

Senator Daniel McCay proposes the following substitute bill:

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 association to manage requests to utility operators to mark utility facilities before excavation;
- ▶ requires excavators to provide notice to the association before beginning excavation;
- ▶ allows a person to submit a design request to the association 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:



26 AMENDS:

- 27 [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 association described in Section 54-8a-9, to identify each
73 utility company that may have a utility facility in the area of the construction or reconstruction
74 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 and design activities [~~in a specified area~~] in the state, as provided by Section
129 [54-8a-9](#).

130 (2) "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 (3) "Business hours" means the hours between 8:00 a.m. and 4:00 p.m. Monday
133 through Friday, excluding holidays.

134 [~~(2)~~] (4) "Board" means the Underground Facilities Damage Dispute Board created in
135 Section [54-8a-13](#).

136 (5) (a) "Design notice" means a communication that:

137 (i) has a location request assignment;

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

140 (iii) meets the requirements of Section [54-8a-4.5](#).

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

142 (6) "Electronic positive response system" means an automated information system,
143 operated by the association, that allows excavators, locators, operators, and others to
144 communicate the status of a design or excavation notice.

145 [~~(3)~~] (7) "Emergency" means an occurrence or suspected natural gas leak necessitating
146 immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential
147 public services.

148 [~~(4)~~] (8) "Excavate" or "excavation" means an operation in which earth, rock, or other
149 material on or below the ground is moved or displaced by tools, equipment, [~~or~~] explosives, or

150 demolition.

151 (9) "Excavation notice" means a communication that:

152 (a) has a location request assignment;

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

154 and

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

156 ~~[(5)]~~ (10) "Excavator" means any person [or entity] that excavates or conducts
157 excavation activities.

158 ~~[(6)]~~ (11) "48 hours" means a 48-hour period, occurring during business days [which]
159 that includes any day except Saturday, Sunday, or a [legal] holiday, that begins at 8:00 a.m. on
160 the first business day after notice has been submitted.

161 ~~[(7)]~~ (12) "Hand tool" means an implement:

162 (a) powered by hand; or

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

165 (13) "Holiday" means all legal holidays as defined in Section [63G-1-301](#), the Friday
166 after Thanksgiving Day, December 24th, and any other association observed holiday as posted
167 in the association's excavator's guide.

168 ~~[(8)]~~ (14) "Location" means the site of a proposed area of excavation described:

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

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

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

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

175 ~~[(9)]~~ (15) "Location request assignment" means a number assigned to a proposed
176 excavation or design by [an] the association [or operator] upon receiving an excavation or
177 design notice [of the proposed excavation from the excavator].

178 (16) "Mark" means to locate and indicate the existence of a line or facility according to
179 the guidelines published by the association in the association's current version of the
180 excavator's guide.

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

182 ~~[(10)]~~ (18) (a) "Operator" means a person ~~[who]~~ that owns, operates, or maintains an
183 underground facility.

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

186 (i) located within:

187 (A) the owner's property; or

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

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

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

192 ~~[(11)]~~ (19) "Person" includes:

193 (a) an individual, government entity, corporation, partnership, association, or company;
194 and

195 (b) the trustee, receiver, assignee, and personal representative of a person listed in
196 Subsection ~~[(11)(a)]~~ (19)(a).

197 (20) "Secondary notice" means notice given by an excavator to the association that:

198 (a) describes indications of specific facilities or facility types;

199 (b) indicates that the facilities or facility types were not marked at the site of the
200 proposed excavation; and

201 (c) is submitted after the excavator previously submitted an excavation notice
202 regarding the site.

203 ~~[(12)]~~ (21) "Sewer lateral cleanout" means a point of access where a sewer lateral can
204 be serviced.

205 (22) "Tolerance zone" means the area surrounding a facility that:

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

209 (b) for an underground facility that does not have the diameter of the facility marked, is
210 24 inches on either side of the outside edge of the mark indicating a facility; or

211 (c) for an above ground facility, is 24 inches in each direction of the outside edge of the

212 physically present facility.

213 ~~[(13)]~~ (23) "24 hours" means a 24-hour period, excluding hours occurring during a
214 Saturday, Sunday, or a ~~[legal]~~ holiday.

215 ~~[(14)]~~ (24) "Underground facility" means personal property that is buried or placed
216 below ground level for use in the storage or conveyance of any of the following:

217 (a) water;

218 (b) sewage, including sewer laterals;

219 (c) communications, including electronic, photonic, telephonic, or telegraphic
220 communications;

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

223 (e) electric power;

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

225 (g) steam;

226 (h) slurry; or

227 (i) dangerous materials or products.

228 Section 3. Section ~~54-8a-4~~ is amended to read:

229 **54-8a-4. Notice of excavation.**

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

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

233 (i) if there is an emergency;

234 (ii) while gardening; or

235 (iii) while tilling private ground.

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

237 (a) be given:

238 (i) by telephone;

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

240 (ii) by electronic communication; or

241 (iii) by other means acceptable to the association ~~[each operator];~~

242 (b) be given not:

- 243 (i) less than 48 hours before excavation begins; or
- 244 (ii) more than 14 days before excavation begins; and
- 245 (c) include the proposed excavation's anticipated:
- 246 (i) location, with reasonable specificity;
- 247 (ii) dimensions; and
- 248 (iii) type~~[-and]~~.
- 249 [~~(iv) duration.~~]

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

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

258 (5) [~~If there is an association in the county, notice to that association~~] Notice provided
259 to the association constitutes notice to each operator that has facilities within the proposed
260 excavation site.

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

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

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

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

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

271 (i) operators that utilize electronic positive response have responded through the
272 association's electronic positive response system; and

273 (ii) (A) all facilities that may be affected by the proposed excavation have been

274 marked;

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

277 (C) the operators have not requested a meeting under Subsection 54-8a-5(2).

278 (b) If an operator has not marked a facility or responded within 48 hours of the initial
279 excavation notice:

280 (i) the excavator may not begin excavation if the excavator is aware of or observes
281 indications of a facility that was not marked at the proposed excavation area until:

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

283 (B) the operator makes arrangements for the facility to be marked by the operator; or

284 (ii) the excavator may begin excavation if there are no visible indications of a facility at
285 the proposed excavation area.

286 (c) An operator shall mark the facilities or make arrangements for the facilities to be
287 marked within four business hours of the association receiving a secondary notice.

288 ~~[(7)]~~ (8) If markings made by the operator have been disturbed so that the markings no
289 longer identify the underground facility:

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

291 (i) the association; or

292 (ii) each operator; and

293 (b) the operator shall mark the area again within 48 hours of the [renotification]

294 notification provided by the excavator under Subsection (8)(a).

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

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

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

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

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

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

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

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

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

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

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

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

310 **54-8a-4.5. Design notice.**

311 (1) A person may submit a design notice to the association.

312 (2) A design notice submitted to the association shall be in accordance with association
313 guidelines and describe the area for which the design notice has been submitted with sufficient
314 particularity to allow an operator to ascertain the precise tract or parcel of land involved for a
315 specific project currently in planning or design.

316 (3) Within 10 business days, not including the day notice is given, an operator that has
317 been notified of a design notice submitted to the association:

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

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

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

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

330 (e) may, if the area associated with a design notice is an area greater than 10 acres in
331 size or longer than one quarter of a mile:

332 (i) request a meeting with the designer submitting the design notice to:

333 (A) review the proposed design described in the design notice; and

334 (B) agree with the designer on how best to respond to the design notice in a manner
335 satisfactory to the operator and designer; or

336 (ii) respond to the design notice in an alternative manner satisfactory to the operator
337 and designer submitting the design notice.

338 (4) (a) Any information provided in response to a design notice shall only be used by
339 the person submitting the design notice for the purposes described in this section and the
340 person submitting the design notice shall not share information provided in a response to the
341 design notice.

342 (b) An operator may require a fully executed confidentiality agreement related to the
343 information provided in a response to a design notice.

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

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

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

349 **54-8a-5. Marking of underground facilities.**

350 (1) ~~[(a)]~~ Within 48 hours of the receipt of the notice required by Section **54-8a-4**, the
351 operator shall:

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

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

357 (b) if the operator utilizes the association's electronic positive response system, provide
358 a response to the association's electronic positive response system to indicate whether the
359 operator can provide the information described in Subsection (1)(a)(i).

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

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

366 (i) the proposed excavation:

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

369 (B) is located in a remote area;

370 (C) is an extensive excavation; or

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

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

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

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

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

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

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

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

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

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

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

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

398 operator for the accuracy of the marking.

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

401 (4) If multiple lines exist:

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

403 (b) all lines must be marked.

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

405 **54-8a-5.5. Determining the precise location of marked underground facilities.**

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

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

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

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

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

419 **54-8a-6. Duties and liabilities of an excavator.**

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

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

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

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

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

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

429 (b) An excavator is liable for damage incurred by an operator if:
430 (i) the operator complies with Section 54-8a-5; and
431 (ii) the damage occurs within [~~24 inches of the operator's markings or the physical~~
432 ~~presence of an above ground facility, including a manhole, meter, or junction box]~~ the
433 tolerance zone.

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

435 **54-8a-7. Notice of contact or damage -- Repairs.**

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

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

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

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

443 (a) provide notice of the contact or damage including the location and nature of any
444 damage immediately to the operator;

445 (b) allow the operator reasonable time when considering the safety of the area, and the
446 availability of materials, labor, and equipment, to accomplish necessary repairs before
447 completing the excavation in the immediate area of the facility; and

448 (c) delay any backfilling in the immediate area of the contacted or damaged facility
449 until the operator authorizes the excavator to resume backfilling.

450 (2) After receiving notification of contact or damage to a facility, the operator, or
451 qualified personnel authorized by the operator, shall:

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

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

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

459 (i) immediately notify:

- 460 (A) emergency responders, including 911 services; and
- 461 (B) the facility operator; and
- 462 (ii) take reasonable measures to protect the excavator, other persons, property, and the
- 463 environment until the operator or emergency responders arrive.

464 [~~2) Upon receipt of notice, the operator shall immediately examine the underground~~

465 ~~facility, and, if necessary, make repairs.]~~

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

467 **54-8a-7.5. Third-party damages caused by failure to mark a facility.**

468 (1) If an operator fails to [~~locate~~] mark a facility as required by this chapter and an

469 excavator damages another operator's facility of a similar size and appearance that fits surface

470 markings [~~as required by Subsection 54-8a-5(1)(b)]~~, the operator who failed to [~~locate its~~] mark

471 the operator's own facility is liable for the costs of damage to the facility caused by the

472 excavator if:

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

476 (2) An excavator who damages a third-party operator's facility as described in

477 Subsection (1):

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

481 (3) Resolution of a dispute under this section may be in accordance with Section

482 [54-8a-13](#).

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

484 **54-8a-8. Civil penalty -- Exceptions -- Other remedies.**

485 (1) A civil penalty may be imposed for a violation of this chapter as provided in this

486 section.

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

488 (a) any person [~~who~~] that violates this chapter in an amount no greater than \$5,000 for

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

490 (b) an excavator [~~who~~] that fails to provide notice of an excavation in accordance with

491 Section [54-8a-4](#) in an amount no greater than \$500 in addition to the amount under Subsection
492 (2)(a), regardless of whether the excavation resulted in damage to a facility.

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

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

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

499 (b) the seriousness of the violation;

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

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

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

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

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

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

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

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

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

513 (i) failure to mark; ~~or~~

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

515 (iii) failure to comply with Section [54-8a-5](#).

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

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

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

524 (b) in agricultural operations;

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

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

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

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

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

532 **54-8a-9. Association for mutual receipt of excavation or design notices.**

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

535 (ii) [Hf] When an association is operational, notice to the association shall be given
536 pursuant to Section [54-8a-4](#) and Section [54-8-4.5](#).

537 (b) (i) [Hf] When an association is formed, each operator with an underground facility
538 in the ~~[area]~~ state shall become a member of the association and participate in it to:

539 (A) receive ~~[a notice of a proposed excavation]~~ excavation or design notices submitted
540 to the association;

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

542 (C) pay its share of the cost for the service furnished~~[-];~~ and

543 (D) provide electronic positive response information to the association's electronic
544 positive response system, if the system is utilized by the operator.

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

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

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

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

553 (2) ~~[An]~~ The association's notification center ~~[receiving notice as provided in~~
 554 ~~Subsection 54-8a-4(1)]~~ shall:

555 (a) notify members and participants in the relevant geographic area within 24 hours
 556 after receiving an excavation or design notice ~~[from the person who proposes to excavate];~~
 557 ~~[and]~~

558 (b) maintain a record of any notice received for a period of five years to document
 559 compliance with the requirements of this chapter~~[-]; and~~

560 (c) implement and operate a statewide electronic positive response system.

561 (3) The association and its notification center shall not be responsible for:

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

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

565 ~~[(3)]~~ (4) An association contacted by a public agency to identify a utility company, in
 566 accordance with Section 54-3-29, shall provide the public agency with a list, including contact
 567 information to the extent available, of each utility company of which the association is aware
 568 that has a utility facility within the area identified by the public agency.

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

570 **54-8a-11. Applicability of federal law.**

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

574 (1) an operator, to the extent subject to the Pipeline Safety Improvement Act of 2002,
 575 49 U.S.C. 60101 et seq.;

576 (2) an excavator; and

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

578 (3) the association.

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

580 **54-8a-13. Underground Facilities Damage Dispute Board -- Arbitration --**

581 **Relationship with Public Service Commission.**

582 (1) There is created within the commission the Underground Facilities Damage
 583 Dispute Board to arbitrate, or parties may mutually agree to mediate, a dispute arising from:

- 584 (a) an operator's or excavator's violation of this chapter; and
585 (b) damage caused by excavation during an emergency.
- 586 (2) The board consists of five members appointed by the governor as follows:
587 (a) one member from a list of names provided to the governor by a group representing
588 operators;
589 (b) one member from a list of names provided to the governor by the Associated
590 General Contractors;
591 (c) one member from a list of names provided to the governor by Blue Stakes of Utah;
592 (d) one member from a list of names provided to the governor by the Utah Home
593 Builders Association; and
594 (e) one member from the Division of Public Utilities.
- 595 (3) (a) A member of the board:
596 (i) shall be appointed for a three-year term; and
597 (ii) may continue to serve until the member's successor takes office.
598 (b) At the time of appointment, the governor shall stagger the terms of the members to
599 ensure that approximately 1/3 of the members of the board are reappointed each year.
- 600 (c) A vacancy in the board shall be filled:
601 (i) for the unexpired term; and
602 (ii) in the same manner as the board member is initially appointed.
603 (d) The board shall select an alternate for a specific board member to serve on a
604 specific case if it becomes necessary to replace a member who has a conflict of interest because
605 a dispute involves that member or that member's employer.
- 606 (4) Three members of the board constitute a quorum.
- 607 (5) The board may, upon agreement of the disputing parties, arbitrate or mediate a
608 dispute regarding damages, not including personal injury damages, arising between:
609 (a) an operator;
610 (b) an excavator;
611 (c) a property owner; or
612 (d) any other interested party.
- 613 (6) At least four members of the board shall be present and vote on an arbitration
614 decision.

615 (7) An arbitration before the board shall be consistent with Title 78B, Chapter 11, Utah
616 Uniform Arbitration Act.

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

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

621 (a) Section 63A-3-106;

622 (b) Section 63A-3-107; and

623 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
624 63A-3-107.

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

626 Section 14. **Repealer.**

627 This bill repeals:

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

629 Section 15. **Effective date.**

630 This bill takes effect on May 1, 2024.