BILL REQ. #: H-0335.1/11 ROUGH DRAFT

ATTY/TYPIST: ML:crs

BRIEF DESCRIPTION: Regarding underground utilities.

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 ((assign responsibilities for locating and keeping accurate records of utility locations, protecting and repairing damage to existing underground facilities, and protecting the public health and safety)) protect public and worker 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.
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 (17) 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.

(26) "Large projects" means projects that are longer than the length of one city block in incorporated areas and projects that exceed seven hundred linear feet in unincorporated areas.

(27) "Precise communication of the geographic extent of the area where the excavation will be performed" means:

(a) The application of white paint on the ground at the excavation site indicating the boundary of the area to be excavated; or

(b) The use of global positioning system coordinates to identify the boundary of the area to be excavated if this technology is available through the one-number locator service.

(28) "Service lateral" means an underground facility 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.

(29) "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.
(30) "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.

(31) "Unlocatable underground facility" means, subject to the provisions of RCW 19.122.030(6), an underground facility that cannot be field-marked with reasonable accuracy using best available information, techniques, or equipment 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.

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.

NEW SECTION. Sec. 4. A new section is added to chapter 19.122 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, prior to notifying the one-number locator service, an excavator must premark with the color white the immediate area of the proposed excavation within both the public rights-of-way and underground easements.

(2) An excavator need not premark as required in subsection (1) of this section if:

(a) The facility operator can determine precisely the direction, length, and location of the proposed excavation by referring to a locate ticket; or

(b) The excavator and facility operator have had a meeting prior to
the beginning of the proposed project, at the construction site, for
the exchange of information required under subsection (1) of this
section.

Sec. 5.  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. 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.
Notice must include a precise communication of the geographic extent of
the area where the excavation will be performed. If an excavator
intends to perform work at multiple sites or over a large area, 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 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 surface-
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 subject to local
fees. Excavators are entitled to recover compensation from the owner
of the underground facility 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 for
costs incurred in responding to excavation notices given less than two
business days prior to the excavation from the excavator.

(4) To assist in designating service or sewer laterals, the
facility operator or sewer system owner or operator shall provide its
best available information regarding the location of the service or
sewer laterals to the excavator. This information must be provided to
the excavator in a manner that may include, but is not limited to, any
one of the following methods:

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

(i) Any service or sewer lateral designated using the best
available information must be considered a good faith attempt and must
be deemed in compliance with this subsection, provided that such mark
represents only the best available information of the facility operator
or sewer system owner or operator and may not be accurate; and

(ii) If a service or sewer lateral is unlocatable, a generally
accepted mark must be placed at the utility or sewer main pointing at
the address in question to indicate the presence of an unlocatable
service or sewer lateral;

(b) Arranging to meet the excavator on-site to provide the best
available information about the location of service or sewer laterals;

(c) Providing records through other processes or any other
reasonable means of conveyance.
5 Facility operators 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, while performing the contract, discovers underground facilities that are not identified, the excavator shall cease excavating in the vicinity of the facility and immediately notify the facility operator or the one-number locator service. If in the course of performing the contract, the excavator uncovers 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, at a minimum, 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. 6. 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 that may result in the
creation of a structure intended for human occupancy within one hundred
feet of a right-of-way or easement that contains a transmission
pipeline must notify any relevant pipeline company of such proposed
construction activity within ninety days of a request for a permit for
such an activity. If the construction or excavation activity is being
conducted on behalf of the state or a political subdivision,
notification must occur with sufficient time for any relevant pipeline
company to propose modifications to the design that may be necessary or
prudent given the proximity of the proposed structure to the
transmission pipeline.

**Sec. 7.** 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
(operator of the hazardous liquid) 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 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. 8. 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 utility 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) (a) 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.

(b) Failure to subscribe to the one-number locator service is considered willful intent to avoid compliance with this chapter.

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

Sec. 9. 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 (utility owning or operating such) facility operator and the one-number locator service. 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. 10. 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 11 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. 11. 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 12 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. 12. 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 11 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 underground damage prevention authority deem to be appropriate for the purpose of improving worker and public safety as it relates to excavation and underground facilities.

Sec. 13. 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. 14. 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. 15. 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;
The equipment operator was provided a false confirmation code by an identifiable third party; or

Notice of the excavation was not required under this chapter.

Sec. 16. 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. 17. A new section is added to chapter 19.122 RCW to read as follows:

(1)(a) The underground damage prevention authority is created. The authority may not receive moneys from the state general fund. Members of the authority serve on a voluntary basis without compensation for time, travel, or other expenses related to the duties of the authority. The authority consists of, at a minimum, one member appointed to represent each of the following:

(i) Cities with a population of twenty-five thousand or more;
(ii) Cities with a population under twenty-five thousand;
(iii) Counties;
(iv) Natural gas utilities regulated by the utilities and transportation commission under Title 80 RCW;
(v) Electric utilities regulated by the utilities and transportation commission under Title 80 RCW;
(vi) Water districts, special districts, sanitary districts, or water and sanitary authorities;
(vii) Telecommunications utilities serving fewer than fifty thousand access lines and regulated by the utilities and transportation commission under Title 80 RCW;
(viii) Telecommunications utilities serving fifty thousand access lines or more and regulated by the utilities and transportation commission under Title 80 RCW;
(ix) Telecommunications cooperatives;
(x) Electric cooperatives;
(xi) Public utility districts;
(xii) Contractors;
(xiii) Excavators;
(xiv) Railroads;
(xv) Cable system operators;
(xvi) Municipal electric utilities;
(xvii) Public member;
(xviii) Communication mainline carriers (interstate fiber optic companies);
(xix) Utility locators;
(xx) Washington utility coordinating council;
(xxi) Professional surveyors; and
(xxii) Hazardous liquid pipeline operators regulated by the utilities and transportation commission under Title 81 RCW.

(b) To facilitate appointment of members of the initial authority, the governor shall by order select organizations that are most representative of each of the groups set forth in (a) of this subsection. Each organization selected may nominate a member for the authority and may, within the time allowed by the governor's order, submit the name of the nominee to the governor, who shall consider the nominee before making any other appointment to the authority.

(c) After appointment of the initial authority, to facilitate appointment of new members to the authority, the authority shall, by its bylaws, select organizations that are most representative of each of the groups set forth in (a) of this subsection. Each organization so selected may nominate a member for the authority and may, within the time allowed by its bylaws, submit the name of the nominee to the governor, who shall consider the nominee before making any other appointment to the authority.

(d) If the authority determines that a group not listed in (a) of this subsection should be represented on the authority, the authority may select an organization that is most representative of the group and ask that organization to nominate a member. Upon receipt of the nomination, the authority may request that the governor appoint the nominee.

(e) The governor shall also appoint to the authority one employee of the utilities and transportation commission and one employee of the department of transportation.

(2) The term of office of a member of the underground damage prevention authority is four years. A member of the authority is eligible for reappointment. Before the expiration of the term of a member, the authority shall solicit a nomination as provided in
subsection (1) of this section and the governor shall appoint a successor. If there is a vacancy for any cause, the authority shall solicit a nomination as provided in subsection (1) of this section and the governor shall make an appointment to become immediately effective for the unexpired term. A member may continue to serve until a successor is appointed. Nothing in this subsection or subsection (1) of this section restricts the authority of the governor to appoint a person other than one of the persons nominated according to this subsection or subsection (1) of this section.

(3) The underground damage prevention authority shall select one of its members as chair and another as vice-chair, for such terms and with such duties and powers as the authority considers necessary for the performance of the functions of those offices. The authority shall adopt bylaws for the conduct of its business. A minimum of seven of the members of the authority constitutes a quorum for the transaction of business.

(4) The underground damage prevention authority shall meet at least once every three months at a time and place determined by the authority. The authority shall meet at such other times and places specified by the call of the chair or of a majority of the members of the authority.

(5) This section expires December 31, 2020.

NEW SECTION. Sec. 18. A new section is added to chapter 19.122 RCW to read as follows:

(1) It is the function of the underground damage prevention authority to appoint an enforcement committee, consisting of members of the authority who are disinterested parties to the complaint and represent a balance of excavator and facility operator interests, in order to:

(a) Hear complaints for violations of this chapter; and

(b) After a hearing, issue a finding of fact and conclusions regarding the alleged violation and recommend appropriate corrective actions, including but not limited to the assessment of civil penalties authorized by this chapter and education of personnel.

(2) In a hearing before the underground damage prevention authority for an alleged violation of this chapter:

(a) All testimony must be given under oath; and
(b) The proceedings must be recorded.

(3) The underground damage prevention authority must issue its findings in writing, stating the reason for its decision. A copy of the finding must be delivered or mailed to all parties to the complaint proceedings.

(4) If the underground damage prevention authority issues a finding that a violation of this chapter has occurred and the complainant or the defendant is subject to regulation by the utilities and transportation commission, then the commission may rely upon the finding of the underground damage prevention authority as prima fascia evidence of a violation and assess any civil penalties authorized in this chapter for such a violation, consistent with the commission's own procedures and appeals process.

(5) If the underground damage prevention authority issues a finding that a violation of this chapter has occurred and neither party to the complaint is subject to regulation by the utilities and transportation commission, then the finding shall be forwarded to the office of the attorney general. The office of the attorney general may rely upon the finding of the underground damage prevention authority as prima fascia evidence of a violation and may pursue any appropriate remedies, consistent with the office of the attorney general's own procedures and appeals process.

(6) This section expires December 31, 2020.

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

(1) The underground damage prevention authority is authorized to:

(a) Adopt bylaws for the conduct of its business;

(b) Accept a grant, loan, or any other assistance in any form from any public or private source, subject to the provisions of this chapter;

(c) Enter into contracts and execute the instruments necessary or convenient to carry out this chapter to accomplish its purposes;

(d) Develop and recommend to the legislature policies to further enhance worker and public safety and protection of underground facilities; and

(e) Do all things necessary or convenient to carry out the powers expressly granted by this chapter.
NEW SECTION. Sec. 20. A new section is added to chapter 19.122 RCW to read as follows:

(1) All facility operators, excavators, or other individuals and organizations shall report to the utilities and transportation commission office of pipeline safety every event where an underground facility has been damaged.

(2) Reports must be made whenever the facility operator, excavator, or other individual or organization has firsthand knowledge of the event.

(3) Reports must be made 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.

(4) Facility operators, excavators, or other individuals or organizations shall make this report to the utilities and transportation commission office of pipeline safety within forty-five days of the event, or sooner if required by law.

(5) All damage reports shall be submitted using the utilities and transportation commission's virtual private damage information reporting tool (DIRT) report form or other similar form as long as the form contains the same information as the utilities and transportation commission's virtual private damage information reporting tool form.

(6) Failure to report a known event, regardless of the level of damage sustained by the underground facility, is a violation of this chapter and subject to citation and penalty in accordance with this chapter.

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

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