

**UTILITY EASEMENTS AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel McCay**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to the marking of utilities.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires utility operators to create a statewide notification center to manage requests to utility operators to mark utility facilities before excavation;
- ▶ requires excavators to provide notice to the notification center before beginning excavation;
- ▶ allows a person to submit a design request to the notification center to receive information about utility facilities in a designated location; and
- ▶ describes the process for an excavator to notify others of contact or damage to a utility facility.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

**54-3-29**, as last amended by Laws of Utah 2012, Chapter 347



- 28 [54-8a-2](#), as last amended by Laws of Utah 2011, Chapter 426
- 29 [54-8a-3](#), as last amended by Laws of Utah 2008, Chapter 344
- 30 [54-8a-4](#), as last amended by Laws of Utah 2011, Chapter 426
- 31 [54-8a-5](#), as last amended by Laws of Utah 2011, Chapter 426
- 32 [54-8a-5.5](#), as last amended by Laws of Utah 2011, Chapter 426
- 33 [54-8a-6](#), as last amended by Laws of Utah 2011, Chapter 426
- 34 [54-8a-7](#), as last amended by Laws of Utah 2008, Chapter 344
- 35 [54-8a-7.5](#), as enacted by Laws of Utah 2011, Chapter 426
- 36 [54-8a-8](#), as last amended by Laws of Utah 2011, Chapter 426
- 37 [54-8a-9](#), as last amended by Laws of Utah 2010, Chapter 272
- 38 [54-8a-11](#), as last amended by Laws of Utah 2011, Chapter 340
- 39 [54-8a-13](#), as last amended by Laws of Utah 2010, Chapter 286

40 ENACTS:

41 [54-8a-4.5](#), Utah Code Annotated 1953

42 REPEALS:

43 [54-8a-9.5](#), as enacted by Laws of Utah 1998, Chapter 198



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

46 Section 1. Section **54-3-29** is amended to read:

47 **54-3-29. Removal, relocation, or alteration of utility facility in public highway**  
48 **construction or reconstruction -- Notice -- Cooperation.**

49 (1) As used in this section:

50 (a) "Design-build" means a design-build transportation project for which a design-build  
51 transportation project contract is issued, within the meaning of Section [63G-6a-1402](#).

52 (b) "Municipality" [~~is~~~~as~~] means the same as that term is defined in Section [10-1-104](#).

53 (c) "Political subdivision" means a:

54 (i) county; [~~or~~]

55 (ii) municipality; or

56 (iii) special service district.

57 (d) "Public agency" means an entity of state government or a political subdivision.

58 (e) "Public highway" means a highway, street, road, or alley constructed for public use

59 in the state.

60 (f) "Utility company" means a privately, cooperatively, or publicly owned utility,  
61 including a utility owned by a political subdivision, that provides service using a utility facility.

62 (g) "Utility facility" means:

63 (i) a telecommunications, gas, electricity, cable television, water, sewer, or data  
64 facility;

65 (ii) a video transmission line;

66 (iii) a drainage and irrigation system; or

67 (iv) a facility similar to those listed in Subsections (1)(g)(i) through (iii) located in, on,  
68 along, across, over, through, or under any public highway.

69 (2) If a public agency engages in or proposes to engage in a construction or  
70 reconstruction project on a public highway that may require the removal, relocation, or  
71 alteration of a utility facility, the public agency shall:

72 (a) contact [~~an association, established under Title 54, Chapter 8a, Damage to~~  
73 ~~Underground Utility Facilities,~~] the notification center, described in Section 54-8a-9 to identify  
74 each utility company that may have a utility facility in the area of the construction or  
75 reconstruction project;

76 (b) identify a utility company that has an above-ground utility facility in the area of the  
77 proposed construction or reconstruction project; and

78 (c) electronically notify each utility company identified in accordance with Subsections  
79 (2)(a) and (b).

80 (3) The notice required by Subsection (2)(c) shall:

81 (a) be made as early as practicable and at least 30 days:

82 (i) before the date of the preliminary design or project development meeting;

83 (ii) before the date of an issuance of a request for proposal for a design-build project;

84 or

85 (iii) after a change in scope of a design-build project;

86 (b) include:

87 (i) information concerning the proposed project design;

88 (ii) the proposed date of a required removal, relocation, or alteration of a utility facility;

89 (iii) the federal identifying project number, if applicable; and

90 (c) advise the utility company if the proposed project may qualify for aid for the utility  
91 company's expense in removing, relocating, or altering a utility facility.

92 (4) A public agency shall permit a utility company notified under Subsection (2) to  
93 participate in the preliminary design or project development meeting[;] or similar meeting at  
94 which the project design is addressed.

95 (5) (a) A public agency shall, not less than 30 days after providing notice under  
96 Subsection (2) to each utility company, provide the utility company an opportunity to meet  
97 with the public agency to allow the utility company to:

98 (i) review project plans;

99 (ii) understand the objectives and funding sources for the proposed project;

100 (iii) provide and discuss recommendations to the public agency that may reasonably  
101 eliminate or minimize utility removal, relocation, or alteration costs, limit the disruption of  
102 utility company services, or eliminate or reduce the need for present or future utility facility  
103 removal, relocation, or alteration; and

104 (iv) provide reasonable schedules to enable coordination of the construction project  
105 and removal, relocation, or alteration of a utility facility.

106 (b) If a public agency provides a utility company with reasonable opportunities to meet  
107 in accordance with Subsection (5)(a), the utility company's failure to meet does not affect the  
108 public agency's ability to proceed with the project.

109 (6) While recognizing the essential goals and objectives of the public highway agency  
110 in proceeding with and completing a project, the parties shall use their best efforts to find ways  
111 to:

112 (a) eliminate the cost to the utility of relocation of the utility facilities; or

113 (b) if elimination of the costs is not feasible, minimize the relocation costs to the extent  
114 reasonably possible.

115 (7) A utility company notified under Subsection (2) shall coordinate with the public  
116 agency concerning the utility facility removal, relocation, or alteration, including the  
117 scheduling of the utility facility removal, relocation, or alteration.

118 (8) A public agency and a utility company may address the removal, relocation, or  
119 alteration of a utility facility in relation to a construction or reconstruction project on a public  
120 highway in a franchise agreement in lieu of this section, if the public agency is otherwise

121 permitted to enter into the franchise agreement.

122 (9) This chapter does not affect a public agency's authority over a public right-of-way,  
123 including any rule, ordinance, order to relocate a utility as provided in Section 72-6-116, or  
124 other valid provision governing the use of the public right-of-way.

125 Section 2. Section 54-8a-2 is amended to read:

126 **54-8a-2. Definitions.**

127 As used in this chapter:

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

130 (1) "Backfill" means soil or material that is approved for the soil or material's intended  
131 use and meets a project's plans and specifications.

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

134 (3) (a) "Design notice" means a communication that:

135 (i) is confirmed and accepted by the notification center;

136 (ii) requests the identification of existing facilities for advance planning and design  
137 purposes; and

138 (iii) meets the requirements of Section 54-8a-4.5.

139 (b) "Design notice" does not mean an excavation notice.

140 (4) "Electronic positive response system" means an automated information system  
141 operated by the notification center, that allows excavators, locators, operators, and others to  
142 communicate the status of a design or excavation notice.

143 ~~[(3)]~~ (5) "Emergency" means an occurrence or suspected natural gas leak necessitating  
144 immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential  
145 public services.

146 ~~[(4)]~~ (6) "Excavate" or "excavation" means an operation in which earth, rock, or other  
147 material on or below the ground is moved or displaced by tools, equipment, ~~[or]~~ explosives, or  
148 demolition.

149 (7) "Excavation notice" means a communication that:

150 (a) is confirmed and accepted by the notification center;

151 (b) provides notice of an individual's intent to excavate in a specified location in the

152 state; and

153 (c) meets the requirements of Section [54-8a-4](#).

154 ~~[(5)]~~ (8) "Excavator" means any person ~~[or entity]~~ that excavates or conducts  
155 excavation activities.

156 ~~[(6)]~~ (9) "48 hours" means a 48-hour period occurring during business days ~~[which]~~  
157 that includes any day except Saturday, Sunday, or a ~~[legal]~~ holiday.

158 ~~[(7)]~~ (10) "Hand tool" means an implement:

159 (a) powered by hand; or

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

162 (11) "Holiday" means all legal holidays as defined in Section [63G-3-301](#), the fourth  
163 Friday in November, and December 24th.

164 ~~[(8)]~~ (12) "Location" means the site of a proposed area of excavation described:

165 (a) (i) by street address, if available;

166 (ii) by the area at that street address to be excavated; and

167 (iii) as specified in Subsection [54-8a-4\(3\)](#) or [54-8a-5\(2\)\(b\)\(ii\)](#); or

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

171 ~~[(9)]~~ (13) "Location request assignment" means a number assigned to a proposed  
172 excavation by an association or operator upon receiving notice of the proposed excavation from  
173 the excavator.

174 (14) "Mark" means to locate and indicate the existence of a line or facility according to  
175 the guidelines published by the notification center in the notification center's current version of  
176 the excavator's guide.

177 (15) "Notification center" means the Utah non-profit corporation that is created in  
178 accordance with Section [54-8a-9](#).

179 ~~[(10)]~~ (16) (a) "Operator" means a person ~~[who]~~ that owns, operates, or maintains an  
180 underground facility.

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

- 183 (i) located within:
- 184 (A) the owner's property; or
- 185 (B) a public street adjacent to the owner's property, a right-of-way adjacent to the
- 186 owner's property, or a public utility easement adjacent to the owner's property;
- 187 (ii) used exclusively to furnish services to the owner's property; and
- 188 (iii) maintained under the operation and control of that owner.

189 ~~[(11)]~~ (17) "Person" includes:

190 (a) an individual, government entity, corporation, partnership, association, or company;

191 and

192 (b) the trustee, receiver, assignee, and personal representative of a person listed in

193 Subsection ~~[(11)(a)]~~ (17)(a).

194 (18) "Secondary notice" means notice given by an operator to the notification center  
195 that describes indications of an unmarked facility at the site of the proposed excavation, after  
196 the operator has previously submitted an excavation notice.

197 ~~[(12)]~~ (19) "Sewer lateral cleanout" means a point of access where a sewer lateral can  
198 be serviced.

199 (20) "Tolerance zone" means the area surrounding a facility that:

200 (a) for an underground facility that has the diameter of the facility marked, is the  
201 distance of one half of the marked diameter plus 24 inches on either side of the designated  
202 center;

203 (b) for an underground facility that does not have the diameter of the facility marked, is  
204 24 inches on either side of the outside edge of the mark indicating a facility; or

205 (c) for an above ground facility, is 24 inches in each direction of the outside edge of the  
206 physically present facility.

207 ~~[(13)]~~ (21) "24 hours" means a 24-hour period, excluding hours occurring during a  
208 Saturday, Sunday, or a ~~[legat]~~ holiday.

209 ~~[(14)]~~ (22) "Underground facility" means personal property that is buried or placed  
210 below ground level for use in the storage or conveyance of any of the following:

211 (a) water;

212 (b) sewage, including sewer laterals;

213 (c) communications, including electronic, photonic, telephonic, or telegraphic

214 communications;

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

217 (e) electric power;

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

219 (g) steam;

220 (h) slurry; or

221 (i) dangerous materials or products.

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

223 **54-8a-3. Information filed with county clerk.**

224 (1) An operator shall file with the county clerk of a county in which the operator has an  
225 underground facility the following:

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

228 (b) the operator's name;

229 (c) the title, telephone number, and address of the operator's representative designated  
230 to receive calls regarding excavation; and

231 (d) a statement concerning whether the operator is a member of ~~[an association]~~ the  
232 notification center and, if the operator is a member of ~~[an association]~~ the notification center,  
233 the name of and contact information for the ~~[association]~~ notification center.

234 ~~[(2) In a county where an association is established, the association shall file its~~  
235 ~~telephone number and a list of its members who are operators with the county clerk on behalf~~  
236 ~~of any participating operator.]~~

237 (2) The notification center shall file with each county clerk:

238 (a) the notification center's telephone number; and

239 (b) a list of the notification center's members that are operators located in the county.

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

241 **54-8a-4. Notice of excavation.**

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

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



245 (i) if there is an emergency;

246 (ii) while gardening; or

247 (iii) while tilling private ground.

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

249 (a) be given:

250 (i) by telephone;

251 [~~(ii) in person~~]

252 (ii) by electronic communication; or

253 (iii) by other means acceptable to the notification center, or to each operator, if given

254 directly to each operator;

255 (b) be given not:

256 (i) less than 48 hours before excavation begins; or

257 (ii) more than 14 days before excavation begins; and

258 (c) include the proposed excavation's anticipated:

259 (i) location, with reasonable specificity;

260 (ii) dimensions; and

261 (iii) type[~~; and~~].

262 [~~(iv) duration~~].

263 (3) If the proposed excavation's anticipated location and dimensions cannot be

264 described as required under Subsection (2)(c) or as requested in accordance with Subsection

265 [54-8a-5\(2\)\(b\)](#), an excavator shall outline the proposed excavation site using as a guideline the

266 then-existing Uniform Color Code and Marking Guidelines, Appendix B, published by the

267 Common Ground Alliance, as amended in the current version of the excavators' guide

268 published by the [~~statewide association~~] notification center established in Section [54-8a-9](#).

269 (4) If more than one excavator will operate at the same excavation site, each excavator

270 shall provide the notice required by this section.

271 (5) [~~If there is an association in the county, notice to that association~~] Notice provided

272 to the notification center constitutes notice to each operator that has facilities within the

273 proposed excavation site.

274 (6) (a) Notice given under this section is valid for [~~14~~] 21 days from the day on which

275 the notice is given.

276 (b) If an excavation will continue beyond the [~~14-day~~] 21-day period under Subsection  
277 (6)(a), the excavator shall provide notice of that fact at least 48 hours, but no sooner than [~~six~~]  
278 seven calendar days, before expiration of the [~~14-day~~] 21-day period.

279 (c) A notice under Subsection (6)(b) is valid for [~~14~~] 21 days from the day on which  
280 the previous notice expires.

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

283 (7) (a) An excavator shall confirm before excavation that:

284 (i) all operators have responded through the notification center's electronic positive  
285 response system; and

286 (ii) (A) all facilities that may be affected by the proposed excavation have been  
287 marked;

288 (B) the operators have indicated that there are no underground facilities within the  
289 proposed excavation site; or

290 (C) the operators have not requested a meeting under Subsection [54-8a-5\(2\)](#).

291 (b) If an operator has not responded in the electronic positive response system within  
292 48 hours of the receipt of notice:

293 (i) the excavator may begin excavation if there are no visible indications of a facility at  
294 the proposed excavation area; or

295 (ii) the excavator may not begin excavation if the excavator is aware of or observes  
296 indications of an unmarked facility at the proposed excavation area until:

297 (A) the excavator has given a secondary notice; and

298 (B) the operator makes arrangements for the facility to be marked by the operator.

299 (c) An operator shall make arrangements for the facility to be marked within three  
300 hours of the notification center receiving a secondary notice.

301 [~~(7)~~] (8) If markings made by the operator have been disturbed so that the markings no  
302 longer identify the underground facility:

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

304 (i) the [~~association~~] notification center; or

305 (ii) each operator; and

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

307 ~~[(8) An excavator may begin excavation if:]~~  
 308 ~~[(a) (i) all underground facilities have been:]~~  
 309 ~~[(A) located; and]~~  
 310 ~~[(B) marked; or]~~  
 311 ~~[(ii) the operators have indicated that there are no underground facilities within the~~  
 312 ~~proposed excavation site;]~~

313 ~~[(b) (i) 48 hours have elapsed from the time of initial notice; and]~~  
 314 ~~[(ii) the excavator has not:]~~  
 315 ~~[(A) been notified by the operator; or]~~  
 316 ~~[(B) received a request for a meeting under Subsection 54-8a-5(2); or]~~  
 317 ~~[(c) 48 hours have elapsed from the time of renotification under Subsection (6).]~~

318 (9) Unless an operator remarks an area pursuant to Subsection ~~[(7);~~ (8), the excavator  
 319 shall be responsible for the costs incurred by an operator to remark its underground facilities  
 320 following the second or subsequent notice given by an excavator for a proposed excavation.

321 Section 5. Section **54-8a-4.5** is enacted to read:

322 **54-8a-4.5. Design notice.**

323 (1) A person may submit a design notice to the notification center.

324 (2) A design notice submitted to the notification center shall describe the tract or parcel  
 325 of land for which the design notice has been submitted with sufficient particularity to allow an  
 326 operator to ascertain the precise tract or parcel of land involved.

327 (3) Within five working days, not including the day notice is given, an operator that has  
 328 been notified of a design notice submitted to the notification center shall:

329 (a) mark the location of all facilities owned by the operator within the area described  
 330 by the design notice as provided in Section 54-8a-5;

331 (b) provide to the person submitting the design notice the best available description of  
 332 all facilities in the area described by the design notice, including drawings marked with a scale,  
 333 dimensions, and reference points for underground utilities already built in the area or other  
 334 facility records that are maintained by the operator;

335 (c) allow the person submitting the design notice or any other authorized person to  
 336 inspect the drawings or other records for all facilities within the area designated by the design  
 337 notice at a location acceptable to the operator; or

338 (d) provide notice to the person submitting the design notice through the electronic  
339 positive response system that the request has been rejected due to homeland security  
340 considerations pending the operator obtaining additional information confirming the legitimacy  
341 of the notice.

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

343 **54-8a-5. Marking of underground facilities.**

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

346 ~~(i)~~ (a) (i) mark the location of ~~[its]~~ the operator's underground facilities in the area of  
347 the proposed excavation; or

348 (ii) notify the excavator, by telephonic or electronic message or indication at the  
349 excavation site, that the operator does not have any underground facility in the area of the  
350 proposed excavation~~[-]; and~~

351 (b) provide a response to the notification center's electronic positive response system to  
352 indicate whether the operator can provide the information described in Subsection (1)(a)(i).

353 ~~[(b) The underground facility shall be marked using as a guideline the then-existing~~  
354 ~~Uniform Color Code and Marking Guidelines, Appendix B, published by the Common Ground~~  
355 ~~Alliance, as amended in the current version of the excavators' guide published by the statewide~~  
356 ~~association established in Section 54-8a-9.]~~

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

359 (i) the proposed excavation:

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

362 (B) is located in a remote area;

363 (C) is an extensive excavation; or

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

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

368 (b) If the operator cannot proceed with the marking because of a situation described in

369 Subsection (2)(a), the operator shall contact the excavator within 48 hours after the [~~excavator's~~  
370 ~~notice of excavation or request for a location request assignment made in accordance with~~  
371 ~~Section 54-8a-4~~] excavation notice and:

372 (i) request a meeting at the proposed excavation site or some other mutually agreed  
373 upon location; or

374 (ii) at the operator's discretion, contact the excavator and request the proposed  
375 excavation site be outlined in accordance with Subsection 54-8a-4(3).

376 (c) For a situation described under Subsection (2)(a)(i), the meeting or completed  
377 outlining of the proposed excavation site constitutes the beginning of a new 48-hour period  
378 within which the operator [~~must~~] shall begin marking the underground facilities.

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

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

384 (e) (i) An operator need not mark [~~or locate~~] an underground facility the operator does  
385 not own.

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

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

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

392 (3) Each marking is valid for not more than [~~14~~] 21 calendar days from the date notice  
393 is given.

394 (4) If multiple lines exist:

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

396 (b) all lines must be marked.

397 Section 7. Section ~~54-8a-5.5~~ is amended to read:

398 **54-8a-5.5. Determining the precise location of marked underground facilities.**

399 (1) An excavator may not use any power-operated or power-driven excavating or

400 boring equipment within [~~24 inches of the markings made in accordance with Section 54-8a-5]~~  
401 the tolerance zone unless:

402 (a) the excavator determines the exact location of the underground facility by  
403 excavating with hand tools to confirm that the excavation will not damage the underground  
404 facilities; or

405 (b) the operator provides an excavator with written or electronic notice waiving the  
406 requirement that the excavator determine the exact location of the underground facilities by  
407 excavating with hand tools.

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

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

412 **54-8a-6. Duties and liabilities of an excavator.**

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

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

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

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

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

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

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

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

424 (ii) the damage occurs within [~~24 inches of the operator's markings or the physical~~  
425 ~~presence of an above ground facility, including a manhole, meter, or junction box]~~ the  
426 tolerance zone.

427 Section 9. Section **54-8a-7** is amended to read:

428 **54-8a-7. Notice of contact or damage -- Repairs.**

429 (1) An excavator performing an excavation that results in contact or damage to a  
430 facility shall:

431 (a) provide notice of the contact or damage, and if known, the location and nature of  
 432 damage immediately to the operator;

433 (b) allow the operator reasonable time to accomplish necessary repairs before  
 434 completing the excavation in the immediate area of the facility; and

435 (c) delay any backfilling in the immediate area of the contacted or damaged facility  
 436 until:

437 (i) the operator authorizes the excavator to resume backfilling; or

438 (ii) if no response is made by the operator, 24 hours after providing the notice  
 439 described in Subsection (1)(a).

440 (2) After receiving notification of contact or damage to a facility, the operator, or  
 441 qualified personnel authorized by the operator, shall immediately examine, and if necessary,  
 442 make repairs to the contacted or damaged facility.

443 (3) (a) An excavator that is responsible for an excavation where any contact or damage  
 444 to a facility results in the discharge of electricity or escape of any flammable, toxic, or  
 445 corrosive gas or liquid, or that endangers life, health, or property shall:

446 (i) immediately notify:

447 (A) emergency responders, including 911 services; and

448 (B) the facility operator; and

449 (ii) take reasonable measures to protect the excavator, other persons, property, and the  
 450 environment until the operator or emergency responders arrive.

451 ~~[If an excavator contacts or damages an underground facility, the excavator shall:]~~

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

454 ~~[(b) immediately call 911 if the excavation may result in an immediate risk to human~~  
 455 ~~life.]~~

456 ~~[(2) Upon receipt of notice, the operator shall immediately examine the underground~~  
 457 ~~facility, and, if necessary, make repairs.]~~

458 Section 10. Section 54-8a-7.5 is amended to read:

459 **54-8a-7.5. Third-party damages caused by failure to mark a facility.**

460 (1) If an operator fails to [~~locate~~] mark a facility as required by this chapter and an  
 461 excavator damages another operator's facility of a similar size and appearance that fits surface

462 markings [as required by Subsection ~~54-8a-5(1)(b)~~], the operator who failed to [locate] mark  
463 [its] the operator's own facility is liable for the costs of damage to the facility caused by the  
464 excavator if:

- 465 (a) the excavator complies with Sections ~~54-8a-4~~, ~~54-8a-5.5~~, and ~~54-8a-6~~; and
- 466 (b) the excavator demonstrates that the damage is the direct result of the operator's  
467 failure to [~~locate its~~] mark the operator's own facility.

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

- 470 (a) shall pay for the costs of repairing the damaged facility; and
- 471 (b) may seek recovery of the costs of damage from the operator [~~who~~] that failed to  
472 mark [its] the operator's own facility.

473 (3) Resolution of a dispute under this section may be in accordance with Section  
474 ~~54-8a-13~~.

475 Section 11. Section ~~54-8a-8~~ is amended to read:

476 **~~54-8a-8. Civil penalty -- Exceptions -- Other remedies.~~**

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

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

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

482 (b) an excavator [~~who~~] that fails to provide notice of an excavation in accordance with  
483 Section ~~54-8a-4~~ in an amount no greater than \$500 in addition to the amount under Subsection  
484 (2)(a), regardless of whether the excavation resulted in damage to a facility.

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

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

- 490 (a) the excavator's or operator's history of any prior violation or penalty;
- 491 (b) the seriousness of the violation;
- 492 (c) any discharge or pollution resulting from the damage;



493 (d) the hazard to the health or safety of the public;  
494 (e) the degree of culpability and willfulness of the violation;  
495 (f) any good faith of the excavator or operator; and  
496 (g) any other factor considered relevant, including the number of past excavations  
497 conducted by the excavator, the number of location requests made by the excavator and the  
498 number of location markings made for the excavator or by the operator.

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

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

503 (6) (a) A civil penalty may not be imposed on an excavator if the damage to an  
504 underground facility results from an operator's[\*] failure to comply with Section 54-8a-5.

505 [~~(i) failure to mark; or~~]

506 [~~(ii) inaccurate marking or locating of the operator's underground facilities.~~]

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

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

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

515 (b) in agricultural operations;

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

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

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

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

522 Section 12. Section **54-8a-9** is amended to read:

523 **54-8a-9. Notification center.**

524 (1) The operators in the state shall maintain a statewide notification center providing  
525 for mutual receipt of excavation notices, receipt of design notices, and damage prevention  
526 education.

527 (2) The notification center shall be responsible for:

528 (a) implementing and operating a statewide electronic positive response system;

529 (b) providing notice to operators in the relevant geographic area of a design or  
530 excavation notice within 24 hours of receipt of the notice; and

531 (c) maintaining a record of any notice received for a period of five years.

532 (3) The notification center may not be held responsible for:

533 (a) resolving reports of alleged violations of this chapter; or

534 (b) a failure on the part of an excavator or operator to perform an excavator's or  
535 operator's responsibilities under this chapter.

536 (4) Each operator with an underground facility in the state shall become a member of  
537 the notification center and participate in the notification center to:

538 (a) receive design or excavation notices that have been submitted to the notification  
539 center;

540 (b) provide electronic positive response information to the notification center's  
541 electronic positive response system; and

542 (c) pay the operator's share of the cost for the service furnished.

543 (5) An operator that does not comply with Subsection (4) and Section [54-8a-5](#) may be  
544 liable for damages incurred by an excavator who complies with this chapter's requirements.

545 (6) The notification center shall file with each county clerk the name and address of the  
546 members of the notification center in the county that have underground facilities located within  
547 the county.

548 (7) Upon receiving an excavation notice, the notification center shall:

549 (a) notify members and participants in the relevant geographic area within 24 hours;  
550 and

551 (b) maintain a record of any notice received for a period of five years to document  
552 compliance with the requirements of this chapter.

553 (8) Upon request by a public agency as described in Section [54-3-29](#), the notification  
554 center shall provide the public agency with a list, including available contact information, of

555 each utility company that the notification center knows has a utility facility within the area  
556 identified by the public agency.

557 (9) The books and records of the notification center shall be open to inspection by the  
558 notification center's members during normal business hours upon 48 hours advance notice.

559 ~~[(1) (a) (i) Two or more operators may form and operate a statewide association~~  
560 ~~providing for mutual receipt of notice of excavation activities.]~~

561 ~~[(ii) If an association is operational, notice to the association shall be given pursuant to~~  
562 ~~Section 54-8a-4.]~~

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

565 ~~[(A) receive a notice of a proposed excavation submitted to the association;]~~

566 ~~[(B) receive the services furnished by it; and]~~

567 ~~[(C) pay its share of the cost for the service furnished.]~~

568 ~~[(ii) If an operator does not comply with Subsection (1)(b)(i) and Section 54-8a-5, the~~  
569 ~~operator is liable for damages incurred by an excavator who complies with this chapter's~~  
570 ~~requirements.]~~

571 ~~[(c) An association whose members or participants have underground facilities within a~~  
572 ~~county shall:]~~

573 ~~[(i) file a description of the geographical area served by the association; and]~~

574 ~~[(ii) file the name and address of every member and participating operator with the~~  
575 ~~county clerk.]~~

576 ~~[(2) An association receiving notice as provided in Subsection 54-8a-4(1) shall:]~~

577 ~~[(a) notify members and participants in the relevant geographic area within 24 hours~~  
578 ~~after receiving notice from the person who proposes to excavate; and]~~

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

581 ~~[(3) An association contacted by a public agency to identify a utility company, in~~  
582 ~~accordance with Section 54-3-29, shall provide the public agency with a list, including contact~~  
583 ~~information to the extent available, of each utility company of which the association is aware~~  
584 ~~that has a utility facility within the area identified by the public agency.]~~

585 Section 13. Section 54-8a-11 is amended to read:

586 **54-8a-11. Applicability of federal law.**

587 The following persons [~~or entities~~] are subject to the provisions of Title 49, Code of  
588 Federal Regulations, Part 198, Regulations for Grants to Aid State Pipeline Safety Programs,  
589 including those provisions relating to damage to underground facilities:

590 (1) an operator, to the extent subject to the Pipeline Safety Improvement Act of 2002,  
591 49 U.S.C. 60101 et seq.;

592 (2) an excavator; and

593 [~~(3) a person who operates an association.~~]

594 (3) the notification center.

595 Section 14. Section **54-8a-13** is amended to read:

596 **54-8a-13. Underground Facilities Damage Dispute Board -- Arbitration --**  
597 **Relationship with Public Service Commission.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 617 (i) for the unexpired term; and
  - 618 (ii) in the same manner as the board member is initially appointed.
  - 619 (d) The board shall select an alternate for a specific board member to serve on a
  - 620 specific case if it becomes necessary to replace a member who has a conflict of interest because
  - 621 a dispute involves that member or that member's employer.
  - 622 (4) Three members of the board constitute a quorum.
  - 623 (5) The board [~~may, upon agreement of the disputing parties,]~~ shall arbitrate a dispute
  - 624 regarding damages, not including personal injury damages, arising between:
  - 625 (a) an operator;
  - 626 (b) an excavator;
  - 627 (c) a property owner; or
  - 628 (d) any other interested party.
  - 629 (6) At least four members of the board shall be present and vote on an arbitration
  - 630 decision.
  - 631 (7) An arbitration before the board shall be consistent with Title 78B, Chapter 11, Utah
  - 632 Uniform Arbitration Act.
  - 633 (8) The prevailing party in an arbitration conducted under this section shall be awarded
  - 634 its costs and attorney fees in an amount determined by the board.
  - 635 (9) A member may not receive compensation or benefits for the member's service, but
  - 636 may receive per diem and travel expenses in accordance with:
  - 637 (a) Section [63A-3-106](#);
  - 638 (b) Section [63A-3-107](#); and
  - 639 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
  - 640 [63A-3-107](#).
  - 641 (10) The commission shall provide administrative support to the board.
- 642 **Section 15. Repealer.**
- 643 This bill repeals:
- 644 Section [54-8a-9.5](#), **Inspection of records.**
- 645 Section 16. **Effective date.**
- 646 This bill takes effect on July 1, 2023.