

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE HOUSE BILL 1539**

59th Legislature  
2005 Regular Session

Passed by the House April 21, 2005  
Yeas 98 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate April 19, 2005  
Yeas 44 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1539** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE HOUSE BILL 1539**

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AS AMENDED BY THE SENATE

Passed Legislature - 2005 Regular Session

**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 19.122.020,  
3 19.122.027, 19.122.055, and 19.122.070; adding new sections to chapter  
4 19.122 RCW; and prescribing penalties.

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

6            **Sec. 1.** RCW 19.122.020 and 2000 c 191 s 15 are each amended to  
7 read as follows:

8            Unless the context clearly requires otherwise, the definitions in  
9 this section apply throughout this chapter:

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

12           (2) "Damage" includes the substantial weakening of structural or  
13 lateral support of an underground facility, penetration, impairment, or  
14 destruction of any underground protective coating, housing, or other  
15 protective device, or the severance, partial or complete, of any  
16 underground facility to the extent that the project owner or the  
17 affected utility owner determines that repairs are required.

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

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

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

10 (6) "Excavator" means any person who engages directly in  
11 excavation.

12 ((+6)) (7) "Gas" means natural gas, flammable gas, or toxic or  
13 corrosive gas.

14 ((+7)) (8) "Hazardous liquid" means: (a) Petroleum, petroleum  
15 products, or anhydrous ammonia as those terms are defined in 49 C.F.R.  
16 Part 195 as in effect on March 1, 1998; and (b) carbon dioxide. The  
17 utilities and transportation commission may by rule incorporate by  
18 reference other substances designated as hazardous by the secretary of  
19 transportation.

20 ((+8)) (9) "Identified facility" means any underground facility  
21 which is indicated in the project plans as being located within the  
22 area of proposed excavation.

23 ((+9)) (10) "Identified but unlocatable underground facility"  
24 means an underground facility which has been identified but cannot be  
25 located with reasonable accuracy.

26 ((+10)) (11) "Locatable underground facility" means an underground  
27 facility which can be field-marked with reasonable accuracy.

28 ((+11)) (12) "Marking" means the use of stakes, paint, or other  
29 clearly identifiable materials to show the field location of  
30 underground facilities, in accordance with the current color code  
31 standard of the American public works association. Markings shall  
32 include identification letters indicating the specific type of the  
33 underground facility.

34 ((+12)) (13) "Notice" or "notify" means contact in person or by  
35 telephone or other electronic methods that results in the receipt of a  
36 valid excavation confirmation code.

37 (14) "One-number locator service" means a service through which a

1 person can notify utilities and request field-marking of underground  
2 facilities.

3 (15) "Operator" means the individual conducting the excavation.

4 (16) "Person" means an individual, partnership, franchise holder,  
5 association, corporation, a state, a city, a county, or any subdivision  
6 or instrumentality of a state, and its employees, agents, or legal  
7 representatives.

8 ~~((13))~~ (17) "Pipeline" or "pipeline system" means all or parts of  
9 a pipeline facility through which hazardous liquid or gas moves in  
10 transportation, including, but not limited to, line pipe, valves, and  
11 other appurtenances connected to line pipe, pumping units, fabricated  
12 assemblies associated with pumping units, metering and delivery  
13 stations and fabricated assemblies therein, and breakout tanks.  
14 "Pipeline" or "pipeline system" does not include process or transfer  
15 pipelines as defined in RCW 81.88.010.

16 ~~((14))~~ (18) "Pipeline company" means a person or entity  
17 constructing, owning, or operating a pipeline for transporting  
18 hazardous liquid or gas. A pipeline company does not include: (a)  
19 Distribution systems owned and operated under franchise for the sale,  
20 delivery, or distribution of natural gas at retail; or (b) excavation  
21 contractors or other contractors that contract with a pipeline company.

22 ~~((15))~~ (19) "Reasonable accuracy" means location within twenty-  
23 four inches of the outside dimensions of both sides of an underground  
24 facility.

25 ~~((16))~~ (20) "Transmission pipeline" means a pipeline that  
26 transports hazardous liquid or gas within a storage field, or  
27 transports hazardous liquid or gas from an interstate pipeline or  
28 storage facility to a distribution main or a large volume hazardous  
29 liquid or gas user, or operates at a hoop stress of twenty percent or  
30 more of the specified minimum yield strength.

31 (21) "Underground facility" means any item buried or placed below  
32 ground for use in connection with the storage or conveyance of water,  
33 sewage, electronic, telephonic or telegraphic communications,  
34 cablevision, electric energy, petroleum products, gas, gaseous vapors,  
35 hazardous liquids, or other substances and including but not limited to  
36 pipes, sewers, conduits, cables, valves, lines, wires, manholes,  
37 attachments, and those parts of poles or anchors below ground. This  
38 definition does not include pipelines as defined in subsection ~~((13))~~

1 (17) of this section, but does include distribution systems owned and  
2 operated under franchise for the sale, delivery, or distribution of  
3 natural gas at retail.

4 ~~(((17) "One number locator service" means a service through which  
5 a person can notify utilities and request field marking of underground  
6 facilities.))~~

7 **Sec. 2.** RCW 19.122.027 and 2000 c 191 s 16 are each amended to  
8 read as follows:

9 (1) ~~((By December 31, 2000,))~~ The utilities and transportation  
10 commission shall cause to be established a single statewide toll-free  
11 telephone number to be used for referring excavators to the appropriate  
12 one-number locator service.

13 (2) The utilities and transportation commission, in consultation  
14 with the Washington utilities coordinating council, shall establish  
15 minimum standards and best management practices for one-number locator  
16 services ~~((consistent with the recommendations of the governor's fuel  
17 accident prevention and response team issued in December 1999. By  
18 December 31, 2000, the commission shall provide its recommendations to  
19 the appropriate standing committees of the house of representatives and  
20 the senate)).~~

21 (3) One-number locator services shall be operated by  
22 nongovernmental agencies.

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

25 (1)(a) Any ~~((person))~~ excavator who fails to notify the one-number  
26 locator service and causes damage to a hazardous liquid or gas pipeline  
27 is subject to a civil penalty of not more than ten thousand dollars for  
28 each violation.

29 (b) The civil penalty in this subsection may also be imposed on any  
30 excavator who violates section 5 of this act.

31 (2) All civil penalties recovered under this section shall be  
32 deposited into the pipeline safety account created in RCW 81.88.050.

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

35 (1) Any person who violates any provision of this chapter not

1 amounting to a violation of RCW 19.122.055, and which violation results  
2 in damage to underground facilities, is subject to a civil penalty of  
3 not more than one thousand dollars for each violation. All penalties  
4 recovered in such actions shall be deposited in the general fund.

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

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

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

18 Any excavator who excavates, without a valid excavation  
19 confirmation code when required under this chapter, within thirty-five  
20 feet of a transmission pipeline is guilty of a misdemeanor.

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

23 If charged with a violation of section 5 of this act, an operator  
24 will be deemed to have established an affirmative defense to such  
25 charges if:

- 26 (1) The operator was provided a valid excavation confirmation code;  
27 (2) The excavation was performed in an emergency situation;  
28 (3) The operator was provided a false confirmation code by an  
29 identifiable third party; or  
30 (4) Notice of the excavation was not required under this chapter.

31 NEW SECTION. Sec. 7. A new section is added to chapter 19.122 RCW  
32 to read as follows:

33 Any person who intentionally provides an operator with a false  
34 excavation confirmation code is guilty of a misdemeanor.

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

3        Upon receipt, during normal business hours, of notice of an  
4   intended excavation, the one-number locator service shall provide an  
5   excavation confirmation code.

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