

SENATE BILL REPORT

ESHB 1539

As Reported By Senate Committee On:
Water, Energy & Environment, March 31, 2005

Title: An act relating to failure to notify the one-number locator service when excavating near a transmission pipeline.

Brief Description: Making it a crime to excavate without notification near a transmission pipeline.

Sponsors: House Committee on Technology, Energy & Communications (originally sponsored by Representatives Linville, Roach, Morris, DeBolt, Ericksen, Williams and Upthegrove).

Brief History: Passed House: 3/10/05, 94-0.

Committee Activity: Water, Energy & Environment: 3/22/05, 3/31/05 [DPA].

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Majority Report: Do pass as amended.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Morton, Ranking Minority Member; Fraser, Hewitt, Honeyford, Mulliken and Pridemore.

Staff: Richard Rodger (786-7461)

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 non-governmental entities and is a means by which a person can notify utilities of excavation and request field marking of underground facilities. 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. The Washington Utilities and Transportation Commission, in consultation with the Washington Utilities Coordinating Council, establishes minimum standards and best management practices for one-number services.

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 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 \$10,000 applies when a person fails to notify the one-number locator service and causes damage to a hazardous liquid or gas pipeline.

Summary of Amended Bill: Any person who fails to notify the one-number locator service, as required under law, before excavating within 35 feet of a transmission pipeline is guilty of a

gross misdemeanor if the pipeline is damaged. A new misdemeanor is created for excavating within 35 feet of the transmission pipeline without first calling the locator service. A person committing either of these offenses is also subject to the existing \$10,000 civil penalty in addition to any criminal sentence or fine.

A "transmission pipeline" is defined as a pipeline that transports hazardous liquid or gas within a storage field, or transports hazardous liquid or gas from an interstate pipeline or storage facility to a distribution main or a large volume hazardous liquid or gas user, or operates at a hoop stress of 20 percent or more of the specified minimum yield strength.

Amended Bill Compared to Original Bill: Narrows the distance for the criminal penalties to those digging within 35 feet (versus 50 feet) of a transmission pipeline without calling the one-number locator service. Makes the gross misdemeanor applicable if the person dug near a transmission pipeline without calling the one-number locator service and caused damage. Created a new lesser misdemeanor offense of digging near the transmission pipeline without calling the one-number service. Allows the civil penalty for damaging a pipeling (\$10,000) to be imposed in addition to any criminal penalties.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The current law only carries a civil penalty for failing to use the call-before-you-dig service and there is no enforcement mechanism for violators. The bill merely provides for enforcement of the existing law. The bill provides additional safety for both workers and the public.

The bill has been heavily negotiated and should not be amended further - - contractors should not be made liable for duties they have delegated to others, such as subcontractors.

Testimony Against: None.

Other: The duty to call the locator service should rest on the employers and contractors, not on the individuals hired to perform the work. Workers should not be subjected to criminal penalties for performing their job as directed by their employers.

Who Testified: PRO: Representative Kelli Linville, prime sponsor; Brad Tower, Olympic Pipe Line Company; Rick Slunaker, Associated General Contractors. OTHER: Dave Ducharme, Utility Contractors Association of Washington; Jeff Soth, International Union of Operating Engineers #302.