

HB 437 -- Underground Facility Safety

Sponsor: Funderburk

This bill changes the laws regarding underground facility safety. In its main provisions, the bill:

- (1) Revises the definition of "excavation" to include pulling material from a ditch onto a road and to clarify that it applies only to specified activities on roads dedicated to the public use for vehicular traffic;
- (2) Requires the marking to show the location of underground facilities to be in accordance with the marking standards as designated by the Missouri Common Ground Alliance Best Practices Manual. Currently, the marking must be in accordance with the color code standard of the American Public Works Association;
- (3) Revises the definition of "notification center" as a statewide organization operating 24 hours a day, 365 days a year on a not-for-profit basis, supported by a majority of the underground facility owners in the state;
- (4) Revises the definition of "pipeline facility" to include all parts of a pipeline facility through which a hazardous liquid or gas moves in transportation and breakout tanks;
- (5) Revises the definition of "working day" to be every day, between the hours of 6:00 a.m. and 6:00 p.m., except Saturday, Sunday, or a legally declared state or federal holiday;
- (6) Removes the provision exempting a railroad regulated by the Federal Railroad Administration from being a participant in a notification center and requires all underground facilities within the state to maintain participation in a notification center for the duration of owning and operating the facility;
- (7) Requires a notification center to have the authority to determine the maximum geographic area for which a single notice to excavate must be valid; when more than one notice of intent to excavate must be required of any person; and the length of time a notice of intent to excavate will be valid;
- (8) Repeals the provision specifying that the State Highways and Transportation Commission cannot be required to be a notification center participant after December 31, 2014, and allowing it to voluntarily choose to be a participant after that date;
- (9) Requires an underground facility owner to respond to an

incorrect locate notification within two hours of receipt of the notification or remain on site until the underground facility is locatable or provide the excavator with a contact phone number during excavation when conditions are present that have interfered with locating its facility;

(10) Allows excavation to begin or continue for a period of 10 working days after the marking has occurred. If an excavator is unable to begin the excavation within the 10 days, the excavator must make a relocate request;

(11) Specifies the excavator's notification requirements in the event of any damage, dislocation, or disturbance to an underground facility;

(12) Requires each underground facility owner who owns or operates electric, gas, or pipeline facilities to submit to a central repository designated by the notification center an anonymous and aggregated report on the number of damages it experienced to its facilities and the circumstances under which its facilities were damaged by April 1 of each year;

(13) Requires a facility to be marked within five working days if the facility owner and the excavator making a design request are unable to mutually agree on a schedule and method for providing the information if the person making the request was contacted as an alternative to marking the location;

(14) Allows a notice that no facilities are located in an area to be made by the use of a positive response system and requires the written records of the date and means of the notification that no facilities were located by the owner or operator to be retained for one year;

(15) Specifies that if a no-response request is made by an excavator even though the markings have been provided or the requests cleared, the excavator may be liable to the underground facility owner for the reasonable costs of the markings;

(16) Specifies that these provisions cannot relieve an excavator from the obligation to excavate in a safe and prudent manner nor absolve an excavator from liability for damage to underground facilities. The failure of any excavator to give notice of proposed excavation activities as required under Chapter 319, RSMo, must be a rebuttable presumption of negligence on his or part if the failure causes injury, loss, or damage. In addition to any specified penalties, liability under common law may apply;

(17) Requires the Attorney General to make public the aggregate

number of enforcement actions under Sections 319.010 to 319.050 for the previous year by March 31 of each year;

(18) Specifies that parties with a dispute related to the provisions of Sections 319.015 to 319.050 may request nonbinding arbitration for disputes of less than \$5,000; and

(19) Specifies that if a request is submitted as an emergency request but it does not meet the definition of an emergency as defined in Section 319.015, the facility owner must notify the excavator, within two hours, that the request does not meet the requirements of an emergency and that the locate request will be marked within two working days.

The provisions of the bill will become effective January 1, 2014.