

SENATE BILL REPORT

SB 5627

As Reported by Senate Committee On:
Environment, Energy & Technology, February 21, 2025

Title: An act relating to improving safe excavation practices and preventing damage to underground utilities.

Brief Description: Improving safe excavation practices and preventing damage to underground utilities.

Sponsors: Senators Ramos, Harris, Wellman, Shewmake, Wilson, J., Hasegawa and Nobles.

Brief History:

Committee Activity: Environment, Energy & Technology: 2/14/25, 2/21/25 [DPS-WM, w/oRec].

Brief Summary of First Substitute Bill

- Modifies several requirements in the Underground Utility Damage Prevention Act (Damage Prevention Act) relating to, in part, notice before excavation, duties before and during excavation, and duties when excavation causes damage to certain underground infrastructure.
- Requires a one-number locator service to maintain a web-based platform providing the same services as the toll-free telephone number.
- Amends civil and criminal penalties in the Damage Prevention Act.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5627 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Shewmake, Chair; Slatter, Vice Chair; Boehnke, Ranking Member; Dhingra, Liias, Lovelett, Ramos and Wellman.

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

Minority Report: That it be referred without recommendation.

Signed by Senators Harris, MacEwen and Short.

Staff: Matt Shepard-Koningsor (786-7627)

Background: Underground Utility Damage Prevention Act. *Generally.* 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 facilities, including, in part, pipes, sewers, cables, lines, wires, and other facilities storing or conveying water, sewage, electricity, or natural gas. All underground facility operators within the service area must subscribe to the state's one-number locator service (locator service), through which an excavator may notify utilities of excavation activities and requires field-marking of underground facilities (notice).

Excavator and Facility Operator Duties Before Excavation. Unless exempted or waived by a facility operator, before digging begins, an excavator must mark the boundary of the excavation area and then provide notice between two and ten days of the scheduled excavation to all facility operators and pipeline companies through the locator service. If marking is not possible, an excavator must communicate directly with affected facility operators to ensure the excavation area is accurately identified.

Within two days of receiving notice, each facility operator must provide the excavator with reasonably accurate information by either marking locatable underground facilities or certain service laterals, or for unlocatable underground facilities, by supplying available information.

An excavator must not excavate until all known facility operators have marked or provided the required information. An excavator is responsible for maintaining the accuracy of the markings for the lesser of 45 calendar days from the date of notice or the duration of the project. The Damage Prevention Act has additional requirements relating to duties of pipeline companies when any portion of a pipeline will be uncovered by excavation, or in the case of a damaged pipeline.

Exempted Activities. Certain activities are exempted from the Damage Prevention Act notice and marking requirements, including, in part, emergency excavations under certain conditions, certain excavations on private property and for agricultural purposes, and road maintenance activities.

Notification of Damage. An excavator who, during excavation, contacts or damages an underground facility must notify the facility operator and a locator service, and report the damage to the Utilities and Transportation Commission (UTC) in accordance with state law. If the damage causes an emergency condition, the excavator must also call 911. A damaged underground facility may not be buried until it is repaired or relocated. A facility operator must arrange for repairs as soon as practical, or permit the excavator to perform the

work at a mutually acceptable price.

A facility operator or excavator who observes or damages an underground facility must report the damage and specified information to the UTC. A nonpipeline facility operator or subcontractor performing certain work on the operator's own underground facility is not required to report the damage to the UTC.

Dig Law Safety Committee. The Dig Law Safety Committee (safety committee) has 13 members representing a variety of stakeholders from utilities and the excavation industry. The safety committee hears complaints under the Damage Prevention Act and makes recommendations to the UTC for enforcement actions.

Enforcement and Penalties. Depending on the type of violation, the UTC or the Office of the Attorney General may enforce the civil penalties in the Damage Prevention Act. In some cases, the UTC may only initiate enforcement after receiving written notification of an alleged violation from the safety committee. The Damage Prevention Act outlines when and how a person may appeal a penalty imposed by the UTC or the Office of the Attorney General.

A civil penalty of up to \$10,000 for each violation may be imposed on an excavator who fails to notify a locator service and causes damage to a hazardous liquid or gas underground facility, or who excavates without a valid confirmation code. For violations not amounting to those above, the civil penalty is reduced to no more than \$1,000 for an initial violation and no more than \$5,000 for subsequent violations within a three-year period. For certain willful or malicious activities, treble damages may apply. An excavator who excavates within 35 feet of a transmission pipeline without a valid confirmation code when required is guilty of a misdemeanor.

Utilities and Transportation Commission. In addition to enforcing the Damage Prevention Act, the UTC regulates the rates, services, and practices of privately-owned utilities and transportation companies in Washington, including natural gas and electrical companies, and develops and enforces safety standards for natural gas and hazardous liquid pipelines located within the state.

Summary of Bill (First Substitute): Web-Based Notification Platform. The one-number locator service (locator service) must maintain a web-based platform (platform) that provides the same services as the toll-free telephone number online. The platform must be free to individuals requesting location of underground facilities and operated in the same manner as the toll-free telephone number.

If each excavator is provided with an individual and unique confirmation code, the locator service may permit multiple excavators on a single notice. The locator service must require an excavator to provide a work-to-begin date in the notice. The UTC, in consultation with the entity administering the locator service, must establish minimum standards and best

management practices for the services.

Excavator Duties. *Activities Before Excavation.* Unless exempted, before commencing any excavation, an excavator must mark the boundary of the area with white lining, or when necessary, white pin flags, on the ground of the worksite, and then provide notice of the excavation to all facility operators through a locator service. An excavator must provide the work-to-begin date in the notice provided to the locator service. If boundary marking is infeasible, an excavator must provide notice electronically to a locator service. An excavator must provide notice to a locator service not less than two full business days and not more than ten full business days before the scheduled work-to-begin date, unless otherwise agreed to by the excavator and facility operators in writing.

Under certain circumstances, a general contractor may provide the required notice on behalf of an excavator. If damage results from a flawed notice, the general contractor who submitted the notice is liable for damages, but in other cases of damage unrelated to the notice, the excavator is liable.

An excavator must not excavate until: (1) all known facility operators have marked their locatable underground facilities or, in the case of non-hazardous liquid or non-gas pipeline facilities, provided required information regarding their unlocatable underground facilities, and (2) the excavator receives a positive response from all operators identified in the notice. An excavator must maintain the markings for the lesser of 45 calendar days from the date notice was provided or the duration of the excavation portion of the project. Facility operators and locating personnel must use whisks to make markings understandable for up to 45 calendar days. If an excavator discovers unidentified underground facilities, it must notify the facility operator directly or through a locator service.

Activities During Excavation. An excavator must use safe and careful work methods, as defined, 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 methods that are commonly accepted as permissible for the type of surface encountered. An excavator who contacts or damages an underground facility must notify the facility operator directly if the operator is known.

When directional boring will be implemented as a method of underground excavation, white lining must be supplemented with physical locates to avoid blind boring. Blind boring means engaging in directional underground boring without potholing the underground facility, relying on surface markings only to approximate the location of underground utilities in three dimensions. Potholing means an excavation process that involves making a series of small test holes to accurately locate underground lines, also known as daylighting.

Facility Operator Duties. After receiving a properly-filed notice, a facility operator must

provide the excavator reasonably accurate information for the facility operator's locatable underground facilities no later than the work-to-begin date on the notice. This deadline may be modified or extended by written agreement in most cases and must be extended in the event of natural disasters and other specified situations outside of the facility operator's control. For a facility operator's unlocatable or identified but unlocatable facilities, the facility operator must provide the excavator available information prior to the work-to-begin date.

Facility operators may direct the locator service to send notices to a contract locator, but the facility operator retains all legal responsibility for compliance. Each facility operator must provide to a locator service, directions on how a requestor may obtain, for design locating, information regarding the location of underground facilities. A facility operator may charge a fee for design locating, except if the requestor is the Washington State Department of Transportation.

End-User Duties. End-user means any utility customer or consumer of utility services or commodities provided by a facility operator. An end-user is responsible for locating the underground facilities they own on their property. The locator service must maintain a list of private-line locate service providers who may be hired at the cost of the end-user to locate service laterals. 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 must subscribe to a locator service and provide specified location information.

Exempted Activities. An excavator is not required to provide notice under the Damage Prevention Act during an emergency excavation, but only with respect to white lining and certain notice requirements, and if the excavator provides notice to a locator service at the earliest practicable opportunity. Facility operators must dispatch locating personnel without undue delay in response to a notice of emergency excavation. 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.

Enforcement and Penalties. The UTC may investigate and enforce any violation of the Damage Prevention Act relating to pipeline facilities without initial referral to the safety committee.

Civil Penalties. A civil penalty of up to \$25,000 for each violation may be imposed on:

- any excavator who violates any provision of the Damage Prevention Act and causes damage to a hazardous liquid or gas underground facility; or
- any pipeline operator who fails to accurately locate an underground facility or fails to mark its underground facilities, and whose underground facility is damaged as a result of the failure.

A civil penalty of up to \$5,000 for each violation may be imposed on:

- any person who violates any provision of the Damage Prevention Act not amounting to the violations above; or
- any excavator or facility operator who violates any provision of the Damage Prevention Act involving an underground pipeline facility but does not cause damage to the facility.

Any excavator who fails to give notice of planned excavation and damages an underground facility is liable for all costs incurred in repairing or relocating the facility and any penalties assessed.

Criminal Penalties. Any excavator who excavates within 35 feet of a transmission pipeline, before the work-to-begin date on a required notice or before receiving positive responses from the transmission pipeline's facility operator when required, is guilty of a misdemeanor.

The Dig Law Safety Committee. The safety committee must include a representative from a labor organization. The safety committee may not review complaints relating to damage to pipeline facilities, or which involve violations relating to damage or removal of permanent marking or excavation without a confirmation code.

Miscellaneous Provisions. Where reasonable, excavators and facility operators must adopt the 20th version of the Common Ground Alliance's Best Practices for Locating, Marking, and Excavating Methods. Legislative intent language is amended to specify that locating and marking underground utilities is free, and improving worker safety is a goal of the program.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

- Adds improving worker safety to intent language.
- Amends existing, and adds new, definitions in the Damage Prevention Act, relating to "blind boring," "end user," "physical locates," "potholing," and "white lining."
- Removes proposed language throughout the bill relating to using digital mapping software to electronically mark an excavation area or underground facility.
- Strikes a section establishing new requirements of pipeline operators relating to, among other things: (1) locating underground facilities consistent with federal law; (2) ensuring all underground facilities installed after the bill's effective date are locatable after January 1, 2027; and (3) adding location information for unlocatable underground facilities to an operator-maintained mapping database.
- Removes redundant language relating to excavator liability, permitting a general contractor to provide notice on behalf of an excavator.
- Requires facility operators and locating personnel to use whisks to make markings understandable for up to 45 calendar days.
- Prohibits facility operators from charging the Washington State Department of Transportation fees for design locating.

- Provides that, when directional boring will be implemented as a method of underground excavation, white lining must be supplemented with physical locates to avoid blind boring.
- Strikes language in a civil penalty section relating to: (1) certain violations of the Damage Prevention Act being subject to a \$5,000 penalty for each violation, rather than for each violation within a three-year period, and (2) an excavator failing to give notice of a planned excavation and damaging an underground facility, rather than damaging a marked underground facility.
- Adds a labor organization to the list of representatives included on the safety committee.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill is trying to modernize the Call Before You Dig Law. The bill will improve communication, which is the most important thing we need for damage prevention. This is a good bill to assist us and make sure that workers go home safe at night. We are concerned with the number of late locates that happen. Locates are sometimes 30 days late and the marking is only good for 45 days. It is a continuous issue that affects contractors every day. Positive response is an important piece to prevent these late locates. The definition of excavation should include saw-cutting. If a location is not marked, someone digging could be injured, the infrastructure could be damaged, or both. Utilities can take advantage of treble damages but contractors cannot.

This bill helps protect my three sons who work in the industry. Workers have a right to be safe too. Allowing the general contractors to submit an application for multiple contractors will help keep our costs down. This program keeps utility workers safe and it needs to be updated.

CON: The bill allows multiple contractors to operate on a single ticket, but who maintains the markings between contractors? We would like to see the process spelled out. We are hesitant to move away from physical markings on the ground, but if digital marking is allowed, we would like some additional sideboards included. Fines for excavators and operators should be equitable. The bill has excessive penalties and specifically, the \$25,000 penalty is a large burden for water and sewer districts. There is an unfair burden on water and utility districts to locate and maintain records on lines that we cannot often locate with reasonable accuracy, and in some cases, do the impossible. This bill has been under

development for years, but we still have a number of concerns.

OTHER: Some provisions in the bill work for utility operators, but we suggest some amendments. I am not supportive of any change that removes the requirement for white lining. Since the UTC has been delegated federal authority and is funded through federal grants, alignment with federal law is critically important. The bill should specify how digital white lining will accurately describe the entire excavation area for multiple contractors. We are confused by the bill requiring unlocatable facilities to be located.

Persons Testifying: PRO: Senator Bill Ramos, Prime Sponsor; Nick Massie, Clark County Utility Coordinating Council, and Dig Safe Safety Committee Member, and Rotschy Inc.; Don Evans, WA 811; Kemp Garcia; jon Cornelius, Dig Law Advocates; Brent A Edd, Evergreen Concrete Cutting; Stephanie Hattenburg, M&L Construction Inc; Matthew Wagner, Evergreen Concrete Cutting; Jason Hudson, IBEW LU 77.

CON: Josie Cummings, Avista; Bill Clarke, WPUDA; Devin Gombosky, Washington Association of Sewer and Water Districts; Kelsey Hulse, Association of Washington Cities.

OTHER: Charlie Brown, Cascade Natural Gas Company; Kurt Cooper, University of Washington 811 Manager Seattle Campus - Member of WA 811; Jason Lewis, Utilities & Transportation Commission; Natasha Jackson, Northwest Gas Association.

Persons Signed In To Testify But Not Testifying: No one.