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**SENATE BILL 5627**

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**State of Washington 69th Legislature 2025 Regular Session**

**By** Senators Ramos, Harris, Wellman, Shewmake, J. Wilson, Hasegawa, and Nobles

AN ACT Relating to improving safe excavation practices and preventing damage to underground utilities; amending RCW 19.122.010, 19.122.020, 19.122.027, 19.122.030, 19.122.031, 19.122.040, 19.122.050, 19.122.055, 19.122.070, 19.122.090, 19.122.100, 19.122.130, and 19.122.150; adding a new section to chapter 19.122 RCW; and prescribing penalties.

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

**Sec.**  RCW 19.122.010 and 2011 c 263 s 1 are each amended to read as follows:

In this chapter, the underground utility damage prevention act, the legislature intends to protect public health and safety and prevent disruption of vital utility services through a comprehensive damage prevention program that includes:

(1) Assigning responsibility for providing notice of proposed excavation, free locating and marking underground utilities, and reporting and repairing damage;

(2) Setting safeguards for construction and excavation near hazardous liquid and gas pipelines;

(3) Improving worker and public knowledge of safe practices;

(4) Collecting and analyzing damage data;

(5) Reviewing alleged violations; and

(6) Enforcing this chapter.

**Sec.**  RCW 19.122.020 and 2020 c 162 s 1 are each amended to read as follows:

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

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

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

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

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

(5) "Emergency" means any condition constituting a clear and present danger to life, health, or property, or a customer service outage due to an unplanned utility outage that requires immediate action where an excavator or facility operator has a crew onsite or enroute.

(6) "End user" means any utility customer or consumer of utility services or commodities provided by a facility operator. An "end user" does not include a person or entity that owns, operates, or maintains underground facilities in a public right-of-way.

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

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

(9) "Excavation confirmation code" means 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 and the work-to-begin date on the notice as provided in RCW 19.122.030(2). The excavation confirmation code is not valid until the work-to-begin date.

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

(11) "Facility operator" means 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.

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

(13) "Hazardous liquid" means:

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

(b) Carbon dioxide; and

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

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

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

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

(17) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type, width, and identification of the operator of the underground facility. Locate marks are not required to indicate the depth of the underground facility given the potential change of topography over time.

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

(19) "One-number locator service" means a service through which a person can notify facility operators and request marking of underground facilities and includes the web-based platform required under RCW 19.122.027(1).

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

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

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

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

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

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

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

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

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

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

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

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

(30) "Design locating" means locating for planning purposes. "Design locating" does not include locating for excavation purposes.

(31) "Force majeure" means: Natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; embargoes; epidemics; terrorist acts; riots; insurrections; explosions; and nuclear accidents.

(32) "General contractor" has the same meaning as defined in RCW 18.27.010.

(33) "Hard surface" means an area covered with asphalt, concrete, interlocking brick or block solid stone, wood, or any similar impervious or nonporous material on the surface of the ground.

(34) "Positive response" means a notification from the owner or operator of the underground facility, or the owner's or operator's authorized locating contractor, to the one-number locator service confirming that the facility owner, operator, or contracted locator has completed marking or provided location information regarding unlocatable facilities in response to a notice.

(35) "Safe and careful work methods" means methods of excavation, including pot holing, hand digging when practical, vacuum excavation methods, pneumatic hand tools, or other technical methods that may be developed.

(36) "White lining" means the use of any white paint, flags, stakes, whiskers, or other locally accepted method that is distinguishable from the surrounding area. "White lining" also includes the use of geometric polygons when a request is received using an electronic mapping software.

(37) "Work-to-begin date" means an identified date not less than two full business days and not more than 10 full business days, not including Saturdays, Sundays, legal local, state, or federal holidays, from the date notice is given to a one-number locator service.

**Sec.**  RCW 19.122.027 and 2011 c 263 s 3 are each amended to read as follows:

(1) The commission must establish a single statewide toll-free telephone number to be used for referring excavators to the appropriate one-number locator service. The one-number locator service shall maintain a web-based platform that provides the same services as the toll-free telephone number online. The web-based platform must meet the requirements outlined in RCW 19.122.030 (1) and (2). The web-based platform must be free of charge to those requesting location of underground facilities and operated in the same manner as the toll-free telephone number.

(a) The web-based platform, to be sufficient for electronic notice, must employ a digital mapping software that utilizes sufficiently accurate geographic data that permits the excavator to accurately place on an electronic map, markers designating the intended area(s) of excavation.

(b) The one-number locator service may permit multiple excavators on a single notice, so long as each excavator is provided with an individual and unique confirmation code.

(c) The one-number locator service must require that an excavator provide a work-to-begin date in the notice.

(2) The commission, in consultation with the ((~~Washington utilities coordinating council~~)) the entity administering the one-number locator service, must establish minimum standards and best management practices for one-number locator services.

(3) One-number locator services must be operated by nongovernmental agencies.

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

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

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

(1) Hazardous liquid and gas pipeline operators shall locate all underground facilities as required under Title 49 C.F.R. Secs. 195.442(c)(5) and 192.614(c)(5) as they existed on the effective date of this section, or such subsequent date as may be provided by the commission by rule, consistent with the purpose of this section.

(2) Except as provided in subsection (1) of this section, if an operator does not visibly mark the location of unlocatable underground utilities or facilities, or marks a triangle, the operator shall provide information on the unlocatable facilities approximate location, if known, and size, type of facility, and any other known information that enables the excavator to use safe and careful work methods to determine the approximate location of the facility. The facility operator shall provide the excavator with contact information for a facility representative who is not a contract locator who can answer questions regarding the unlocatable facility during the course of excavation.

(3) After January 1, 2027, facility operators shall make all underground facilities installed after the effective date of this section locatable underground facilities.

(4) Facility operators shall add location information for unlocatable underground facilities, to a facility operator-maintained mapping database within 30 calendar days of the date the facility operator acquires location information for each previously unlocatable underground facility.

(5) After December 31, 2025, facility operators shall maintain maps, drawings, diagrams, or other records illustrating the location of all underground facilities that the facility operator abandons or designates as out-of-service. If within the white-lined area in a notice, the facility operator shall indicate the presence of these facilities by marking the location of the abandoned or out-of-service facilities with an "A" in a circle and include the size and type of facility.

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

(1)(a) Unless exempted under RCW 19.122.031, before commencing any excavation, an excavator must mark the boundary of the excavation area with white ((~~paint~~)) lining or, when necessary, white pin flags, applied on the ground of the worksite, then provide notice of the scheduled commencement of excavation to all facility operators through a one-number locator service. An excavator shall provide the work-to-begin date in the notice provided to the one-number locator service. Physical marking of the boundary of excavation is not required when the excavator provides notice to a one-number locator service through a web-based platform, in accordance with subsection (2) of this section. Where notice is submitted using the web-based platform, any physical markings on the site take priority to the markings submitted using the online mapping software. Where reasonable, excavators and facility operators shall adopt the 20th version of the common ground alliance's best practices for locating, marking, and excavating methods published in 2024, or such subsequent versions as may be adopted by the commission by rule, consistent with the purposes of this section.

(b) If boundary marking required by (a) of this subsection is infeasible, an excavator must ((~~communicate directly with affected facility operators to ensure that the boundary of the excavation area is accurately identified~~)) provide notice electronically to a one-number locator service using geographic mapping features as described in (a) of this subsection.

(2)(a) An excavator must provide the notice required by subsection (1) of this section to a one-number locator service not less than two full business days and not more than ((~~ten~~)) 10 full business days before the scheduled work-to-begin date ((~~for commencement of excavation~~)), unless otherwise agreed by the excavator and facility operators in writing. If an excavator intends to work at multiple sites or at a large project, the excavator must take reasonable steps to confer with facility operators to enable them to locate underground facilities reasonably in advance of the start of excavation for each phase of the work. If notice is provided through the web-based platform, such notice must contain electronic mapping of the boundary of excavation as defined in RCW 19.122.027(1)(a). Submission of notice electronically without sufficient geographic mapping is not notice under this chapter.

(b) A general contractor may provide the notice required by subsection (1) of this section on behalf of an excavator. A general contractor may list multiple excavators in the notice if the notice contains, for each excavator, the excavator's full legal name, phone number, physical address, and company name, if applicable. The excavator engaging in excavation is liable for all costs and penalties resulting from damage caused by excavation. The excavator engaging in excavation is liable for all costs and penalties that result from damage from excavation that occurred because of failure to follow the notice. If damage was the result of a flaw in the notice, the general contractor who submitted the notice is liable for all costs and penalties resulting from the damage.

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

(a)(i) The facility operator's locatable underground facilities, provide the excavator with reasonably accurate information by marking ((~~their~~)) facility location. Hazardous liquid and gas pipeline operators are required to locate all facilities in accordance with Title 49 C.F.R. Secs. 195.442(c)(5) and 192.614(c)(5) as they existed on the effective date of this section, or such subsequent date as may be provided by the commission by rule, consistent with the purpose of this section. This information must be provided free of charge subject to the limitations in subsections (6)(b) and (8) of this section, and the grant of authority in subsection (11) of this section;

(ii) In the event of force majeure, the facility operator's deadline to mark underground facilities as provided in subsection (4)(a) of this section, must be extended by an agreement in writing between the affected parties. The facility operator shall notify the excavator of the need for extension of the deadline as soon as reasonable, but no later than the expiration of the deadline established in subsection (4)(a) of this section;

(b) The facility operator's unlocatable or identified but unlocatable underground facilities, provide the excavator with available information as to their location prior to the work-to-begin date provided in the notice under subsection (1) of this section. For any gas or hazardous liquid pipeline, locate all facilities in accordance with Title 49 C.F.R. Secs. 195.442(c)(5) and 192.614(c)(5) as they existed on the effective date of this section, or such subsequent date as may be provided by the commission by rule, consistent with the purpose of this section; and

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

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

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

(4)(a) A facility operator must provide information to an excavator pursuant to subsection (3) of this section no later than ((~~two business days after the receipt of the notice provided for in subsection (1) of this section or before excavation commences, at the option of the facility operator, unless otherwise agreed by the parties~~)) the work-to-begin date on the notice provided for in subsection (1) and (2)(a) of this section, unless otherwise agreed by written agreement between the facility operator and excavator.

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

(i) Placing within a proposed excavation area a triangular mark at the main utility line pointing at the building, structure, or property in question, indicating the presence of an unlocatable or identified but unlocatable underground facility, including a service lateral;

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

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

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

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

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

(d) An end user is responsible for determining the location of a service lateral on their property or a service lateral that they own. An end user is responsible for locating on their own property the underground facilities that they own. The one-number locator service shall maintain a list of private-line locate service providers who may be hired at the cost of the end user for the location of service laterals. Nothing in this section may be interpreted to require an end user to subscribe to a one-number locator service or to locate a service lateral within a right-of-way or utility easement, except an end user who is an owner, operator, or responsible party of a service lateral or other underground facility in a public right-of-way shall subscribe to a one-number locator service and comply with subsection (3) of this section.

(e) Facility operators may direct the one-number locator service to send notices provided for in subsection (1) of this section to a contract locator. The facility operator retains all legal responsibility for compliance with this chapter.

(5) An excavator must not excavate until all known facility operators have marked ((~~or provided information regarding~~)) their locatable underground facilities or, in the case of nonhazardous liquid or nongas pipeline facilities, provided information regarding their unlocatable underground facilities as provided in this section. An excavator may not commence excavation until the excavator has received positive response from all operators with underground facilities in the area identified in the notice.

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

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

(ii) The duration of the excavation portion of the project.

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

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

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

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

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

(10) If an excavator discovers underground facilities that are not identified, the excavator must cease excavating in the vicinity of the underground facilities and immediately notify the facility operator ((~~or~~)) directly or through a one-number locator service. If an excavator discovers identified but unlocatable underground facilities, the excavator must notify the facility operator directly or through a one-number locator service. Upon notification by a one-number locator service or an excavator, a facility operator must allow for location of the uncovered portion of an underground facility identified by the excavator, and may accept location information from the excavator for marking of the underground facility.

(11) Each facility operator shall provide to a one-number locator service directions on how a requestor may obtain, for design locating, information regarding the location of underground facilities. For the purpose of this subsection, a "requestor" is any person seeking the location of underground facilities for design locating. Facility operators may attach fees for design locating.

(12) Except as provided in subsections (6)(b), (8), and (11) of this section, facility operators are prohibited from charging a fee for locating and marking their underground facilities.

**Sec.**  RCW 19.122.031 and 2011 c 263 s 5 are each amended to read as follows:

(1) The requirements specified in RCW 19.122.030 do not apply to any of the following activities:

(a) An emergency excavation, but only with respect to ((~~boundary marking~~)) white lining and notice requirements specified in RCW 19.122.030 (1) and (2), and provided that the excavator provides notice to a one-number locator service at the earliest practicable opportunity. Facility operators must promptly respond to a notice of emergency excavation. Prompt means to dispatch locating personnel without undue delay;

(b) An excavation of less than twelve inches in depth on private noncommercial property, if the excavation is performed by the person or an employee of the person who owns or occupies the property on which the excavation is being performed;

(c) The tilling of soil for agricultural purposes less than:

(i) Twelve inches in depth within a utility easement; and

(ii) Twenty inches in depth outside of a utility easement;

(d) The replacement of an official traffic sign installed prior to January 1, 2013, no deeper than the depth at which it was installed;

(e) Road maintenance activities involving excavation less than six inches in depth below the original road grade and ditch maintenance activities involving excavation less than six inches in depth below the original ditch flowline, or alteration of the original ditch horizontal alignment;

(f) The creation of bar holes less than twelve inches in depth, or of any depth during emergency leak investigations, provided that the excavator takes reasonable measures to eliminate electrical arc hazards; or

(g) Construction, operation, or maintenance activities by an irrigation district on rights-of-way, easements, or facilities owned by the federal bureau of reclamation in federal reclamation projects.

(2) Any activity described in subsection (1) of this section is subject to the requirements specified in RCW 19.122.050.

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

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

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

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

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

(a) Determine the precise location of underground facilities which have been marked pursuant to RCW 19.122.030(1);

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

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

(d) Use safe and careful work methods, taking into consideration the known and unknown underground facilities and the surface and subsurface to be excavated. If the marking is on a hard surface, methods of excavation may include pneumatic hand tools or other excavation methods that are commonly accepted as permissible for the type of surface encountered.

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

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

**Sec.**  RCW 19.122.050 and 2020 c 162 s 2 are each amended to read as follows:

(1) An excavator who, in the course of excavation, contacts or damages an underground facility shall notify the facility operator directly, if the facility operator is known, and a one-number locator service, and report the damage as required under RCW 19.122.053. If the damage causes an emergency condition, the excavator causing the damage shall also call 911 to alert the appropriate local public safety agencies and take all appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

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

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

(1)(a) Any excavator who ((~~fails to notify a one-number locator service~~)) violates any provision of this chapter and causes damage to a hazardous liquid or gas underground facility is subject to a civil penalty of not more than ((~~ten thousand dollars~~)) $25,000 for each violation.

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

(2) Any facility operator who (a): (i) Fails to accurately locate the underground facility as required under RCW 19.122.030 (3) and (4); or (ii) fails to mark its underground facilities as required under RCW 19.122.030(1), and (b) whose underground facility is damaged as a result of the failure in (a) of this subsection is subject to a civil penalty of not more than $25,000 for each violation.

(3) A civil penalty of up to $5,000 for each violation may be imposed on any excavator or facility operator that violates any provision of this chapter involving an underground pipeline facility, but does not cause damage to an underground pipeline facility.

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

**Sec.**  RCW 19.122.070 and 2011 c 263 s 11 are each amended to read as follows:

(1) Any person who violates any provision of this chapter not amounting to a violation of RCW 19.122.055 is subject to a civil penalty of ((~~not more than one thousand dollars for an initial violation, and~~)) not more than ((~~five thousand dollars~~)) $5,000 for each ((~~subsequent~~)) violation within a three-year period. All penalties recovered in such actions must be deposited in the damage prevention account created in RCW 19.122.160.

(2) Any excavator who ((~~willfully or maliciously damages a marked underground facility is liable for treble the costs incurred in repairing or relocating the facility. In those cases in which an excavator fails to notify known facility operators or a one-number locator service, any damage to the underground facility is deemed willful and malicious and is subject to treble damages for costs incurred in repairing or relocating the facility~~)) fails to give notice of planned excavation and damages a marked underground facility is liable for all costs incurred in repairing or relocating the facility and any penalties assessed under this chapter.

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

**Sec.**  RCW 19.122.090 and 2005 c 448 s 5 are each amended to read as follows:

(1) Any excavator who excavates, without ((~~a valid~~)) an excavation confirmation code when required under this chapter, within ((~~thirty-five~~)) 35 feet of a transmission pipeline is guilty of a misdemeanor.

(2) Any excavator who excavates within 35 feet of a transmission pipeline, prior to the work-to-begin date on the notice when required under this chapter, is guilty of a misdemeanor.

(3) Any excavator who excavates within 35 feet of a transmission pipeline, prior to receiving positive response from the facility operator of the transmission pipeline when required under this chapter, is guilty of a misdemeanor.

**Sec.**  RCW 19.122.100 and 2011 c 263 s 16 are each amended to read as follows:

If charged with a violation of RCW 19.122.090, an equipment operator is deemed to have established an affirmative defense to such charges if:

(1) The equipment operator was provided ((~~a valid~~)) an excavation confirmation code;

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

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

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

**Sec.**  RCW 19.122.130 and 2020 c 162 s 3 are each amended to read as follows:

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

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

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

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

(3)(a) The safety committee will consist of thirteen members, who must be nominated by represented groups and appointed by the contracting entity to staggered three-year terms. The safety committee must include representatives of:

(i) Local governments;

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

(iii) Contractors;

(iv) Excavators;

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

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

(vii) A pipeline company;

(viii) A water-sewer district subject to regulation under Title 57 RCW;

(ix) The commission; and

(x) A telecommunications company.

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

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

(5) The safety committee may review complaints of alleged violations of this chapter involving practices related to underground facilities, except for those complaints relating to damage to pipeline facilities or which involve violations of RCW 19.122.075 and 19.122.090. Any person may bring a complaint to the safety committee regarding an alleged violation occurring on or after January 1, 2013.

(6) To review complaints of alleged violations, the safety committee must appoint at least three and not more than five members as a review committee. The review committee must be a balanced group, including at least one excavator and one facility operator.

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

(8) The safety committee may provide written notification to the commission, with supporting documentation, that a person has likely committed a violation of this chapter, and recommend remedial action that may include a penalty amount, training, or education to improve public safety, or some combination thereof.

**Sec.**  RCW 19.122.150 and 2017 c 20 s 3 are each amended to read as follows:

(1) The commission may investigate and enforce violations of ((~~RCW 19.122.055, 19.122.075, and 19.122.090~~)) any provision of this chapter relating to pipeline facilities without initial referral to the safety committee created under RCW 19.122.130.

(2) If the commission's investigation of notifications received pursuant to RCW 19.122.140 or subsection (1) of this section substantiates violations of this chapter, the commission may impose penalties authorized by RCW 19.122.055, 19.122.070, 19.122.075, and 19.122.090, and require training, education, or any combination thereof.

(3) With respect to referrals from the safety committee, the commission must consider any recommendation by the committee regarding enforcement and remedial actions involving an alleged violator.

(4) In an action to impose a penalty initiated by the commission under subsection (1) or (2) of this section, the penalty is due and payable when the person incurring the penalty receives a notice of penalty in writing from the commission describing the violation and advising the person that the penalty is due. The person incurring the penalty has fifteen days from the date the person receives the notice of penalty to file with the commission a request for mitigation or a request for a hearing. The commission must include this time limit information in the notice of penalty. After receiving a timely request for mitigation or hearing, the commission must suspend collection of the penalty until it issues a final order concerning the penalty or mitigation of that penalty. A person aggrieved by the commission's final order may seek judicial review, subject to provisions of the administrative procedure act, chapter 34.05 RCW.

(5) If a penalty imposed by the commission is not paid, the attorney general may, on the commission's behalf, file a civil action in superior court to collect the penalty.

**--- END ---**