

All – Below is the current law. Underlined and red is new or modified language.

The 5 discussed changes include:

- 1. Add to the definition of Reasonable Accuracy: Locate marks do not require depth. 19.122.020 (23)
- 2. When a damage occurs, notify 911 if deemed to be life threatening, and 811, and make a reasonable attempt to notify the owner of the buried facility. 19.122.050 (1)
- 3. Give the UTC authority to bring enforcement, without a complaint, against any party that damages any buried line while digging and did not notify CBYD first. 19.122.055 (2) and 19.122.150 (2)
- 4. Change the make-up of the safety committee by dropping the insurance seat and adding a water/sewer rep. Total number still = 13. 19.122.130 (3)(h)
- 5. Change Complaint Review panels as proposed. E.g. equal number of excavators and facility numbers and no mandate to have a pipeline and insurance rep on each panel. 19.122.130 (6)

Chapter 19.122 RCW UNDERGROUND UTILITIES

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19.122.901	Short title—2011 c 263.

RCW 19.122.010

Intent.

In this chapter, the underground utility damage prevention act, the legislature intends to protect public health and safety and prevent disruption of vital utility services through a comprehensive damage prevention program that includes:

- (1) Assigning responsibility for providing notice of proposed excavation, locating and marking underground utilities, and reporting and repairing damage;
- (2) Setting safeguards for construction and excavation near hazardous liquid and gas pipelines;
- (3) Improving worker and public knowledge of safe practices;
- (4) Collecting and analyzing damage data;
- (5) Reviewing alleged violations; and
- (6) Enforcing this chapter.

[2011 c 263 § 1; 1984 c 144 § 1.]

NOTES:

Report—2011 c 263: "By December 1, 2015, the utilities and transportation commission must report to the appropriate committees of the legislature on the effectiveness of the damage prevention program established under chapter 19.122 RCW. The legislative report required under this section must include analysis of damage data reported under section 20 of this act." [2011 c 263 § 26.]

Effective date—2012 c 96; 2011 c 263: "Except for section 18 of this act (chapter 263, Laws of 2011), this act takes effect January 1, 2013." [2012 c 96 § 2; 2011 c 263 § 27.]

RCW 19.122.020

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

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

(4) "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 facility operator determines that repairs are required.

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

(6) "End user" means any utility customer or consumer of utility services or commodities provided by a facility operator.

(7) "Equipment operator" means an individual conducting an excavation.

(8) "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.

(9) "Excavation confirmation code" means a code or ticket issued by a 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.

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

(11) "Facility operator" means any person who owns an underground facility or is in the business of supplying any utility service or commodity for compensation. "Facility operator" does not include a utility customer who owns a service lateral that terminates at a facility operator's main utility line.

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

(13) "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;

(b) Carbon dioxide; and

(c) Other substances designated as hazardous by the secretary of transportation and incorporated by reference by the commission by rule.

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

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

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

(17) "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.

(18) "Notice" or "notify" means contact in person or by telephone or other electronic method, and, with respect to contact of a one-number locator service, also results in the receipt of a valid excavation confirmation code.

(19) "One-number locator service" means a service through which a person can notify facility operators and request marking of underground facilities.

(20) "Person" means an individual, partnership, franchise holder, association, corporation, the state, a city, a county, a town, or any subdivision or instrumentality of the state, including any unit of local government, and its employees, agents, or legal representatives.

(21) "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.

(22) "Pipeline company" means a person or entity constructing, owning, or operating a pipeline for transporting hazardous liquid or gas. "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.

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

(24) "Service lateral" means an underground water, stormwater, or sewer facility located in a public right-of-way or utility easement that connects an end user's building or property to a facility operator's underground facility, and terminates beyond the public right-of-way or utility easement.

(25) "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 a facility, provided that any discharge on the facility side of the first valve will not directly impact waters of the state. "Transfer pipeline" includes valves and other appurtenances connected to the pipeline, pumping units, and fabricated assemblies associated with pumping units. "Transfer pipeline" does not include process pipelines, pipelines carrying ballast or bilge water, transmission pipelines, or tank vessel or storage tanks.

(26) "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

Commented [DM1]: 1. Add to the definition of Reasonable Accuracy: Locate marks do not require depth. 19.122.020 (23) –Marian Dacca

gas user, or operates at a hoop stress of twenty percent or more of the specified minimum yield strength.

(27) "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 that are below ground. This definition does not include pipelines as defined in subsection (21) of this section, but does include distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail.

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

(29) "Utility easement" means a right held by a facility operator to install, maintain, and access an underground facility or pipeline.
[2011 c 263 § 2; 2007 c 142 § 9; 2005 c 448 § 1; 2000 c 191 § 15; 1984 c 144 § 2.]

NOTES:

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

RCW 19.122.027

One-number locator services—Single statewide toll-free telephone number.

(1) The commission must establish a single statewide toll-free telephone number to be used for referring excavators to the appropriate one-number locator service.

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

(3) One-number locator services must 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 a one-number locator service constitutes willful intent to avoid compliance with this chapter.

[2011 c 263 § 3; 2005 c 448 § 2; 2000 c 191 § 16.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

RCW 19.122.030

Excavator and facility operator duties before excavation.

(1)(a) Unless exempted under RCW 19.122.031, before commencing any excavation, an excavator must mark the boundary of the excavation area with white paint applied on the ground of the worksite, then provide notice of the scheduled commencement of excavation to all facility operators through a one-number locator service.

(b) If boundary marking required by (a) of this subsection is infeasible, an excavator must communicate directly with affected facility operators to ensure that the boundary of the excavation area is accurately identified.

(2) An excavator must provide the notice required by subsection (1) of this section to a one-number locator service not less than two business days and not more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed by the excavator and facility operators. If an excavator intends to work at multiple sites or at a large project, the excavator must take reasonable steps to confer with facility operators to enable them to locate underground facilities reasonably in advance of the start of excavation for each phase of the work.

(3) Upon receipt of the notice provided for in subsection (1) of this section, a facility operator must, with respect to:

(a) The facility operator's locatable underground facilities, provide the excavator with reasonably accurate information by marking their location;

(b) The facility operator's unlocatable or identified but unlocatable underground facilities, provide the excavator with available information as to their location; and

(c) Service laterals, designate their presence or location, if the service laterals:

(i) Connect end users to the facility operator's main utility line; and

(ii) Are within a public right-of-way or utility easement and the boundary of the excavation area identified under subsection (1) of this section.

(4)(a) A facility operator must provide information to an excavator pursuant to subsection (3) of this section no later than two business days after the receipt of the notice provided for in subsection (1) of this section or before excavation commences, at the option of the facility operator, unless otherwise agreed by the parties.

(b) A facility operator complying with subsection (3)(b) and (c) of this section may do so in a manner that includes any of the following methods:

(i) Placing within a proposed excavation area a triangular mark at the main utility line pointing at the building, structure, or property in question, indicating the presence of an unlocatable or identified but unlocatable underground facility, including a service lateral;

(ii) Arranging to meet an excavator at a worksite to provide available information about the location of service laterals; or

(iii) Providing copies of the best reasonably available records by electronic message, mail, facsimile, or other delivery method.

(c) A facility operator's good faith attempt to comply with subsection (3)(b) and (c) of this section:

(i) Constitutes full compliance with the requirements of this section, and no person may be found liable for damages or injuries that may result from such compliance, apart from liability for arranging for repairs or relocation as provided in RCW 19.122.050(2); and

(ii) Does not constitute any assertion of ownership or operation of a service lateral by the facility operator.

(d) An end user is responsible for determining the location of a service lateral on their property or a service lateral that they own. Nothing in this section may be interpreted to require an end user to subscribe to a one-number locator service or to locate a service lateral within a right-of-way or utility easement.

(5) An excavator must not excavate until all known facility operators have marked or provided information regarding underground facilities as provided in this section.

(6)(a) Once marked by a facility operator, an excavator is responsible for maintaining the accuracy of the facility operator's markings of underground facilities for the lesser of:

(i) Forty-five calendar days from the date that the excavator provided notice to a one-number locator service pursuant to subsection (1) of this section; or

(ii) The duration of the project.

(b) An excavator that makes repeated requests for location of underground facilities due to its failure to maintain the accuracy of a facility operator's markings as required by this subsection (6) may be charged by the facility operator for services provided.

(c) A facility operator's markings of underground utilities expire forty-five calendar days from the date that the excavator provided notice to a one-number locator service pursuant to subsection (1) of this section. For excavation occurring after that date, an excavator must provide additional notice to a one-number locator service pursuant to subsection (1) of this section.

(7) An excavator has the right to receive reasonable compensation from a facility operator for costs incurred by the excavator if the facility operator does not locate its underground facilities in accordance with the requirements specified in this section.

(8) A facility operator has the right to receive reasonable compensation from an excavator for costs incurred by the facility operator if the excavator does not comply with the requirements specified in this section.

(9) A facility operator is not required to comply with subsection (4) of this section with respect to service laterals conveying only water if their presence can be determined from other visible water facilities, such as water meters, water valve covers, and

junction boxes in or adjacent to the boundary of an excavation area identified under subsection (1) of this section.

(10) If an excavator discovers underground facilities that are not identified, the excavator must cease excavating in the vicinity of the underground facilities and immediately notify the facility operator or a one-number locator service. If an excavator discovers identified but unlocatable underground facilities, the excavator must notify the facility operator. Upon notification by a one-number locator service or an excavator, a facility operator must allow for location of the uncovered portion of an underground facility identified by the excavator, and may accept location information from the excavator for marking of the underground facility.

[2011 c 263 § 4; 2000 c 191 § 17; 1988 c 99 § 1; 1984 c 144 § 3.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

Damages to facilities on state highways: RCW 47.44.150.

RCW 19.122.031

Exempted activities.

(1) The requirements specified in RCW 19.122.030 do not apply to any of the following activities:

(a) An emergency excavation, but only with respect to boundary marking and notice requirements specified in RCW 19.122.030 (1) and (2), and provided that the excavator provides notice to a one-number locator service at the earliest practicable opportunity;

(b) An excavation of less than twelve inches in depth on private noncommercial property, if the excavation is performed by the person or an employee of the person who owns or occupies the property on which the excavation is being performed;

(c) The tilling of soil for agricultural purposes less than:

(i) Twelve inches in depth within a utility easement; and

(ii) Twenty inches in depth outside of a utility easement;

(d) The replacement of an official traffic sign installed prior to January 1, 2013, no deeper than the depth at which it was installed;

(e) Road maintenance activities involving excavation less than six inches in depth below the original road grade and ditch maintenance activities involving excavation less than six inches in depth below the original ditch flowline, or alteration of the original ditch horizontal alignment;

(f) The creation of bar holes less than twelve inches in depth, or of any depth during emergency leak investigations, provided that the excavator takes reasonable measures to eliminate electrical arc hazards; or

(g) Construction, operation, or maintenance activities by an irrigation district on rights-of-way, easements, or facilities owned by the federal bureau of reclamation in federal reclamation projects.

(2) Any activity described in subsection (1) of this section is subject to the requirements specified in RCW 19.122.050.

[2011 c 263 § 5.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

RCW 19.122.033

Notice of excavation to pipeline companies.

(1) Before commencing any excavation, an excavator must notify pipeline companies of the scheduled commencement of excavation through a one-number locator service in the same manner as required for notifying facility operators of excavation under RCW 19.122.030. Pipeline companies have the same rights and responsibilities as facility operators under RCW 19.122.030 regarding excavation. 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, and any subdivision or instrumentality of the state, including any unit of local government, must, when planning construction or excavation within one hundred feet, or greater distance if required by local ordinance, of a right-of-way or utility easement containing a transmission pipeline, notify the pipeline company of the scheduled commencement of work.

(4) Any unit of local government that issues permits under codes adopted pursuant to chapter 19.27 RCW must, when permitting construction or excavation within one hundred feet, or greater distance if required by local ordinance, of a right-of-way or utility easement containing a transmission pipeline:

(a) Notify the pipeline company of the permitted activity when it issues the permit;

or

(b) Require, as a condition of issuing the permit, that the applicant consult with the pipeline company.

(5) The commission must assist local governments in obtaining hazardous liquid and gas pipeline location information and maps, as provided in RCW 81.88.080.

[2011 c 263 § 6; 2000 c 191 § 18.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Intent—Findings—Conflict with federal requirements—Short title—
Effective date—2000 c 191: See RCW [81.88.005](#) and [81.88.900](#) through [81.88.902](#).

RCW 19.122.035

Pipeline company duties after notice of excavation—Examination—
Information of damage—Notification of local first responders.

(1) After a pipeline company has been notified by an excavator pursuant to RCW [19.122.033](#) that excavation will uncover any portion of the pipeline company's 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 commission, consistent with reporting requirements under 49 C.F.R. Parts 191 and 195, Subpart B.

(3) Pipeline companies shall immediately notify local first responders and the department of ecology 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.

[[2011 c 263 § 7](#); [2000 c 191 § 19](#).]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW [19.122.010](#).

Intent—Findings—Conflict with federal requirements—Short title—
Effective date—2000 c 191: See RCW [81.88.005](#) and [81.88.900](#) through [81.88.902](#).

RCW 19.122.040

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

(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 are deemed to be 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 must:

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

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

(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 is 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, that differs 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.

[2011 c 263 § 8; 1984 c 144 § 4.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

RCW 19.122.045

Exemption from liability.

Excavators who comply with the requirements of this chapter are not liable for any damages arising from contact or damage to an underground fiber optics facility other than the cost to repair the facility.

[1988 c 99 § 2.]

RCW 19.122.050

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

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

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

[2011 c 263 § 9; 1984 c 144 § 5.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Commented [DM2]: 2. When a damage occurs, notify 911 if deemed to be life threatening, and 811, and make a reasonable attempt to notify the owner of the buried facility. 19.122.050 (1)
—Marian Dacca

RCW 19.122.053

Report of damage to underground facility.

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

(2) A nonpipeline facility operator conducting an excavation, or a subcontractor conducting an excavation on the facility operator's behalf, that strikes the facility operator's own underground facility is not required to report that damage event to the commission.

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

(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 a facility operator;

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

(c) The address where the damage event occurred;

(d) The type of right-of-way, where the damage event occurred, including but not limited to city street, state highway, or utility 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 parts of poles or anchors below ground;

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

(g) The type of excavator involved, including but not limited to contractors or facility operators;

(h) The excavation equipment used, including but not limited to augers, bulldozers, backhoes, or hand tools;

(i) The type of excavation being performed, including but not limited to drainage, grading, or landscaping;

(j) Whether a one-number locator service was notified before excavation commenced, and, if so, the excavation confirmation code provided by a one-number locator service;

(k) If applicable:

(i) The person who located the underground facility, and their employer;

(ii) Whether underground facility marks were visible in the proposed excavation area before excavation commenced;

(iii) Whether underground facilities were marked correctly;

(l) Whether an excavator experienced interruption of work as a result of the damage event;

(m) A description of the damage; and

(n) Whether the damage caused an interruption of underground facility service.

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

[2011 c 263 § 20.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW [19.122.010](#).

RCW [19.122.055](#)

Failure to notify one-number locator service—Civil penalty, if damages.

(1)(a) Any excavator who fails to notify a one-number locator service and causes damage to a hazardous liquid or gas underground facility is subject to a civil penalty of not more than ten thousand dollars for each violation.

(b) The civil penalty in this subsection may also be imposed on any excavator who violates RCW [19.122.090](#).

(2) Any excavator who fails to notify a one-number locator service and causes damage to an underground facility other than a hazardous liquid or gas underground facility is subject to a civil penalty of not more than one thousand dollars for an initial

violation, and not more than five thousand dollars for each subsequent violation within a three-year period.

(3) All civil penalties recovered under this section must be deposited into the damage prevention account created in RCW 19.122.160.

[2011 c 263 § 10; 2005 c 448 § 3; 2001 c 238 § 5; 2000 c 191 § 24.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Intent—Finding—Effective date—2001 c 238: See notes following RCW 80.24.060.

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

RCW 19.122.070

Civil penalties—Treble damages—Existing remedies not affected.

(1) Any person who violates any provision of this chapter not amounting to a violation of RCW 19.122.055 is subject to a civil penalty of not more than one thousand dollars for an initial violation, and not more than five thousand dollars for each subsequent violation within a three-year period. All penalties recovered in such actions must be deposited in the damage prevention account created in RCW 19.122.160.

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

[2011 c 263 § 11; 2005 c 448 § 4; 1984 c 144 § 7.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Damages to facilities on state highways: RCW 47.44.150.

RCW 19.122.075

Damage or removal of permanent marking—Civil penalty.

Commented [DM3]: 3. Give the UTC authority to bring enforcement, without a complaint, against any party that damages any buried line while digging and did not notify CBYD first. 19.122.055 (2) and 19.122.150 (2)
-Marian Dacca

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 an initial violation, and not more than five thousand dollars for each subsequent violation within a three-year period.

[2011 c 263 § 14; 2000 c 191 § 23.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

RCW 19.122.080

Waiver of notification and marking requirements.

The notification and marking provisions of this chapter may be waived for one or more designated persons by a facility operator with respect to all or part of that facility operator's underground facilities.

[2011 c 263 § 15; 1984 c 144 § 8.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

RCW 19.122.090

Excavation without a valid excavation confirmation code—Penalty.

Any excavator who excavates, without a valid excavation confirmation code when required under this chapter, within thirty-five feet of a transmission pipeline is guilty of a misdemeanor.

[2005 c 448 § 5.]

RCW 19.122.100

Violation of RCW 19.122.090—Affirmative defense.

If charged with a violation of RCW 19.122.090, an equipment operator is 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.

[2011 c 263 § 16; 2005 c 448 § 6.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

RCW 19.122.110

False excavation confirmation code—Penalty.

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

[2011 c 263 § 17; 2005 c 448 § 7.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

RCW 19.122.120

One-number locator service to provide excavation confirmation code.

Upon receipt, during normal business hours, of notice of an intended excavation, the one-number locator service shall provide an excavation confirmation code.

[2005 c 448 § 8.]

RCW 19.122.130

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

(1) The commission must contract with a statewide, nonprofit entity whose purpose is to reduce damages to underground and above ground facilities, promote safe excavation practices, and review complaints of alleged violations of this chapter. The contract must not obligate funding by the commission for activities performed by the nonprofit entity or the safety committee under this section.

(2) The contracting entity must create a safety committee to:

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

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

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

- (i) Local governments;
- (ii) A natural gas utility subject to regulation under Titles 80 and 81 RCW;
- (iii) Contractors;
- (iv) Excavators;
- (v) An electric utility subject to regulation under Title 80 RCW;
- (vi) A consumer-owned utility, as defined in RCW 19.27A.140;
- (vii) A pipeline company;

~~(viii) The insurance industry; A water sewer district subject to regulation under Title 57 RCW;~~

- (ix) The commission; and
- (x) A telecommunications company.

(b) The safety committee may pass bylaws and provide for those organizational processes that are necessary to complete the safety committee's tasks.

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

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

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

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

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

[2017 c 20 § 1; 2012 c 96 § 1; 2011 c 263 § 18.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Commented [DM4]: 4. Change the make-up of the safety committee by dropping the insurance seat and adding a water/sewer rep. Total number still = 13. 19.122.130 (3)(h)
—Marian Dacca

Commented [DM5]: 5. Change Complaint Review panels as proposed. E.g. equal number of excavators and facility numbers and no mandate to have a pipeline and insurance rep on each panel. 19.122.130 (6) —Marian Dacca

RCW 19.122.140

Commission authority—Receipt of notification of violation of chapter—Referral to attorney general.

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

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

(3) In a matter referred to it by the commission pursuant to subsection (2) of this section, the attorney general may bring an action to enforce the penalties authorized in RCW 19.122.070 or 19.122.075. In such an action, the court may award the state all costs of investigation and trial, including a reasonable attorneys' fee fixed by the court. [2017 c 20 § 2; 2011 c 263 § 19.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

RCW 19.122.150

Commission authority—Violations of chapter—Imposition of penalties.

(1) The commission may investigate and enforce violations of RCW ~~19.122.055~~ 19.122.075, and 19.122.090 relating to pipeline facilities without initial referral to the safety committee created under RCW 19.122.130.

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

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

Commented [DM6]: 3. Give the UTC authority to bring enforcement, without a complaint, against any party that damages any buried line while digging and did not notify CBYD first. 19.122.055 (2) and 19.122.150 (2) –Marian Dacca

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

(5) In an action to impose a penalty initiated by the commission under subsection (1), (2) or (3) of this section, the penalty is due and payable when the person incurring the penalty receives a notice of penalty in writing from the commission describing the violation and advising the person that the penalty is due. The person incurring the penalty has fifteen days from the date the person receives the notice of penalty to file with the commission a request for mitigation or a request for a hearing. The commission must include this time limit information in the notice of penalty. After receiving a timely request for mitigation or hearing, the commission must suspend collection of the penalty until it issues a final order concerning the penalty or mitigation of that penalty. A person aggrieved by the commission's final order may seek judicial review, subject to provisions of the administrative procedure act, chapter 34.05 RCW.

(6) If a penalty imposed by the commission is not paid, the attorney general may, on the commission's behalf, file a civil action in superior court to collect the penalty. [2017 c 20 § 3; 2011 c 263 § 21.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

RCW 19.122.160

Damage prevention account.

The damage prevention account is created in the custody of the state treasurer. All receipts from moneys directed by law or the commission to be deposited to the account must be deposited in the account. Expenditures from the account may be used only for purposes designated in RCW 19.122.170. Only the commission or the commission's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW.

[2011 c 263 § 12.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

RCW 19.122.170

Damage prevention account—Use of funds.

The commission may use money deposited in the damage prevention account created in RCW 19.122.160 to:

(1) Develop and disseminate educational programming designed to improve worker and public safety relating to excavation and underground facilities; and

(2) Provide grants to persons who have developed educational programming that the commission and the safety committee created pursuant to RCW 19.122.130 deem appropriate for improving worker and public safety relating to excavation and underground facilities.

[2011 c 263 § 13.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

RCW 19.122.180

Damage prevention account—Deposit of penalties.

All penalties collected pursuant to RCW 19.122.150 must be deposited in the damage prevention account created in RCW 19.122.160.

[2011 c 263 § 22.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

RCW 19.122.901

Short title—2011 c 263.

This act may be known and cited as the underground utility damage prevention act.

[2011 c 263 § 25.]

NOTES:

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.