

## CHAPTER 144

[Substitute House Bill No. 857]  
UNDERGROUND UTILITIES

AN ACT Relating to underground utilities; adding a new chapter to Title 19 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. It is the intent of the legislature in enacting this chapter to assign responsibilities for locating and keeping accurate records of utility locations, protecting and repairing damage to existing underground facilities, and protecting the public health and safety from interruption in utility services caused by damage to existing underground utility facilities.

NEW SECTION. Sec. 2. 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) "Excavator" means any person who engages directly in excavation.

(6) "Identified facility" means any underground facility which is indicated in the project plans as being located within the area of proposed excavation.

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

(8) "Locatable underground facility" means an underground facility which can be field-marked with reasonable accuracy.

(9) "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.

(10) "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.

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

(12) "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.

(13) "One-number locator service" means a service through which a person can notify utilities and request field-marking of underground facilities.

NEW SECTION. Sec. 3. Before commencing any excavation, the excavator shall provide notice of the scheduled commencement of excavation to all owners of underground facilities through a one-number locator service. If no one-number locator service is available, notice shall be provided individually to those owners of underground facilities known to or suspected of having underground facilities within the area of proposed excavation. The notice shall be communicated to the owners of underground facilities not less than two business days or more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed by the parties.

Upon receipt of the notice provided for in this section, the owner of the underground facility shall provide the excavator with reasonably accurate information as to its locatable underground facilities by surface-marking the location of the facilities. If there are identified but unlocatable underground facilities, the owner of such facilities shall provide the excavator with the best available information as to their locations. The owner of the underground facility providing the information shall respond no later than two business days after the receipt of the notice or before the excavation time, at the option of the owner, unless otherwise agreed by the parties. Excavators shall not excavate until all known facilities have been marked. Once marked by the owner of the underground facility, the excavator is responsible for maintaining the markings. Excavators shall have the right to receive compensation from the owner of the underground facility for costs incurred if the owner of the underground facility does not locate its facilities in accordance with this section.

The owner of the underground facility shall have the right to receive compensation for costs incurred in responding to excavation notices given less than two business days prior to the excavation from the excavator.

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.

Emergency excavations are exempt from the time requirements for notification provided in this section.

If the excavator, while performing the contract, discovers underground facilities which are not identified, the excavator shall cease excavating in the vicinity of the facility and immediately notify the owner or operator of such facilities, or the one-number locator service.

NEW SECTION. Sec. 4. (1) Project owners shall indicate in bid or contract documents the existence of underground facilities known by the project owner to be located within the proposed area of excavation. The following shall be deemed changed or differing site conditions:

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

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

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

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

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

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

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

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

**NEW SECTION.** Sec. 5. (1) An excavator who, in the course of excavation, contacts or damages an underground facility shall notify the utility owning or operating such facility and the one-number locator service. If the damage causes an emergency condition, the excavator causing the damage shall also alert the appropriate local public safety agencies and take all appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

(2) The owner of the underground facilities damaged shall arrange for repairs or relocation as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price.

**NEW SECTION.** Sec. 6. An excavation of less than twelve inches in vertical depth on private noncommercial property shall be exempt from the requirements of section 3 of this act, if the excavation is being performed by the person or an employee of the person who owns or occupies the property on which the excavation is being performed.

**NEW SECTION.** Sec. 7. (1) Any person who violates any provision of this chapter, and which violation results in damage to underground facilities, is subject to a civil penalty of not more than one thousand dollars for each violation. All penalties recovered in such actions shall be deposited in the general fund.

(2) Any excavator who wilfully or maliciously damages a field-marked underground facility shall be liable for treble the costs incurred in repairing or relocating the facility. In those cases in which an excavator fails to notify known underground facility owners or the one-number locator service, any damage to the underground facility shall be deemed wilful and malicious and shall be subject to treble damages for costs incurred in repairing or relocating the facility.

(3) This chapter does not affect any civil remedies for personal injury or for property damage, including that to underground facilities, nor does this chapter create any new civil remedies for such damage.

**NEW SECTION.** Sec. 8. The notification and marking provisions of this chapter may be waived for one or more designated persons by an underground facility owner with respect to all or part of that underground facility owner's own underground facilities.

**NEW SECTION.** Sec. 9. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 10. Sections 1 through 8 of this act shall constitute a new chapter in Title 19 RCW.

Passed the House February 27, 1984.

Passed the Senate February 22, 1984.

Approved by the Governor March 7, 1984.

Filed in Office of Secretary of State March 7, 1984.

CHAPTER 145

[Engrossed House Bill No. 1427]

MOTOR VEHICLES USING ALTERNATIVE FUEL SOURCES—REFLECTIVE PLACARDS

AN ACT Relating to motor vehicles using alternative fuel sources; and amending section 2, chapter 237, Laws of 1983 and RCW 46.37.467.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 2, chapter 237, Laws of 1983 and RCW 46.37.467 are each amended to read as follows:

(1) Every automobile, truck, motorcycle, motor home, or off-road vehicle that is fueled by ~~((propane gas))~~ an alternative fuel source shall bear a reflective placard issued by the national fire protection association indicating that the vehicle is so fueled. Violation of this subsection is a traffic infraction.

(2) As used in this section "~~((propane gas))~~ alternative fuel source" includes propane, compressed natural gas, liquid petroleum gas, or any chemically similar gas but does not include gasoline or diesel fuel.

(3) ~~((The vehicle identification decal required by the national fire protection association and designed by the national LP gas association shall be required to be displayed on all propane fueled vehicles:))~~ If a placard for a specific alternative fuel source has not been issued by the national fire protection association, a placard issued by the state fire marshal shall be required. The state fire marshal shall develop rules for the design, size, and placement of the placard which shall remain effective until a specific placard is issued by the national fire protection association.

Passed the House February 28, 1984.

Passed the Senate February 24, 1984.

Approved by the Governor March 7, 1984.

Filed in Office of Secretary of State March 7, 1984.