

HCS HB 1867 -- UNDERGROUND FACILITY SAFETY (Schatz)

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

(1) Revises the definition of "excavation" to make technical changes and specifies that the provisions of the bill do not apply to railroads regulated by the Federal Railroad Administration when the excavating is done entirely on land it owns or on which the railroad operates or, in the event of an emergency, on excavating done by a railroad on adjacent land;

(2) Revises the definition of "marking" from the use of paint, flags, stakes, and other identifying materials in accordance with the color code standard of the American Public Works Association to the marking standards as designated by the Common Ground Alliance best practices version 10.0 except that "approximate location" must comply with specified requirements;

(3) Revises the definition of "notification center" to a statewide organization on a not-for-profit basis supported by a majority of the underground facility owners in Missouri;

(4) Revises the definition of "pipeline facility" to all parts of a facility through which a hazardous liquid or gas moves in transportation;

(5) Revises the definition of "underground facility" to specify that a structure that transports storm water drainage under roadways, driveways, or railways must not be considered an underground facility;

(6) Requires all underground facility owners in the state to maintain participation in a notification center during the time he or she owns and operates an underground facility. The notification center must be governed by a board of directors elected from all members with representatives from the general membership group;

(7) Repeals obsolete provisions regarding membership in the notification center;

(8) Repeals written policy requirement on underground facility location policies that is now governed by more specific requirements for location of these facilities;

(9) Requires the owner to respond to an incorrect locate notification within two hours of receipt of the notification by contacting the person responsible for the excavation or by correctly locating the underground facility. If an excavator is

unable to begin the excavation within 10 working days as described in the request, the excavator must make a relocate request before beginning the excavation. These provisions cannot allow any person other than the facility owner or his or her representative to mark or relocate any underground facility;

(10) Requires the excavator, prior to commencing work, to 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 must be used as a best practice when possible;

(11) Requires the person responsible for the excavation operations to notify the notification center in the event of any damage, dislocation, or disturbance of any underground facility in connection with any excavation. This provision must be deemed to require the reporting of any damage, dislocation, or disturbance to trace wires, encasements, cathode protection, permanent above-ground stakes, or other items utilized for protection of the underground facility. The excavator must immediately contact 911 when any damage or contact with a pipeline results in a release from the pipeline of hazardous liquid or gas. In the event of any damage, dislocation, or disturbance to any underground facility or any protective devices required to be reported by the excavator, the person responsible for the excavation operations cannot conceal or attempt to conceal the damage, dislocation, or disturbance nor can 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. The emergency repairs cannot relieve the excavator of the responsibility to make the notification;

(12) Requires, no later than April 1, 2015, and each year thereafter, each underground facility owner who owns or operates an electric, gas, or pipeline facility to submit to a central repository designated by the notification center a report of damages experienced by its facilities for the prior year. The notification center must determine the minimum information to be reported. All data submitted must be aggregated and anonymous. Information provided by the underground facility owner specific to damage data submitted must be accessible only to the underground facility owner unless otherwise designated by the underground facility owner;

(13) Requires an underground facility owner to implement markings within five days of receiving a design request if the facility

owner and the person making a request are unable to mutually agree on a schedule;

(14) Prohibits the start of any excavation earlier than the scheduled excavation date provided on the locate request unless the excavator has confirmed that all underground facilities have been located;

(15) Requires each underground facility owner receiving notifications from the notification center by use of the Internet must, after December 31, 2014, use the locate status system provided by the notification center. Those underground facility owners who do not receive notifications by use of the Internet must, no later than January 1, 2016, provide locate status to the notification center by an alternate method provided by the notification center;

(16) Allows the owner or operator of an underground facility to make notice to the excavator that no facilities are located in the area of excavation by use of a locate status system and requires a record of the date and means of informing the excavator that no facilities were located by the owner or operator that are in the written records of the underground facility owner must be retained for five years;

(17) Allows the owner or operator to notify the excavator that the area of excavation cannot be determined from the description provided by the excavator through a notice and requires the excavator to provide clarification of the area of excavation by marking the area with white flags or white paint, by providing project plans to the owner or operator, or by meeting on the site of the excavation with representatives of the owner or operator;

(18) Specifies that in addition to other requirements, the response to a notice of intent to excavate received by a sewer system owner when the owner has underground facilities located in the area of excavation identified in the notice that indicates that trenchless excavation methods will be used must include a determination of whether sewer service connections exist in the excavation area. If the sewer system owner determines that sewer service connections exist, the owner must provide his or her best available information regarding the location of the connections to the excavator by one of the specified methods. If no information exists the facility owner will provide notice of that fact. Providing the best available information regarding the location of sewer service connections that exist or are likely to exist in the area of excavation identified in a notice of intent to excavate must constitute full compliance with these provisions, and a sewer system owner cannot be liable to any party for damages or injuries

resulting from an excavation if he or she is in compliance with these provisions. Providing the best available information regarding the location of sewer service connections that exist or are likely to exist in the area of excavation identified in a notice of intent to excavate cannot in and of itself constitute ownership, operation, control, or management of sewer service lines by a sewer system owner;

(19) Requires, if new lateral sewer pipes or water service lines are installed or connected from or to an underground facility or if the infrastructure is replaced or rehabilitated by use of excavation within the public right-of-way, the person conducting the replacement or rehabilitation will place an access point and cleanout at the edge of the public right-of-way and use trace wire to mark the location of the pipes and lines in those areas that are located within a public right-of-way, easement, or street. This provision must apply to all installations of water and sewer without regard to their status as underground facilities. A violation of these provisions must result in a presumption of negligence against the facility owner failing to install tracer wire or a similar technology, and a violator must be liable for all damages caused by his or her failure to act in accordance with these provisions;

(20) Specifies that these provisions cannot relieve an excavator from the obligation to excavate in a safe and prudent manner nor does it absolve an excavator from liability for damage to underground facilities. The failure of any excavator to give notice of proposed excavation activities as required by law is a rebuttable presumption of negligence on his or her part in the event that the failure will cause injury, loss, or damage. The failure of an underground facility owner to mark his or her facilities that are located in an area of excavation described in a notice of intent to excavate received by the underground facility owner or the failure of an underground facility owner to be a notification center participant must be a rebuttable presumption of negligence on the part of the owner in the event that the failure will cause injury, loss, or damage. In addition to any penalties, liability under common law may apply;

(21) Requires the Attorney General to make public the aggregate number of enforcement actions for the previous year prior to March 31;

(22) Allows parties with a dispute related to the provisions of the bill to request arbitration for disputes of less than \$5,000; and

(23) Requires, for a request submitted as an emergency request

that does not meet the definition of an emergency as specified in the bill, the facility owner to notify the excavator within two hours that the request does not meet the requirements of an emergency, and the locate request will be marked within two working days.

The bill will become effective January 1, 2015.