

DIG LAW PROJECT
AGENDA FOR SECOND WORKSHOP TO BE HELD AT UTC
HEADQUARTERS BUILDING IN LACEY, WA¹

(8/27/2019 - 10:00 a.m. to 2:00 p.m.)

1) Introductions

- Reintroduce facilitator.
- Any participants present today who were not at the first workshop? If so, have new participants introduce themselves and say whom they represent.
- Have returning participants identify themselves and say whom they represent.
- For the benefit of the teleconference participants those present today should identify themselves by name and affiliation each time they speak,

- 2) **Brief recap:** It appears at this juncture that there is broad agreement in the stakeholder community that this facilitation process should focus on developing consensus bill language to address effectively certain issues previously identified for presentation to the legislature. Issues as to which no consensus can be achieved can be deferred to a later time. There was general support for these ideas, and no opposition to them was voiced, during or after the first workshop, held on July 31, 2019.

The participating stakeholders reported that they had been working on restated or reformulated versions of amendments previously presented to the legislature in proposed HB 2979, and subsequently discussed and refined to meet concerns among some stakeholders. In light of this effort, the stakeholders agreed the initial focus should be on five changes to the Dig Law, as follows:

- a) Change the makeup of the Safety Committee by dropping the insurance seat and adding a seat to be occupied by a water/sewer company representative. The total number of representatives on the Safety Committee thus would remain at 13.
- b) Change the makeup of Complaint Review panels as proposed previously. That is, panels will continue to have five members with an equal number of excavators and facility owners, and the mandates to have a pipeline representative and an insurance representative on each panel will be eliminated.

¹ Stakeholders may monitor via Skype at [1 \(360\) 407-3810](tel:3604073810) using [Conference ID: 7957717](#). Please understand that while the UTC will make every effort to avoid disruption of Skype communication, technical difficulties may occur.

- c) Give the UTC authority to bring enforcement directly, without a complaint first being vetted by a Complaint Review panel, against any person that damages any buried facility while digging without giving notice to “Call Before You Dig” (*i.e.*, 8-1-1) of its intention to excavate.
- d) Add language to the definition of “marking” providing that “locate marks do not require the depth of facilities to be indicated.”
- e) Add language requiring excavators to notify 9-1-1 if they damage an underground facility in addition to notifying 8-1-1, and making a reasonable attempt to notify the owner of the buried facility.

3) First order of business for 8/27/2019 Workshop: Five Priority Issues and Stakeholder Comments (*see Appendix A to Agenda*)

UTC received, on behalf of the facilitator, comments about the five priority issues and workshop generally, as follows:

- a) Clark McIsaac, Snohomish Public Utility District
- b) Rory Paine Donovan, City of Seattle
- c) Don Robertson, Gary Merlino Construction, Inc.
- d) Marian Dacca, Tacoma Public Utilities

We will discuss these comments in an effort to finalize the language stakeholders wish to present to the legislature with respect to the five priority issues identified at the first workshop.

- If unanimity or consensus is achieved, the issue and proposed language will be included in the facilitator’s report to the legislature as a point of agreement among the stakeholders, subject to appropriate identification in terms of the breadth of support within the stakeholder group.
- If consensus is not achieved, the issue may be revisited in a future workshop, or will be identified to the legislature as an issue that requires additional attention going forward after this facilitated stakeholder workshop process concludes.

4) Second order of business: Prioritize additional issues for discussion one at a time (*see Appendix B to Agenda*)²

- a) If, and as, resolution is achieved on an issue, it will be added to the set of changes the stakeholders support for introduction to the legislature this year.

² *Note: Appendix B invites and requests stakeholders to establish their priorities prior to the workshop.*

- b) If, and as, it is apparent resolution cannot be achieved during the 8/27 workshop, the issue will be flagged for additional discussion as time permits during the third workshop.
 - c) Issues discussed but not resolved by unanimous consent or consensus by the end of the fourth workshop will be identified to the legislature as requiring additional attention going forward (*i.e.*, after this facilitated stakeholder workshop process concludes) unless the issue is affirmatively removed from further stakeholder consideration by unanimous consent or consensus, which will be reported.
- 5) Third order of business: Other business that stakeholders raise for discussion during the second workshop, if any.**

APPENDIX A

FIVE TOP PRIORITY ISSUES

1. Change the makeup of the Safety Committee by dropping the insurance seat and adding a seat to be occupied by a water/sewer representative. The total number of representatives on the Safety Committee thus would remain at 13.

- City of Seattle and Snohomish PUD each support this recommendation and propose no changes to the language circulated after the first workshop, as follows:

RCW [19.122.130](#)

Commission to contract with nonprofit entity—Safety committee—Review of violations of chapter.

* * *

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

- (i) Local governments;
- (ii) A natural gas utility subject to regulation under Titles 80 and 81 RCW;
- (iii) Contractors;
- (iv) Excavators;
- (v) An electric utility subject to regulation under Title 80 RCW;
- (vi) A consumer-owned utility, as defined in RCW [19.27A.140](#);
- (vii) A pipeline company;
- (viii) ~~The insurance industry;~~ A water sewer district subject to regulation under Title 57 RCW;
- (ix) The commission; and
- (x) A telecommunications company.

2. Change Complaint Review panels as proposed previously. That is, panels would continue to have five members with an equal number of excavators and facility owners, but no mandate to have a pipeline representative and an insurance representative on each panel.

- Snohomish PUD and City of Seattle both support the recommendation and the proposed language circulated after the first workshop, as follows:

RCW [19.122.130](#)

Commission to contract with nonprofit entity—Safety committee—Review of violations of chapter.

* * *

(6) To review complaints of alleged violations, the safety committee must appoint at least three and not more than five members as a review committee. The review committee must include the same number of members representing excavators and facility operators. ~~One member representing facility operators must also be a representative of a pipeline company or a natural gas utility subject to regulation under Titles 80 and 81RCW. The review committee must also include a member representing the insurance industry.~~

Note: Both commenters note the importance of having balanced panels (*i.e.*, equal number of excavators and facility owners).

3. Give the UTC authority to bring enforcement directly, without a complaint first being vetted by a Complaint Review panel, against any person that damages any buried facility while digging without giving notice to “Call Before You Dig” (*i.e.*, 8-1-1) of its intention to excavate.

- Snohomish PUD and City of Seattle support the language as drafted, which says:

RCW 19.122.055

New provision: **(2) Any excavator who fails to notify a one-number locator service and causes damage to an underground facility other than a hazardous liquid or gas underground facility is subject to a civil penalty of not more than one thousand dollars for an initial violation, and not more than five thousand dollars for each subsequent violation within a three-year period.**

RCW 19.122.150

New provision: **(2) The commission may investigate and enforce violations of RCW 19.122.055 relating to any excavator who fails to notify a one-number locator service and causes damage to an underground facility without initial referral to the safety committee created under RCW 19.122.130.**

- Gary Merlino Construction Company comments that to “make this fair to both contractors and utility owners” the provision should include language that would: **“Give the UTC authority to bring enforcement, without a complaint, against any party that fails to complete a locate request and damages occur.”**

4. Add language to the definition of “marking” providing that “locate marks do not require the depth of facilities to be indicated.”

- Snohomish PUD supports adding to the definition of “**marking**”: “Locate marks do not require depth.”

- City of Seattle supports (either in addition, or in the alternative to, modifying the definition of “marking”), revising the definition of “**reasonable accuracy**” consistent with the language circulated after the first workshop, as follows:

RCW 19.122.020

Definitions.

(23) "Reasonable accuracy" means location within twenty-four inches of the outside dimensions of both sides of an underground facility. Reasonable accuracy does not require marking depth.

- City of Seattle also would “welcome conversation about other definitions in which ‘reasonable accuracy’ informs the requirement to locate facilities.”
- 5. Add language requiring excavators to notify 9-1-1 if they damage an underground facility in addition to notifying 8-1-1, and making a reasonable attempt to notify the owner of the buried facility.**
- Snohomish PUD supports adding “call 911” to the outreach requirements for excavators **when damage deemed to be life threatening occurs**. This is in addition to calling 811 and making a *reasonable* attempt to notify the owner of the buried facility.
 - City of Seattle would change “*reasonable*” to “*robust*.”
 - Seattle also suggests adding language to make this section more specific, as follows:
 - Require follow-up by excavators until the relevant facility owner confirms receipt of a damage notification message.
 - Include in 811 tickets an emergency contact number for each facility owner implicated by a locate request.

Note that the proposed language circulated after the first workshop captures only the additional requirement to call 911, as follows:

RCW 19.122.050

Damage to underground facility—Notification by excavator—Repairs or relocation of facility.

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

APPENDIX B

ISSUES TO BE PRIORITIZED FOR FURTHER DISCUSSION

ACTION REQUESTED BY 8/26/2019:

Please consider the 19 issues listed below, add any others that may have been overlooked or that are new, and consider what priority you would assign to each (*i.e.*, indicate HIGH PRIORITY, MEDIUM PRIORITY, or LOW PRIORITY). Consider also, and state, what rank-order you would assign to the high priority and medium priority issues (*i.e.*, 1, 2, 3, . . .).

The facilitator requests written responses from all stakeholders by email directed to amanda.hathaway@utc.wa.gov. Please respond by COB (earlier, if possible) on 8/26/2019.

We will endeavor to develop from your responses a consensus set of priorities for discussion. Stakeholders that elect to participate in the second workshop will be given additional opportunity to make their priorities known during the workshop.

ISSUES:

Safety/Enforcement

- a. Require new underground facilities to be locatable
- b. Require mapping of previously un-locatable underground facilities discovered during excavation
- c. Adopt a “Tolerance Zone” standard
- d. Adopt mandatory training or certification for persons who perform utility locates
- e. Definition of “reasonable care”³

³ “Reasonable” is used 19 times in the statute today and “reasonably” is used 3 times in the statute today, in various connections. “Reasonable” is defined, without suffering from vagueness, only as fleshed out in connection with:

Proposed RCW 19.122.020
Definitions.

(23) "**Reasonable accuracy**" means location within twenty-four inches of the outside dimensions of both sides of an underground facility. **Reasonable accuracy** does not require marking depth.

Current RCW 19.122.040

Underground facilities identified in bid or contract—Excavator's duty of **reasonable care**—Liability for damages—Attorneys' fees.

- (2) An excavator shall use **reasonable care** to avoid damaging underground facilities. An excavator must:
- (a) Determine the precise location of underground facilities which have been marked;
 - (b) Plan the excavation to avoid damage to or minimize interference with underground facilities in and near the excavation area; and

- f. Definition of “reasonable accuracy”⁴
- g. Definition of “non-invasive methods”
- h. Definition of “locatable/unlocatable”
- i. Definition of “soft digging”
- j. Require inspection prior to reburying exposed facilities
- k. Expand the commission’s direct enforcement authority to include telecommunications facilities

Administrative

- l. Require or allow design locates
- m. Require a positive response
- n. Report cause of damage to underground facility
- o. Reimbursement for the cost of locating un-locatable facilities
- p. Provide the Commission with additional rulemaking authority to implement RCW 19.122
- q. Adopt American Public Works Association (APWA) national marking standards
- r. Clarify use of emergency locates
- s. Definition of “large project” (*e.g.*, 500 feet versus 700 feet)

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

⁴ This would be defined, in part, under Appendix A, Issue 4, which proposes to amend RCW [19.122.020](#) Definitions, as follows:

(23) "Reasonable accuracy" means location within twenty-four inches of the outside dimensions of both sides of an underground facility. Reasonable accuracy does not require marking depth.