

UTILITY EASEMENTS AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

House Sponsor: _____

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:

None

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

39 ENACTS:

- 40 [54-8a-4.5](#), Utah Code Annotated 1953

41 REPEALS:

- 42 [54-8a-3](#), as last amended by Laws of Utah 2008, Chapter 344



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

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

46 **54-3-29. Removal, relocation, or alteration of utility facility in public highway**
 47 **construction or reconstruction -- Notice -- Cooperation.**

48 (1) As used in this section:

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

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

52 (c) "Political subdivision" means a:

- 53 (i) county; [~~or~~]
- 54 (ii) municipality; or
- 55 (iii) special service district.

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

57 (e) "Public highway" means a highway, street, road, or alley constructed for public use
 58 in the state.

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

61 (g) "Utility facility" means:

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

64 (ii) a video transmission line;

65 (iii) a drainage and irrigation system; or

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

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

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

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

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

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

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

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

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

83 or

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

85 (b) include:

86 (i) information concerning the proposed project design;

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

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

89 (c) advise the utility company if the proposed project may qualify for aid for the utility

90 company's expense in removing, relocating, or altering a utility facility.

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

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

97 (i) review project plans;

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

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

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

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

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

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

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

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

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

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

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

125 **54-8a-2. Definitions.**

126 As used in this chapter:

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

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

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

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

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

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

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

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

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

142 ~~[(3)]~~ (5) "Emergency" means an occurrence or suspected natural gas leak necessitating
 143 immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential
 144 public services.

145 ~~[(4)]~~ (6) "Excavate" or "excavation" means an operation in which earth, rock, or other
 146 material on or below the ground is moved or displaced by tools, equipment, ~~[or]~~ explosives, or
 147 demolition.

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

149 (a) has a location request assignment;

150 (b) provides notice of an person's intent to excavate in a specified location in the state;

151 and

152 (c) meets the requirements of Section 54-8a-4.

153 ~~[(5)]~~ (8) "Excavator" means any person ~~[or entity]~~ that excavates or conducts
154 excavation activities.

155 ~~[(6)]~~ (9) "48 hours" means a 48-hour period, occurring during business days ~~[which]~~
156 that includes any day except Saturday, Sunday, or a ~~[legal]~~ holiday, that begins at 9:00 a.m. on
157 the first business day after notice has been submitted.

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-1-301, the Friday
163 after Thanksgiving Day, December 24th, and any other notification center observed holiday as
164 posted in the notification center excavators' guide.

165 ~~[(8)]~~ (12) "Location" means the site of a proposed area of excavation described:

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

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

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

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

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

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

178 (15) "Municipality" means the same as that term is defined in Section 10-1-104.

179 (16) "Notification center" means the association that is created in accordance with
180 Section 54-8a-9.

181 ~~[(10)]~~ (17) (a) "Operator" means a person ~~[who]~~ that owns, operates, or maintains an
182 underground facility.

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

185 (i) located within:

186 (A) the owner's property; or

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

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

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

191 ~~[(11)]~~ (18) "Person" includes:

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

193 and

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

195 Subsection ~~[(11)(a)]~~ (18)(a).

196 (19) "Secondary notice" means notice given by an excavator to the notification center
197 that describes indications of an unmarked facility at the site of the proposed excavation after
198 the excavator has previously submitted an excavation notice.

199 ~~[(12)]~~ (20) "Sewer lateral cleanout" means a point of access where a sewer lateral can
200 be serviced.

201 (21) "Tolerance zone" means the area surrounding a facility that:

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

205 (b) for an underground facility that does not have the diameter of the facility marked, is
206 24 inches on either side of the outside edge of the mark indicating a facility; or

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

209 ~~[(13)]~~ (22) "24 hours" means a 24-hour period, excluding hours occurring during a
210 Saturday, Sunday, or a ~~[legal]~~ holiday.

211 ~~[(14)]~~ (23) "Underground facility" means personal property that is buried or placed
212 below ground level for use in the storage or conveyance of any of the following:

213 (a) water;

- 214 (b) sewage, including sewer laterals;
 - 215 (c) communications, including electronic, photonic, telephonic, or telegraphic
 - 216 communications;
 - 217 (d) television, cable television, or other telecommunication signals, including
 - 218 transmission to subscribers of video or other programming;
 - 219 (e) electric power;
 - 220 (f) oil, gas, or other fluid and gaseous substances;
 - 221 (g) steam;
 - 222 (h) slurry; or
 - 223 (i) dangerous materials or products.
- 224 Section 3. Section **54-8a-4** is amended to read:
- 225 **54-8a-4. Notice of excavation.**
- 226 (1) (a) Before excavating, an excavator shall notify each operator with an underground
- 227 facility in the area of the proposed excavation.
- 228 (b) The requirements of Subsection (1)(a) do not apply:
- 229 (i) if there is an emergency;
 - 230 (ii) while gardening; or
 - 231 (iii) while tilling private ground.
- 232 (2) The notice required by Subsection (1) shall:
- 233 (a) be given:
 - 234 (i) by telephone;
 - 235 ~~[(ii) in person]~~
 - 236 (ii) by electronic communication; or
 - 237 (iii) by other means acceptable to the notification center, or to each operator, if given
 - 238 directly to each operator;
 - 239 (b) be given not:
 - 240 (i) less than 48 hours before excavation begins; or
 - 241 (ii) more than 14 days before excavation begins; and
 - 242 (c) include the proposed excavation's anticipated:
 - 243 (i) location, with reasonable specificity;
 - 244 (ii) dimensions; and

245 (iii) type~~;~~ and].

246 [~~iv~~ duration].

247 (3) If the proposed excavation's anticipated location and dimensions cannot be
248 described as required under Subsection (2)(c) or as requested in accordance with Subsection
249 [54-8a-5\(2\)\(b\)](#), an excavator shall outline the proposed excavation site using as a guideline the
250 then-existing Uniform Color Code and Marking Guidelines, Appendix B, published by the
251 Common Ground Alliance, as amended in the current version of the excavators' guide
252 published by the ~~[statewide association]~~ notification center established in Section [54-8a-9](#).

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

255 (5) ~~[If there is an association in the county, notice to that association]~~ Notice provided
256 to the notification center constitutes notice to each operator that has facilities within the
257 proposed excavation site.

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

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

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

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

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

268 (i) operators that utilize electronic positive response have responded through the
269 notification center's electronic positive response system; and

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

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

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

275 (b) If an operator has not responded within 48 hours of the receipt of notice:

276 (i) the excavator may not begin excavation if the excavator is aware of or observes
 277 indications of an unmarked facility at the proposed excavation area until:
 278 (A) the excavator has given a secondary notice; and
 279 (B) the operator makes arrangements for the facility to be marked by the operator; or
 280 (ii) the excavator may begin excavation if there are no visible indications of a facility at
 281 the proposed excavation area.

282 (c) An operator shall mark or make arrangements for the facilities to be marked within
 283 three hours of the notification center receiving a secondary notice.

284 ~~[(7)]~~ (8) If markings made by the operator have been disturbed so that the markings no
 285 longer identify the underground facility:

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

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

288 (ii) each operator; and

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

290 ~~[(8) An excavator may begin excavation if:]~~

291 ~~[(a) (i) all underground facilities have been:]~~

292 ~~[(A) located; and]~~

293 ~~[(B) marked; or]~~

294 ~~[(ii) the operators have indicated that there are no underground facilities within the~~
 295 ~~proposed excavation site;]~~

296 ~~[(b) (i) 48 hours have elapsed from the time of initial notice; and]~~

297 ~~[(ii) the excavator has not:]~~

298 ~~[(A) been notified by the operator; or]~~

299 ~~[(B) received a request for a meeting under Subsection ~~54-8a-5(2)~~; or]~~

300 ~~[(c) 48 hours have elapsed from the time of renotification under Subsection (6).]~~

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

304 Section 4. Section ~~54-8a-4.5~~ is enacted to read:

305 **54-8a-4.5. Design notice.**

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

307 (2) A design notice submitted to the notification center shall be in accordance with
308 notification center guidelines and describe the area for which the design notice has been
309 submitted with sufficient particularity to allow an operator to ascertain the precise tract or
310 parcel of land involved for a specific project currently in planning, design, or bidding.

311 (3) Within 10 working days, not including the day notice is given, an operator that has
312 been notified of a design notice submitted to the notification center shall:

313 (a) mark the location of all facilities owned by the operator within the area described
314 by the design notice as provided in Section [54-8a-5](#);

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

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

322 (d) provide notice to the person submitting the design notice that the request has been
323 rejected due to homeland security considerations pending the operator obtaining additional
324 information confirming the legitimacy of the notice; or

325 (e) otherwise respond to the person submitting the design notice in a manner that is
326 satisfactory to the person submitting the design notice.

327 (4) Any information provided in response to a design notice shall only be used by the
328 person submitting the design notice for the purposes described in this section and the person
329 submitting the design notice shall not share information provided in a response to the design
330 notice.

331 (5) A design notice is not an excavation notice or a request for authorization to dig or
332 perform exploratory work.

333 (6) Any action listed in Subsection (3) performed by an operator is a response to the
334 design notice.

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

336 **54-8a-5. Marking of underground facilities.**

337 (1) [(a)] Within 48 hours of the receipt of the notice required by Section [54-8a-4](#), the

338 operator shall:

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

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

344 (b) if the operator utilizes the notification center's electronic positive response system,
345 provide a response to the notification center's electronic positive response system to indicate
346 whether the operator can provide the information described in Subsection (1)(a)(i).

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

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

353 (i) the proposed excavation:

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

356 (B) is located in a remote area;

357 (C) is an extensive excavation; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

388 (4) If multiple lines exist:

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

390 (b) all lines must be marked.

391 Section 6. Section ~~54-8a-5.5~~ is amended to read:

392 **54-8a-5.5. Determining the precise location of marked underground facilities.**

393 (1) An excavator may not use any power-operated or power-driven excavating or
394 boring equipment within [~~24 inches of the markings made in accordance with Section ~~54-8a-5~~~~]
395 the tolerance zone unless:

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

399 (b) the operator provides an excavator with written or electronic notice waiving the

400 requirement that the excavator determine the exact location of the underground facilities by
401 excavating with hand tools.

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

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

406 **54-8a-6. Duties and liabilities of an excavator.**

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

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

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

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

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

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

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

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

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

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

422 **54-8a-7. Notice of contact or damage -- Repairs.**

423 [~~(1) If an excavator contacts or damages an underground facility, the excavator shall:]~~

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

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

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

430 (a) provide notice of the contact or damage, and if known, the location and nature of

431 damage immediately to the operator;

432 (b) allow the operator reasonable time when considering the safety of the area, and the
 433 availability of materials, labor, and equipment, 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:

442 (a) expedite a response to examine the contacted or damaged facility; and

443 (b) make necessary repairs to the contacted or damaged facility within eight hours or
 444 notify the excavator that the repairs will take longer than eight hours due to safety or
 445 availability of materials, labor, and equipment.

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

449 (i) immediately notify:

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

451 (B) the facility operator; and

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

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

456 Section 9. Section **54-8a-7.5** is amended to read:

457 **54-8a-7.5. Third-party damages caused by failure to mark a facility.**

458 (1) If an operator fails to [~~locate~~] mark a facility as required by this chapter and an
 459 excavator damages another operator's facility of a similar size and appearance that fits surface
 460 markings [~~as required by Subsection 54-8a-5(1)(b)~~], the operator who failed to [~~locate its~~] mark
 461 the operator's own facility is liable for the costs of damage to the facility caused by the

462 excavator if:

463 (a) the excavator complies with Sections [54-8a-4](#), [54-8a-5.5](#), and [54-8a-6](#); and

464 (b) the excavator demonstrates that the damage is the direct result of the operator's
465 failure to [~~locate its~~] mark the operator's own facility.

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

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

469 (b) may seek recovery of the costs of damage from the operator [~~who~~] that failed to
470 mark [~~its~~] the operator's own facility.

471 (3) Resolution of a dispute under this section may be in accordance with Section
472 [54-8a-13](#).

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

474 **54-8a-8. Civil penalty -- Exceptions -- Other remedies.**

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

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

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

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

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

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

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

489 (b) the seriousness of the violation;

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

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

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

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

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

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

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

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

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

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

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

505 (iii) failure to comply with Section 54-8a-5.

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

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

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

514 (b) in agricultural operations;

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

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

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

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

521 Section 11. Section **54-8a-9** is amended to read:

522 **54-8a-9. Notification center.**

523 (1) An association of operators in the state shall own, operate, and maintain a statewide

524 notification center providing for mutual receipt of excavation notices, receipt of design notices,
525 and damage prevention education.

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

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

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

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

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

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

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

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

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

539 (b) if utilizing the notification center's electronic positive response system, provide
540 electronic positive response information to the notification center's electronic positive response
541 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) Upon receiving an excavation notice, the notification center shall:

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

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

550 (7) Upon request by a public agency as described in Section [54-3-29](#), the notification
551 center shall provide the public agency with a list, including available contact information, of
552 each utility company that the notification center knows has a utility facility within the area
553 identified by the public agency.

554 (8) The books and records of the notification center shall be open to inspection by the

555 notification center's members during normal business hours upon 48 hours advance notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

582 Section 12. Section 54-8a-11 is amended to read:

583 **54-8a-11. Applicability of federal law.**

584 The following persons [~~or entities~~] are subject to the provisions of Title 49, Code of
585 Federal Regulations, Part 198, Regulations for Grants to Aid State Pipeline Safety Programs,

586 including those provisions relating to damage to underground facilities:

587 (1) an operator, to the extent subject to the Pipeline Safety Improvement Act of 2002,

588 49 U.S.C. 60101 et seq.;

589 (2) an excavator; and

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

591 (3) the notification center.

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

593 **54-8a-13. Underground Facilities Damage Dispute Board -- Mediation --**

594 **Relationship with Public Service Commission.**

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

596 Dispute Board to [~~arbitrate~~] mediate a dispute arising from:

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

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

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

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

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

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

605 (d) one member from a list of names provided to the governor by the Utah Home

606 Builders Association; and

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

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

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

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

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

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

614 (i) for the unexpired term; and

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

616 (d) The board shall select an alternate for a specific board member to serve on a

617 specific case if it becomes necessary to replace a member who has a conflict of interest because
618 a dispute involves that member or that member's employer.

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

620 (5) The board [~~may, upon agreement of the disputing parties, arbitrate~~] shall mediate a
621 dispute regarding damages, not including personal injury damages, arising between:

622 (a) an operator;

623 (b) an excavator;

624 (c) a property owner; or

625 (d) any other interested party.

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

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

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

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

634 [~~(a) Section 63A-3-106;~~]

635 [~~(b) Section 63A-3-107; and~~]

636 [~~(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and~~
637 ~~63A-3-107.~~]

638 [~~(10)~~] (6) The commission shall provide administrative support to the board.

639 Section 14. **Repealer.**

640 This bill repeals:

641 Section **54-8a-3, Information filed with county clerk.**

642 Section 15. **Effective date.**

643 This bill takes effect on May 1, 2024.