

BILL ANALYSIS

Senate Research Center

S.B. 1217
By: Estes
Business & Commerce
8/19/2011
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1217 seeks to discourage the abuse of current excavation law and protect citizens from dangers that stem from that abuse. Currently, Section 251.155 (Exception in Case of Emergency), Utilities Code, waives an excavator's duty to provide notice of a dig to notification centers, if it is deemed that a 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 the action. Once a notification center receives notice of an excavation it dispatches a locating crew to ensure that the excavation can proceed safely.

It is the final portion of the waiver that has been abused. Some excavators have deemed routine excavations to be "emergencies" because they did not want to wait for the locating service, which in most instances is no more than two hours away. Locating services have voiced concern due to the potential harm caused from striking underground pipes.

Moreover, under current law excavators are only required to take "reasonable" precautions and notify the center as soon as "reasonably" possible. Given the inherent danger involved in these excavations, S.B. 1217 requires that an excavator notify a notification center as "promptly as possible," rather than as "promptly as reasonably possible."

S.B. 1217 amends current law relating to an excavator's duty to notify a notification center before excavating and provides civil and criminal penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 251.155, Utilities Code, as follows:

Sec. 251.155. New heading: EXCEPTION IN CASE OF EMERGENCY; OFFENSE.

(a) Makes no changes to this subsection.

(b) Authorizes the excavator to begin emergency excavation under Subsection (a) (relating to emergency excavation) immediately and to take reasonable care, rather than reasonable precautions, to protect underground facilities.

(c) Requires the excavator, when an emergency exists, to notify a notification center as promptly as practicably possible, rather than notify a notification center as promptly as reasonably possible.

(d) Prohibits an excavator from misrepresenting a fact or circumstance used in the determination of an emergency excavation under Subsection (a). Provides that a person who violates this subsection is subject to a penalty under Section 251.201 (Civil Penalty or Warning Letter); Section 251.203 (Criminal Penalty for

Removal, Damage, or Concealment of Marker or Sign); or both Sections 251.201 and 251.203.

SECTION 2. Amends Section 251.201, Utilities Code, by adding Subsections (a-1), (b-1), and (c-1) and amending Subsections (b) and (c), as follows:

(a-1) Provides that an excavator that violates Section 251.155(d) is liable for a civil penalty of not less than \$1,000 or more than \$2,000. Authorizes the board of directors of the corporation (board), if a county attorney or district attorney decides not to bring an action to recover the civil penalty, to, in accordance with Section 251.2011 (Warning Letter and Safety Training Course), give the excavator a warning letter and require the excavator to attend a safety training course approved by the board. Requires the county attorney or district attorney to notify the board of its decision.

(b) Provides that, except as provided by Subsection (b-1), if it is found at the trial on a civil penalty that the excavator has violated this chapter and has been assessed a penalty under this section 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 excavator is liable for a civil penalty of not less than \$1,000 or more than \$2,000.

(b-1) Provides that, if it is found at the trial on a civil penalty that the excavator has violated Section 251.155(d) and has been assessed a penalty under this section 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 excavator is liable for a civil penalty of not less than \$2,000 or more than \$5,000.

(c) Provides that, except as provided by Subsection (c-1), if it is found at the trial on a civil penalty that the excavator has violated this chapter and has been assessed a penalty under this section 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 excavator is liable for a civil penalty of not less than \$2,000 or more than \$5,000.

(c-1) Provides that, if it is found at the trial on a civil penalty that the excavator has violated Section 251.155(d) and has been assessed a penalty under this section 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 excavator is liable for a civil penalty of not less than \$5,000 or more than \$10,000.

SECTION 3. Amends the heading to Section 251.203, Utilities Code, to read as follows:

Sec. 251.203. CRIMINAL PENALTY.

SECTION 4 Amends Section 251.203, Utilities Code, by adding Subsection (a-1), to provide that a person commits an offense if the person intentionally or recklessly violates Section 251.155(d).

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2011.