

Senator Daniel McCay proposes the following substitute bill:

UTILITY EASEMENTS AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

House Sponsor: Brady Brammer

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; 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



- 26 [54-8a-2](#), as last amended by Laws of Utah 2011, Chapter 426
- 27 [54-8a-4](#), as last amended by Laws of Utah 2011, Chapter 426
- 28 [54-8a-5](#), as last amended by Laws of Utah 2011, Chapter 426
- 29 [54-8a-5.5](#), as last amended by Laws of Utah 2011, Chapter 426
- 30 [54-8a-6](#), as last amended by Laws of Utah 2011, Chapter 426
- 31 [54-8a-7](#), as last amended by Laws of Utah 2008, Chapter 344
- 32 [54-8a-7.5](#), as enacted by Laws of Utah 2011, Chapter 426
- 33 [54-8a-8](#), as last amended by Laws of Utah 2011, Chapter 426
- 34 [54-8a-9](#), as last amended by Laws of Utah 2010, Chapter 272
- 35 [54-8a-11](#), as last amended by Laws of Utah 2011, Chapter 340
- 36 [54-8a-13](#), as last amended by Laws of Utah 2010, Chapter 286

37 REPEALS:

- 38 [54-8a-3](#), as last amended by Laws of Utah 2008, Chapter 344

39

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

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

42 **54-3-29. Removal, relocation, or alteration of utility facility in public highway**
43 **construction or reconstruction -- Notice -- Cooperation.**

44 (1) As used in this section:

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

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

48 (c) "Political subdivision" means a:

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

50 (ii) municipality; or

51 (iii) special service district.

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

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

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

- 57 (g) "Utility facility" means:
- 58 (i) a telecommunications, gas, electricity, cable television, water, sewer, or data
59 facility;
- 60 (ii) a video transmission line;
- 61 (iii) a drainage and irrigation system; or
- 62 (iv) a facility similar to those listed in Subsections (1)(g)(i) through (iii) located in, on,
63 along, across, over, through, or under any public highway.
- 64 (2) If a public agency engages in or proposes to engage in a construction or
65 reconstruction project on a public highway that may require the removal, relocation, or
66 alteration of a utility facility, the public agency shall:
- 67 (a) contact [~~an association, established under Title 54, Chapter 8a, Damage to~~
68 ~~Underground Utility Facilities,~~] the association described in Section 54-8a-9, to identify each
69 utility company that may have a utility facility in the area of the construction or reconstruction
70 project;
- 71 (b) identify a utility company that has an above-ground utility facility in the area of the
72 proposed construction or reconstruction project; and
- 73 (c) electronically notify each utility company identified in accordance with Subsections
74 (2)(a) and (b).
- 75 (3) The notice required by Subsection (2)(c) shall:
- 76 (a) be made as early as practicable and at least 30 days:
- 77 (i) before the date of the preliminary design or project development meeting;
- 78 (ii) before the date of an issuance of a request for proposal for a design-build project;
- 79 or
- 80 (iii) after a change in scope of a design-build project;
- 81 (b) include:
- 82 (i) information concerning the proposed project design;
- 83 (ii) the proposed date of a required removal, relocation, or alteration of a utility facility;
- 84 (iii) the federal identifying project number, if applicable; and
- 85 (c) advise the utility company if the proposed project may qualify for aid for the utility
86 company's expense in removing, relocating, or altering a utility facility.
- 87 (4) A public agency shall permit a utility company notified under Subsection (2) to

88 participate in the preliminary design or project development meeting[;] or similar meeting at
89 which the project design is addressed.

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

93 (i) review project plans;

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

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

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

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

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

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

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

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

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

117 (9) This chapter does not affect a public agency's authority over a public right-of-way,
118 including any rule, ordinance, order to relocate a utility as provided in Section 72-6-116, or

119 other valid provision governing the use of the public right-of-way.

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

121 **54-8a-2. Definitions.**

122 As used in this chapter:

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

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

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

129 [~~(2)~~] (4) "Board" means the Underground Facilities Damage Dispute Board created in
130 Section [54-8a-13](#).

131 (5) "Electronic positive response system" means an automated information system,
132 operated by the association, that allows excavators, locators, operators, and others to
133 communicate the status of an excavation notice.

134 [~~(3)~~] (6) "Emergency" means an occurrence or suspected natural gas leak necessitating
135 immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential
136 public services.

137 [~~(4)~~] (7) "Excavate" or "excavation" means an operation in which earth, rock, or other
138 material on or below the ground is moved or displaced by tools, equipment, [~~or~~] explosives, or
139 demolition.

140 (8) "Excavation notice" means a communication that:

141 (a) has a location request assignment;

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

143 and

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

145 [~~(5)~~] (9) "Excavator" means any person [~~or entity~~] that excavates or conducts
146 excavation activities.

147 [~~(6)~~] (10) "48 hours" means a 48-hour period, occurring during business days [~~which~~]
148 that includes any day except Saturday, Sunday, or a [~~legal~~] holiday, that begins at 8:00 a.m. on
149 the first business day after notice has been submitted.

150 ~~[(7)]~~ (11) "Hand tool" means an implement:

151 (a) powered by hand; or

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

154 (12) "Holiday" means all legal holidays as defined in Section 63G-1-301, the Friday
155 after Thanksgiving Day, December 24th, and any other association observed holiday as posted
156 in the association's excavator's guide.

157 ~~[(8)]~~ (13) "Location" means the site of a proposed area of excavation described:

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

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

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

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

164 ~~[(9)]~~ (14) "Location request assignment" means a number assigned to a proposed
165 excavation by ~~[an]~~ the association ~~[or operator]~~ upon receiving an excavation notice ~~[of the~~
166 ~~proposed excavation from the excavator]~~.

167 (15) "Mark" means to locate and indicate the existence of a line or facility according to
168 the guidelines published by the association in the association's current version of the
169 excavator's guide.

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

171 (17) "No response notice" means notice given by an excavator to the association that:

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

173 (b) indicates that the facilities or facility types were not marked by the operator at the
174 site of the proposed excavation; and

175 (c) is submitted after the excavator previously submitted an excavation notice
176 regarding the site.

177 ~~[(10)]~~ (18) (a) "Operator" means a person ~~[who]~~ that owns, operates, or maintains an
178 underground facility.

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

181 (i) located within:
 182 (A) the owner's property; or
 183 (B) a public street adjacent to the owner's property, a right-of-way adjacent to the
 184 owner's property, or a public utility easement adjacent to the owner's property;
 185 (ii) used exclusively to furnish services to the owner's property; and
 186 (iii) maintained under the operation and control of that owner.
 187 ~~[(11)]~~ (19) "Person" includes:
 188 (a) an individual, government entity, corporation, partnership, association, or company;
 189 and
 190 (b) the trustee, receiver, assignee, and personal representative of a person listed in
 191 Subsection ~~[(11)(a)]~~ (19)(a).
 192 ~~[(12)]~~ (20) "Sewer lateral cleanout" means a point of access where a sewer lateral can
 193 be serviced.
 194 (21) "Tolerance zone" means the area surrounding a facility that:
 195 (a) for an underground facility that has the diameter of the facility marked, is the
 196 distance of one half of the marked diameter plus 24 inches on either side of the designated
 197 center;
 198 (b) for an underground facility that does not have the diameter of the facility marked, is
 199 24 inches on either side of the outside edge of the mark indicating a facility; or
 200 (c) for an above ground facility, is 24 inches in each direction of the outside edge of the
 201 physically present facility.
 202 ~~[(13)]~~ (22) "24 hours" means a 24-hour period, excluding hours occurring during a
 203 Saturday, Sunday, or a ~~[legat]~~ holiday.
 204 ~~[(14)]~~ (23) "Underground facility" means personal property that is buried or placed
 205 below ground level for use in the storage or conveyance of any of the following:
 206 (a) water;
 207 (b) sewage, including sewer laterals;
 208 (c) communications, including electronic, photonic, telephonic, or telegraphic
 209 communications;
 210 (d) television, cable television, or other telecommunication signals, including
 211 transmission to subscribers of video or other programming;

- 212 (e) electric power;
- 213 (f) oil, gas, or other fluid and gaseous substances;
- 214 (g) steam;
- 215 (h) slurry; or
- 216 (i) dangerous materials or products.

217 Section 3. Section **54-8a-4** is amended to read:

218 **54-8a-4. Notice of excavation.**

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

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

- 222 (i) if there is an emergency;
- 223 (ii) while gardening; or
- 224 (iii) while tilling private ground.

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

226 (a) be given:

227 (i) by telephone;

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

229 (ii) by electronic communication; or

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

231 (b) be given not:

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

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

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

235 (i) location, with reasonable specificity;

236 (ii) dimensions; and

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

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

239 (3) If the proposed excavation's anticipated location and dimensions cannot be
240 described as required under Subsection (2)(c) or as requested in accordance with Subsection
241 **54-8a-5(2)(b)**, an excavator shall outline the proposed excavation site using as a guideline the
242 then-existing Uniform Color Code and Marking Guidelines, Appendix B, published by the

243 Common Ground Alliance, as amended in the current version of the excavators' guide
244 published by the statewide association established in Section 54-8a-9.

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

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

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

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

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

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

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

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

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

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

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

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

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

271 (A) the excavator has given a no response notice; and

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

273 (ii) the excavator may begin excavation if there are no visible indications of a facility

274 within the proposed excavation area.

275 (c) Within four business hours of the association receiving a no response notice, an
276 operator shall mark the facilities or make arrangements for the facilities to be marked.

277 ~~[(7)]~~ (8) If markings made by the operator have been disturbed so that the markings no
278 longer identify the underground facility:

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

280 (i) the association; or

281 (ii) each operator; and

282 (b) the operator shall mark the area again within 48 hours of the [renotification]
283 notification provided by the excavator under Subsection (8)(a).

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

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

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

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

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

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

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

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

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

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

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

298 Section 4. Section **54-8a-5** is amended to read:

299 **54-8a-5. Marking of underground facilities.**

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

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

304 (ii) notify the excavator, by telephonic or electronic message or indication at the

305 excavation site, that the operator does not have any underground facility in the area of the
306 proposed excavation[-]; and

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

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

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

316 (i) the proposed excavation:

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

319 (B) is located in a remote area;

320 (C) is an extensive excavation; or

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

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

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

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

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

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

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

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

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

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

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

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

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

351 (4) If multiple lines exist:

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

353 (b) all lines must be marked.

354 Section 5. Section ~~54-8a-5.5~~ is amended to read:

355 **54-8a-5.5. Determining the precise location of marked underground facilities.**

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

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

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

365 (2) Power-operated or power-driven excavating or boring equipment may be used for
366 the removal of any existing pavement if there is no underground facility contained in the

367 pavement, as marked by the operator.

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

369 **54-8a-6. Duties and liabilities of an excavator.**

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

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

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

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

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

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

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

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

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

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

385 **54-8a-7. Notice of contact or damage -- Repairs.**

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

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

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

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

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

395 (b) allow the operator reasonable time when considering the safety of the area, and the
396 availability of materials, labor, or equipment, to make or coordinate necessary repairs before
397 completing the excavation in the immediate area of the facility; and

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

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

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

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

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

409 (i) immediately notify:

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

411 (B) the facility operator; and

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

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

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

417 **54-8a-7.5. Third-party damages caused by failure to mark a facility.**

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

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

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

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

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

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

431 (3) Resolution of a dispute under this section may be in accordance with Section
432 [54-8a-13](#).

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

434 **54-8a-8. Civil penalty -- Exceptions -- Other remedies.**

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

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

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

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

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

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

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

449 (b) the seriousness of the violation;

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

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

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

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

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

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

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

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

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

463 (i) failure to mark; [or]

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

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

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

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

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

474 (b) in agricultural operations;

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

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

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

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

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

482 **54-8a-9. Association for mutual receipt of excavation notices.**

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

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

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

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

- 491 (B) receive the services furnished by it; [~~and~~]
- 492 (C) pay its share of the cost for the service furnished[~~;~~]; and
- 493 (D) provide electronic positive response information to the association's electronic
- 494 positive response system, if the system is utilized by the operator.

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

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

- 500 [~~(i) file a description of the geographical area served by the association; and]~~
- 501 [~~(ii) file the name and address of every member and participating operator with the~~
 502 ~~county clerk.~~]

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

- 505 (a) notify members and participants in the relevant geographic area within 24 hours
 506 after receiving an excavation notice [~~from the person who proposes to excavate; and~~];
- 507 (b) maintain a record of any notice received for a period of five years to document
 508 compliance with the requirements of this chapter[~~;~~]; and
- 509 (c) implement and operate a statewide electronic positive response system.

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

- 511 (a) resolving reports of alleged violations of this chapter; or
- 512 (b) a failure on the part of an excavator or operator to perform an excavator's or
 513 operator's responsibilities under this chapter.

514 [~~(3)~~] (4) An association contacted by a public agency to identify a utility company, in
 515 accordance with Section 54-3-29, shall provide the public agency with a list, including contact
 516 information to the extent available, of each utility company of which the association is aware
 517 that has a utility facility within the area identified by the public agency.

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

519 **54-8a-11. Applicability of federal law.**

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

522 including those provisions relating to damage to underground facilities:

523 (1) an operator, to the extent subject to the Pipeline Safety Improvement Act of 2002,
524 49 U.S.C. 60101 et seq.;

525 (2) an excavator; and

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

527 (3) the association.

528 Section 12. Section **54-8a-13** is amended to read:

529 **54-8a-13. Underground Facilities Damage Dispute Board -- Arbitration --**

530 **Relationship with Public Service Commission.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

550 (i) for the unexpired term; and

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

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

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

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

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

558 (a) an operator;

559 (b) an excavator;

560 (c) a property owner; or

561 (d) any other interested party.

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

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

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

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

570 (a) Section [63A-3-106](#);

571 (b) Section [63A-3-107](#); and

572 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
573 [63A-3-107](#).

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

575 Section 13. **Repealer.**

576 This bill repeals:

577 Section [54-8a-3](#), **Information filed with county clerk.**

578 Section 14. **Effective date.**

579 This bill takes effect on May 1, 2024.