investigation of notifications received  
13 pursuant to section 19 of this act or subsection (1) of this section  
14 substantiates violations of this chapter, the commission may impose  
15 penalties authorized by RCW 19.122.055, 19.122.070, 19.122.075, and  
16 19.122.090, and require training, education, or any combination of  
17 these remedies.

18 (3) With respect to referrals from the safety committee, the  
19 commission must consider any recommendation by the committee regarding  
20 enforcement and remedial actions involving an alleged violator.

21 (4) In an action to impose penalties initiated by the commission  
22 under subsection (1) or (2) of this section, the penalty is due and  
23 payable when the person incurring the penalty receives a notice of  
24 penalty in writing from the commission describing the violation and  
25 advising the person that the penalty is due. The person incurring the  
26 penalty has fifteen days from the date it receives the notice of  
27 penalty to file with the commission a request for mitigation or a  
28 request for a hearing, and the commission must include this time limit  
29 information in the notice of penalty. After receiving a timely request  
30 for mitigation or hearing, the commission must suspend collection of  
31 the penalty until it issues a final order concerning the penalty or  
32 mitigation of that penalty. A person aggrieved by the commission's  
33 final order may seek judicial review, subject to provisions of the  
34 administrative procedure act, chapter 34.05 RCW.

35 (5) If a penalty imposed by the commission is not paid, the  
36 attorney general may, on the commission's behalf, file a civil action  
37 in superior court to collect the penalty.

1 (6) This section expires December 31, 2020.

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

4 All penalties collected pursuant to section 21 of this act must be  
5 deposited in the damage prevention account created in section 12 of  
6 this act.

7 NEW SECTION. **Sec. 23.** RCW 19.122.060 (Exemption from notice and  
8 marking requirements for property owners) and 1984 c 144 s 6 are each  
9 repealed.

10 NEW SECTION. **Sec. 24.** A new section is added to chapter 19.122  
11 RCW to read as follows:

12 Nothing in this act may be construed to classify a consumer-owned  
13 utility, as defined in RCW 19.27A.140, to be under the authority of the  
14 commission.

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

17 This act may be known and cited as the underground utility damage  
18 prevention act.

19 NEW SECTION. **Sec. 26.** This act takes effect January 1, 2013."

**E2SHB 1634** - S COMM AMD

By Committee on Environment, Water & Energy

**NOT ADOPTED 04/06/2011**

20 On page 1, line 1 of the title, after "utilities;" strike the  
21 remainder of the title and insert "amending RCW 19.122.010, 19.122.020,  
22 19.122.027, 19.122.030, 19.122.033, 19.122.035, 19.122.040, 19.122.050,  
23 19.122.055, 19.122.070, 19.122.075, 19.122.080, 19.122.100, and  
24 19.122.110; adding new sections to chapter 19.122 RCW; repealing RCW  
25 19.122.060; prescribing penalties; providing an effective date; and

1 providing expiration dates."

EFFECT: Several technical corrections and clarifications are included, in addition to the following changes.

Intent (Section 1). The intent section is clarified, and provides that the chapter is the "underground utility damage prevention act," as further specified in Section 25.

Definitions (Section 2). The definition of "excavation" and "excavate" is revised to provide that installation of official traffic signs is excluded. Other existing and proposed new exceptions to the definition of "excavation" and "excavate" are transferred to a new section consolidating exemptions from excavator requirements (Section 5). An obsolete definition of "identified facility" is deleted. A definition of "easement" or "utility easement" is added. Proposed definitions of "end user," "facility operator," "service lateral," and "unlocatable underground facility" are revised. Proposed definitions of "sewer lateral," "sewer system owner or operator," and "utility coordinating council" are deleted.

Duties of Excavators and Facility Operators (Section 4). Facility operator duties are revised to provide that facility operators: (1) Must provide "information" rather than "best available information" regarding location of their facilities if they are unlocatable or identified but unlocatable; (2) must designate service laterals only if they connect end users to facility operators' main utility lines and are within a right-of-way or utility easement and boundary of an identified excavation area; and (3) may comply with the foregoing requirements through several methods, including placing marks indicating the presence of underground facilities, arranging to meet excavators at worksites to provide information, or by providing information through other means agreeable to both excavators and utility operators.

Exemptions from Excavator Duties (Section 5). Exemptions from excavator duties are consolidated in a new section. Existing exemptions for: (1) Tilling of soil for agricultural purposes is changed from less than 12 inches in depth to less than 20 inches in depth; and (2) road and ditch maintenance activities not involving excavation below original road grade or original ditch flowline or alteration of original ditch horizontal alignment are changed to allow excavation up to 6 inches. An exemption is added for certain activities by an irrigation district on rights-of-way, easements, or facilities owned by the federal bureau of reclamation in federal reclamation projects. Activity exempted from excavator duties in this section is nonetheless subject to a requirement that excavators report damage they cause to underground facilities.

Damage Prevention Account (Section 10). Civil penalties on excavators damaging hazardous liquid or gas pipelines will be deposited in the new damage prevention account created by the legislation, rather than the existing pipeline safety account.

Safety Committee (Section 18). Language is added providing that the UTC's contract with a nonprofit entity creating the Safety Committee does not obligate UTC funding, and therefore is exempt from competitive contracting requirements. The process for selecting members is clarified. The Safety Committee will include representatives of investor-owned natural gas utilities and insurance industry, in addition to other stakeholders. Before reviewing a complaint, a review committee appointed by the Safety Committee must notify the complainant and alleged violator of its review and the opportunity to participate. The Safety Committee may provide written notification to the UTC that a person has likely committed a violation, and recommend remedial action.

Enforcement Authority (Sections 19 and 21). Provisions for enforcement of alleged violations not involving UTC-regulated persons or facilities are added; the Attorney General will provide such enforcement. The UTC's authority to enforce violations involving damage to UTC-regulated pipelines is clarified.

Repeal of Exemption (Section 23). A provision exempting excavation less than 12 inches deep on private noncommercial property from excavator duties if performed by the property owner or occupier, or an employee, is repealed, and the exemption is incorporated in Section 5.

UTC Jurisdiction (Section 24). A provision is added clarifying that nothing in the act may be construed to classify a consumer-owned utility to be under the authority of the UTC.

Short Title (Section 25). A provision is added providing that the act may be known and cited as the underground utility damage prevention act.

--- END ---