

**DAMAGE TO UNDERGROUND UTILITIES FACILITIES**

**AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies a provision relating to the damage of underground utilities facilities.

**Highlighted Provisions:**

This bill:

- ▶ provides limits on an operator's claim against an excavator for damage to underground utility facilities resulting from the excavator's violation of requirements related to excavation involving underground utility facilities; and
- ▶ requires an operator to give notice to an excavator and an opportunity to cure a violation before the operator may sue the excavator or initiate an arbitration seeking compensation for damage arising from the excavator's violation.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**54-8a-12**, as enacted by Laws of Utah 2008, Chapter 344

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



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

29 Section 1. Section **54-8a-12** is amended to read:

30 **54-8a-12. Enforcement -- Attorney general.**

31 (1) (a) The attorney general may bring an action in the district court located in the  
32 county in which the excavation is located to enforce this chapter.

33 (b) The right of any person to bring a civil action for damage arising from an  
34 excavator's or operator's actions or conduct relating to underground facilities is not affected by:

35 (i) a proceeding commenced by the attorney general under this chapter; or

36 (ii) the imposition of a civil penalty under this chapter.

37 (c) If the attorney general does not bring an action under Subsection (1)(a), the operator  
38 or excavator may pursue any remedy, including a civil penalty.

39 (2) Whether through legal action or an arbitration under Section 54-8a-13, an operator  
40 may not seek to recover compensation from an excavator for damage caused by the excavator's  
41 violation of this chapter:

42 (a) unless the operator:

43 (i) gives written notice to the excavator within 30 days after the date the operator knew  
44 or reasonably should have known of the damage caused by the excavator's violation of this  
45 chapter; and

46 (ii) provides the excavator at least 90 days after the occurrence giving rise to the  
47 operator's claim to cure the damage caused by the excavator's violation; and

48 (b) more than 180 days after the date the operator knew or reasonably should have  
49 known of the damage caused by the excavator's violation of this chapter.

50 [~~2~~] (3) Any civil penalty imposed and collected under this chapter shall be deposited  
51 into the General Fund.

52 Section 2. Section **54-8a-13** is amended to read:

53 **54-8a-13. Underground Facilities Damage Dispute Board -- Arbitration --**  
54 **Relationship with Public Service Commission.**

55 (1) There is created within the commission the Underground Facilities Damage  
56 Dispute Board to arbitrate a dispute arising from:

57 (a) an operator's or excavator's violation of this chapter; and

58 (b) damage caused by excavation during an emergency.

- 59 (2) The board consists of five members appointed by the governor as follows:
- 60 (a) one member from a list of names provided to the governor by a group representing
- 61 operators;
- 62 (b) one member from a list of names provided to the governor by the Associated
- 63 General Contractors;
- 64 (c) one member from a list of names provided to the governor by Blue Stakes of Utah;
- 65 (d) one member from a list of names provided to the governor by the Utah Home
- 66 Builders Association; and
- 67 (e) one member from the Division of Public Utilities.
- 68 (3) (a) A member of the board:
- 69 (i) shall be appointed for a three-year term; and
- 70 (ii) may continue to serve until the member's successor takes office.
- 71 (b) At the time of appointment, the governor shall stagger the terms of the members to
- 72 ensure that approximately 1/3 of the members of the board are reappointed each year.
- 73 (c) A vacancy in the board shall be filled:
- 74 (i) for the unexpired term; and
- 75 (ii) in the same manner as the board member is initially appointed.
- 76 (d) The board shall select an alternate for a specific board member to serve on a
- 77 specific case if it becomes necessary to replace a member who has a conflict of interest because
- 78 a dispute involves that member or that member's employer.
- 79 (4) Three members of the board constitute a quorum.
- 80 (5) [~~The~~] Subject to Subsection 54-8a-12(2), the board may, upon agreement of the
- 81 disputing parties, arbitrate a dispute regarding damages, not including personal injury damages,
- 82 arising between:
- 83 (a) an operator;
- 84 (b) an excavator;
- 85 (c) a property owner; or
- 86 (d) any other interested party.
- 87 (6) At least four members of the board shall be present and vote on an arbitration
- 88 decision.
- 89 (7) An arbitration before the board shall be consistent with Title 78B, Chapter 11, Utah

90 Uniform Arbitration Act.

91 (8) The prevailing party in an arbitration conducted under this section shall be awarded  
92 its costs and attorney fees in an amount determined by the board.

93 (9) A member may not receive compensation or benefits for the member's service, but  
94 may receive per diem and travel expenses in accordance with:

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

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

97 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and  
98 [63A-3-107](#).

99 (10) The commission shall provide administrative support to the board.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**