
BILL REQUEST - CODE REVISER'S OFFICE

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

ATTY/TYPIST: ML:crs

BRIEF DESCRIPTION: Regarding underground utilities.

1 AN ACT Relating to underground utilities; amending RCW 19.122.010,
2 19.122.020, 19.122.027, 19.122.030, 19.122.033, 19.122.035, 19.122.040,
3 19.122.050, 19.122.070, 19.122.075, 19.122.080, 19.122.100, and
4 19.122.110; adding new sections to chapter 19.122 RCW; prescribing
5 penalties; providing an effective date; and providing expiration dates.

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

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

9 It is the intent of the legislature in enacting this chapter to
10 ~~((assign responsibilities for locating and keeping accurate records of~~
11 ~~utility locations, protecting and repairing damage to existing~~
12 ~~underground facilities, and protecting the public health and safety))~~
13 protect public and worker health and safety and to prevent the
14 disruption of vital services by establishing a comprehensive damage
15 prevention program for transfer pipelines, transmission pipelines, and
16 underground facilities. Additionally, the legislature intends to
17 establish authority to enforce the law, assign responsibilities for
18 locating and keeping accurate records of underground facilities'
19 locations, protect and repair damage to existing underground

1 facilities, and protect public health and safety from interruption in
2 utility services caused by damage to existing underground utility
3 facilities.

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

6 ~~((Unless the context clearly requires otherwise,))~~ The definitions
7 in this section apply throughout this chapter((+)) unless the context
8 clearly requires otherwise.

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

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

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

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

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

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

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

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

36 (5) "Excavation confirmation code" means a code or ticket issued by

1 the one-number locator service for the site where an excavation is
2 planned. The code must be accompanied by the date and time it was
3 issued.

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

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

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

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

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

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

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

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

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

34 ~~(15) ("Operator" means the individual conducting the excavation.~~
35 ~~(+16+))~~ "Person" means an individual, partnership, franchise holder,
36 association, corporation, a state, a city, a county, or any subdivision
37 or instrumentality of a state, and its employees, agents, or legal
38 representatives.

1 (~~(17)~~) (16) "Pipeline" or "pipeline system" means all or parts of
2 a pipeline facility through which hazardous liquid or gas moves in
3 transportation, including, but not limited to, line pipe, valves, and
4 other appurtenances connected to line pipe, pumping units, fabricated
5 assemblies associated with pumping or compressor units, metering and
6 delivery stations and fabricated assemblies therein, and breakout
7 tanks. "Pipeline" or "pipeline system" does not include process or
8 transfer pipelines.

9 (~~(18)~~) (17) "Pipeline company" means a person or entity
10 constructing, owning, or operating a pipeline for transporting
11 hazardous liquid or gas. A pipeline company does not include: (a)
12 Distribution systems owned and operated under franchise for the sale,
13 delivery, or distribution of natural gas at retail; or (b) excavation
14 contractors or other contractors that contract with a pipeline company.

15 (~~(19)~~) (18) "Reasonable accuracy" means location within twenty-
16 four inches of the outside dimensions of both sides of an underground
17 facility.

18 (~~(20)~~) (19) "Transfer pipeline" means a buried or aboveground
19 pipeline used to carry hazardous liquid between a tank vessel or
20 transmission pipeline and the first valve inside secondary containment
21 at the facility provided that any discharge on the facility side of
22 that first valve will not directly impact waters of the state. A
23 transfer pipeline includes valves, and other appurtenances connected to
24 the pipeline, pumping units, and fabricated assemblies associated with
25 pumping units. A transfer pipeline does not include process pipelines,
26 pipelines carrying ballast or bilge water, transmission pipelines, or
27 tank vessel or storage tanks.

28 (~~(21)~~) (20) "Transmission pipeline" means a pipeline that
29 transports hazardous liquid or gas within a storage field, or
30 transports hazardous liquid or gas from an interstate pipeline or
31 storage facility to a distribution main or a large volume hazardous
32 liquid or gas user, or operates at a hoop stress of twenty percent or
33 more of the specified minimum yield strength.

34 (~~(22)~~) (21) "Underground facility" means any item buried or
35 placed below ground for use in connection with the storage or
36 conveyance of water, sewage, electronic, telephonic or telegraphic
37 communications, cablevision, electric energy, petroleum products, gas,
38 gaseous vapors, hazardous liquids, or other substances and including

1 but not limited to pipes, sewers, conduits, cables, valves, lines,
2 wires, manholes, attachments, and those parts of poles or anchors below
3 ground. This definition does not include pipelines as defined in
4 subsection ~~((+17))~~ (16) of this section, but does include distribution
5 systems owned and operated under franchise for the sale, delivery, or
6 distribution of natural gas at retail.

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

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

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

15 (25) "Facility operator" means any person with control over
16 underground facilities. "Facility operator" includes any person having
17 the legal right to place underground facilities in a public right-of-
18 way or in any utility easement.

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

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

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

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

29 (28) "Service lateral" means an underground facility that
30 originates at the connection of a facility operator's system and
31 terminates at or on the end user's property line. A service lateral
32 may be owned by the end user or facility operator.

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

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

4 (31) "Unlocatable underground facility" means, subject to the
5 provisions of RCW 19.122.030(6), an underground facility that cannot be
6 field-marked with reasonable accuracy using best available information,
7 techniques, or equipment to designate the location of underground
8 facilities. "Unlocatable underground facility" includes, but is not
9 limited to, sewer laterals, storm drains, and nonconductive and
10 nonmetallic underground facilities that do not contain trace wires.

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

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

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

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

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

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

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

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

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

35 (b) The excavator and facility operator have had a meeting prior to

1 the beginning of the proposed project, at the construction site, for
2 the exchange of information required under subsection (1) of this
3 section.

4 **Sec. 5.** RCW 19.122.030 and 2000 c 191 s 17 are each amended to
5 read as follows:

6 (1) Before commencing any excavation, excluding agriculture tilling
7 less than twelve inches in depth, the excavator shall provide notice of
8 the scheduled commencement of excavation to all owners of underground
9 facilities through a one-number locator service. The notice must be
10 provided to the one-number locator service not less than two business
11 days or more than ten business days before the scheduled date for
12 commencement of excavation, unless otherwise agreed to by the parties.
13 Notice must include a precise communication of the geographic extent of
14 the area where the excavation will be performed. If an excavator
15 intends to perform work at multiple sites or over a large area, the
16 excavator must take reasonable steps to work with facility operators so
17 that facility operators can locate their facilities at a time
18 reasonably in advance of the actual start of excavation for each phase
19 of the work.

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

31 ~~(3) Upon receipt of the notice provided for in this section, the~~
32 ~~owner of the underground facility shall provide the excavator with~~
33 ~~reasonably accurate information as to its locatable underground~~
34 ~~facilities by surface marking the location of the facilities. If there~~
35 ~~are identified but unlocatable underground facilities, the owner of~~
36 ~~such facilities shall provide the excavator with the best available~~
37 ~~information as to their locations. The owner of the underground~~

1 facility providing the information shall respond no later than two
2 business days after the receipt of the notice or before the excavation
3 time, at the option of the owner, unless otherwise agreed by the
4 parties. Excavators shall not excavate until all known facilities have
5 been marked. Once marked by the owner of the underground facility, the
6 excavator is responsible for maintaining the markings. Excavators
7 shall have the right to receive compensation from the owner of the
8 underground facility for costs incurred if the owner of the underground
9 facility does not locate its facilities in accordance with this
10 section.

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

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

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

23 (7) If the excavator, while performing the contract, discovers
24 underground facilities which are not identified, the excavator shall
25 cease excavating in the vicinity of the facility and immediately notify
26 the owner or operator of such facilities, or the one-number locator
27 service.) Upon receipt of the notice provided for in this section, the
28 facility operator shall provide the excavator with reasonably accurate
29 information as to its locatable underground facilities by surface-
30 marking the location of the facilities. If there are identified but
31 unlocatable underground facilities, the facility operator responsible
32 for the facilities must provide the excavator with the best available
33 information as to the location of the underground facilities. The
34 facility operator providing the information must respond no later than
35 two business days after the receipt of the notice or before the
36 excavation time, at the option of the facility operator, unless
37 otherwise agreed by the parties. Excavators shall not excavate until
38 all known facilities have been marked. Once marked by the facility

1 operator, the excavator is responsible for maintaining the accuracy of
2 the original markings for the lesser of forty-five calendar days from
3 the date notice was provided to the one-number locator service or the
4 life of the project. Markings expire forty-five calendar days from the
5 date notice was provided to the one-number locator service. For
6 excavation occurring more than forty-five calendar days from the date
7 notice was provided to the one-number locator service, a second notice
8 must be provided in accordance with the provisions of subsection (1) of
9 this section. Excavators that make repeated calls for relocates
10 because of their failure to maintain the marks may be subject to local
11 fees. Excavators are entitled to recover compensation from the owner
12 of the underground facility for costs incurred if the facility operator
13 does not locate its facilities in accordance with this section.

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

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

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

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

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

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

36 (c) Providing records through other processes or any other
37 reasonable means of conveyance.

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

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

19 (7) If the excavator, while performing the contract, discovers
20 underground facilities that are not identified, the excavator shall
21 cease excavating in the vicinity of the facility and immediately notify
22 the facility operator or the one-number locator service. If in the
23 course of performing the contract, the excavator uncovers identified
24 but unlocatable underground facilities, the excavator shall notify the
25 facility operator and the facility operator must take action under
26 subsection (8) of this section.

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

34 **Sec. 6.** RCW 19.122.033 and 2000 c 191 s 18 are each amended to
35 read as follows:

36 (1) Before commencing any excavation, excluding agricultural
37 tilling less than twelve inches in depth, an excavator shall notify

1 pipeline companies of the scheduled commencement of excavation through
2 a one-number locator service in the same manner as is required for
3 notifying owners of underground facilities of excavation work under RCW
4 19.122.030. Pipeline companies shall have the same rights and
5 responsibilities as owners of underground facilities under RCW
6 19.122.030 regarding excavation work. Excavators have the same rights
7 and responsibilities under this section as they have under RCW
8 19.122.030.

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

13 (3) The state or any of its political subdivisions undertaking or
14 permitting construction or excavation activity that may result in the
15 creation of a structure intended for human occupancy within one hundred
16 feet of a right-of-way or easement that contains a transmission
17 pipeline must notify any relevant pipeline company of such proposed
18 construction activity within ninety days of a request for a permit for
19 such an activity. If the construction or excavation activity is being
20 conducted on behalf of the state or a political subdivision,
21 notification must occur with sufficient time for any relevant pipeline
22 company to propose modifications to the design that may be necessary or
23 prudent given the proximity of the proposed structure to the
24 transmission pipeline.

25 **Sec. 7.** RCW 19.122.035 and 2000 c 191 s 19 are each amended to
26 read as follows:

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

32 (2) Immediately upon receiving information of third-party damage to
33 a hazardous liquid pipeline, the company that operates the pipeline
34 shall terminate the flow of hazardous liquid in that pipeline until it
35 has visually inspected the pipeline. After visual inspection, the
36 (~~operator of the hazardous liquid~~) pipeline company shall determine
37 whether the damaged pipeline section should be replaced or repaired, or

1 whether it is safe to resume pipeline operation. Immediately upon
2 receiving information of third-party damage to a gas pipeline, the
3 (~~company that operates the~~) pipeline company shall conduct a visual
4 inspection of the pipeline to determine whether the flow of gas through
5 that pipeline should be terminated, and whether the damaged pipeline
6 should be replaced or repaired. A record of the pipeline company's
7 inspection report and test results shall be provided to the utilities
8 and transportation commission consistent with reporting requirements
9 under 49 C.F.R. 195 Subpart B.

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

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

23 **Sec. 8.** RCW 19.122.040 and 1984 c 144 s 4 are each amended to read
24 as follows:

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

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

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

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

1 (a) Determine the precise location of underground facilities which
2 have been marked;

3 (b) Plan the excavation to avoid damage to or minimize interference
4 with underground facilities in and near the excavation area; and

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

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

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

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

22 **Sec. 9.** RCW 19.122.050 and 1984 c 144 s 5 are each amended to read
23 as follows:

24 (1) An excavator who, in the course of excavation, contacts or
25 damages an underground facility shall notify the (~~(utility owning or~~
26 ~~operating such)) facility operator and the one-number locator service.
27 If the damage causes an emergency condition, the excavator causing the
28 damage shall also alert the appropriate local public safety agencies
29 and take all appropriate steps to ensure the public safety. No damaged
30 underground facility may be buried until it is repaired or relocated.~~

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

1 **Sec. 10.** RCW 19.122.070 and 2005 c 448 s 4 are each amended to
2 read as follows:

3 (1) Any person who violates any provision of this chapter not
4 amounting to a violation of RCW 19.122.055(~~(, and which violation~~
5 ~~results in damage to underground facilities,)~~) is subject to a civil
6 penalty of not more than one thousand dollars for (~~each violation.~~
7 ~~All penalties recovered in such actions shall be deposited in the~~
8 ~~general fund~~) an initial violation, and not more than five thousand
9 dollars for each subsequent violation within a three-year period. All
10 penalties recovered in such actions must be used for education and
11 training of excavators and facility operators regarding best practices
12 and compliance with this chapter. All penalties recovered in such
13 actions must be deposited into the damage prevention account created in
14 section 11 of this act.

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

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

27 NEW SECTION. **Sec. 11.** A new section is added to chapter 19.122
28 RCW to read as follows:

29 The damage prevention account is created in the custody of the
30 state treasurer. All receipts from those moneys directed by law or
31 directed by the utilities and transportation commission to be deposited
32 to the account must be deposited in the account. Expenditures from the
33 account may be used only for the purposes designated in section 12 of
34 this act. Only the utilities and transportation commission or the
35 commission's designee may authorize expenditures from the account. The
36 account is subject to allotment procedures under chapter 43.88 RCW, but
37 an appropriation is not required for expenditures.

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

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

4 **Sec. 16.** RCW 19.122.110 and 2005 c 448 s 7 are each amended to
5 read as follows:

6 Any person who intentionally provides an equipment operator with a
7 false excavation confirmation code is guilty of a misdemeanor.

8 NEW SECTION. **Sec. 17.** A new section is added to chapter 19.122
9 RCW to read as follows:

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

16 (i) Cities with a population of twenty-five thousand or more;

17 (ii) Cities with a population under twenty-five thousand;

18 (iii) Counties;

19 (iv) Natural gas utilities regulated by the utilities and
20 transportation commission under Title 80 RCW;

21 (v) Electric utilities regulated by the utilities and
22 transportation commission under Title 80 RCW;

23 (vi) Water districts, special districts, sanitary districts, or
24 water and sanitary authorities;

25 (vii) Telecommunications utilities serving fewer than fifty
26 thousand access lines and regulated by the utilities and transportation
27 commission under Title 80 RCW;

28 (viii) Telecommunications utilities serving fifty thousand access
29 lines or more and regulated by the utilities and transportation
30 commission under Title 80 RCW;

31 (ix) Telecommunications cooperatives;

32 (x) Electric cooperatives;

33 (xi) Public utility districts;

34 (xii) Contractors;

35 (xiii) Excavators;

36 (xiv) Railroads;

- 1 (xv) Cable system operators;
- 2 (xvi) Municipal electric utilities;
- 3 (xvii) Public member;
- 4 (xviii) Communication mainline carriers (interstate fiber optic
- 5 companies);
- 6 (xix) Utility locators;
- 7 (xx) Washington utility coordinating council;
- 8 (xxi) Professional surveyors; and
- 9 (xxii) Hazardous liquid pipeline operators regulated by the
- 10 utilities and transportation commission under Title 81 RCW.

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

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

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

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

35 (2) The term of office of a member of the underground damage
36 prevention authority is four years. A member of the authority is
37 eligible for reappointment. Before the expiration of the term of a
38 member, the authority shall solicit a nomination as provided in

1 subsection (1) of this section and the governor shall appoint a
2 successor. If there is a vacancy for any cause, the authority shall
3 solicit a nomination as provided in subsection (1) of this section and
4 the governor shall make an appointment to become immediately effective
5 for the unexpired term. A member may continue to serve until a
6 successor is appointed. Nothing in this subsection or subsection (1)
7 of this section restricts the authority of the governor to appoint a
8 person other than one of the persons nominated according to this
9 subsection or subsection (1) of this section.

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

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

22 (5) This section expires December 31, 2020.

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

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

- 30 (a) Hear complaints for violations of this chapter; and
- 31 (b) After a hearing, issue a finding of fact and conclusions
32 regarding the alleged violation and recommend appropriate corrective
33 actions, including but not limited to the assessment of civil penalties
34 authorized by this chapter and education of personnel.

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

- 37 (a) All testimony must be given under oath; and

1 (b) The proceedings must be recorded.

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

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

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

23 (6) This section expires December 31, 2020.

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

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

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

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

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

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

36 (e) Do all things necessary or convenient to carry out the powers
37 expressly granted by this chapter.

1 (2) This section expires December 31, 2020.

2 NEW SECTION. **Sec. 20.** A new section is added to chapter 19.122
3 RCW to read as follows:

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

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

11 (3) Reports must be made whenever the event results in scrapes,
12 gouges, cracks, dents, or other visible damage to the utility,
13 pipeline, or cable casing or other external protection of any
14 underground facility.

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

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

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

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

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