
SUBSTITUTE HOUSE BILL 1634

State of Washington

62nd Legislature

2011 Regular Session

By House Technology, Energy & Communications (originally sponsored by Representatives Takko, Angel, Morris, and Armstrong)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to underground utilities; amending RCW 19.122.010,
2 19.122.020, 19.122.027, 19.122.030, 19.122.033, 19.122.035, 19.122.040,
3 19.122.050, 19.122.070, 19.122.075, 19.122.080, 19.122.100, and
4 19.122.110; adding new sections to chapter 19.122 RCW; prescribing
5 penalties; providing an effective date; and providing expiration dates.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 19.122.010 and 1984 c 144 s 1 are each amended to read
8 as follows:

9 It is the intent of the legislature in enacting this chapter to
10 ~~((assign responsibilities for locating and keeping accurate records of~~
11 ~~utility locations, protecting and repairing damage to existing~~
12 ~~underground facilities, and protecting the public health and safety))~~
13 protect public health and safety and to prevent the disruption of vital
14 services by establishing a comprehensive damage prevention program for
15 transfer pipelines, transmission pipelines, and underground facilities.
16 Additionally, the legislature intends to establish authority to enforce
17 the law, assign responsibilities for locating and keeping accurate
18 records of underground facilities' locations, protect and repair damage

1 to existing underground facilities, and protect public health and
2 safety from interruption in utility services caused by damage to
3 existing underground utility facilities.

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

6 ~~((Unless the context clearly requires otherwise,))~~ The definitions
7 in this section apply throughout this chapter((+)) unless the context
8 clearly requires otherwise.

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

11 (2) "Damage" includes the substantial weakening of structural or
12 lateral support of an underground facility, penetration, impairment, or
13 destruction of any underground protective coating, housing, or other
14 protective device, or the severance, partial or complete, of any
15 underground facility to the extent that the project owner or the
16 affected utility owner determines that repairs are required.

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

19 (4) "Excavation" and "excavate" means any operation, including the
20 installation of signs, in which earth, rock, or other material on or
21 below the ground is moved or otherwise displaced by any means(~~(, except~~
22 ~~the tilling of soil less than twelve inches in depth for agricultural~~
23 ~~purposes, or road and ditch maintenance that does not change the~~
24 ~~original road grade or ditch flowline)). "Excavation" and "excavate"
25 does not include:~~

26 (a) The tilling of soil less than twelve inches in depth for
27 agricultural purposes;

28 (b) Road maintenance that does not involve excavation below the
29 original road grade and ditch maintenance that does not involve
30 excavation below the original ditch flowline or alter the original
31 ditch horizontal alignment. Road maintenance activities are still
32 required to notify a facility operator under RCW 19.122.050;

33 (c) Bar holes created by hand-operated equipment during emergency
34 leak investigations; or

35 (d) Bar holes less than twelve inches in depth.

36 (5) "Excavation confirmation code" means a code or ticket issued by

1 the one-number locator service for the site where an excavation is
2 planned. The code must be accompanied by the date and time it was
3 issued.

4 (6) "Excavator" means any person who engages directly in
5 excavation.

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

8 (8) "Hazardous liquid" means: (a) Petroleum, petroleum products,
9 or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195
10 as in effect on March 1, 1998; and (b) carbon dioxide. The utilities
11 and transportation commission may by rule incorporate by reference
12 other substances designated as hazardous by the secretary of
13 transportation.

14 (9) "Identified facility" means any underground facility which is
15 indicated in the project plans as being located within the area of
16 proposed excavation.

17 (10) "Identified but unlocatable underground facility" means an
18 underground facility which has been identified but cannot be located
19 with reasonable accuracy.

20 (11) "Locatable underground facility" means an underground facility
21 which can be field-marked with reasonable accuracy.

22 (12) "Marking" means the use of stakes, paint, or other clearly
23 identifiable materials to show the field location of underground
24 facilities, in accordance with the current color code standard of the
25 American public works association. Markings shall include
26 identification letters indicating the specific type of the underground
27 facility.

28 (13) "Notice" or "notify" means contact in person or by telephone
29 or other electronic methods that results in the receipt of a valid
30 excavation confirmation code.

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

34 ~~(15) ("Operator" means the individual conducting the excavation.~~

35 (+16+)) "Person" means an individual, partnership, franchise holder,
36 association, corporation, a state, a city, a county, or any subdivision
37 or instrumentality of a state, and its employees, agents, or legal
38 representatives.

1 ~~((17))~~ (16) "Pipeline" or "pipeline system" means all or parts of
2 a pipeline facility through which hazardous liquid or gas moves in
3 transportation, including, but not limited to, line pipe, valves, and
4 other appurtenances connected to line pipe, pumping units, fabricated
5 assemblies associated with pumping or compressor units, metering and
6 delivery stations and fabricated assemblies therein, and breakout
7 tanks. "Pipeline" or "pipeline system" does not include process or
8 transfer pipelines.

9 ~~((18))~~ (17) "Pipeline company" means a person or entity
10 constructing, owning, or operating a pipeline for transporting
11 hazardous liquid or gas. A pipeline company does not include: (a)
12 Distribution systems owned and operated under franchise for the sale,
13 delivery, or distribution of natural gas at retail; or (b) excavation
14 contractors or other contractors that contract with a pipeline company.

15 ~~((19))~~ (18) "Reasonable accuracy" means location within twenty-
16 four inches of the outside dimensions of both sides of an underground
17 facility.

18 ~~((20))~~ (19) "Transfer pipeline" means a buried or aboveground
19 pipeline used to carry hazardous liquid between a tank vessel or
20 transmission pipeline and the first valve inside secondary containment
21 at the facility provided that any discharge on the facility side of
22 that first valve will not directly impact waters of the state. A
23 transfer pipeline includes valves, and other appurtenances connected to
24 the pipeline, pumping units, and fabricated assemblies associated with
25 pumping units. A transfer pipeline does not include process pipelines,
26 pipelines carrying ballast or bilge water, transmission pipelines, or
27 tank vessel or storage tanks.

28 ~~((21))~~ (20) "Transmission pipeline" means a pipeline that
29 transports hazardous liquid or gas within a storage field, or
30 transports hazardous liquid or gas from an interstate pipeline or
31 storage facility to a distribution main or a large volume hazardous
32 liquid or gas user, or operates at a hoop stress of twenty percent or
33 more of the specified minimum yield strength.

34 ~~((22))~~ (21) "Underground facility" means any item buried or
35 placed below ground for use in connection with the storage or
36 conveyance of water, sewage, electronic, telephonic or telegraphic
37 communications, cablevision, electric energy, petroleum products, gas,
38 gaseous vapors, hazardous liquids, or other substances and including

1 but not limited to pipes, sewers, conduits, cables, valves, lines,
2 wires, manholes, attachments, and those parts of poles or anchors below
3 ground. This definition does not include pipelines as defined in
4 subsection (~~((+17))~~) (16) of this section, but does include distribution
5 systems owned and operated under franchise for the sale, delivery, or
6 distribution of natural gas at retail.

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

10 (23) "End user" means any utility customer, including any public,
11 commercial, or private consumer of facility operator underground
12 facilities.

13 (24) "Equipment operator" means the individual conducting the
14 excavation.

15 (25) "Facility operator" means any person with control over
16 underground facilities. "Facility operator" includes any person having
17 the legal right to place underground facilities in a public right-of-
18 way or in any utility easement. A person or entity is not considered
19 a facility operator of an independently owned underground facility
20 operated within the person's or entity's right-of-way or utility
21 easement.

22 (26) "Large project" means a project that exceeds seven hundred
23 linear feet.

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

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

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

36 (30) "Unlocatable underground facility" means, subject to the
37 provisions of RCW 19.122.030(6), an underground facility that cannot be
38 field-marked with reasonable accuracy using best available information

1 to designate the location of underground facilities. "Unlocatable
2 underground facility" includes, but is not limited to, sewer laterals,
3 storm drains, and nonconductive and nonmetallic underground facilities
4 that do not contain trace wires.

5 (31) "Commission" means the utilities and transportation
6 commission.

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

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

13 (1) The utilities and transportation commission shall cause to be
14 established a single statewide toll-free telephone number to be used
15 for referring excavators to the appropriate one-number locator service.

16 (2) The utilities and transportation commission, in consultation
17 with the Washington utilities coordinating council, shall establish
18 minimum standards and best management practices for one-number locator
19 services.

20 (3) One-number locator services shall be operated by
21 nongovernmental agencies.

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

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

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

28 (1) Before commencing any excavation, excluding agriculture tilling
29 less than twelve inches in depth, the excavator shall provide notice of
30 the scheduled commencement of excavation to all owners of underground
31 facilities through a one-number locator service.

32 (a) The notice must be provided to the one-number locator service
33 not less than two business days or more than ten business days before
34 the scheduled date for commencement of excavation, unless otherwise
35 agreed to by the parties.

1 (b) Prior to providing notice, the boundary of the area where the
2 excavation will be performed must be indicated by the application of
3 white paint on the ground at the excavation site, unless doing so is
4 unfeasible, in which case the excavator must communicate directly with
5 the affected facility operator or operators to ensure the area of
6 excavation has been accurately identified.

7 (c) If an excavator intends to perform work at multiple sites or
8 the project is a large project, the excavator must take reasonable
9 steps to work with facility operators so that facility operators can
10 locate their facilities at a time reasonably in advance of the actual
11 start of excavation for each phase of the work.

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

23 ~~(3) Upon receipt of the notice provided for in this section, the~~
24 ~~owner of the underground facility shall provide the excavator with~~
25 ~~reasonably accurate information as to its locatable underground~~
26 ~~facilities by surface marking the location of the facilities. If there~~
27 ~~are identified but unlocatable underground facilities, the owner of~~
28 ~~such facilities shall provide the excavator with the best available~~
29 ~~information as to their locations. The owner of the underground~~
30 ~~facility providing the information shall respond no later than two~~
31 ~~business days after the receipt of the notice or before the excavation~~
32 ~~time, at the option of the owner, unless otherwise agreed by the~~
33 ~~parties. Excavators shall not excavate until all known facilities have~~
34 ~~been marked. Once marked by the owner of the underground facility, the~~
35 ~~excavator is responsible for maintaining the markings. Excavators~~
36 ~~shall have the right to receive compensation from the owner of the~~
37 ~~underground facility for costs incurred if the owner of the underground~~

1 ~~facility does not locate its facilities in accordance with this~~
2 ~~section.~~

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

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

13 ~~(6) Emergency excavations are exempt from the time requirements for~~
14 ~~notification provided in this section.~~

15 ~~(7) If the excavator, while performing the contract, discovers~~
16 ~~underground facilities which are not identified, the excavator shall~~
17 ~~cease excavating in the vicinity of the facility and immediately notify~~
18 ~~the owner or operator of such facilities, or the one-number locator~~
19 ~~service.)) Upon receipt of the notice provided for in this section, the~~
20 ~~facility operator shall provide the excavator with reasonably accurate~~
21 ~~information as to its locatable underground facilities by marking the~~
22 ~~location of the facilities. If there are identified but unlocatable~~
23 ~~underground facilities, the facility operator responsible for the~~
24 ~~facilities must provide the excavator with the best available~~
25 ~~information as to the location of the underground facilities. The~~
26 ~~facility operator providing the information must respond no later than~~
27 ~~two business days after the receipt of the notice or before the~~
28 ~~excavation time, at the option of the facility operator, unless~~
29 ~~otherwise agreed by the parties. Excavators shall not excavate until~~
30 ~~all known facilities have been marked. Once marked by the facility~~
31 ~~operator, the excavator is responsible for maintaining the accuracy of~~
32 ~~the original markings for the lesser of forty-five calendar days from~~
33 ~~the date notice was provided to the one-number locator service or the~~
34 ~~life of the project. Markings expire forty-five calendar days from the~~
35 ~~date notice was provided to the one-number locator service. For~~
36 ~~excavation occurring more than forty-five calendar days from the date~~
37 ~~notice was provided to the one-number locator service, a second notice~~
38 ~~must be provided in accordance with the provisions of subsection (1) of~~

1 this section. Excavators that make repeated calls for relocates
2 because of their failure to maintain the marks may be charged for
3 services provided. Excavators are entitled to recover compensation
4 from the facility operator for costs incurred if the facility operator
5 does not locate its facilities in accordance with this section.

6 (3) The facility operator is entitled to recover compensation from
7 the excavator for costs incurred in responding to excavation notices
8 given less than two business days prior to the excavation.

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

15 (5) To assist in designating service, water, or sewer laterals, the
16 facility operator or sewer system owner or operator shall provide its
17 best available information regarding the location of the service or
18 sewer laterals to the excavator. This information must be provided to
19 the excavator in a manner that may include, but is not limited to, any
20 one of the following methods:

21 (a) Marking the location of service or sewer laterals in accordance
22 with the procedures in subsection (2) of this section, provided that:

23 (i) Any service or sewer lateral designated using the best
24 available information must be considered a good faith attempt and must
25 be deemed in compliance with this subsection; and

26 (ii) If a service or sewer lateral is unlocatable, a generally
27 accepted mark must be placed at the utility or sewer main pointing at
28 the address in question to indicate the presence of an unlocatable
29 service or sewer lateral;

30 (b) Arranging to meet the excavator on-site to provide the best
31 available information about the location of service or sewer laterals;

32 (c) Providing records through other processes or any other
33 reasonable means of conveyance.

34 (6) Facility operators, water, and sewer system owners or operators
35 must indicate the presence of service or sewer laterals only to the
36 extent that they exist within a right-of-way or easement. This
37 assistance does not constitute ownership or operation of service
38 laterals or sewer laterals by the facility operator or sewer system

1 owner or operator. Service or sewer laterals existing on private
2 property are the responsibility of the property owner. Nothing in this
3 section may be interpreted to require property owners to subscribe to
4 the one-number locator service or to locate service laterals within a
5 right-of-way or easement. Good faith compliance with the provisions of
6 this subsection in response to a locate request constitutes full
7 compliance with this chapter, and no person may be found liable to any
8 party for damages or injuries as a result of performing in compliance
9 with the requirements of this subsection.

10 (7) Emergency excavations are exempt from the time requirements for
11 notification provided in this section. For emergency bar holing twelve
12 or more inches in depth, reasonable measures must be taken to eliminate
13 electrical arc hazards.

14 (8) If the excavator discovers underground facilities that are not
15 identified in plans or contract documents, the excavator shall cease
16 excavating in the vicinity of the facility and immediately notify the
17 facility operator or the one-number locator service. If the excavator
18 uncovers identified but unlocatable underground facilities, the
19 excavator shall notify the facility operator and the facility operator
20 must take action under subsection (9) of this section.

21 (9) Upon notification by an excavator or the one-number locator
22 service in accordance with subsection (8) of this section, a facility
23 operator must take action to allow for the accurate future location of
24 the uncovered portion of the underground facility identified by the
25 excavator. A facility operator may accept facility location
26 information from the excavator for the future marking of an underground
27 facility.

28 **Sec. 5.** RCW 19.122.033 and 2000 c 191 s 18 are each amended to
29 read as follows:

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

1 19.122.030 regarding excavation work. Excavators have the same rights
2 and responsibilities under this section as they have under RCW
3 19.122.030.

4 (2) Project owners, excavators, and pipeline companies have the
5 same rights and responsibilities relating to excavation near pipelines
6 that they have for excavation near underground facilities as provided
7 in RCW 19.122.040.

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

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

15 (b) Require consultation between the person proposing the
16 construction activity and the transmission pipeline company as a
17 condition of receiving the permit.

18 **Sec. 6.** RCW 19.122.035 and 2000 c 191 s 19 are each amended to
19 read as follows:

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

25 (2) Immediately upon receiving information of third-party damage to
26 a hazardous liquid pipeline, the company that operates the pipeline
27 shall terminate the flow of hazardous liquid in that pipeline until it
28 has visually inspected the pipeline. After visual inspection, the
29 ~~((operator of the hazardous liquid))~~ pipeline company shall determine
30 whether the damaged pipeline section should be replaced or repaired, or
31 whether it is safe to resume pipeline operation. Immediately upon
32 receiving information of third-party damage to a gas pipeline, the
33 ~~((company that operates the))~~ pipeline company shall conduct a visual
34 inspection of the pipeline to determine whether the flow of gas through
35 that pipeline should be terminated, and whether the damaged pipeline
36 should be replaced or repaired. A record of the pipeline company's

1 inspection report and test results shall be provided to the utilities
2 and transportation commission consistent with reporting requirements
3 under 49 C.F.R. 195 Subpart B.

4 (3) Pipeline companies shall immediately notify local first
5 responders and the department of any reportable release of a hazardous
6 liquid from a pipeline. Pipeline companies shall immediately notify
7 local first responders and the commission of any blowing gas leak from
8 a gas pipeline that has ignited or represents a probable hazard to
9 persons or property. Pipeline companies shall take all appropriate
10 steps to ensure the public safety in the event of a release of
11 hazardous liquid or gas under this subsection.

12 (4) No damaged pipeline may be buried until it is repaired or
13 relocated. The pipeline company shall arrange for repairs or
14 relocation of a damaged pipeline as soon as is practical or may permit
15 the excavator to do necessary repairs or relocation at a mutually
16 acceptable price.

17 **Sec. 7.** RCW 19.122.040 and 1984 c 144 s 4 are each amended to read
18 as follows:

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

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

25 (b) An underground facility not located, as required by this
26 chapter or other provision of law, by the project owner, facility
27 operator, or excavator if the project owner or excavator is also a
28 (~~utility~~) facility operator.

29 (2) An excavator shall use reasonable care to avoid damaging
30 underground facilities. An excavator shall:

31 (a) Determine the precise location of underground facilities which
32 have been marked;

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

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

1 (3) If an underground facility is damaged and such damage is the
2 consequence of the failure to fulfill an obligation under this chapter,
3 the party failing to perform that obligation shall be liable for any
4 damages. Any clause in an excavation contract which attempts to
5 allocate liability, or requires indemnification to shift the economic
6 consequences of liability, different from the provisions of this
7 chapter is against public policy and unenforceable. Nothing in this
8 chapter prevents the parties to an excavation contract from contracting
9 with respect to the allocation of risk for changed or differing site
10 conditions.

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

13 **Sec. 8.** RCW 19.122.050 and 1984 c 144 s 5 are each amended to read
14 as follows:

15 (1) An excavator who, in the course of excavation, contacts or
16 damages an underground facility shall notify the (~~utility owning or~~
17 ~~operating such~~) facility operator and the one-number locator service.
18 If the damage causes an emergency condition, the excavator causing the
19 damage shall also alert the appropriate local public safety agencies
20 and take all appropriate steps to ensure the public safety. No damaged
21 underground facility may be buried until it is repaired or relocated.

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

27 **Sec. 9.** RCW 19.122.070 and 2005 c 448 s 4 are each amended to read
28 as follows:

29 (1) Any person who violates any provision of this chapter not
30 amounting to a violation of RCW 19.122.055(~~, and which violation~~
31 ~~results in damage to underground facilities,~~) is subject to a civil
32 penalty of not more than one thousand dollars for (~~each violation.~~
33 ~~All penalties recovered in such actions shall be deposited in the~~
34 ~~general fund~~) an initial violation, and not more than five thousand
35 dollars for each subsequent violation within a three-year period. All
36 penalties recovered in such actions must be used for education and

1 training of excavators and facility operators regarding best practices
2 and compliance with this chapter. All penalties recovered in such
3 actions must be deposited into the damage prevention account created in
4 section 10 of this act.

5 (2) Any excavator who willfully or maliciously damages a field-
6 marked underground facility shall be liable for treble the costs
7 incurred in repairing or relocating the facility. In those cases in
8 which an excavator fails to notify known underground facility
9 (~~owners~~) operators or the one-number locator service, any damage to
10 the underground facility shall be deemed willful and malicious and
11 shall be subject to treble damages for costs incurred in repairing or
12 relocating the facility.

13 (3) This chapter does not affect any civil remedies for personal
14 injury or for property damage, including that to underground
15 facilities, nor does this chapter create any new civil remedies for
16 such damage.

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

19 The damage prevention account is created in the custody of the
20 state treasurer. All receipts from those moneys directed by law or
21 directed by the utilities and transportation commission to be deposited
22 to the account must be deposited in the account. Expenditures from the
23 account may be used only for the purposes designated in section 11 of
24 this act. Only the utilities and transportation commission or the
25 commission's designee may authorize expenditures from the account. The
26 account is subject to allotment procedures under chapter 43.88 RCW, but
27 an appropriation is not required for expenditures.

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

30 The utilities and transportation commission is authorized to use
31 money deposited in the damage prevention account created in section 10
32 of this act for the following purposes:

33 (1) To develop and disseminate educational programming designed to
34 improve worker and public safety as it relates to excavation and
35 underground facilities; and

1 (2) To provide grants to persons who have developed educational
2 programming that the utilities and transportation commission and the
3 safety committee created in section 16 of this act deem to be
4 appropriate for the purpose of improving worker and public safety as it
5 relates to excavation and underground facilities.

6 **Sec. 12.** RCW 19.122.075 and 2000 c 191 s 23 are each amended to
7 read as follows:

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

14 **Sec. 13.** RCW 19.122.080 and 1984 c 144 s 8 are each amended to
15 read as follows:

16 The notification and marking provisions of this chapter may be
17 waived for one or more designated persons by an underground facility
18 ~~((owner))~~ operator with respect to all or part of that ~~((underground))~~
19 facility ~~((owner's))~~ operator's own underground facilities.

20 **Sec. 14.** RCW 19.122.100 and 2005 c 448 s 6 are each amended to
21 read as follows:

22 If charged with a violation of RCW 19.122.090, an equipment
23 operator will be deemed to have established an affirmative defense to
24 such charges if:

- 25 (1) The equipment operator was provided a valid excavation
26 confirmation code;
- 27 (2) The excavation was performed in an emergency situation;
- 28 (3) The equipment operator was provided a false confirmation code
29 by an identifiable third party; or
- 30 (4) Notice of the excavation was not required under this chapter.

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

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

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

3 (1) For the purposes of establishing a dispute resolution service
4 under this chapter, the commission shall contract with a statewide,
5 nonprofit entity whose purpose is to reduce damages to underground
6 facilities as well as above ground facilities through cooperation,
7 coordination, and by promoting safe excavation practices.

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

9 (a) Advise the commission and other state agencies, the
10 legislature, and local government agencies and officials on:

11 (i) Matters relating to best practices and training to prevent
12 damage to underground utilities; and

13 (ii) Policies to enhance worker and public safety and protection of
14 underground facilities; and

15 (b) Resolve disputes involving practices related to underground
16 facilities and possible violations of this chapter.

17 (3) The safety committee of the contracting entity consists of
18 thirteen members appointed in consultation with the commission to
19 staggered three-year terms and must consist of representatives of:

20 (a) Local governments;

21 (b) Owners and operators of hazardous liquid and gas pipelines;

22 (c) Contractors;

23 (d) Excavators;

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

26 (f) A consumer-owned utility;

27 (g) A pipeline transportation company;

28 (h) The commission; and

29 (i) A telecommunications company.

30 (4) The safety committee may mediate disagreements among parties
31 involving practices related to underground facilities and possible
32 violations of this chapter.

33 (5) For the purposes of mediation, the safety committee shall
34 appoint at least three and no more than five members as mediators. The
35 mediators shall represent a balance of excavators, facility operators,
36 and the insurance industry, and must include at least one
37 representative of a pipeline company or natural gas distribution
38 company.

1 (6) The safety committee shall meet at least once every three
2 months.

3 (7) All members of the safety committee may participate fully in
4 the committee's meetings, activities, and deliberations and must
5 receive all notices and information related to committee business and
6 decisions in a timely manner.

7 (8) Any party may bring a complaint to the safety committee
8 regarding a violation of this chapter.

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

10 NEW SECTION. **Sec. 17.** A new section is added to chapter 19.122
11 RCW to read as follows:

12 (1) Any person may request that the attorney general take action to
13 enforce the civil penalties authorized in this chapter by presenting
14 the attorney general with a written complaint and supporting evidence
15 of an alleged violation of this chapter.

16 (2) The commission need not request the attorney general to take
17 enforcement action under subsection (1) of this section, and the
18 commission may proceed to enforce the civil penalties authorized in RCW
19 19.122.070, if any of the following conditions are met:

20 (a) A document is filed with the commission by a person subject to
21 regulation by the commission indicating a violation of this chapter has
22 likely occurred and which caused economic harm to the regulated person;

23 (b) A document is filed with the commission by a person not subject
24 to regulation by the commission, indicating a violation of this chapter
25 has likely occurred by a person subject to regulation by the
26 commission, and which caused the complainant economic harm; or

27 (c) A document is filed with the commission by the safety committee
28 created in section 16 of this act indicating that a violation of this
29 chapter has likely occurred by a person subject to regulation by the
30 commission, or involving the facilities of such a person.

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

33 (1) All facility operators, excavators, or other individuals and
34 organizations must report every event where they have knowledge an
35 underground facility has been damaged. The utilities and

1 transportation commission will use reported data to evaluate the
2 effectiveness of the damage prevention program.

3 (2) Reports must be made whenever the event results in scrapes,
4 gouges, cracks, dents, or other visible damage to the utility,
5 pipeline, or cable casing or other external protection of any
6 underground facility.

7 (3) Reports must be made to the office of pipeline safety within
8 forty-five days of the event, or sooner if required by law using the
9 commission's virtual private damage information reporting tool (DIRT)
10 report form or other similar form as long as the form contains the same
11 information as the commission's virtual private damage information
12 reporting tool form.

13 (4) A nonpipeline facility operator, when it operates as an
14 excavator and hits its own facilities, is not required to report that
15 damage event.

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

18 (1) After notice and an opportunity for a hearing, the utilities
19 and transportation commission may impose the penalties authorized by
20 RCW 19.122.055 and 19.122.070 on persons who violate this chapter with
21 respect to underground facilities of persons within its jurisdiction.
22 Before imposing a penalty authorized by RCW 19.122.070, the utilities
23 and transportation commission must seek and consider the recommendation
24 of the safety committee created in section 16 of this act.

25 (2) Any person aggrieved by any penalty imposed pursuant to this
26 section may seek judicial review pursuant to the administrative
27 procedure act, chapter 34.05 RCW.

28 (3) If a penalty imposed by the utilities and transportation
29 commission is not paid, the attorney general must, on behalf of the
30 commission, file a civil action in superior court to collect the
31 penalty.

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

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

35 (1) The attorney general or the prosecuting attorney for the county
36 in which any violation takes place may commence a civil action in

1 superior court to collect a civil penalty authorized by RCW 19.122.070
2 against any person who violates this chapter with respect to
3 underground facilities of persons not within the jurisdiction of the
4 utilities and transportation commission.

5 (2) This section expires December 31, 2020.

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

8 All penalties collected under sections 20 and 21 of this act must
9 be deposited into the damage prevention account created under section
10 10 of this act.

11 NEW SECTION. **Sec. 22.** This act takes effect January 1, 2013.

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