
HOUSE BILL 1634

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Takko, Angel, Morris, and Armstrong

Read first time 01/27/11. Referred to Committee on Technology, Energy & Communications.

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 operating underground
16 facilities in a public right-of-way or utility easement. Local
17 governments managing the right-of-way or utility easement are facility
18 operators only when they operate underground facilities placed in the
19 right-of-way or utility easement.

20 (26) "Large project" means a project that exceeds seven hundred
21 linear feet.

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

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

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

34 (30) "Unlocatable underground facility" means, subject to the
35 provisions of RCW 19.122.030(5), an underground facility that cannot be
36 field-marked with reasonable accuracy using best available information
37 to designate the location of underground facilities. "Unlocatable

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

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

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

9 (2) The utilities and transportation commission, in consultation
10 with the Washington utilities coordinating council, shall establish
11 minimum standards and best management practices for one-number locator
12 services.

13 (3) One-number locator services shall be operated by
14 nongovernmental agencies.

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

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

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

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

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

29 (b) Prior to providing notice, the boundary of the area where the
30 excavation will be performed must be indicated by the application of
31 white paint on the ground at the excavation site, unless doing so is
32 unfeasible or impractical, in which case the excavator must communicate
33 directly with the affected facility operator or operators to ensure the
34 area of excavation has been accurately identified.

35 (c) If an excavator intends to perform work at multiple sites or
36 the project is a large project, the excavator must take reasonable

1 steps to work with facility operators so that facility operators can
2 locate their facilities at a time reasonably in advance of the actual
3 start of excavation for each phase of the work.

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

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

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

36 ~~(5) An owner of underground facilities is not required to indicate~~
37 ~~the presence of existing service laterals or appurtenances if the~~
38 ~~presence of existing service laterals or appurtenances on the site of~~

1 ~~the construction project can be determined from the presence of other~~
2 ~~visible facilities, such as buildings, manholes, or meter and junction~~
3 ~~boxes on or adjacent to the construction site.~~

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

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

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

1 (4) To assist in designating service or sewer laterals, the
2 facility operator or sewer system owner or operator shall provide its
3 best available information regarding the location of the service or
4 sewer laterals to the excavator. This information must be provided to
5 the excavator in a manner that may include, but is not limited to, any
6 one of the following methods:

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

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

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

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

18 (c) Providing records through other processes or any other
19 reasonable means of conveyance.

20 (5) Facility operators and sewer system owners or operators must
21 indicate the presence of service or sewer laterals only to the extent
22 that they exist within a right-of-way or easement. This assistance
23 does not constitute ownership or operation of service laterals or sewer
24 laterals by the facility operator or sewer system owner or operator.
25 Service or sewer laterals existing on private property are the
26 responsibility of the property owner. Nothing in this section may be
27 interpreted to require property owners to subscribe to the one-number
28 locator service or to locate service laterals within a right-of-way or
29 easement. Good faith compliance with the provisions of this subsection
30 in response to a locate request constitutes full compliance with this
31 chapter, and no person may be found liable to any party for damages or
32 injuries as a result of performing in compliance with the requirements
33 of this subsection.

34 (6) Emergency excavations are exempt from the time requirements for
35 notification provided in this section. For emergency bar holing twelve
36 or more inches in depth, reasonable measures must be taken to eliminate
37 electrical arc hazards.

1 (7) If the excavator discovers underground facilities that are not
2 identified in plans or contract documents, the excavator shall cease
3 excavating in the vicinity of the facility and immediately notify the
4 facility operator or the one-number locator service. If the excavator
5 uncovered identified but unlocatable underground facilities, the
6 excavator shall notify the facility operator and the facility operator
7 must take action under subsection (8) of this section.

8 (8) Upon notification by an excavator or the one-number locator
9 service in accordance with subsection (7) of this section, a facility
10 operator must take action to allow for the accurate future location of
11 the uncovered portion of the underground facility identified by the
12 excavator. A facility operator may accept facility location
13 information from the excavator for the future marking of an underground
14 facility.

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

17 (1) Before commencing any excavation, excluding agricultural
18 tilling less than twelve inches in depth, an excavator shall notify
19 pipeline companies of the scheduled commencement of excavation through
20 a one-number locator service in the same manner as is required for
21 notifying owners of underground facilities of excavation work under RCW
22 19.122.030. Pipeline companies shall have the same rights and
23 responsibilities as owners of underground facilities under RCW
24 19.122.030 regarding excavation work. Excavators have the same rights
25 and responsibilities under this section as they have under RCW
26 19.122.030.

27 (2) Project owners, excavators, and pipeline companies have the
28 same rights and responsibilities relating to excavation near pipelines
29 that they have for excavation near underground facilities as provided
30 in RCW 19.122.040.

31 (3) The state or any of its political subdivisions undertaking or
32 permitting construction or excavation activity that may result in the
33 creation of a structure intended for human occupancy within one hundred
34 feet, or greater distance if defined by local ordinance, of a right-of-
35 way or easement that contains a transmission pipeline must:

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

1 (b) Require consultation between the person proposing the
2 construction activity and the transmission pipeline company as a
3 condition of receiving the permit.

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

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

11 (2) Immediately upon receiving information of third-party damage to
12 a hazardous liquid pipeline, the company that operates the pipeline
13 shall terminate the flow of hazardous liquid in that pipeline until it
14 has visually inspected the pipeline. After visual inspection, the
15 ~~((operator of the hazardous liquid))~~ pipeline company shall determine
16 whether the damaged pipeline section should be replaced or repaired, or
17 whether it is safe to resume pipeline operation. Immediately upon
18 receiving information of third-party damage to a gas pipeline, the
19 ~~((company that operates the))~~ pipeline company shall conduct a visual
20 inspection of the pipeline to determine whether the flow of gas through
21 that pipeline should be terminated, and whether the damaged pipeline
22 should be replaced or repaired. A record of the pipeline company's
23 inspection report and test results shall be provided to the utilities
24 and transportation commission consistent with reporting requirements
25 under 49 C.F.R. 195 Subpart B.

26 (3) Pipeline companies shall immediately notify local first
27 responders and the department of any reportable release of a hazardous
28 liquid from a pipeline. Pipeline companies shall immediately notify
29 local first responders and the commission of any blowing gas leak from
30 a gas pipeline that has ignited or represents a probable hazard to
31 persons or property. Pipeline companies shall take all appropriate
32 steps to ensure the public safety in the event of a release of
33 hazardous liquid or gas under this subsection.

34 (4) No damaged pipeline may be buried until it is repaired or
35 relocated. The pipeline company shall arrange for repairs or
36 relocation of a damaged pipeline as soon as is practical or may permit

1 the excavator to do necessary repairs or relocation at a mutually
2 acceptable price.

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

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

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

11 (b) An underground facility not located, as required by this
12 chapter or other provision of law, by the project owner, facility
13 operator, or excavator if the project owner or excavator is also a
14 (~~utility~~) facility operator.

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

17 (a) Determine the precise location of underground facilities which
18 have been marked;

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

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

24 (3) If an underground facility is damaged and such damage is the
25 consequence of the failure to fulfill an obligation under this chapter,
26 the party failing to perform that obligation shall be liable for any
27 damages. Any clause in an excavation contract which attempts to
28 allocate liability, or requires indemnification to shift the economic
29 consequences of liability, different from the provisions of this
30 chapter is against public policy and unenforceable. Nothing in this
31 chapter prevents the parties to an excavation contract from contracting
32 with respect to the allocation of risk for changed or differing site
33 conditions.

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

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

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

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

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

17 (1) Any person who violates any provision of this chapter not
18 amounting to a violation of RCW 19.122.055(~~(, and which violation~~
19 ~~results in damage to underground facilities,)) is subject to a civil
20 penalty of not more than one thousand dollars for ~~((each violation.~~
21 ~~All penalties recovered in such actions shall be deposited in the~~
22 ~~general fund))~~ an initial violation, and not more than five thousand
23 dollars for each subsequent violation within a three-year period. All
24 penalties recovered in such actions must be used for education and
25 training of excavators and facility operators regarding best practices
26 and compliance with this chapter. All penalties recovered in such
27 actions must be deposited into the damage prevention account created in
28 section 10 of this act.~~

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

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

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

7 The damage prevention account is created in the custody of the
8 state treasurer. All receipts from those moneys directed by law or
9 directed by the utilities and transportation commission to be deposited
10 to the account must be deposited in the account. Expenditures from the
11 account may be used only for the purposes designated in section 11 of
12 this act. Only the utilities and transportation commission or the
13 commission's designee may authorize expenditures from the account. The
14 account is subject to allotment procedures under chapter 43.88 RCW, but
15 an appropriation is not required for expenditures.

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

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

21 (1) To develop and disseminate educational programming designed to
22 improve worker and public safety as it relates to excavation and
23 underground facilities; and

24 (2) To provide grants to persons who have developed educational
25 programming that the utilities and transportation commission and the
26 underground damage prevention authority deem to be appropriate for the
27 purpose of improving worker and public safety as it relates to
28 excavation and underground facilities.

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

31 Any person who willfully damages or removes a permanent marking
32 used to identify an underground facility or pipeline, or a temporary
33 marking prior to its intended use, is subject to a civil penalty of not
34 more than one thousand dollars for (~~each act~~) an initial violation,

1 and not more than five thousand dollars for each subsequent violation
2 within a three-year period.

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

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

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

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

14 (1) The equipment operator was provided a valid excavation
15 confirmation code;

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

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

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

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

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

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

26 (1) The creation of an underground damage prevention authority as
27 a private, nonprofit corporation is authorized for the purposes of
28 section 17 of this act. The authority may not receive moneys from the
29 state general fund.

30 (2) Members of the authority serve on a voluntary basis without
31 compensation for time, travel, or other expenses related to the duties
32 of the authority.

33 (a) To facilitate appointment of members of the initial authority,
34 the governor shall by order select organizations that are most

1 representative of each of the groups set forth in (b) of this
2 subsection. Each organization selected may nominate a member for the
3 authority and may, within the time allowed by the governor's order,
4 submit the name of the nominee to the governor, who shall consider the
5 nominee before making any other appointment to the authority.

6 (b) The authority consists of representatives from each of the
7 following:

- 8 (i) Cities with a population of twenty-five thousand or more;
- 9 (ii) Cities with a population under twenty-five thousand;
- 10 (iii) Counties;
- 11 (iv) Natural gas utilities regulated by the utilities and
12 transportation commission under Title 80 RCW;
- 13 (v) Electric utilities regulated by the utilities and
14 transportation commission under Title 80 RCW;
- 15 (vi) Water districts, special districts, sanitary districts, or
16 water and sanitary authorities;
- 17 (vii) Telecommunications utilities serving fewer than fifty
18 thousand access lines and regulated by the utilities and transportation
19 commission under Title 80 RCW;
- 20 (viii) Telecommunications utilities serving fifty thousand access
21 lines or more and regulated by the utilities and transportation
22 commission under Title 80 RCW;
- 23 (ix) Telecommunications cooperatives;
- 24 (x) Electric cooperatives;
- 25 (xi) Public utility districts;
- 26 (xii) Contractors;
- 27 (xiii) Excavators;
- 28 (xiv) Railroads;
- 29 (xv) Cable system operators;
- 30 (xvi) Municipal electric utilities;
- 31 (xvii) Public member;
- 32 (xviii) Communication mainline carriers (interstate fiber optic
33 companies);
- 34 (xix) Utility locators;
- 35 (xx) Washington utility coordinating council;
- 36 (xxi) Professional surveyors; and
- 37 (xxii) Hazardous liquid pipeline operators regulated by the
38 utilities and transportation commission under Title 81 RCW.

1 (c) After appointment of the initial authority, to facilitate
2 appointment of new members to the authority, the authority shall, by
3 its bylaws, select organizations that are most representative of each
4 of the groups set forth in (b) of this subsection. Each organization
5 so selected may nominate a member for the authority and may, within the
6 time allowed by its bylaws, submit the name of the nominee to the
7 governor, who shall consider the nominee before making any other
8 appointment to the authority.

9 (d) If the authority determines that a group not listed in (b) of
10 this subsection should be represented on the authority, the authority
11 may select an organization that is most representative of the group and
12 ask that organization to nominate a member. Upon receipt of the
13 nomination, the authority may request that the governor appoint the
14 nominee.

15 (e) The governor shall also appoint to the authority one employee
16 of the utilities and transportation commission and one employee of the
17 department of transportation.

18 (3) The term of office of a member of the underground damage
19 prevention authority is four years. A member of the authority is
20 eligible for reappointment. Before the expiration of the term of a
21 member, the authority shall solicit a nomination as provided in
22 subsection (2) of this section and the governor shall appoint a
23 successor. If there is a vacancy for any cause, the authority shall
24 solicit a nomination as provided in subsection (2) of this section and
25 the governor shall make an appointment to become immediately effective
26 for the unexpired term. A member may continue to serve until a
27 successor is appointed. Nothing in this subsection or subsection (2)
28 of this section restricts the authority of the governor to appoint a
29 person other than one of the persons nominated according to this
30 subsection or subsection (2) of this section.

31 (4) The underground damage prevention authority shall select one of
32 its members as chair and another as vice-chair, for such terms and with
33 such duties and powers as the authority considers necessary for the
34 performance of the functions of those offices. The authority shall
35 adopt bylaws for the conduct of its business. A minimum of seven of
36 the members of the authority constitutes a quorum for the transaction
37 of business.

1 (5) The underground damage prevention authority shall meet at least
2 once every three months at a time and place determined by the
3 authority. The authority shall meet at such other times and places
4 specified by the call of the chair or of a majority of the members of
5 the authority.

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

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

9 (1) It is a function of the underground damage prevention authority
10 to appoint an enforcement committee, consisting of members of the
11 authority who are not parties to the complaint and represent a balance
12 of excavator and facility operator interests, in order to:

13 (a) Hear complaints for violations of this chapter; and

14 (b) After a hearing, issue a finding of facts and conclusions
15 regarding the alleged violation and recommend appropriate corrective
16 actions, including but not limited to the assessment of civil penalties
17 authorized by this chapter and education of personnel.

18 (2) In a hearing before the underground damage prevention authority
19 for an alleged violation of this chapter:

20 (a) All testimony must be given under oath; and

21 (b) The proceedings must be recorded.

22 (3) The underground damage prevention authority must issue its
23 findings in writing, stating the reason for its decision. A copy of
24 the finding must be delivered or mailed to all parties to the complaint
25 proceedings.

26 (4) If the underground damage prevention authority issues a finding
27 that a violation of this chapter has occurred and the complainant or
28 the defendant is subject to regulation by the utilities and
29 transportation commission, then the commission may rely upon the
30 finding of the underground damage prevention authority as prima facie
31 evidence of a violation and assess any civil penalties authorized in
32 this chapter for such a violation, consistent with the commission's own
33 procedures and appeals process.

34 (5) If the underground damage prevention authority issues a finding
35 that a violation of this chapter has occurred and neither party to the
36 complaint is subject to regulation by the utilities and transportation
37 commission, then the finding shall be forwarded to the office of the

1 attorney general. The office of the attorney general may rely upon the
2 finding of the underground damage prevention authority as prima fascia
3 evidence of a violation and may pursue any appropriate remedies,
4 consistent with the office of the attorney general's own procedures and
5 appeals process.

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

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

9 (1) The underground damage prevention authority is authorized to:

10 (a) Adopt bylaws for the conduct of its business;

11 (b) Accept a grant, loan, or any other assistance in any form from
12 any public or private source, subject to the provisions of this
13 chapter;

14 (c) Enter into contracts and execute the instruments necessary or
15 convenient to carry out this chapter to accomplish its purposes;

16 (d) Develop and recommend to the legislature policies to further
17 enhance worker and public safety and protection of underground
18 facilities; and

19 (e) Do all things necessary or convenient to carry out the powers
20 expressly granted by this chapter.

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

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

24 (1) All facility operators, excavators, or other individuals and
25 organizations shall report to the utilities and transportation
26 commission office of pipeline safety every event where an underground
27 facility has been damaged.

28 (2) Reports must be made whenever the facility operator, excavator,
29 or other individual or organization has firsthand knowledge of the
30 event.

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

35 (4) Facility operators, excavators, or other individuals or

1 organizations shall make this report to the utilities and
2 transportation commission office of pipeline safety within forty-five
3 days of the event, or sooner if required by law.

4 (5) All damage reports shall be submitted using the utilities and
5 transportation commission's virtual private damage information
6 reporting tool (DIRT) report form or other similar form as long as the
7 form contains the same information as the utilities and transportation
8 commission's virtual private damage information reporting tool form.

9 (6) Failure to report a known event, regardless of the level of
10 damage sustained by the underground facility, is a violation of this
11 chapter and subject to citation and penalty in accordance with this
12 chapter.

13 NEW SECTION. **Sec. 20.** This act takes effect January 1, 2013.

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