

BILL ANALYSIS

C.S.H.B. 263
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, state law waives an excavator's duty to provide notice of a dig to notification centers if it is determined that the dig is necessary to respond to a situation that endangers life, health, or property or a situation in which the public need for uninterrupted service and immediate reestablishment of service if service is interrupted compels action. There is concern that the overly broad language in the latter part of the exception has been relied on to justify routine excavations. Furthermore, a misrepresentation of facts or circumstances used to determine that the situation is an emergency currently goes unpunished, meaning an excavator can dig, without consequence, under a false premise and not abide by the safety mechanisms in place. The result can be the unnecessary endangerment of life, health, and property that the law explicitly seeks to prohibit.

Additionally, and regardless of the basis for the excavation, an excavator is currently only required to take reasonable precautions and notify a notification center as soon as reasonably possible when commencing an emergency excavation. Given the inherent danger and potentially grave consequences of excavating without knowing what lies underneath, which could be gas, water, electric or cable lines, the standard of care should rise to meet those potential consequences. C.S.H.B. 263 seeks to discourage abuse of current excavation law and protect citizens from dangers that stem from that abuse by clarifying an excavator's duty to notify a notification center before excavating and providing a civil and criminal penalty for violations.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 263 amends the Utilities Code to exempt an emergency excavation that is necessary to respond to a situation that involves a natural gas or hazardous liquid pipeline from a provision under the Underground Facility Damage Prevention and Safety Act requiring a person who intends to excavate to notify a notification center in advance of the excavation. The bill removes an exception from that notice requirement for a situation in which the public need for uninterrupted service and immediate reestablishment of service if service is interrupted compels immediate action. The bill requires an excavator, in beginning an emergency excavation, to take special precautions, rather than reasonable precautions, and when an emergency exists, to notify a notification center as promptly as practicably possible, rather than as promptly as reasonably possible.

C.S.H.B. 263 requires an excavator, when an emergency exists, to immediately cease all excavation efforts if advised by an underground facility operator to do so. The bill prohibits an excavator from misrepresenting a fact or circumstance used in the determination of an emergency excavation and establishes that a person that violates such a prohibition is subject to specified civil or criminal penalties or both a civil and a criminal penalty.

C.S.H.B. 263 makes an excavator that violates the prohibition against misrepresenting a fact or circumstance used in the determination of an emergency excavation liable for a civil penalty of not less than \$1,000 or more than \$2,000. The bill authorizes the board of directors of the Texas Underground Facility Notification Corporation to give the excavator a warning letter and to require the excavator to attend a safety training course approved by the board if a county attorney or district attorney decides not to bring an action to recover the civil penalty. The bill requires the county attorney or district attorney to notify the board of such a decision.

C.S.H.B. 263 makes an excavator liable for a civil penalty of not less than \$2,000 or more than \$5,000 if it is found at the trial on a civil penalty that the excavator has violated the prohibition against misrepresenting a fact or circumstance used in the determination of an emergency excavation and has been assessed a penalty or has received a warning letter from the board one other time before the first anniversary of the date of the most recent violation. The bill makes an excavator liable for a civil penalty of not less than \$5,000 or more than \$10,000 if it is found at the trial on a civil penalty that the excavator has been assessed a penalty at least two other times before the first anniversary of the date of the most recent violation or has been assessed a penalty at least one other time before the first anniversary of the date of the most recent violation and has received a warning letter from the board during that period. The bill makes it a Class B misdemeanor to intentionally or recklessly violate the prohibition against misrepresenting a fact or circumstance used in the determination of an emergency excavation.

C.S.H.B. 263 establishes that the Underground Facility Damage Prevention and Safety Act does not supersede, limit, or otherwise interfere with the authority of the Railroad Commission of Texas to impose or enforce a penalty against a person who violates damage prevention safety standards that relate to excavating in the vicinity of a pipeline.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 263 contains a provision not included in the original exempting an emergency excavation in response to a situation involving a natural gas or hazardous liquid pipeline from a requirement that a person intending to excavate notify a notification center in advance of the excavation.

C.S.H.B. 263 differs from the original by requiring an excavator, when an emergency exists, to immediately cease all excavation efforts if advised by an underground facility operator to do so, whereas the original requires an excavator, in such case, to immediately cease all excavation efforts if advised by the notification center or other governing authority to do so.

C.S.H.B. 263 contains a provision not included in the original establishing that the Underground Facility Damage Prevention and Safety Act does not supersede, limit, or otherwise interfere with the authority of the Railroad Commission of Texas to impose or enforce a penalty against a person who violates damage prevention safety standards that relate to excavating in the vicinity of a pipeline.