

SUBJECT: Increasing fees and penalties relating to underground facility excavation

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 7 ayes —B. Turner, Berman, Driver, Gutierrez, Hupp, Isett, Villarreal

0 nays

2 absent — Keel, P. King

WITNESSES: For — Joe Berry, Reliant Energy; Steve Landon, Southwestern Bell; Rell Rice, Southwestern Bell

Against — None

On — Howard Pebley, Jr., AGC of Texas; Donald Ward, One-Call Board of Texas

BACKGROUND: The Texas Underground Facility Notification Corporation, known interchangeably as the One-Call Board of Texas, was created by the 75th Legislature in 1997 for the purpose of establishing a “one-call” excavation safety and underground facility damage prevention system. This system operates a network of notification centers that allow an excavator to make one call before excavating, whereby all utility companies (except water and sewer) with underground facilities in the area will receive notice of the excavator’s intent to dig. The operator of the underground facility then has at least 48 hours to physically locate and mark its underground lines to avoid injury or line damage. The excavator generally must contact a notification center within two to 14 working days, excluding weekends and holidays, before digging.

A notification center charges a Class A underground facility operator up to \$1.25 for a call made to the system that affects the operator. Each time a notification center receives a call from an excavator, it must pay the corporation one cent. The maximum annual amount the corporation can collect is \$500,000, after which it must waive the one-cent fee. The

corporation's budget is composed of one-half operator fees and one-half donations and grants.

Currently, an excavator who fails to call a notification center between 48 hours and 14 days before digging is liable for a civil penalty fine of between \$50 and \$100. An excavator also is subject to fines for failing to provide complete information or for failing to notify an underground facility operator of damage that occurs during the excavation. Penalties do not apply to residential property owners who operate on their own property.

**DIGEST:**

CSHB 2391 would amend the fee and penalty structure for underground excavation as outlined in Utilities Code, ch. 251. The corporation user fee paid by notification centers would be increased from one cent to five cents per call. The bill would reduce the annual threshold at which the corporation would begin waiving charges from \$500,000 to \$250,000 in user fees.

The bill would increase the fines for excavator violations to between \$500 and \$1,000 for each violation. The board of directors of the corporation could give an excavator a warning notice and require the excavator to undergo safety training after a first-time violation if the county or district attorney did not take action against the violation.

CSHB 2391 would take effect September 1, 2001.

**SUPPORTERS  
SAY:**

Current penalties for failure to call a notification center to locate underground lines before excavation are not appropriate. Violations can result in serious personal injuries or property damage, so a sufficient deterrent should be in place. The penalty increases are necessary because current penalties do not deter those who commit violations, and local prosecutors will not bother to recover such a small amount of money. The penalties would not be too harsh on first-time offenders, because in situations where the county or district attorney decided not to collect the civil penalty, first time offenders could receive a written notice and attend a safety training course.

Increasing the user fee would reduce the corporation's dependence on grants and donations. The maximum amount collected should be reduced because, even with the increase in the user fee, the corporation still would not collect

anywhere near \$250,000, much less \$500,000, and so there would be no reason to keep the limit so high.

The proposals in this bill would follow recommendations made by the interim committee report of the House Public Safety Committee. One recommendation was to establish an equitable and meaningful penalty and fine structure to promote safety training and education and to deter habitual and flagrant violators.

OPPONENTS  
SAY:

Current law is sufficient for first-time offenders. A new excavator may be unaware of the violation, and fining that person a minimum of \$500, as the bill proposes, could seriously damage the operation of a small excavator.

NOTES:

The author plans to offer a floor amendment that would require the board to verify that an excavator had committed a violation before giving a warning letter, require attendance of safety training course, and require the board to solicit and consider advice and recommendations from excavators regarding the safety training course.

The substitute added a provision that allows the board of directors to take further action if a county or district attorney decided not to prosecute for a violation.

A related bill, HB 1669 by B. Turner, which would set a deadline for electronic notification to excavators whether an operator would make underground lines, also is on today's calendar.