

Can You Dig It?



Washington's New Underground Utility Damage Prevention Act

Washington State has a new Call Before You Dig law.



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After three years and a great deal of input from stakeholders of every ilk, the legislature passed E2SHB 1634 – the *Underground Utilities Damage Prevention Act* in 2011. While the basic intent of the statute is still to protect underground utilities from damage by uninformed or careless excavators, there are substantive enough changes in the statute that the effective date is January 1, 2013. So, agencies will have plenty of time to adapt their procedures and ordinances to conform to the new law. In fact, complacency may be your worst enemy.

Federal legislation

As a result of several high-profile fatal pipeline failures due to excavators (including one in Bellingham), Congress mandated that each state adopt an effective damage prevention program that

meets the following PIPES Act elements (PIPES stands for *Pipeline Inspection, Protection, Enforcement and Safety Act*):

1. Effective communication between operators and excavators from excavation notification to completion of excavation.
2. Fostering support and partnership of all stakeholders.
3. Operators' use of performance measures for locators.
4. Partnership in employee training.
5. Partnership in public education.
6. A dispute resolution process that defines the enforcement agency as a partner and facilitator.
7. Fair and consistent enforcement of the law.
8. Use of technology to improve the locating process.
9. Data analysis to continually improve program effectiveness.

Washington's response

In 2009, the Washington State Utilities and Transportation Commission (UTC) spearheaded formation of the Dig Law Group; a consortium of regulated utilities, utility districts of all types, cities, counties, contractors, and excavators. The goals of the Dig Law Group were to address PHMSA concerns, to have a true stakeholder driven process, to “park” old tensions, and to eliminate or reduce bad or poor practices. It became apparent that substantial revisions to RCW 19.122 were needed. Two years of work by the Dig Law Group resulted in a much revised and revisited HB 1634 (two substitute bills and substantive amendments) that was signed by the Governor on May 5.

The final House Bill Report contains this brief summary:


- Specifies that failure by an underground facility operator to subscribe to a one-number locator service constitutes a willful intent to avoid compliance with underground utilities damage prevention law.
- Requires damage to underground utilities to be reported to the Utilities and Transportation Commission (UTC), and for the UTC to evaluate damage data.
- Establishes the Damage Prevention Account (Account), funded by penalties, and specifies that expenditures from the Account by the UTC must be used to educate excavators and operators to improve safety and compliance.
- Establishes a Safety Committee of stakeholder representatives to advise on underground utility safety and to review complaints of alleged underground utility violations.
- Establishes enforcement procedures for the UTC to address violations involving UTC regulated entities or facilities of UTC regulated entities and for the Attorney General to address violations by non-UTC regulated entities.

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Differences between the old and new statutes

(Thanks to Ashley Probart, AWC, and Don Evans, UULC)



Current RCW 19.122	Revised RCW 19.122 (E2SHB 1634)
<p>Many of the definitions in RCW 19.122 were edited, amended, and new ones were created. DO NOT rely on your institutional memory, but familiarize yourself the new definitions.</p>	<p>See New Definitions sidebar.</p>
<p>One number locator system established.</p>	<p>All facility operators must subscribe to the one number locator service. Failure to subscribe is willful intent to avoid compliance.</p>
<p>Excavator responsibilities:</p> <ul style="list-style-type: none"> • Two to ten day notice before excavation. • May not proceed until all known facilities are marked. 	<p>Excavator responsibilities:</p> <ul style="list-style-type: none"> • Two to ten day notice before excavation. • Must mark excavation area with white paint. • Large project or multiple sites = confer with facility operator. • 45 days to maintain markings. • May not proceed until all known facilities are marked OR provided information regarding unlocatable underground facilities.
<p>Facility Operator responsibilities:</p> <ul style="list-style-type: none"> • Two days to respond. • Must mark locatable facilities. <p>Appurtenance clause: "An owner of underground facilities is not required to indicate the presence of existing service laterals or appurtenances if the presence of existing service laterals or appurtenances on the site of the construction project can be determined from the presence of other visible facilities, such as buildings, manholes, or meter and junction boxes on or adjacent to the construction site."</p>	<p>Facility Operator responsibilities:</p> <ul style="list-style-type: none"> • Two days to respond. • Must mark locatable facilities within the public right-of-way and marked excavation area. • Must provide information about the presence of unlocatable facilities. <p>Appurtenance clause limited to water facilities only, and:</p> <ul style="list-style-type: none"> (i) Placing within a proposed excavation area a triangular mark at the main utility line pointing at an address in question, indicating the presence of an unlocatable or identified but unlocatable underground facility, including a service lateral; (ii) Arranging to meet an excavator at a worksite to provide available information about the location of service laterals; or (iii) Providing copies of the best reasonably available records by electronic message, mail, facsimile, or other delivery method <u>This is considered good faith compliance on behalf of the facility operator.</u>
<p>Pipeline Notice</p> <p>No state mandate. Some local governments have adopted local programs.</p> 	<p>Pipeline Notice-Transmission lines:</p> <ul style="list-style-type: none"> (3) The state, and any subdivision or instrumentality of the state, including any unit of local government, must, when planning construction or excavation within one hundred feet, or greater distance if required by local ordinance, of a right-of-way or utility easement containing a transmission pipeline, notify the pipeline company of the scheduled commencement of work. (4) Any unit of local government that issues permits under codes adopted pursuant to chapter 19.27 RCW must, when permitting construction or excavation within one hundred feet, or greater distance if required by local ordinance, of a right-of-way or utility easement containing a transmission pipeline: <ul style="list-style-type: none"> (a) Notify the pipeline company of the permitted activity when it issues the permit; or (b) Require, as a condition of issuing the permit, that the applicant consult with the pipeline company. (5) The commission must assist local governments in obtaining hazardous liquid and gas pipeline location information and maps, as provided in RCW 81.88.080.

Exemptions are now grouped in one place in new law:

- (a) An emergency excavation, but only with respect to boundary marking and notice requirements specified in RCW 19.122.030 (1) and (2), and provided that the excavator provides notice to a one-number locator service at the earliest practicable opportunity;
 - (b) An excavation of less than twelve inches in depth on private noncommercial property, if the excavation is performed by the person or an employee of the person who owns or occupies the property on which the excavation is being performed;
 - (c) The tilling of soil for agricultural purposes less than:
 - (i) Twelve inches in depth within a utility easement; and
 - (ii) Twenty inches in depth outside of a utility easement;
 - (d) The replacement of an official traffic sign installed prior to January 1, 2013, no deeper than the depth at which it was installed;
 - (e) Road maintenance activities involving excavation less than six inches in depth below the original road grade and ditch maintenance activities involving excavation less than six inches in depth below the original ditch flowline, or alteration of the original ditch horizontal alignment;
 - (f) The creation of bar holes less than twelve inches in depth, or of any depth during emergency leak investigations, provided that the excavator takes reasonable measures to eliminate electrical arc hazards; or
 - (g) Construction, operation, or maintenance activities by an irrigation district on rights-of-way, easements, or facilities owned by the federal bureau of reclamation in federal reclamation projects.
- Excavators are still required to provide notice and take action if they damage or come in contact with an underground facility while performing any of the activities noted above.

All activities above are subject to notification and damage reporting requirements in RCW 19.122.050 (section 9 of E2SHB 1634).

Damage Prevention Account in New Law

Commission may use funds to:

- Develop and disseminate educational programming designed to improve worker and public safety relating to excavation and underground facilities; and
- Provide grants to persons who have developed educational programming.

Civil Penalties

Not more than \$1,000 per violation.

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Not more than \$1,000 per initial violation, and not more than \$5,000 per subsequent violation within a three-year period.



Safety Committee in New Law

A Safety Committee is created to advise the commission and other state agencies on best practices and training to prevent damage to underground facilities, enhance worker and public safety and review complaints of violations of the underground utilities law.

The Safety Committee = 13 members, staggered three-year terms, must meet at least once every three months, must include representatives of:

- Local governments
- An investor-owned natural gas utility
- Contractors
- Excavators
- An investor-owned electric utility
- A consumer-owned utility
- A pipeline company
- The insurance industry
- The commission (UTC)
- A telecommunications company

Enforcing violations of RCW 19.122

- The UTC is authorized to investigate and enforce violations of RCW 19.122 related to pipeline facilities.
- The commission is also authorized to enforce violations of the law when a violation related to a company regulated by the UTC or its facilities is referred to it by the safety committee.
- If the safety committee refers a violation to the UTC involving a person other than a regulated company, the UTC may refer that matter to the attorney general to enforce in superior court.

Damage Reporting in New Law

Facility operators and excavators who observe or cause damage must report whenever the event results in scrapes, gouges, cracks, dents, or other visible damage to a utility, pipeline, or cable casing or other external protection of any underground facility. A nonpipeline facility operator conducting excavations, or a subcontractor conducting excavations on the facility operator's behalf, that strikes the facility operator's own underground facilities is not required to report that damage event to the commission. Reports must be made to the commission's office of pipeline safety within forty-five days of the event, or sooner if required by law using the commission's virtual private damage information reporting tool (DIRT).

Definitions



Current RCW 19.122.020 Definitions

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

- (1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.
- (2) "Damage" includes the substantial weakening of structural or lateral support of an underground facility, penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected utility owner determines that repairs are required.
- (3) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.
- (4) "Excavation" means any operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than twelve inches in depth for agricultural purposes, or road and ditch maintenance that does not change the original road grade or ditch flowline.
- (5) "Excavation confirmation code" means a code or ticket issued by the one-number locator service for the site where an excavation is planned. The code must be accompanied by the date and time it was issued.
- (6) "Excavator" means any person who engages directly in excavation
- (7) "Gas" means natural gas, flammable gas, or toxic or corrosive gas
- (8) "Hazardous liquid" means: (a) Petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195 as in effect on March 1, 1998; and (b) carbon dioxide. The utilities and transportation commission may by rule incorporate by reference other substances designated as hazardous by the secretary of transportation.
- (9) "Identified facility" means any underground facility which is indicated in the project plans as being located within the area of proposed excavation.
- (10) "Identified but unlocatable underground facility" means an underground facility which has been identified but cannot be located with reasonable accuracy.
- (11) "Locatable underground facility" means an underground facility which can be field-marked with reasonable accuracy.
- (12) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.
- (13) "Notice" or "notify" means contact in person or by telephone or other electronic methods that results in the receipt of a valid excavation confirmation code.
- (14) "One-number locator service" means a service through which a person can notify utilities and request field-marking of underground facilities.
- (15) "Operator" means the individual conducting the excavation.
- (16) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of a state, and its employees, agents, or legal representatives.
- (17) "Pipeline" or "pipeline system" means all or parts of a pipeline facility through which hazardous liquid or gas moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping or

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- (3) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.
- (4) "Excavation" and "excavate" means any operation, including the installation of signs, in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means.
- (5) "Excavation confirmation code" means a code or ticket issued by a one-number locator service for the site where an excavation is planned. The code must be accompanied by the date and time it was issued.
- (6) "Excavator" means any person who engages directly in excavation.
- (7) "Gas" means natural gas, flammable gas, or toxic or corrosive gas.
- (8) "Hazardous liquid" means:
 - (a) Petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195 as in effect on March 1, 1998;
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 - (c) Other substances designated as hazardous by the secretary of transportation and incorporated by reference by the commission by rule.
- (9) "Identified but unlocatable underground facility" means an underground facility which has been identified but cannot be located with reasonable accuracy.
- (10) "Locatable underground facility" means an underground facility which can be marked with reasonable accuracy.
- (11) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American Public Works Association. Markings shall include identification letters indicating the specific type of the underground facility.
- (12) "Notice" or "notify" means contact in person or by telephone or other electronic method, and, with respect to contact of a one-number locator service, also results in the receipt of a valid excavation confirmation code.
- (13) "One-number locator service" means a service through which a person can notify facility operators and request marking of underground facilities.
- (14) "Person" means an individual, partnership, franchise holder, association, corporation, the state, a city, a county, a town, or any subdivision or instrumentality of the state, including any unit of local government, and its employees, agents, or legal representatives.
- (15) "Pipeline" or "pipeline system" means all or parts of a pipeline facility through which hazardous liquid or gas moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping or compressor units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. "Pipeline" or "pipeline system" does not include process or transfer pipelines.

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

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

(20) "Transfer pipeline" means a buried or aboveground pipeline used to carry hazardous liquid between a tank vessel or transmission pipeline and the first valve inside secondary containment at the facility provided that any discharge on the facility side of that first valve will not directly impact waters of the state. A transfer pipeline includes valves, and other appurtenances connected to the pipeline, pumping units, and fabricated assemblies associated with pumping units. A transfer pipeline does not include process pipelines, pipelines carrying ballast or bilge water, transmission pipelines, or tank vessel or storage tanks.

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

(22) "Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including but not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors below ground. This definition does not include pipelines as defined in subsection (17) of this section, but does include distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail



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

(22) "Commission" means the utilities and transportation commission.

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

(24) "Equipment operator" means an individual conducting an excavation.

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

(26) "Large project" means a project that exceeds seven hundred linear feet.

(27) "Service lateral" means an underground water, storm water, or sewer facility located in a public right-of-way or utility easement that connects an end user's building or property to a facility operator's underground facility, and terminates beyond the public right-of-way or utility easement.

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

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