

# FINAL BILL REPORT

## E2SHB 1634

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### PARTIAL VETO C 263 L 11 Synopsis as Enacted

**Brief Description:** Concerning underground utilities.

**Sponsors:** House Committee on General Government Appropriations & Oversight (originally sponsored by Representatives Takko, Angel, Morris and Armstrong).

**House Committee on Technology, Energy & Communications**  
**House Committee on General Government Appropriations & Oversight**  
**Senate Committee on Environment, Water & Energy**

#### **Background:**

##### One-number Locator Service.

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.

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. If a transmission pipeline company is notified that excavation work will occur near a pipeline, a representative of the company must be present and consult with the excavator on-site prior to excavation.

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

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pipelines, as well as distribution systems owned and operated for the sale, delivery, or distribution of natural gas at retail.

#### Penalties.

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 within 35 feet of a transmission pipeline without a valid excavation confirmation code 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 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.

#### **Summary:**

#### Underground Utility Damage Prevention Act.

Various provisions regarding underground facilities are adopted, to be known and cited as the Underground Utility Damage Prevention Act (Damage Prevention Act).

#### Effective Date.

The Damage Prevention Act takes effect January 1, 2013.

#### Failure to Subscribe to a One-number Locator Service.

Failure of a facility operator to subscribe to a one-number locator service constitutes willful intent to avoid compliance with the Damage Prevention Act.

#### Marking of Excavation Boundaries by Excavator.

Before commencing any excavation, an excavator must mark the boundary of the excavation area with white paint applied to the ground of the worksite and then provide notice of the scheduled commencement of excavation to all facility operators through a one-number locator service. If boundary marking is infeasible, an excavator must communicate directly with affected facility operators to ensure that the boundary of the excavation area is accurately identified. If an excavator intends to work at multiple sites or at a large project, the excavator must take reasonable steps to confer with facility operators to enable them to locate underground facilities reasonably in advance of the start of excavation for each phase of the work.

#### Responsibility to Mark Underground Utilities by Facility Operator.

Upon receipt of the notice, a facility operator must, with respect to the facility operator's locatable underground facilities, provide the excavator with reasonably accurate information by marking their location. If a facility operator's underground utilities are unlocatable or identified but unlocatable, the facility operator must provide the excavator with available information as to their location.

If an underground facility involves service laterals, the facility operator is required to designate the presence of service laterals, if the service laterals: (1) connect end users to the facility operator's main utility line; and (2) are within a public right-of-way or utility easement and the boundary of the excavation area. The service lateral facility operator may comply with the requirement to designate service laterals through several methods, including placing marks indicating the presence of underground facilities, arranging to meet excavators at worksites to provide available information, or by providing copies of the best reasonably available records. A facility operator's good faith attempt to comply constitutes full compliance, and no person may be found liable for damages or injuries resulting from such compliance, apart from liability for arranging for repairs or relocation of underground facilities.

If the underground facility involves service laterals conveying only water, a facility operator is not required to designate the presence these service laterals if their presence can be determined from other visible water facilities, such as water meters, water valve covers, and junction boxes in or adjacent to the boundary of an excavation area.

#### Responsibility to Maintain Markings by Excavator.

Once marked by a facility operator, an excavator is responsible for maintaining the accuracy of the facility operator's markings of underground facilities for the lesser of: (1) 45 calendar days from the date that the excavator provided notice to a one-number locator service; or (2) the duration of the project. An excavator that makes repeated requests for location of underground facilities due to its failure to maintain the accuracy of a facility operator's markings may be charged by the facility operator for services provided.

#### Exemptions from Standard One-number Locator Service Requirements.

Under certain conditions, the following excavation activities are exempt from standard one-number locator service requirements:

- an emergency excavation;
- an excavation of less than 12 inches in depth on private noncommercial property;
- the tilling of soil for agricultural purposes less than 12 inches in depth within a utility easement, and 20 inches in depth outside of a utility easement;
- the replacement of an official traffic sign installed before January 1, 2013;
- road maintenance activities involving excavation less than six inches in depth below the original road grade and ditch maintenance activities involving excavation less than six inches in depth;
- the creation of bar holes less than 12 inches in depth, or of any depth during emergency leak investigations; or
- construction, operation, or maintenance activities by an irrigation district on rights-of-way, easements, or facilities owned by the Federal Bureau of Reclamation in federal reclamation projects.

If an excavator in the course of performing an exempted excavation contacts or damages an underground facility, the excavator must still notify the facility operator and a one-number locator service, and report the damage using the UTC's damage information reporting tool (DIRT).

Bar hole is defined as a hole made in the soil or pavement with a hand-operated bar for the specific purpose of testing the subsurface atmosphere with a combustible gas indicator.

#### Reporting of Damage to Underground Utilities.

Facility operators and excavators who observe or cause damage to an underground facility must report the damage to the UTC within 45 days, or sooner if required by law, using the UTC's virtual private DIRT report form, or other similar form. The UTC must use reported data to evaluate the effectiveness of the Damage Prevention Program.

A non-pipeline facility operator conducting an excavation, or a subcontractor conducting an excavation on the facility operator's behalf, that strikes the facility operator's own underground facility is not required to report that damage to the UTC.

#### Construction or Excavation within 100 Feet of a Transmission Pipeline.

When planning construction or excavation within 100 feet, or greater distance if required by local ordinance, of a right-of-way or utility easement containing a transmission pipeline, the state and any unit of local government must notify the pipeline company of the scheduled commencement of work.

Any unit of local government that issues permits under the State Building Code Act, when permitting construction or excavation within 100 feet, or greater distance if required by local ordinance, of a right-of-way or utility easement containing a transmission pipeline must: (1) notify the pipeline company of the permitted activity when it issues the permit; or (2) require the applicant consult with the pipeline company as a condition of issuing the permit. The UTC is directed to assist local governments in obtaining hazardous liquid and gas pipeline location information and maps.

#### Damage Prevention Account.

The Damage Prevention Account (Account) is created in the custody of the State Treasurer. All receipts from moneys directed by law or the UTC must be deposited to the Account. Only the UTC or a designee of the UTC may authorize expenditures from the Account. Expenditures from the Account may be used only for educational programming designed to improve worker and public safety relating to excavation and underground facilities and for grants to persons who have developed educational programming for improving worker and public safety relating to excavation and underground facilities.

#### Safety Committee.

The UTC is directed to contract with a statewide, nonprofit entity whose purpose is to reduce damages to underground and above ground facilities, promote safe excavation practices, and review complaints of alleged violations of the Damage Prevention Act. The purpose of the contract is to create a 13-member Safety Committee to: (1) advise the UTC and other state agencies, the Legislature, and local governments on best practices and training to prevent damage to underground utilities, and policies to enhance worker and public safety; and (2)

review complaints alleging violations involving practices related to underground facilities. The Safety Committee must consist of members who represent a broad range of underground utility stakeholders.

In reviewing complaints of alleged violations, the Safety Committee must appoint at least three and not more than five members as a Review Committee. The Review Committee must include the same number of members representing excavators and facility operators and also include a member representing the insurance industry. One member representing facility operators must also be a representative of a pipeline company or a natural gas company.

Any person may bring a complaint to the Safety Committee regarding an alleged violation. Before reviewing a complaint alleging an underground utilities violation, the Review Committee must notify the person making the complaint and the alleged violator of its review and of the opportunity to participate in the review process.

The Safety Committee may provide written notification to the UTC, with supporting documentation, that a person has likely committed a violation of the Damage Prevention Act, and recommend remedial action that may include a penalty amount, training, or education. The contract must not obligate funding by the UTC for activities performed by the nonprofit entity or the Safety Committee. The UTC authorization to contract with a nonprofit entity expires December 31, 2020.

#### The UTC Enforcement of Safety Committee's Review of Violation.

The UTC may enforce civil penalties when it receives written notification from the Safety Committee indicating that a violation of Damage Prevention Act has likely been committed by a person subject to regulation by the UTC, or involving the underground facilities of such a person.

If the UTC receives written notification from the Safety Committee that a violation has likely been committed by a person who is not subject to regulation by the UTC, and in which the underground facility involved is also not subject to regulation by the UTC, the UTC may refer the matter to the Attorney General for enforcement of a civil penalty. The UTC must provide funding for such enforcement. The court may award the state all costs of investigation and trial, including a reasonable attorneys' fee. Any costs and fees recovered by the Attorney General must be deposited by the UTC in the fund that paid for such enforcement.

#### The UTC Enforcement of Pipeline Facilities.

The UTC may investigate and enforce violations relating to pipeline facilities without initial referral to the Safety Committee. If the UTC's investigation relates to a Safety Committee's review of an alleged violation, the UTC may impose penalties and require training or education or a combination of training and education. The UTC must consider any recommendation by the Safety Committee regarding enforcement and remedial actions involving an alleged violation relating to pipeline facilities.

#### Civil Penalties.

Any person who violates any provision of the Damage Prevention Act that does not involve a hazardous liquid or gas underground facility 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.

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.

All penalties recovered in such actions must be deposited in the Account.

The UTC Reporting Requirements.

By December 1, 2015, the UTC must report to the Legislature on the effectiveness of the Damage Prevention Program and include an analysis of damage data reported as required by the act.

Authority of the UTC over Consumer-owned Utilities.

Nothing in this act may be construed to classify a consumer-owned utility to be under the authority of the UTC.

**Votes on Final Passage:**

House	93	4	
Senate	49	0	(Senate amended)
House	97	0	(House concurred)

**Effective:** January 1, 2013

**Partial Veto Summary:** The Governor vetoed the section specifying that nothing in this act may be construed to classify a consumer-owned utility to be under the authority of the UTC. The Governor's veto statement expressed concern that this section could be read to exempt consumer-owned utilities from enforcement under the act, and thereby prevent the UTC from taking enforcement action on underground utility damage caused by consumer-owner utilities.