

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 904
94TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Energy and the Environment, March 27, 2008, with recommendation that the Senate Committee Substitute do pass.

4109S.06C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.030, 319.036, 319.037, 319.041, 319.045, and 319.050, RSMo, and to enact in lieu thereof thirteen new sections relating to underground facilities, with an effective date.

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319.015, 319.022, 319.024, 319.025, 319.026, 319.030, 319.036, 319.037, 319.041, 319.045, and 319.050, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 319.015, 319.022, 319.024, 319.025, 319.026, 319.027, 319.029, 319.030, 319.037, 319.041, 319.042, 319.045, and 319.050, to read as follows:

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

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

(2) "**Design request**", a request from any person for facility location information for design purposes only;

(3) "**Emergency**", a sudden, unexpected occurrence, presenting a clear and imminent danger demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services. "Unexpected occurrence" includes, but is not limited to, thunderstorms, high winds, ice or snow storms, fires, floods,

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

15 **earthquakes, or other soil or geologic movements, riots, accidents,**
16 **water or wastewater pipe breaks, vandalism, or sabotage;**

17 (4) "Excavation", any operation in which earth, rock or other material in
18 or on the ground is moved, removed or otherwise displaced by means of any tools,
19 equipment or explosives and includes, without limitation, backfilling, grading,
20 trenching, digging, ditching, drilling, well-drilling, augering, boring, tunneling,
21 scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, and
22 demolition of structures, except that, the use of mechanized tools and equipment
23 to break and remove pavement and masonry down only to the depth of such
24 pavement or masonry, the use of [high-velocity] **pressurized** air to disintegrate
25 and suction to remove earth, rock and other materials, [and] the tilling of soil for
26 agricultural or seeding purposes, **and the installation of marking flags and**
27 **stakes for the location of underground facilities that are not driven**
28 shall not be deemed excavation. Backfilling or moving earth on the ground in
29 connection with other excavation operations at the same site shall not be deemed
30 separate instances of excavation;

31 (5) "Excavator", **any person making one or more excavations who**
32 **is required to make notices of excavation under the requirements of**
33 **sections 319.010 to 319.050;**

34 [(3)] (6) "Marking", the use of [stakes,] **paint, flags, stakes,** or other
35 clearly identifiable materials to show the field location of underground facilities,
36 or the area of proposed excavation, in accordance with the color code standard of
37 the American Public Works Association. Unless otherwise provided by the
38 American Public Works Association, the following color scheme shall be used:
39 blue for potable water; purple for reclaimed water, irrigation and slurry lines;
40 green for sewers and drain lines; red for electric, power lines, cables, conduit and
41 lighting cables; orange for communications, including telephone, cable television,
42 alarm or signal lines, cable or conduit; yellow for gas, oil, steam, petroleum or
43 gaseous materials; white for proposed excavation; pink for temporary marking of
44 construction project site features such as centerline and top of slope and toe of
45 slope;

46 [(4)] (7) "Notification center", a statewide organization operating
47 twenty-four hours a day, three hundred sixty-five days a year on a not-for-profit
48 basis, supported by its participants, or by more than one operator of underground
49 facilities, having as its principal purpose the statewide receipt and dissemination
50 to participating owners and operators of underground facilities of information

51 concerning intended excavation activities in the area where such owners and
52 operators have underground facilities, and open to participation by any and all
53 such owners and operators on a fair and uniform basis. Such notification center
54 shall be governed by a board of directors elected by the membership and
55 composed of representatives from each general membership group;

56 **(8) "Notification center participant", an underground facility**
57 **owner who is a member and participant in the notification center;**

58 [(5)] **(9) "Permitted project", a project for which a permit for the work to**
59 **be performed is required to be issued by a local, state or federal agency and, as**
60 **a prerequisite to receiving such permit, the applicant is required to [locate all**
61 **underground facilities in the area of the work and in the vicinity of the**
62 **excavation and is required to notify each owner of such underground facilities]**
63 **notify all underground facility owners in the area of the work for**
64 **purposes of identifying the location of existing underground facilities;**

65 [(6)] **(10) "Person", any individual, firm, joint venture, partnership,**
66 **corporation, association, cooperative, municipality, political subdivision,**
67 **governmental unit, department or agency and shall include a notification center**
68 **and any trustee, receiver, assignee or personal representative thereof;**

69 [(7)] **(11) "Pipeline facility" includes, without limitation, new and**
70 **existing pipe, rights-of-way, and any equipment, facility, or building used or**
71 **intended for use in the transportation of gas or the treatment of gas, or used or**
72 **intended for use in the transportation of hazardous liquids including petroleum,**
73 **or petroleum products;**

74 [(8)] **(12) "Preengineered project", a project which is approved by an**
75 **agency or political subdivision of the state and for which the agency or political**
76 **subdivision responsible for the project, as part of its engineering and contract**
77 **procedures, holds a meeting prior to the commencement of any construction work**
78 **on such project and in such meeting all persons determined by the agency or**
79 **political subdivision to have underground facilities located within the excavation**
80 **area of the project are invited to attend and given an opportunity to verify or**
81 **inform any agency or political subdivision of the location of their underground**
82 **facilities, if any, within the excavation area and where the location of all known**
83 **underground facilities are duly located or noted on the engineering drawing as**
84 **specifications for the project;**

85 [(9)] **"Residential property", any real estate used or intended to be used as**
86 **a residence by not more than four families on which no underground facilities**

87 exist which are owned or operated by any party other than the owner of said
88 property;]

89 **(13) "State plane coordinates", a system of locating a point on a**
90 **flat plane developed by the National Oceanic and Atmospheric**
91 **Administration and utilized by state agencies, local governments, and**
92 **other persons to designate the site of a construction project;**

93 **(14) "Trenchless excavation", horizontal excavation parallel to**
94 **the surface of the earth which does not use trenching or vertical**
95 **digging as the primary means of excavation, including but not limited**
96 **to directional boring, tunneling, or auguring;**

97 **[(10)] (15) "Underground facility", any item of personal property which**
98 **shall be buried or placed below ground for use in connection with the storage or**
99 **conveyance of water, storm drainage, sewage, telecommunications service, cable**
100 **television service, electricity, oil, gas, hazardous liquids or other substances, and**
101 **shall include but not be limited to pipes, sewers, conduits, cables, valves, lines,**
102 **wires, manholes, attachments, or appurtenances, and those portions of pylons**
103 **or other supports below ground that are within any public or private street, road**
104 **or alley, right-of-way dedicated to the public use or utility easement of record, or**
105 **prescriptive easement[; except that where]. If gas distribution lines or electric**
106 **lines, telecommunications facilities, cable television facilities, water service lines,**
107 **water system, storm drainage or sewer system lines [are and such lines or**
108 **facilities], other than those used for vehicular traffic control, lighting of**
109 **streets and highways and communications for emergency response, are**
110 **located on private property and** are owned solely by the owner or owners of
111 such **private** property, such lines or facilities receiving service shall not be
112 considered underground facilities for purposes of this chapter[; provided,
113 however], **except at locations where they cross or lie within an easement**
114 **or right-of-way dedicated to public use or owned by a person other than**
115 **the owner of the private property. Water and sanitary sewer lines**
116 **providing service to private property that are owned solely by the**
117 **owner of such property shall not be considered underground facilities**
118 **at any location.** For railroads regulated by the Federal Railroad
119 Administration, "underground facility" as used in sections 319.015 to 319.050
120 shall not include any excavating done by a railroad when such excavating is done
121 entirely on land which the railroad owns or on which the railroad operates, or in
122 the event of emergency, on adjacent land;

123 **(16) "Underground facility owner", any person who owns or**
124 **operates underground facilities as defined by this section;**

125 [(11)] **(17) "Working day", every day, except Saturday, Sunday or a**
126 **legally declared local, state or federal holiday.**

 319.022. 1. **Any person who installs or otherwise owns or operates**
2 **an underground facility shall become a participant in a notification**
3 **center upon first acquiring or owning or operating such underground**
4 **facility. All owners and operators of underground facilities within the**
5 **state shall maintain participation in a notification center.**

6 **2.** All owners and operators of underground facilities which are located
7 in a county of the first classification or second classification within the state who
8 are not members of a notification center on August 28, 2001, shall become
9 participants in the notification center prior to January 1, 2003. Any person who
10 installs or otherwise becomes an owner or operator of an underground facility
11 which is located within a county of the first classification or second classification
12 on or after January 1, 2003, shall become a participant in the notification center
13 within thirty days of acquiring or operating such underground facility. Beginning
14 January 1, 2003, all owners and operators of underground facilities which are
15 located in a county of the first classification or second classification within the
16 state shall maintain participation in the notification center.

17 **[2.] 3.** All owners and operators of underground facilities which are
18 located in a county of the third classification or fourth classification within the
19 state who are not members of a notification center on August 28, 2001, shall
20 become participants in the notification center prior to January 1, 2005. Any
21 person who installs or otherwise becomes an owner or operator of an underground
22 facility which is located within a county of the third classification or fourth
23 classification on or after January 1, 2005, shall become a participant in the
24 notification center within thirty days of acquiring or operating such underground
25 facility. Beginning January 1, 2005, all owners and operators of underground
26 facilities which are located in a county of the third classification or fourth
27 classification within the state shall maintain participation in the notification
28 center.

29 **[3.] 4.** The notification center shall maintain in its offices and make
30 available to any [person] **notification center participant or excavator** upon
31 request, a current list of the names and addresses of each [owner and operator
32 participating in the] notification center **participant**, including the county or

33 counties wherein each [owner or operator] **participant** has underground
34 facilities. The notification center may charge a reasonable fee to [persons]
35 **notification center participants or excavators** requesting such list as is
36 necessary to recover the actual costs of printing and mailing.

37 [4.] **5.** Excavators shall be informed of the availability of the list of
38 **notification center** participants [in the notification center] required in
39 subsection [2] **3** of this section in the manner provided for in section 319.024.

40 [5.] **6.** An annual audit or review of the notification center shall be
41 performed by a certified public accountant and a report of the findings submitted
42 to the speaker of the house of representatives and the president pro tem of the
43 senate.

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

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

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

26 notification and actual notification to all excavators on such list of the existence
27 and purpose of the notification center, and procedures for obtaining information
28 from the notification center;

29 (2) Either directly or through the notification center, notify excavators and
30 the public in the vicinity of his or her underground pipeline facility of the
31 availability of the notification center by including the information set out in
32 subsection 1 of section 319.025, in notifications required by the safety rules of the
33 Missouri public service commission relating to its damage prevention program;

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

319.025. 1. Except as provided in [sections] **subsection 3 of section**
2 319.030 and **in section** 319.050, a person shall not make or begin any excavation
3 in any public street, road or alley, right-of-way dedicated to the public use or
4 utility easement of record or within any private street or private property without
5 first giving notice to **the notification center** and obtaining information
6 concerning the possible location of any underground facilities which may be
7 affected by said excavation from [each and every owner and operator of
8 underground facilities] **underground facility owners** whose [name appears]
9 **names appear** on the current list of participants in the notification center **and**
10 **who were communicated to the excavator as notification center**
11 **participants who would be informed of the excavation notice.** Prior to
12 January 1, 2003, a person shall not make or begin any excavation pursuant to
13 this subsection without also making notice to owners or operators of underground
14 facilities which do not participate in a notification center and whose name
15 appears on the current list of the recorder of deeds in and for the county in which
16 the excavation is to occur. Beginning January 1, 2003, notice to the notification
17 center of proposed excavation shall be deemed notice to all owners and operators
18 of underground facilities. The notice referred to in this section shall comply with
19 the provisions of section 319.026. **As part of the process to request the**
20 **locating of underground facilities and having them properly marked,**
21 **the notification center shall ask excavators to identify whether or not**
22 **the proposed excavation will be on a public right-of-way or easement**
23 **dedicated to public use for vehicular traffic.**

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

27 center. Prior to January 1, 2003, the notice required by subsection 1 of this
28 section shall be given directly to owners or operators of underground facilities
29 who are not represented by a notification center.

30 3. [If the excavator is engaged in trenching, ditching, drilling,
31 well-drilling or -driving, augering or boring and, if upon notification by the
32 excavator pursuant to section 319.026, the owner or operator notifies the
33 excavator that the area of excavation cannot be determined from the description
34 provided by the excavator, the excavator shall mark the proposed area of
35 excavation prior to marking of location by the owner or operator of the
36 facility. For any excavation, as defined in section 319.015,] **Notification center**
37 **participants shall be relieved of the responsibility to respond to a**
38 **notice of intent to excavate received directly from the person intending**
39 **to commence an excavation, except for requests for clarification of**
40 **markings through on-site meetings as provided in subsection 1 of**
41 **section 319.030 and requests for locations at the time of an emergency**
42 **as provided by section 319.050.**

43 4. If the owner or operator notifies the excavator that the area of
44 excavation cannot be determined from the description provided by the excavator
45 through the notice required by this section, [the owner or operator may require]
46 the excavator [to provide] **shall provide clarification of the area of**
47 **excavation by markings or by providing** project plans to the owner or
48 operator, or [meet] **by meeting** on the site of the excavation with representatives
49 of the owner or operator as provided by subsection 1 of section 319.030. [The
50 provisions of this subsection shall not apply to owners of residential property
51 performing excavations on their own property.]

319.026. 1. An excavator shall serve notice of intent to excavate to the
2 notification center by toll-free telephone number operated on a twenty-four hour
3 per day, seven day per week basis or[, prior to January 1, 2003, to individual
4 nonparticipant owners or operators] **by facsimile or by completing notice via**
5 **the Internet** at least two working days, but not more than ten working days,
6 before **the expected date of** commencing the excavation activity. The
7 notification center receiving such notice shall inform the excavator of all [owners,
8 operators and other persons] **notification center participants** to whom such
9 notice will be transmitted and shall promptly transmit **all details of** such notice
10 **provided under subsection 2 of this section** to every [public utility,
11 municipal corporation and all persons owning or operating an underground

12 facility] **notification center participant** in the area of excavation [and which
13 are participants in and have registered their locations with the notification
14 center. The notification center receiving such notice shall solicit all information
15 required in subsection 2 of this section from the excavator and shall transmit all
16 details of such notice as required by this section].

17 2. [Each notice] **Notices** of intent to excavate given pursuant to this
18 section shall contain **the following information:**

19 (1) The name[, address] and telephone number [and facsimile number,
20 if any,] of the person filing the notice of [intent,] **excavation, if the telephone**
21 **number is different than that of the excavator, and** the name, address
22 [and], telephone number of the excavator[,] **and whether the excavator's**
23 **telephone is equipped with a recording device;**

24 (2) The date the excavation activity is **expected** to commence, the depth
25 of planned excavation and, if applicable, that the use of explosives is anticipated
26 on the excavation site, and the type of excavation being planned, including
27 whether the excavation involves [tunneling or horizontal boring. The notice shall
28 state whether someone is available between 8:00 a.m. and 5:00 p.m. on working
29 days at the telephone number given and whether the excavator's telephone is
30 equipped with a recording device. The notice shall also specify] **trenchless**
31 **excavation;**

32 (3) **The facsimile number, email address, and cellular telephone**
33 **number of the excavator, if any;**

34 (4) **The name of the person primarily responsible for conducting**
35 **the excavation or managing the excavation process, and if any of the**
36 **information stated in subdivisions (1) or (3) of this subsection is**
37 **different for the person primarily responsible for the excavation, the**
38 **notice shall also state the same information for that person;**

39 (5) **A detailed description accepted by the notification center**
40 **sufficient for** the location of the excavation by any one or more of the following
41 means: by reference to a specific street address, [or by reference to specific
42 quarter section, and shall state whether excavation is to take place within the
43 city limits. The notice shall also include] **or by description of location in**
44 **relation to the nearest numbered, lettered, or named state or county**
45 **road or city street for which a road sign is posted, or by latitude and**
46 **longitude including the appropriate description in degrees, minutes,**
47 **and seconds, or by state plane coordinates;**

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

53 **(7) A description of the location or locations of the excavation at the site**
54 **described by direction and approximate distance in relation to prominent features**
55 **of the site, such as existing buildings or roadways[. For excavations occurring**
56 **outside the limits of an incorporated city, the following additional information**
57 **shall be provided: the location of the excavation in relation to the nearest**
58 **numbered, lettered or named state or county road which is posted on a road sign,**
59 **including the approximate distance from the nearest intersection or prominent**
60 **landmark; and, if the excavation is not on or near a posted numbered, lettered or**
61 **named state or county road,];**

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

65 **3.** The notification center receiving such notice shall solicit all information
66 required [in this] **by subsection 2 of this section** and shall require the
67 excavator to provide all such information before notice by the excavator is deemed
68 to be completed pursuant to sections 319.015 to 319.050. The notification center
69 shall transmit all details of such notice as required [in subsection 1 of] **by this**
70 **section.**

71 **[3.] 4.** A [written] record of each notice of intent to excavate shall be
72 maintained by the notification center or, prior to January 1, 2003, by the
73 nonmember owner or operator receiving direct notifications for a period of five
74 years. The record shall include the date the notice was received and all
75 information required by subsection 2 of this section which was provided by the
76 excavator **and a record of the underground facility owners notified by**
77 **the notification center.** If the [recipient] **notification center** creates a
78 record of the notice by [computer or] telephonic recording, such record of the
79 original notice shall be maintained for one year from the date of
80 receipt. **Records of notices to excavate maintained by the notification**
81 **center in electronic form shall be deemed to be records under this**
82 **subsection.** Persons holding records of notices of intent to excavate and records
83 of information provided to the excavator by the notification center or owner or

84 operator of the facility, shall make copies of such records available for a
85 reasonable copying fee upon the request of the owner or operator of the
86 underground facilities or the excavator filing the notice.

87 [4.] 5. If in the course of excavation the person responsible for the
88 excavation operations discovers that the owner or operator of the underground
89 facility who is a participant in a notification center has incorrectly located the
90 underground facility, he or she shall notify the notification center which shall
91 inform the [participating owner or operator] **notification center participant**.
92 If the owner or operator of the underground facility is not a participant in a
93 notification center prior to the January 1, 2003, effective date for mandatory
94 participation pursuant to section 319.022, the person responsible for the
95 excavation shall notify the owner. The person responsible for maintaining records
96 of the location of underground facilities for the [owner or operator] **notification**
97 **center participant** shall correct such records to show the actual location of such
98 facilities, if current records are incorrect.

99 [5. Notwithstanding the fact that a project is a preengineered project or
100 a permitted project, excavators connected therewith shall be required to give
101 notification in accordance with this section prior to commencement of excavation.]

102 6. When markings have been provided in response to a notice of intent to
103 excavate, excavators may **commence or** continue to work within the area
104 described in the notice **for** so long as the markings are visible. If markings
105 become unusable due to weather, construction or other cause, the excavator shall
106 contact the notification center to request remarking. Such notice shall be given
107 in the same manner as original notice of intent to excavate, and the owner or
108 operator shall remark the site in the same manner, within the same time, as
109 required in response to an original notice of intent to excavate. Each excavator
110 shall exercise reasonable care not to unnecessarily disturb or obliterate markings
111 provided for location of underground facilities. If remarking is required due to
112 the excavator's failure to exercise reasonable care, or if repeated unnecessary
113 requests for remarking are made by an excavator even though the markings are
114 visible and usable, the excavator may be liable to the owner or operator for the
115 reasonable cost of such remarking.

319.027. 1. Any person may make design requests by contacting
2 **the notification center. Such design requests shall include all**
3 **information deemed necessary by the notification center to complete**
4 **the notice, including the identification of the person and a description**

5 of the location of the project being designed and other information
6 similar to that required of excavators under section 319.026.

7 2. Design requests shall be made to the notification center at
8 least five working days, but not more than ten working days, before the
9 date the person has requested receiving the information from the
10 underground facility owner. Upon receipt of a design request, the
11 notification center shall inform the person of the name of all
12 notification center participants to whom the notice will be transmitted
13 and shall promptly transmit such notice to the appropriate
14 underground facility owners.

15 3. Every underground facility owner who receives a design
16 request shall mark the location of the facility, or contact the person
17 making the request, within five working days after the date the notice
18 was received from the notification center. If the person making the
19 request was contacted as an alternative to marking location, the person
20 and the underground facility owner shall mutually agree on a schedule
21 and method for providing the information.

22 4. No excavation may be commenced based upon information
23 received through a design request. Obtaining information through a
24 design request shall not excuse any person commencing an excavation
25 from making notice and obtaining information under sections 319.025
26 and 319.026 concerning the possible location of any underground
27 facilities which may be affected.

 319.029. Notwithstanding the fact that a project is a
2 preengineered project or a permitted project, or that a design request
3 was previously made, excavators connected therewith shall be required
4 to give notification in accordance with sections 319.025 and 319.026
5 prior to commencement of excavation.

 319.030. 1. Every person owning or operating an underground facility to
2 whom notice of intent to excavate is required to be given shall, upon receipt of
3 such notice as provided in this section from a person intending to commence an
4 excavation, inform the excavator as promptly as practical, but not in excess of two
5 working days [from receipt of the notice], unless otherwise mutually agreed, of
6 the approximate location of underground facilities in or near the area of the
7 excavation so as to enable the person engaged in the excavation work to locate the
8 facilities in advance of and during the excavation work. **The two working days**
9 **provided for notice in this subsection and subsection 1 of section**

10 **319.026, shall begin at 12:00 a.m. following the receipt of the request by**
11 **the notification center.** If the information available to the owner or operator
12 of a pipeline facility or an underground electric or communications cable discloses
13 that valves, vaults or other appurtenances are located in or near the area of
14 excavation, the owner or operator shall either inform the excavator of the
15 approximate location of such appurtenances at the same time and in the same
16 manner as the approximate location of the remainder of the facility is provided,
17 or shall at such time inform the excavator that appurtenances exist in the area
18 and provide a telephone number through which the excavator may contact a
19 representative of the owner or operator who will meet at the site within one
20 working day after request from the excavator and at such meeting furnish the
21 excavator with the available information about the location and nature of such
22 appurtenances. If the excavator states in the notice of intent to excavate that the
23 excavation will involve [tunneling or horizontal boring] **trenchless technology,**
24 the owner or operator shall inform the excavator of the depth, to the best of his
25 or her knowledge or ability, of the facility according to the records of the owner
26 or operator. The owner or operator shall provide the approximate location of
27 underground facilities by use of markings. If **flags or** stakes are used, [staking]
28 **such marking** shall be consistent with the color code and other standards for
29 ground markings. Persons representing the excavator and the owner or operator
30 shall meet on the site of excavation within two working days of a request by
31 either person for such meeting for the purpose of clarifying markings, or upon
32 agreement of the excavator and owner or operator, such meeting may be an
33 alternate means of providing the location of facilities by originally marking the
34 approximate location of the facility at the time of the meeting. If upon receipt of
35 a notice of intent to excavate, an owner or operator determines that he or she
36 neither owns or operates underground facilities in or near the area of excavation,
37 the owner or operator shall within two working days after receipt of the notice,
38 inform the excavator that the owner or operator has no facilities located in the
39 area of the proposed excavation. [If the notice of intent to excavate provided to
40 the owner or operator of the underground facility by the notification center states
41 that a person is available at the telephone number given in the notice between
42 8:00 a.m. and 5:00 p.m. on each working day or that the excavator's telephone is
43 equipped with a recording device, or states a facsimile number for the excavator,
44 the owner or operator shall make actual notice of no facilities in the area of the
45 excavation described in the notice by one or more of the following methods:

46 calling the telephone number given between 8:00 a.m. and 5:00 p.m. on a working
47 day; leaving a message on the excavator's recording device; transmitting a
48 facsimile message to the excavator; marking "no facilities" or "clear" at the site
49 of excavation; or verbally informing the excavator at the site of excavation. If the
50 notice of intent to excavate provided to the owner or operator does not indicate
51 that a person is available at the telephone number given in the notice between
52 8:00 a.m. and 5:00 p.m. on each working day or that the excavator's telephone is
53 equipped with a recording device or that a facsimile number is provided for
54 receiving facsimile messages, then the owner or operator may attempt to notify
55 the excavator of no facilities in the area of excavation by any of the methods
56 indicated above; however, two documented attempts by the owner or operator to
57 reach such an excavator by telephone shall constitute compliance with this
58 subsection.] **The owner or operator of the underground facility shall**
59 **make notice to the excavator that no facilities are located in the area**
60 **of excavation by contacting the excavator by any of the following**
61 **methods:**

62 **(1) By calling the primary number of the excavator or by calling**
63 **the telephone number of the responsible person as provided by the**
64 **excavator under subdivision (4) of subsection 2 of section 319.026;**

65 **(2) By leaving a message on the recording device for such**
66 **numbers;**

67 **(3) By calling the cellular telephone number of the excavator or**
68 **responsible person;**

69 **(4) By notifying the excavator by facsimile or electronic mail at**
70 **numbers or addresses stated by the excavator in the notice of**
71 **excavation made under subsection 2 of section 319.026;**

72 **(5) By marking "clear" or "OK" at the site of excavation; or**

73 **(6) By verbally informing the excavator in person.**

74 **If the only means of contacting the excavator is one or more telephone**
75 **numbers provided by the excavator in the notice of excavation under**
76 **section 319.026, then two attempts by the underground facility owner**
77 **to contact the excavator at one of the telephone numbers provided shall**
78 **constitute compliance with this subsection.**

79 **2. A record of the date and means of informing the excavator that no**
80 **facilities were located by the owner or operator shall be included in the written**
81 **records [required by subsection 3 of section 319.026] of the underground**

82 facility owner regarding each specific notice of excavation.

83 [2. Owners and operators of underground facilities who are participants
84 in the notification center according to the current list maintained in the offices
85 of the notification center shall be relieved of the responsibility to respond to
86 notices of intent to excavate received directly from the person intending to
87 commence an excavation, except for requests for clarification of markings through
88 on-site meetings and requests for locations at the time of an emergency as
89 provided by section 319.050.]

90 3. In the event that a person owning or operating an underground facility
91 fails to comply with the provisions of subsection 1 of this section after notice
92 given by an excavator in compliance with section 319.026, the excavator, prior to
93 commencing the excavation, shall give a second notice to the [same entity to
94 whom the original notice was made] **notification center** as required by section
95 319.026 **stating that there has been no response to the original notice**
96 **given under section 319.026.** [If,] After the receipt of the [second] notice
97 **stating there has been "no response"**, the owner or operator of an
98 underground facility [fails to provide the excavator with location information
99 during the next working day] **shall, within two hours of the receipt of such**
100 **notice, mark its facilities or contact and inform the excavator of when**
101 **the facilities will be marked; provided, however, that for "no response"**
102 **notices made to the notification center by 2:00 p.m., the markings shall**
103 **be completed on the working day the notice is made to the notification**
104 **center, and provided that for "no response" notices made to the**
105 **notification center after 2:00 p.m., the markings shall be completed no**
106 **later than 10:00 a.m. on the next working day. If an underground**
107 **facility owner fails to mark its facilities or contact the excavator as**
108 **required by this subsection,** the excavator may commence the
109 excavation. Nothing in this subsection shall excuse the excavator from exercising
110 the degree of care in making the excavation as is otherwise required by law.

111 4. For purposes of this section, a period of two working days begins [upon
112 receipt of the excavator's notice of intent to excavate or upon receipt of a request
113 for a meeting and shall end on the second working day thereafter at the same
114 time of day. If the excavator's notice of intent to excavate or a request for a
115 meeting is received on a working day before 8:00 a.m., such period of time shall
116 begin at 8:00 a.m. of that day. If the excavator's notice of intent to excavate or
117 a request for a meeting is received after 5:00 p.m. on a working day, or at any

118 time on a day that is not a working day, then such period of time shall begin at
119 8:00 a.m. of the first working day after the day of actual receipt] **at 12:00 a.m.**
120 **following when the request is made.**

319.037. 1. Notwithstanding any other provision of law to the contrary,
2 the procedures and requirements set forth in this section shall apply on the site
3 of any excavation involving [horizontal boring] **trenchless excavation**,
4 including directional drilling, where the approximate location of underground
5 facilities has been marked in compliance with section 319.030 and where any part
6 of the walls of the intended bore are within the marked approximate location of
7 the underground facility.

8 2. The excavator shall not use power-driven equipment for [horizontal
9 boring] **trenchless excavation**, including directional drilling, within the
10 marked approximate location of such underground facilities until the excavator
11 has made careful and prudent efforts to confirm the horizontal and vertical
12 location thereof in the vicinity of the proposed excavation through methods
13 appropriate to the geologic and weather conditions, and the nature of the facility,
14 such as the use of electronic locating devices, hand digging, pot holing when
15 practical, soft digging, vacuum methods, use of pressurized air or water,
16 pneumatic hand tools or other noninvasive methods as such methods are
17 developed. Such methods of confirming location shall not violate established
18 safety practices. Nothing in this subsection shall authorize any person other than
19 the owner or operator of a facility to attach an electronic locating device to any
20 underground facility. For excavations paralleling the underground facility, such
21 efforts to confirm the location of the facility shall be made at careful and prudent
22 intervals. The excavator shall also make careful and prudent efforts by such
23 means as are appropriate to the geologic and weather conditions and the nature
24 of the facility, to confirm the horizontal and vertical location of the boring device
25 during boring operations. Notwithstanding the foregoing, the excavator shall not
26 be required to confirm the horizontal or vertical location of the underground
27 facilities if the excavator, using the methods described in this section, excavates
28 a hole over the underground facilities to a depth two feet or more below the
29 planned boring path and then carefully and prudently monitors the horizontal
30 and vertical location of the boring device in a manner calculated to enable the
31 device to be visually observed by the excavator as it crosses the entire width of
32 the marked approximate location of the underground facilities.

319.041. Nothing in the foregoing shall relieve an excavator from the

2 obligation to excavate in a safe and prudent manner, nor shall it absolve an
3 excavator from liability for damage to legally installed
4 facilities. [Notwithstanding any provision of law to the contrary, nothing in this
5 chapter shall abrogate any contractual provisions entered into between any
6 railroad and any other party owning or operating an underground facility within
7 the railroad's right-of-way.]

319.042. Notwithstanding any provision of law to the contrary,
2 **nothing in this chapter shall abrogate any contractual provisions**
3 **entered into between any railroad and any other party owning or**
4 **operating an underground facility within the railroad's right-of-**
5 **way. For railroads regulated by the Federal Railroad Administration,**
6 **sections 319.015 to 319.050 shall not include any underground facility**
7 **owned or operated by a railroad on land which the railroad owns or**
8 **any excavation done by a railroad when such excavation is done**
9 **entirely on land which the railroad owns.**

319.045. 1. In the event of any damage or dislocation or disturbance of
2 any underground facility in connection with any excavation, the person
3 responsible for the excavation operations shall immediately notify the notification
4 center [and the owner or operator of the facility or the owner or operator, if
5 known, if it is not a participant in the notification center prior to January 1,
6 2003. On or after January 1, 2003, the responsible party shall notify the
7 notification center only]. **This subsection shall be deemed to require**
8 **reporting of any damage, dislocation, or disturbance to trace wires,**
9 **encasements, cathode protection, permanent above-ground stakes or**
10 **other such items utilized for protection of the underground facility.**

11 2. In the event of any damage or dislocation or disturbance to any
12 underground facility **or any protective devices required to be reported by**
13 **the excavator under subsection 1 of this section,** in advance of or during
14 the excavation work, the person responsible for the excavation operations shall
15 not conceal or attempt to conceal such damage or dislocation or disturbance, nor
16 shall that person attempt or make repairs to the facility unless authorized by the
17 owner or operator of the facility. In the case of sewer lines or facilities,
18 emergency temporary repairs may be made by the excavator after notification
19 without the owners' or operators' authorization to prevent further damage to the
20 facilities. Such emergency repairs shall not relieve the excavator of responsibility
21 to make notification as required by subsection 1 of this section.

22 3. Any person who violates in any material respect the provisions of
23 section 319.022, [319.023,] 319.025, 319.026, **319.029**, 319.030, 319.037, or
24 319.045 or who willfully damages an underground facility shall be liable to the
25 state of Missouri for a civil penalty of up to ten thousand dollars for each
26 violation for each day such violation persists, except that the maximum penalty
27 for violation of the provisions of sections 319.010 to 319.050 shall not exceed five
28 hundred thousand dollars for any related series of violations. An action to
29 recover such civil penalty may be brought by the attorney general or a
30 prosecuting attorney on behalf of the state of Missouri in any appropriate circuit
31 court of this state. Trial thereof shall be before the court, which shall consider
32 the nature, circumstances and gravity of the violation, and with respect to the
33 person found to have committed the violation, the degree of culpability, the
34 absence or existence of prior violations, whether the violation was a willful act,
35 the effect on ability to continue to do business, any good faith in attempting to
36 achieve compliance, ability to pay the penalty, and such other matters as justice
37 may require in determining the amount of penalty imposed.

38 4. The attorney general may bring an action in any appropriate circuit
39 court of this state for equitable relief to redress or restrain a violation by any
40 person of any provision of sections 319.010 to 319.050. The court may grant such
41 relief as is necessary or appropriate, including mandatory or prohibitive
42 injunctive relief, temporary or permanent.

 319.050. The provisions of sections 319.025 and 319.026 shall not apply
2 to any [utility which is repairing or replacing any of its facilities due to damage
3 caused during an unexpected occurrence or when making an excavation at times
4 of emergency resulting from a sudden, unexpected occurrence, and presenting a
5 clear and imminent danger demanding immediate action to prevent or mitigate
6 loss or damage to life, health, property or essential public services. "Unexpected
7 occurrence" includes, but is not limited to, thunderstorms, high winds, ice or snow
8 storms, fires, floods, earthquakes, or other soil or geologic movements, riots,
9 accidents, water pipe breaks, vandalism or sabotage which cause damage to
10 surface or subsurface facilities requiring immediate repair] **excavation when**
11 **necessary due to an emergency as defined in section 319.015**. An
12 [excavator or utility] **excavation** may proceed regarding such emergency,
13 provided all reasonable precautions have been taken to protect the underground
14 facilities. In any such case, the excavator [or utility] shall give notification,
15 substantially in compliance with section 319.026, as soon as practical, and upon

16 being notified that an emergency exists, each [owner and operator of an]
17 underground facility **owner** in the area shall [immediately provide all location
18 information reasonably available to any excavator who requests the same],
19 **within two hours after receiving such notice, provide markings or**
20 **contact the excavator with any information immediately available to**
21 **assist the excavator and shall inform the excavator if not able to mark**
22 **within the two hours of when the underground facility will be marked**
23 **at the site of the emergency. The excavator may be liable to the owner**
24 **or operator for costs directly associated with the locating of any such**
25 **underground facility relating to a notification of an emergency that**
26 **does not meet the definition of "emergency" as stated in section 319.015.**

[319.036. Any person owning or leasing agricultural
2 property shall not be required to make notice of excavation
3 required by section 319.022 for excavations on such property, if
4 such excavation is not in the proximity of an underground facility
5 which is marked with an aboveground placard or line marker and
6 is not in the proximity of a utility easement known to that
7 person. For purposes of this section "agricultural property" means
8 any property used to produce an agricultural product as defined by
9 section 348.400, RSMo, or defined as agricultural property by that
10 section.]

Section B. Section A of this act shall become effective on January 1, 2009.

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