

BILL ANALYSIS

S.B. 1217
By: Estes
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, state utilities 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 or immediate reestablishment of interrupted service compels action. However, 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 very endangerment of life, health, and property that the law explicitly seeks to prevent.

Additionally, an excavator currently is only required to take reasonable precautions and notify a notification center as soon as reasonably possible when starting an emergency excavation. Given the inherent danger and potentially grave consequences of excavating without knowing whether gas, water, electric, or cable lines are present, the standard of care should rise to meet those potential consequences. S.B. 1217 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

S.B. 1217 amends the Utilities Code to require an excavator, in beginning an emergency excavation under the Underground Facility Damage Prevention and Safety Act that is necessary to respond to a situation that endangers life, health, or property or in which the public need for uninterrupted service and immediate reestablishment of interrupted service compels immediate action, to take reasonable care, rather than reasonable precautions, to protect underground facilities and, when an emergency exists, to notify a notification center as promptly as practicably possible, rather than as promptly as reasonably possible.

S.B. 1217 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 a civil or criminal penalty or both a civil and a criminal penalty.

S.B. 1217 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.

S.B. 1217 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 such a trial 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.

S.B. 1217 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.

EFFECTIVE DATE

September 1, 2011.