

E2SHB 1634 - S AMD 273

By Senators Rockefeller, Nelson, Honeyford

ADOPTED 04/06/2011

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 ~~from interruption in utility services caused by damage to existing~~
10 ~~underground utility facilities.)) In this chapter, the underground
11 utility damage prevention act, the legislature intends to protect
12 public health and safety and prevent disruption of vital utility
13 services through a comprehensive damage prevention program that
14 includes:~~

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

18 (2) Setting safeguards for construction and excavation near
19 hazardous liquid and gas pipelines;

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

21 (4) Collecting and analyzing damage data;

22 (5) Reviewing alleged violations; and

23 (6) Enforcing this chapter.

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

26 ~~((Unless the context clearly requires otherwise,)) The definitions
27 in this section apply throughout this chapter((÷)) unless the context
28 clearly requires otherwise.~~

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

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

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

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

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

22 (6) "Excavator" means any person who engages directly in
23 excavation.

24 (7) "Gas" means natural gas, flammable gas, or toxic or corrosive
25 gas.

26 (8) "Hazardous liquid" means:

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

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

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

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

37 ~~(10))~~) "Identified but unlocatable underground facility" means an

1 underground facility which has been identified but cannot be located
2 with reasonable accuracy.

3 ~~((+11))~~ (10) "Locatable underground facility" means an underground
4 facility which can be ~~((field-marked))~~ marked with reasonable accuracy.

5 ~~((+12))~~ (11) "Marking" means the use of stakes, paint, or other
6 clearly identifiable materials to show the field location of
7 underground facilities, in accordance with the current color code
8 standard of the American public works association. Markings shall
9 include identification letters indicating the specific type of the
10 underground facility.

11 ~~((+13))~~ (12) "Notice" or "notify" means contact in person or by
12 telephone or other electronic method~~((s-that))~~, and, with respect to
13 contact of a one-number locator service, also results in the receipt of
14 a valid excavation confirmation code.

15 ~~((+14))~~ (13) "One-number locator service" means a service through
16 which a person can notify ~~((utilities))~~ facility operators and request
17 ~~((field-marking))~~ marking of underground facilities.

18 ~~((+15) "Operator" means the individual conducting the excavation.~~
19 ~~(+16))~~ (14) "Person" means an individual, partnership, franchise
20 holder, association, corporation, ~~((a))~~ the state, a city, a county, a
21 town, or any subdivision or instrumentality of ~~((a))~~ the state,
22 including any unit of local government, and its employees, agents, or
23 legal representatives.

24 ~~((+17))~~ (15) "Pipeline" or "pipeline system" means all or parts of
25 a pipeline facility through which hazardous liquid or gas moves in
26 transportation, including, but not limited to, line pipe, valves, and
27 other appurtenances connected to line pipe, pumping units, fabricated
28 assemblies associated with pumping or compressor units, metering and
29 delivery stations and fabricated assemblies therein, and breakout
30 tanks. "Pipeline" or "pipeline system" does not include process or
31 transfer pipelines.

32 ~~((+18))~~ (16) "Pipeline company" means a person or entity
33 constructing, owning, or operating a pipeline for transporting
34 hazardous liquid or gas. ~~((A))~~ "Pipeline company" does not include:

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

37 (b) Excavation contractors or other contractors that contract with
38 a pipeline company.

1 (~~(19)~~) (17) "Reasonable accuracy" means location within twenty-
2 four inches of the outside dimensions of both sides of an underground
3 facility.

4 (~~(20)~~) (18) "Transfer pipeline" means a buried or aboveground
5 pipeline used to carry hazardous liquid between a tank vessel or
6 transmission pipeline and the first valve inside secondary containment
7 at (~~the~~) a facility, provided that any discharge on the facility side
8 of (~~that~~) the first valve will not directly impact waters of the
9 state. (~~(A)~~) "Transfer pipeline" includes valves(~~(7)~~) and other
10 appurtenances connected to the pipeline, pumping units, and fabricated
11 assemblies associated with pumping units. (~~(A)~~) "Transfer pipeline"
12 does not include process pipelines, pipelines carrying ballast or bilge
13 water, transmission pipelines, or tank vessel or storage tanks.

14 (~~(21)~~) (19) "Transmission pipeline" means a pipeline that
15 transports hazardous liquid or gas within a storage field, or
16 transports hazardous liquid or gas from an interstate pipeline or
17 storage facility to a distribution main or a large volume hazardous
18 liquid or gas user, or operates at a hoop stress of twenty percent or
19 more of the specified minimum yield strength.

20 (~~(22)~~) (20) "Underground facility" means any item buried or
21 placed below ground for use in connection with the storage or
22 conveyance of water, sewage, electronic, telephonic or telegraphic
23 communications, cablevision, electric energy, petroleum products, gas,
24 gaseous vapors, hazardous liquids, or other substances and including
25 but not limited to pipes, sewers, conduits, cables, valves, lines,
26 wires, manholes, attachments, and those parts of poles or anchors that
27 are below ground. This definition does not include pipelines as
28 defined in subsection (~~(17)~~) (15) of this section, but does include
29 distribution systems owned and operated under franchise for the sale,
30 delivery, or distribution of natural gas at retail.

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

34 (22) "Commission" means the utilities and transportation
35 commission.

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

1 (24) "Equipment operator" means an individual conducting an
2 excavation.

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

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

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

15 (28) "Unlocatable underground facility" means, subject to the
16 provisions of RCW 19.122.030, an underground facility that cannot be
17 marked with reasonable accuracy using available information to
18 designate the location of an underground facility. "Unlocatable
19 underground facility" includes, but is not limited to, service
20 laterals, storm drains, and nonconductive and nonmetallic underground
21 facilities that do not contain trace wires.

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

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

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

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

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

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

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

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

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

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

16 (2) (~~All owners of underground facilities within a one-number~~
17 ~~locator service area shall subscribe to the service. One-number~~
18 ~~locator service rates for cable television companies will be based on~~
19 ~~the amount of their underground facilities. If no one-number locator~~
20 ~~service is available, notice shall be provided individually to those~~
21 ~~owners of underground facilities known to or suspected of having~~
22 ~~underground facilities within the area of proposed excavation. The~~
23 ~~notice shall be communicated to the owners of underground facilities~~)
24 An excavator must provide the notice required by subsection (1) of this
25 section to a one-number locator service not less than two business days
26 (~~or~~) and not more than ten business days before the scheduled date
27 for commencement of excavation, unless otherwise agreed (~~by the~~
28 ~~parties~~) by the excavator and facility operators. If an excavator
29 intends to work at multiple sites or at a large project, the excavator
30 must take reasonable steps to confer with facility operators to enable
31 them to locate underground facilities reasonably in advance of the
32 start of excavation for each phase of the work.

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

36 (a) The facility operator's locatable underground facilities,

1 provide the excavator with reasonably accurate information (~~((as to its~~
2 ~~locatable underground facilities by surface marking the location of the~~
3 ~~facilities. If there are))~~) by marking their location;

4 (b) The facility operator's unlocatable or identified but
5 unlocatable underground facilities, ((the owner of such facilities
6 shall)) provide the excavator with ((the best)) available information
7 as to their ((locations. The owner of the underground facility
8 providing the information shall respond)) location; and

9 (c) Service laterals, designate their presence or location, if the
10 service laterals:

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

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

16 (4)(a) A facility operator must provide information to an excavator
17 pursuant to subsection (3) of this section no later than two business
18 days after the receipt of the notice ((or before the excavation time))
19 provided for in subsection (1) of this section or before excavation
20 commences, at the option of the ((owner)) facility operator, unless
21 otherwise agreed by the parties. ((Excavators shall not excavate until
22 all known facilities have been marked. Once marked by the owner of the
23 underground facility, the excavator is responsible for maintaining the
24 markings. Excavators shall have the right to receive compensation from
25 the owner of the underground facility for costs incurred if the owner
26 of the underground facility does not locate its facilities in
27 accordance with this section.

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

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

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

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

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

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

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

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

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

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

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

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

25 (ii) The duration of the project.

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

30 (c) A facility operator's markings of underground utilities expire
31 forty-five calendar days from the date that the excavator provided
32 notice to a one-number locator service pursuant to subsection (1) of
33 this section. For excavation occurring after that date, an excavator
34 must provide additional notice to a one-number locator service pursuant
35 to subsection (1) of this section.

36 (7) An excavator has the right to receive reasonable compensation
37 from a facility operator for costs incurred by the excavator if the

1 facility operator does not locate its underground facilities in
2 accordance with the requirements specified in this section.

3 (8) A facility operator has the right to receive ((compensation for
4 costs incurred in responding to excavation notices given less than two
5 business days prior to the excavation from the excavator)) reasonable
6 compensation from an excavator for costs incurred by the facility
7 operator if the excavator does not comply with the requirements
8 specified in this section.

9 ~~((5) An owner of underground facilities is not required to~~
10 ~~indicate the presence of existing service laterals or appurtenances if~~
11 ~~the presence of existing service laterals or appurtenances on the site~~
12 ~~of the construction project can be determined from the presence of~~
13 ~~other visible facilities, such as buildings, manholes, or meter and~~
14 ~~junction boxes on or adjacent to the construction site.~~

15 ~~(6) Emergency excavations are exempt from the time requirements for~~
16 ~~notification provided in this section.~~

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

24 (10) If an excavator discovers underground facilities ((which))
25 that are not identified, the excavator ((shall)) must cease excavating
26 in the vicinity of the ((facility)) underground facilities and
27 immediately notify the ((owner or)) facility operator ((of such
28 facilities,)) or ((the)) a one-number locator service. If an excavator
29 discovers identified but unlocatable underground facilities, the
30 excavator must notify the facility operator. Upon notification by a
31 one-number locator service or an excavator, a facility operator must
32 allow for location of the uncovered portion of an underground facility
33 identified by the excavator, and may accept location information from
34 the excavator for marking of the underground facility.

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

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

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

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

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

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

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

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

16 (e) Road maintenance activities involving excavation less than six
17 inches in depth below the original road grade and ditch maintenance
18 activities involving excavation less than six inches in depth below the
19 original ditch flowline, or alteration of the original ditch horizontal
20 alignment;

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

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

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

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

32 (1) Before commencing any excavation, (~~excluding agricultural~~
33 ~~tilling less than twelve inches in depth,~~) an excavator (~~shall~~) must
34 notify pipeline companies of the scheduled commencement of excavation
35 through a one-number locator service in the same manner as (~~is~~)
36 required for notifying (~~owners of underground facilities~~) facility
37 operators of excavation (~~work~~) under RCW 19.122.030. Pipeline

1 companies (~~shall~~) have the same rights and responsibilities as
2 (~~owners of underground facilities~~) facility operators under RCW
3 19.122.030 regarding excavation (~~work~~). Excavators have the same
4 rights and responsibilities under this section as they have under RCW
5 19.122.030.

6 (2) Project owners, excavators, and pipeline companies have the
7 same rights and responsibilities relating to excavation near pipelines
8 that they have for excavation near underground facilities as provided
9 in RCW 19.122.040.

10 (3) The state, and any subdivision or instrumentality of the state,
11 including any unit of local government, must, when planning
12 construction or excavation within one hundred feet, or greater distance
13 if required by local ordinance, of a right-of-way or utility easement
14 containing a transmission pipeline, notify the pipeline company of the
15 scheduled commencement of work.

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

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

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

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

28 **Sec. 7.** RCW 19.122.035 and 2000 c 191 s 19 are each amended to
29 read as follows:

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

35 (2) Immediately upon receiving information of third-party damage to
36 a hazardous liquid pipeline, the company that operates the pipeline
37 shall terminate the flow of hazardous liquid in that pipeline until it

1 has visually inspected the pipeline. After visual inspection, the
2 (~~operator of the hazardous liquid~~) pipeline company shall determine
3 whether the damaged pipeline section should be replaced or repaired, or
4 whether it is safe to resume pipeline operation. Immediately upon
5 receiving information of third-party damage to a gas pipeline, the
6 (~~company that operates the~~) pipeline company shall conduct a visual
7 inspection of the pipeline to determine whether the flow of gas through
8 that pipeline should be terminated, and whether the damaged pipeline
9 should be replaced or repaired. A record of the pipeline company's
10 inspection report and test results shall be provided to the (~~utilities~~
11 ~~and transportation~~) commission, consistent with reporting requirements
12 under 49 C.F.R. Parts 191 and 195, Subpart B.

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

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

26 **Sec. 8.** RCW 19.122.040 and 1984 c 144 s 4 are each amended to read
27 as follows:

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

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

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

1 (2) An excavator shall use reasonable care to avoid damaging
2 underground facilities. An excavator (~~(shall)~~) must:

3 (a) Determine the precise location of underground facilities which
4 have been marked;

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

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

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

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

22 **Sec. 9.** RCW 19.122.050 and 1984 c 144 s 5 are each amended to read
23 as follows:

24 (1) An excavator who, in the course of excavation, contacts or
25 damages an underground facility shall notify the (~~(utility owning or~~
26 ~~operating such)) facility operator and (~~(the))~~ a one-number locator
27 service, and report the damage as required under section 20 of this
28 act. If the damage causes an emergency condition, the excavator
29 causing the damage shall also alert the appropriate local public safety
30 agencies and take all appropriate steps to ensure the public safety.
31 No damaged underground facility may be buried until it is repaired or
32 relocated.~~

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

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

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

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

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

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

14 (1) Any person who violates any provision of this chapter not
15 amounting to a violation of RCW 19.122.055~~((, and which violation~~
16 ~~results in damage to underground facilities,))~~ is subject to a civil
17 penalty of not more than one thousand dollars for ~~((each violation.~~
18 ~~All penalties recovered in such actions shall be deposited in the~~
19 ~~general fund))~~ an initial violation, and not more than five thousand
20 dollars for each subsequent violation within a three-year period. All
21 penalties recovered in such actions must be deposited in the damage
22 prevention account created in section 12 of this act.

23 (2) Any excavator who willfully or maliciously damages a ~~((field-~~
24 ~~marked))~~ marked underground facility ~~((shall be))~~ is liable for treble
25 the costs incurred in repairing or relocating the facility. In those
26 cases in which an excavator fails to notify known ~~((underground))~~
27 facility ~~((owners))~~ operators or ~~((the))~~ a one-number locator service,
28 any damage to the underground facility ~~((shall be))~~ is deemed willful
29 and malicious and ~~((shall be))~~ is subject to treble damages for costs
30 incurred in repairing or relocating the facility.

31 (3) This chapter does not affect any civil remedies for personal
32 injury or for property damage, including that to underground
33 facilities, nor does this chapter create any new civil remedies for
34 such damage.

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

1 The damage prevention account is created in the custody of the
2 state treasurer. All receipts from moneys directed by law or the
3 commission to be deposited to the account must be deposited in the
4 account. Expenditures from the account may be used only for purposes
5 designated in section 13 of this act. Only the commission or the
6 commission's designee may authorize expenditures from the account. The
7 account is subject to allotment procedures under chapter 43.88 RCW.

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

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

12 (1) Develop and disseminate educational programming designed to
13 improve worker and public safety relating to excavation and underground
14 facilities; and

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

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

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

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

30 The notification and marking provisions of this chapter may be
31 waived for one or more designated persons by ~~((an underground))~~ a
32 facility ~~((owner))~~ operator with respect to all or part of that
33 ~~((underground))~~ facility ~~((owner's own))~~ operator's underground
34 facilities.

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

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

6 (1) The equipment operator was provided a valid excavation
7 confirmation code;

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

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

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

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

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

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

18 (1) The commission must contract with a statewide, nonprofit entity
19 whose purpose is to reduce damages to underground and above ground
20 facilities, promote safe excavation practices, and review complaints of
21 alleged violations of this chapter. The contract must not obligate
22 funding by the commission for activities performed by the nonprofit
23 entity or the safety committee under this section, and is therefore
24 exempt under RCW 39.29.040(1) from the requirements of chapter 39.29
25 RCW.

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

27 (a) Advise the commission and other state agencies, the
28 legislature, and local governments on best practices and training to
29 prevent damage to underground utilities, and policies to enhance worker
30 and public safety; and

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

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

- 1 (a) Local governments;
- 2 (b) A natural gas utility subject to regulation under Titles 80 and
- 3 81 RCW;
- 4 (c) Contractors;
- 5 (d) Excavators;
- 6 (e) An electric utility subject to regulation under Title 80 RCW;
- 7 (f) A consumer-owned utility, as defined in RCW 19.27A.140;
- 8 (g) A pipeline company;
- 9 (h) The insurance industry;
- 10 (i) The commission; and
- 11 (j) A telecommunications company.

12 (4) The safety committee must meet at least once every three
13 months.

14 (5) The safety committee may review complaints of alleged
15 violations of this chapter involving practices related to underground
16 facilities. Any person may bring a complaint to the safety committee
17 regarding an alleged violation.

18 (6) To review complaints of alleged violations, the safety
19 committee must appoint at least three and not more than five members as
20 a review committee. The review committee must include the same number
21 of members representing excavators and facility operators. One member
22 representing facility operators must also be a representative of a
23 pipeline company or a natural gas utility subject to regulation under
24 Titles 80 and 81 RCW. The review committee must also include a member
25 representing the insurance industry.

26 (7) Before reviewing a complaint alleging a violation of this
27 chapter, the review committee must notify the person making the
28 complaint and the alleged violator of its review and of the opportunity
29 to participate.

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

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

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

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

7 (2) If the commission receives written notification from the safety
8 committee pursuant to section 18 of this act that a violation of this
9 chapter has likely been committed by a person who is not subject to
10 regulation by the commission, and in which the underground facility
11 involved is also not subject to regulation by the commission, the
12 commission may refer the matter to the attorney general for enforcement
13 of a civil penalty under RCW 19.122.070 or 19.122.075. The commission
14 must provide funding for such enforcement. However, any costs and fees
15 recovered by the attorney general pursuant to subsection (3) of this
16 section must be deposited by the commission in the fund that paid for
17 such enforcement.

18 (3) In a matter referred to it by the commission pursuant to
19 subsection (2) of this section, the attorney general may bring an
20 action to enforce the penalties authorized in RCW 19.122.070 or
21 19.122.075. In such an action, the court may award the state all costs
22 of investigation and trial, including a reasonable attorneys' fee fixed
23 by the court.

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

25 NEW SECTION. **Sec. 20.** 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 damage event to the
29 commission.

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

34 (3) Reports must be made to the commission's office of pipeline
35 safety within forty-five days of the damage event, or sooner if
36 required by law, using the commission's virtual private damage

1 information reporting tool (DIRT) report form, or other similar form if
2 it reports:

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

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

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

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

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

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

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

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

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

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

29 (k) If applicable:

30 (i) The person who located the underground facility, and their
31 employer;

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

34 (iii) Whether underground facilities were marked correctly;

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

37 (m) A description of the damage; and

1 (n) Whether the damage caused an interruption of underground
2 facility service.

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

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

7 (1) The commission may investigate and enforce violations of RCW
8 19.122.055, 19.122.075, and 19.122.090 relating to pipeline facilities
9 without initial referral to the safety committee created under section
10 18 of this act.

11 (2) If the commission's investigation of notifications received
12 pursuant to section 19 of this act or subsection (1) of this section
13 substantiates violations of this chapter, the commission may impose
14 penalties authorized by RCW 19.122.055, 19.122.070, 19.122.075, and
15 19.122.090, and require training, education, or any combination
16 thereof.

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

20 (4) In an action to impose a penalty initiated by the commission
21 under subsection (1) or (2) of this section, the penalty is due and
22 payable when the person incurring the penalty receives a notice of
23 penalty in writing from the commission describing the violation and
24 advising the person that the penalty is due. The person incurring the
25 penalty has fifteen days from the date the person receives the notice
26 of penalty to file with the commission a request for mitigation or a
27 request for a hearing. The commission must include this time limit
28 information in the notice of penalty. After receiving a timely request
29 for mitigation or hearing, the commission must suspend collection of
30 the penalty until it issues a final order concerning the penalty or
31 mitigation of that penalty. A person aggrieved by the commission's
32 final order may seek judicial review, subject to provisions of the
33 administrative procedure act, chapter 34.05 RCW.

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

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

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

3 All penalties collected pursuant to section 21 of this act must be
4 deposited in the damage prevention account created in section 12 of
5 this act.

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

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

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

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

16 This act may be known and cited as the underground utility damage
17 prevention act.

18 NEW SECTION. **Sec. 26.** By December 1, 2015, the utilities and
19 transportation commission must report to the appropriate committees of
20 the legislature on the effectiveness of the damage prevention program
21 established under chapter 19.122 RCW. The legislative report required
22 under this section must include analysis of damage data reported under
23 section 20 of this act.

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

E2SHB 1634 - S COMM AMD

By Senators Rockefeller, Nelson, Honeyford

ADOPTED 04/06/2011

25 On page 1, line 1 of the title, after "utilities;" strike the

1 remainder of the title and insert "amending RCW 19.122.010, 19.122.020,
2 19.122.027, 19.122.030, 19.122.033, 19.122.035, 19.122.040, 19.122.050,
3 19.122.055, 19.122.070, 19.122.075, 19.122.080, 19.122.100, and
4 19.122.110; adding new sections to chapter 19.122 RCW; creating a new
5 section; repealing RCW 19.122.060; prescribing penalties; providing an
6 effective date; and providing expiration dates."

EFFECT: Several technical corrections and clarifications are included, in addition to the following changes.

Intent (Section 1). The intent section is clarified, and provides that the chapter is the "underground utility damage prevention act," as further specified in Section 25.

Definitions (Section 2). Existing and proposed new exceptions to the definition of "excavation" and "excavate" are transferred to a new section consolidating exemptions from excavator requirements (Section 5). An obsolete definition of "identified facility" is deleted. Proposed definitions of "bar hole," "end user," "facility operator," "service lateral," and "unlocatable underground facility" are revised. Proposed definitions of "sewer lateral," "sewer system owner or operator," and "utility coordinating council" are deleted. A definition of "utility easement" is added.

Duties of Excavators and Facility Operators (Section 4). Facility operator duties are revised to provide that facility operators: (1) Must provide "available information" rather than "best available information" regarding location of their facilities if they are unlocatable or identified but unlocatable; (2) must designate service laterals only if they connect end users to facility operators' main utility lines and are within a right-of-way or utility easement and the boundary of an identified excavation area; and (3) may comply with the foregoing requirements through several methods, including placing marks indicating the presence of underground facilities, arranging to meet excavators at worksites to provide available information, or by providing copies of the best reasonably available records. A facility operator's good faith attempt to comply with the foregoing requirements constitutes full compliance, and no person may be found liable for damages or injuries resulting from such compliance, apart from liability for arranging for repairs or relocation of underground facilities. Liability of: (1) Facility operators is clarified to provide that excavators may receive "reasonable" compensation for their costs if an operator does not locate facilities in accordance with requirements; and (2) excavators is revised to provide that facility operators may receive reasonable compensation for their costs if an excavator does not comply with all requirements for excavators (not just costs incurred in responding to excavation notices given less than two days prior to excavation). A facility operator is not required to provide available information or designate service laterals conveying only water if their presence can be determined from other visible water

facilities, such as water meters, water valve covers, and junction boxes in or adjacent to the boundary of an identified excavation area. An exemption from notice requirements for emergency excavations is transferred to Section 5.

Exemptions from Excavator Duties (Section 5). Exemptions from excavator duties are consolidated in a new section. Existing exemptions for: (1) Emergency excavations is clarified; (2) tilling of soil for agricultural purposes is changed from less than 12 inches in depth to less than 12 inches in depth within a utility easement and less than 20 inches in depth outside of a utility easement; and (3) road and ditch maintenance activities not involving excavation below original road grade or original ditch flowline or alteration of original ditch horizontal alignment are changed to allow excavation up to 6 inches. Proposed exemptions are added for: (1) Replacement of an official traffic sign installed prior to January 1, 2013 (effective date of the act), no deeper than the depth at which it was installed; and (2) certain activities by an irrigation district on rights-of-way, easements, or facilities owned by the federal bureau of reclamation in federal reclamation projects. Proposed exemptions for creation of bar holes are consolidated and clarified. Activity exempted from excavator duties in this section is nonetheless subject to a requirement that excavators report damage they cause to underground facilities.

Construction or Excavation Near Hazardous Liquid and Gas Pipelines (Section 6). Provisions are clarified. Duties of local governments regarding permitting of construction or excavation near pipelines are changed to relate to issuance, rather than approval, of permits. A reference is provided to existing law requiring the UTC to assist local governments in obtaining pipeline location information and maps.

Damage Prevention Account (Section 10). Civil penalties on excavators damaging hazardous liquid or gas pipelines will be deposited in the new damage prevention account created by the legislation, rather than the existing pipeline safety account.

Safety Committee (Section 18). Language is added providing that the UTC's contract with a nonprofit entity creating the Safety Committee must not obligate UTC funding, and is therefore exempt from competitive contracting requirements. The process for selecting members is clarified. The Safety Committee will include representatives of investor-owned natural gas utilities and insurance industry, in addition to other stakeholders. Before reviewing a complaint, a review committee appointed by the Safety Committee must notify the complainant and alleged violator of its review and the opportunity to participate. Membership of a review committee is clarified. The Safety Committee may provide written notification to the UTC that a person has likely committed a violation, and recommend remedial action.

Enforcement Authority (Sections 19 and 21). Provisions for enforcement of alleged violations not involving UTC-regulated persons or facilities are added; the Attorney General will provide such enforcement. The UTC's authority to enforce violations involving damage to UTC-regulated pipelines is clarified.

Repeal of Exemption (Section 23). A provision exempting excavation less than 12 inches deep on private noncommercial property from excavator duties if performed by the property owner or occupier, or an employee, is repealed, and the exemption is incorporated in Section 5.

UTC Jurisdiction (Section 24). A provision is added clarifying

that nothing in the act may be construed to classify a consumer-owned utility to be under the authority of the UTC.

Short Title (Section 25). A provision is added providing that the act may be known and cited as the underground utility damage prevention act.

Report to Legislature (Section 26). A provision is added requiring the UTC to report to the legislature by December 1, 2015, on the effectiveness of the damage prevention program, with analysis of reported damage data.

--- END ---