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ENGROSSED SUBSTITUTE SENATE BILL 5627

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State of Washington

69th Legislature

2025 Regular Session

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Ramos, Harris, Wellman, Shewmake, J. Wilson, Hasegawa, and Nobles)

READ FIRST TIME 02/21/25.

1 AN ACT Relating to improving safe excavation practices and  
2 preventing damage to underground utilities; amending RCW 19.122.010,  
3 19.122.020, 19.122.027, 19.122.030, 19.122.031, 19.122.040,  
4 19.122.050, 19.122.055, 19.122.090, 19.122.100, 19.122.130, and  
5 19.122.150; and prescribing penalties.

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

7 **Sec. 1.** RCW 19.122.010 and 2011 c 263 s 1 are each amended to  
8 read as follows:

9 In this chapter, the underground utility damage prevention act,  
10 the legislature intends to protect public health and safety and  
11 prevent disruption of vital utility services through a comprehensive  
12 damage prevention program that includes:

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

16 (2) Setting safeguards for construction and excavation near  
17 hazardous liquid and gas pipelines;

18 (3) Improving worker safety and public knowledge of safe  
19 practices;

20 (4) Collecting and analyzing damage data;

21 (5) Reviewing alleged violations; and

1 (6) Enforcing this chapter.

2 **Sec. 2.** RCW 19.122.020 and 2020 c 162 s 1 are each amended to  
3 read as follows:

4 The definitions in this section apply throughout this chapter  
5 unless the context clearly requires otherwise.

6 (1) "Bar hole" means a hole made in the soil or pavement with a  
7 hand-operated bar for the specific purpose of testing the subsurface  
8 atmosphere with a combustible gas indicator.

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

11 (3) "Commission" means the utilities and transportation  
12 commission.

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

19 (5) "Emergency" means any condition constituting a clear and  
20 present danger to life, health, or property, or a customer service  
21 outage due to an unplanned utility outage that requires immediate  
22 action where an excavator or facility operator has a crew on-site or  
23 en route.

24 (6) "End user" means any utility customer or consumer of utility  
25 services or commodities provided by a facility operator.

26 (7) "Equipment operator" means an individual conducting an  
27 excavation.

28 (8) "Excavation" and "excavate" means any operation, including  
29 the installation of signs, in which earth, rock, or other material on  
30 or below the ground is moved or otherwise displaced by any means.

31 (9) "Excavation confirmation code" means a code or ticket issued  
32 by a one-number locator service for the site where an excavation is  
33 planned. The code must be accompanied by the date and time it was  
34 issued and the work-to-begin date on the notice as provided in RCW  
35 19.122.030(2). The excavation confirmation code is not valid until  
36 the work-to-begin date.

37 (10) "Excavator" means any person who engages directly in  
38 excavation.

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

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

8 (13) "Hazardous liquid" means:

9 (a) Petroleum, petroleum products, or anhydrous ammonia as those  
10 terms are defined in 49 C.F.R. Part 195 as in effect on March 1,  
11 1998;

12 (b) Carbon dioxide; and

13 (c) Other substances designated as hazardous by the secretary of  
14 transportation and incorporated by reference by the commission by  
15 rule.

16 (14) "Identified but unlocatable underground facility" means an  
17 underground facility which has been identified but cannot be located  
18 with reasonable accuracy.

19 (15) "Large project" means a project that exceeds seven hundred  
20 linear feet.

21 (16) "Locatable underground facility" means an underground  
22 facility which can be marked with reasonable accuracy.

23 (17) "Marking" means the use of stakes, paint, or other clearly  
24 identifiable materials to show the field location of underground  
25 facilities, in accordance with the current color code standard of the  
26 American public works association. Markings shall include  
27 identification letters indicating the specific type, best known  
28 width, and identification of the operator of the underground  
29 facility. Locate marks are not required to indicate the depth of the  
30 underground facility given the potential change of topography over  
31 time.

32 (18) "Notice" or "notify" means contact in person or by telephone  
33 or other electronic method, and, with respect to contact of a one-  
34 number locator service, also results in the receipt of (~~a valid~~) an  
35 excavation confirmation code.

36 (19) "One-number locator service" means a service through which a  
37 person can notify facility operators and request marking of  
38 underground facilities and includes the web-based platform required  
39 under RCW 19.122.027(1).

1 (20) "Person" means an individual, partnership, franchise holder,  
2 association, corporation, the state, a city, a county, a town, or any  
3 subdivision or instrumentality of the state, including any unit of  
4 local government, and its employees, agents, or legal  
5 representatives.

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

14 (22) "Pipeline company" means a person or entity constructing,  
15 owning, or operating a pipeline for transporting hazardous liquid or  
16 gas. "Pipeline company" does not include:

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

19 (b) Excavation contractors or other contractors that contract  
20 with a pipeline company.

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

24 (24) "Service lateral" means an underground water, stormwater, 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 (25) "Transfer pipeline" means a buried or aboveground pipeline  
30 used to carry hazardous liquid between a tank vessel or transmission  
31 pipeline and the first valve inside secondary containment at a  
32 facility, provided that any discharge on the facility side of the  
33 first valve will not directly impact waters of the state. "Transfer  
34 pipeline" includes valves and other appurtenances connected to the  
35 pipeline, pumping units, and fabricated assemblies associated with  
36 pumping units. "Transfer pipeline" does not include process  
37 pipelines, pipelines carrying ballast or bilge water, transmission  
38 pipelines, or tank vessel or storage tanks.

39 (26) "Transmission pipeline" means a pipeline that transports  
40 hazardous liquid or gas within a storage field, or transports

1 hazardous liquid or gas from an interstate pipeline or storage  
2 facility to a distribution main or a large volume hazardous liquid or  
3 gas user, or operates at a hoop stress of twenty percent or more of  
4 the specified minimum yield strength.

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

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

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

25 (30) "Blind boring" means engaging in directional underground  
26 boring without potholing the underground facility, relying on surface  
27 markings only to approximate the location of underground utilities in  
28 three dimensions.

29 (31) "Design locating" means locating for planning purposes.  
30 "Design locating" does not include locating for excavation purposes.

31 (32) "Force majeure" means: Natural disasters, including fire,  
32 flood, earthquake, windstorm, avalanche, mudslide, and other similar  
33 events; acts of war or civil unrest when an emergency has been  
34 declared by appropriate governmental officials; acts of civil or  
35 military authority; embargoes; epidemics; terrorist acts; riots;  
36 insurrections; explosions; and nuclear accidents.

37 (33) "General contractor" has the same meaning as defined in RCW  
38 18.27.010.

1 (34) "Hard surface" means an area covered with asphalt, concrete,  
2 interlocking brick or block solid stone, wood, or any similar  
3 impervious or nonporous material on the surface of the ground.

4 (35) "Physical exposure" means processes, such as potholing or  
5 daylighting.

6 (36) "Positive response" means a notification from the owner or  
7 operator of the underground facility, or the owner's or operator's  
8 authorized locating contractor, to the one-number locator service  
9 confirming that the facility owner, operator, or contracted locator  
10 has completed marking or provided location information regarding  
11 unlocatable facilities in response to a notice.

12 (37) "Potholing" means an excavation process that involves making  
13 a series of small test holes to accurately locate underground lines.  
14 Potholing is also known as daylighting.

15 (38) "Safe and careful work methods" means methods of excavation,  
16 including pot holing, hand digging when practical, vacuum excavation  
17 methods, pneumatic hand tools, or other technical methods that may be  
18 developed.

19 (39) "White lining" means the use of any white paint, flags,  
20 stakes, whiskers, or other locally accepted method that is  
21 distinguishable from the surrounding area.

22 (40) "Work-to-begin date" means an identified date not less than  
23 two full business days and not more than 10 full business days, not  
24 including Saturdays, Sundays, legal local, state, or federal  
25 holidays, from the date notice is given to a one-number locator  
26 service.

27 **Sec. 3.** RCW 19.122.027 and 2011 c 263 s 3 are each amended to  
28 read as follows:

29 (1) The commission must establish a single statewide toll-free  
30 telephone number to be used for referring excavators to the  
31 appropriate one-number locator service. The one-number locator  
32 service shall maintain a web-based platform that provides the same  
33 services as the toll-free telephone number online. The web-based  
34 platform must meet the requirements outlined in RCW 19.122.030 (1)  
35 and (2). The web-based platform must be free of charge to those  
36 requesting location of underground facilities and operated in the  
37 same manner as the toll-free telephone number.

1 (a) The one-number locator service may permit multiple excavators  
2 on a single notice, so long as each excavator is provided with an  
3 individual and unique confirmation code.

4 (b) The one-number locator service must require that an excavator  
5 provide a work-to-begin date in the notice.

6 (2) The commission, in consultation with the ~~((Washington~~  
7 ~~utilities coordinating council))~~ entity administering the one-number  
8 locator service, must establish minimum standards and best management  
9 practices for one-number locator services.

10 (3) One-number locator services must be operated by  
11 nongovernmental agencies.

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

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

16 **Sec. 4.** RCW 19.122.030 and 2011 c 263 s 4 are each amended to  
17 read as follows:

18 (1)(a) Unless exempted under RCW 19.122.031, before commencing  
19 any excavation, an excavator must mark the boundary of the excavation  
20 area with white ~~((paint))~~ lining or, when necessary, white pin flags,  
21 applied on the ground of the worksite, then provide notice of the  
22 scheduled commencement of excavation to all facility operators  
23 through a one-number locator service. An excavator shall provide the  
24 work-to-begin date in the notice provided to the one-number locator  
25 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))~~ provide notice electronically to a one-  
30 number locator service.

31 (c) Excavators and facility operators are encouraged to  
32 incorporate best practices for underground damage prevention, improve  
33 worker safety, protect vital underground infrastructure, and ensure  
34 public safety during excavation activities conducted in the vicinity  
35 of existing underground facilities.

36 (2)(a) An excavator must provide the notice required by  
37 subsection (1) of this section to a one-number locator service not  
38 less than two full business days and not more than ~~((ten))~~ 10 full  
39 business days before the scheduled work-to-begin date ~~((for~~

1 ~~commencement of excavation~~)), unless otherwise agreed by the  
2 excavator and facility operators in writing. If an excavator intends  
3 to work at multiple sites or at a large project, the excavator must  
4 take reasonable steps to confer with facility operators to enable  
5 them to locate underground facilities reasonably in advance of the  
6 start of excavation for each phase of the work.

7 (b) A general contractor may provide the notice required by  
8 subsection (1) of this section on behalf of an excavator. A general  
9 contractor may list multiple excavators in the notice if the notice  
10 contains, for each excavator, the excavator's full legal name, phone  
11 number, physical address, and company name, if applicable. The  
12 general contractor must provide each excavator with an individual and  
13 unique confirmation code. The excavator engaging in excavation is  
14 liable for all costs and penalties resulting from damage caused by  
15 excavation, including failure to follow the notice. If damage was the  
16 result of a flaw in the notice, the general contractor who submitted  
17 the notice is liable for all costs and penalties resulting from the  
18 damage.

19 (3) Upon receipt of the notice provided for in subsection (1) of  
20 this section, a facility operator must, with respect to:

21 (a) (i) The facility operator's locatable underground facilities,  
22 provide the excavator with reasonably accurate information by marking  
23 ((~~their~~)) facility location. Hazardous liquid and gas pipeline  
24 operators are required to locate all facilities in accordance with  
25 Title 49 C.F.R. Secs. 195.442(c)(4) through (6) and 192.614(c)(4)  
26 through (6) as they existed on the effective date of this section, or  
27 such subsequent date as may be provided by the commission by rule,  
28 consistent with the purpose of this section. This information must be  
29 provided free of charge subject to the limitations in subsections  
30 (6)(b) and (8) of this section, and the grant of authority in  
31 subsection (11) of this section;

32 (ii) In the event of force majeure, the facility operator's  
33 deadline to mark underground facilities as provided in subsection  
34 (4)(a) of this section, must be extended by an agreement in writing  
35 between the affected parties. The facility operator shall notify the  
36 excavator of the need for extension of the deadline as soon as  
37 reasonable, but no later than the expiration of the deadline  
38 established in subsection (4)(a) of this section;

39 (b) The facility operator's unlocatable or identified but  
40 unlocatable underground facilities, provide the excavator with



1 available information as to their location prior to the work-to-begin  
2 date provided in the notice under subsection (1) of this section. For  
3 any gas or hazardous liquid pipeline, locate all facilities in  
4 accordance with Title 49 C.F.R. Secs. 195.442(c)(4) through (6) and  
5 192.614(c)(4) through (6) as they existed on the effective date of  
6 this section, or such subsequent date as may be provided by the  
7 commission by rule, consistent with the purpose of this section; and

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

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

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

15 (4)(a) A facility operator must provide information to an  
16 excavator pursuant to subsection (3) of this section no later than  
17 (~~two business days after the receipt of the notice provided for in~~  
18 ~~subsection (1) of this section or before excavation commences, at the~~  
19 ~~option of the facility operator, unless otherwise agreed by the~~  
20 ~~parties)) the work-to-begin date on the notice provided for in  
21 subsection (1) and (2)(a) of this section, unless otherwise agreed by  
22 written agreement between the facility operator and excavator.~~

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

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

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

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

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

37 (i) Constitutes full compliance with the requirements of this  
38 section, and no person may be found liable for damages or injuries  
39 that may result from such compliance, apart from liability for

1 arranging for repairs or relocation as provided in RCW 19.122.050(2);  
2 and

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

5 (d) An end user is responsible for determining the location of a  
6 service lateral on their property or a service lateral that they own.  
7 An end user is responsible for locating on their own property the  
8 underground facilities that they own. The one-number locator service  
9 shall maintain a list of private-line locate service providers who  
10 may be hired at the cost of the end user for the location of service  
11 laterals. Nothing in this section may be interpreted to require an  
12 end user to subscribe to a one-number locator service or to locate a  
13 service lateral within a right-of-way or utility easement, except an  
14 end user who is an owner, operator, or responsible party of an  
15 underground facility in a public right-of-way shall subscribe to a  
16 one-number locator service and comply with subsection (3) of this  
17 section.

18 (e) Facility operators may direct the one-number locator service  
19 to send notices provided for in subsection (1) of this section to a  
20 contract locator. The facility operator retains all legal  
21 responsibility for compliance with this section.

22 (5) An excavator must not excavate until all known facility  
23 operators have marked (~~or provided information regarding~~) their  
24 locatable underground facilities or, in the case of nonhazardous  
25 liquid or nongas pipeline facilities, provided information regarding  
26 their unlocatable underground facilities as provided in this section.  
27 An excavator may not commence excavation until the excavator has  
28 received positive response from all operators with underground  
29 facilities in the area identified in the notice.

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

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

36 (ii) The duration of the excavation portion of the project.

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

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

7 (7) An excavator has the right to receive reasonable compensation  
8 from a facility operator for costs incurred by the excavator if the  
9 facility operator does not locate its underground facilities in  
10 accordance with the requirements specified in this section.

11 (8) A facility operator has the right to receive reasonable  
12 compensation from an excavator for costs incurred by the facility  
13 operator if the excavator does not comply with the requirements  
14 specified in this section.

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

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

32 (11) Each facility operator shall provide to a one-number locator  
33 service directions on how a requestor may obtain, for design  
34 locating, information regarding the location of underground  
35 facilities. For the purpose of this subsection, a "requestor" is any  
36 person seeking the location of underground facilities for design  
37 locating. Facility operators may attach fees for design locating.  
38 However, the fees under this subsection may not be imposed on the  
39 department of transportation.

1 (12) Design locating is required whenever any individual applies  
2 for a development permit of any type within 700 feet of a  
3 transmission pipeline.

4 (a) Prior to any activity that involves grade modification,  
5 excavation, or additional loading of the soil on property within 700  
6 feet of a transmission pipeline, the requestor must contact the  
7 transmission pipeline operator and provide documentation detailing  
8 the proposed activity.

9 (b) The transmission pipeline operator must respond to the  
10 requestor within 30 days to confirm a review of the documents  
11 describing the proposed activity and indicate any potential impacts  
12 from the activity on the transmission line.

13 (c) If after 30 days, the transmission pipeline operator does not  
14 respond to the requestor, then development activity may resume  
15 without violation.

16 (13) Except as provided in subsections (6)(b), (8), and (11) of  
17 this section, facility operators are prohibited from charging a fee  
18 for locating and marking their underground facilities.

19 (14) Nothing in this section limits a facility operator regulated  
20 by the commission from seeking recovery of costs for locating and  
21 marking its underground facilities as part of rates.

22 **Sec. 5.** RCW 19.122.031 and 2011 c 263 s 5 are each amended to  
23 read as follows:

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

26 (a) An emergency excavation, but only with respect to (~~boundary~~  
27 ~~marking~~) white lining and notice requirements specified in RCW  
28 19.122.030 (1) and (2), and provided that the excavator provides  
29 notice to a one-number locator service at the earliest practicable  
30 opportunity. Facility operators must promptly respond to a notice of  
31 emergency excavation. Prompt means to dispatch locating personnel  
32 without undue delay;

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

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

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

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

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

4 (e) Road maintenance activities involving excavation less than  
5 six inches in depth below the original road grade and ditch  
6 maintenance activities involving excavation less than six inches in  
7 depth below the original ditch flowline, or alteration of the  
8 original ditch horizontal alignment;

9 (f) The creation of bar holes less than twelve inches in depth,  
10 or of any depth during emergency leak investigations, provided that  
11 the excavator takes reasonable measures to eliminate electrical arc  
12 hazards; ((~~or~~))

13 (g) Construction, operation, or maintenance activities by an  
14 irrigation district on rights-of-way, easements, or facilities owned  
15 by the federal bureau of reclamation in federal reclamation projects;  
16 or

17 (h) Any facility operator using safe and careful work methods to  
18 physically expose an unlocatable facility in response to a one-call  
19 notification.

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

22 **Sec. 6.** RCW 19.122.040 and 2011 c 263 s 8 are each amended to  
23 read as follows:

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

28 (a) An underground facility not identified as required by this  
29 chapter or other provision of law; or

30 (b) An underground facility not located, as required by this  
31 chapter or other provision of law, by the project owner, facility  
32 operator, or excavator if the project owner or excavator is also a  
33 facility operator.

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

36 (a) Determine the precise location of underground facilities  
37 which have been marked pursuant to RCW 19.122.030;

1 (b) Plan the excavation to avoid damage to or minimize  
2 interference with underground facilities in and near the excavation  
3 area; (~~and~~)

4 (c) Provide such support for underground facilities in and near  
5 the construction area, including during backfill operations, as may  
6 be reasonably necessary for the protection of such facilities;

7 (d) Use safe and careful work methods, taking into consideration  
8 the known and unknown underground facilities and the surface and  
9 subsurface to be excavated. If the marking is on a hard surface,  
10 methods of excavation may include pneumatic hand tools or other  
11 excavation methods that are commonly accepted as permissible for the  
12 type of surface encountered; and

13 (e) When directional boring will be implemented as a method of  
14 underground excavation, supplement white lining with physical  
15 exposure to avoid blind boring.

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

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

28 **Sec. 7.** RCW 19.122.050 and 2020 c 162 s 2 are each amended to  
29 read as follows:

30 (1) An excavator who, in the course of excavation, contacts or  
31 damages an underground facility shall notify the facility operator  
32 directly, if the facility operator is known, and a one-number locator  
33 service, and report the damage as required under RCW 19.122.053. If  
34 the damage causes an emergency condition, the excavator causing the  
35 damage shall also call 911 to alert the appropriate local public  
36 safety agencies and take all appropriate steps to ensure the public  
37 safety. No damaged underground facility may be buried until it is  
38 repaired or relocated.

1 (2) A facility operator notified in accordance with subsection  
2 (1) of this section shall arrange for repairs or relocation as soon  
3 as is practical, or permit the excavator to do necessary repairs or  
4 relocation at a mutually acceptable price.

5 **Sec. 8.** RCW 19.122.055 and 2011 c 263 s 10 are each amended to  
6 read as follows:

7 (1) (a) Any excavator who (~~fails to notify a one-number locator~~  
8 ~~service~~) violates any provision of this chapter and causes damage to  
9 a hazardous liquid or gas underground facility is subject to a civil  
10 penalty of not more than (~~ten thousand dollars~~) \$25,000 for each  
11 violation.

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

14 (2) Any hazardous liquid or gas pipeline operator who (a): (i)  
15 Fails to accurately locate the underground facility as required under  
16 RCW 19.122.030 (3) and (4); or (ii) fails to mark its underground  
17 facilities as required under RCW 19.122.030(1), and (b) whose  
18 underground facility is damaged as a result of the failure in (a) of  
19 this subsection is subject to a civil penalty of not more than  
20 \$25,000 for each violation.

21 (3) A civil penalty of up to \$5,000 for each violation may be  
22 imposed on any excavator or facility operator that violates any  
23 provision of this chapter involving an underground pipeline facility,  
24 but does not cause damage to an underground pipeline facility.

25 (4) All civil penalties recovered under this section must be  
26 deposited into the damage prevention account created in RCW  
27 19.122.160.

28 **Sec. 9.** RCW 19.122.090 and 2005 c 448 s 5 are each amended to  
29 read as follows:

30 (1) Any excavator who excavates, without (~~a valid~~) an  
31 excavation confirmation code when required under this chapter, within  
32 (~~thirty-five~~) 35 feet of a transmission pipeline is guilty of a  
33 misdemeanor.

34 (2) Any excavator who excavates within 35 feet of a transmission  
35 pipeline, prior to the work-to-begin date on the notice when required  
36 under this chapter, is guilty of a misdemeanor.

37 (3) Any excavator who excavates within 35 feet of a transmission  
38 pipeline, prior to receiving positive response from the facility

1 operator of the transmission pipeline when required under this  
2 chapter, is guilty of a misdemeanor.

3 **Sec. 10.** RCW 19.122.100 and 2011 c 263 s 16 are each amended to  
4 read as follows:

5 If charged with a violation of RCW 19.122.090, an equipment  
6 operator is deemed to have established an affirmative defense to such  
7 charges if:

8 (1) The equipment operator was provided ((a~~valid~~)) an excavation  
9 confirmation code;

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

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

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

14 **Sec. 11.** RCW 19.122.130 and 2020 c 162 s 3 are each amended to  
15 read as follows:

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

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

23 (a) Advise the commission and other state agencies, the  
24 legislature, and local governments on best practices and training to  
25 prevent damage to underground utilities, and policies to enhance  
26 worker and public safety; and

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

29 (3) (a) The safety committee will consist of thirteen members, who  
30 must be nominated by represented groups and appointed by the  
31 contracting entity to staggered three-year terms. The safety  
32 committee must include representatives of:

33 (i) Local governments;

34 (ii) A natural gas utility subject to regulation under Titles 80  
35 and 81 RCW;

36 (iii) Contractors;

37 (iv) Excavators;

38 (v) An electric utility subject to regulation under Title 80 RCW;



- 1 (vi) A consumer-owned utility, as defined in RCW 19.27A.140;  
2 (vii) A pipeline company;  
3 (viii) A water-sewer district subject to regulation under Title  
4 57 RCW;  
5 (ix) The commission; (~~and~~)  
6 (x) A telecommunications company; and  
7 (xi) A labor organization.

8 (b) The safety committee may pass bylaws and provide for those  
9 organizational processes that are necessary to complete the safety  
10 committee's tasks.

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

13 (5) The safety committee may review complaints of alleged  
14 violations of this chapter involving practices related to underground  
15 facilities, except for those complaints relating to damage to  
16 pipeline facilities or which involve violations of RCW 19.122.075 or  
17 19.122.090. Any person may bring a complaint to the safety committee  
18 regarding an alleged violation occurring on or after January 1, 2013.

19 (6) To review complaints of alleged violations, the safety  
20 committee must first receive sufficient evidence that a probable  
21 violation occurred. Once sufficient evidence has been received, the  
22 safety committee must appoint at least three and not more than five  
23 members as a review committee. The review committee must be a  
24 balanced group, including at least one excavator and one facility  
25 operator.

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~~) provide all  
29 complaint forms, materials, and supporting evidence that will be  
30 presented or used by the person or company making the complaint, to  
31 the alleged violator no less than 30 days prior to the scheduled date  
32 of review. Both parties must be notified of the review and be  
33 provided the opportunity to participate.

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

1       **Sec. 12.** RCW 19.122.150 and 2017 c 20 s 3 are each amended to  
2 read as follows:

3       (1) The commission may investigate and enforce violations of  
4 (~~RCW 19.122.055, 19.122.075, and 19.122.090~~) any provision of this  
5 chapter relating to pipeline facilities without initial referral to  
6 the safety committee created under RCW 19.122.130.

7       (2) If the commission's investigation of notifications received  
8 pursuant to RCW 19.122.140 or subsection (1) of this section  
9 substantiates violations of this chapter, the commission may impose  
10 penalties authorized by RCW 19.122.055, 19.122.070, 19.122.075, and  
11 19.122.090, and require training, education, or any combination  
12 thereof.

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

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

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

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