State of Washington       62nd Legislature       2011 Regular Session

By  House General Government Appropriations & Oversight (originally sponsored by Representatives Takko, Angel, Morris, and Armstrong)

READ FIRST TIME 02/24/11.


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

Sec. 1. RCW 19.122.010 and 1984 c 144 s 1 are each amended to read as follows:

It is the intent of the legislature in enacting this chapter to protect public health and safety and to prevent the disruption of vital services by establishing a comprehensive damage prevention program for transfer pipelines, transmission pipelines, and underground facilities. Additionally, the legislature intends to establish authority to enforce the law. Assign responsibilities for locating and keeping accurate records of underground facilities' locations, protect and repair damage
to existing underground facilities, and protect public health and safety from interruption in utility services caused by damage to existing underground utility facilities.

**Sec. 2.** RCW 19.122.020 and 2007 c 142 s 9 are each amended to read as follows:

((Unless the context clearly requires otherwise,)) The definitions in this section apply throughout this chapter((:)) unless the context clearly requires otherwise.

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

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

(3) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.

(4) "Excavation" and "excavate" means any operation, including the installation of signs, in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means((, except the tilling of soil less than twelve inches in depth for agricultural purposes, or road and ditch maintenance that does not change the original road grade or ditch flowline)). "Excavation" and "excavate" does not include:

(a) The tilling of soil less than twelve inches in depth for agricultural purposes;

(b) Road maintenance that does not involve excavation below the original road grade and ditch maintenance that does not involve excavation below the original ditch flowline or alter the original ditch horizontal alignment. Road maintenance activities are still required to notify a facility operator under RCW 19.122.050;

(c) Bar holes created by hand-operated equipment during emergency leak investigations; or

(d) Bar holes less than twelve inches in depth.

(5) "Excavation confirmation code" means a code or ticket issued by
the one-number locator service for the site where an excavation is planned. The code must be accompanied by the date and time it was issued.

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

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

(8) "Hazardous liquid" means: (a) Petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195 as in effect on March 1, 1998; and (b) carbon dioxide. The utilities and transportation commission may by rule incorporate by reference other substances designated as hazardous by the secretary of transportation.

(9) "Identified facility" means any underground facility which is indicated in the project plans as being located within the area of proposed excavation.

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

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

(12) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.

(13) "Notice" or "notify" means contact in person or by telephone or other electronic methods that results in the receipt of a valid excavation confirmation code.

(14) "One-number locator service" means a service through which a person can notify utilities and request field-marking of underground facilities.

(15) ("Operator" means the individual conducting the excavation.

(16)) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of a state, and its employees, agents, or legal representatives.
"Pipeline" or "pipeline system" means all or parts of a pipeline facility through which hazardous liquid or gas moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping or compressor units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. "Pipeline" or "pipeline system" does not include process or transfer pipelines.

"Pipeline company" means a person or entity constructing, owning, or operating a pipeline for transporting hazardous liquid or gas. A pipeline company does not include: (a) Distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail; or (b) excavation contractors or other contractors that contract with a pipeline company.

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

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

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

"Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including
but not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors below ground. This definition does not include pipelines as defined in subsection ((47)) (16) of this section, but does include distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail.

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

(23) "End user" means any utility customer, including any public, commercial, or private consumer of facility operator underground facilities.

(24) "Equipment operator" means the individual conducting the excavation.

(25) "Facility operator" means any person with control over underground facilities. "Facility operator" includes any person having the legal right to place underground facilities in a public right-of-way or in any utility easement. A person or entity is not considered a facility operator of an independently owned underground facility operated within the person's or entity's right-of-way or utility easement.

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

(27) "Service lateral" means an underground facility, including water service, that originates at the connection of a facility operator's system and terminates at or on the end user's property line. A service lateral may be owned by the end user or facility operator.

(28) "Sewer lateral" means a facility operator's end user service line that transports wastewater from one or more building units or commercial facilities on the end user's property line to the point of connection to a facility operator sewer system. A sewer lateral may be owned by the end user or facility operator.

(29) "Sewer system owner or operator" means the owner or operator of a sewer system. Sewer systems are considered to the end user's property line for locating purposes only.

(30) "Unlocatable underground facility" means, subject to the provisions of RCW 19.122.030(5), an underground facility that cannot be field-marked with reasonable accuracy using best available information
to designate the location of underground facilities. "Unlocatable underground facility" includes, but is not limited to, sewer laterals, storm drains, and nonconductive and nonmetallic underground facilities that do not contain trace wires.

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

(32) "Utility coordinating council" means a statewide, nonprofit entity incorporated to reduce damages to underground facilities as well as above ground facilities through cooperation, coordination, and by promoting safe excavation practices.

Sec. 3. RCW 19.122.027 and 2005 c 448 s 2 are each amended to read as follows:

(1) The utilities and transportation commission shall cause to be established a single statewide toll-free telephone number to be used for referring excavators to the appropriate one-number locator service.

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

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

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

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

Sec. 4. RCW 19.122.030 and 2000 c 191 s 17 are each amended to read as follows:

(1) Before commencing any excavation, excluding agriculture tilling less than twelve inches in depth, the excavator shall provide notice of the scheduled commencement of excavation to all owners of underground facilities through a one-number locator service.

(a) The notice must be provided to the one-number locator service not less than two business days or more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed to by the parties.
(b) Prior to providing notice, the boundary of the area where the excavation will be performed must be indicated by the application of white paint on the ground at the excavation site, unless doing so is unfeasible, in which case the excavator must communicate directly with the affected facility operator or operators to ensure the area of excavation has been accurately identified.

(c) If an excavator intends to perform work at multiple sites or the project is a large project, the excavator must take reasonable steps to work with facility operators so that facility operators can locate their facilities at a time reasonably in advance of the actual start of excavation for each phase of the work.

(2) (All owners of underground facilities within a one-number locator service area shall subscribe to the service. One-number locator service rates for cable television companies will be based on the amount of their underground facilities. If no one-number locator service is available, notice shall be provided individually to those owners of underground facilities known to or suspected of having underground facilities within the area of proposed excavation. The notice shall be communicated to the owners of underground facilities not less than two business days or more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed by the parties.

(3) Upon receipt of the notice provided for in this section, the owner of the underground facility shall provide the excavator with reasonably accurate information as to its locatable underground facilities by surface-marking the location of the facilities. If there are identified but unlocatable underground facilities, the owner of such facilities shall provide the excavator with the best available information as to their locations. The owner of the underground facility providing the information shall respond no later than two business days after the receipt of the notice or before the excavation time, at the option of the owner, unless otherwise agreed by the parties. Excavators shall not excavate until all known facilities have been marked. Once marked by the owner of the underground facility, the excavator is responsible for maintaining the markings. Excavators shall have the right to receive compensation from the owner of the underground facility for costs incurred if the owner of the underground facility...
facility does not locate its facilities in accordance with this section.

(4) The owner of the underground facility shall have the right to receive compensation for costs incurred in responding to excavation notices given less than two business days prior to the excavation from the excavator.

(5) An owner of underground facilities is not required to indicate the presence of existing service laterals or appurtenances if the presence of existing service laterals or appurtenances on the site of the construction project can be determined from the presence of other visible facilities, such as buildings, manholes, or meter and junction boxes on or adjacent to the construction site.

(6) Emergency excavations are exempt from the time requirements for notification provided in this section.

(7) If the excavator, while performing the contract, discovers underground facilities which are not identified, the excavator shall cease excavating in the vicinity of the facility and immediately notify the owner or operator of such facilities, or the one-number locator service.) Upon receipt of the notice provided for in this section, the facility operator shall provide the excavator with reasonably accurate information as to its locatable underground facilities by marking the location of the facilities. If there are identified but unlocatable underground facilities, the facility operator responsible for the facilities must provide the excavator with the best available information as to the location of the underground facilities. The facility operator providing the information must respond no later than two business days after the receipt of the notice or before the excavation time, at the option of the facility operator, unless otherwise agreed by the parties. Excavators shall not excavate until all known facilities have been marked. Once marked by the facility operator, the excavator is responsible for maintaining the accuracy of the original markings for the lesser of forty-five calendar days from the date notice was provided to the one-number locator service or the life of the project. Markings expire forty-five calendar days from the date notice was provided to the one-number locator service. For excavation occurring more than forty-five calendar days from the date notice was provided to the one-number locator service, a second notice must be provided in accordance with the provisions of subsection (1) of
this section. Excavators that make repeated calls for relocates because of their failure to maintain the marks may be charged for services provided. Excavators are entitled to recover compensation from the facility operator for costs incurred if the facility operator does not locate its facilities in accordance with this section.

(3) The facility operator is entitled to recover compensation from the excavator for costs incurred in responding to excavation notices given less than two business days prior to the excavation.

(4) To assist in designating service, water, or sewer laterals, the facility operator or sewer system owner or operator shall designate a proposed excavation location by:

(a) Marking the location of service, water, or sewer laterals in accordance with the procedures in subsection (2) of this section; or

(b) If a service, water, or sewer lateral is unlocatable, marking within the proposed excavation area that there is an unlocatable service, water, or sewer lateral.

(5) Facility operators, water, and sewer system owners or operators must indicate the presence of service or sewer laterals only to the extent that they exist within a right-of-way or easement. This assistance does not constitute ownership or operation of service laterals or sewer laterals by the facility operator or sewer system owner or operator. Service or sewer laterals existing on private property are the responsibility of the property owner. Nothing in this section may be interpreted to require property owners to subscribe to the one-number locator service or to locate service laterals within a right-of-way or easement. Good faith compliance with the provisions of this subsection in response to a locate request constitutes full compliance with this chapter, and no person may be found liable to any party for damages or injuries as a result of performing in compliance with the requirements of this subsection.

(6) Emergency excavations are exempt from the time requirements for notification provided in this section. For emergency bar holing twelve or more inches in depth, reasonable measures must be taken to eliminate electrical arc hazards.

(7) If the excavator discovers underground facilities that are not identified in plans or contract documents, the excavator shall cease excavating in the vicinity of the facility and immediately notify the facility operator or the one-number locator service. If the excavator
uncover Identified but unlocatable underground facilities, the excavator shall notify the facility operator and the facility operator must take action under subsection (8) of this section.

(8) Upon notification by an excavator or the one-number locator service in accordance with subsection (7) of this section, a facility operator must take action to allow for the accurate future location of the uncovered portion of the underground facility identified by the excavator. A facility operator may accept facility location information from the excavator for the future marking of an underground facility.

Sec. 5. RCW 19.122.033 and 2000 c 191 s 18 are each amended to read as follows:

(1) Before commencing any excavation, excluding agricultural tilling less than twelve inches in depth, an excavator shall notify pipeline companies of the scheduled commencement of excavation through a one-number locator service in the same manner as is required for notifying owners of underground facilities of excavation work under RCW 19.122.030. Pipeline companies shall have the same rights and responsibilities as owners of underground facilities under RCW 19.122.030 regarding excavation work. Excavators have the same rights and responsibilities under this section as they have under RCW 19.122.030.

(2) Project owners, excavators, and pipeline companies have the same rights and responsibilities relating to excavation near pipelines that they have for excavation near underground facilities as provided in RCW 19.122.040.

(3) The state or any of its political subdivisions undertaking or permitting construction or excavation activity under chapter 19.27 RCW within one hundred feet, or greater distance if defined by local ordinance, of a right-of-way or easement that contains a transmission pipeline must:

(a) Notify the transmission pipeline company of the proposed construction activity before such a permit is approved; or

(b) Require consultation between the person proposing the construction activity and the transmission pipeline company as a condition of receiving the permit.
Sec. 6. RCW 19.122.035 and 2000 c 191 s 19 are each amended to read as follows:

(1) After a pipeline company has been notified by an excavator pursuant to RCW 19.122.033 that excavation work will uncover any portion of the pipeline, the pipeline company shall ensure that the pipeline section in the vicinity of the excavation is examined for damage prior to being reburied.

(2) Immediately upon receiving information of third-party damage to a hazardous liquid pipeline, the company that operates the pipeline shall terminate the flow of hazardous liquid in that pipeline until it has visually inspected the pipeline. After visual inspection, the pipeline company shall determine whether the damaged pipeline section should be replaced or repaired, or whether it is safe to resume pipeline operation. Immediately upon receiving information of third-party damage to a gas pipeline, the pipeline company shall conduct a visual inspection of the pipeline to determine whether the flow of gas through that pipeline should be terminated, and whether the damaged pipeline should be replaced or repaired. A record of the pipeline company's inspection report and test results shall be provided to the utilities and transportation commission consistent with reporting requirements under 49 C.F.R. 195 Subpart B.

(3) Pipeline companies shall immediately notify local first responders and the department of any reportable release of a hazardous liquid from a pipeline. Pipeline companies shall immediately notify local first responders and the commission of any blowing gas leak from a gas pipeline that has ignited or represents a probable hazard to persons or property. Pipeline companies shall take all appropriate steps to ensure the public safety in the event of a release of hazardous liquid or gas under this subsection.

(4) No damaged pipeline may be buried until it is repaired or relocated. The pipeline company shall arrange for repairs or relocation of a damaged pipeline as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price.

Sec. 7. RCW 19.122.040 and 1984 c 144 s 4 are each amended to read as follows:
(1) Project owners shall indicate in bid or contract documents the existence of underground facilities known by the project owner to be located within the proposed area of excavation. The following shall be deemed changed or differing site conditions:

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

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

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

(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

(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.

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

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

Sec. 8. RCW 19.122.050 and 1984 c 144 s 5 are each amended to read as follows:

(1) An excavator who, in the course of excavation, contacts or damages an underground facility shall notify the facility operator and the one-number locator service, and report the damage as required under section 18 of this act. If the
damage causes an emergency condition, the excavator causing the damage shall also alert the appropriate local public safety agencies and take all appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

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

Sec. 9. RCW 19.122.070 and 2005 c 448 s 4 are each amended to read as follows:

(1) Any person who violates any provision of this chapter not amounting to a violation of RCW 19.122.055((, and which violation results in damage to underground facilities)) is subject to a civil penalty of not more than one thousand dollars for ((each violation. All penalties recovered in such actions shall be deposited in the general fund)) an initial violation, and not more than five thousand dollars for each subsequent violation within a three-year period. All penalties recovered in such actions must be used for education and training of excavators and facility operators regarding best practices and compliance with this chapter. All penalties recovered in such actions must be deposited into the damage prevention account created in section 10 of this act.

(2) Any excavator who willfully or maliciously damages a field-marked underground facility shall be liable for treble the costs incurred in repairing or relocating the facility. In those cases in which an excavator fails to notify known underground facility ((owners)) operators or the one-number locator service, any damage to the underground facility shall be deemed willful and malicious and shall be subject to treble damages for costs incurred in repairing or relocating the facility.

(3) This chapter does not affect any civil remedies for personal injury or for property damage, including that to underground facilities, nor does this chapter create any new civil remedies for such damage.
NEW SECTION. Sec. 10. A new section is added to chapter 19.122 RCW to read as follows:
The damage prevention account is created in the custody of the state treasurer. All receipts from those moneys directed by law or directed by the utilities and transportation commission to be deposited to the account must be deposited in the account. Expenditures from the account may be used only for the purposes designated in section 11 of this act. Only the utilities and transportation commission or the commission's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. Sec. 11. A new section is added to chapter 19.122 RCW to read as follows:
The utilities and transportation commission is authorized to use money deposited in the damage prevention account created in section 10 of this act for the following purposes:
(1) To develop and disseminate educational programming designed to improve worker and public safety as it relates to excavation and underground facilities; and
(2) To provide grants to persons who have developed educational programming that the utilities and transportation commission and the safety committee created in section 16 of this act deem to be appropriate for the purpose of improving worker and public safety as it relates to excavation and underground facilities.

Sec. 12. RCW 19.122.075 and 2000 c 191 s 23 are each amended to read as follows:
Any person who willfully damages or removes a permanent marking used to identify an underground facility or pipeline, or a temporary marking prior to its intended use, is subject to a civil penalty of not more than one thousand dollars for (each act) an initial violation, and not more than five thousand dollars for each subsequent violation within a three-year period.

Sec. 13. RCW 19.122.080 and 1984 c 144 s 8 are each amended to read as follows:
The notification and marking provisions of this chapter may be
waived for one or more designated persons by an underground facility
((owner)) operator with respect to all or part of that ((underground))
facility ((owner's)) operator's own underground facilities.

Sec. 14. RCW 19.122.100 and 2005 c 448 s 6 are each amended to
read as follows:
If charged with a violation of RCW 19.122.090, an equipment
operator will be deemed to have established an affirmative defense to
such charges if:
(1) The equipment operator was provided a valid excavation
confirmation code;
(2) The excavation was performed in an emergency situation;
(3) The equipment operator was provided a false confirmation code
by an identifiable third party; or
(4) Notice of the excavation was not required under this chapter.

Sec. 15. RCW 19.122.110 and 2005 c 448 s 7 are each amended to
read as follows:
Any person who intentionally provides an equipment operator with a
false excavation confirmation code is guilty of a misdemeanor.

NEW SECTION. Sec. 16. A new section is added to chapter 19.122
RCW to read as follows:
(1) For the purposes of establishing a dispute resolution service
under this chapter, the commission shall contract with a statewide,
nonprofit entity whose purpose is to reduce damages to underground
facilities as well as above ground facilities through cooperation,
coordination, and by promoting safe excavation practices.
(2) The contracting entity must create a safety committee to:
(a) Advise the commission and other state agencies, the
legislature, and local government agencies and officials on:
(i) Matters relating to best practices and training to prevent
damage to underground utilities; and
(ii) Policies to enhance worker and public safety and protection of
underground facilities; and
(b) Resolve disputes involving practices related to underground
facilities and possible violations of this chapter.
(3) The safety committee of the contracting entity consists of thirteen members appointed in consultation with the commission to staggered three-year terms and must consist of representatives of:
   (a) Local governments;
   (b) Owners and operators of hazardous liquid and gas pipelines;
   (c) Contractors;
   (d) Excavators;
   (e) An investor-owned electric utility subject to regulation under Title 80 RCW;
   (f) A consumer-owned utility;
   (g) A pipeline transportation company;
   (h) The commission; and
   (i) A telecommunications company.
(4) The safety committee may mediate disagreements among parties involving practices related to underground facilities and possible violations of this chapter.
(5) For the purposes of mediation, the safety committee shall appoint at least three and no more than five members as mediators. The mediators shall represent a balance of excavators, facility operators, and the insurance industry, and must include at least one representative of a pipeline company or natural gas distribution company.
(6) The safety committee shall meet at least once every three months.
(7) All members of the safety committee may participate fully in the committee's meetings, activities, and deliberations and must receive all notices and information related to committee business and decisions in a timely manner.
(8) Any party may bring a complaint to the safety committee regarding a violation of this chapter.
(9) This section expires December 31, 2020.

NEW SECTION. Sec. 17. A new section is added to chapter 19.122 RCW to read as follows:
The commission may enforce the civil penalties authorized in RCW 19.122.070 when a document is filed with the commission by the safety committee created in section 16 of this act indicating that a violation of this chapter has likely occurred.
NEW SECTION. Sec. 18. A new section is added to chapter 19.122 RCW to read as follows:

(1) Facility operators and excavators who observe or cause damage to an underground facility must report the event to the commission.

(2)(a) Facility operators and excavators who observe or cause damage must report whenever the event results in scrapes, gouges, cracks, dents, or other visible damage to the utility, pipeline, or cable casing or other external protection of any underground facility.

(b) A nonpipeline facility operator acting as their own excavator or the facility operator's subcontractor who hits its own facilities is not required to report that damage event.

(3) Reports must be made to the commission's office of pipeline safety within forty-five days of the event, or sooner if required by law using the commission's virtual private damage information reporting tool (DIRT) report form or other similar form provided that the form reports the following information:

(a) The name of the person submitting the report and whether the person is an excavator, a representative of a one-number locator service, or an underground facility operator;

(b) The date and time of the damage event;

(c) The address where the damage occurred;

(d) The type of right-of-way, including but not limited to: A city street, state highway, or private easement;

(e) The type of underground facility damaged, including but not limited to: Pipes, transmission pipelines, distribution lines, sewers, conduits, cables, valves, lines, wires, manholes, attachments, or those parts of poles or anchors below ground;

(f) The type of materials the underground facility stores or conveys, including but not limited to: Water, sewage, electronic, telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances;

(g) The type of excavator, including but not limited to: A contractor or facility operator;

(h) Excavation equipment used, including but not limited to: An auger, bulldozer, backhoe, or hand tool;

(i) The type of work being performed, including but not limited to: Drainage, grading, or landscaping;
(j) Whether a one-number locator service was notified before excavation commenced and the one-number locator service ticket number issued for the excavation, if a one-number locator service was notified;

(k) Who performed the locate of the underground facility and the company, locate service, or utility for whom the person performing the locate is employed;

(l) Whether underground facility marks were visible in the area of excavation before excavation commenced;

(m) Whether underground facilities were marked correctly;

(n) Whether an excavator experienced downtime as a result of the damage;

(o) A description of the damage; and

(p) Whether the damage caused an interruption of service.

(4) The commission must use reported data to evaluate the effectiveness of the damage prevention program.

NEW SECTION. Sec. 19. A new section is added to chapter 19.122 RCW to read as follows:

(1) After notice and an opportunity for a hearing, the utilities and transportation commission may impose the penalties authorized by RCW 19.122.055 and 19.122.070 on persons who violate this chapter with respect to underground facilities of persons within its jurisdiction. Before imposing a penalty authorized by RCW 19.122.070, the utilities and transportation commission must seek and consider the recommendation of the safety committee created in section 16 of this act.

(2) Any person aggrieved by any penalty imposed pursuant to this section may seek judicial review pursuant to the administrative procedure act, chapter 34.05 RCW.

(3) If a penalty imposed by the utilities and transportation commission is not paid, the attorney general must, on behalf of the commission, file a civil action in superior court to collect the penalty.

(4) This section expires December 31, 2020.

NEW SECTION. Sec. 20. A new section is added to chapter 19.122 RCW to read as follows:
All penalties collected under section 19 of this act must be deposited into the damage prevention account created under section 10 of this act.

NEW SECTION. Sec. 21. This act takes effect January 1, 2013.

--- END ---