

1 **UTILITIES - UNDERGROUND FACILITIES AND**
2 **PIPELINES**

3 2011 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Scott K. Jenkins**

6 House Sponsor: Michael T. Morley

8 **LONG TITLE**

9 **General Description:**

10 This bill addresses utility facilities, including underground facilities and pipelines.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines "location" for utility facility marking purposes;
- 14 ▶ provides for the marking of underground utilities;
- 15 ▶ addresses communication between excavators and operators of utility facilities;
- 16 ▶ provides for a utility facility operator's optional waiver of limitations on excavation
- 17 with power tools in the vicinity of a utility facility;
- 18 ▶ provides for liability for an operator that fails to mark a facility, leading to damage
- 19 of another operator's facility;
- 20 ▶ increases the amount of civil penalty for certain violations;
- 21 ▶ provides for a penalty for violations of Title 54, Chapter 13, Natural Gas Pipeline
- 22 Safety; and
- 23 ▶ makes technical changes.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **54-8a-2**, as last amended by Laws of Utah 2009, Chapter 209
- 31 **54-8a-4**, as last amended by Laws of Utah 2008, Chapter 344
- 32 **54-8a-5**, as last amended by Laws of Utah 2008, Chapter 344
- 33 **54-8a-5.5**, as last amended by Laws of Utah 2008, Chapter 344
- 34 **54-8a-6**, as last amended by Laws of Utah 2008, Chapter 344
- 35 **54-8a-8**, as repealed and reenacted by Laws of Utah 2008, Chapter 344

36 ENACTS:

- 37 **54-8a-7.5**, Utah Code Annotated 1953
- 38 **54-13-8**, Utah Code Annotated 1953



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

41 Section 1. Section **54-8a-2** is amended to read:

42 **54-8a-2. Definitions.**

43 As used in this chapter:

44 (1) "Association" means two or more operators organized to receive notification of
45 excavation activities in a specified area, as provided by Section 54-8a-9.

46 (2) "Board" means the Underground Facilities Damage Dispute Board created in
47 Section 54-8a-13.

48 (3) "Emergency" means an occurrence or suspected natural gas leak necessitating
49 immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential
50 public services.

51 (4) "Excavate" or "excavation" means an operation in which earth, rock, or other
52 material on or below the ground is moved or displaced by tools, equipment, or explosives.

53 (5) "Excavator" means any person or entity that excavates or conducts excavation
54 activities.

55 (6) "48 hours" means a 48-hour period occurring during business days which includes
56 any day except Saturday, Sunday, or a legal holiday.

57 (7) "Hand tool" means an implement:

58 (a) powered by hand; or

59 (b) designed to avoid damaging an underground facility, including a vacuum
60 excavation tool and air knife.

61 (8) "Location" means the site of a proposed area of excavation described ~~[by]~~:

62 (a) (i) by street address, if available; ~~[and]~~

63 (ii) by the area at that street address to be excavated; ~~[or]~~ and

64 (iii) as specified in Subsection 54-8a-4(3) or 54-8a-5(2)(b)(ii); or

65 (b) if there is no street address available, by the area of excavation using any available
66 designations, including a nearby street or road, an intersection, GPS coordinates, or other
67 generally accepted methods.

68 (9) "Location request assignment" means a number assigned to a proposed excavation
69 by an association or operator upon receiving notice of the proposed excavation from the
70 excavator.

71 (10) (a) "Operator" means a person who owns, operates, or maintains an underground
72 facility.

73 (b) "Operator" does not include an owner of real property where underground facilities
74 are:

75 (i) located within:

76 (A) the owner's property; or

77 (B) a public street adjacent to the owner's property, a right-of-way adjacent to the
78 owner's property, or a public utility easement adjacent to the owner's property;

79 (ii) used exclusively to furnish services to the owner's property; and

80 (iii) maintained under the operation and control of that owner.

81 (11) "Person" includes:

82 (a) an individual, government entity, corporation, partnership, association, or company;
83 and

84 (b) the trustee, receiver, assignee, and personal representative of a person listed in
85 Subsection (11)(a).

86 (12) "Sewer lateral cleanout" means a point of access where a sewer lateral can be
87 serviced.

88 (13) "24 hours" means a 24-hour period, excluding hours occurring during a Saturday,
89 Sunday, or a legal holiday.

90 (14) "Underground facility" means personal property that is buried or placed below
91 ground level for use in the storage or conveyance of any of the following:

92 (a) water;

93 (b) sewage, including sewer laterals;

94 (c) communications, including electronic, photonic, telephonic, or telegraphic
95 communications;

96 (d) television, cable television, or other telecommunication signals, including
97 transmission to subscribers of video or other programming;

98 (e) electric power;

99 (f) oil, gas, or other fluid and gaseous substances;

100 (g) steam;

101 (h) slurry; or

102 (i) dangerous materials or products.

103 Section 2. Section **54-8a-4** is amended to read:

104 **54-8a-4. Notice of excavation.**

105 (1) (a) Before excavating, an excavator shall notify each operator with an underground
106 facility in the area of the proposed excavation.

107 (b) The requirements of Subsection (1)(a) do not apply:

108 (i) if there is an emergency;

109 (ii) while gardening; or

110 (iii) while tilling private ground.

111 (2) The notice required by Subsection (1) shall:

112 (a) be given:

113 (i) by telephone;

- 114 (ii) in person; or
- 115 (iii) by other means acceptable to each operator;
- 116 (b) be given not:
 - 117 (i) less than 48 hours before excavation begins; or
 - 118 (ii) more than 14 days before excavation begins; and
 - 119 (c) include the proposed excavation's anticipated:
 - 120 (i) location, with reasonable specificity;
 - 121 (ii) dimensions;
 - 122 (iii) type; and
 - 123 (iv) duration.
 - 124 (3) If the proposed excavation's anticipated location and dimensions cannot be
 - 125 described as required under Subsection (2)(c) or as requested in accordance with Subsection
 - 126 54-8a-5(2)(b), an excavator shall outline the proposed excavation site [~~in white paint, stakes,~~
 - 127 ~~flags, or other industry-accepted manner~~] using as a guideline the then-existing Uniform Color
 - 128 Code and Marking Guidelines, Appendix B, published by the Common Ground Alliance, as
 - 129 amended in the current version of the excavators' guide published by the statewide association
 - 130 established in Section 54-8a-9.
 - 131 (4) If more than one excavator will operate at the same excavation site, each excavator
 - 132 shall provide the notice required by this section.
 - 133 (5) If there is an association in the county, notice to that association constitutes notice
 - 134 to each operator that has facilities within the proposed excavation site.
 - 135 (6) (a) Notice given under this section is valid for 14 days from the day on which the
 - 136 notice is given.
 - 137 (b) If an excavation will continue beyond the 14-day period under Subsection (6)(a),
 - 138 the excavator shall provide notice of that fact at least 48 hours, but no sooner than six calendar
 - 139 days, before expiration of the 14-day period.
 - 140 (c) A notice under Subsection (6)(b) is valid for 14 days from the day on which the
 - 141 previous notice expires.

142 (d) An excavator shall give notice as provided in this Subsection (6) for the duration of
143 the excavation.

144 (7) If markings made by the operator have been disturbed so that the markings no
145 longer identify the underground facility:

146 (a) before excavating the site an excavator shall notify:

147 (i) the association; or

148 (ii) each operator; and

149 (b) the operator shall mark the area again within 48 hours of the renotification.

150 (8) An excavator may begin excavation if:

151 (a) (i) all underground facilities have been:

152 (A) located; and

153 (B) marked; or

154 (ii) the operators have indicated that there are no underground facilities within the
155 proposed excavation site;

156 (b) (i) 48 hours have elapsed from the time of initial notice; and

157 (ii) the excavator has not:

158 (A) been notified by the operator; or

159 (B) received a request for a meeting under Subsection 54-8a-5(2); or

160 (c) 48 hours have elapsed from the time of renotification under Subsection (6).

161 (9) Unless an operator remarks an area pursuant to Subsection (7), the excavator shall
162 be responsible for the costs incurred by an operator to remark its underground facilities
163 following the second or subsequent notice given by an excavator for a proposed excavation.

164 Section 3. Section **54-8a-5** is amended to read:

165 **54-8a-5. Marking of underground facilities.**

166 (1) (a) Within 48 hours of the receipt of the notice required by Section 54-8a-4, the
167 operator shall:

168 (i) mark the location of its underground facilities in the area of the proposed
169 excavation; or

170 (ii) notify the excavator, by telephonic or electronic message or indication at the
171 excavation site, that the operator does not have any underground facility in the area of the
172 proposed excavation.

173 (b) The underground facility shall be marked [~~with stakes, paint, or in some other~~
174 ~~customary way, indicating, at the option of the operator, either:~~] using as a guideline the
175 then-existing Uniform Color Code and Marking Guidelines, Appendix B, published by the
176 Common Ground Alliance, as amended in the current version of the excavators' guide
177 published by the statewide association established in Section 54-8a-9.

178 [~~(i) the approximate centerline of the underground facility; or]~~
179 [~~(ii) the approximate outside dimensions of both sides of the underground facility.]~~

180 (2) (a) The operator is not required to mark the underground facilities within 48 hours
181 if:

182 (i) the proposed excavation:

183 (A) is not identified in accordance with Subsection 54-8a-4(2) or is not marked as
184 provided in Subsection 54-8a-4(3);

185 (B) is located in a remote area;

186 (C) is an extensive excavation; or

187 (D) presents other constraints that make it unreasonably difficult for the operator to
188 comply with the marking requirements of this section; or

189 (ii) the operator is not able to readily locate the underground facilities from the surface
190 with standard underground detection devices.

191 (b) If the operator cannot proceed with the marking because of a situation described in
192 Subsection (2)(a), the operator shall contact the excavator within 48 hours after the excavator's
193 notice of excavation or request for a location request assignment made in accordance with
194 Section 54-8a-4 and:

195 (i) request a meeting at the proposed excavation site or some other mutually agreed
196 upon location[-]; or

197 (ii) at the operator's discretion, contact the excavator and request the proposed

198 excavation site be outlined in accordance with Subsection 54-8a-4(3).

199 (c) For a situation described under Subsection (2)(a)(i), the meeting or completed
200 outlining of the proposed excavation site constitutes the beginning of a new 48-hour period
201 within which the operator must begin marking the underground facilities.

202 (d) (i) For the situation described under Subsection (2)(a)(ii), the excavator and
203 operator shall agree on a plan of excavation designed to prevent damage to the operator's
204 underground facility.

205 (ii) Notwithstanding the agreement, the excavator shall proceed in a manner that is
206 reasonably calculated to avoid damage to the underground facility.

207 (e) (i) An operator need not mark or locate an underground facility the operator does
208 not own.

209 (ii) An underground facility under Subsection (2)(e)(i) includes a water or sewer lateral
210 or a facility running from a house to a garage or outbuilding.

211 (f) (i) An operator may mark the location of a known facility connected to the
212 operator's facilities that is not owned or operated by the operator.

213 (ii) Marking a known facility under Subsection (2)(f)(i) imposes no liability on the
214 operator for the accuracy of the marking.

215 [~~3~~] ~~The markings required by this section shall conform with marking standards~~
216 ~~established by the American Public Works Association for temporary markings.]~~

217 [~~4~~] (3) Each marking is valid for not more than 14 calendar days from the date notice
218 is given.

219 [~~5~~] (4) If multiple lines exist:

220 (a) the markings must indicate the number of lines; or

221 (b) all lines must be marked.

222 Section 4. Section **54-8a-5.5** is amended to read:

223 **54-8a-5.5. Determining the precise location of marked underground facilities.**

224 (1) [~~a~~] An excavator may not use any power-operated or power-driven excavating or
225 boring equipment within 24 inches of the markings made in accordance with Section 54-8a-5

226 unless:

227 (a) the excavator determines the exact location of the underground facility by
228 excavating with hand tools to confirm that the excavation will not damage the underground
229 facilities[-]; or

230 (b) [~~An operator may waive, in writing or electronically,~~] the operator provides an
231 excavator with written or electronic notice waiving the requirement that the excavator
232 determine the exact location of the underground facilities by excavating with hand tools.

233 (2) Power-operated or power-driven excavating or boring equipment may be used for
234 the removal of any existing pavement if there is no underground facility contained in the
235 pavement, as marked by the operator.

236 ~~[(3) The excavator may use power-operated or power-driven excavating or boring~~
237 ~~equipment within 24 inches of the markings only:]~~

238 ~~[(a) to a depth agreed upon by the operator; and]~~

239 ~~[(b) if allowed by the operator.]~~

240 Section 5. Section **54-8a-6** is amended to read:

241 **54-8a-6. Duties and liabilities of an excavator.**

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

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

247 (i) given proper notice of the proposed excavation as required in this chapter;

248 (ii) marked the area of the proposed excavation as required in Section 54-8a-4;

249 (iii) complied with Section 54-8a-5.5; and

250 (iv) complied with Section 54-8a-7.

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

252 (i) the operator complies with Section 54-8a-5; and

253 (ii) the damage occurs within 24 inches of the operator's markings or the physical

254 presence of an above ground facility, including a manhole, meter, or junction box.

255 Section 6. Section **54-8a-7.5** is enacted to read:

256 **54-8a-7.5. Third-party damages caused by failure to locate.**

257 (1) If an operator fails to locate a facility as required by this chapter and an excavator
258 damages another operator's facility of a similar size and appearance that fits surface markings
259 as required by Subsection 54-8a-5(1)(b), the operator who failed to locate its facility is liable
260 for the costs of damage to the facility caused by the excavator if:

261 (a) the excavator complies with Sections 54-8a-4, 54-8a-5.5, and 54-8a-6; and

262 (b) the excavator demonstrates that the damage is the direct result of the operator's
263 failure to locate its facility.

264 (2) An excavator who damages a third-party operator's facility as described in
265 Subsection (1):

266 (a) shall pay for the costs of repairing the damaged facility; and

267 (b) may seek recovery of the costs of damage from the operator who failed to mark its
268 facility.

269 (3) Resolution of a dispute under this section may be in accordance with Section
270 54-8a-13.

271 Section 7. Section **54-8a-8** is amended to read:

272 **54-8a-8. Civil penalty for damage -- Exceptions -- Other remedies.**

273 (1) A civil penalty may be imposed for a violation of this chapter as provided in this
274 section.

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

276 (a) any person who violates this chapter in an amount no greater than [~~\$2,500~~] \$5,000
277 for each violation with a maximum civil penalty of \$100,000 per excavation; or

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

281 (3) Notwithstanding Subsection (2)(a), a penalty under this chapter may not be

282 imposed on an excavator or operator unless the excavator or operator fails to comply with this
283 chapter and damages an underground facility.

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

- 286 (a) the excavator's or operator's history of any prior violation or penalty;
- 287 (b) the seriousness of the violation;
- 288 (c) any discharge or pollution resulting from the damage;
- 289 (d) the hazard to the health or safety of the public;
- 290 (e) the degree of culpability and willfulness of the violation;
- 291 (f) any good faith of the excavator or operator; and
- 292 (g) any other factor considered relevant, including the number of past excavations
293 conducted by the excavator, the number of location requests made by the excavator and the
294 number of location markings made for the excavator or by the operator.

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

- 297 (a) remedy, in whole or in part, a violation of this chapter; or
- 298 (b) mitigate the consequences and damages resulting from a violation of this chapter.

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

- 301 (i) failure to mark; or
- 302 (ii) inaccurate marking or locating of the operator's underground facilities.

303 (b) In addition to or in lieu of part of or all of a civil penalty, the excavator or operator
304 may be required to undertake actions that are designed to prevent future violations of this
305 chapter, including attending safety and compliance training, improving internal monitoring and
306 compliance processes and procedures, or any other action that may result in compliance with
307 this chapter.

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

- 309 (a) during an emergency, if reasonable precautions are taken to protect any

310 underground facility;

311 (b) in agricultural operations;

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

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

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

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

318 Section 8. Section **54-13-8** is enacted to read:

319 **54-13-8. Violation of chapter -- Penalty.**

320 (1) Any person engaged in intrastate pipeline transportation who is determined by the
321 commission, after notice and an opportunity for a hearing, to have violated any provision of
322 this chapter or any rule or order issued under this chapter, is liable for a civil penalty of not
323 more than \$10,000 for each violation for each day the violation persists.

324 (2) The maximum civil penalty assessed under this section may not exceed \$500,000
325 for any related series of violations.

326 (3) The amount of the penalty shall be assessed by the commission by written notice.

327 (4) In determining the amount of the penalty, the commission shall consider:

328 (a) the nature, circumstances, and gravity of the violation; and

329 (b) with respect to the person found to have committed the violation:

330 (i) the degree of culpability;

331 (ii) any history of prior violations;

332 (iii) the effect on the person's ability to continue to do business;

333 (iv) any good faith in attempting to achieve compliance;

334 (v) the person's ability to pay the penalty; and

335 (vi) any other matter, as justice may require.

336 (5) (a) A civil penalty assessed under this section may be recovered in an action
337 brought by the attorney general on behalf of the state in the appropriate district court, or before

338 referral to the attorney general, it may be compromised by the commission.

339 (b) The amount of the penalty, when finally determined, or agreed upon in
340 compromise, may be deducted from any sum owed by the state to the person charged.

341 (6) Any penalty collected under this section shall be deposited in the General Fund.