

FIRST REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 133

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR FITZWATER.

0382S.05P

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3 repealed and eleven new sections enacted in lieu thereof, to be  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;

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

(2) "Best practices", the damage prevention recommended standard for protecting vital underground facilities issued by the Common Ground Alliance, sponsored by the Department of Transportation as described in 49 U.S.C. Section 6105(a), as amended. The Common Ground Alliance Best Practices shall be read in conjunction with Missouri law; in any instance in which such best practices conflict with state law, state law shall control;

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

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

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

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

[(3)] (7) "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, earthquakes, or other soil or geologic movements, riots, accidents, water or wastewater pipe breaks, vandalism, or sabotage;

[(4)] (8) "Excavation", any operation in which earth, rock or other material in or on the ground is moved, removed

or otherwise displaced by means of any tools, equipment or explosives and includes, without limitation, backfilling, grading, trenching, digging, ditching, pulling material from a ditch **[but not including] not in conjunction with** routine road maintenance, drilling, well-drilling, augering, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, and demolition of structures~~[,~~  
**except that,]. Exemptions to this definition include:**

**routine road maintenance**, the use of mechanized tools and equipment to break and remove pavement and masonry down only to the depth of such pavement or masonry on roads dedicated to the public use for vehicular traffic, the tilling of soil for agricultural purposes when such excavation does not exceed sixteen inches in depth, the installation of marking flags and stakes and the use of pressurized air to disintegrate and **the** suction to remove earth, rock, or other materials for the location of underground facilities **[shall not be deemed excavation]**. Backfilling or moving earth on the ground in connection with other excavation operations at the same site shall not be deemed separate instances of excavation. For railroads regulated by the Federal Railroad Administration, "excavation" shall not include any excavating done by a railroad when such excavating is done entirely on land that the railroad owns or on which the railroad operates, or in the event of an emergency, excavating done by a railroad on adjacent land;

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

**[(6)] (10)** "Locate status", the underground facility owner's designation of the status of the locate request to the notification center which then makes that information

75 available to the person making the locate request through  
76 electronic or other means;

77       **(11) "Locator strip", a type of detectible underground**  
78 **location device that consists of a plastic or other durable**  
79 **material ribbon containing a material capable of being**  
80 **detected from above ground with an electronic locating**  
81 **device and color coded by type of underground facility;**

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

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

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

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

103       **[(10)] (16) "Permitted project", a project for which a**  
104 **permit for the work to be performed is required to be issued**  
105 **by a local, state or federal agency and, as a prerequisite**  
106 **to receiving such permit, the applicant is required to**

107 notify all underground facility owners in the area of the  
108 work for purposes of identifying the location of existing  
109 underground facilities;

110 [(11)] (17) "Person", any individual, firm, joint  
111 venture, partnership, corporation, association, cooperative,  
112 municipality, political subdivision, governmental unit,  
113 department or agency and shall include a notification center  
114 and any trustee, receiver, assignee or personal  
115 representative thereof;

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

123 (19) "Reasonable care", includes compliance with  
124 Common Ground Alliance Best Practices;

125 (20) "Start date of work", the date provided by the  
126 excavator on the notice of intent to excavate that  
127 identifies the date of intention to begin excavation;

128 [(13)] (21) "State plane coordinates", a system of  
129 locating a point on a flat plane developed by the National  
130 Oceanic and Atmospheric Administration and utilized by state  
131 agencies, local governments, and other persons to designate  
132 the site of a construction project;

133 [(14)] (22) "Trenchless excavation", horizontal  
134 excavation parallel to the surface of the earth which does  
135 not use trenching or vertical digging as the primary means  
136 of excavation, including but not limited to directional  
137 boring, tunneling, or augering;

138           [(15)] (23) "Underground facility", any item of  
139 personal property which shall be buried or placed below  
140 ground for use in connection with the storage or conveyance  
141 of water, storm drainage, sewage, telecommunications  
142 **service, broadband** service, cable television service,  
143 electricity, oil, gas, hazardous liquids or other  
144 substances, and shall include but not be limited to pipes,  
145 sewers, conduits, cables, valves, vaults, **fiber optic or**  
146 **other** lines, wires, manholes, attachments, or appurtenances,  
147 and those portions of pylons or other supports below ground  
148 that are within any public or private street, road or alley,  
149 right-of-way dedicated to the public use or utility easement  
150 of record, or prescriptive easement. If gas distribution  
151 lines or electric lines, telecommunications **or broadband**  
152 facilities, cable television facilities, water service  
153 lines, water system, storm drainage or sewer system lines,  
154 other than those used for vehicular traffic control,  
155 lighting of streets and highways and communications for  
156 emergency response, are located on private property and are  
157 owned solely by the owner or owners of such private  
158 property, such lines or facilities receiving service shall  
159 not be considered underground facilities for purposes of  
160 this chapter, except at locations where they cross or lie  
161 within an easement or right-of-way dedicated to public use  
162 or owned by a person other than the owner of the private  
163 property. Water and sanitary sewer lines providing service  
164 to private property that are owned solely by the owner of  
165 such property shall not be considered underground facilities  
166 at any location. A structure that transports only storm  
167 water drainage under roadways, driveways, or railways shall  
168 not be considered an underground facility;

169           [(16)] (24) "Underground facility owner", any person  
170 who owns or operates underground facilities;

171           [(17)] (25) "Working day", every day, except Saturday,  
172 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, with the exception**  
4   **of storm sewers and sanitary sewer mains and laterals**  
5   **installed at depths more than six feet, shall be installed**  
6   **with a detectible underground location device unless the**  
7   **facility is capable of being detected from above ground with**  
8   **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 four**  
12 **voting directors, elected by the board of directors, from**  
13 **other damage prevention stakeholders within the construction**  
14 **industry, three of whom shall be from a heavy civil, site**  
15 **grading, road or highway contractor and one of whom shall be**  
16 **from a utility or underground contractor; provided, however,**  
17 **that none of the directors, elected by the board of**  
18 **directors, shall work for a contractor that owns or operates**  
19 **an underground facility. All directors shall be subject to**  
20 **the bylaws and policies of the notification center.**

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

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

32           [4.] 5. An annual audit or review of the notification  
33 center shall be performed by a certified public accountant  
34 and a report of the findings submitted to the speaker of the  
35 house of representatives and the president pro tem of the  
36 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



underground facility shall be deemed in compliance with this section by such persons.

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

(1) Identify on a current basis persons who normally engage in excavation activities in the area in which the pipeline is located. Every such person who is a participant in a notification center shall be deemed to comply with this subdivision if such notification center maintains and updates a list of the names and addresses of all excavators who have given notice of intent to excavate to such notification center during the previous year and provided the notification center shall, not less frequently than annually, provide public notification and actual notification to all excavators on such list of the existence and purpose of the notification center, and procedures for obtaining information from the notification center;

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

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

319.025. 1. Except as provided in subsection 4 of section 319.030 and in section 319.050, **[a person]** **an 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 facilities  
17 **and shall have an operational life ending at 11:59 p.m.**  
18 **twenty-one consecutive calendar days from the start date of**  
19 **work.** The notice referred to in this section shall comply  
20 with the provisions of section 319.026.

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

26 3. Notification center participants shall be relieved  
27 of the responsibility to respond to a notice of intent to  
28 excavate received directly from the person intending to  
29 commence an excavation, except for requests for  
30 clarification of markings through on-site meetings as  
31 provided in subsection 1 of section 319.030 and requests for  
32 locations at the time of an emergency as provided by section  
33 319.050.

34 4. Notwithstanding the provisions of this section to  
35 the contrary, a person shall not make or begin any

36 excavation in any state highway, or on the right-of-way of  
37 any state highway, without first obtaining a permit from the  
38 state highways and transportation commission pursuant to  
39 section 227.240, provided however, the provisions of this  
40 subsection shall not apply to railroad right-of-way owned or  
41 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 Nothing in this section shall conflict with sections  
68 319.024, 319.025, or 319.030.

69           4. The notification center receiving such notice shall  
70 solicit all information required by subsection 2 of this  
71 section and shall require the excavator to provide all such  
72 information before notice by the excavator is deemed to be  
73 completed pursuant to sections 319.015 to 319.050. The  
74 notification center shall transmit all details of such  
75 notice as required by this section.

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

89 records of information provided to the excavator by the  
90 notification center or owner or operator of the facility  
91 shall make copies of such records available for a reasonable  
92 copying fee upon the request of the owner or operator of the  
93 underground facilities or the excavator filing the notice.

94 [5.] 6. If in the course of excavation the person  
95 responsible for the excavation operations discovers that the  
96 owner or operator of the underground facility who is a  
97 participant in a notification center has incorrectly located  
98 the underground facility, **or discovers an underground**  
99 **facility that is not marked**, he or she shall notify the  
100 notification center which shall inform the underground  
101 facility owner. The underground facility owner shall  
102 respond to the incorrect locate notification within two  
103 hours of receipt of the notification by contacting the  
104 person responsible for the excavation or by correctly  
105 locating their underground facility. The person responsible  
106 for maintaining records of the location of underground  
107 facilities for the notification center participant shall  
108 correct such records to show the actual location of such  
109 facilities, if current records are incorrect.

110 [6.] 7. When markings have been provided in response  
111 to a notice of intent to excavate, excavators may commence  
112 or continue to work within the area described in the notice  
113 **[for so] until the notice of intent to excavate expiration**  
114 **date as** long as the markings are visible. If an excavator  
115 is unable to begin the excavation within ten working days as  
116 described in the request, the excavator shall make a  
117 relocate request before beginning the excavation. If  
118 markings become unusable due to weather, construction or  
119 other cause, the excavator shall contact the notification  
120 center to request remarking. Such notice shall be given in

the same manner as original notice of intent to excavate, and the owner or operator shall remark the site in the same manner, within the same time, as required in response to an original notice of intent to excavate. Each excavator shall exercise reasonable care not to unnecessarily disturb or obliterate markings provided for location of underground facilities. If remarking is required due to the excavator's failure to exercise reasonable care, or if repeated unnecessary requests for remarking are made by an excavator even though the markings are visible and usable, the excavator may be liable to the owner or operator for the reasonable cost of such remarking. Nothing in this section shall allow any person other than the facility owner or their representative to mark or relocate any underground facility.

[7.] 8. Before commencing excavation, the excavator shall determine best practices for confirming the horizontal and vertical location of facilities at the site of excavation considering conditions at the site including geology, access to the site, and the presence of paved surfaces. Hand digging or soft digging shall be used as a best practice when possible.

[8.] 9. In the event of any damage, dislocation, or disturbance of any underground facility in connection with any excavation, the person responsible for the excavation operations shall notify the notification center. This subsection shall be deemed to require reporting of any damage, dislocation, or disturbance to trace wires, encasements, cathode protection, permanent above-ground stakes, or other such items utilized for protection of the underground facility. The excavator shall immediately contact 911 when any damage or contact with a pipeline

results in a release from the pipeline of hazardous liquid or gas to occur.

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

[10.] 11. No later than [April 1, 2015, and each year thereafter] **the date determined annually by Common Ground Alliance, or any successor organization,** each underground facility owner who owns or operates electric, gas, or pipeline facilities shall submit to a central repository designated by the notification center a report of damages experienced by its facilities for the prior calendar year. The notification center shall determine the minimum information to be reported. All data submitted shall be aggregated and anonymous. Information provided by the underground facility owner specific to damage data submitted shall be accessible only to the underground facility owner unless otherwise designated by the underground facility owner.



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

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

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

4. No excavation may be commenced based upon information received through a design request. Obtaining information through a design request shall not excuse any person commencing an excavation from making notice and 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],

her, **or its** knowledge or ability, of the facility according to the records of the owner or operator. The owner or operator shall provide the approximate location of underground facilities by use of markings as designated in section 319.015. Persons representing the excavator and the owner or operator shall meet on the site of excavation within two working days of a request by either person for such meeting for the purpose of clarifying markings, or upon agreement of the excavator and owner or operator, such meeting may be an alternate means of providing the location of facilities by originally marking the approximate location of the facility at the time of the meeting. If upon receipt of a notice of intent to excavate, an owner or operator determines that he or she neither owns or operates underground facilities in or near the area of excavation, the owner or operator shall within two working days after receipt of the notice, inform the excavator that the owner or operator has no facilities located in the area of the proposed excavation. The owner or operator of the underground facility shall make notice to the excavator that no facilities are located in the area of excavation by contacting the excavator by any of the following methods:

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

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

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

(4) By notifying the excavator by **[facsimile or]** 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

notice to the notification center as required by section 319.026 stating that there has been no response to the original notice given under section 319.026. After the receipt of the notice stating there has been "no response", the owner or operator of an underground facility shall, within two hours of the receipt of such notice, mark its facilities or contact and inform the excavator of when the facilities will be marked; provided, however, that for "no response" notices made to the notification center by 2:00 p.m., the markings shall be completed on the working day the notice is made to the notification center, and provided that for "no response" notices made to the notification center after 2:00 p.m., the markings shall be completed no later than 10:00 a.m. on the next working day. If an underground facility owner fails to mark its facilities or contact the excavator as required by this subsection, the excavator may commence the excavation. Nothing in this subsection shall excuse the excavator from exercising the degree of care in making the excavation as is otherwise required by law.

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

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

2. If the sewer system owner determines that sewer 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 is damaged by an  
6 excavator due to the furnishing of incorrect information by  
7 the facility owner or operator, the excavator shall not be  
8 subject to any liability resulting from damage to the  
9 underground facility as a result of the excavating, provided  
10 that such person engaging in scheduled excavating complies  
11 with the requirements of sections 319.010 to 319.050 with  
12 respect to such excavation and there is no evidence visible  
13 and obvious to the excavator of the presence of a mismarked  
14 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 **except**  
9 **as provided in section 319.034.**

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

16 4. The failure of an underground facility owner **or a**  
17 **locator or other contractor engaged by the facility owner** to  
18 mark [his or her] **the facility owner's** facilities that are  
19 located in an area of excavation described in a notice of  
20 intent to excavate received by the underground facility  
21 owner, as required by section 319.030, or the failure of an  
22 underground facility owner to be a notification center

23 participant, consistent with the provisions of section  
24 319.022, shall be a rebuttable presumption of negligence on  
25 the part of such owner, **and of the locator or other**  
26 **contractor engaged by the facility owner**, in the event that  
27 such failure shall cause injury, loss, or damage. In  
28 addition to any penalties provided herein, liability under  
29 common law may apply.

✓