

HOUSE BILL REPORT

HB 1634

As Reported by House Committee On:
Technology, Energy & Communications

Title: An act relating to underground utilities.

Brief Description: Regarding underground utilities.

Sponsors: Representatives Takko, Angel, Morris and Armstrong.

Brief History:

Committee Activity:

Technology, Energy & Communications: 2/8/11, 2/16/11 [DPS].

Brief Summary of Substitute Bill

- Requires all underground facility operators to subscribe to a one-number locator service.
- Requires that every event where damage occurs to an underground facility be reported to Utilities and Transportation Commission's Damage Information Reporting Tool (DIRT).
- Establishes a dispute resolution process for violations relating to underground utilities.
- Establishes the Damage Prevention Account.
- Creates state and local governments notification requirements when permitting structures intended for human occupation are within 100 feet of a transmission pipeline right-of-way.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives McCoy, Chair; Jacks, Vice Chair; Crouse, Ranking Minority Member; Short, Assistant Ranking Minority Member; Anderson, Billig, Carlyle, Dahlquist, Eddy, Frockt, Haler, Harris, Hasegawa, Kelley, Kristiansen, Lias, McCune, Morris and Nealey.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Scott Richards (786-7156).

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 nongovernmental entities and is a means by which a person can notify utilities of excavation and request field marking of underground facilities.

An underground facility means any item buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors below ground. An underground facility also includes gas or hazardous liquid pipelines, as well as distribution systems owned and operated for the sale, delivery, or distribution of natural gas at retail.

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.

All owners of underground facilities within a one-number locator service area are required to subscribe to one-number locator service. If no one-number locator service is available, notice of a proposed excavation must be provided to the owners of underground facilities known to or suspected of having underground facilities within the area of proposed excavation. The notice must be communicated to the owners of underground facilities not less than two business days but not more than 10 business days before the scheduled date for commencement of excavation, unless otherwise agreed by the parties.

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 transmission 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 \$1,000 for each violation applies when a person fails to notify the one-number locator service and causes damage to underground facilities. Some civil penalties collected are deposited into the State General Fund and other penalties are paid into the Pipeline Safety Account. Any excavator who willfully or maliciously damages a field marked underground facility is liable for treble the costs incurred in repairing or relocating the facility. Any excavator who fails to notify the one-number locator service and causes damage to a hazardous liquid or gas pipeline is subject to a civil penalty of not more than \$10,000 for each violation. Any excavator who excavates, without a valid excavation confirmation code, within 35 feet of a transmission pipeline is guilty of a misdemeanor.

Utilities and Transportation Commission.

The Utilities and Transportation Commission (UTC) regulates utilities and transportation services in the state to ensure fair pricing, availability, reliability, and safety. The UTC currently regulates intrastate pipelines, while the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) regulates interstate pipelines. Since 2003 the UTC has been the lead inspector of all interstate pipelines in the state, certified by the PHMSA to make inspections based on federal regulations.

Washington Utilities Coordinating Council.

The Washington Utilities Coordinating Council is a statewide organization of utilities, governmental agencies, contractors, excavators, and other interested organizations and individuals established to promote cooperation in order to reduce damages to subsurface structures as well as above ground facilities, and achieve the orderly planning and installation of underground facilities.

Summary of Substitute Bill:

One-Number Locator Service.

All facility operators within a one-number locator service area must subscribe to the service. Failure to subscribe to the one-number locator service constitutes willful intent to avoid compliance with the underground utilities statutes.

Marking of Excavation Boundaries.

Before providing notice to the one-number locator service, the excavator must mark the boundary of the area in white paint on the ground where the excavation will be performed at the excavation site. If it is unfeasible to mark the boundary in white paint, the excavator is required to communicate directly with the affected facility operator or operators to ensure the area of excavation has been accurately identified.

Maintenance of Underground Facility Markings.

Once underground facilities have been marked by the facility operator, the excavator is responsible for maintaining the accuracy of the original markings for 45 calendar days from the date notice was provided to the one-number locator service or the life of the project.

Underground facility markings expire 45 calendar days from the date notice was provided to the one-number locator service. After 45 calendar days, a second notice must be provided to the one-number locator service. Excavators that make repeated calls to relocate the underground facilities because of their failure to maintain the marks may be charged for additional marking services.

Marking of Water Service Laterals and Appurtenances.

An owner of underground water facilities is not required to indicate the presence of existing service laterals or appurtenances if the presence of existing service laterals or appurtenances on the site of the construction project can be determined from the presence of other visible facilities, such as buildings, manholes, or meter and junction boxes on or adjacent to the construction site.

Service, Water, and Sewer Laterals.

For the designating of service, water, and sewer laterals, the facility operator or sewer system owner or operator must provide the best available information regarding the location of the service or sewer laterals to the excavator only to the extent that laterals exist within the right-of-way or easement. This assistance does not constitute ownership or operation of service laterals or sewer laterals by the facility operator or sewer system owner or operator. Service or sewer laterals existing on private property are the responsibility of the property owner. Property owners are not required to subscribe to the one-number locator service or to locate service laterals within a right-of-way or easement.

The following procedures are permitted: (1) marking the location of service or sewer laterals; (2) arranging to meet the excavator on-site to provide the best available information about the location of service or sewer laterals; or (3) providing records through other processes or any other reasonable means of conveyance. Any service or sewer lateral designated using the best available information is considered a good faith attempt and is deemed in compliance. If a service or sewer lateral is unlocatable, a generally accepted mark must be placed at the utility or sewer main pointing at the address in question to indicate the presence of an unlocatable service or sewer lateral.

Damage Information Reporting Tool.

All facility operators, excavators, or other individuals and organizations must report every event where they have knowledge an underground facility has been damaged. The Utilities and Transportation Commission (UTC) must use reported data to evaluate the effectiveness of the damage prevention program.

Reports must be made whenever the event results in scrapes, gouges, cracks, dents, or other visible damage to the utility, pipeline, or cable casing or other external protection of any underground facility. Reports must be made to the Office of Pipeline Safety within 45 days of the event, or sooner if required by law using the UTC's virtual private Damage Information Reporting Tool (DIRT) report form or other similar form as long as the form contains the same information as the UTC's virtual private damage information reporting tool form.

A non-pipeline facility operator, when it operates as an excavator and hits its own facilities, is not required to report that damage event.

Penalties.

Any person who violates any provision under the underground utilities statute, that does not relate to a violation of hazardous liquid or gas pipeline provisions, is subject to a civil penalty of not more than \$1,000 for an initial violation and not more than \$5,000 for each subsequent violation within a three-year period. All penalties recovered in such actions must be deposited into the Damage Prevention Account (Account) and be used for education and training of excavators and facility operators regarding best practices and compliance with the underground utilities statute.

Damage to a Permanent Marking.

Any person who willfully damages or removes a permanent marking used to identify an underground facility or pipeline, or a temporary marking prior to its intended use, is subject

to a civil penalty of not more than \$1,000 for an initial violation, and not more than \$5,000 for each subsequent violation within a three-year period.

Damage Prevention Account.

The Account is created in the custody of the State Treasurer. All receipts from those moneys directed under the underground utilities statute or directed by the UTC must be deposited in the Account. Expenditures from the Account may be used only for the purposes of: (1) developing and disseminating educational programming designed to improve worker and public safety as it relates to excavation and underground facilities; and (2) providing grants to persons who have developed educational programming that the UTC and the Safety Committee deem to be appropriate for the purpose of improving worker and public safety as it relates to excavation and underground facilities. Only the UTC may authorize expenditures from the Account.

Dispute Resolution Process.

The UTC is directed to contract with a statewide, nonprofit entity whose purpose is to reduce damages to underground facilities as well as above ground facilities through cooperation, coordination, and by promoting safe excavation practices. The contracting entity is directed to create a Safety Committee.

The purpose of the Safety Committee is to advise the UTC and other state agencies, the Legislature, and local government agencies and officials on matters relating to best practices and training to prevent damage to underground utilities; and policies to enhance worker and public safety and protection of underground facilities. Additionally, the Safety Committee is responsible for resolving disputes involving practices related to underground facilities and possible violations. Any party may bring a complaint to the Safety Committee regarding a violation of underground utilities damage prevention laws.

The Safety Committee of the contracting entity consists of 13 members appointed in consultation with the UTC to staggered three-year terms and must consist of representatives of: (1) local governments; (2) owners and operators of hazardous liquid and gas pipelines; (3) contractors; (4) excavators; (5) an electric utility regulated by the UTC; (6) a consumer-owned utility; (7) a pipeline transportation company; (8) the UTC; and (9) a telecommunications company.

The Safety Committee may mediate disagreements among parties involving practices related to underground facilities and possible violations. For the purposes of mediation, the Safety Committee must appoint at least three and no more than five members as mediators. The mediators must represent a balance of excavators, facility operators, and the insurance industry, and must include at least one representative of a pipeline company or natural gas distribution company.

Enforcement of Civil Penalties.

Any person may request that the Attorney General take action to enforce the civil penalties authorized in the underground utilities statute by presenting the Attorney General with a written complaint and supporting evidence of an alleged violation. The UTC is not required to request the Attorney General to take enforcement action. The UTC may proceed to enforce the civil penalties, if a document is filed with the UTC by:

- a person subject to regulation by the UTC, indicating a violation has likely occurred and which caused economic harm to the regulated person;
- a person not subject to regulation by the UTC, indicating a violation has likely occurred by a person subject to regulation by the UTC, and which caused the complainant economic harm; or
- the Safety Committee, indicating that a violation has likely occurred by a person subject to regulation by the UTC, or involving the facilities of such a person.

After notice and an opportunity for a hearing, the UTC may impose the penalties on persons who commit a violation with respect to underground facilities of persons within its jurisdiction. Before imposing a penalty, the UTC must seek and consider the recommendation of the Safety Committee. Any person aggrieved by any penalty imposed may seek judicial review under the Administrative Procedure Act. If a penalty imposed by the UTC is not paid, the Attorney General must, on behalf of the UTC, file a civil action in superior court to collect the penalty.

The Attorney General or the prosecuting attorney for the county in which any violation takes place may commence a civil action in superior court to collect a civil penalty against any person who violates the underground utilities statute of persons not within the jurisdiction of the UTC.

Construction or Excavation within 100 Feet of a Transmission Pipeline.

The state or any of its political subdivisions undertaking or permitting construction or excavation activity that is permitted under the state's building code statute and is within 100 feet, or greater distance if defined by local ordinance, of a right-of-way or easement that contains a transmission pipeline must:

- notify the transmission pipeline company of the proposed construction activity before a permit is approved; or
- require consultation between the person proposing the construction activity and the transmission pipeline company as a condition of receiving the permit.

Emergency Excavations.

For emergency excavations using emergency bar holing 12 or more inches in depth, reasonable measures must be taken to eliminate electrical arc hazards.

Road Maintenance.

Road maintenance is exempted from the definition of excavation if the road maintenance undertaken does not involve excavation below the original road grade and ditch maintenance that does not involve excavation below the original ditch flow line or alter the original ditch horizontal alignment.

Large Projects.

If an excavator intends to perform work at multiple sites or the project is a large project, the excavator must take reasonable steps to work with facility operators so that facility operators can locate their facilities at a time reasonably in advance of the actual start of excavation for each phase of the work. A "large project" is defined as a project that exceeds 700 linear feet.

Definitions.

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

"End user" means any utility customer, including any public, commercial, or private consumer of facility operator underground facilities.

"Equipment operator" means the individual conducting the excavation.

"Facility operator" means any person with control over underground facilities, and includes any person having the legal right to place underground facilities in a public right-of-way or in any utility easement. A person or entity is not considered a facility operator of an independently owned underground facility operated within the person's or entity's right-of-way or utility easement.

"Service lateral" means an underground facility, including water service, that originates at the connection of a facility operator's system and terminates at or on the end user's property line. A service lateral may be owned by the end user or facility operator.

"Sewer lateral" means a facility operator's end user service line that transports wastewater from one or more building units or commercial facilities on the end user's property line to the point of connection to a facility operator sewer system. A sewer lateral may be owned by the end user or facility operator.

"Sewer system owner or operator" means the owner or operator of a sewer system. Sewer systems are considered to the end user's property line for locating purposes only.

"Unlocatable underground facility" means an underground facility that cannot be field-marked with reasonable accuracy using best available information to designate the location of underground facilities. "Unlocatable underground facility" includes, but is not limited to, sewer laterals, storm drains, and nonconductive and nonmetallic underground facilities that do not contain trace wires.

"Utility coordinating council" means a statewide, nonprofit entity incorporated to reduce damages to underground facilities as well as above ground facilities through cooperation, coordination, and by promoting safe excavation practices.

Substitute Bill Compared to Original Bill:

All provisions relating to the Underground Damage Prevention Authority are removed. The Utilities and Transportation Commission (UTC) for the purposes of dispute resolution is required to contract with a statewide, nonprofit entity whose purpose is to reduce damages to underground facilities. The contracting entity must create a Safety Committee to: (1) resolve disputes involving practices related to underground facilities and possible violations; and (2) advise the UTC and other state and local officials on matters relating to best practices and training to prevent damage to underground utilities.

Any person may request that the Attorney General take action to enforce the civil penalties by written complaint and supporting evidence of an alleged violation. The UTC is directed

to enforce the civil penalties as authorized by underground utilities laws, but must seek and consider the recommendation of the Safety Committee before imposing penalties. The Attorney General or the prosecuting attorney for the county in which any violation takes place is authorized to commence a civil action in superior court to collect a civil penalty against any person who violates underground utilities laws with respect to underground facilities of persons not within the jurisdiction of the UTC.

A non-pipeline facility operator, when it operates as an excavator and hits its own facilities, is not required to report that damage event using the Damage Information Reporting Tool (DIRT).

A state or any of its political subdivisions undertaking or permitting construction or excavation activities under the Building Code Act within 100 feet of a right-of-way that contains a transmission pipeline must: (1) notify the transmission pipeline company before a permit is approved; or (2) require consultation between the person proposing the construction activity and the transmission pipeline company as a condition of receiving the permit.

The owners of underground water facilities are not required to indicate the presence of existing service laterals or appurtenances if the presence of existing service laterals or appurtenances on the site of the construction project can be determined from the presence of other visible facilities such as buildings, manholes, or meter and junction boxes, on or adjacent to the construction site. In addition to service and sewer laterals facility operators, water facility operators must provide the best available information regarding the location of the service or sewer laterals to the excavator.

The definition of "facility operator" is modified to mean any person with control over underground facilities. "Facility operator" includes any person having the legal right to place underground facilities in a public right-of-way or in any utility easement. A person or entity is not considered a facility operator of an independently owned underground facility operated within the person's or entity's right-of-way or utility easement. The definition for "service laterals" is clarified to include water service. A definition for "commission" is provided to mean the UTC. A definition is provided for "utility coordinating council."

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: This act takes effect on January 1, 2013.

Staff Summary of Public Testimony:

(In support) The issues in the bill have been worked on for the last year by a broad group of stakeholders and it is very close to a finished bill. Underground utilities are important. We cannot have people digging into other's underground facilities. It is expensive and it is dangerous. This bill begins to bring the program in the line with federal requirements. Transmission pipeline operators need to know about excavation projects. The data collection

provision in the bill is extremely important. The first step for safety is simply knowing about digging activities and collecting data about activities. Currently, there is no state agency responsible for this program. This bill seeks to emulate the success in Oregon with the creation of the Underground Damage Prevention Authority (Authority). If you get away from the big issues that remain in negotiating this bill, there are a number of small changes in the bill that have a big impact in the field and protecting public safety.

(In support with concerns) While Washington's Pipeline Safety Program has a very good reputation nationally, our third party damage prevention program does not meet similar high standards for public safety. There are a number of inadequacies in the damage prevention program and because of these inadequacies we are at risk of losing federal funds. The Authority does not enhance the Utilities and Transportation Commission's (UTC's) enforcement capacity. The creation of the Authority represents the paranoia by public utilities of their rates being regulated by the UTC. The public should expect the UTC to be involved in these safety issues. We need to focus on the safety of our system.

(With concerns) Please keep the bill alive and moving through the legislative process. The language regarding the commencement of construction or excavation activities needs to be replaced with language that would speak to the timing of an approval of a subdivision or a building permit. It links up more specifically the notice with the risk. There are parts of the bill that have dramatic language and we think it needs to be tightened up with more technical language.

(Neutral) This bill represents good compromises. The bill needs some rework, so the UTC does not become an enforcement entity to public utilities.

(Opposed) While this bill represents a lot of progress, sewer and water laterals need to be addressed. Our concern is that this bill requires changes to how the cities operate and results in significant costs to the cities. As the bill is drafted it makes cities liable for assets that they do not own. This bill represents thousands of additional work hours. Existing law is adequate, and this bill represents an unfunded mandate.

Persons Testifying: (In support) Representative Takko, prime sponsor; Brad Tower, Olympic Pipeline Company; Gary Hyatt, Northwest Natural Gas; Helge Ferchert, Puget Sound Energy; and Don Evans, Utilities Underground Location Center Washington 811.

(In support with concerns) Jeff Goltz, Washington Utilities Transportation Commission; Bill Clarke, Washington Public Utilities District Association; and Dave Ducharme, Utility Contractors Association of Washington.

(With concerns) Steve Lindstrom, Sno-King Water District Coalition.

(Neutral) Kim Adamson, Beacon Hill Water and Sewer District.

(Opposed) Ashley Probart, Association of Washington Cities; Terry Kakida and Lin Ruchty, Seattle Public Utilities; and Betty Buckley, Washington Independent Telecommunications Association.

Persons Signed In To Testify But Not Testifying: None.