
SUBSTITUTE SENATE BILL 5627

State of Washington

69th Legislature

2025 Regular Session

By Senate Environment, Energy & Technology (originally sponsored by Senators Ramos, Harris, Wellman, Shewmake, J. Wilson, Hasegawa, and Nobles)

READ FIRST TIME 02/21/25.

1 AN ACT Relating to improving safe excavation practices and
2 preventing damage to underground utilities; amending RCW 19.122.010,
3 19.122.020, 19.122.027, 19.122.030, 19.122.031, 19.122.040,
4 19.122.050, 19.122.055, 19.122.070, 19.122.090, 19.122.100,
5 19.122.130, and 19.122.150; and prescribing penalties.

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

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

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

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

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

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

20 (4) Collecting and analyzing damage data;

21 (5) Reviewing alleged violations; and

1 (6) Enforcing this chapter.

2 **Sec. 2.** RCW 19.122.020 and 2020 c 162 s 1 are each amended to
3 read as follows:

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

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

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

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

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

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

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

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

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

31 (9) "Excavation confirmation code" means a code or ticket issued
32 by a one-number locator service for the site where an excavation is
33 planned. The code must be accompanied by the date and time it was
34 issued and the work-to-begin date on the notice as provided in RCW
35 19.122.030(2). The excavation confirmation code is not valid until
36 the work-to-begin date.

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

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

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

8 (13) "Hazardous liquid" means:

9 (a) Petroleum, petroleum products, or anhydrous ammonia as those
10 terms are defined in 49 C.F.R. Part 195 as in effect on March 1,
11 1998;

12 (b) Carbon dioxide; and

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

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

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

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

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

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

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

39 (20) "Person" means an individual, partnership, franchise holder,
40 association, corporation, the state, a city, a county, a town, or any

1 subdivision or instrumentality of the state, including any unit of
2 local government, and its employees, agents, or legal
3 representatives.

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

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

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

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

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

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

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

37 (26) "Transmission pipeline" means a pipeline that transports
38 hazardous liquid or gas within a storage field, or transports
39 hazardous liquid or gas from an interstate pipeline or storage
40 facility to a distribution main or a large volume hazardous liquid or

1 gas user, or operates at a hoop stress of twenty percent or more of
2 the specified minimum yield strength.

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

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

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

23 (30) "Blind boring" means engaging in directional underground
24 boring without potholing the underground facility, relying on surface
25 markings only to approximate the location of underground utilities in
26 three dimensions.

27 (31) "Design locating" means locating for planning purposes.
28 "Design locating" does not include locating for excavation purposes.

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

35 (33) "General contractor" has the same meaning as defined in RCW
36 18.27.010.

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

1 (35) "Physical locates" means processes, such as potholing or
2 daylighting.

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

9 (37) "Potholing" means an excavation process that involves making
10 a series of small test holes to accurately locate underground lines.
11 Potholing is also known as daylighting.

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

16 (39) "White lining" means the use of any white paint, flags,
17 stakes, whiskers, or other locally accepted method that is
18 distinguishable from the surrounding area.

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

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

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

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

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

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

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

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

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

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

13 (1)(a) Unless exempted under RCW 19.122.031, before commencing
14 any excavation, an excavator must mark the boundary of the excavation
15 area with white (~~paint~~) lining or, when necessary, white pin flags,
16 applied on the ground of the worksite, then provide notice of the
17 scheduled commencement of excavation to all facility operators
18 through a one-number locator service. An excavator shall provide the
19 work-to-begin date in the notice provided to the one-number locator
20 service. Where reasonable, excavators and facility operators shall
21 adopt the 20th version of the common ground alliance's best practices
22 for locating, marking, and excavating methods published in 2024, or
23 such subsequent versions as may be adopted by the commission by rule,
24 consistent with the purposes of this section.

25 (b) If boundary marking required by (a) of this subsection is
26 infeasible, an excavator must (~~communicate directly with affected~~
27 ~~facility operators to ensure that the boundary of the excavation area~~
28 ~~is accurately identified~~) provide notice electronically to a one-
29 number locator service.

30 (2)(a) An excavator must provide the notice required by
31 subsection (1) of this section to a one-number locator service not
32 less than two full business days and not more than (~~ten~~) 10 full
33 business days before the scheduled work-to-begin date (~~for~~
34 ~~commencement of excavation~~), unless otherwise agreed by the
35 excavator and facility operators in writing. If an excavator intends
36 to work at multiple sites or at a large project, the excavator must
37 take reasonable steps to confer with facility operators to enable
38 them to locate underground facilities reasonably in advance of the
39 start of excavation for each phase of the work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (d) An end user is responsible for determining the location of a
38 service lateral on their property or a service lateral that they own.
39 An end user is responsible for locating on their own property the
40 underground facilities that they own. The one-number locator service

1 shall maintain a list of private-line locate service providers who
2 may be hired at the cost of the end user for the location of service
3 laterals. Nothing in this section may be interpreted to require an
4 end user to subscribe to a one-number locator service or to locate a
5 service lateral within a right-of-way or utility easement, except an
6 end user who is an owner, operator, or responsible party of a service
7 lateral or other underground facility in a public right-of-way shall
8 subscribe to a one-number locator service and comply with subsection
9 (3) of this section.

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

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

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

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

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

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

33 (c) A facility operator's markings of underground utilities
34 expire forty-five calendar days from the date that the excavator
35 provided notice to a one-number locator service pursuant to
36 subsection (1) of this section. For excavation occurring after that
37 date, an excavator must provide additional notice to a one-number
38 locator service pursuant to subsection (1) of this section. Facility
39 operators and locating personnel must use whiskers to make markings
40 understandable for up to 45 calendar days.

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

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

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

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

27 (11) Each facility operator shall provide to a one-number locator
28 service directions on how a requestor may obtain, for design
29 locating, information regarding the location of underground
30 facilities. For the purpose of this subsection, a "requestor" is any
31 person seeking the location of underground facilities for design
32 locating. Facility operators may attach fees for design locating.
33 However, the fees under this subsection may not be imposed on the
34 department of transportation.

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

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

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

3 (a) An emergency excavation, but only with respect to (~~boundary~~
4 ~~marking~~) white lining and notice requirements specified in RCW
5 19.122.030 (1) and (2), and provided that the excavator provides
6 notice to a one-number locator service at the earliest practicable
7 opportunity. Facility operators must promptly respond to a notice of
8 emergency excavation. Prompt means to dispatch locating personnel
9 without undue delay;

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

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

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

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

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

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

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

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

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

34 **Sec. 6.** RCW 19.122.040 and 2011 c 263 s 8 are each amended to
35 read as follows:

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

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

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

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

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

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

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

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

23 (e) When directional boring will be implemented as a method of
24 underground excavation, supplement white lining with physical locates
25 to avoid blind boring.

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

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

38 **Sec. 7.** RCW 19.122.050 and 2020 c 162 s 2 are each amended to
39 read as follows:

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

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

14 **Sec. 8.** RCW 19.122.055 and 2011 c 263 s 10 are each amended to
15 read as follows:

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

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

23 (2) Any hazardous liquid or gas pipeline operator who (a): (i)
24 Fails to accurately locate the underground facility as required under
25 RCW 19.122.030 (3) and (4); or (ii) fails to mark its underground
26 facilities as required under RCW 19.122.030(1), and (b) whose
27 underground facility is damaged as a result of the failure in (a) of
28 this subsection is subject to a civil penalty of not more than
29 \$25,000 for each violation.

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

34 (4) All civil penalties recovered under this section must be
35 deposited into the damage prevention account created in RCW
36 19.122.160.

37 **Sec. 9.** RCW 19.122.070 and 2011 c 263 s 11 are each amended to
38 read as follows:

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

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

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

22 **Sec. 10.** RCW 19.122.090 and 2005 c 448 s 5 are each amended to
23 read as follows:

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

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

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

35 **Sec. 11.** RCW 19.122.100 and 2011 c 263 s 16 are each amended to
36 read as follows:

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

4 (1) The equipment operator was provided ((a-valid)) an excavation
5 confirmation code;

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

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

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

10 **Sec. 12.** RCW 19.122.130 and 2020 c 162 s 3 are each amended to
11 read as follows:

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

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

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

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

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

29 (i) Local governments;

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

32 (iii) Contractors;

33 (iv) Excavators;

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

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

36 (vii) A pipeline company;

37 (viii) A water-sewer district subject to regulation under Title
38 57 RCW;

39 (ix) The commission; ((and))

1 (x) A telecommunications company; and

2 (xi) A labor organization.

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

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

8 (5) The safety committee may review complaints of alleged
9 violations of this chapter involving practices related to underground
10 facilities, except for those complaints relating to damage to
11 pipeline facilities or which involve violations of RCW 19.122.075 and
12 19.122.090. Any person may bring a complaint to the safety committee
13 regarding an alleged violation occurring on or after January 1, 2013.

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

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

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

27 **Sec. 13.** RCW 19.122.150 and 2017 c 20 s 3 are each amended to
28 read as follows:

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

33 (2) If the commission's investigation of notifications received
34 pursuant to RCW 19.122.140 or subsection (1) of this section
35 substantiates violations of this chapter, the commission may impose
36 penalties authorized by RCW 19.122.055, 19.122.070, 19.122.075, and
37 19.122.090, and require training, education, or any combination
38 thereof.

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

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

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

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