

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1634

62nd Legislature
2011 Regular Session

Passed by the House April 14, 2011
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 6, 2011
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1634** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1634

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

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, 19.122.055, 19.122.070, 19.122.075, 19.122.080, 19.122.100,
4 and 19.122.110; adding new sections to chapter 19.122 RCW; creating a
5 new section; repealing RCW 19.122.060; prescribing penalties; providing
6 an effective date; and providing expiration dates.

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

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

10 ~~((It is the intent of the legislature in enacting this chapter to~~
11 ~~assign responsibilities for locating and keeping accurate records of~~
12 ~~utility locations, protecting and repairing damage to existing~~
13 ~~underground facilities, and protecting the public health and safety~~
14 ~~from interruption in utility services caused by damage to existing~~
15 ~~underground utility facilities.)) In this chapter, the underground
16 utility damage prevention act, the legislature intends to protect
17 public health and safety and prevent disruption of vital utility
18 services through a comprehensive damage prevention program that
19 includes:~~

1 (1) Assigning responsibility for providing notice of proposed
2 excavation, locating and marking underground utilities, and reporting
3 and repairing damage;

4 (2) Setting safeguards for construction and excavation near
5 hazardous liquid and gas pipelines;

6 (3) Improving worker and public knowledge of safe practices;

7 (4) Collecting and analyzing damage data;

8 (5) Reviewing alleged violations; and

9 (6) Enforcing this chapter.

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

12 (~~Unless the context clearly requires otherwise,~~) The definitions
13 in this section apply throughout this chapter(+) unless the context
14 clearly requires otherwise.

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

17 (2) "Damage" includes the substantial weakening of structural or
18 lateral support of an underground facility, penetration, impairment, or
19 destruction of any underground protective coating, housing, or other
20 protective device, or the severance, partial or complete, of any
21 underground facility to the extent that the project owner or the
22 affected (~~utility owner~~) facility operator determines that repairs
23 are required.

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

26 (4) "Excavation" and "excavate" means any operation, including the
27 installation of signs, in which earth, rock, or other material on or
28 below the ground is moved or otherwise displaced by any means(~~, except~~
29 ~~the tilling of soil less than twelve inches in depth for agricultural~~
30 ~~purposes, or road and ditch maintenance that does not change the~~
31 ~~original road grade or ditch flowline)).~~

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

36 (6) "Excavator" means any person who engages directly in
37 excavation.

1 (7) "Gas" means natural gas, flammable gas, or toxic or corrosive
2 gas.

3 (8) "Hazardous liquid" means:

4 (a) Petroleum, petroleum products, or anhydrous ammonia as those
5 terms are defined in 49 C.F.R. Part 195 as in effect on March 1, 1998;
6 (~~and~~)

7 (b) Carbon dioxide(~~(. The utilities and transportation commission~~
8 ~~may by rule incorporate by reference))~~; and

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

11 (~~(9) ("Identified facility" means any underground facility which is~~
12 ~~indicated in the project plans as being located within the area of~~
13 ~~proposed excavation.~~

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

17 ~~((11))~~ (10) "Locatable underground facility" means an underground
18 facility which can be (~~(field marked))~~ marked with reasonable accuracy.

19 ~~((12))~~ (11) "Marking" means the use of stakes, paint, or other
20 clearly identifiable materials to show the field location of
21 underground facilities, in accordance with the current color code
22 standard of the American public works association. Markings shall
23 include identification letters indicating the specific type of the
24 underground facility.

25 ~~((13))~~ (12) "Notice" or "notify" means contact in person or by
26 telephone or other electronic method(~~(s that))~~, and, with respect to
27 contact of a one-number locator service, also results in the receipt of
28 a valid excavation confirmation code.

29 ~~((14))~~ (13) "One-number locator service" means a service through
30 which a person can notify (~~(utilities))~~ facility operators and request
31 (~~(field marking))~~ marking of underground facilities.

32 ~~((15) "Operator" means the individual conducting the excavation.~~
33 ~~(16))~~ (14) "Person" means an individual, partnership, franchise
34 holder, association, corporation, (~~(a))~~ the state, a city, a county, a
35 town, or any subdivision or instrumentality of (~~(a))~~ the state,
36 including any unit of local government, and its employees, agents, or
37 legal representatives.

1 (~~(17)~~) (15) "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)~~) (16) "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:

12 (a) Distribution systems owned and operated under franchise for the
13 sale, delivery, or distribution of natural gas at retail; or

14 (b) Excavation contractors or other contractors that contract with
15 a pipeline company.

16 (~~(19)~~) (17) "Reasonable accuracy" means location within twenty-
17 four inches of the outside dimensions of both sides of an underground
18 facility.

19 (~~(20)~~) (18) "Transfer pipeline" means a buried or aboveground
20 pipeline used to carry hazardous liquid between a tank vessel or
21 transmission pipeline and the first valve inside secondary containment
22 at (~~the~~) a facility, provided that any discharge on the facility side
23 of (~~that~~) the first valve will not directly impact waters of the
24 state. (~~(A)~~) "Transfer pipeline" includes valves(~~(7)~~) and other
25 appurtenances connected to the pipeline, pumping units, and fabricated
26 assemblies associated with pumping units. (~~(A)~~) "Transfer pipeline"
27 does not include process pipelines, pipelines carrying ballast or bilge
28 water, transmission pipelines, or tank vessel or storage tanks.

29 (~~(21)~~) (19) "Transmission pipeline" means a pipeline that
30 transports hazardous liquid or gas within a storage field, or
31 transports hazardous liquid or gas from an interstate pipeline or
32 storage facility to a distribution main or a large volume hazardous
33 liquid or gas user, or operates at a hoop stress of twenty percent or
34 more of the specified minimum yield strength.

35 (~~(22)~~) (20) "Underground facility" means any item buried or
36 placed below ground for use in connection with the storage or
37 conveyance of water, sewage, electronic, telephonic or telegraphic
38 communications, cablevision, electric energy, petroleum products, gas,

1 gaseous vapors, hazardous liquids, or other substances and including
2 but not limited to pipes, sewers, conduits, cables, valves, lines,
3 wires, manholes, attachments, and those parts of poles or anchors that
4 are below ground. This definition does not include pipelines as
5 defined in subsection ~~((+17))~~ (15) of this section, but does include
6 distribution systems owned and operated under franchise for the sale,
7 delivery, or distribution of natural gas at retail.

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

11 (22) "Commission" means the utilities and transportation
12 commission.

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

15 (24) "Equipment operator" means an individual conducting an
16 excavation.

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

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

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

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

36 (29) "Utility easement" means a right held by a facility operator
37 to install, maintain, and access an underground facility or pipeline.

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

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

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

11 (3) One-number locator services (~~shall~~) must be operated by
12 nongovernmental agencies.

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

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

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

19 (1)(a) Unless exempted under section 5 of this act, before
20 commencing any excavation, (~~excluding agriculture tilling less than~~
21 twelve inches in depth, the excavator shall) an excavator must mark
22 the boundary of the excavation area with white paint applied on the
23 ground of the worksite, then provide notice of the scheduled
24 commencement of excavation to all (~~owners of underground facilities~~)
25 facility operators through a one-number locator service.

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

30 (2) (~~All owners of underground facilities within a one-number~~
31 ~~locator service area shall subscribe to the service. One-number~~
32 ~~locator service rates for cable television companies will be based on~~
33 ~~the amount of their underground facilities. If no one-number locator~~
34 ~~service is available, notice shall be provided individually to those~~
35 ~~owners of underground facilities known to or suspected of having~~
36 ~~underground facilities within the area of proposed excavation. The~~
37 ~~notice shall be communicated to the owners of underground facilities~~)

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

10 (3) Upon receipt of the notice provided for in ~~((this section, the~~
11 ~~owner of the underground facility shall))~~ subsection (1) of this
12 section, a facility operator must, with respect to:

13 (a) The facility operator's locatable underground facilities,
14 provide the excavator with reasonably accurate information ((as to its
15 locatable underground facilities by surface marking the location of the
16 facilities. If there are)) by marking their location;

17 (b) The facility operator's unlocatable or identified but
18 unlocatable underground facilities, ((the owner of such facilities
19 shall)) provide the excavator with ((the best)) available information
20 as to their ((locations. The owner of the underground facility
21 providing the information shall respond)) location; and

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

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

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

29 (4)(a) A facility operator must provide information to an excavator
30 pursuant to subsection (3) of this section no later than two business
31 days after the receipt of the notice ((or before the excavation time))
32 provided for in subsection (1) of this section or before excavation
33 commences, at the option of the ((owner)) facility operator, unless
34 otherwise agreed by the parties. ((Excavators shall not excavate until
35 all known facilities have been marked. Once marked by the owner of the
36 underground facility, the excavator is responsible for maintaining the
37 markings. Excavators shall have the right to receive compensation from

1 ~~the owner of the underground facility for costs incurred if the owner~~
2 ~~of the underground facility does not locate its facilities in~~
3 ~~accordance with this section.~~

4 ~~(4) The owner of the underground facility shall have))~~

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

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

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

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

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

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

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

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

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

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

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

38 (ii) The duration of the project.

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

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

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

15 (8) A facility operator has the right to receive ((compensation for
16 costs incurred in responding to excavation notices given less than two
17 business days prior to the excavation from the excavator)) reasonable
18 compensation from an excavator for costs incurred by the facility
19 operator if the excavator does not comply with the requirements
20 specified in this section.

21 ((5) An owner of underground facilities is not required to
22 indicate the presence of existing service laterals or appurtenances if
23 the presence of existing service laterals or appurtenances on the site
24 of the construction project can be determined from the presence of
25 other visible facilities, such as buildings, manholes, or meter and
26 junction boxes on or adjacent to the construction site.

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

29 (7) If the excavator, while performing the contract,)) (9) A
30 facility operator is not required to comply with subsection (4) of this
31 section with respect to service laterals conveying only water if their
32 presence can be determined from other visible water facilities, such as
33 water meters, water valve covers, and junction boxes in or adjacent to
34 the boundary of an excavation area identified under subsection (1) of
35 this section.

36 (10) If an excavator discovers underground facilities ((which))
37 that are not identified, the excavator ((shall)) must cease excavating
38 in the vicinity of the ((facility)) underground facilities and

1 immediately notify the (~~owner or~~) facility operator (~~of such~~
2 ~~facilities,~~) or (~~the~~) a one-number locator service. If an excavator
3 discovers identified but unlocatable underground facilities, the
4 excavator must notify the facility operator. Upon notification by a
5 one-number locator service or an excavator, a facility operator must
6 allow for location of the uncovered portion of an underground facility
7 identified by the excavator, and may accept location information from
8 the excavator for marking of the underground facility.

9 NEW SECTION. Sec. 5. A new section is added to chapter 19.122 RCW
10 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

3 **Sec. 6.** RCW 19.122.033 and 2000 c 191 s 18 are each amended to
4 read as follows:

5 (1) Before commencing any excavation, (~~excluding agricultural~~
6 ~~tilling less than twelve inches in depth,~~) an excavator (~~shall~~) must
7 notify pipeline companies of the scheduled commencement of excavation
8 through a one-number locator service in the same manner as (~~is~~)
9 required for notifying (~~owners of underground facilities~~) facility
10 operators of excavation (~~work~~) under RCW 19.122.030. Pipeline
11 companies (~~shall~~) have the same rights and responsibilities as
12 (~~owners of underground facilities~~) facility operators under RCW
13 19.122.030 regarding excavation (~~work~~). Excavators have the same
14 rights and responsibilities under this section as they have under RCW
15 19.122.030.

16 (2) Project owners, excavators, and pipeline companies have the
17 same rights and responsibilities relating to excavation near pipelines
18 that they have for excavation near underground facilities as provided
19 in RCW 19.122.040.

20 (3) The state, and any subdivision or instrumentality of the state,
21 including any unit of local government, must, when planning
22 construction or excavation within one hundred feet, or greater distance
23 if required by local ordinance, of a right-of-way or utility easement
24 containing a transmission pipeline, notify the pipeline company of the
25 scheduled commencement of work.

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

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

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

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

1 **Sec. 7.** 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 company's pipeline, the pipeline company shall
6 ensure that the pipeline section in the vicinity of the excavation is
7 examined for 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. Parts 191 and 195, Subpart B.

23 (3) Pipeline companies shall immediately notify local first
24 responders and the department of ecology of any reportable release of
25 a hazardous liquid from a pipeline. Pipeline companies shall
26 immediately notify local first responders and the commission of any
27 blowing gas leak from a gas pipeline that has ignited or represents a
28 probable hazard to persons or property. Pipeline companies shall take
29 all appropriate steps to ensure the public safety in the event of a
30 release of 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. 8.** 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~~
4 ~~be~~) are deemed to be 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~~) must:

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~~) is liable for
23 any 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~~) that differs from the
26 provisions of this chapter is against public policy and unenforceable.
27 Nothing in this chapter prevents the parties to an excavation contract
28 from contracting with respect to the allocation of risk for changed or
29 differing site conditions.

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

32 **Sec. 9.** 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~~) a one-number locator
37 service, and report the damage as required under section 20 of this

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

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

11 **Sec. 10.** RCW 19.122.055 and 2005 c 448 s 3 are each amended to
12 read as follows:

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

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

19 (2) All civil penalties recovered under this section ~~((shall))~~ must
20 be deposited into the ~~((pipeline safety))~~ damage prevention account
21 created in ~~((RCW 81.88.050))~~ section 12 of this act.

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

24 (1) Any person who violates any provision of this chapter not
25 amounting to a violation of RCW 19.122.055~~((, and which violation~~
26 ~~results in damage to underground facilities,))~~ is subject to a civil
27 penalty of not more than one thousand dollars for ~~((each violation.~~
28 ~~All penalties recovered in such actions shall be deposited in the~~
29 ~~general fund))~~ an initial violation, and not more than five thousand
30 dollars for each subsequent violation within a three-year period. All
31 penalties recovered in such actions must be deposited in the damage
32 prevention account created in section 12 of this act.

33 (2) Any excavator who willfully or maliciously damages a ~~((field-~~
34 ~~marked))~~ marked underground facility ~~((shall be))~~ is liable for treble
35 the costs incurred in repairing or relocating the facility. In those
36 cases in which an excavator fails to notify known ~~((underground))~~

1 facility (~~owners~~) operators or (~~the~~) a one-number locator service,
2 any damage to the underground facility (~~shall be~~) is deemed willful
3 and malicious and (~~shall be~~) is subject to treble damages for costs
4 incurred in repairing or relocating the facility.

5 (3) This chapter does not affect any civil remedies for personal
6 injury or for property damage, including that to underground
7 facilities, nor does this chapter create any new civil remedies for
8 such damage.

9 NEW SECTION. Sec. 12. A new section is added to chapter 19.122
10 RCW to read as follows:

11 The damage prevention account is created in the custody of the
12 state treasurer. All receipts from moneys directed by law or the
13 commission to be deposited to the account must be deposited in the
14 account. Expenditures from the account may be used only for purposes
15 designated in section 13 of this act. Only the commission or the
16 commission's designee may authorize expenditures from the account. The
17 account is subject to allotment procedures under chapter 43.88 RCW.

18 NEW SECTION. Sec. 13. A new section is added to chapter 19.122
19 RCW to read as follows:

20 The commission may use money deposited in the damage prevention
21 account created in section 12 of this act to:

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

25 (2) Provide grants to persons who have developed educational
26 programming that the commission and the safety committee created
27 pursuant to section 18 of this act deem appropriate for improving
28 worker and public safety relating to excavation and underground
29 facilities.

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

32 Any person who willfully damages or removes a permanent marking
33 used to identify an underground facility or pipeline, or a temporary
34 marking prior to its intended use, is subject to a civil penalty of not

1 more than one thousand dollars for (~~each act~~) an initial violation,
2 and not more than five thousand dollars for each subsequent violation
3 within a three-year period.

4 **Sec. 15.** RCW 19.122.080 and 1984 c 144 s 8 are each amended to
5 read as follows:

6 The notification and marking provisions of this chapter may be
7 waived for one or more designated persons by (~~an underground~~) a
8 facility (~~owner~~) operator with respect to all or part of that
9 (~~underground~~) facility (~~owner's own~~) operator's underground
10 facilities.

11 **Sec. 16.** RCW 19.122.100 and 2005 c 448 s 6 are each amended to
12 read as follows:

13 If charged with a violation of RCW 19.122.090, an equipment
14 operator (~~will be~~) is deemed to have established an affirmative
15 defense to such charges if:

16 (1) The equipment operator was provided a valid excavation
17 confirmation code;

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

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

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

22 **Sec. 17.** RCW 19.122.110 and 2005 c 448 s 7 are each amended to
23 read as follows:

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

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

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

1 exempt under RCW 39.29.040(1) from the requirements of chapter 39.29
2 RCW.

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

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

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

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

14 (a) Local governments;

15 (b) A natural gas utility subject to regulation under Titles 80 and
16 81 RCW;

17 (c) Contractors;

18 (d) Excavators;

19 (e) An electric utility subject to regulation under Title 80 RCW;

20 (f) A consumer-owned utility, as defined in RCW 19.27A.140;

21 (g) A pipeline company;

22 (h) The insurance industry;

23 (i) The commission; and

24 (j) A telecommunications company.

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

27 (5) The safety committee may review complaints of alleged
28 violations of this chapter involving practices related to underground
29 facilities. Any person may bring a complaint to the safety committee
30 regarding an alleged violation.

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

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

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

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

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

13 (1) The commission may enforce the civil penalties authorized in
14 RCW 19.122.070 or 19.122.075 when it receives written notification from
15 the safety committee created under section 18 of this act indicating
16 that a violation of this chapter has likely been committed by a person
17 subject to regulation by the commission, or involving the underground
18 facilities of such a person.

19 (2) If the commission receives written notification from the safety
20 committee pursuant to section 18 of this act that a violation of this
21 chapter has likely been committed by a person who is not subject to
22 regulation by the commission, and in which the underground facility
23 involved is also not subject to regulation by the commission, the
24 commission may refer the matter to the attorney general for enforcement
25 of a civil penalty under RCW 19.122.070 or 19.122.075. The commission
26 must provide funding for such enforcement. However, any costs and fees
27 recovered by the attorney general pursuant to subsection (3) of this
28 section must be deposited by the commission in the fund that paid for
29 such enforcement.

30 (3) In a matter referred to it by the commission pursuant to
31 subsection (2) of this section, the attorney general may bring an
32 action to enforce the penalties authorized in RCW 19.122.070 or
33 19.122.075. In such an action, the court may award the state all costs
34 of investigation and trial, including a reasonable attorneys' fee fixed
35 by the court.

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

1 NEW SECTION. **Sec. 20.** 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 damage event to the
5 commission.

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

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

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

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

19 (c) The address where the damage event occurred;

20 (d) The type of right-of-way, where the damage event occurred,
21 including but not limited to city street, state highway, or utility
22 easement;

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

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

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

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

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

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

4 (k) If applicable:

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

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

9 (iii) Whether underground facilities were marked correctly;

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

12 (m) A description of the damage; and

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

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

17 NEW SECTION. **Sec. 21.** A new section is added to chapter 19.122
18 RCW to read as follows:

19 (1) The commission may investigate and enforce violations of RCW
20 19.122.055, 19.122.075, and 19.122.090 relating to pipeline facilities
21 without initial referral to the safety committee created under section
22 18 of this act.

23 (2) If the commission's investigation of notifications received
24 pursuant to section 19 of this act or subsection (1) of this section
25 substantiates violations of this chapter, the commission may impose
26 penalties authorized by RCW 19.122.055, 19.122.070, 19.122.075, and
27 19.122.090, and require training, education, or any combination
28 thereof.

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

32 (4) In an action to impose a penalty initiated by the commission
33 under subsection (1) or (2) of this section, the penalty is due and
34 payable when the person incurring the penalty receives a notice of
35 penalty in writing from the commission describing the violation and
36 advising the person that the penalty is due. The person incurring the
37 penalty has fifteen days from the date the person receives the notice

1 of penalty to file with the commission a request for mitigation or a
2 request for a hearing. The commission must include this time limit
3 information in the notice of penalty. After receiving a timely request
4 for mitigation or hearing, the commission must suspend collection of
5 the penalty until it issues a final order concerning the penalty or
6 mitigation of that penalty. A person aggrieved by the commission's
7 final order may seek judicial review, subject to provisions of the
8 administrative procedure act, chapter 34.05 RCW.

9 (5) If a penalty imposed by the commission is not paid, the
10 attorney general may, on the commission's behalf, file a civil action
11 in superior court to collect the penalty.

12 (6) This section expires December 31, 2020.

13 NEW SECTION. **Sec. 22.** A new section is added to chapter 19.122
14 RCW to read as follows:

15 All penalties collected pursuant to section 21 of this act must be
16 deposited in the damage prevention account created in section 12 of
17 this act.

18 NEW SECTION. **Sec. 23.** RCW 19.122.060 (Exemption from notice and
19 marking requirements for property owners) and 1984 c 144 s 6 are each
20 repealed.

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

23 Nothing in this act may be construed to classify a consumer-owned
24 utility, as defined in RCW 19.27A.140, to be under the authority of the
25 commission.

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

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

30 NEW SECTION. **Sec. 26.** By December 1, 2015, the utilities and
31 transportation commission must report to the appropriate committees of
32 the legislature on the effectiveness of the damage prevention program

1 established under chapter 19.122 RCW. The legislative report required
2 under this section must include analysis of damage data reported under
3 section 20 of this act.

4 NEW SECTION. **Sec. 27.** This act takes effect January 1, 2013.

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