



# New Dig Law Review

# **Nine elements of effective damage prevention programs**

(Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act of 2006):

1. Effective communication between operators and excavators from excavation notification to completion of excavation
2. Fostering support and partnership of all stakeholders
3. Operators' use of performance measures for locators
4. Partnership in employee training
5. Partnership in public education
6. A dispute resolution process that defines the enforcement agency as a partner and facilitator
7. Fair and consistent enforcement of the law
8. Use of technology to improve the locating process
9. Data analysis to continually improve program effectiveness



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Intent = Assign responsibilities

"Operator" means the individual conducting the excavation.

One number locate established

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Intent = Establish a comprehensive damage prevention program ("Utility Damage Prevention Act")

"Facility operator" means any person who owns underground facilities or is in the business of supplying any utility service or commodity for compensation.

All facility operators must subscribe. Failure to subscribe is willful intent to avoid compliance



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Excavator responsibilities:

- Two to ten day notice
- May not proceed until all known facilities are marked

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Excavator responsibilities:

- **Two to ten day notice**
  - Must mark area with white paint
  - Large project or multiple sites = confer with facility operator
  - 45 days to maintain markings
  - May not proceed until all known facilities are marked OR provided information regarding underground facilities



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**Large project" means a project that exceeds seven hundred linear feet.**

If an excavator intends to work at multiple sites or at a large project, the excavator must take reasonable steps to confer with facility operators to enable them to locate underground facilities reasonably in advance of the start of excavation for each phase of the work.



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Facility Operator responsibilities:

- Two days to respond
- Must mark locatable facilities
- Appurtenance clause:  
“An owner of underground facilities is not required to indicate the presence of existing service laterals or appurtenances if the presence of existing service laterals or appurtenances on the site of the construction project can be determined from the presence of other visible facilities, such as buildings, manholes, or meter and junction boxes on or adjacent to the construction site.”

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Facility Operator responsibilities:

- **Two days to respond**
- **Must mark locatable facilities**
- Appurtenance clause for water **only**, and:
  - (i) Placing within a proposed excavation area a triangular mark at the main utility line pointing at an address in question, indicating the presence of an unlocatable or identified but unlocatable underground facility, including a service lateral;
  - (ii) Arranging to meet an excavator at a worksite to provide available



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### Pipeline Notice

No state mandate. Some local governments have adopted local programs.

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### Pipeline Notice

The state or any of its political subdivisions undertaking or permitting construction or excavation activity under chapter 19.27 RCW within one hundred feet, or greater distance if defined by local ordinance, of a right-of-way or easement that contains a transmission pipeline must:

- (a) Notify the transmission pipeline company of the proposed construction activity before such a permit is approved; or
- (b) Require consultation between the person proposing the construction activity and the transmission pipeline company as a condition of receiving the permit.



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Damage Prevention Account -  
Commission may use funds to:

Develop and disseminate  
educational programming designed  
to improve worker and public safety  
relating to excavation and  
underground facilities; and

Provide grants to persons who have  
developed educational programming





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Penalties = \$1,000 per violation

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Penalties = \$1,000 per initial violation, and not more than \$5,000 per subsequent violation within a three-year period



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**THE COMMISSION MUST CONTRACT WITH A STATEWIDE, NONPROFIT ENTITY WHOSE PURPOSE IS TO REDUCE DAMAGES TO UNDERGROUND AND ABOVE GROUND FACILITIES, PROMOTE SAFE EXCAVATION PRACTICES, AND REVIEW COMPLAINTS OF ALLEGED VIOLATIONS**

The contracting entity must create a safety committee to:

- (a) Advise... on best practices and training to prevent damage to underground utilities, and policies to enhance worker and public safety and protection of underground facilities; and
- (b) **Review complaints alleging violations of this chapter involving practices related to underground facilities.**



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Safety Committee = 13 members, staggered 3-year terms, must meet at least once every three months, must include representatives of:

- Local governments;
- An investor-owned natural gas utility
- Contractors;
- Excavators;
- An investor-owned electric utility
- A consumer-owned utility
- A pipeline company
- The insurance industry
- The commission; and
- A telecommunications company



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**Facility operators and excavators who observe or cause damage must report whenever the event results in scrapes, gouges, cracks, dents, or other visible damage to a utility, pipeline, or cable casing or other external protection of any underground facility.**

**A nonpipeline facility operator conducting excavations, or a subcontractor conducting excavations on the facility operator's behalf, that strikes the facility operator's own underground facilities is not required to report that damage event to the commission**

**Reports must be made to the commission's office of pipeline safety within forty-five days of the event, or sooner if required by law using the commission's virtual private damage information reporting tool (DIRT)**



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