

CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1634**

Chapter 263, Laws of 2011

(partial veto)

62nd Legislature  
2011 Regular Session

UNDERGROUND UTILITIES

EFFECTIVE DATE: 01/01/13

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

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

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

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Approved May 5, 2011, 10:08 a.m., with  
the exception of Section 24 which is  
vetoed.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**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.

BARBARA BAKER

\_\_\_\_\_  
**Chief Clerk**

FILED

May 6, 2011

**Secretary of State  
State of Washington**

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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1634

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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.***

***\*Sec. 24 was vetoed. See message at end of chapter.***

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.

Passed by the House April 14, 2011.

Passed by the Senate April 6, 2011.

Approved by the Governor May 5, 2011, with the exception of  
certain items that were vetoed.

Filed in Office of Secretary of State May 6, 2011.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 24,  
Engrossed Second Substitute House Bill 1634 entitled:

"AN ACT Relating to underground utilities."

This bill strengthens our law for preventing damages to underground pipelines and other utilities during excavation. The bill provides the Utilities and Transportation Commission with the authority to take enforcement action for violations, to require reporting of damage to underground utilities, and to develop a stakeholder process to review violations and encourage better excavation practices. The bill provides a comprehensive damage prevention program for underground utilities.

Pursuant to the House floor colloquy on this bill, section 24 was intended to ensure that the bill would not result in regulation by the Utilities and Transportation Commission of consumer-owned utilities such as electric cooperatives, municipal utilities and public utility districts, except when such a utility damages an underground facility subject to this bill, in which case the Commission would have the authority to enforce the provisions of this act.

While the House floor colloquy clarifies legislative intent, the language in Section 24 could be read to exempt consumer-owned utilities from enforcement under the bill, and thereby prevent the Commission from taking enforcement action on underground utility damage caused by consumer-owner utilities. Since the language in this section does not change the statutory independence of consumer-owned utilities in setting their rates and determining their services, the section is not necessary.

For these reasons, I have vetoed section 24 of Engrossed Second Substitute House Bill 1634.

With the exception of section 24, Engrossed Second Substitute House Bill 1634 is approved."