

SB0145S02 compared with SB0145S01

~~text~~ shows text that was in SB0145S01 but was deleted in SB0145S02.

text shows text that was not in SB0145S01 but was inserted into SB0145S02.

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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

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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

54-8a-2, as last amended by Laws of Utah 2011, Chapter 426

54-8a-4, as last amended by Laws of Utah 2011, Chapter 426

54-8a-5, as last amended by Laws of Utah 2011, Chapter 426

54-8a-5.5, as last amended by Laws of Utah 2011, Chapter 426

54-8a-6, as last amended by Laws of Utah 2011, Chapter 426

54-8a-7, as last amended by Laws of Utah 2008, Chapter 344

54-8a-7.5, as enacted by Laws of Utah 2011, Chapter 426

54-8a-8, as last amended by Laws of Utah 2011, Chapter 426

54-8a-9, as last amended by Laws of Utah 2010, Chapter 272

54-8a-11, as last amended by Laws of Utah 2011, Chapter 340

54-8a-13, as last amended by Laws of Utah 2010, Chapter 286

~~ENACTS:~~

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

~~REPEALS:~~

~~**54-8a-3**, as last amended by Laws of Utah 2008, Chapter 344~~

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

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

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

(1) As used in this section:

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

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

(c) "Political subdivision" means a:

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

(ii) municipality; or

(iii) special service district.

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

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

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

(g) "Utility facility" means:

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

(ii) a video transmission line;

(iii) a drainage and irrigation system; or

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

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

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

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

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

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

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

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

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

or

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

(b) include:

(i) information concerning the proposed project design;

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

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

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

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

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

(i) review project plans;

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

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

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

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

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

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

(b) if elimination of the costs is not feasible, minimize the relocation costs to the extent

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reasonably possible.

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

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

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

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

54-8a-2. Definitions.

As used in this chapter:

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

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

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

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

~~{ (5) (a) "Design notice" means a communication that:~~

~~— (i) has a location request assignment;~~

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

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

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

~~†~~ ~~(†6†5)~~ "Electronic positive response system" means an automated information system, operated by the association, that allows excavators, locators, operators, and others to

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communicate the status of ~~fa design or~~an excavation notice.

[(3)] (~~7~~6) "Emergency" means an occurrence or suspected natural gas leak necessitating immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

[(4)] (~~8~~7) "Excavate" or "excavation" means an operation in which earth, rock, or other material on or below the ground is moved or displaced by tools, equipment, [~~or~~] explosives, or demolition.

(~~9~~8) "Excavation notice" means a communication that:

(a) has a location request assignment;

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

and

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

[(5)] (~~10~~9) "Excavator" means any person [~~or entity~~] that excavates or conducts excavation activities.

[(6)] (~~11~~10) "48 hours" means a 48-hour period, occurring during business days [~~which~~] that includes any day except Saturday, Sunday, or a [~~legal~~] holiday, that begins at 8:00 a.m. on the first business day after notice has been submitted.

[(7)] (~~12~~11) "Hand tool" means an implement:

(a) powered by hand; or

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

(~~13~~12) "Holiday" means all legal holidays as defined in Section 63G-1-301, the Friday after Thanksgiving Day, December 24th, and any other association observed holiday as posted in the association's excavator's guide.

[(8)] (~~14~~13) "Location" means the site of a proposed area of excavation described:

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

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

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

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

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~~[(9)]~~ ~~(~~15~~)14~~ "Location request assignment" means a number assigned to a proposed excavation ~~{or design }~~by [an] the association ~~[or operator]~~ upon receiving an excavation~~{or design}~~ notice ~~[of the proposed excavation from the excavator]~~.

~~(~~16~~)15~~ "Mark" means to locate and indicate the existence of a line or facility according to the guidelines published by the association in the association's current version of the excavator's guide.

~~(~~17~~)16~~ "Municipality" means the same as that term is defined in Section 10-1-104.

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

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

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

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

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

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

(i) located within:

(A) the owner's property; or

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

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

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

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

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

and

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

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

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

~~(b) indicates that the facilities or facility types were not marked at the site of the~~

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~~proposed excavation; and~~

~~_____ (c) is submitted after the excavator previously submitted an excavation notice regarding the site.~~

† [(12)] (~~(21)~~20) "Sewer lateral cleanout" means a point of access where a sewer lateral can be serviced.

(~~(22)~~21) "Tolerance zone" means the area surrounding a facility that:

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

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

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

[(13)] (~~(23)~~22) "24 hours" means a 24-hour period, excluding hours occurring during a Saturday, Sunday, or a [legal] holiday.

[(14)] (~~(24)~~23) "Underground facility" means personal property that is buried or placed below ground level for use in the storage or conveyance of any of the following:

(a) water;

(b) sewage, including sewer laterals;

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

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

(e) electric power;

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

(g) steam;

(h) slurry; or

(i) dangerous materials or products.

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

54-8a-4. Notice of excavation.

(1) (a) Before excavating, an excavator shall notify each operator with an underground

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facility in the area of the proposed excavation.

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

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

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

(a) be given:

(i) by telephone;

~~[(ii) in person]~~

(ii) by electronic communication; or

(iii) by other means acceptable to each operator the association ~~{each operator}~~;

(b) be given not:

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

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

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

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

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

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the notice is given.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the association; or

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(ii) each operator; and

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Section ~~{54-8a-4.5}~~ 54-8a-5 is ~~{enacted}~~ amended to read:

~~{~~ 54-8a-4.5. Design notice:

~~—— (1) A person may submit a design notice to the association:~~

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

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

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

~~—— (b) shall provide to the person submitting the design notice the best available description of all facilities in the area described by the design notice, including, when available, drawings marked with a scale, dimensions, and reference points for underground utilities~~

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~~already built in the area or other facility records that are maintained by the operator;~~

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

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

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

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

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

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

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

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

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

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

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

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

~~†~~ **54-8a-5. Marking of underground facilities.**

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

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

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

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

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

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

(i) the proposed excavation:

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

(B) is located in a remote area;

(C) is an extensive excavation; or

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

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

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

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

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

(c) For a situation described under Subsection (2)(a)(i), the meeting or completed outlining of the proposed excavation site constitutes the beginning of a new 48-hour period

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within which the operator [~~must~~] shall begin marking the underground facilities.

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

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

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

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

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

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

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

(4) If multiple lines exist:

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

(b) all lines must be marked.

Section ~~6~~5. Section **54-8a-5.5** is amended to read:

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

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

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

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

(2) Power-operated or power-driven excavating or boring equipment may be used for

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the removal of any existing pavement if there is no underground facility contained in the pavement, as marked by the operator.

Section ~~{7}~~6. Section **54-8a-6** is amended to read:

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

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

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

- (i) given proper notice of the proposed excavation as required in this chapter;
- (ii) marked the area of the proposed excavation as required in Section 54-8a-4;
- (iii) complied with Section 54-8a-5.5; and
- (iv) complied with Section 54-8a-7.

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

- (i) the operator complies with Section 54-8a-5; and
- (ii) the damage occurs within ~~[24 inches of the operator's markings or the physical presence of an above ground facility, including a manhole, meter, or junction box]~~ the tolerance zone.

Section ~~{8}~~7. Section **54-8a-7** is amended to read:

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

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

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

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

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

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

(b) allow the operator reasonable time when considering the safety of the area, and the availability of materials, labor, ~~and~~or equipment, to ~~accomplish~~make or coordinate

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necessary repairs before completing the excavation in the immediate area of the facility; and

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

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

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

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

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

(i) immediately notify:

(A) emergency responders, including 911 services; and

(B) the facility operator; and

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

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

Section ~~{9}~~8. Section **54-8a-7.5** is amended to read:

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

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

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

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

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

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

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

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

Section ~~410~~9. Section **54-8a-8** is amended to read:

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

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

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

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

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

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

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

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

(b) the seriousness of the violation;

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

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

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

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

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

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

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- (a) remedy, in whole or in part, a violation of this chapter; or
 - (b) mitigate the consequences and damages resulting from a violation of this chapter.
- (6) (a) A civil penalty may not be imposed on an excavator if the damage to an

underground facility results from an operator's:

- (i) failure to mark; [~~or~~]
- (ii) inaccurate marking or locating of the operator's underground facilities[-]; or
- (iii) failure to comply with Section 54-8a-5.

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

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

- (a) during an emergency, if reasonable precautions are taken to protect any underground facility;
- (b) in agricultural operations;
- (c) for the purpose of finding or extracting natural resources; or
- (d) with hand tools on property owned or occupied by the excavator.

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

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

Section ~~{H}~~10. Section **54-8a-9** is amended to read:

54-8a-9. Association for mutual receipt of excavation ~~for design~~ notices.

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

(ii) [~~H~~] When an association is operational, notice to the association shall be given pursuant to Section 54-8a-4~~{ and Section 54-8-4.5}~~.

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

- (A) receive [~~a notice of a proposed excavation~~] an excavation ~~for design~~

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~~notices}~~notice submitted to the association;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~{12}~~ 11. Section **54-8a-11** is amended to read:

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

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

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

(2) an excavator; and

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

(3) the association.

Section ~~{13}~~12. Section **54-8a-13** is amended to read:

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

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

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

(b) damage caused by excavation during an emergency.

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

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

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

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

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

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

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

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

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

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

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

(i) for the unexpired term; and

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

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

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

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

(a) an operator;

(b) an excavator;

(c) a property owner; or

(d) any other interested party.

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

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

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

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

(a) Section 63A-3-106;

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

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

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

Section ~~{14}~~13. **Repealer.**

This bill repeals:

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

Section ~~{15}~~14. **Effective date.**

This bill takes effect on May 1, 2024.