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HOUSE BILL 2661

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State of Washington

55th Legislature

1998 Regular Session

By Representatives DeBolt, Poulsen and Crouse; by request of Utilities & Transportation Commission

Read first time 01/16/98. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to excavation damage prevention and public safety;  
2 amending RCW 19.122.010, 19.122.020, and 19.122.070; and prescribing  
3 penalties.

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

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

7 It is the intent of the legislature in enacting this chapter to  
8 assign responsibilities for locating and keeping accurate records of  
9 underground facilities and utility locations, protecting and repairing  
10 damage to existing underground facilities, and protecting the public  
11 health and safety from interruption in ((utility)) services caused by  
12 damage to existing underground ((utility)) facilities.

13 **Sec. 2.** RCW 19.122.020 and 1984 c 144 s 2 are each amended to read  
14 as follows:

15 Unless the context clearly requires otherwise, the definitions in  
16 this section apply throughout this chapter:

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

1 (2) "Damage" includes the substantial weakening of structural or  
2 lateral support of an underground facility, penetration, impairment, or  
3 destruction of any underground protective coating, housing, or other  
4 protective device, or the severance, partial or complete, of any  
5 underground facility to the extent that the project owner or the  
6 affected underground facility or utility owner determines that repairs  
7 are required.

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

10 (4) "Excavation" means any operation in which earth, rock, or other  
11 material on or below the ground is moved or otherwise displaced by any  
12 means, except the tilling of soil less than twelve inches in depth for  
13 agricultural purposes, or road and ditch maintenance that does not  
14 change the original road grade or ditch flowline.

15 (5) "Excavator" means any person who engages directly in  
16 excavation.

17 (6) "Identified facility" means any underground facility which is  
18 indicated in the project plans as being located within the area of  
19 proposed excavation.

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

23 (8) "Locatable underground facility" means an underground facility  
24 which can be field-marked with reasonable accuracy.

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

31 (10) "Person" means an individual, partnership, franchise holder,  
32 association, corporation, a state, a city, a county, or any subdivision  
33 or instrumentality of a state, and its employees, agents, or legal  
34 representatives.

35 (11) "Reasonable accuracy" means location within twenty-four inches  
36 of the outside dimensions of both sides of an underground facility.

37 (12) "Reasonable care" means, but is not limited to, excavation in  
38 such a way that anytime the excavation is within twenty-four inches  
39 from an underground facility, the precise location of the facility is

1 first determined by either hand digging, vacuum, or other  
2 nondestructive means of excavation to precisely locate the underground  
3 facility.

4 (13) "Underground facility" means any item buried or placed below  
5 ground for use in connection with the storage or conveyance of water,  
6 sewage, electronic, telephonic or telegraphic communications,  
7 cablevision, electric energy, petroleum products, gas, gaseous vapors,  
8 hazardous liquids, or other substances and including but not limited to  
9 pipes, sewers, conduits, cables, valves, lines, wires, manholes,  
10 attachments, and those parts of poles or anchors below ground.

11 ((13)) (14) "One-number locator service" means a service through  
12 which a person can notify underground facility owners and utilities and  
13 request field-marking of underground facilities.

14 **Sec. 3.** RCW 19.122.070 and 1984 c 144 s 7 are each amended to read  
15 as follows:

16 (1) ((Any)) A person who violates ((any)) a provision of this  
17 chapter(~~(, and which violation results in damage to underground~~  
18 ~~facilities,)) is subject to a civil penalty of not more than ((one))  
19 twenty-five thousand dollars for each violation. In the case of a  
20 continuing violation, every day in violation of this chapter is deemed  
21 to be a separate and distinct offense with a maximum civil penalty of  
22 five hundred thousand dollars for any related series of violations.  
23 The civil penalty may be compromised by the Washington utilities and  
24 transportation commission commensurate with the seriousness of the  
25 violation committed by a facility owner or excavator. Consideration  
26 will be given to reducing or waiving penalties for a first time offense  
27 for a violation that results in little or no damage, provided that the  
28 violation will be promptly corrected. All penalties recovered in such  
29 actions shall be deposited in the general fund.~~

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

37 (3) This chapter does not affect any civil remedies for personal  
38 injury or for property damage, including that to underground

1 facilities, nor does this chapter create any new civil remedies for  
2 such damage.

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