
HOUSE BILL 2979

State of Washington

65th Legislature

2018 Regular Session

By Representative Appleton

Read first time 02/01/18. Referred to Committee on Technology & Economic Development.

1 AN ACT Relating to adopting new requirements for locating
2 underground facilities, including positive response, minimum marking
3 standards, adopting a new process for coordinating large projects,
4 and requiring new and replacement facilities to be locatable;
5 amending RCW 19.122.030, 19.122.035, 19.122.040, 19.122.050,
6 19.122.055, and 19.122.130; reenacting and amending RCW 19.122.020;
7 adding a new section to chapter 19.122 RCW; and prescribing
8 penalties.

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

10 **Sec. 1.** RCW 19.122.020 and 2011 c 263 s 2 are each reenacted and
11 amended to read as follows:

12 The definitions in this section apply throughout this chapter
13 unless the context clearly requires otherwise.

14 (1) "Bar hole" means a hole made in the soil or pavement with a
15 hand-operated bar for the specific purpose of testing the subsurface
16 atmosphere with a combustible gas indicator.

17 (2) "Business day" means any day other than Saturday, Sunday, or
18 a legal local, state, or federal holiday.

19 (3) "Commission" means the utilities and transportation
20 commission.

1 (4) "Damage" includes the substantial weakening of structural or
2 lateral support of an underground facility, penetration, impairment,
3 or destruction of any underground protective coating, housing, or
4 other protective device, or the severance, partial or complete, of
5 any underground facility to the extent that the project owner or the
6 affected facility operator determines that repairs are required.

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

9 (6) "End user" means any utility customer or consumer of utility
10 services or commodities provided by a facility operator.

11 (7) "Equipment operator" means an individual conducting an
12 excavation.

13 (8) "Excavation" and "excavate" means any operation, including
14 the installation of signs, in which earth, rock, or other material on
15 or below the ground is moved or otherwise displaced by any means.

16 (9) "Excavation confirmation code" means a code or ticket issued
17 by a one-number locator service for the site where an excavation is
18 planned. The code must be accompanied by the date and time it was
19 issued.

20 (10) "Excavator" means any person who engages directly in
21 excavation.

22 (11) "Facility operator" means any person who owns an underground
23 facility or is in the business of supplying any utility service or
24 commodity for compensation. "Facility operator" does not include a
25 utility customer who owns a service lateral that terminates at a
26 facility operator's main utility line.

27 (12) "Gas" means natural gas, flammable gas, or toxic or
28 corrosive gas.

29 (13) "Hazardous liquid" means:

30 (a) Petroleum, petroleum products, or anhydrous ammonia as those
31 terms are defined in 49 C.F.R. Part 195 as in effect on March 1,
32 1998;

33 (b) Carbon dioxide; and

34 (c) Other substances designated as hazardous by the secretary of
35 transportation and incorporated by reference by the commission by
36 rule.

37 (14) "Identified but unlocatable underground facility" means an
38 underground facility which has been identified but cannot be located
39 with reasonable accuracy.

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

3 (16) "Locatable underground facility" means an underground
4 facility which can be marked with reasonable accuracy.

5 (17) "Marking" means the use of stakes, paint, or other clearly
6 identifiable materials to show the field location of underground
7 facilities, in accordance with the current color code standard of the
8 American public works association. Markings shall include
9 identification letters indicating the specific type of the
10 underground facility.

11 (18) "Notice" or "notify" means contact in person or by telephone
12 or other electronic method, and, with respect to contact of a one-
13 number locator service, also results in the receipt of a valid
14 excavation confirmation code.

15 (19) "One-number locator service" means a service through which a
16 person can notify facility operators and request marking of
17 underground facilities.

18 (20) "Person" means an individual, partnership, franchise holder,
19 association, corporation, the state, a city, a county, a town, or any
20 subdivision or instrumentality of the state, including any unit of
21 local government, and its employees, agents, or legal
22 representatives.

23 (21) "Pipeline" or "pipeline system" means all or parts of a
24 pipeline facility through which hazardous liquid or gas moves in
25 transportation, including, but not limited to, line pipe, valves, and
26 other appurtenances connected to line pipe, pumping units, fabricated
27 assemblies associated with pumping or compressor units, metering and
28 delivery stations and fabricated assemblies therein, and breakout
29 tanks. "Pipeline" or "pipeline system" does not include process or
30 transfer pipelines.

31 (22) "Pipeline company" means a person or entity constructing,
32 owning, or operating a pipeline for transporting hazardous liquid or
33 gas. "Pipeline company" does not include:

34 (a) Distribution systems owned and operated under franchise for
35 the sale, delivery, or distribution of natural gas at retail; or

36 (b) Excavation contractors or other contractors that contract
37 with a pipeline company.

38 (23) "Reasonable accuracy" means location within twenty-four
39 inches of the outside dimensions of both sides of an underground
40 facility.

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

6 (25) "Transfer pipeline" means a buried or aboveground pipeline
7 used to carry hazardous liquid between a tank vessel or transmission
8 pipeline and the first valve inside secondary containment at a
9 facility, provided that any discharge on the facility side of the
10 first valve will not directly impact waters of the state. "Transfer
11 pipeline" includes valves and other appurtenances connected to the
12 pipeline, pumping units, and fabricated assemblies associated with
13 pumping units. "Transfer pipeline" does not include process
14 pipelines, pipelines carrying ballast or bilge water, transmission
15 pipelines, or tank vessel or storage tanks.

16 (26) "Transmission pipeline" means a pipeline that transports
17 hazardous liquid or gas within a storage field, or transports
18 hazardous liquid or gas from an interstate pipeline or storage
19 facility to a distribution main or a large volume hazardous liquid or
20 gas user, or operates at a hoop stress of twenty percent or more of
21 the specified minimum yield strength.

22 (27) "Underground facility" means any item buried or placed below
23 ground for use in connection with the storage or conveyance of water,
24 sewage, electronic, telephonic or telegraphic communications,
25 cablevision, electric energy, petroleum products, gas, gaseous
26 vapors, hazardous liquids, or other substances and including but not
27 limited to pipes, sewers, conduits, cables, valves, lines, wires,
28 manholes, attachments, and those parts of poles or anchors that are
29 below ground. This definition does not include pipelines as defined
30 in subsection (21) of this section, but does include distribution
31 systems owned and operated under franchise for the sale, delivery, or
32 distribution of natural gas at retail.

33 (28) "Unlocatable underground facility" means, subject to the
34 provisions of RCW 19.122.030, an underground facility that cannot be
35 marked with reasonable accuracy using available information to
36 designate the location of an underground facility. "Unlocatable
37 underground facility" includes, but is not limited to, service
38 laterals, storm drains, and nonconductive and nonmetallic underground
39 facilities that do not contain trace wires.

1 (29) "Utility easement" means a right held by a facility operator
2 to install, maintain, and access an underground facility or pipeline.

3 (30) "Noninvasive methods" means methods that do not damage the
4 facility, and may include:

5 (a) Hand digging when practical, soft digging, and vacuum
6 excavation methods; or

7 (b) With the approval of the facility owner or operator:

8 (i) Pneumatic hand tools or other mechanical methods; and

9 (ii) Other technical methods that may be developed.

10 (31) "Positive response" means that a facility operator provides
11 electronic notification to the one-number locator service in response
12 to a locate request.

13 (32) "Replacement" means the portion of a new underground
14 facility that is installed, by open cut or trenchless methods,
15 between connection points, such as structures in replacement of an
16 existing underground facility. "Replacement" does not include a spot
17 repair.

18 (33) "Soft digging" means removal of soils that have been
19 preloosened by noninvasive methods.

20 **Sec. 2.** RCW 19.122.030 and 2011 c 263 s 4 are each amended to
21 read as follows:

22 (1)(a) Unless exempted under RCW 19.122.031, before commencing
23 any excavation, an excavator must mark the boundary of the excavation
24 area with white paint applied on the ground of the worksite, then
25 provide notice of the scheduled commencement of excavation to all
26 facility operators through a one-number locator service.

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

31 (2)(a) An excavator must provide the notice required by
32 subsection (1) of this section to a one-number locator service not
33 less than two business days and not more than ten business days
34 before the scheduled date for commencement of excavation, unless
35 otherwise agreed by the excavator and facility operators.

36 (b) If an excavator intends to work at multiple sites or at a
37 large project, the excavator must ~~((take reasonable steps to confer))~~
38 include on the locate notice a date, no sooner than the second
39 business day, time, and place for a meeting with facility operators

1 to make arrangements that enable ((them)) the facility operators to
2 locate underground facilities reasonably in advance of the start of
3 excavation for each phase of the work. The meeting date is the date
4 of notice for the purpose of compliance with this subsection. In the
5 event that the facility operator does not attend the required
6 meeting, it is the facility operator's responsibility to contact the
7 excavator.

8 (3) Upon receipt of the notice provided for in subsection (1) of
9 this section, a facility operator must, with respect to:

10 (a) The facility operator's locatable underground facilities,
11 provide the excavator with reasonably accurate information by marking
12 their location. All marks shall indicate the name or initials of the
13 facility operator, and when known, the best available description
14 including width, if greater than two inches, and the quantity;

15 (b) The facility operator's unlocatable or identified but
16 unlocatable underground facilities, provide the excavator with
17 available information as to their location; ~~((and))~~

18 (c) Service laterals, designate their presence or location, if
19 the service laterals:

20 (i) Connect end users to the facility operator's main utility
21 line; and

22 (ii) Are within a public right-of-way or utility easement and the
23 boundary of the excavation area identified under subsection (1) of
24 this section; and

25 (d) The one-number locator service, beginning January 1, 2021,
26 provide positive response status. The one-number locator service must
27 then provide the excavator with the status of the locate request.

28 (4)(a) A facility operator must provide positive response status
29 information to an excavator pursuant to subsection (3) of this
30 section no later than two business days after the receipt of the
31 notice provided for in subsection (1) of this section or before
32 excavation commences, at the option of the facility operator, unless
33 otherwise agreed by the parties. If the positive response status is
34 not complete within two business days, a final status update is
35 required upon completion.

36 (b) A facility operator complying with subsection (3)(b) and (c)
37 of this section may do so in a manner that includes any of the
38 following methods:

39 (i) Placing within a proposed excavation area a triangular mark
40 at the main utility line pointing at the building, structure, or

1 property in question, indicating the presence of an unlocatable or
2 identified but unlocatable underground facility, including a service
3 lateral;

4 (ii) Arranging to meet an excavator at a worksite to provide
5 available information about the location of service laterals; or

6 (iii) Providing copies of the best reasonably available records
7 by electronic message, mail, facsimile, or other delivery method.

8 (c) A facility operator's good faith attempt to comply with
9 subsection (3)(b) and (c) of this section:

10 (i) Constitutes full compliance with the requirements of this
11 section, and no person may be found liable for damages or injuries
12 that may result from such compliance, apart from liability for
13 arranging for repairs or relocation as provided in RCW 19.122.050(2);
14 and

15 (ii) Does not constitute any assertion of ownership or operation
16 of a service lateral by the facility operator.

17 (d) An end user is responsible for determining the location of a
18 service lateral on their property or a service lateral that they own.
19 Nothing in this section may be interpreted to require an end user to
20 subscribe to a one-number locator service or to locate a service
21 lateral within a right-of-way or utility easement.

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

25 (6)(a) Once marked by a facility operator, an excavator is
26 responsible for maintaining the accuracy of the facility operator's
27 markings of underground facilities for the lesser of:

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

31 (ii) The duration of the project.

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

36 (c) A facility operator's markings of underground utilities
37 expire forty-five calendar days from the date that the excavator
38 provided notice to a one-number locator service pursuant to
39 subsection (1) of this section. For excavation occurring after that

1 date, an excavator must provide additional notice to a one-number
2 locator service pursuant to subsection (1) of this section.

3 (7) An excavator has the right to receive reasonable compensation
4 from a facility operator for costs incurred by the excavator if the
5 facility operator does not locate its underground facilities in
6 accordance with the requirements specified in this section.

7 (8) A facility operator has the right to receive reasonable
8 compensation from an excavator for costs incurred by the facility
9 operator if the excavator does not comply with the requirements
10 specified in this section.

11 (9) A facility operator is not required to comply with subsection
12 (4) of this section with respect to service laterals conveying only
13 water if their presence can be determined from other visible water
14 facilities, such as water meters, water valve covers, and junction
15 boxes in or adjacent to the boundary of an excavation area identified
16 under subsection (1) of this section.

17 (10) If an excavator discovers underground facilities that are
18 not identified, the excavator must cease excavating in the vicinity
19 of the underground facilities and immediately notify the facility
20 operator ~~((or))~~ and a one-number locator service. If an excavator
21 discovers identified but unlocatable underground facilities, the
22 excavator must notify the facility operator and the one-number
23 locator service. Upon notification by a one-number locator service or
24 an excavator, a facility operator must ~~((allow for))~~ map or record
25 and mark the location of the uncovered portion of an underground
26 facility identified by the excavator, ~~((and may))~~ or accept
27 verifiable location information from the excavator for ~~((marking of~~
28 ~~the underground facility))~~ future one-number locate requests. If an
29 excavator discovers and damages an identified but unlocatable
30 facility, the excavator shall proceed pursuant to RCW 19.122.050.

31 **Sec. 3.** RCW 19.122.035 and 2011 c 263 s 7 are each amended to
32 read as follows:

33 (1) After a pipeline company has been notified by an excavator
34 pursuant to RCW 19.122.033 that excavation will uncover any portion
35 of the pipeline company's pipeline, the pipeline company shall ensure
36 that the pipeline section in the vicinity of the excavation is
37 examined for damage prior to being reburied.

38 (2) Immediately upon receiving information of third-party damage
39 to a hazardous liquid pipeline, the company that operates the

1 pipeline shall terminate the flow of hazardous liquid in that
2 pipeline until it has visually inspected the pipeline. After visual
3 inspection, the pipeline company shall determine whether the damaged
4 pipeline section should be replaced or repaired, or whether it is
5 safe to resume pipeline operation. Immediately upon receiving
6 information of third-party damage to a gas pipeline, the pipeline
7 company shall conduct a visual inspection of the pipeline to
8 determine whether the flow of gas through that pipeline should be
9 terminated, and whether the damaged pipeline should be replaced or
10 repaired. A record of the pipeline company's inspection report and
11 test results shall be provided to the commission, consistent with
12 reporting requirements under 49 C.F.R. Parts 191 and 195, Subpart B.

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

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

26 **Sec. 4.** RCW 19.122.040 and 2011 c 263 s 8 are each amended to
27 read as follows:

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

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

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

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

1 (a) Use noninvasive methods to determine the precise location of
2 underground facilities which have been marked;

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

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

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

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

21 **Sec. 5.** RCW 19.122.050 and 2011 c 263 s 9 are each amended to
22 read as follows:

23 (1) An excavator who, in the course of excavation, contacts or
24 damages an underground facility shall notify the facility operator
25 and a one-number locator service, and report the damage as required
26 under RCW 19.122.053. If the damage causes an emergency condition,
27 the excavator causing the damage shall also alert the appropriate
28 local public safety agencies and take all appropriate steps to ensure
29 the public safety. No damaged underground facility may be buried
30 until it is inspected by the facility operator, repaired, or
31 relocated.

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

36 **Sec. 6.** RCW 19.122.055 and 2011 c 263 s 10 are each amended to
37 read as follows:

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

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

7 (2) Any excavator who fails to notify a one-number locator
8 service and causes damage to an underground facility other than a
9 hazardous liquid or gas underground facility is subject to a civil
10 penalty of not more than one thousand dollars for an initial
11 violation, and not more than five thousand dollars for each
12 subsequent violation within a three-year period.

13 (3) All civil penalties recovered under this section must be
14 deposited into the damage prevention account created in RCW
15 19.122.160.

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

18 As of January 1, 2020, all newly constructed and replacement
19 underground facilities shall be installed so that they are locatable
20 by a common, accessible, and proven method at the time they enter
21 service.

22 **Sec. 8.** RCW 19.122.130 and 2017 c 20 s 1 are each amended to
23 read as follows:

24 (1) The commission must contract with a statewide, nonprofit
25 entity whose purpose is to reduce damages to underground and above
26 ground facilities, promote safe excavation practices, and review
27 complaints of alleged violations of this chapter. The contract must
28 not obligate funding by the commission for activities performed by
29 the nonprofit entity or the safety committee under this section.

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

31 (a) Advise the commission and other state agencies, the
32 legislature, and local governments on best practices and training to
33 prevent damage to underground utilities, and policies to enhance
34 worker and public safety; and

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

37 (3)(a) The safety committee will consist of thirteen members, who
38 must be nominated by represented groups and appointed by the

1 contracting entity to staggered three-year terms. The safety
2 committee must include representatives of:

3 (i) Local governments;

4 (ii) A natural gas utility subject to regulation under Titles 80
5 and 81 RCW;

6 (iii) Contractors;

7 (iv) Excavators;

8 (v) An electric utility subject to regulation under Title 80 RCW;

9 (vi) A consumer-owned utility, as defined in RCW 19.27A.140;

10 (vii) A pipeline company;

11 (viii) The insurance industry;

12 (ix) The commission; and

13 (x) A telecommunications company.

14 (b) The safety committee may pass bylaws and provide for those
15 organizational processes that are necessary to complete the safety
16 committee's tasks.

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

19 (5) The safety committee may review complaints of alleged
20 violations of this chapter involving practices related to underground
21 facilities. Any person may bring a complaint to the safety committee
22 regarding an alleged violation occurring on or after January 1, 2013.

23 (6) To review complaints of alleged violations, the safety
24 committee must appoint at least three and not more than five members
25 as a review committee. The review committee must include ~~((the same
26 number of))~~ members representing excavators and facility operators.
27 ~~((One member representing facility operators must also be a
28 representative of a pipeline company or a natural gas utility subject
29 to regulation under Titles 80 and 81 RCW. The review committee must
30 also include a member representing the insurance industry.))~~

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

35 (8) The safety committee may provide written notification to the
36 commission, with supporting documentation, that a person has likely
37 committed a violation of this chapter, and recommend remedial action

1 that may include a penalty amount, training, or education to improve
2 public safety, or some combination thereof.

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