

SENATE BILL NO. 573

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHATZ.

2777S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 319.015, RSMo, and to enact in lieu thereof two new sections relating to the underground damage prevention review board, with penalty provisions.

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

Section A. Section 319.015, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 319.015 and 319.060, to read as follows:

319.015. For the purposes of sections 319.010 to [319.050] **319.060**, 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, earthquakes,

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

19 or other soil or geologic movements, riots, accidents, water
20 or wastewater pipe breaks, vandalism, or sabotage;

21 (4) "Excavation", any operation in which earth, rock
22 or other material in or on the ground is moved, removed or
23 otherwise displaced by means of any tools, equipment or
24 explosives and includes, without limitation, backfilling,
25 grading, trenching, digging, ditching, pulling material from
26 a ditch but not including routine road maintenance,
27 drilling, well-drilling, augering, boring, tunneling,
28 scraping, cable or pipe plowing, plowing-in, pulling-in,
29 ripping, driving, and demolition of structures, except that,
30 the use of mechanized tools and equipment to break and
31 remove pavement and masonry down only to the depth of such
32 pavement or masonry on roads dedicated to the public use for
33 vehicular traffic, the tilling of soil for agricultural
34 purposes when such excavation does not exceed sixteen inches
35 in depth, the installation of marking flags and stakes and
36 the use of pressurized air to disintegrate and suction to
37 remove earth, rock, or other materials for the location of
38 underground facilities shall not be deemed excavation.
39 Backfilling or moving earth on the ground in connection with
40 other excavation operations at the same site shall not be
41 deemed separate instances of excavation. For railroads
42 regulated by the Federal Railroad Administration,
43 "excavation" shall not include any excavating done by a
44 railroad when such excavating is done entirely on land that
45 the railroad owns or on which the railroad operates, or in
46 the event of an emergency, excavating done by a railroad on
47 adjacent land;

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

51 (6) "Locate status", the underground facility owner's
52 designation of the status of the locate request to the
53 notification center which then makes that information
54 available to the person making the locate request through
55 electronic or other means;

56 (7) "Marking", the use of paint, flags, stakes, or
57 other clearly identifiable materials to show the field
58 location of underground facilities, or the area of proposed
59 excavation, in accordance with the marking standards for
60 underground facilities as designated by the Common Ground
61 Alliance Best Practices Version 10.0 except that
62 "approximate location" shall comply with the requirements as
63 set forth in subdivision (1) of this section;

64 (8) "Notification center", a statewide organization
65 operating twenty-four hours a day, three hundred sixty-five
66 days a year on a not-for-profit basis, supported by a
67 majority of the underground facility owners in the state of
68 Missouri;

69 (9) "Notification center participant", an underground
70 facility owner who is a member and participant in the
71 notification center;

72 (10) "Permitted project", a project for which a permit
73 for the work to be performed is required to be issued by a
74 local, state or federal agency and, as a prerequisite to
75 receiving such permit, the applicant is required to notify
76 all underground facility owners in the area of the work for
77 purposes of identifying the location of existing underground
78 facilities;

79 (11) "Person", any individual, firm, joint venture,
80 partnership, corporation, association, cooperative,
81 municipality, political subdivision, governmental unit,
82 department or agency and shall include a notification center

83 and any trustee, receiver, assignee or personal
84 representative thereof;

85 (12) "Pipeline facility" includes all parts of a
86 facility through which a hazardous liquid or gas moves in
87 transportation including, but not limited to, pipe, valves
88 and other appurtenances connected to pipe, pumping units,
89 fabricated assemblies associated with pumping units,
90 metering and delivery stations and fabricated assemblies
91 therein, and breakout tanks;

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

97 (14) "Trenchless excavation", horizontal excavation
98 parallel to the surface of the earth which does not use
99 trenching or vertical digging as the primary means of
100 excavation, including but not limited to directional boring,
101 tunneling, or augering;

102 (15) "Underground facility", any item of personal
103 property which shall be buried or placed below ground for
104 use in connection with the storage or conveyance of water,
105 storm drainage, sewage, telecommunications service, cable
106 television service, electricity, oil, gas, hazardous liquids
107 or other substances, and shall include but not be limited to
108 pipes, sewers, conduits, cables, valves, vaults, lines,
109 wires, manholes, attachments, or appurtenances, and those
110 portions of pylons or other supports below ground that are
111 within any public or private street, road or alley, right-of-
112 way dedicated to the public use or utility easement of
113 record, or prescriptive easement. If gas distribution lines
114 or electric lines, telecommunications facilities, cable

115 television facilities, water service lines, water system,
116 storm drainage or sewer system lines, other than those used
117 for vehicular traffic control, lighting of streets and
118 highways and communications for emergency response, are
119 located on private property and are owned solely by the
120 owner or owners of such private property, such lines or
121 facilities receiving service shall not be considered
122 underground facilities for purposes of this chapter, except
123 at locations where they cross or lie within an easement or
124 right-of-way dedicated to public use or owned by a person
125 other than the owner of the private property. Water and
126 sanitary sewer lines providing service to private property
127 that are owned solely by the owner of such property shall
128 not be considered underground facilities at any location. A
129 structure that transports only storm water drainage under
130 roadways, driveways, or railways shall not be considered an
131 underground facility;

132 (16) "Underground facility owner", any person who owns
133 or operates underground facilities;

134 (17) "Working day", every day, except Saturday, Sunday
135 or a legally declared state or federal holiday.

319.060. 1. There is hereby established the
2 **"Underground Damage Prevention Review Board" to review**
3 **reports of alleged violations of sections 319.010 to**
4 **319.060. The members of the board shall be appointed by the**
5 **governor. The board shall consist of nine members who shall**
6 **be as follows:**

7 (1) **A city or county official from this state;**

8 (2) **An employee or officer of an underground facility**
9 **owner;**

10 (3) **An employee or officer of an underground pipeline**
11 **facility owner;**

12 (4) An employee or officer of a rural underground
13 facility owner;

14 (5) An employee or officer of a highway contractor who
15 does not own or operate underground facilities;

16 (6) An employee or officer of a utility contractor who
17 does not own or operate underground facilities;

18 (7) An employee or officer of an excavator who does
19 not own or operate underground facilities;

20 (8) An employee or officer of an underground facility
21 contract locator; and

22 (9) A surveyor licensed under chapter 327.

23 2. Each member of the board shall be initially
24 appointed for a term of either two or four years.

25 Subsequent appointments shall be for four-year terms.

26 Members of the board may serve no more than two consecutive
27 four year terms. Vacancies in appointments made by the
28 governor occurring prior to the expiration of a term shall
29 be filled by appointment for the unexpired term. The person
30 appointed to a vacancy shall represent the same group as his
31 or her predecessor.

32 3. No member of the board may serve on a case in which
33 the member has a conflict of interest.

34 4. The governor may remove any member at any time for
35 cause.

36 5. The board shall meet within thirty days after the
37 appointment of all its members and thereafter at such other
38 times as may be expedient and necessary for the proper
39 performance of its duties, but the board shall hold at least
40 two regular meetings per year. At the board's first
41 meeting, the members shall elect a chair and vice chair.
42 The chair may serve in such capacity for a one-year term and
43 shall not serve as chair for more than two consecutive

44 terms. A majority of the board shall constitute a quorum
45 for the transaction of business.

46 6. The board shall receive reports of alleged
47 violations of sections 319.010 to 319.060. The board shall
48 contact persons against whom reports have been filed to
49 inform them of the alleged violation within ten days of the
50 filing of the report. The board shall maintain all of the
51 following information regarding reports of alleged
52 violations:

53 (1) The name, address, and telephone number of the
54 person making the report;

55 (2) The nature of the violation, including the statute
56 that is alleged to have been violated;

57 (3) Information provided by the person making the
58 report including, but not limited to, written and electronic
59 correspondence, pictures, and videos; and

60 (4) Information provided by the person against whom
61 the report has been filed including, but not limited to,
62 written and electronic correspondence, pictures, and videos.

63 7. The board shall review all reports of alleged
64 violations of sections 319.010 to 319.060 and accompanying
65 information. If the board determines that a person has
66 violated any provision of sections 319.010 to 319.060, the
67 board shall determine the appropriate action or penalty to
68 impose for each such violation. Actions and penalties may
69 include, but are not limited to, training, education, and a
70 civil penalty not to exceed two thousand five hundred
71 dollars. The board shall approve training courses and the
72 sponsors of training courses under this subsection. Any
73 fees for training courses approved by the board shall be
74 paid by the person determined to have violated any provision
75 of sections 319.010 to 319.060. The board shall notify each

76 person who is determined to have violated any provision of
77 sections 319.010 to 319.060 in writing of the board's
78 determination and the board's recommended action or
79 penalty. A person determined to be in violation of any
80 provision of sections 319.010 to 319.060 may request a
81 hearing before the board, after which the board may reverse
82 or uphold its original finding. If the board recommends a
83 penalty, the board shall notify the public service
84 commission of the recommended penalty and the commission
85 shall issue an order imposing the penalty.

86 8. If the board recommends a penalty, the fee assessed
87 upon an underground facility owner shall be collected
88 payable to the board or, at the discretion of the board, the
89 person making the complaint, in accordance with a schedule
90 and in a manner established by the board. All fees
91 collected by the board shall be deposited with the state
92 treasurer to be credited to the underground damage
93 prevention review board fund. All moneys received by the
94 board under the terms and provisions of this chapter shall
95 be deposited into the underground damage prevention review
96 board fund and shall be spent exclusively in support of
97 board activities to develop and disseminate educational
98 programming designed to improve worker and public safety
99 relating to excavation and underground facilities.

100 9. The board shall maintain a record of reports of
101 alleged violations of sections 319.010 to 319.060 received
102 under subsection 6 of this section for at least four years,
103 including responses to such reports.

104 10. The attorney general's office shall assign a legal
105 representative to provide legal counsel to the board, if
106 requested.

107 11. (1) There is hereby created in the state treasury
108 the "Underground Damage Prevention Review Board Fund", which
109 shall consist of moneys collected under subsection 8 of this
110 section. The state treasurer shall be custodian of the
111 fund. In accordance with sections 30.170 and 30.180, the
112 state treasurer may approve disbursements. The fund shall
113 be a dedicated fund and, upon appropriation, moneys in the
114 fund shall be used solely for the administration of this
115 section.

116 (2) Notwithstanding the provisions of section 33.080,
117 to the contrary, any moneys remaining in the fund at the end
118 of the biennium shall not revert to the credit of the
119 general revenue fund.

120 (3) The state treasurer shall invest moneys in the
121 fund in the same manner as other funds are invested. Any
122 interest and moneys earned on such investments shall be
123 credited to the fund.

✓