
SENATE BILL 5627

State of Washington

69th Legislature

2025 Regular Session

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

Read first time 01/31/25. Referred to Committee on Environment, Energy & Technology.

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; adding a new section to chapter 19.122
6 RCW; and prescribing penalties.

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

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

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

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

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

19 (3) Improving worker and public knowledge of safe 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 enroute.

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

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

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

33 (9) "Excavation confirmation code" means a code or ticket issued
34 by a one-number locator service for the site where an excavation is
35 planned. The code must be accompanied by the date and time it was
36 issued and the work-to-begin date on the notice as provided in RCW
37 19.122.030(2). The excavation confirmation code is not valid until
38 the work-to-begin date.

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

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

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

10 (13) "Hazardous liquid" means:

11 (a) Petroleum, petroleum products, or anhydrous ammonia as those
12 terms are defined in 49 C.F.R. Part 195 as in effect on March 1,
13 1998;

14 (b) Carbon dioxide; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (26) "Transmission pipeline" means a pipeline that transports
40 hazardous liquid or gas within a storage field, or transports

1 hazardous liquid or gas from an interstate pipeline or storage
2 facility to a distribution main or a large volume hazardous liquid or
3 gas user, or operates at a hoop stress of twenty percent or more of
4 the specified minimum yield strength.

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

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

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

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

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

33 (32) "General contractor" has the same meaning as defined in RCW
34 18.27.010.

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

38 (34) "Positive response" means a notification from the owner or
39 operator of the underground facility, or the owner's or operator's
40 authorized locating contractor, to the one-number locator service

1 confirming that the facility owner, operator, or contracted locator
2 has completed marking or provided location information regarding
3 unlocatable facilities in response to a notice.

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

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

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

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

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

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

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

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

1 (2) The commission, in consultation with the (~~Washington~~
2 ~~utilities coordinating council~~) the entity administering the one-
3 number locator service, must establish minimum standards and best
4 management 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 NEW SECTION. **Sec. 4.** A new section is added to chapter 19.122
12 RCW to read as follows:

13 (1) Hazardous liquid and gas pipeline operators shall locate all
14 underground facilities as required under Title 49 C.F.R. Secs.
15 195.442(c)(5) and 192.614(c)(5) as they existed on the effective date
16 of this section, or such subsequent date as may be provided by the
17 commission by rule, consistent with the purpose of this section.

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

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

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

37 (5) After December 31, 2025, facility operators shall maintain
38 maps, drawings, diagrams, or other records illustrating the location
39 of all underground facilities that the facility operator abandons or

1 designates as out-of-service. If within the white-lined area in a
2 notice, the facility operator shall indicate the presence of these
3 facilities by marking the location of the abandoned or out-of-service
4 facilities with an "A" in a circle and include the size and type of
5 facility.

6 **Sec. 5.** RCW 19.122.030 and 2011 c 263 s 4 are each amended to
7 read as follows:

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

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

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

1 them to locate underground facilities reasonably in advance of the
2 start of excavation for each phase of the work. If notice is provided
3 through the web-based platform, such notice must contain electronic
4 mapping of the boundary of excavation as defined in RCW
5 19.122.027(1)(a). Submission of notice electronically without
6 sufficient geographic mapping is not notice under this chapter.

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

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

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

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

39 (b) The facility operator's unlocatable or identified but
40 unlocatable underground facilities, provide the excavator with

1 available information as to their location prior to the work-to-begin
2 date provided in the notice under subsection (1) of this section. For
3 any gas or hazardous liquid pipeline, locate all facilities in
4 accordance with Title 49 C.F.R. Secs. 195.442(c)(5) and 192.614(c)(5)
5 as they existed on the effective date of this section, or such
6 subsequent date as may be provided by the commission by rule,
7 consistent with the purpose of this section; and

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

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

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

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

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

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

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

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

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

37 (i) Constitutes full compliance with the requirements of this
38 section, and no person may be found liable for damages or injuries
39 that may result from such compliance, apart from liability for

1 arranging for repairs or relocation as provided in RCW 19.122.050(2);
2 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **Sec. 6.** RCW 19.122.031 and 2011 c 263 s 5 are each amended to
5 read as follows:

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

8 (a) An emergency excavation, but only with respect to (~~boundary~~
9 ~~marking~~) white lining and notice requirements specified in RCW
10 19.122.030 (1) and (2), and provided that the excavator provides
11 notice to a one-number locator service at the earliest practicable
12 opportunity. Facility operators must promptly respond to a notice of
13 emergency excavation. Prompt means to dispatch locating personnel
14 without undue delay;

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

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

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

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

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

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

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

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

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

1 **Sec. 7.** RCW 19.122.040 and 2011 c 263 s 8 are each amended to
2 read as follows:

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

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

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

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

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

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

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

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

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

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

1 **Sec. 8.** RCW 19.122.050 and 2020 c 162 s 2 are each amended to
2 read as follows:

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

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

16 **Sec. 9.** RCW 19.122.055 and 2011 c 263 s 10 are each amended to
17 read as follows:

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

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

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

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

36 (4) All civil penalties recovered under this section must be
37 deposited into the damage prevention account created in RCW
38 19.122.160.

1 **Sec. 10.** RCW 19.122.070 and 2011 c 263 s 11 are each amended to
2 read as follows:

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

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

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

24 **Sec. 11.** RCW 19.122.090 and 2005 c 448 s 5 are each amended to
25 read as follows:

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

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

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

37 **Sec. 12.** RCW 19.122.100 and 2011 c 263 s 16 are each amended to
38 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. 13.** 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.

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

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

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

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

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

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

26 **Sec. 14.** RCW 19.122.150 and 2017 c 20 s 3 are each amended to
27 read as follows:

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

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

38 (3) With respect to referrals from the safety committee, the
39 commission must consider any recommendation by the committee

1 regarding enforcement and remedial actions involving an alleged
2 violator.

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

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

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