

2SHB 1634 - H AMD 320

By Representative Takko

WITHDRAWN 03/04/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 19.122.010 and 1984 c 144 s 1 are each amended to
4 read as follows:

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

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

20 (~~Unless the context clearly requires otherwise,~~) The definitions
21 in this section apply throughout this chapter(+) unless the context
22 clearly requires otherwise.

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

25 (2) "Damage" includes the substantial weakening of structural or
26 lateral support of an underground facility, penetration, impairment, or
27 destruction of any underground protective coating, housing, or other
28 protective device, or the severance, partial or complete, of any

1 underground facility to the extent that the project owner or the
2 affected utility owner determines that repairs are required.

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

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

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

14 (b) Road maintenance that does not involve excavation below the
15 original road grade and ditch maintenance that does not involve
16 excavation below the original ditch flowline or alter the original
17 ditch horizontal alignment. Road maintenance activities are still
18 required to notify a facility operator under RCW 19.122.050;

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

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

22 (5) "Excavation confirmation code" means a code or ticket issued by
23 the one-number locator service for the site where an excavation is
24 planned. The code must be accompanied by the date and time it was
25 issued.

26 (6) "Excavator" means any person who engages directly in
27 excavation.

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

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

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

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

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

6 (12) "Marking" means the use of stakes, paint, or other clearly
7 identifiable materials to show the field location of underground
8 facilities, in accordance with the current color code standard of the
9 American public works association. Markings shall include
10 identification letters indicating the specific type of the underground
11 facility.

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

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

18 ~~((15) ("Operator" means the individual conducting the excavation.~~
19 ~~(16)))~~ "Person" means an individual, partnership, franchise holder,
20 association, corporation, a state, a city, a county, or any subdivision
21 or instrumentality of a state, and its employees, agents, or legal
22 representatives.

23 ~~((17)))~~ (16) "Pipeline" or "pipeline system" means all or parts of
24 a pipeline facility through which hazardous liquid or gas moves in
25 transportation, including, but not limited to, line pipe, valves, and
26 other appurtenances connected to line pipe, pumping units, fabricated
27 assemblies associated with pumping or compressor units, metering and
28 delivery stations and fabricated assemblies therein, and breakout
29 tanks. "Pipeline" or "pipeline system" does not include process or
30 transfer pipelines.

31 ~~((18)))~~ (17) "Pipeline company" means a person or entity
32 constructing, owning, or operating a pipeline for transporting
33 hazardous liquid or gas. A pipeline company does not include: (a)
34 Distribution systems owned and operated under franchise for the sale,
35 delivery, or distribution of natural gas at retail; or (b) excavation
36 contractors or other contractors that contract with a pipeline company.

37 ~~((19)))~~ (18) "Reasonable accuracy" means location within twenty-

1 four inches of the outside dimensions of both sides of an underground
2 facility.

3 ~~((+20))~~ (19) "Transfer pipeline" means a buried or aboveground
4 pipeline used to carry hazardous liquid between a tank vessel or
5 transmission pipeline and the first valve inside secondary containment
6 at the facility provided that any discharge on the facility side of
7 that first valve will not directly impact waters of the state. A
8 transfer pipeline includes valves, and other appurtenances connected to
9 the pipeline, pumping units, and fabricated assemblies associated with
10 pumping units. A transfer pipeline does not include process pipelines,
11 pipelines carrying ballast or bilge water, transmission pipelines, or
12 tank vessel or storage tanks.

13 ~~((+21))~~ (20) "Transmission pipeline" means a pipeline that
14 transports hazardous liquid or gas within a storage field, or
15 transports hazardous liquid or gas from an interstate pipeline or
16 storage facility to a distribution main or a large volume hazardous
17 liquid or gas user, or operates at a hoop stress of twenty percent or
18 more of the specified minimum yield strength.

19 ~~((+22))~~ (21) "Underground facility" means any item buried or
20 placed below ground for use in connection with the storage or
21 conveyance of water, sewage, electronic, telephonic or telegraphic
22 communications, cablevision, electric energy, petroleum products, gas,
23 gaseous vapors, hazardous liquids, or other substances and including
24 but not limited to pipes, sewers, conduits, cables, valves, lines,
25 wires, manholes, attachments, and those parts of poles or anchors below
26 ground. This definition does not include pipelines as defined in
27 subsection ~~((+17))~~ (16) of this section, but does include distribution
28 systems owned and operated under franchise for the sale, delivery, or
29 distribution of natural gas at retail.

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

33 (23) "End user" means any utility customer, including any public,
34 commercial, or private consumer of facility operator underground
35 facilities.

36 (24) "Equipment operator" means the individual conducting the
37 excavation.

1 (25) "Facility operator" means any person with control over
2 underground facilities. "Facility operator" includes any person having
3 the legal right to place underground facilities in a public right-of-
4 way or in any utility easement. A person or entity is not considered
5 a facility operator of an independently owned underground facility
6 operated within the person's or entity's right-of-way or utility
7 easement.

8 (26) "Large project" means a project that exceeds seven hundred
9 linear feet.

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

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

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

22 (30) "Unlocatable underground facility" means, subject to the
23 provisions of RCW 19.122.030(5), an underground facility that cannot be
24 field-marked with reasonable accuracy using best available information
25 to designate the location of underground facilities. "Unlocatable
26 underground facility" includes, but is not limited to, sewer laterals,
27 storm drains, and nonconductive and nonmetallic underground facilities
28 that do not contain trace wires.

29 (31) "Commission" means the utilities and transportation
30 commission.

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

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

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

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

8 (3) One-number locator services shall be operated by
9 nongovernmental agencies.

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

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

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

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

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

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

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

35 ~~(2) ((All owners of underground facilities within a one-number~~
36 ~~locator service area shall subscribe to the service. One-number~~
37 ~~locator service rates for cable television companies will be based on~~

1 the amount of their underground facilities. If no one-number locator
2 service is available, notice shall be provided individually to those
3 owners of underground facilities known to or suspected of having
4 underground facilities within the area of proposed excavation. The
5 notice shall be communicated to the owners of underground facilities
6 not less than two business days or more than ten business days before
7 the scheduled date for commencement of excavation, unless otherwise
8 agreed by the parties.

9 (3) Upon receipt of the notice provided for in this section, the
10 owner of the underground facility shall provide the excavator with
11 reasonably accurate information as to its locatable underground
12 facilities by surface marking the location of the facilities. If there
13 are identified but unlocatable underground facilities, the owner of
14 such facilities shall provide the excavator with the best available
15 information as to their locations. The owner of the underground
16 facility providing the information shall respond no later than two
17 business days after the receipt of the notice or before the excavation
18 time, at the option of the owner, unless otherwise agreed by the
19 parties. Excavators shall not excavate until all known facilities have
20 been marked. Once marked by the owner of the underground facility, the
21 excavator is responsible for maintaining the markings. Excavators
22 shall have the right to receive compensation from the owner of the
23 underground facility for costs incurred if the owner of the underground
24 facility does not locate its facilities in accordance with this
25 section.

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

30 (5) An owner of underground facilities is not required to indicate
31 the presence of existing service laterals or appurtenances if the
32 presence of existing service laterals or appurtenances on the site of
33 the construction project can be determined from the presence of other
34 visible facilities, such as buildings, manholes, or meter and junction
35 boxes on or adjacent to the construction site.

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

1 ~~(7) If the excavator, while performing the contract, discovers~~
2 ~~underground facilities which are not identified, the excavator shall~~
3 ~~cease excavating in the vicinity of the facility and immediately notify~~
4 ~~the owner or operator of such facilities, or the one-number locator~~
5 ~~service.)) Upon receipt of the notice provided for in this section, the~~
6 ~~facility operator shall provide the excavator with reasonably accurate~~
7 ~~information as to its locatable underground facilities by marking the~~
8 ~~location of the facilities. If there are identified but unlocatable~~
9 ~~underground facilities, the facility operator responsible for the~~
10 ~~facilities must provide the excavator with the best available~~
11 ~~information as to the location of the underground facilities. The~~
12 ~~facility operator providing the information must respond no later than~~
13 ~~two business days after the receipt of the notice or before the~~
14 ~~excavation time, at the option of the facility operator, unless~~
15 ~~otherwise agreed by the parties. Excavators shall not excavate until~~
16 ~~all known facilities have been marked. Once marked by the facility~~
17 ~~operator, the excavator is responsible for maintaining the accuracy of~~
18 ~~the original markings for the lesser of forty-five calendar days from~~
19 ~~the date notice was provided to the one-number locator service or the~~
20 ~~life of the project. Markings expire forty-five calendar days from the~~
21 ~~date notice was provided to the one-number locator service. For~~
22 ~~excavation occurring more than forty-five calendar days from the date~~
23 ~~notice was provided to the one-number locator service, a second notice~~
24 ~~must be provided in accordance with the provisions of subsection (1) of~~
25 ~~this section. Excavators that make repeated calls for relocates~~
26 ~~because of their failure to maintain the marks may be charged for~~
27 ~~services provided. Excavators are entitled to recover compensation~~
28 ~~from the facility operator for costs incurred if the facility operator~~
29 ~~does not locate its facilities in accordance with this section.~~

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

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

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

1 (b) If a service, water, or sewer lateral is unlocatable, marking
2 within the proposed excavation area that there is an unlocatable
3 service, water, or sewer lateral.

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

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

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

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

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

1 (1) Before commencing any excavation, excluding agricultural
2 tilling less than twelve inches in depth, an excavator shall notify
3 pipeline companies of the scheduled commencement of excavation through
4 a one-number locator service in the same manner as is required for
5 notifying owners of underground facilities of excavation work under RCW
6 19.122.030. Pipeline companies shall have the same rights and
7 responsibilities as owners of underground facilities under RCW
8 19.122.030 regarding excavation work. Excavators have the same rights
9 and responsibilities under this section as they have under RCW
10 19.122.030.

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

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

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

22 (b) Require consultation between the person proposing the
23 construction activity and the transmission pipeline company as a
24 condition of receiving the permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (1) An excavator who, in the course of excavation, contacts or
23 damages an underground facility shall notify the ~~((utility owning or~~
24 ~~operating such))~~ facility operator and the one-number locator service,
25 and report the damage as required under section 18 of this act. If the
26 damage causes an emergency condition, the excavator causing the damage
27 shall also alert the appropriate local public safety agencies and take
28 all appropriate steps to ensure the public safety. No damaged
29 underground facility may be buried until it is repaired or relocated.

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

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

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

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

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

25 NEW SECTION. Sec. 10. A new section is added to chapter 19.122
26 RCW to read as follows:

27 The damage prevention account is created in the custody of the
28 state treasurer. All receipts from those moneys directed by law or
29 directed by the utilities and transportation commission to be deposited
30 to the account must be deposited in the account. Expenditures from the
31 account may be used only for the purposes designated in section 11 of
32 this act. Only the utilities and transportation commission or the
33 commission's designee may authorize expenditures from the account. The
34 account is subject to allotment procedures under chapter 43.88 RCW, but
35 an appropriation is not required for expenditures.

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

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

6 (1) To develop and disseminate educational programming designed to
7 improve worker and public safety as it relates to excavation and
8 underground facilities; and

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

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

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

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

24 The notification and marking provisions of this chapter may be
25 waived for one or more designated persons by an underground facility
26 ~~((owner))~~ operator with respect to all or part of that ~~((underground))~~
27 facility ~~((owner's))~~ operator's own underground facilities.

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

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

33 (1) The equipment operator was provided a valid excavation
34 confirmation code;

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

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

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

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

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

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

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

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

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

18 (i) Matters relating to best practices and training to prevent
19 damage to underground utilities; and

20 (ii) Policies to enhance worker and public safety and protection of
21 underground facilities; and

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

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

27 (a) Local governments;

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

29 (c) Contractors;

30 (d) Excavators;

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

33 (f) A consumer-owned utility;

34 (g) A pipeline transportation company;

35 (h) The commission; and

36 (i) A telecommunications company.

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

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

10 (6) The safety committee shall meet at least once every three
11 months.

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

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

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

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

21 The commission may enforce the civil penalties authorized in RCW
22 19.122.070 when a document is filed with the commission by the safety
23 committee created in section 16 of this act indicating that a violation
24 of this chapter has likely occurred.

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

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

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

33 (b) A nonpipeline facility operator, when it operates as an
34 excavator and hits its own facilities, is not required to report that
35 damage event.

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

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

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

10 (c) The address where the damage occurred;

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

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

17 (f) The type of materials the underground facility stores or
18 conveys, including but not limited to: Water, sewage, electronic,
19 telephonic or telegraphic communications, cablevision, electric energy,
20 petroleum products, gas, gaseous vapors, hazardous liquids, or other
21 substances;

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

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

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

28 (j) Whether a one-number locator service was notified before
29 excavation commenced and the one-number locator service ticket number
30 issued for the excavation, if a one-number locator service was
31 notified;

32 (k) Who performed the locate of the underground facility and the
33 company, locate service, or utility for whom the person performing the
34 locate is employed;

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

37 (m) Whether underground facilities were marked correctly;

- 1 (n) Whether an excavator experienced downtime as a result of the
- 2 damage;
- 3 (o) A description of the damage; and
- 4 (p) Whether the damage caused an interruption of service.
- 5 (4) The commission must use reported data to evaluate the
- 6 effectiveness of the damage prevention program.

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

9 (1) After notice and an opportunity for a hearing, the utilities
10 and transportation commission may impose the penalties authorized by
11 RCW 19.122.055 and 19.122.070 on persons who violate this chapter with
12 respect to underground facilities of persons within its jurisdiction.
13 Before imposing a penalty authorized by RCW 19.122.070, the utilities
14 and transportation commission must seek and consider the recommendation
15 of the safety committee created in section 16 of this act.

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

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

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

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

26 All penalties collected under section 19 of this act must be
27 deposited into the damage prevention account created under section 10
28 of this act.

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

30 Correct the title.

EFFECT: Removes the provision that permits owners of underground

water facilities to not indicate the presence of existing service laterals or appurtenances, if the presence of these laterals and appurtenances can be determined from the presence of visible facilities. Requires a facility operator or sewer system owner or operator to mark within a proposed excavation area that there is an unlocatable service, water, or sewer lateral, if these laterals are unlocatable. Specifies that only facility operators and excavators who observe or cause damage to an underground facility to report the event to the utilities and transportation commission, omitting other individuals and organizations. Specifies that the utilities and transportation commission may enforce civil penalties relating to violations of the underground utilities statute when a document is filed with the utilities and transportation commission by the safety committee indicating that a violation has likely occurred. Specifies the information that must be provided if an excavator or a facility operator reports damage to an underground facility using a form and not the utilities and transportation commission's damage information reporting tool.

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