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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1634

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State of Washington

62nd Legislature

2011 Regular Session

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

READ FIRST TIME 02/24/11.

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 health and safety and to prevent the disruption of vital  
14 services by establishing a comprehensive damage prevention program for  
15 transfer pipelines, transmission pipelines, and underground facilities.  
16 Additionally, the legislature intends to establish authority to enforce  
17 the law, assign responsibilities for locating and keeping accurate  
18 records of underground facilities' locations, protect and repair damage

1 to existing underground facilities, and protect public health and  
2 safety from interruption in utility services caused by damage to  
3 existing underground utility 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. A person or entity is not considered  
19 a facility operator of an independently owned underground facility  
20 operated within the person's or entity's right-of-way or utility  
21 easement.

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

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

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

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

36 (30) "Unlocatable underground facility" means, subject to the  
37 provisions of RCW 19.122.030(5), an underground facility that cannot be  
38 field-marked with reasonable accuracy using best available information

1 to designate the location of underground facilities. "Unlocatable  
2 underground facility" includes, but is not limited to, sewer laterals,  
3 storm drains, and nonconductive and nonmetallic underground facilities  
4 that do not contain trace wires.

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

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

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

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

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

32 (a) The notice must be provided to the one-number locator service  
33 not less than two business days or more than ten business days before  
34 the scheduled date for commencement of excavation, unless otherwise  
35 agreed to by the parties.

1       (b) Prior to providing notice, the boundary of the area where the  
2 excavation will be performed must be indicated by the application of  
3 white paint on the ground at the excavation site, unless doing so is  
4 unfeasible, in which case the excavator must communicate directly with  
5 the affected facility operator or operators to ensure the area of  
6 excavation has been accurately identified.

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

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

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

1 facility—does—not—locate—its—facilities—in—accordance—with—this  
2 section.

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

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

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

15 (7) ~~If the excavator, while performing the contract, discovers~~  
16 ~~underground facilities which are not identified, the excavator shall~~  
17 ~~cease excavating in the vicinity of the facility and immediately notify~~  
18 ~~the owner or operator of such facilities, or the one number locator~~  
19 ~~service.)) Upon receipt of the notice provided for in this section, the~~  
20 ~~facility operator shall provide the excavator with reasonably accurate~~  
21 ~~information as to its locatable underground facilities by marking the~~  
22 ~~location of the facilities. If there are identified but unlocatable~~  
23 ~~underground facilities, the facility operator responsible for the~~  
24 ~~facilities must provide the excavator with the best available~~  
25 ~~information as to the location of the underground facilities. The~~  
26 ~~facility operator providing the information must respond no later than~~  
27 ~~two business days after the receipt of the notice or before the~~  
28 ~~excavation time, at the option of the facility operator, unless~~  
29 ~~otherwise agreed by the parties. Excavators shall not excavate until~~  
30 ~~all known facilities have been marked. Once marked by the facility~~  
31 ~~operator, the excavator is responsible for maintaining the accuracy of~~  
32 ~~the original markings for the lesser of forty-five calendar days from~~  
33 ~~the date notice was provided to the one-number locator service or the~~  
34 ~~life of the project. Markings expire forty-five calendar days from the~~  
35 ~~date notice was provided to the one-number locator service. For~~  
36 ~~excavation occurring more than forty-five calendar days from the date~~  
37 ~~notice was provided to the one-number locator service, a second notice~~  
38 ~~must be provided in accordance with the provisions of subsection (1) of~~

1 this section. Excavators that make repeated calls for relocates  
2 because of their failure to maintain the marks may be charged for  
3 services provided. Excavators are entitled to recover compensation  
4 from the facility operator for costs incurred if the facility operator  
5 does not locate its facilities in accordance with this section.

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

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

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

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

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

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

35 (7) If the excavator discovers underground facilities that are not  
36 identified in plans or contract documents, the excavator shall cease  
37 excavating in the vicinity of the facility and immediately notify the  
38 facility operator or the one-number locator service. If the excavator

1 uncovers identified but unlocatable underground facilities, the  
2 excavator shall notify the facility operator and the facility operator  
3 must take action under subsection (8) of this section.

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

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

13 (1) Before commencing any excavation, excluding agricultural  
14 tilling less than twelve inches in depth, an excavator shall notify  
15 pipeline companies of the scheduled commencement of excavation through  
16 a one-number locator service in the same manner as is required for  
17 notifying owners of underground facilities of excavation work under RCW  
18 19.122.030. Pipeline companies shall have the same rights and  
19 responsibilities as owners of underground facilities under RCW  
20 19.122.030 regarding excavation work. Excavators have the same rights  
21 and responsibilities under this section as they have under RCW  
22 19.122.030.

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

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

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

34 (b) Require consultation between the person proposing the  
35 construction activity and the transmission pipeline company as a  
36 condition of receiving the permit.

1       **Sec. 6.** RCW 19.122.035 and 2000 c 191 s 19 are each amended to  
2 read as follows:

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

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

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

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

36       **Sec. 7.** RCW 19.122.040 and 1984 c 144 s 4 are each amended to read  
37 as follows:

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

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

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

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

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

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

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

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

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

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

34 (1) An excavator who, in the course of excavation, contacts or  
35 damages an underground facility shall notify the ~~((utility owning or~~  
36 ~~operating such))~~ facility operator and the one-number locator service,  
37 and report the damage as required under section 18 of this act. If the

1 damage causes an emergency condition, the excavator causing the damage  
2 shall also alert the appropriate local public safety agencies and take  
3 all appropriate steps to ensure the public safety. No damaged  
4 underground facility may be buried until it is repaired or relocated.

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

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

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

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

32 (3) This chapter does not affect any civil remedies for personal  
33 injury or for property damage, including that to underground  
34 facilities, nor does this chapter create any new civil remedies for  
35 such damage.

1        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 19.122  
2    RCW to read as follows:

3        The damage prevention account is created in the custody of the  
4    state treasurer. All receipts from those moneys directed by law or  
5    directed by the utilities and transportation commission to be deposited  
6    to the account must be deposited in the account. Expenditures from the  
7    account may be used only for the purposes designated in section 11 of  
8    this act. Only the utilities and transportation commission or the  
9    commission's designee may authorize expenditures from the account. The  
10   account is subject to allotment procedures under chapter 43.88 RCW, but  
11   an appropriation is not required for expenditures.

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

14       The utilities and transportation commission is authorized to use  
15    money deposited in the damage prevention account created in section 10  
16    of this act for the following purposes:

17       (1) To develop and disseminate educational programming designed to  
18    improve worker and public safety as it relates to excavation and  
19    underground facilities; and

20       (2) To provide grants to persons who have developed educational  
21    programming that the utilities and transportation commission and the  
22    safety committee created in section 16 of this act deem to be  
23    appropriate for the purpose of improving worker and public safety as it  
24    relates to excavation and underground facilities.

25       **Sec. 12.**    RCW 19.122.075 and 2000 c 191 s 23 are each amended to  
26    read as follows:

27       Any person who willfully damages or removes a permanent marking  
28    used to identify an underground facility or pipeline, or a temporary  
29    marking prior to its intended use, is subject to a civil penalty of not  
30    more than one thousand dollars for ~~((each act))~~ an initial violation,  
31    and not more than five thousand dollars for each subsequent violation  
32    within a three-year period.

33       **Sec. 13.**    RCW 19.122.080 and 1984 c 144 s 8 are each amended to  
34    read as follows:

35       The notification and marking provisions of this chapter may be

1 waived for one or more designated persons by an underground facility  
2 ((owner)) operator with respect to all or part of that ((underground))  
3 facility ((owner's)) operator's own underground facilities.

4 **Sec. 14.** RCW 19.122.100 and 2005 c 448 s 6 are each amended to  
5 read as follows:

6 If charged with a violation of RCW 19.122.090, an equipment  
7 operator will be deemed to have established an affirmative defense to  
8 such charges if:

9 (1) The equipment operator was provided a valid excavation  
10 confirmation code;

11 (2) The excavation was performed in an emergency situation;

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

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

15 **Sec. 15.** RCW 19.122.110 and 2005 c 448 s 7 are each amended to  
16 read as follows:

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

19 NEW SECTION. **Sec. 16.** A new section is added to chapter 19.122  
20 RCW to read as follows:

21 (1) For the purposes of establishing a dispute resolution service  
22 under this chapter, the commission shall contract with a statewide,  
23 nonprofit entity whose purpose is to reduce damages to underground  
24 facilities as well as above ground facilities through cooperation,  
25 coordination, and by promoting safe excavation practices.

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

27 (a) Advise the commission and other state agencies, the  
28 legislature, and local government agencies and officials on:

29 (i) Matters relating to best practices and training to prevent  
30 damage to underground utilities; and

31 (ii) Policies to enhance worker and public safety and protection of  
32 underground facilities; and

33 (b) Resolve disputes involving practices related to underground  
34 facilities and possible violations of this chapter.

1 (3) The safety committee of the contracting entity consists of  
2 thirteen members appointed in consultation with the commission to  
3 staggered three-year terms and must consist of representatives of:

4 (a) Local governments;

5 (b) Owners and operators of hazardous liquid and gas pipelines;

6 (c) Contractors;

7 (d) Excavators;

8 (e) An investor-owned electric utility subject to regulation under  
9 Title 80 RCW;

10 (f) A consumer-owned utility;

11 (g) A pipeline transportation company;

12 (h) The commission; and

13 (i) A telecommunications company.

14 (4) The safety committee may mediate disagreements among parties  
15 involving practices related to underground facilities and possible  
16 violations of this chapter.

17 (5) For the purposes of mediation, the safety committee shall  
18 appoint at least three and no more than five members as mediators. The  
19 mediators shall represent a balance of excavators, facility operators,  
20 and the insurance industry, and must include at least one  
21 representative of a pipeline company or natural gas distribution  
22 company.

23 (6) The safety committee shall meet at least once every three  
24 months.

25 (7) All members of the safety committee may participate fully in  
26 the committee's meetings, activities, and deliberations and must  
27 receive all notices and information related to committee business and  
28 decisions in a timely manner.

29 (8) Any party may bring a complaint to the safety committee  
30 regarding a violation of this chapter.

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

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

34 The commission may enforce the civil penalties authorized in RCW  
35 19.122.070 when a document is filed with the commission by the safety  
36 committee created in section 16 of this act indicating that a violation  
37 of this chapter has likely occurred.

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

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

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

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

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

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

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

21        (c) The address where the damage occurred;

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

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

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

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

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

37        (i) The type of work being performed, including but not limited to:  
38    Drainage, grading, or landscaping;

1 (j) Whether a one-number locator service was notified before  
2 excavation commenced and the one-number locator service ticket number  
3 issued for the excavation, if a one-number locator service was  
4 notified;

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

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

10 (m) Whether underground facilities were marked correctly;

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

13 (o) A description of the damage; and

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

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

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

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

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

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

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

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

1 All penalties collected under section 19 of this act must be  
2 deposited into the damage prevention account created under section 10  
3 of this act.

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

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