

HOUSE BILL REPORT

HB 1006

As Reported by House Committee On: Local Government

Title: An act relating to adopting new requirements for locating underground facilities, including positive response, minimum marking standards, adopting a new process for coordinating large projects, and requiring new and replacement facilities to be locatable.

Brief Description: Adopting new requirements for locating underground facilities, including positive response, minimum marking standards, adopting a new process for coordinating large projects, and requiring new and replacement facilities to be locatable.

Sponsors: Representative Appleton.

Brief History:

Committee Activity:

Local Government: 2/5/19, 2/22/19 [DPS].

Brief Summary of Substitute Bill

- Creates a utilities and excavator work group charged with making recommendations for updating the Damage Prevention Act.
- Requires the Utilities Transportation Commission (UTC) to convene the work group consisting of various members, including but not limited to, facility operators, excavators, insurance companies, and other private and public entities with underground facilities.
- Requires the work group must meet a minimum of four times and produce a report with recommendations to the Governor and Legislature by December 1, 2019.
- Requires the Department of Commerce, in consultation with the UTC, to hire a facilitator to moderate the work group meetings.
- Appropriates up to \$50,000 from the State General Fund to the UTC for the sole purpose of employing the facilitator and producing a final report.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

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

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Pollet, Chair; Peterson, Vice Chair; Kraft, Ranking Member; Appleton, Goehner and Senn.

Staff: Yvonne Walker (786-7841).

Background:

The Underground Utility Damage Prevention Act.

The Underground Utility Damage Prevention Act (Damage Prevention Act), also referred to as the "Call Before You Dig Law," governs safe excavation practices near underground utility facilities, including natural gas and hazardous liquid pipelines. All underground facility operators must subscribe to the state's one-number locator service, through which an excavator may notify utilities of excavation activities and request field-marking of underground facilities.

Any excavator who fails to notify a one-number locator service and causes damage to a hazardous liquid or gas underground facility is subject to a civil penalty of no more than \$10,000 for each violation. This civil penalty may also be imposed on any excavator who excavates without a valid excavation confirmation code within 35 feet of a transmission pipeline. An excavation confirmation code is a code or ticket issued by a one-number locator service for the site where an excavation is planned. The code must be accompanied by the date and time it was issued.

Any person who violates any other provision of the Damage Prevention Act is subject to a civil penalty of no more than \$1,000 for an initial violation, and no more than \$5,000 for each subsequent violation within a three-year period.

An "excavator" is any person who engages directly in excavation. A "facility operator" is any person who owns an underground facility or is in the business of supplying any utility service or commodity for compensation. "Facility operator" does not include a utility customer who owns a service lateral that terminates at a facility operator's main utility line.

The Utilities and Transportation Commission.

The Utilities and Transportation Commission (UTC) regulates the rates, services, and practices of privately-owned utilities and transportation companies in Washington, including natural gas and electric companies. The UTC is also responsible for developing and enforcing safety standards for natural gas and hazardous liquid pipelines located within the state. The UTC enforces the requirements of the Damage Prevention Act.

The Dig Law Safety Committee.

The Dig Law Safety Committee (Committee) is made up of 13 members representing a variety of stakeholders throughout the digging and utility industry. The Committee must include the same number of members representing excavators and facility operators. The Committee hears complaints under the Damage Prevention Act and makes recommendations to the UTC for enforcement action.

Summary of Substitute Bill:

The Utilities and Transportation Commission (UTC) must convene a utilities and excavator work group by June 1, 2019, charged with making recommendations for updating the Underground Utility Damage Prevention Act (Damage Prevention Act).

The purpose of the work group is to develop recommendations relating to establishing new requirements for: (1) locating underground facilities; (2) notification and reciprocal communication standards for excavators and facility operators, including positive response; (3) minimum marking standards; (4) a process for coordinating large projects; and (5) the location markings of new and replacement facilities.

The work group must be a collaboration between governmental entities, members of the excavation community, municipal utility districts, and private utility companies. Members of the work group must include at a minimum, representatives from the 8-1-1 boards, the UTC, consumer-owned utilities, investor-owned utilities, natural gas utilities, local governments maintaining, owning, and operating underground facilities, the Association of Washington Cities, the Washington State Association of Counties, water-sewer districts, irrigation districts, construction and excavator communities, pipeline companies, port districts, insurance companies, telecommunications companies, the Department of Transportation, the Department of Commerce (COM), private utility companies, and other governmental entities with underground facilities.

The work group must develop recommendations that include but are not limited to determining:

- how facility operators must schedule and confirm a meeting place and time when an excavator works at multiple sites or on large projects;
- new requirements for marking locatable underground facilities;
- how to define "noninvasive methods" for purposes of determining locations of marked underground facilities;
- the procedures that must take place when an excavator discovers an underground facility that was not identified and marked by the facility operator;
- the procedures that must take place when an excavator damages an underground facility that was not identified and marked by the facility operator;
- the penalty for failing to notify a one-number locator service when damage is caused to an underground facility, other than a hazardous liquid or gas underground facility;
- utility identification procedures for newly constructed and replacement underground facilities;
- the membership composition of the Dig Law Safety Committee; and
- who is financially liable for damage occurring from an excavation when either the excavator or the facility operator fails to comply with the statutory requirements relating to notice requirements or utility marking requirements.

The work group must meet a minimum of four times and is encouraged to solicit comments from nonmember individuals. A report of the work group's recommendations is due to the Governor and the appropriate committees of the Legislature by December 1, 2019.

The COM, in consultation with the UTC, must employ a facilitator to: (1) conduct and moderate each of the meetings of the work group; (2) provide objective third-party facilitation of negotiation between all parties involved; (3) ensure all work group members are provided an opportunity to be heard and included in all final decisions of the work group; (4) set deadlines and ensure participants respond in a timely manner; and (5) synthesize agreements and points under negotiation. The facilitator must develop a plan in consultation with work group stakeholders and local and state agencies that enables views to be represented in a process which the facilitator believes is likely to result in agreements.

A sum of up to \$50,000 is appropriated for the fiscal year ending June 30, 2020, from the State General Fund to the COM for the sole purpose of employing a facilitator and producing a final report on behalf of the work group.

Substitute Bill Compared to Original Bill:

All of the provisions of the original bill are eliminated and instead a work group charged with making recommendations for updating the Underground Utility Damage Prevention Act is created. In addition, the following provisions were added that:

- require the Utilities and Transportation Commission (UTC) to convene a work group that includes, but is not limited to, members representing the cities, counties, public and private utility companies, construction and excavator communities, water-sewer districts, and other government entities with underground facilities;
- requires the work group to meet a minimum of four times and produce a report with recommendations to the Governor and Legislature by December 1, 2019;
- requires the work group to determine a number factors as part of its study and review;
- requires the Department of Commerce, in consultation with the UTC, to hire a facilitator for the work group to moderate the meetings, provide an objective view and negotiation between work group members, ensure participants respond in a timely manner, and to synthesize agreements and points under negotiation; and
- appropriates up to \$50,000 from the State General Fund to the UTC for the sole purpose of employing the facilitator and producing a final report.

Appropriation: The sum of \$50,000.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is the result of a stakeholder group that included the Utilities and Transportation Commission (UTC) which began meeting back in 2017. The original dig law bill was enacted in 2012 and in that bill there was a provision that allowed the Dig Law Safety Committee (Committee) to review complaints and to review how well the bill was doing. In this bill, the membership of the Committee is being reduced as it is not necessary

to have several of those members be part of that review panel. However, it is recommended that an amendment be made to the bill to include a person on the Committee that represents the water-sewer districts.

This is a simple bill based on a complex set of rules for the industry. The enhancements in this bill will increase safety for workers and reduce service disruptions to customers. Furthermore, the changes proposed in this bill are items that will make the original legislation even better.

(Opposed) The City of Seattle has invested a considerable amount of time participating in the UTC-convened Committee. The bill in its current form does not reflect the language agreed upon during the interim. The biggest concern is language that modifies the current responsibilities for the marking and physical location of underground facilities before excavation, as this is a departure from national law and practice.

(Other) The Bureau of Reclamation (Bureau) has been doing 8-1-1 work for nearly 80 years. They originally gathered all the public utilities together and laid out a plan on how each and every utility would be placed relative to where the Bureau's facilities were located. They believe in protecting underground facilities.

The current bill version does not reflect the stakeholder work that took place to define the bill. One of the objectives in the original bill was to set up a process that involved all the stakeholders and to arrive at a consensus. The amendments being offered to the original bill will reflect the stakeholders' requested changes.

Persons Testifying: (In support) Representative Appleton, prime sponsor; Jon Cornelius, National Utility Contract Association of Washington; Don Evans, Washington Utilities Coordinating Council; Mark Scoccolo, SCI Infrastructure, LLC, and Board of Directors National Utility Contractors Association; Steve Lindstrom, Sno-King Water District Coalition; and Joe Daniels, Washington Association of Water/Sewer Districts.

(Opposed) Mendy Droke, Seattle City Light.

(Other) Dan Kirschner, Northwest Gas Association; and Todd Knittel, Columbia Basin Federal Reclamation Project.

Persons Signed In To Testify But Not Testifying: None.