

# SENATE BILL NO. 133

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR FITZWATER.

0382S.02I

KRISTINA MARTIN, Secretary

## AN ACT

To repeal sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.027, 319.030, 319.031, and 319.035, RSMo, and to enact in lieu thereof eleven new sections relating to underground facilities.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 319.015, 319.022, 319.024, 319.025,  
2 319.026, 319.027, 319.030, 319.031, and 319.035, RSMo, are  
3 repealed and eleven new sections enacted in lieu thereof, to be  
4 known as sections 319.015, 319.019, 319.022, 319.024, 319.025,  
5 319.026, 319.027, 319.030, 319.031, 319.034, and 319.035, to  
6 read as follows:

319.015. For the purposes of sections 319.010 to  
2 319.050, the following terms mean:

3 (1) "Approximate location", a strip of land not wider  
4 than the width of the underground facility plus two feet on  
5 either side thereof. In situations where reinforced  
6 concrete, multiplicity of adjacent facilities or other  
7 unusual specified conditions interfere with location  
8 attempts, the owner or operator shall designate to the best  
9 of his [or], her, or its ability an approximate location of  
10 greater width;

11 (2) "Best practices", the Common Ground Alliance Best  
12 Practices for protecting vital underground facilities,  
13 sponsored by the Department of Transportation as described  
14 in 49 U.S.C. Section 6105(a), as amended. The Common Ground

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

15 Alliance Best Practices shall be read in conjunction with  
16 Missouri law; in any instance in which such best practices  
17 conflict with state law, state law shall control;

18 (3) "Careful and prudent", conducting excavation using  
19 best practices;

20 (4) "Design request", a request from any person for  
21 facility location information for design purposes only;

22 (5) "Detectible underground location device", any  
23 device that is installed underground and that is capable of  
24 being detected from above ground with an electronic locating  
25 device, including a locator strip or locator wire;

26 (6) "Electronic white lining", the process in which an  
27 excavator identifies where a proposed excavation will occur  
28 by drawing a polygon shape on a GIS map, transmitted in a  
29 manner that may then be delivered by the notification center  
30 to its member operator;

31 [(3)] (7) "Emergency", a sudden, unexpected  
32 occurrence, presenting a clear and imminent danger demanding  
33 immediate action to prevent or mitigate loss or damage to  
34 life, health, property, or essential public services.  
35 "Unexpected occurrence" includes, but is not limited to,  
36 thunderstorms, high winds, ice or snow storms, fires,  
37 floods, earthquakes, or other soil or geologic movements,  
38 riots, accidents, water or wastewater pipe breaks,  
39 vandalism, or sabotage;

40 [(4)] (8) "Excavation", any operation in which earth,  
41 rock or other material in or on the ground is moved, removed  
42 or otherwise displaced by means of any tools, equipment or  
43 explosives and includes, without limitation, backfilling,  
44 grading, trenching, digging, ditching, pulling material from  
45 a ditch but not including routine road maintenance,  
46 drilling, well-drilling, augering, boring, tunneling,

47 scraping, cable or pipe plowing, plowing-in, pulling-in,  
48 ripping, driving, and demolition of structures, except that,  
49 the use of mechanized tools and equipment to break and  
50 remove pavement and masonry down only to the depth of such  
51 pavement or masonry on roads dedicated to the public use for  
52 vehicular traffic, the tilling of soil for agricultural  
53 purposes when such excavation does not exceed sixteen inches  
54 in depth, the installation of marking flags and stakes and  
55 the use of pressurized air to disintegrate and suction to  
56 remove earth, rock, or other materials for the location of  
57 underground facilities shall not be deemed excavation.

58 Backfilling or moving earth on the ground in connection with  
59 other excavation operations at the same site shall not be  
60 deemed separate instances of excavation. For railroads  
61 regulated by the Federal Railroad Administration,  
62 "excavation" shall not include any excavating done by a  
63 railroad when such excavating is done entirely on land that  
64 the railroad owns or on which the railroad operates, or in  
65 the event of an emergency, excavating done by a railroad on  
66 adjacent land;

67 [(5)] (9) "Excavator", any person making one or more  
68 excavations who is required to make notices of excavation  
69 under the requirements of sections 319.010 to 319.050;

70 [(6)] (10) "Locate status", the underground facility  
71 owner's designation of the status of the locate request to  
72 the notification center which then makes that information  
73 available to the person making the locate request through  
74 electronic or other means;

75 (11) "Locator strip", a type of detectible underground  
76 location device that consists of a plastic or other durable  
77 material ribbon containing a material capable of being

78 detected from above ground with an electronic locating  
79 device and color coded by type of underground facility;

80 (12) "Locator wire", a type of detectible underground  
81 location device that consists of a copper wire or metallic,  
82 conductive, noncorrosive trace wire capable of being  
83 detected from above ground with an electronic locating  
84 device;

85 [(7)] (13) "Marking", the use of paint, flags, stakes,  
86 or other clearly identifiable materials to show the field  
87 location of underground facilities, or the area of proposed  
88 excavation, in accordance with the marking standards for  
89 underground facilities as designated by the Common Ground  
90 Alliance Best Practices [Version 10.0] except that  
91 "approximate location" shall comply with the requirements as  
92 set forth in subdivision (1) of this section;

93 [(8)] (14) "Notification center", a statewide  
94 organization operating twenty-four hours a day, three  
95 hundred sixty-five days a year on a not-for-profit basis,  
96 supported by a majority of the underground facility owners  
97 in the state of Missouri;

98 [(9)] (15) "Notification center participant", an  
99 underground facility owner who is a member and participant  
100 in the notification center;

101 [(10)] (16) "Permitted project", a project for which a  
102 permit for the work to be performed is required to be issued  
103 by a local, state or federal agency and, as a prerequisite  
104 to receiving such permit, the applicant is required to  
105 notify all underground facility owners in the area of the  
106 work for purposes of identifying the location of existing  
107 underground facilities;

108 [(11)] (17) "Person", any individual, firm, joint  
109 venture, partnership, corporation, association, cooperative,

110 municipality, political subdivision, governmental unit,  
111 department or agency and shall include a notification center  
112 and any trustee, receiver, assignee or personal  
113 representative thereof;

114 [(12)] (18) "Pipeline facility" includes all parts of  
115 a facility through which a hazardous liquid or gas moves in  
116 transportation including, but not limited to, pipe, valves  
117 and other appurtenances connected to pipe, pumping units,  
118 fabricated assemblies associated with pumping units,  
119 metering and delivery stations and fabricated assemblies  
120 therein, and breakout tanks;

121 (19) "Reasonable care", includes compliance with  
122 **Common Ground Alliance Best Practices**;

123 [(13)] (20) "State plane coordinates", a system of  
124 locating a point on a flat plane developed by the National  
125 Oceanic and Atmospheric Administration and utilized by state  
126 agencies, local governments, and other persons to designate  
127 the site of a construction project;

128 [(14)] (21) "Trenchless excavation", horizontal  
129 excavation parallel to the surface of the earth which does  
130 not use trenching or vertical digging as the primary means  
131 of excavation, including but not limited to directional  
132 boring, tunneling, or augering;

133 [(15)] (22) "Underground facility", any item of  
134 personal property which shall be buried or placed below  
135 ground for use in connection with the storage or conveyance  
136 of water, storm drainage, sewage, telecommunications **and**  
137 **broadband** service, cable television service, electricity,  
138 oil, gas, hazardous liquids or other substances, and shall  
139 include but not be limited to pipes, sewers, conduits,  
140 cables, valves, vaults, lines, wires, manholes, attachments,  
141 or appurtenances, and those portions of pylons or other

142 supports below ground that are within any public or private  
143 street, road or alley, right-of-way dedicated to the public  
144 use or utility easement of record, or prescriptive  
145 easement. If gas distribution lines or electric lines,  
146 telecommunications **and broadband** facilities, cable  
147 television facilities, water service lines, water system,  
148 storm drainage or sewer system lines, other than those used  
149 for vehicular traffic control, lighting of streets and  
150 highways and communications for emergency response, are  
151 located on private property and are owned solely by the  
152 owner or owners of such private property, such lines or  
153 facilities receiving service shall not be considered  
154 underground facilities for purposes of this chapter, except  
155 at locations where they cross or lie within an easement or  
156 right-of-way dedicated to public use or owned by a person  
157 other than the owner of the private property. Water and  
158 sanitary sewer lines providing service to private property  
159 that are owned solely by the owner of such property shall  
160 not be considered underground facilities at any location. A  
161 structure that transports only storm water drainage under  
162 roadways, driveways, or railways shall not be considered an  
163 underground facility;

164 [(16)] (23) "Underground facility owner", any person  
165 who owns or operates underground facilities;

166 [(17)] (24) "Working day", every day, except Saturday,  
167 Sunday or a legally declared state or federal holiday.

**319.019. The underground facility owner shall ensure**  
2 **that all new and active underground facilities installed on**  
3 **any real property after August 28, 2025, shall be installed**  
4 **with a detectible underground location device unless the**  
5 **facility is capable of being detected from above ground with**  
6 **an electronic locating device.**

319.022. 1. Any person, except a railroad regulated  
2 by the Federal Railroad Administration, who installs or  
3 otherwise owns or operates an underground facility shall  
4 become a participant in a notification center upon first  
5 acquiring or owning or operating such underground facility.  
6 All underground facility owners within the state shall  
7 maintain participation in a notification center for the  
8 duration of owning and operating such underground facility.

9       **2.** Such notification center shall be governed by a  
10 board of directors elected by the membership and composed of  
11 representatives from the general membership group, **plus no**  
12 **fewer than four full voting directors from other damage**  
13 **prevention stakeholders within the construction industry,**  
14 **two of whom shall be from a heavy civil, site grading, road**  
15 **or highway contractor and two of whom shall be from a**  
16 **utility or underground contractor; provided, however, that**  
17 **none of the directors appointed from the construction**  
18 **industry shall work for a contractor that owns or operates**  
19 **an underground facility.**

20       **[2.]** 3. The notification center shall maintain in its  
21 offices and make available to any notification center  
22 participant or excavator upon request a current list of the  
23 names and addresses of each notification center participant,  
24 including the county or counties wherein each participant  
25 has underground facilities. The notification center may  
26 charge a reasonable fee to notification center participants  
27 or excavators requesting such list as is necessary to  
28 recover the actual costs of printing and mailing.

29       **[3.]** 4. Excavators shall be informed of the  
30 availability of the list of notification center participants.

31       **[4.]** 5. An annual audit or review of the notification  
32 center shall be performed by a certified public accountant

33 and a report of the findings submitted to the speaker of the  
34 house of representatives and the president pro tem of the  
35 senate.

319.024. 1. Every person owning or operating an  
2 underground facility shall assist excavators and the general  
3 public in determining the location of underground facilities  
4 before excavation activities are begun or as may be required  
5 by subsection [6] 7 of section 319.026 or subsection 1 of  
6 section 319.030 after an excavation has commenced. Methods  
7 of informing the public and excavators of the means of  
8 obtaining such information may, but need not, include  
9 advertising, including advertising in periodicals of general  
10 circulation or trade publications, information provided to  
11 professional or trade associations which routinely provide  
12 information to excavators or design professionals, or  
13 sponsoring meetings of excavators and design professionals  
14 for such purposes. Information provided by the notification  
15 center on behalf of persons owning or operating an  
16 underground facility shall be deemed in compliance with this  
17 section by such persons.

18 2. Every person owning or operating underground  
19 pipeline facilities shall, in addition to the requirements  
20 of subsection 1 of this section:

21 (1) Identify on a current basis persons who normally  
22 engage in excavation activities in the area in which the  
23 pipeline is located. Every such person who is a participant  
24 in a notification center shall be deemed to comply with this  
25 subdivision if such notification center maintains and  
26 updates a list of the names and addresses of all excavators  
27 who have given notice of intent to excavate to such  
28 notification center during the previous year and provided  
29 the notification center shall, not less frequently than



30 annually, provide public notification and actual  
31 notification to all excavators on such list of the existence  
32 and purpose of the notification center, and procedures for  
33 obtaining information from the notification center;

34 (2) Either directly or through the notification  
35 center, notify excavators and the public in the vicinity of  
36 his [or], her, **or its** underground pipeline facility of the  
37 availability of the notification center by including the  
38 information set out in subsection 1 of section 319.025 in  
39 notifications required by the safety rules of the Missouri  
40 public service commission relating to its damage prevention  
41 program;

42 (3) Notify excavators annually who give notice of  
43 their intent to excavate of the type of marking to be  
44 provided and how to identify the markings.

319.025. 1. Except as provided in subsection 4 of  
2 section 319.030 and in section 319.050, [a person] **an**  
3 **excavator** shall not make or begin any excavation in any  
4 public street, road or alley, right-of-way dedicated to the  
5 public use or utility easement of record or within any  
6 private street or private property [without first giving]  
7 **until such excavator gives** notice to the notification center  
8 and [obtaining] **obtains** information concerning the possible  
9 location of any underground facilities which may be affected  
10 by said excavation from underground facility owners whose  
11 names appear on the current list of participants in the  
12 notification center and who were communicated to the  
13 excavator as notification center participants who would be  
14 informed of the excavation notice. Notice to the  
15 notification center of proposed excavation shall be deemed  
16 notice to all owners and operators of underground

17 facilities. The notice referred to in this section shall  
18 comply with the provisions of section 319.026.

19 2. An excavator's notice to owners and operators of  
20 underground facilities participating in the notification  
21 center pursuant to section 319.022 is ineffective for  
22 purposes of subsection 1 of this section unless given to  
23 such notification center.

24 3. Notification center participants shall be relieved  
25 of the responsibility to respond to a notice of intent to  
26 excavate received directly from the person intending to  
27 commence an excavation, except for requests for  
28 clarification of markings through on-site meetings as  
29 provided in subsection 1 of section 319.030 and requests for  
30 locations at the time of an emergency as provided by section  
31 319.050.

32 4. Notwithstanding the provisions of this section to  
33 the contrary, a person shall not make or begin any  
34 excavation in any state highway, or on the right-of-way of  
35 any state highway, without first obtaining a permit from the  
36 state highways and transportation commission pursuant to  
37 section 227.240, provided however, the provisions of this  
38 subsection shall not apply to railroad right-of-way owned or  
39 operated by a railroad.

319.026. 1. An excavator shall serve notice of intent  
2 to excavate to the notification center by toll-free  
3 telephone number operated on a twenty-four hour per-day,  
4 seven day per-week basis [or by facsimile] or by completing  
5 notice via the internet at least two working days, but not  
6 more than ten working days, before the expected date of  
7 commencing the excavation activity. The notification center  
8 receiving such notice shall inform the excavator of all  
9 notification center participants to whom such notice will be

10 transmitted and shall promptly transmit all details of such  
11 notice provided under subsection 2 of this section to every  
12 notification center participant in the area of excavation.

13 2. Notices of intent to excavate given pursuant to  
14 this section shall contain the following information:

15 (1) The name and telephone number of the person filing  
16 the notice of excavation, if the telephone number is  
17 different than that of the excavator, and the name, address,  
18 **and** telephone number of the excavator [and whether the  
19 excavator's telephone is equipped with a recording device];

20 (2) The date the excavation activity is expected to  
21 commence, the depth of planned excavation and, if  
22 applicable, that the use of explosives is anticipated on the  
23 excavation site, and the type of excavation being planned,  
24 including whether the excavation involves trenchless  
25 excavation;

26 (3) The [facsimile number,] email address[,], and  
27 cellular telephone number of the excavator, if any;

28 (4) The name of the person primarily responsible for  
29 conducting the excavation or managing the excavation  
30 process, and if any of the information stated in subdivision  
31 (1) or (3) of this subsection is different for the person  
32 primarily responsible for the excavation, the notice shall  
33 also state the same information for that person;

34 (5) A detailed description accepted by the  
35 notification center sufficient for the location of the  
36 excavation by any one or more of the following means: by  
37 reference to a specific street address, or by description of  
38 location in relation to the nearest numbered, lettered, or  
39 named state or county road or city street for which a road  
40 sign is posted, or by latitude and longitude including the

41 appropriate description in degrees, minutes, and seconds, or  
42 by state plane coordinates;

43 (6) A description of the site of excavation by  
44 approximate distance and direction from the nearest state or  
45 county road or city street or intersection of such roads or  
46 streets unless previously provided under subdivision (5) of  
47 this subsection, and the proximity of the site to any  
48 prominent landmarks;

49 (7) A description of the location or locations of the  
50 excavation at the site described by direction and  
51 approximate distance in relation to prominent features of  
52 the site, such as existing buildings or roadways;

53 (8) Directions as to how to reach the site of the  
54 excavation from the nearest such road, if the excavation is  
55 not on or near a posted numbered, lettered, or named state  
56 or county road or city street.

57 **3. When the location of the planned excavation cannot**  
58 **be clearly identified solely by the means described in**  
59 **subdivision (5) of subsection 2 of this section, the**  
60 **excavator may also designate the planned excavation route or**  
61 **area to be excavated by physical white lining using white**  
62 **paint, stakes, whiskers, or other similar markings on and**  
63 **along the area to be excavated, or by electronic white**  
64 **lining when available through the notification center. Such**  
65 **information may be provided to the notification center prior**  
66 **to or with the notification required under this section.**

67 **4.** The notification center receiving such notice shall  
68 solicit all information required by subsection 2 of this  
69 section and shall require the excavator to provide all such  
70 information before notice by the excavator is deemed to be  
71 completed pursuant to sections 319.015 to 319.050. The

72 notification center shall transmit all details of such  
73 notice as required by this section.

74 [4.] 5. A record of each notice of intent to excavate  
75 shall be maintained by the notification center for a period  
76 of five years. The record shall include the date the notice  
77 was received and all information required by subsection 2 of  
78 this section which was provided by the excavator and a  
79 record of the underground facility owners notified by the  
80 notification center. If the notification center creates a  
81 record of the notice by telephonic recording, such record of  
82 the original notice shall be maintained for one year from  
83 the date of receipt. Records of notices to excavate  
84 maintained by the notification center in electronic form  
85 shall be deemed to be records under this subsection.

86 Persons holding records of notices of intent to excavate and  
87 records of information provided to the excavator by the  
88 notification center or owner or operator of the facility  
89 shall make copies of such records available for a reasonable  
90 copying fee upon the request of the owner or operator of the  
91 underground facilities or the excavator filing the notice.

92 [5.] 6. If in the course of excavation the person  
93 responsible for the excavation operations discovers that the  
94 owner or operator of the underground facility who is a  
95 participant in a notification center has incorrectly located  
96 the underground facility, **or if the discovery of an**  
97 **underground facility is not marked**, he or she shall notify  
98 the notification center which shall inform the underground  
99 facility owner. The underground facility owner shall  
100 respond to the incorrect locate notification within two  
101 hours of receipt of the notification by contacting the  
102 person responsible for the excavation or by correctly  
103 locating their underground facility. The person responsible

104 for maintaining records of the location of underground  
105 facilities for the notification center participant shall  
106 correct such records to show the actual location of such  
107 facilities, if current records are incorrect.

108 [6.] 7. When markings have been provided in response  
109 to a notice of intent to excavate, excavators may commence  
110 or continue to work within the area described in the notice  
111 for so long as the markings are visible. If an excavator is  
112 unable to begin the excavation within ten working days as  
113 described in the request, the excavator shall make a  
114 relocate request before beginning the excavation. If  
115 markings become unusable due to weather, construction or  
116 other cause, the excavator shall contact the notification  
117 center to request remarking. Such notice shall be given in  
118 the same manner as original notice of intent to excavate,  
119 and the owner or operator shall remark the site in the same  
120 manner, within the same time, as required in response to an  
121 original notice of intent to excavate. Each excavator shall  
122 exercise reasonable care not to unnecessarily disturb or  
123 obliterate markings provided for location of underground  
124 facilities. If remarking is required due to the excavator's  
125 failure to exercise reasonable care, or if repeated  
126 unnecessary requests for remarking are made by an excavator  
127 even though the markings are visible and usable, the  
128 excavator may be liable to the owner or operator for the  
129 reasonable cost of such remarking. Nothing in this section  
130 shall allow any person other than the facility owner or  
131 their representative to mark or relocate any underground  
132 facility.

133 [7.] 8. Before commencing excavation, the excavator  
134 shall determine best practices for confirming the horizontal  
135 and vertical location of facilities at the site of

136 excavation considering conditions at the site including  
137 geology, access to the site, and the presence of paved  
138 surfaces. Hand digging or soft digging shall be used as a  
139 best practice when possible.

140 [8.] 9. In the event of any damage, dislocation, or  
141 disturbance of any underground facility in connection with  
142 any excavation, the person responsible for the excavation  
143 operations shall notify the notification center. This  
144 subsection shall be deemed to require reporting of any  
145 damage, dislocation, or disturbance to trace wires,  
146 encasements, cathode protection, permanent above-ground  
147 stakes, or other such items utilized for protection of the  
148 underground facility. The excavator shall immediately  
149 contact 911 when any damage or contact with a pipeline  
150 results in a release from the pipeline of hazardous liquid  
151 or gas to occur.

152 [9.] 10. In the event of any damage, dislocation, or  
153 disturbance to any underground facility or any protective  
154 devices required to be reported by the excavator under  
155 subsection [8] 9 of this section in advance of or during the  
156 excavation work, the person responsible for the excavation  
157 operations shall not conceal or attempt to conceal such  
158 damage, dislocation, or disturbance, nor shall that person  
159 attempt to make repairs to the facility unless authorized by  
160 the underground facility owner. In the case of sewer lines  
161 or facilities, emergency temporary repairs may be made by  
162 the excavator after notification without the owners' or  
163 operators' authorization to prevent further damage to the  
164 facilities. Such emergency repairs shall not relieve the  
165 excavator of responsibility to make notification as required  
166 by subsection [8] 9 of this section.

167 [10.] 11. No later than April [1, 2015, and] **first of**  
168 each year [thereafter], each underground facility owner who  
169 owns or operates electric, gas, or pipeline facilities shall  
170 submit to a central repository designated by the  
171 notification center a report of damages experienced by its  
172 facilities for the prior calendar year. The notification  
173 center shall determine the minimum information to be  
174 reported. All data submitted shall be aggregated and  
175 anonymous. Information provided by the underground facility  
176 owner specific to damage data submitted shall be accessible  
177 only to the underground facility owner unless otherwise  
178 designated by the underground facility owner.

179 **12. In the event of any damage, dislocation, or**  
180 **disturbance to any underground facility or any protective**  
181 **devices required to be reported by the excavator under**  
182 **subsection 9 of this section in advance of or during the**  
183 **excavation work, the person responsible for the excavation**  
184 **operations shall report the occurrence through the Damage**  
185 **Information Reporting Tool (DIRT) sponsored by the Common**  
186 **Ground Alliance and in accordance with best practices.**

319.027. 1. Any person may make design requests by  
2 contacting the notification center. Such design requests  
3 shall include all information deemed necessary by the  
4 notification center to complete the notice, including the  
5 identification of the person and a description of the  
6 location of the project being designed and other information  
7 similar to that required of excavators under section 319.026.

8 2. Design requests shall be made to the notification  
9 center at least five working days[, but not more than ten  
10 working days,] before the date the person has requested  
11 receiving the information from the underground facility  
12 owner. Upon receipt of a design request, the notification



13 center shall inform the person of the name of all  
14 notification center participants to whom the notice will be  
15 transmitted and shall promptly transmit such notice to the  
16 appropriate underground facility owners.

17 3. Every underground facility owner who receives a  
18 design request shall mark the location of the facility, or  
19 contact the person making the request, within five working  
20 days after the date the notice was received from the  
21 notification center. If the person making the request was  
22 contacted as an alternative to marking location, the person  
23 and the underground facility owner shall mutually agree on a  
24 schedule and method for providing the information, provided  
25 that the facility shall be marked within five working days  
26 if the facility owner and the person making the request are  
27 unable to agree.

28 4. No excavation may be commenced based upon  
29 information received through a design request. Obtaining  
30 information through a design request shall not excuse any  
31 person commencing an excavation from making notice and  
32 obtaining information under sections 319.025 and 319.026  
33 concerning the possible location of any underground  
34 facilities which may be affected.

319.030. 1. Every person owning or operating an  
2 underground facility to whom notice of intent to excavate is  
3 required to be given shall, upon receipt of such notice as  
4 provided in this section from a person intending to commence  
5 an excavation, inform the excavator as promptly as  
6 practical, but not in excess of two working days, unless the  
7 excavator agrees to extend the start date and time provided  
8 in the locate request through methods established by the  
9 notification center, of the approximate location of  
10 underground facilities in or near the area of the excavation

11 so as to enable the person engaged in the excavation work to  
12 locate the facilities in advance of and during the  
13 excavation work, provided that no excavation shall begin  
14 earlier than the scheduled excavation date provided on the  
15 locate request unless the excavator has confirmed that all  
16 underground facilities have been located. The two working  
17 days provided for notice in this subsection and subsection 1  
18 of section 319.026 shall begin at 12:00 a.m. following the  
19 receipt of the request by the notification center. Each  
20 underground facility owner receiving notifications from the  
21 notification center by use of the internet shall, after  
22 December 31, 2014, use the locate status system provided by  
23 the notification center. Those underground facility owners  
24 that do not receive notifications by use of the internet  
25 shall, no later than January 1, 2016, provide locate status  
26 to the notification center by an alternate method provided  
27 by the notification center. If the excavator states in the  
28 notice of intent to excavate that the excavation will  
29 involve trenchless technology, the owner or operator shall  
30 inform the excavator of the depth, to the best of his [or],  
31 her, **or its** knowledge or ability, of the facility according  
32 to the records of the owner or operator. The owner or  
33 operator shall provide the approximate location of  
34 underground facilities by use of markings as designated in  
35 section 319.015. Persons representing the excavator and the  
36 owner or operator shall meet on the site of excavation  
37 within two working days of a request by either person for  
38 such meeting for the purpose of clarifying markings, or upon  
39 agreement of the excavator and owner or operator, such  
40 meeting may be an alternate means of providing the location  
41 of facilities by originally marking the approximate location  
42 of the facility at the time of the meeting. If upon receipt

43 of a notice of intent to excavate, an owner or operator  
44 determines that he or she neither owns or operates  
45 underground facilities in or near the area of excavation,  
46 the owner or operator shall within two working days after  
47 receipt of the notice, inform the excavator that the owner  
48 or operator has no facilities located in the area of the  
49 proposed excavation. The owner or operator of the  
50 underground facility shall make notice to the excavator that  
51 no facilities are located in the area of excavation by  
52 contacting the excavator by any of the following methods:

53 (1) By calling the primary number of the excavator or  
54 by calling the telephone number of the responsible person as  
55 provided by the excavator under subdivision (4) of  
56 subsection 2 of section 319.026;

57 (2) By leaving a message on the recording device for  
58 such numbers;

59 (3) By calling the cellular telephone number of the  
60 excavator or responsible person;

61 (4) By notifying the excavator by [facsimile or]  
62 electronic mail at [numbers or] addresses stated by the  
63 excavator in the notice of excavation made under subsection  
64 2 of section 319.026;

65 (5) By marking "clear" or "OK" at the site of  
66 excavation;

67 (6) By verbally informing the excavator in person.

68 If the only means of contacting the excavator is one or more  
69 telephone numbers provided by the excavator in the notice of  
70 excavation under section 319.026, then two attempts by the  
71 underground facility owner to contact the excavator at one  
72 of the telephone numbers provided shall constitute  
73 compliance with this subsection; or

74           (7) By use of a locate status system.

75           2. A record of the date and means of informing the  
76 excavator that no facilities were located by the owner or  
77 operator shall be included in the written records of the  
78 underground facility owner regarding each specific notice of  
79 excavation and shall be retained for a period of five years.

80           3. If the owner or operator notifies the excavator  
81 that the area of excavation cannot be determined from the  
82 description provided by the excavator through the notice  
83 required by this section, the excavator shall provide  
84 clarification of the area of excavation by marking the area  
85 with white flags or white paint, or by providing project  
86 plans to the owner or operator, or by meeting on the site of  
87 the excavation with representatives of the owner or operator  
88 as provided for in this section.

89           4. In the event that a person owning or operating an  
90 underground facility fails to comply with the provisions of  
91 subsection 1 of this section after notice given by an  
92 excavator in compliance with section 319.026, the excavator,  
93 prior to commencing the excavation, shall give a second  
94 notice to the notification center as required by section  
95 319.026 stating that there has been no response to the  
96 original notice given under section 319.026. After the  
97 receipt of the notice stating there has been "no response",  
98 the owner or operator of an underground facility shall,  
99 within two hours of the receipt of such notice, mark its  
100 facilities or contact and inform the excavator of when the  
101 facilities will be marked; provided, however, that for "no  
102 response" notices made to the notification center by 2:00  
103 p.m., the markings shall be completed on the working day the  
104 notice is made to the notification center, and provided that  
105 for "no response" notices made to the notification center

106 after 2:00 p.m., the markings shall be completed no later  
107 than 10:00 a.m. on the next working day. If an underground  
108 facility owner fails to mark its facilities or contact the  
109 excavator as required by this subsection, the excavator may  
110 commence the excavation. Nothing in this subsection shall  
111 excuse the excavator from exercising the degree of care in  
112 making the excavation as is otherwise required by law.

113 5. For purposes of this section, a period of two  
114 working days begins at 12:00 a.m. following when the request  
115 is made.

319.031. 1. In addition to the other requirements of  
2 section 319.030, the response to a notice of intent to  
3 excavate received by a sewer system owner, when such owner  
4 has underground facilities located in the area of excavation  
5 identified in the notice and when the notice indicates that  
6 trenchless excavation methods will be used, shall include a  
7 determination of whether sewer service connections exist in  
8 the area of the excavation.

9 2. If the sewer system owner determines that sewer  
10 service connections exist in the area of the excavation  
11 identified in a notice of intent to excavate, the owner  
12 shall provide his [or], her, or its best available  
13 information, or notice that the information does not exist,  
14 regarding the location of such connections to the excavator  
15 by any of the following methods:

16 (1) Placing a triangular green mark at the approximate  
17 location of the sewer service connection pointing in the  
18 direction of the customer structure serviced;

19 (2) Providing electronic copies of the information to  
20 the excavator;

21 (3) Delivering copies of the information to the  
22 excavator by [facsimile or by] other agreed upon means; or

23 (4) Arranging to meet the excavator at the site of the  
24 excavation to provide the information.

25 3. Providing the best available information, or notice  
26 that the information does not exist, regarding the location  
27 of sewer service connections that exist in the area of  
28 excavation identified in a notice of intent to excavate  
29 shall constitute full compliance with this section, and a  
30 sewer system owner shall not be liable to any party for  
31 damages or injuries resulting from an excavation if they are  
32 in compliance with this section.

33 4. Providing the best available information regarding  
34 the location of sewer service connections that exist in the  
35 area of excavation identified in a notice of intent to  
36 excavate shall not in and of itself constitute ownership,  
37 operation, control, or management of sewer service lines by  
38 a sewer system owner.

**319.034. For purposes of sections 319.010 to 319.050,  
2 the location of underground facilities provided by a  
3 facility owner or operator in accordance with section  
4 319.026 to any person engaging in scheduled excavating shall  
5 be accurate. If any underground facility becomes damaged by  
6 an excavator due to the furnishing of inaccurate information  
7 as to its location by the facility owner or operator, the  
8 excavator shall not be subject to any liability resulting  
9 from damage to the underground facility as a result of the  
10 excavating, provided that such person engaging in scheduled  
11 excavating complies with the requirements of sections  
12 319.010 to 319.050 with respect to such excavation and there  
13 is no evidence visible and obvious to the excavator of the  
14 presence of a mismarked underground facility.**

319.035. 1. Obtaining information as required by  
2 sections 319.010 to 319.050 does not excuse any person

3 making any excavation from doing so in a careful and prudent  
4 manner.

5       2. Nothing in sections 319.010 to 319.050 shall  
6 relieve an excavator from the obligation to excavate in a  
7 safe and prudent manner, nor shall it absolve an excavator  
8 from liability for damage to underground facilities.

9       3. The failure of any excavator to give notice of  
10 proposed excavation activities as required by this chapter  
11 shall be a rebuttable presumption of negligence on his or  
12 her part in the event that such failure shall cause injury,  
13 loss, or damage. In addition to any penalties provided  
14 herein, liability under common law may apply.

15       4. The failure of an underground facility owner **or a**  
16 **locator or other contractor engaged by the facility owner** to  
17 mark [his or her] **the facility owner's** facilities that are  
18 located in an area of excavation described in a notice of  
19 intent to excavate received by the underground facility  
20 owner, as required by section 319.030, or the failure of an  
21 underground facility owner to be a notification center  
22 participant, consistent with the provisions of section  
23 319.022, shall be a rebuttable presumption of negligence on  
24 the part of such owner, **and of the locator or other**  
25 **contractor engaged by the facility owner**, in the event that  
26 such failure shall cause injury, loss, or damage. In  
27 addition to any penalties provided herein, liability under  
28 common law may apply.

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