

SUBJECT: Creating penalties for a misrepresentation in an emergency excavation

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Cook, Menendez, Craddick, Frullo, Harless, Hilderbran, Huberty, Oliveira, Smithee, Solomons, Turner

0 nays

2 absent — Gallego, Geren

WITNESSES: (*On original bill:*)
For — Michael Brumter, United States Infrastructure Corporation;
(*Registered, but did not testify:* Marty Allday, Copano Energy and Enbridge Energy; Terry Franks, Air Products and Chemicals, Inc.; James Mann, Atmos Energy and Texas Pipeline Association; Tami Miller, Center Point Energy; Lindsay Sander, Texas Pipeline Safety Coalition, Kinder Morgan, Mark West, and Regency Energy; Michael Stewart, United States Infrastructure Corporation; Julie Williams, Chevron U.S.A.)

Against — None

On — Bob Digneo, AT&T; Perry Fowler, Associated General Contractors of Texas

(*On committee substitute:*)
For — (*Registered, but did not testify:* Thure Cannon, Texas Pipeline Association; Lindsay Sander, Texas Oil and Gas Association)

Against — None

BACKGROUND: Utilities Code, sec. 251.151 requires an excavator to notify a notification center two to 14 days before excavation is to begin, excluding Saturdays, Sundays, and legal holidays.

Sec. 251.155 provides that excavation notification requirements do not apply to an emergency excavation that 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 compels immediate action. The excavator may begin emergency excavation immediately and is required to take reasonable precautions to protect underground facilities. The excavator is required to notify a notification center as promptly as reasonably possible.

DIGEST:

CSHB 263 would amend sec. 251.155 to provide that excavation notification requirements would not apply to an emergency evacuation that was necessary to respond to a situation that endangered life, health, or property or that involved a natural gas or hazardous liquid pipeline. The excavator could begin emergency excavation immediately and would be required to take special precautions to protect underground facilities. The excavator would be required to:

- notify a notification center as promptly as practically possible; and
- immediately cease all excavation efforts if advised by an underground facility operator to cease all such efforts.

An excavator could not misrepresent a fact or circumstance used in the determination of an emergency excavation. A person who made a misrepresentation would be subject to:

- a civil penalty;
- a class B misdemeanor, if the misrepresentation was made intentionally or recklessly; or
- both.

The amount of the civil penalty would depend in part on past conduct. The penalty would be \$1,000 to \$2,000 or, if a county or district attorney decided not to bring an action to recover the civil penalty, the corporation's board of directors could give a warning letter and require a safety training course. If it was found that the excavator had made a misrepresentation and had been assessed a penalty or had received a warning letter once before in the last year, the excavator would be liable for a civil penalty of \$2,000 to \$5,000. If it was found that the excavator had been assessed a penalty at least two other times in the last year, or had been assessed a penalty at least one other time in the last year and had received a warning letter during that period, the excavator would be liable for a civil penalty of \$5,000 to \$10,000.

The bill would not supersede, limit, or otherwise interfere with the authority of the Railroad Commission to impose or enforce a penalty

against a person who violated damage prevention safety standards relating to excavating in the vicinity of a pipeline.

The bill would take effect September 1, 2011, and would apply to conduct occurring on or after the effective date.

**SUPPORTERS
SAY:**

CSHB 263 would create a safer workplace for excavators, construction workers, and locators by providing penalties for the abuse of the emergency exception provision. The bill also would help avoid accidents that could cause health and property damage to citizens.

Presently, excavators are required to dial 811 to call the One Call Center 48 hours prior to excavation. This gives the underground facility owner and any locator service provider time to go to the site of the dig to assess and mark all necessary underground facilities, such as gas pipelines or phone and cable lines. The facility operator or locator service marks the ground with paint or flags to warn the excavator where the underground facilities are located and avoid an accident while digging.

Unfortunately, this system is being abused, with many excavators circumventing the 48-hour requirement by using the emergency exception provision. A fencing company recently forgot to call the One Call Center and used the emergency exception provision to install a fence, so as not to inconvenience the customer. The backhoe operator hit a power line and was badly electrocuted.

**OPPONENTS
SAY:**

The bill could affect the prompt restoration of services such as residential phone services after an emergency outage, requiring customers to wait two days before service was restored. Under current law, the emergency exception provision applies to an emergency excavation that is necessary to respond to a situation in which the public need for uninterrupted service and immediate reestablishment of service compels immediate action. This language would be stricken with CSHB 263. The Senate companion is preferable because it would retain this language in current law.

NOTES:

The companion bill, SB 1217 by Estes, passed the Senate by 31-0 on April 19 and was reported favorably, without amendment, by the House State Affairs Committee on May 4.