

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5627

69th Legislature
2025 Regular Session

Passed by the Senate April 22, 2025
Yeas 48 Nays 0

President of the Senate

Passed by the House April 11, 2025
Yeas 95 Nays 0

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5627** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5627

AS AMENDED BY THE HOUSE

Passed Legislature - 2025 Regular Session

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. The one-number locator
38 service must require that an excavator provide a work-to-begin date
39 in the notice. The one-number locator service must allow an option

1 for the submission of a notice that generates multiple unique and
2 individual excavation confirmation codes in accordance with RCW
3 19.122.030(1). This notice option does not alter any duties,
4 obligations, or liabilities of excavators or facility operators.

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

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

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

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

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

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

25 (b) If boundary marking required by (a) of this subsection is
26 infeasible, an excavator must (~~communicate directly with affected~~
27 ~~facility operators to ensure that the boundary of the excavation area~~
28 ~~is accurately identified~~) provide notice electronically to a one-
29 number locator service.

30 (c) An excavator may use a third-party entity, including a
31 general contractor, to provide the required notice of the scheduled
32 commencement of excavation to all facility operators through a one-
33 number locator service as required in this subsection. An excavator
34 that uses a third-party entity to provide such required notice
35 retains all legal duties and responsibilities for compliance with
36 this chapter.

37 (d) Excavators and facility operators are encouraged to
38 incorporate best practices for underground damage prevention, improve
39 worker safety, protect vital underground infrastructure, and ensure

1 public safety during excavation activities conducted in the vicinity
2 of existing underground facilities.

3 (2) An excavator must provide the notice required by subsection
4 (1) of this section to a one-number locator service not less than two
5 full business days and not more than ~~((ten))~~ 10 full business days
6 before the scheduled work-to-begin date ~~((for commencement of~~
7 ~~excavation))~~, unless otherwise agreed by the excavator and facility
8 operators in writing. If an excavator intends to work at multiple
9 sites or at a large project, the excavator must take reasonable steps
10 to confer with facility operators to enable them to locate
11 underground facilities reasonably in advance of the start of
12 excavation for each phase of the work.

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

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

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

33 (b) The facility operator's unlocatable or identified but
34 unlocatable underground facilities, provide the excavator with
35 available information as to their location prior to the work-to-begin
36 date provided in the notice under subsection (1) of this section. For
37 any gas or hazardous liquid pipeline, locate all facilities in
38 accordance with Title 49 C.F.R. Secs. 195.442(c)(4) through (6) and
39 192.614(c)(4) through (6) as they existed on the effective date of

1 this section, or such subsequent date as may be provided by the
2 commission by rule, consistent with the purpose of this section; and

3 (c) Service laterals, designate their presence or location, if
4 the service laterals:

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

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

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

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

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

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

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

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

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

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

39 (d) An end user is responsible for determining the location of a
40 service lateral on their property or a service lateral that they own.

1 An end user is responsible for locating on their own property the
2 underground facilities that they own. The one-number locator service
3 shall maintain a list of private-line locate service providers who
4 may be hired at the cost of the end user for the location of service
5 laterals. Nothing in this section may be interpreted to require an
6 end user to subscribe to a one-number locator service or to locate a
7 service lateral within a right-of-way or utility easement.

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

12 (5) An excavator must not excavate until all known facility
13 operators have marked (~~or provided information regarding~~) their
14 locatable underground facilities or, in the case of nonhazardous
15 liquid or nongas pipeline facilities, provided information regarding
16 their unlocatable underground facilities as provided in this section.
17 On and after January 1, 2026, an excavator may not commence
18 excavation until the excavator has received positive response from
19 all operators with underground facilities in the area identified in
20 the notice.

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

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

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

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

32 (c) A facility operator's markings of underground utilities
33 expire 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. For excavation occurring after that
36 date, an excavator must provide additional notice to a one-number
37 locator service pursuant to subsection (1) of this section.

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

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

3 (8) A facility operator has the right to receive reasonable
4 compensation from an excavator for costs incurred by the facility
5 operator if the excavator does not comply with the requirements
6 specified in this section.

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

13 (10) If an excavator discovers underground facilities that are
14 not identified, the excavator must cease excavating in the vicinity
15 of the underground facilities and immediately notify the facility
16 operator ((~~or~~)) through a one-number locator service. If an excavator
17 discovers identified but unlocatable underground facilities, the
18 excavator must notify the facility operator through a one-number
19 locator service. Upon notification by a one-number locator service or
20 an excavator, a facility operator must allow for location of the
21 uncovered portion of an underground facility identified by the
22 excavator, and may accept location information from the excavator for
23 marking of the underground facility.

24 (11) Each facility operator shall provide to a one-number locator
25 service directions on how a requestor may obtain, for design
26 locating, information regarding the location of underground
27 facilities. For the purpose of this subsection, a "requestor" is any
28 person seeking the location of underground facilities for design
29 locating. Facility operators may attach fees for design locating.
30 However, the fees under this subsection may not be imposed on the
31 department of transportation.

32 (12) Design locating is required whenever any individual applies
33 for a development permit of any type within 700 feet of a
34 transmission pipeline.

35 (a) Prior to any activity that involves grade modification,
36 excavation, or additional loading of the soil on property within 700
37 feet of a transmission pipeline, the requestor must contact the
38 transmission pipeline operator and provide documentation detailing
39 the proposed activity.

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

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

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

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

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

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

18 (a) An emergency excavation, but only with respect to (~~boundary~~
19 ~~marking~~) white lining and notice requirements specified in RCW
20 19.122.030 (1) and (2), and provided that the excavator provides
21 notice to a one-number locator service at the earliest practicable
22 opportunity. Facility operators must promptly respond to a notice of
23 emergency excavation. Prompt means to dispatch locating personnel
24 without undue delay;

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

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

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

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

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

35 (e) Road maintenance activities involving excavation less than
36 six inches in depth below the original road grade and ditch
37 maintenance activities involving excavation less than six inches in
38 depth below the original ditch flowline, or alteration of the
39 original ditch horizontal alignment;

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

5 (g) Construction, operation, or maintenance activities by an
6 irrigation district on rights-of-way, easements, or facilities owned
7 by the federal bureau of reclamation in federal reclamation projects;
8 or

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

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

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

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

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

22 (b) An underground facility not located, as required by this
23 chapter or other provision of law, by the project owner, facility
24 operator, or excavator if the project owner or excavator is also a
25 facility operator.

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

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

30 (b) Plan the excavation to avoid damage to or minimize
31 interference with underground facilities in and near the excavation
32 area; (~~and~~)

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

36 (d) Use safe and careful work methods, taking into consideration
37 the known and unknown underground facilities and the surface and
38 subsurface to be excavated. If the marking is on a hard surface,
39 methods of excavation may include pneumatic hand tools or other

1 excavation methods that are commonly accepted as permissible for the
2 type of surface encountered; and

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

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

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

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

20 (1) An excavator who, in the course of excavation, contacts or
21 damages an underground facility shall notify the facility operator
22 directly, if the facility operator is known, and a one-number locator
23 service, and report the damage as required under RCW 19.122.053. If
24 the damage causes an emergency condition, the excavator causing the
25 damage shall also call 911 to alert the appropriate local public
26 safety agencies and take all appropriate steps to ensure the public
27 safety. No damaged underground facility may be buried until it is
28 repaired or relocated.

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

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

35 (1)(a) Any excavator who (~~fails to notify a one-number locator~~
36 ~~service~~) violates any provision of this chapter and causes damage to
37 a hazardous liquid or gas underground facility is subject to a civil

1 penalty of not more than (~~ten thousand dollars~~) \$25,000 for each
2 violation.

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

5 (2) Any hazardous liquid or gas pipeline operator who (a): (i)
6 Fails to accurately locate the underground facility as required under
7 RCW 19.122.030 (3) and (4); or (ii) fails to mark its underground
8 facilities as required under RCW 19.122.030(1), and (b) whose
9 underground facility is damaged as a result of the failure in (a) of
10 this subsection is subject to a civil penalty of not more than
11 \$25,000 for each violation.

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

16 (4) All civil penalties recovered under this section must be
17 deposited into the damage prevention account created in RCW
18 19.122.160.

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

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

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

28 (3) Any excavator who excavates within 35 feet of a transmission
29 pipeline, prior to receiving positive response from the facility
30 operator of the transmission pipeline when required under this
31 chapter, is guilty of a misdemeanor.

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

34 If charged with a violation of RCW 19.122.090, an equipment
35 operator is deemed to have established an affirmative defense to such
36 charges if:

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

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

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

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

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

14 (a) Advise the commission and other state agencies, the
15 legislature, and local governments on best practices and training to
16 prevent damage to underground utilities, and policies to enhance
17 worker and public safety; and

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

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

24 (i) Local governments;

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

27 (iii) Contractors;

28 (iv) Excavators;

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

30 (vi) A consumer-owned utility, as defined in RCW 19.27A.140;

31 (vii) A pipeline company;

32 (viii) A water-sewer district subject to regulation under Title
33 57 RCW;

34 (ix) The commission; (~~and~~)

35 (x) A telecommunications company; and

36 (xi) A labor organization that historically represents workers
37 who perform underground utility or excavation work.

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

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

6 (5) The safety committee may review complaints of alleged
7 violations of this chapter involving practices related to underground
8 facilities, except for those complaints relating to damage to
9 pipeline facilities or which involve violations of RCW 19.122.075 or
10 19.122.090. Any person may bring a complaint to the safety committee
11 regarding an alleged violation occurring on or after January 1, 2013.

12 (6) To review complaints of alleged violations, the safety
13 committee must first receive sufficient evidence that a probable
14 violation occurred. Once sufficient evidence has been received, the
15 safety committee must appoint at least three and not more than five
16 members as a review committee. The review committee must be a
17 balanced group, including at least one excavator and one facility
18 operator.

19 (7) Before reviewing a complaint alleging a violation of this
20 chapter, the review committee must (~~notify the person making the~~
21 ~~complaint and the alleged violator of its review and of~~) provide all
22 complaint forms, materials, and supporting evidence that will be
23 presented or used by the person or company making the complaint, to
24 the alleged violator no less than 30 days prior to the scheduled date
25 of review. Both parties must be notified of the review and be
26 provided the opportunity to participate.

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

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

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

38 (2) If the commission's investigation of notifications received
39 pursuant to RCW 19.122.140 or subsection (1) of this section

1 substantiates violations of this chapter, the commission may impose
2 penalties authorized by RCW 19.122.055, 19.122.070, 19.122.075, and
3 19.122.090, and require training, education, or any combination
4 thereof.

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

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

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

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