

1 **DAMAGE TO UNDERGROUND FACILITIES AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Stephen G. Handy**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts and amends provisions related to the damage of underground utility
10 facilities in the Public Utilities Code.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ defines duties and liabilities between an operator and excavator in the damage of an
14 underground utility facility;

15 ▶ establishes required deadlines and procedures related to arbitration in the damage of
16 an underground utility facility;

17 ▶ makes changes to the membership of the Underground Facilities Damage Dispute
18 Board; and

19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **54-8a-6**, as last amended by Laws of Utah 2011, Chapter 426

27 **54-8a-8**, as last amended by Laws of Utah 2011, Chapter 426



28 **54-8a-13**, as last amended by Laws of Utah 2010, Chapter 286

29 ENACTS:

30 **54-8a-6.5**, Utah Code Annotated 1953



32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **54-8a-6** is amended to read:

34 **54-8a-6. Duties and liabilities of an excavator.**

35 (1) Damage to an underground facility by an excavator who excavates but fails to
36 comply with Section **54-8a-4**, is prima facie evidence that the excavator is liable for any
37 damage caused by the negligence of that excavator.

38 (2) (a) An excavator is not liable for a civil penalty under this chapter if the excavator
39 has:

- 40 (i) given proper notice of the proposed excavation as required in this chapter;
- 41 (ii) marked the area of the proposed excavation as required in Section **54-8a-4**;
- 42 (iii) complied with Section **54-8a-5.5**; and
- 43 (iv) complied with Section **54-8a-7**.

44 (b) An excavator is liable for damage incurred by an operator if:

- 45 (i) the operator complies with Section **54-8a-5**; and
- 46 (ii) the damage occurs within 24 inches of the operator's markings or the physical
47 presence of an above ground facility, including a manhole, meter, or junction box.

48 (3) A person licensed under Title 58, Chapter 55, Utah Construction Trades Licensing
49 Act, that violates this chapter shall be considered to have engaged in unlawful conduct as
50 defined in Subsection **58-55-501(16)(a)**.

51 Section 2. Section **54-8a-6.5** is enacted to read:

52 **54-8a-6.5. Duties and liabilities of an operator.**

53 An operator is liable for damage incurred by an excavator if:

- 54 (1) the excavator complies with this chapter; and
- 55 (2) the operator fails to comply with this chapter.

56 Section 3. Section **54-8a-8** is amended to read:

57 **54-8a-8. Civil penalty for damage -- Exceptions -- Other remedies.**

58 (1) A civil penalty may be imposed for a violation of this chapter as provided in this

59 section.

60 (2) A civil penalty under this section may be imposed on:

61 (a) any person who violates this chapter in an amount no greater than \$5,000 for each
62 violation with a maximum civil penalty of \$100,000 per excavation; or

63 (b) an excavator who fails to provide notice of an excavation in accordance with
64 Section 54-8a-4 in an amount no greater than \$500 in addition to the amount under Subsection
65 (2)(a).

66 (3) Notwithstanding Subsection (2)(a), a penalty under this chapter may not be
67 imposed on an excavator or operator unless the excavator or operator fails to comply with this
68 chapter and damages an underground facility.

69 (4) The amount of a civil penalty under this section shall be made taking into
70 consideration the following:

71 (a) the excavator's or operator's history of any prior violation or penalty;

72 (b) the seriousness of the violation;

73 (c) any discharge or pollution resulting from the damage;

74 (d) the hazard to the health or safety of the public;

75 (e) the degree of culpability and willfulness of the violation;

76 (f) any good faith of the excavator or operator; and

77 (g) any other factor considered relevant, including the number of past excavations
78 conducted by the excavator, the number of location requests made by the excavator and the
79 number of location markings made for the excavator or by the operator.

80 (5) "Good faith," as used in Subsection (4)(f), includes actions taken before the filing
81 of an action for civil penalty under this section to:

82 (a) remedy, in whole or in part, a violation of this chapter; or

83 (b) mitigate the consequences and damages resulting from a violation of this chapter.

84 (6) (a) A civil penalty may not be imposed on an excavator if the damage to an
85 underground facility results from an operator's:

86 (i) failure to mark; or

87 (ii) inaccurate marking or locating of the operator's underground facilities.

88 (b) In addition to or in lieu of part of or all of a civil penalty, the excavator or operator
89 may be required to undertake actions that are designed to prevent future violations of this

90 chapter, including attending safety and compliance training, improving internal monitoring and
91 compliance processes and procedures, or any other action that may result in compliance with
92 this chapter.

93 (7) Subsection (1) does not apply to an excavation made:

94 (a) during an emergency, if reasonable precautions are taken to protect any
95 underground facility;

96 (b) in agricultural operations;

97 (c) for the purpose of finding or extracting natural resources; or

98 (d) with hand tools on property owned or occupied by the excavator.

99 (8) (a) A civil penalty under this section is in addition to any damages that an operator
100 or an excavator may seek to recover.

101 (b) In an action brought under this section, the prevailing party shall be awarded its
102 costs and attorney fees as determined by the court.

103 (9) As a condition precedent to an operator or excavator seeking compensation from
104 the other for damages, arising from a violation of this chapter, not including personal injury
105 damages, the aggrieved party shall:

106 (a) give written notice to the party allegedly at fault within 45 days of the date the
107 aggrieved party became aware of the occurrence of said damages notifying the party allegedly
108 at fault of the nature of the damages, if known;

109 (b) send the party allegedly at fault a bill for the alleged damages within 180 days from
110 the notice set forth in Subsection (9)(a); and

111 (c) commence an action against the party allegedly at fault by demanding arbitration
112 under Section 54-8a-13 or as otherwise allowed by law within one year from the later of:

113 (i) the bill being sent under Subsection (9)(b); or

114 (ii) 60 days after the repairs are completed and invoiced.

115 (10) Either party is excused from the notice requirements set forth in Subsection (9) if
116 the other party fails to comply with the requirements of this chapter.

117 Section 4. Section 54-8a-13 is amended to read:

118 **54-8a-13. Underground Facilities Damage Dispute Board -- Arbitration --**
119 **Relationship with Public Service Commission.**

120 (1) There is created within the commission the Underground Facilities Damage

- 121 Dispute Board to arbitrate a dispute arising from:
- 122 (a) an operator's or excavator's violation of this chapter; and
- 123 (b) damage caused by excavation during an emergency.
- 124 (2) The board consists of [~~five~~] seven members appointed by the governor as follows:
- 125 (a) [~~one member~~] two members from a list of names provided to the governor by [a
- 126 ~~group~~] the association established under Section 54-8a-9 representing operators;
- 127 (b) one member from a list of names provided to the governor by the Associated
- 128 Builders and Contractors;
- 129 [~~(b)~~] (c) one member from a list of names provided to the governor by the Associated
- 130 General Contractors;
- 131 [~~(c)~~] (d) one member from a list of names provided to the governor by Blue Stakes of
- 132 Utah;
- 133 [~~(d)~~] (e) one member from a list of names provided to the governor by the Utah Home
- 134 Builders Association; and
- 135 [~~(e)~~] (f) one member from the Division of Public Utilities.
- 136 (3) (a) A member of the board:
- 137 (i) shall be appointed for a three-year term; and
- 138 (ii) may continue to serve until the member's successor takes office.
- 139 (b) At the time of appointment, the governor shall stagger the terms of the members to
- 140 ensure that approximately 1/3 of the members of the board are reappointed each year.
- 141 (c) A vacancy in the board shall be filled:
- 142 (i) for the unexpired term; and
- 143 (ii) in the same manner as the board member is initially appointed.
- 144 (d) The board shall select an alternate for a specific board member to serve on a
- 145 specific case if it becomes necessary to replace a member who has a conflict of interest because
- 146 a dispute involves that member or that member's employer.
- 147 (4) [~~Three~~] Four members of the board constitute a quorum.
- 148 (5) The board may, upon agreement of the disputing parties, arbitrate a dispute
- 149 regarding damages, not including personal injury damages, arising between:
- 150 (a) an operator;
- 151 (b) an excavator;

152 (c) a property owner; or

153 (d) any other interested party.

154 [~~(6)~~ At least four members of the board shall be present and vote on an arbitration
155 decision.]

156 [~~(7)~~ (6) An arbitration before the board shall be consistent with Title 78B, Chapter 11,
157 Utah Uniform Arbitration Act.

158 [~~(8)~~ (7) The prevailing party in an arbitration conducted under this section shall be
159 awarded its costs and attorney fees in an amount determined by the board.

160 [~~(9)~~ (8) A member may not receive compensation or benefits for the member's service,
161 but may receive per diem and travel expenses in accordance with:

162 (a) Section [63A-3-106](#);

163 (b) Section [63A-3-107](#); and

164 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
165 [63A-3-107](#).

166 [~~(10)~~ (9) The commission shall provide administrative support to the board.