
**Technology, Energy & Communications
Committee**

HB 1634

Brief Description: Regarding underground utilities.

Sponsors: Representatives Takko, Angel, Morris and Armstrong.

Brief Summary of Bill

- Requires all underground facility operators to subscribe to a one-number locator service.
- Requires that every event where damage occurs to an underground facility be reported to Utilities and Transportation Commission's Damage Information Reporting Tool (DIRT).
- Establishes the Underground Damage Prevention Authority.
- Establishes the Damage Prevention Account.
- Creates state and local governments notification requirements when permitting structures intended for human occupation are within 100 feet of a transmission pipeline right-of-way.
- Establishes underground facilities locating processes for sewer laterals and service laterals.

Hearing Date: 2/8/11

Staff: Scott Richards (786-7156).

Background:

Under current law, a single statewide telephone number exists for referring excavators to the appropriate one-number locator service. A one-number locator service is operated by

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nongovernmental entities and is a means by which a person can notify utilities of excavation and request field marking of underground facilities.

An 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 below ground. An underground facility also includes gas or hazardous liquid pipelines, as well as distribution systems owned and operated for the sale, delivery, or distribution of natural gas at retail.

In general, a one-number locator service receives requests for the location of buried utility facilities and relays those requests to member utilities and governmental agencies.

All owners of underground facilities within a one-number locator service area are required to subscribe to one-number locator service. If no one-number locator service is available, notice of a proposed excavation must be provided to the owners of underground facilities known to or suspected of having underground facilities within the area of proposed excavation. The notice must be communicated to the owners of underground facilities not less than two business days or more than 10 business days before the scheduled date for commencement of excavation, unless otherwise agreed by the parties.

Before conducting any excavation, excluding agricultural tilling less than 12 inches in depth, a person must notify pipeline companies of the scheduled excavation through the one-number locator service. Notification must occur in a window of not less than two business days but not more than 10 business days before beginning the excavation. If a transmission pipeline company is notified that excavation work will occur near a pipeline, a representative of the company must consult with the excavator on-site prior to excavation.

A civil penalty of not more than \$1,000 for each violation applies when a person fails to notify the one-number locator service and causes damage to underground facilities. Some civil penalties collected are deposited into the state's General Fund and other penalties are paid into the Pipeline Safety Account. Any excavator who willfully or maliciously damages a field-marked underground facility is liable for treble the costs incurred in repairing or relocating the facility. Any excavator who fails to notify the one-number locator service and causes damage to a hazardous liquid or gas pipeline is subject to a civil penalty of not more than \$10,000 for each violation. Any excavator who excavates, without a valid excavation confirmation code, within 35 feet of a transmission pipeline is guilty of a misdemeanor.

Utilities and Transportation Commission.

The Utilities and Transportation Commission (UTC) regulates utilities and transportation services in the state to ensure fair pricing, availability, reliability, and safety. The UTC currently regulates intrastate pipelines, while the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) regulates interstate pipelines. Since 2003, the UTC has been the lead inspector of all interstate pipelines in the state, certified by PHMSA to make inspections based on federal regulations.

Washington Utilities Coordinating Council.

The Washington Utilities Coordinating Council is a statewide organization of utilities, governmental agencies, contractors, excavators, and other interested organizations and individuals established to promote cooperation in order to reduce damages to subsurface structures as well as above ground facilities, and achieve the orderly planning and installation of underground facilities.

Summary of Bill:

Failure to Subscribe to One-number Locator Service.

All underground facility operators are required to subscribe to a one-number locator service. Failure by a facility operator to subscribe to the one-number locator service constitutes willful intent to avoid compliance with underground facilities damage prevention laws of the state. Any underground facility operator who does not subscribe to a one-number locator service is subject to civil penalties.

Reporting Damage to Underground Facilities.

All facility operators, excavators, or other individuals and organizations are required to report to the Utilities and Transportation Commission's (UTC's) Office of Pipeline Safety every event where an underground facility has been damaged. Reports must be made within 45 days of the event. All damage reports must be submitted using the UTC's web-based Damage Information Reporting Tool (DIRT) report form or other similar form if the form contains the same information as the UTC's DIRT form. Failure to report a known event, regardless of the level of damage sustained by the underground facility, is considered a violation and is subject to citation and penalty.

Marking of Excavation Boundaries.

Before providing notice to the one-number locator service, the excavator must mark the boundary of the area in white paint on the ground where the excavation will be performed at the excavation site. If it is unfeasible or impractical to mark the boundary in white paint, the excavator is required to communicate directly with the affected facility operator or operators to ensure the area of excavation has been accurately identified.

Maintenance of Underground Facility Markings.

Once underground facilities have been marked by the facility operator, the excavator is responsible for maintaining the accuracy of the original markings for 45 calendar days from the date notice was provided to the one-number locator service or the life of the project. Underground facility markings expire 45 calendar days from the date notice was provided to the one-number locator service. For excavation occurring more than 45 calendar days from the date notice was provided to the one-number locator service, a second notice must be provided to the one-number locator service. Excavators that make repeated calls to relocate the underground facilities because of their failure to maintain the marks may be charged for additional marking services.

Underground Damage Prevention Authority.

The Underground Damage Prevention Authority (Authority) is created as a private, nonprofit corporation. The Authority is directed to form an enforcement committee with the responsibility of hearing complaints for violations; and after a hearing, issuing a finding of facts and

conclusions regarding the alleged violation. The enforcement committee may recommend appropriate corrective actions, including but not limited to the assessment of civil penalties and education of personnel. In hearings before the enforcement committee for an alleged violations: (1) all testimony must be given under oath; and (2) the proceedings must be recorded. The Authority must issue the findings of the enforcement committee in writing, stating the reason for its decision.

If the Authority issues a finding that a violation has occurred and the complainant or the defendant is subject to regulation by the UTC, then the UTC may rely upon the finding of the Authority as prima facie evidence of a violation and assess any civil penalties for the violation, consistent with the UTC's own procedures and appeals process. If the Authority issues a finding that a violation has occurred and neither party to the complaint is subject to regulation by the UTC, then the finding is forwarded to the Office of the Attorney General. The Office of the Attorney General may rely upon the finding of the Authority as prima facie evidence of a violation and may pursue any appropriate remedies, consistent with the Office of the Attorney General's own procedures and appeals process.

The Governor is responsible for the initial selection of organizations to serve as members of the Authority. Members of the Authority serve on a voluntary basis without compensation for time, travel, or other expenses related to the duties of the Authority. The term of a member is for four years and members are eligible for reappointment. The Governor is responsible for the initial selection of organizations to serve as members of the Authority. In appointing the initial members of the Authority, the Governor must select organizations that are most representative of each of the following:

- cities with a population of 25,000 or more;
- cities with a population under 25,000;
- counties;
- natural gas utilities regulated by the UTC;
- electric utilities regulated by the UTC;
- water districts, special districts, sanitary districts, or water and sanitary authorities;
- telecommunications utilities regulated by the UTC serving fewer than 50,000 access lines;
- telecommunications utilities regulated by the UTC serving 50,000 access lines or more;
- telecommunications cooperatives;
- electric cooperatives;
- public utility districts;
- contractors;
- excavators;
- railroads;
- cable system operators;
- municipal electric utilities;
- public member;
- communication mainline carriers (interstate fiber optic companies);
- utility locators;
- Washington Utility Coordinating Council;
- professional surveyors; and
- hazardous liquid pipeline operators regulated by the UTC.

Additionally, the Governor must appoint one employee of the UTC and one employee of the Department of Transportation to serve on the Authority.

After appointment of the initial Authority by the Governor, the Authority may select, according to its bylaws, organizations that are most representative of the various groups identified. The Authority must select one of its members as chair and another as vice-chair. The Authority must adopt bylaws for the conduct of its business.

The Authority is authorized to function until December 31, 2020.

Damage Prevention Account.

The Damage Prevention Account (Account) is created in the custody of the state treasurer. All receipts from those moneys directed by law or directed by the UTC must be deposited in the Account. Only the UTC or its designee may authorize expenditures from the account. Expenditures from the Account may be used only for the following purposes: (1) to develop and disseminate educational programming designed to improve worker and public safety as it relates to excavation and underground facilities; and (2) to provide grants to persons who have developed educational programming that the UTC and the Authority deem to be appropriate for the purpose of improving worker and public safety as it relates to excavation and underground facilities.

Service and Sewer Laterals.

Facility operators, sewer system owners, or operators are required to provide the best available information regarding the location of the service or sewer laterals to the excavator. Facility operators, sewer system owners or operators that seek to comply in good faith in response to a locate request, constitutes full compliance and they may not be found liable to any party for damages or injuries.

Facility operators, sewer system owners or operators must indicate the presence of service or sewer laterals only to the extent that they exist within a right-of-way or easement. This assistance does not constitute ownership or operation of service laterals or sewer laterals by the facility operator or sewer system owner or operator. Service or sewer laterals existing on private property are the responsibility of the property owner. Property owners are not required to subscribe to the one-number locator service or to locate service laterals within a right-of-way or easement.

Information relating to the location of service laterals or sewer laterals must be provided by the sewer system owners or operators to the excavator in any one of the following methods:

- The sewer system owner or operator must mark the location of service laterals or sewer laterals in a similar manner as underground facilities are marked.
- The sewer system owner or operator arranges to meet the excavator on-site to provide the best available information about the location of service laterals or sewer laterals.
- The sewer system owner or operator provides records through other processes or any other reasonable means of conveyance.

Prior Consultation about Construction or Excavation within 100 feet of a Transmission Pipeline.

If a state or any local government permits construction that may result in the creation of a structure intended for human occupancy within 100 feet of a right-of-way or easement that contains a transmission pipeline that transports hazardous liquid or gas, the state or local government must take certain actions. These actions include: (1) notifying the transmission pipeline company of the proposed construction activity before a permit is approved; or (2) requiring consultation between the person proposing the construction activity and the transmission pipeline company as a condition of receiving the permit. The distances may be greater than 100 feet if required under a local ordinance.

Emergency Excavations.

For emergency excavations using emergency bar holing 12 or more inches in depth, reasonable measures must be taken to eliminate electrical arc hazards.

Road Maintenance.

Road maintenance is exempted from the definition of excavation if the road maintenance undertaken does not involve excavation below the original road grade and ditch maintenance that does not involve excavation below the original ditch flowline or alter the original ditch horizontal alignment. Road maintenance activities are still required to notify a facility operator.

Penalties.

Any person who violates state laws to prevent damages to underground facilities is subject to a civil penalty of not more than \$1,000 for an initial violation and not more than \$5,000 for each subsequent violation within a three-year period. All collected penalties are dedicated to education and training of excavators and facility operators in best practices and compliance with state underground utilities laws.

Any person who willfully damages or removes a permanent marking used to identify an underground facility or pipeline, or a temporary marking before its intended use, is subject to a civil penalty of not more than \$1,000 for an initial violation, and not more than \$5,000 for each subsequent violation within a three-year period.

Large Projects.

If an excavator intends to perform work at multiple sites or the project is a large project, the excavator must take reasonable steps to work with facility operators so that facility operators can locate their facilities at a time reasonably in advance of the actual start of excavation for each phase of the work. A "large project" is defined as a project that exceeds 700 linear feet.

Unidentified Underground Facilities.

If the excavator discovers underground facilities that are not identified in plans or contract documents, the excavator must cease excavating in the vicinity of the facility and immediately notify the facility operator or the one-number locator service. If the excavator uncovers identified but unlocatable underground facilities, the excavator must notify the facility operator. Upon notification, the facility operator must take action to allow for the accurate future location of the uncovered portion of the underground facility identified by the excavator.

Definitions.

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

"End user" means any utility customer, including any public, commercial, or private consumer of facility operator underground facilities.

"Equipment operator" means the individual conducting the excavation.

"Facility operator" means any person operating underground facilities in a public right-of-way or utility easement. Local governments managing the right-of-way or utility easement are facility operators only when they operate underground facilities placed in the right-of-way or utility easement.

"Service lateral" means an underground facility that originates at the connection of a facility operator's system and terminates at or on the end user's property line. A service lateral may be owned by the end user or facility operator.

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

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

"Unlocatable underground facility" means an underground facility that cannot be field-marked with reasonable accuracy using best available information to designate the location of underground facilities. "Unlocatable underground facility" includes, but is not limited to, sewer laterals, storm drains, and nonconductive and nonmetallic underground facilities that do not contain trace wires.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.