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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: Z-0079.2/17 2nd draft

ATTY/TYPIST: KS:eab

BRIEF DESCRIPTION: Removing expiration dates, obsolete dates, and an outdated statutory reference from the enforcement provisions of the underground utility damage prevention act.

1 AN ACT Relating to removing expiration dates, obsolete dates, and  
2 an outdated statutory reference from the enforcement provisions of  
3 the underground utility damage prevention act; and amending RCW  
4 19.122.130, 19.122.140, and 19.122.150.

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

6 **Sec. 1.** RCW 19.122.130 and 2012 c 96 s 1 are each amended to  
7 read as follows:

8 (1) (~~By January 1, 2013,~~) The commission must contract with a  
9 statewide, nonprofit entity whose purpose is to reduce damages to  
10 underground and above ground facilities, promote safe excavation  
11 practices, and review complaints of alleged violations of this  
12 chapter. The contract must not obligate funding by the commission for  
13 activities performed by the nonprofit entity or the safety committee  
14 under this section(~~, and is therefore exempt under RCW 39.29.040(1)~~  
15 ~~from the requirements of chapter 39.29 RCW~~)).

16 (2) (~~By January 1, 2013,~~) The contracting entity must create a  
17 safety committee to:

18 (a) Advise the commission and other state agencies, the  
19 legislature, and local governments on best practices and training to  
20 prevent damage to underground utilities, and policies to enhance  
21 worker and public safety; and

1 (b) Review complaints alleging violations of this chapter  
2 involving practices related to underground facilities.

3 (3)(a) The safety committee will consist of thirteen members, who  
4 must be nominated by represented groups and appointed by the  
5 contracting entity to staggered three-year terms. (~~By January 1,~~  
6 ~~2013,~~) The safety committee must include representatives of:

7 (i) Local governments;

8 (ii) A natural gas utility subject to regulation under Titles 80  
9 and 81 RCW;

10 (iii) Contractors;

11 (iv) Excavators;

12 (v) An electric utility subject to regulation under Title 80 RCW;

13 (vi) A consumer-owned utility, as defined in RCW 19.27A.140;

14 (vii) A pipeline company;

15 (viii) The insurance industry;

16 (ix) The commission; and

17 (x) A telecommunications company.

18 (b) (~~By January 1, 2013,~~) The safety committee may pass bylaws  
19 and provide for those organizational processes that are necessary to  
20 complete the safety committee's tasks.

21 (4) The safety committee must meet at least once every three  
22 months.

23 (5) (~~After January 1, 2013,~~) The safety committee may review  
24 complaints of alleged violations of this chapter involving practices  
25 related to underground facilities. Any person may bring a complaint  
26 to the safety committee regarding an alleged violation occurring on  
27 or after January 1, 2013.

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

36 (7) Before reviewing a complaint alleging a violation of this  
37 chapter, the review committee must notify the person making the  
38 complaint and the alleged violator of its review and of the  
39 opportunity to participate.

1           (8) (~~(After January 1, 2013,)~~) The safety committee may provide  
2 written notification to the commission, with supporting  
3 documentation, that a person has likely committed a violation of this  
4 chapter, and recommend remedial action that may include a penalty  
5 amount, training, or education to improve public safety, or some  
6 combination thereof.

7           (~~(9) This section expires December 31, 2020.~~)

8           **Sec. 2.** RCW 19.122.140 and 2011 c 263 s 19 are each amended to  
9 read as follows:

10           (1) The commission may enforce the civil penalties authorized in  
11 RCW 19.122.070 or 19.122.075 when it receives written notification  
12 from the safety committee created under RCW 19.122.130 indicating  
13 that a violation of this chapter has likely been committed by a  
14 person subject to regulation by the commission, or involving the  
15 underground facilities of such a person.

16           (2) If the commission receives written notification from the  
17 safety committee pursuant to RCW 19.122.130 that a violation of this  
18 chapter has likely been committed by a person who is not subject to  
19 regulation by the commission, and in which the underground facility  
20 involved is also not subject to regulation by the commission, the  
21 commission may refer the matter to the attorney general for  
22 enforcement of a civil penalty under RCW 19.122.070 or 19.122.075.  
23 The commission must provide funding for such enforcement. However,  
24 any costs and fees recovered by the attorney general pursuant to  
25 subsection (3) of this section must be deposited by the commission in  
26 the fund that paid for such enforcement.

27           (3) In a matter referred to it by the commission pursuant to  
28 subsection (2) of this section, the attorney general may bring an  
29 action to enforce the penalties authorized in RCW 19.122.070 or  
30 19.122.075. In such an action, the court may award the state all  
31 costs of investigation and trial, including a reasonable attorneys'  
32 fee fixed by the court.

33           (~~(4) This section expires December 31, 2020.~~)

34           **Sec. 3.** RCW 19.122.150 and 2011 c 263 s 21 are each amended to  
35 read as follows:

36           (1) The commission may investigate and enforce violations of RCW  
37 19.122.055, 19.122.075, and 19.122.090 relating to pipeline

1 facilities without initial referral to the safety committee created  
2 under RCW 19.122.130.

3 (2) If the commission's investigation of notifications received  
4 pursuant to RCW 19.122.140 or subsection (1) of this section  
5 substantiates violations of this chapter, the commission may impose  
6 penalties authorized by RCW 19.122.055, 19.122.070, 19.122.075, and  
7 19.122.090, and require training, education, or any combination  
8 thereof.

9 (3) With respect to referrals from the safety committee, the  
10 commission must consider any recommendation by the committee  
11 regarding enforcement and remedial actions involving an alleged  
12 violator.

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

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

30 (~~(6) This section expires December 31, 2020.~~)

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