
SUBSTITUTE HOUSE BILL 2409

State of Washington

68th Legislature

2024 Regular Session

By House Local Government (originally sponsored by Representatives Corry and Barkis)

READ FIRST TIME 01/31/24.

1 AN ACT Relating to underground facilities and safe excavation
2 practices; and amending RCW 19.122.020, 19.122.030, 19.122.040, and
3 19.122.130.

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

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

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

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

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

14 (3) "Commission" means the utilities and transportation
15 commission.

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

1 (5) "Emergency" means any condition constituting a clear and
2 present danger to life or property, or a customer service outage.

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

5 (7) "Equipment operator" means an individual conducting an
6 excavation.

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

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

14 (10) "Excavator" means any person who engages directly in
15 excavation.

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

21 (12) "Gas" means natural gas, flammable gas, or toxic or
22 corrosive gas.

23 (13) "Hard Surface" means an area covered with asphalt, concrete,
24 interlocking brick or block, solid stone, wood or any similar
25 impervious or nonporous material on the surface of the ground.

26 (14) "Hazardous liquid" means:

27 (a) Petroleum, petroleum products, or anhydrous ammonia as those
28 terms are defined in 49 C.F.R. Part 195 as in effect on March 1,
29 1998;

30 (b) Carbon dioxide; and

31 (c) Other substances designated as hazardous by the secretary of
32 transportation and incorporated by reference by the commission by
33 rule.

34 (~~(14)~~) (15) "Identified but unlocatable underground facility"
35 means an underground facility which has been identified but cannot be
36 located with reasonable accuracy.

37 (~~(15)~~) (16) "Large project" means a project that exceeds seven
38 hundred linear feet.

39 (~~(16)~~) (17) "Locatable underground facility" means an
40 underground facility which can be marked with reasonable accuracy.

1 (~~(17)~~) (18) "Marking" means the use of stakes, paint, or other
2 clearly identifiable materials to show the field location of
3 underground facilities, in accordance with the current color code
4 standard of the American public works association. Markings shall
5 include identification letters indicating the specific type of the
6 underground facility. Locate marks are not required to indicate the
7 depth of the underground facility given the potential change of
8 topography over time.

9 (~~(18)~~) (19) "Notice" or "notify" means contact in person or by
10 telephone or other electronic method, and, with respect to contact of
11 a one-number locator service, also results in the receipt of a valid
12 excavation confirmation code.

13 (~~(19)~~) (20) "One-number locator service" means a service
14 through which a person can notify facility operators and request
15 marking of underground facilities.

16 (~~(20)~~) (21) "Person" means an individual, partnership,
17 franchise holder, association, corporation, the state, a city, a
18 county, a town, or any subdivision or instrumentality of the state,
19 including any unit of local government, and its employees, agents, or
20 legal representatives.

21 (~~(21)~~) (22) "Pipeline" or "pipeline system" means all or parts
22 of a pipeline facility through which hazardous liquid or gas moves in
23 transportation, including, but not limited to, line pipe, valves, and
24 other appurtenances connected to line pipe, pumping units, fabricated
25 assemblies associated with pumping or compressor units, metering and
26 delivery stations and fabricated assemblies therein, and breakout
27 tanks. "Pipeline" or "pipeline system" does not include process or
28 transfer pipelines.

29 (~~(22)~~) (23) "Pipeline company" means a person or entity
30 constructing, owning, or operating a pipeline for transporting
31 hazardous liquid or gas. "Pipeline company" does not include:

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

34 (b) Excavation contractors or other contractors that contract
35 with a pipeline company.

36 (~~(23)~~) (24) "Positive Response" is a notification from the
37 facility owner or operator or their authorized locating contractor to
38 the one number locate center that the facility owner or operator or
39 their contractor has completed marking or providing information in
40 response to a notice.

1 ~~(25)~~ "Reasonable accuracy" means a location within (~~(twenty-~~
2 ~~four)~~) 24 horizontal inches of the (~~(outside dimensions of both)~~)
3 lateral sides of an underground facility.

4 (~~(24)~~) (26) "Service lateral" means an underground water,
5 stormwater, or sewer facility located in a public right-of-way or
6 utility easement that connects an end user's building or property to
7 a facility operator's underground facility, and terminates beyond the
8 public right-of-way or utility easement.

9 (~~(25)~~) (27) "Transfer pipeline" means a buried or aboveground
10 pipeline used to carry hazardous liquid between a tank vessel or
11 transmission pipeline and the first valve inside secondary
12 containment at a facility, provided that any discharge on the
13 facility side of the first valve will not directly impact waters of
14 the state. "Transfer pipeline" includes valves and other
15 appurtenances connected to the pipeline, pumping units, and
16 fabricated assemblies associated with pumping units. "Transfer
17 pipeline" does not include process pipelines, pipelines carrying
18 ballast or bilge water, transmission pipelines, or tank vessel or
19 storage tanks.

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

26 (~~(27)~~) (29) "Underground facility" means any item buried or
27 placed below ground for use in connection with the storage or
28 conveyance of water, sewage, electronic, telephonic or telegraphic
29 communications, cablevision, electric energy, petroleum products,
30 gas, gaseous vapors, hazardous liquids, or other substances and
31 including but not limited to pipes, sewers, conduits, cables, valves,
32 lines, wires, manholes, attachments, and those parts of poles or
33 anchors that are below ground. This definition does not include
34 pipelines as defined in subsection (~~(21)~~) (22) of this section, but
35 does include distribution systems owned and operated under franchise
36 for the sale, delivery, or distribution of natural gas at retail.

37 (~~(28)~~) (30) "Unlocatable underground facility" means, subject
38 to the provisions of RCW 19.122.030, an underground facility that
39 cannot be marked with reasonable accuracy using available information
40 to designate the location of an underground facility. "Unlocatable

1 underground facility" includes, but is not limited to, service
2 laterals, storm drains, and nonconductive and nonmetallic underground
3 facilities that do not contain trace wires.

4 ~~((29))~~ (31) "Utility easement" means a right held by a facility
5 operator to install, maintain, and access an underground facility or
6 pipeline.

7 **Sec. 2.** RCW 19.122.030 and 2011 c 263 s 4 are each amended to
8 read as follows:

9 (1) ~~((a))~~ Unless exempted under RCW 19.122.031, before
10 commencing any excavation, an excavator must mark the boundary of the
11 excavation area using white lining, or, when necessary, pin flags
12 with white paint applied on the ground of the worksite, then provide
13 notice of the scheduled commencement of excavation to all facility
14 operators through a one-number locator service.

15 ~~((b) If boundary marking required by (a) of this subsection is
16 infeasible, an excavator must communicate directly with affected
17 facility operators to ensure that the boundary of the excavation area
18 is accurately identified.))~~

19 (2) An excavator must provide the notice required by subsection
20 (1) of this section to a one-number locator service not less than two
21 full business days and not more than ~~((ten))~~ 10 full business days
22 before the scheduled date for commencement of excavation, unless
23 otherwise agreed to, either orally or in writing, by the excavator
24 and facility operators. If an excavator intends to work at multiple
25 sites or at a large project, the excavator must take reasonable steps
26 to confer with facility operators to enable them to locate
27 underground facilities reasonably in advance of the start of
28 excavation for each phase of the work.

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

31 (a) The facility operator's locatable underground facilities
32 within the boundary of the white lined area, provide the excavator
33 with reasonably accurate information by marking their location. All
34 facility operators who receive notice from an excavator, including
35 those operators who do not have facilities buried in excavation
36 areas, must provide a positive response to inform excavators that the
37 area has been marked or that the area is clear of the operators'
38 buried facilities;

1 (b) The facility operator's unlocatable or identified but
2 unlocatable underground facilities, provide the excavator with
3 available information as to their location; and

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

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

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

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

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

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

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

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

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

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

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

38 (d) An end user is responsible for determining the location of a
39 service lateral on their property or a service lateral that they own.
40 Nothing in this section may be interpreted to require an end user to

1 subscribe to a one-number locator service or to locate a service
2 lateral within a right-of-way or utility easement.

3 (5) An excavator must not excavate until all known facility
4 operators have marked or provided information regarding underground
5 facilities as provided in this section.

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

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

12 (ii) The duration of the project.

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

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

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

27 (8) A facility operator has the right to receive reasonable
28 compensation from an excavator for costs incurred by the facility
29 operator if the excavator does not comply with the requirements
30 specified in this section.

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

37 (10) If an excavator discovers underground facilities that are
38 not identified, the excavator must cease excavating in the vicinity
39 of the underground facilities and immediately notify the facility
40 operator or a one-number locator service. If an excavator discovers

1 identified but unlocatable underground facilities, the excavator must
2 notify the facility operator. Upon notification by a one-number
3 locator service or an excavator, a facility operator must allow for
4 location of the uncovered portion of an underground facility
5 identified by the excavator, and may accept location information from
6 the excavator for marking of the underground facility.

7 **Sec. 3.** RCW 19.122.040 and 2011 c 263 s 8 are each amended to
8 read as follows:

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

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

15 (b) An underground facility not located, as required by this
16 chapter or other provision of law, by the project owner, facility
17 operator, or excavator if the project owner or excavator is also a
18 facility operator.

19 (2) An excavator shall use reasonable care to avoid damaging
20 underground facilities, including while removing hard surfaces. An
21 excavator must:

22 (a) Determine the precise location of underground facilities
23 which have been marked;

24 (b) Plan the excavation to avoid damage to or minimize
25 interference with underground facilities in and near the excavation
26 area; and

27 (c) Provide such support for underground facilities in and near
28 the construction area, including during backfill operations, as may
29 be reasonably necessary for the protection of such facilities.

30 (3) If an underground facility is damaged and such damage is the
31 consequence of the failure to fulfill an obligation under this
32 chapter, the party failing to perform that obligation is liable for
33 any damages. Any clause in an excavation contract which attempts to
34 allocate liability, or requires indemnification to shift the economic
35 consequences of liability, that differs from the provisions of this
36 chapter is against public policy and unenforceable. Nothing in this
37 chapter prevents the parties to an excavation contract from
38 contracting with respect to the allocation of risk for changed or
39 differing site conditions.

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

3 **Sec. 4.** RCW 19.122.130 and 2020 c 162 s 3 are each amended to
4 read as follows:

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

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

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

16 (b) Review complaints alleging violations of this chapter
17 involving practices related to underground facilities. The safety
18 committee does not have authority to review downtime or other claim
19 disputes between facility operators and excavators.

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.

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

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

3 (5) The safety committee may review complaints of alleged
4 violations of this chapter involving practices related to underground
5 facilities. Any person may bring a complaint to the safety committee
6 regarding an alleged violation occurring on or after January 1, 2013.

7 (6) To review complaints of alleged violations, the safety
8 committee must appoint at least three and not more than five members
9 as a review committee. The review committee must be a balanced group,
10 including at least one excavator and one facility operator.

11 (7) Before reviewing a complaint alleging a violation of this
12 chapter, the review committee must notify the person making the
13 complaint and the alleged violator of its review and of the
14 opportunity to participate.

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

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