



# Washington's Unique Approach to Damage Prevention Legislation

**DON EVANS, EXECUTIVE DIRECTOR OF WASHINGTON 811, AND LYNDA HOLLAWAY, DAMAGE PREVENTION PROGRAM MANAGER FOR WASHINGTON'S UTILITIES AND TRANSPORTATION COMMISSION, GAVE A PRESENTATION DURING THE ABCGA AGM ON OCTOBER 21ST ABOUT THE MERITS OF WASHINGTON'S *UNDERGROUND UTILITIES DAMAGE PREVENTION ACT.***

When the State of Washington implemented damage prevention legislation, the hardest part for the departments and organizations involved was determining how that legislation would be enforced. They wanted a system that helped to change people's behaviour around buried utilities, to prevent lines from getting cut, but they wanted it focused education, rather than penalties—and above all they wanted to ensure there was no fiscal impact on taxpayers.

## Highlights:

- No government funding
- Peer driven process
- Emphasizes education over discipline
- Monetary penalties fund education
- Mandatory damage reporting
- Process for appeals

The solution was to establish a safety committee with a panel of industry experts who hear complaints from all parties involved in ground disturbance incidents.

The panel, which is composed of between three to five members, changes from one case to the next. The members who make up the panel are selected based on their similar work experiences and industry backgrounds to the parties involved in the incident, including contractors, locators and utility owners.

Don Evans, the executive director of Washington 811, says that by choosing panel members from the same industries ensures that those overseeing the case already possess the expertise to understand the case and the experience necessary to ask the right questions.

Evans says the greatest benefit of the safety committee's panel is that contractors and locators have the opportunity to make their case and they know that when they do, they will be treated fairly, even when their complaint is against a much larger company. There are no lawyers involved in the process. Instead, all parties are given the chance to represent themselves. It's peers talking to peers. The system works because each person's peers are holding them accountable to the damage prevention process.

"When talking with people who know what they do, the nonsense falls to the side," Evans says.

After hearing from each party, the panel decides whether any violations have occurred and prepares a recommendation which they send to the Utility Transportation Commission (UTC). The panel itself has no authority to enforce the legislation. Instead the UTC receives the recommendation and their investigator conducts an analysis. The commission then sends the recommendation, along with their findings, to an administrative law judge for penalty assessments.

When the UTC considers a recommendation, they are looking for an observable change in behaviour for those responsible for an incident. Along with monetary penalties, which begin at \$1,000 for the first infraction and grow to \$5,000 for a second infraction, there is also the option to attend education sessions or training courses.

Penalties are handed out based on infractions. multiple parties are at fault for an incident, each party is required to either pay fines or attend educational sessions.

If someone wishes to appeal the case, they may also request a hearing in front of an administrative law judge.

Lynda Hollaway, damage prevention program manager with UTC, says that the process has produced unexpected benefits for the State of Washington.

"The UTC wasn't used to receiving recommendations," Lynda Hollaway says. "But in some ways, it has saved us a lot of work."

Because the safety committee is the first place that hears from all parties involved in an incident, it has reduced the number of small claims cases which the government has handled.

The panel is funded by utility companies and produces no fiscal impact on government or on taxpayers. The monetary penalties which the UTC receives are used exclusively to fund damage prevention initiatives and education. The State of Washington spent the money on damage prevention classes for excavators and utility locator classes, which they have been able to provide for free.

Since the committee was formed, Washington has seen a large drop in the number of incidents in areas where they have put on classes and done advertising campaigns. In turn, they have seen an increase in the number of people involved in damage prevention and eager to sit on the panel.