

1 **DAMAGE TO UNDERGROUND UTILITY**

2 **FACILITIES AMENDMENTS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: David Clark**

6 Senate Sponsor: Sheldon L. Killpack

7

LONG TITLE

8 **General Description:**

9
10 This bill addresses liability provisions and other provisions concerning the location of
11 an underground utility facility.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ requires certain information be provided concerning an operators' association;
- 16 ▶ provides warning language that may be included with a building permit;
- 17 ▶ addresses requirements for and effects of a notice of excavation;
- 18 ▶ describes an underground facility that need not be marked;
- 19 ▶ outlines a method for determining the precise location of a marked underground

20 utility facility;

21 ~~H→ [→ addresses liability of an excavator;] ←H~~

- 22 ▶ requires an excavator to call 911 if certain damage occurs;
- 23 ▶ provides a civil penalty for a violation of the chapter;
- 24 ▶ provides for enforcement by the attorney general;
- 25 ▶ limits the period for which an operators' association must maintain a record of
- 26 notices of excavation;
- 27 ▶ addresses the installation of a nonmetallic underground facility;

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- 28 ▶ creates the Underground Facilities Damage Dispute Board to arbitrate disputes
- 29 arising under the chapter; and
- 30 ▶ makes technical changes.

31 **Monies Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

- 37 **54-8a-2**, as last amended by Laws of Utah 1998, Chapter 198
- 38 **54-8a-3**, as last amended by Laws of Utah 1993, Chapter 87
- 39 **54-8a-4**, as last amended by Laws of Utah 2001, Chapter 189
- 40 **54-8a-5**, as last amended by Laws of Utah 1998, Chapter 198
- 41 **54-8a-5.5**, as enacted by Laws of Utah 1996, Chapter 203
- 42 **54-8a-6**, as last amended by Laws of Utah 1998, Chapter 198
- 43 **54-8a-7**, as last amended by Laws of Utah 2001, Chapter 189
- 44 **54-8a-9**, as last amended by Laws of Utah 1993, Chapter 87
- 45 **54-8a-10**, as last amended by Laws of Utah 1993, Chapter 87

46 ENACTS:

- 47 **54-8a-3.5**, Utah Code Annotated 1953
- 48 **54-8a-12**, Utah Code Annotated 1953
- 49 **54-8a-13**, Utah Code Annotated 1953

50 REPEALS AND REENACTS:

- 51 **54-8a-8**, as last amended by Laws of Utah 2001, Chapter 189

52 REPEALS:

- 53 **54-8a-8.5**, as last amended by Laws of Utah 2004, Chapter 90
- 54 **54-13-6**, as enacted by Laws of Utah 1989, Chapter 131



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

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

58 **54-8a-2. Definitions.**

59 As used in this chapter:

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

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

64 [~~2~~] (3) "Emergency" means an occurrence ~~H→~~ **or suspected natural gas leak** ~~←H~~
64a necessitating immediate action to prevent
65 or mitigate loss of, or damage to, life, health, property, or essential public services.

66 [~~3~~] (4) "Excavate" or "excavation" means an operation in which earth, rock, or other
67 material on or below the ground is moved or displaced by tools, equipment, or explosives.

68 [~~4~~] (5) "Excavator" means any person or entity that excavates or conducts excavation
69 activities.

70 [~~5~~] (6) "48 hours" means a 48-hour period occurring during business days which
71 includes any day except Saturday, Sunday, or a legal holiday.

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

73 (a) powered by hand; or

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

76 (8) "Location" means the site of a proposed area of excavation described by:

77 (a) (i) street address, if available; and

78 (ii) the area at that street address to be excavated; or

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

82 [~~6~~] (9) "Location request assignment" means a number assigned to a proposed
83 excavation by an association or operator upon receiving notice of the proposed excavation from
84 the excavator.

85 [~~7~~] (10) (a) "Operator" means a person [~~or entity which~~] who owns, operates, or
86 maintains an underground [~~facilities~~] facility.

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

89 (i) located solely within the property;

90 (ii) used exclusively to furnish services on the property; and
91 (iii) maintained under the operation and control of that owner.

92 ~~[(8)] (11) "Person" includes [individuals, government entities, corporations,~~
93 ~~partnerships, associations, and companies and their trustees, receivers, assignees, and personal~~
94 ~~representatives.];~~

95 (a) an individual, government entity, corporation, partnership, association, or company;
96 and

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

99 (12) "24 hours" means a 24-hour period, excluding hours occurring during a Saturday,
100 Sunday, or a legal holiday.

101 ~~[(9)] (13) "Underground facility" means personal property that is buried or placed~~
102 ~~below ground level for use in the storage or conveyance of any of the following:~~

103 (a) water;

104 (b) sewage;

105 (c) communications, including electronic, photonic, telephonic, or telegraphic
106 communications;

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

109 (e) electric power;

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

111 (g) steam;

112 (h) slurry; or

113 (i) dangerous materials or products.

114 Section 2. Section **54-8a-3** is amended to read:

115 **54-8a-3. Information filed with county clerk.**

116 (1) An operator shall file with the county clerk of a county in which the operator has an
117 underground [facilities] facility the following:

118 (a) the name of each municipality, city, or town in which the operator has an
119 underground [facilities] facility within that county;

120 (b) the operator's name; ~~[and]~~

121 (c) the title, telephone number, and address of the operator's representative designated
 122 to receive calls regarding excavation[-]; and

123 (d) a statement concerning whether the operator is a member of an association and, if
 124 the operator is a member of an association, the name of and contact information for the
 125 association.

126 (2) In [counties] a county where an association is established, the association shall file
 127 its telephone number and a list of its members who are operators with the county clerk on
 128 behalf of [all] any participating [operators] operator.

129 Section 3. Section **54-8a-3.5** is enacted to read:

130 **54-8a-3.5. Excavation-related information included with construction and**
 131 **building permit.**

132 An entity issuing a permit for building or construction that may require excavation may,
 133 and is encouraged to, include a notice on or with a permit stating, "Attention, Utah law requires
 134 any excavator to notify the owner of underground facilities 48 hours before excavating and
 135 comply with Utah Code Title 54, Chapter 8a, Damage to Underground Utility Facilities."

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

137 **54-8a-4. Notice of excavation.**

138 (1) (a) Before excavating, an excavator shall notify each operator with an underground
 139 [facilities] facility in the area of the proposed excavation.

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

141 (i) if there is an emergency;

142 (ii) while gardening; ~~H→~~ [f] or [t] ~~←H~~

143 (iii) while tilling private ground ~~H→~~ [f] . [t] [~~or~~

144 ~~— (iv) while probing with an industry-approved probe bar to determine the presence or~~
 145 ~~extent of a natural gas leak in the ground.] ←H~~

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

147 (a) be given:

148 (i) by telephone;

149 (ii) in person; or

150 (iii) by other means acceptable to each operator;

151 (b) be given not:

- 152 (i) less than 48 hours before excavation begins; or
 153 (ii) more than ~~[seven]~~ 14 days before excavation begins; and
 154 (c) include the proposed excavation's anticipated:
 155 (i) location ~~H~~→ , with reasonable specificity ←~~H~~ ;
 156 (ii) dimensions;
 157 (iii) type; and
 158 (iv) duration.

159 (3) If the proposed excavation's anticipated location and dimensions cannot be
 160 described as required under Subsection (2)(c), an excavator shall ~~[mark]~~ outline the proposed
 161 excavation site in white paint, stakes, flags, or other industry-accepted manner.

162 (4) If more than one excavator will operate at the same excavation site, each excavator
 163 shall provide the notice required by this section.

164 ~~[(4)]~~ (5) If there is an association in the county, notice to that association constitutes
 165 notice to each operator ~~[in the county]~~ that has facilities within the proposed excavation site.

166 ~~[(5) If an excavation on a single project lasts more than 14 days, the excavator shall~~
 167 ~~give notice at least once each additional 14-day period.]~~

168 (6) (a) Notice given under this section is valid for 14 days from the day on which the
 169 notice is given.

170 (b) If an excavation will continue beyond the 14-day period under Subsection (6)(a),
 171 the excavator shall provide notice of that fact at least 48 hours before expiration of the 14-day
 172 period.

173 (c) A notice under Subsection (6)(b) is valid for 14 days from the day on which the
 174 previous notice expires.

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

177 ~~[(6)]~~ (7) If markings made by the operator have been disturbed so that the markings no
 178 longer identify the underground ~~[facilities]~~ facility:

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

- 180 (i) the association; or
 181 (ii) each operator; and

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

183 ~~[(7)]~~ (8) An excavator may begin excavation if:
 184 (a) (i) all underground facilities have been:
 185 (A) located; and
 186 (B) marked; or
 187 (ii) the operators have indicated that there are no underground facilities within the
 188 proposed excavation site;

189 (b) (i) 48 hours have elapsed from the time of initial notice; and
 190 (ii) the excavator has not:
 191 (A) been notified by the operator; or
 192 (B) received a request for a meeting under Subsection 54-8a-5(2); or
 193 (c) 48 hours have elapsed from the time of renotification under Subsection (6).

194 ~~[(8)]~~ (9) Unless an operator remarks an area pursuant to Subsection ~~[(6)]~~ (7), the
 195 excavator shall be responsible for the costs incurred by an operator to remark its underground
 196 facilities following the second or subsequent notice given by an excavator for a proposed
 197 excavation ~~[designated by the same location request assignment]~~.

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

199 **54-8a-5. Marking of underground facilities.**

200 (1) (a) Within 48 hours of the receipt of the notice required by Section 54-8a-4, the
 201 operator shall:
 202 (i) mark the location of its underground facilities in the area of the proposed
 203 excavation; or
 204 (ii) notify the excavator, by telephonic ~~H~~→ or electronic ←~~H~~ message or indication at the
 204a excavation site, that

205 the operator does not have any underground ~~[facilities]~~ facility in the area of the proposed
 206 excavation.

207 (b) The underground ~~[facilities]~~ facility shall be marked with stakes, paint, or in some
 208 other customary way, indicating, at the option of the operator, either:

209 (i) the approximate centerline of the underground facility; or
 210 (ii) the approximate outside dimensions of both sides of the underground facility.

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

213 (i) the proposed excavation:

214 (A) is not ~~[clearly described by a street address or description and]~~ identified in
215 accordance with Subsection 54-8a-4(2) or is not marked as provided in Subsection 54-8a-4(3);

216 (B) is located in a remote area;

217 (C) is an extensive excavation; or

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

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

222 (b) If the operator cannot proceed with the marking because of a situation described in
223 Subsection (2)(a), the operator shall contact the excavator within 48 hours after the excavator's
224 notice of excavation or request for a location request assignment made in accordance with
225 Section 54-8a-4 and request a meeting at the proposed excavation site or some other mutually
226 agreed upon location.

227 (c) For ~~[the situations]~~ a situation described under ~~[Subsections]~~ Subsection
228 ~~(2)(a)(i)[(A) and (2)(a)(i)(B)]~~, the meeting will constitute the beginning of a new 48-hour period
229 ~~within which the operator must mark the underground facilities.~~ (d) ~~For the situations~~
230 ~~described under Subsections (2)(a)(i)(C) and (2)(a)(i)(D)]~~, the meeting ~~[will constitute]~~
231 constitutes the beginning of a new 48-hour period within which the operator must begin
232 marking the underground facilities.

233 ~~[(e)]~~ (d) (i) For the situation described under Subsection (2)(a)(ii), the excavator and
234 operator shall agree on a plan of excavation designed to prevent damage to the operator's
235 underground ~~[facilities]~~ facility.

236 (ii) Notwithstanding the agreement, the excavator shall proceed in a manner that is
237 reasonably calculated to avoid damage to the underground ~~[facilities]~~ facility.

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

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

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

244 (ii) Marking a known facility under Subsection (2)(f)(i) imposes no liability on the

245 operator for the accuracy of the marking.

246 (3) The markings required by this section shall conform [~~to the following color code~~
247 ~~for each type of installation:] with marking standards established by the American Public
248 Works Association for temporary markings.~~

249 [~~(a) safety red - electric power;~~]

250 [~~(b) safety yellow - gas, oil, a dangerous material or product, or steam;~~]

251 [~~(c) safety orange - communications or cable television;~~]

252 [~~(d) safety blue - water or slurry; and]~~

253 [~~(e) safety green - sewer.]~~

254 (4) Each marking is valid for not more than 14 calendar days from the date notice is
255 given.

256 (5) If multiple lines exist:

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

258 (b) all lines must be marked.

259 Section 6. Section **54-8a-5.5** is amended to read:

260 **54-8a-5.5. Determining the precise location of marked underground facilities.**

261 (1) (a) An excavator may not use any power-operated or power-driven excavating or
262 boring equipment within 24 inches of the markings made in accordance with Section 54-8a-5
263 [~~before]~~ unless the excavator [~~has determined]~~ determines the exact location of the
264 underground [~~facilities]~~ facility by excavating with hand tools to confirm that the excavation
265 will not damage the underground facilities.

266 (b) An operator may waive ~~H→~~, **in writing or electronically,** ~~←H~~ the requirement that the
266a excavator determine the exact
267 location of the underground facilities by excavating with hand tools.

268 (2) Power-operated or power-driven excavating or boring equipment may be used for
269 the removal of any existing pavement if there [~~are]~~ is no underground [~~facilities]~~ facility
270 contained in the pavement, as marked by the operator.

271 (3) The excavator may use power-operated or power-driven excavating or boring
272 equipment within 24 inches of the markings only:

273 (a) to a depth agreed upon by the operator; and

274 (b) if allowed by the operator.

275 Section 7. Section **54-8a-6** is amended to read:

276 **54-8a-6. Duties and liabilities of an excavator.**

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

280 (2) (a) An excavator is not liable for ~~[damage to an underground facility]~~ a civil penalty
 281 under this chapter if ~~[he or she]~~ the excavator has:

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

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

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

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

286 (b) An excavator is ~~[not]~~ liable for damage ~~Ĥ→ [to an underground facility]~~ incurred by an
 286a operator ←Ĥ if ~~[an operator~~
 287 ~~has failed to comply with Section 54-8a-5 or 54-8a-9.];~~

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

289 (ii) the damage occurs within 24 inches of the operator's markings.

290 ~~Ĥ→ [(3) Notwithstanding Subsection 54-8a-4(1)(b)(i), an excavator is liable for damage to~~
 291 ~~an underground facility that occurs during an emergency.] ←Ĥ~~

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

293 **54-8a-7. Notice of damage -- Repairs.**

294 (1) If an excavator contacts or damages an underground facility, the excavator shall:

295 (a) immediately notify the appropriate operator and then proceed in a manner that is
 296 reasonably calculated to avoid further damage to the underground facility[-]; and

297 (b) immediately call 911 if the excavation Ĥ→ [results] may result ←Ĥ in Ĥ→ [the escape
 297a of a flammable gas or
 298 toxic or corrosive gas or liquid, or damages an electrical line] an immediate risk to
 298a human life ←Ĥ .

299 (2) Upon receipt of notice, the operator shall immediately examine the underground
 300 facility, and, if necessary, make repairs.

301 Section 9. Section **54-8a-8** is repealed and reenacted to read:

302 **54-8a-8. Civil penalty for damage -- Exceptions -- Other remedies.**

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

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

306 (a) any person who violates this chapter in an amount no greater than \$2,500 for each

307 violation with a maximum civil penalty of \$100,000 per excavation; or

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

311 (3) Notwithstanding Subsection (2)(a) a penalty under this chapter may not be
 312 imposed ~~Ĥ→~~ [;

313 ~~—— (a) ~~←Ĥ~~ on an excavator ~~Ĥ→~~ or operator ~~←Ĥ~~ unless the excavator ~~Ĥ→~~ or operator ~~←Ĥ~~~~
 313a ~~fails to comply with this chapter and damages~~

314 ~~an underground facility ~~Ĥ→~~ [; or~~

315 ~~—— (b) on an operator unless:~~

316 ~~—— (i) (A) the operator fails to respond to a location request under Section 54-8a-5 in order~~
 317 ~~to prevent damage to the facility; or~~

318 ~~—— (B) the operator fails to take reasonable steps, in response to a location request, to~~
 319 ~~ensure accurate marking of the facility in order to prevent damage to the facility; and~~

320 ~~—— (ii) damage occurs to an underground facility as a result of the operator's failure under~~
 321 ~~Subsection (3)(b)(i)(A) or (B)] ~~←Ĥ~~ .~~

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

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

325 (b) the seriousness of the violation;

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

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

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

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

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

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

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

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

337 (6) (a) A civil penalty may not be imposed on an excavator if the damage to an

338 underground facility results from an operator's:

339 (i) failure to mark; or

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

341 (b) In addition to or in lieu of part of or all of a civil penalty, the excavator or operator

342 may be required to undertake actions that are designed to prevent future violations of this

343 chapter, including attending safety and compliance training, improving internal monitoring and

344 compliance processes and procedures, or any other action that may result in compliance with

345 this chapter.

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

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

348 underground facility;

349 (b) in agricultural operations;

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

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

352 (8) (a) A civil penalty under this section is in addition to any damages that an operator

353 or an excavator may seek to recover.

354 (b) In an action brought under this section, the prevailing party shall be awarded its

355 costs and attorney fees as determined by the court.

356 Section 10. Section **54-8a-9** is amended to read:

357 **54-8a-9. Association for mutual receipt of notice of excavation activities.**

358 (1) (a) (i) Two or more operators may form and operate a statewide association
359 providing for mutual receipt of notice of excavation activities.

360 (ii) If an association is operational, notice to the association shall be given pursuant to
361 Section 54-8a-4.

362 (b) (i) If an association is formed, each operator with an underground [~~facilities~~]
363 facility in the area shall become a member of the association [~~or~~] and participate in it to:

364 (A) receive a notice of a proposed excavation submitted to the association;

365 (B) receive the services furnished by it; and

366 (C) pay its share of the cost for the service furnished.

367 (ii) If an operator does not comply with Subsection (1)(b)(i) and Section 54-8a-5, [~~he~~]

368 the operator is liable for damages incurred by an excavator who [~~has complied~~] complies with

369 [the] this chapter's requirements [~~under this chapter~~].

370 (c) An association whose members or participants have underground facilities within a
371 county shall:

372 (i) file a description of the geographical area served by the association; and

373 (ii) file the name and address of every member and participating operator with the
374 county clerk.

375 (2) An association receiving notice as provided in Subsection 54-8a-4(1) shall:

376 (a) notify members and participants in the relevant geographic area within 24 hours
377 after receiving notice from the person who proposes to excavate; and

378 (b) maintain a record of [~~notices~~] any notice received for a period of five years to
379 document compliance with the requirements of this chapter.

380 Section 11. Section **54-8a-10** is amended to read:

381 **54-8a-10. Installation of nonmetallic facilities.**

382 Any operator [~~utilizing a fiberoptic or other~~] installing a nonmetallic facility, such as a
383 sewer, water, or fiber optic line, shall install the [~~fiberoptic or other~~] nonmetallic facility so that
384 it can be located with standard underground facility detection devices or in a concrete conduit
385 system.

386 Section 12. Section **54-8a-12** is enacted to read:

387 **54-8a-12. Enforcement -- Attorney general.**

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

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

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

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

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

396 (2) Any civil penalty imposed and collected under this chapter shall be deposited into
397 the General Fund.

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

399 **54-8a-13. Underground Facilities Damage Dispute Board -- Arbitration --**

400 **Relationship with Public Service Commission.**

401 (1) There is created within the commission the Underground Facilities Damage
 402 Dispute Board to arbitrate a dispute arising from ~~H~~ :

402a (a) ~~H~~ an operator's or excavator's violation of this

403 chapter ~~H~~ [:] ; and

403a (b) damage caused by excavation during an emergency. ~~H~~

404 (2) The board consists of five members appointed by the governor as follows:

405 (a) one member from a list of names provided to the governor by a group representing
 406 operators;

407 (b) one member from a list of names provided to the governor by the Associated
 408 General Contractors;

409 (c) one member from a list of names provided to the governor by Blue Stakes of Utah;

410 (d) one member from a list of names provided to the governor by the Utah Home
 411 Builders Association; and

412 (e) one member from the Division of Public Utilities.

413 (3) (a) A member of the board:

414 (i) shall be appointed for a three-year term; and

415 (ii) may continue to serve until the member's successor takes office.

416 (b) At the time of appointment, the governor shall stagger the terms of the members to
 417 ensure that approximately 1/3 of the members of the board are reappointed each year.

418 (c) A vacancy in the board shall be filled:

419 (i) for the unexpired term; and

420 (ii) in the same manner as the board member is initially appointed.

421 (d) The board shall select an alternate for a specific board member to serve on a
 422 specific case if it becomes necessary to replace a member who has a conflict of interest because
 423 a dispute involves that member or that member's employer.

424 (4) Three members of the board constitute a quorum.

425 (5) The board may, upon agreement of the disputing parties, arbitrate a dispute
 426 regarding damages, not including personal injury damages, arising between:

427 (a) an operator;

428 (b) an excavator;

429 (c) a property owner; or

430 (d) any other interested party.

431 (6) At least four members of the board shall be present and vote on an arbitration
432 decision.

433 (7) An arbitration before the board shall be consistent with Title 78, Chapter 31a, Utah
434 Uniform Arbitration Act.

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

437 (9) (a) A member of the board who is not a state officer or employee or local
438 government officer or employee shall receive no compensation or benefits for the member's
439 service, but may receive per diem and expenses incurred in the performance of the member's
440 duties at the rates established by the Division of Finance under Sections 63A-3-106 and
441 63A-3-107. Members may decline to receive per diem and expenses for their services.

442 (b) A state officer or employee or local government officer or employee member of the
443 board who does not receive salary, per diem, or expenses from their agency or employer for
444 their service on the board may receive per diem and expenses incurred in the performance of
445 the member's duties at the rates established by the Division of Finance under Sections
446 63A-3-106 and 63A-3-107. State and local government officer or employee members may
447 decline to receive per diem and expenses for their services.

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

449 **Section 14. Repealer.**

450 This bill repeals:

451 Section **54-8a-8.5, Alternative dispute resolution.**

452 Section **54-13-6, Violation of chapter -- Penalty.**

Legislative Review Note
as of 1-24-08 11:43 AM

Office of Legislative Research and General Counsel

H.B. 341 - Damage to Underground Utility Facilities Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill require additional appropriations of \$5,000 from Commerce Service Fund-Public Utility Regulatory Fee restricted account to pay for additional hearings that the Public Service Commission would be required to administer.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
Restricted Funds	\$0	\$5,000	\$5,000	\$0	\$0	\$0
Total	\$0	\$5,000	\$5,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
