
SUBSTITUTE HOUSE BILL 1539

State of Washington

59th Legislature

2005 Regular Session

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

READ FIRST TIME 02/21/05.

1 AN ACT Relating to failure to notify the one-number locator service
2 when excavating near a transmission pipeline; amending RCW 19.122.030,
3 19.122.033, 19.122.055, 19.122.070, and 19.122.020; and prescribing
4 penalties.

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

6 **Sec. 1.** RCW 19.122.030 and 2000 c 191 s 17 are each amended to
7 read as follows:

8 (1) Before commencing any excavation, excluding agriculture tilling
9 less than twelve inches in depth, the excavator shall provide notice of
10 the scheduled commencement of excavation to all owners of underground
11 facilities through a one-number locator service.

12 (2) All owners of underground facilities within a one-number
13 locator service area shall subscribe to the service. One-number
14 locator service rates for cable television companies will be based on
15 the amount of their underground facilities. If no one-number locator
16 service is available, notice shall be provided individually to those
17 owners of underground facilities known to or suspected of having
18 underground facilities within the area of proposed excavation. The
19 notice shall be communicated to the owners of underground facilities

1 not less than two business days or more than ten business days before
2 the scheduled date for commencement of excavation, unless otherwise
3 agreed by the parties.

4 (3) Upon receipt of the notice provided for in this section, the
5 owner of the underground facility shall provide the excavator with
6 reasonably accurate information as to its locatable underground
7 facilities by surface-marking the location of the facilities. If there
8 are identified but unlocatable underground facilities, the owner of
9 such facilities shall provide the excavator with the best available
10 information as to their locations. The owner of the underground
11 facility providing the information shall respond no later than two
12 business days after the receipt of the notice or before the excavation
13 time, at the option of the owner, unless otherwise agreed by the
14 parties. Excavators shall not excavate until all known facilities have
15 been marked. Once marked by the owner of the underground facility, the
16 excavator is responsible for maintaining the markings. Excavators
17 shall have the right to receive compensation from the owner of the
18 underground facility for costs incurred if the owner of the underground
19 facility does not locate its facilities in accordance with this
20 section.

21 (4) The owner of the underground facility shall have the right to
22 receive compensation for costs incurred in responding to excavation
23 notices given less than two business days prior to the excavation from
24 the excavator.

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

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

33 (7) If the excavator, while performing the contract, discovers
34 underground facilities which are not identified, the excavator shall
35 cease excavating in the vicinity of the facility and immediately notify
36 the owner or operator of such facilities, or the one-number locator
37 service.

1 (8) For the purposes of this section, when the excavation is
2 conducted by a contractor, as defined under RCW 18.27.010(1), the
3 contractor is required to provide the notice required under subsection
4 (1) of this section.

5 **Sec. 2.** RCW 19.122.033 and 2000 c 191 s 18 are each amended to
6 read as follows:

7 (1) Before commencing any excavation, excluding agricultural
8 tilling less than twelve inches in depth, an excavator shall notify
9 pipeline companies of the scheduled commencement of excavation through
10 a one-number locator service in the same manner as is required for
11 notifying owners of underground facilities of excavation work under RCW
12 19.122.030. Pipeline companies shall have the same rights and
13 responsibilities as owners of underground facilities under RCW
14 19.122.030 regarding excavation work. Excavators have the same rights
15 and responsibilities under this section as they have under RCW
16 19.122.030.

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

21 (3) For the purposes of this section, when the excavation is
22 conducted by a contractor, as defined under RCW 18.27.010(1), the
23 contractor is required to provide the notice required under subsection
24 (1) of this section.

25 **Sec. 3.** RCW 19.122.055 and 2001 c 238 s 5 are each amended to read
26 as follows:

27 (1) Any person who fails to notify the one-number locator service
28 when required under this chapter and excavates within fifty feet of a
29 transmission pipeline is guilty of a gross misdemeanor. Any person who
30 fails to notify the one-number locator service and causes damage to a
31 hazardous liquid or gas pipeline is subject to ((a)) an additional
32 civil penalty of not more than ten thousand dollars for each violation.

33 (2) All fines and civil penalties recovered under this section
34 shall be deposited into the pipeline safety account created in RCW
35 81.88.050.

1 **Sec. 4.** RCW 19.122.070 and 1984 c 144 s 7 are each amended to read
2 as follows:

3 (1) Any person who violates any provision of this chapter not
4 amounting to a violation of RCW 19.122.055, and which violation results
5 in damage to underground facilities, is subject to a civil penalty of
6 not more than one thousand dollars for each violation. All penalties
7 recovered in such actions shall be deposited in the general fund.

8 (2) Any excavator who willfully or maliciously damages a field-
9 marked underground facility shall be liable for treble the costs
10 incurred in repairing or relocating the facility. In those cases in
11 which an excavator fails to notify known underground facility owners or
12 the one-number locator service, any damage to the underground facility
13 shall be deemed willful and malicious and shall be subject to treble
14 damages for costs incurred in repairing or relocating the facility.

15 (3) This chapter does not affect any civil remedies for personal
16 injury or for property damage, including that to underground
17 facilities, nor does this chapter create any new civil remedies for
18 such damage.

19 **Sec. 5.** RCW 19.122.020 and 2000 c 191 s 15 are each amended to
20 read as follows:

21 Unless the context clearly requires otherwise, the definitions in
22 this section apply throughout this chapter:

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

25 (2) "Damage" includes the substantial weakening of structural or
26 lateral support of an underground facility, penetration, impairment, or
27 destruction of any underground protective coating, housing, or other
28 protective device, or the severance, partial or complete, of any
29 underground facility to the extent that the project owner or the
30 affected utility owner determines that repairs are required.

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

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

- 1 (5) "Excavator" means any person who engages directly in
2 excavation.
- 3 (6) "Gas" means natural gas, flammable gas, or toxic or corrosive
4 gas.
- 5 (7) "Hazardous liquid" means: (a) Petroleum, petroleum products,
6 or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195
7 as in effect on March 1, 1998; and (b) carbon dioxide. The utilities
8 and transportation commission may by rule incorporate by reference
9 other substances designated as hazardous by the secretary of
10 transportation.
- 11 (8) "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 (9) "Identified but unlocatable underground facility" means an
15 underground facility which has been identified but cannot be located
16 with reasonable accuracy.
- 17 (10) "Locatable underground facility" means an underground facility
18 which can be field-marked with reasonable accuracy.
- 19 (11) "Marking" means the use of stakes, paint, or other clearly
20 identifiable materials to show the field location of underground
21 facilities, in accordance with the current color code standard of the
22 American public works association. Markings shall include
23 identification letters indicating the specific type of the underground
24 facility.
- 25 (12) "Person" means an individual, partnership, franchise holder,
26 association, corporation, a state, a city, a county, or any subdivision
27 or instrumentality of a state, and its employees, agents, or legal
28 representatives.
- 29 (13) "Pipeline" or "pipeline system" means all or parts of a
30 pipeline facility through which hazardous liquid or gas moves in
31 transportation, including, but not limited to, line pipe, valves, and
32 other appurtenances connected to line pipe, pumping units, fabricated
33 assemblies associated with pumping units, metering and delivery
34 stations and fabricated assemblies therein, and breakout tanks.
35 "Pipeline" or "pipeline system" does not include process or transfer
36 pipelines as defined in RCW 81.88.010.
- 37 (14) "Pipeline company" means a person or entity constructing,
38 owning, or operating a pipeline for transporting hazardous liquid or

1 gas. A pipeline company does not include: (a) Distribution systems
2 owned and operated under franchise for the sale, delivery, or
3 distribution of natural gas at retail; or (b) excavation contractors or
4 other contractors that contract with a pipeline company.

5 (15) "Reasonable accuracy" means location within twenty-four inches
6 of the outside dimensions of both sides of an underground facility.

7 (16) "Transmission pipeline" means a pipeline that transports
8 hazardous liquid or gas within a storage field, or transports hazardous
9 liquid or gas from an interstate pipeline or storage facility to a
10 distribution main or a large volume hazardous liquid or gas user, or
11 operates at a hoop stress of twenty percent or more of the specified
12 minimum yield strength.

13 (17) "Underground facility" means any item buried or placed below
14 ground for use in connection with the storage or conveyance of water,
15 sewage, electronic, telephonic or telegraphic communications,
16 cablevision, electric energy, petroleum products, gas, gaseous vapors,
17 hazardous liquids, or other substances and including but not limited to
18 pipes, sewers, conduits, cables, valves, lines, wires, manholes,
19 attachments, and those parts of poles or anchors below ground. This
20 definition does not include pipelines as defined in subsection (13) of
21 this section, but does include distribution systems owned and operated
22 under franchise for the sale, delivery, or distribution of natural gas
23 at retail.

24 ((+17)) (18) "One-number locator service" means a service through
25 which a person can notify utilities and request field-marking of
26 underground facilities.

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