

HB 2329 -- UNDERGROUND FACILITIES

SPONSOR: Buchheit-Courtway

This bill requires an underground facility owner to ensure that all new and active underground facilities installed after August 28, 2024, be installed with a detectable underground location device unless the facility is capable of being detected from above ground with an electronic locating device.

When the location of the planned excavation cannot be clearly identified, the excavator may designate the planned excavation route or area to be excavated by means specified in the bill and provide the information to the notification center before or with the notice of intent to excavate.

If a person responsible for the excavation finds that an owner or operator of the underground facility did not mark the underground facility, the person responsible for the excavation must notify the notification center. In the event of any damage to an underground facility, the notification center shall notify the owner of the underground facility of any damage, dislocation, or disturbance to the facility.

Within 60 days of receipt of a notice of damage to the underground facility or actual notice of an incident involving damage, dislocation, or disturbance of the underground facility, the owner of the underground facility must submit a report of the incident to the notification center and the excavator as specified in the bill.

If any of the information required in the report is not known or reasonably available to the facility owner, the facility owner must report the information as specified in the bill. The notification center must maintain a database of incident reports and each incident report must be maintained by the notification center for at least five years. If an underground facility owner fails to timely submit an incident report, the owner will be subject to a fine of no more than \$250 per day until the report is filed with a maximum fine of \$5,000. The filing of an incident report is a condition precedent to the right of a facility owner to file and maintain a lawsuit for damages against an excavator for violations.

In the event of any damage, dislocation, or disturbance to any underground facility or any protective devices, the person responsible for the excavation operations must report the damage through the Damage Information Reporting Tool.

The bill requires the location of underground facilities provided by a facility owner or operator to any person engaging in scheduled

excavating be accurate. If any underground facility becomes damaged by an excavator due to the furnishing of inaccurate information as to its location by the facility owner or operator, the excavator would not be liable for the damage to the underground facility as a result of the excavating, provided that the excavating complies with the safety and notice requirements and current law and there is no evidence visible and obvious to the excavator of the presence of a mismarked underground facility.

Upon evidence that the person seeking information as to the location of underground facilities has incurred losses or expenses due to inaccurate information, lack of information, or unreasonable delays in supplying information by the facility owner or operator, the facility owners or operators are liable for any losses or expenses.

In addition to any fines or penalties payable to the state, a person injured by the negligence of an excavator or an underground facility owner or operator may recover any proximately caused damages allowed under the common law. The failure of a locator or other contractor engaged by the underground facility owner to mark the facility owner's facilities is a rebuttable presumption of negligence on the part of the locator or other contractor engaged by the facility owner. The failure of any excavator to give notice of proposed excavation activities is also a rebuttable presumption of negligence on the part of the excavator in the event that such failure causes injury, loss, or damage.