

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0331.01 Thomas Morris x4218

SENATE BILL 18-167

SENATE SPONSORSHIP

Scott and Donovan, Martinez Humenik

HOUSE SPONSORSHIP

Winter and Saine, Becker J.

Senate Committees

Transportation

House Committees

A BILL FOR AN ACT

101 CONCERNING INCREASED ENFORCEMENT OF REQUIREMENTS RELATED
102 TO THE LOCATION OF UNDERGROUND FACILITIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current law requires a person, before conducting an excavation, to contact a nonprofit notification association (comprised of all owners and operators of underground facilities) by dialing "811" to learn the location of underground facilities in the excavation project area. The owners and operators must then accurately mark the location of their facilities. Violations of the excavation damage prevention law are

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

enforced exclusively through civil actions initiated by damaged parties to collect specified civil penalties and damages. In 2016, the United States department of transportation's pipeline and hazardous materials safety administration (PHMSA) conducted an adequacy evaluation of Colorado's enforcement of its excavation damage prevention law and determined that the enforcement is inadequate, which may eventually result in the withholding of federal funds from Colorado.

The bill creates the underground damage prevention safety commission (commission) as an independent agency within the department of labor and employment. The commission has rule-making and enforcement authority regarding the excavation damage prevention law and is required to enter into a memorandum of understanding with the notification association to facilitate implementation and administration of the law. The notification association is required to provide administrative support to the commission in performing its duties.

A review committee of the commission initially determines whether a violation of the law has occurred and, if appropriate, recommends remedial action, potentially including a fine. Fines range from \$250 for a single minor violation within the previous 12 months to \$75,000 for a fourth major violation within the previous 12 months. The full commission is bound by the review committee's determination of facts but determines the final agency action regarding alleged violations. Fines are credited to the damage prevention fund, which the commission will use to develop educational programming, including by making grants, that is designed to improve worker and public safety relating to excavation and underground facilities.

Current law allows only an excavator to submit a location request to the notification association. The bill authorizes a licensed professional engineer designing excavation to submit a location request. The engineer is required to ensure that the engineering plans meet certain standards established by the American Society of Civil Engineers for defining the accuracy of an underground facility location. The notification association will collect a fee for each location request, which is deposited in the safety commission fund and used to pay the commission's expenses.

Current law creates 2 tiers of membership in the notification association. Tier 2 members are limited members with limited benefits and include certain special districts, local governments, cable television providers, and small telecommunications providers; tier 1 members are full members with full benefits, and tier 1 consists of all other owners and operators. If, after receiving a location request, the notification association determines that a tier 1 member owns or operates the underground facilities, the notification association contacts the tier 1 member to arrange for the marking of the underground facilities. If a tier 2 member owns or operates the underground facilities, the excavator must contact the tier 2 member to arrange for the marking of the underground

facilities. Effective January 1, 2021, all underground facility owners and operators are full members of the notification association with full benefits, and excavators will no longer need to contact the owners or operators to arrange for the marking.

All new underground facilities installed on or after January 1, 2020, must be electronically locatable when installed. Home rule local governments are not subject to the commission's enforcement authority, but the governing body of a home rule local government is required to either adopt a similar enforceable damage prevention safety program or waive its exemption and delegate its damage prevention enforcement authority to the commission.

Information regarding the location of underground facilities is exempt from the "Colorado Open Records Act", pursuant to the existing exemption for specialized details of critical infrastructure.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 9-1.5-102, **amend**
3 the introductory portion, (1), and (3); and **add** (1.5), (3.4), (3.7), (6.2),
4 (6.7), (6.8), and (6.9) as follows:

5 **9-1.5-102. Definitions.** As used in this ~~article~~ ARTICLE 1.5, unless
6 the context otherwise requires:

7 (1) ~~"Damage" includes the penetration or destruction of any~~
8 ~~protective coating, housing, or other protective device of an underground~~
9 ~~facility, the partial or complete severance of an underground facility, or~~
10 ~~the rendering of any underground facility inaccessible~~ "ASCE 38" MEANS
11 THE STANDARD FOR DEFINING THE QUALITY OF AN UNDERGROUND
12 FACILITY LOCATION AS DEFINED IN THE CURRENT EDITION OF THE
13 AMERICAN SOCIETY OF CIVIL ENGINEERS' "STANDARD GUIDELINE FOR
14 THE COLLECTION AND DEPICTION OF EXISTING SUBSURFACE UTILITY
15 DATA (CI/ASCE 38-02)" OR AN ANALOGOUS SUCCESSOR STANDARD AS
16 DETERMINED BY THE SAFETY COMMISSION.

17 (1.5) "DAMAGE" INCLUDES THE DENTING, PENETRATION, OR

1 DESTRUCTION OF ANY PROTECTIVE COATING, HOUSING, OR OTHER
2 PROTECTIVE DEVICE OF AN UNDERGROUND FACILITY, THE PARTIAL OR
3 COMPLETE SEVERANCE OF AN UNDERGROUND FACILITY, OR THE
4 RENDERING OF ANY UNDERGROUND FACILITY INACCESSIBLE.

5 (3) "Excavation" means any operation in which earth is moved or
6 removed by means of any tools, equipment, or explosives and includes
7 augering, backfilling, boring, ditching, drilling, grading, plowing-in,
8 pulling-in, ripping, scraping, trenching, HYDRO EXCAVATING,
9 POSTHOLING, and tunneling. "Excavation" ~~shall~~ DOES not include:

10 (a) Routine maintenance on existing planted landscapes; OR

11 (b) AN EXCAVATION BY A RANCHER OR A FARMER, AS DEFINED IN
12 SECTION 42-20-108.5, OCCURRING ON A RANCH OR FARM WHEN THE
13 EXCAVATION INVOLVES:

14 (I) ANY FORM OF CULTIVATION FOR AGRICULTURAL PURPOSES
15 THAT IS ROUTINE FOR THAT RANCH OR FARM;

16 (II) LAND CLEARING; OR

17 (III) ROUTINE MAINTENANCE OF IRRIGATION FACILITIES OR
18 EXISTING FENCE LINES.

19 (3.4) "GRAVITY-FED SYSTEM" MEANS ANY UNDERGROUND
20 FACILITY THAT IS NOT PRESSURIZED AND THAT UTILIZES GRAVITY AS THE
21 ONLY MEANS TO TRANSPORT ITS CONTENTS. THESE SYSTEMS INCLUDE
22 SANITARY SEWER LINES, STORM SEWER LINES, AND OPEN-AIR IRRIGATION
23 DITCHES.

24 (3.7) "LICENSED PROFESSIONAL ENGINEER" MEANS A
25 PROFESSIONAL ENGINEER AS DEFINED IN SECTION 12-25-102.

26 (6.2) "PHMSA" MEANS THE UNITED STATES DEPARTMENT OF
27 TRANSPORTATION'S PIPELINE AND HAZARDOUS MATERIALS SAFETY

1 ADMINISTRATION.

2 (6.7) "SUBSURFACE UTILITY ENGINEERING NOTIFICATION" MEANS
3 A NOTICE TO THE NOTIFICATION ASSOCIATION THAT A PROJECT IS BEING
4 DESIGNED BY A LICENSED PROFESSIONAL ENGINEER AND THAT THE
5 PROJECT WILL INCLUDE THE INVESTIGATION AND DEPICTION OF EXISTING
6 UNDERGROUND FACILITIES THAT MEET OR EXCEED THE ASCE 38
7 STANDARD.

8 (6.8) "SUBSURFACE UTILITY ENGINEERING-REQUIRED PROJECT"
9 MEANS A PROJECT THAT MEETS ALL OF THE FOLLOWING CONDITIONS:

10 (a) THE PROJECT INVOLVES A CONSTRUCTION CONTRACT WITH A
11 PUBLIC ENTITY, AS THOSE TERMS ARE DEFINED IN SECTION 24-91-102;

12 (b) THE PROJECT HAS AN ANTICIPATED EXCAVATION FOOTPRINT
13 THAT EXCEEDS TWO FEET IN DEPTH AND THAT IS A CONTIGUOUS ONE
14 THOUSAND SQUARE FEET. THE TERM "TWO FEET IN DEPTH" DOES NOT
15 INCLUDE ROTOMILLING, AND THE CONTIGUOUS ONE THOUSAND SQUARE
16 FEET DOES NOT INCLUDE FENCING AND SIGNING PROJECTS.

17 (c) THE PROJECT REQUIRES THE DESIGN SERVICES OF A LICENSED
18 PROFESSIONAL ENGINEER.

19 (6.9) "UNDERGROUND DAMAGE PREVENTION SAFETY COMMISSION"
20 OR "SAFETY COMMISSION" MEANS THE ENFORCEMENT AUTHORITY
21 ESTABLISHED IN SECTION 9-1.5-104.2.

22 **SECTION 2.** In Colorado Revised Statutes, 9-1.5-103, **amend**
23 (3)(a), (3)(c), (3)(d), (4)(a), (4)(b), (4)(c)(I), (4)(c)(II), and (6); **repeal**
24 (7)(c)(V); and **add** (2.4), (2.7), (6.5), (7)(e), (9), (10), (11), and (12) as
25 follows:

26 **9-1.5-103. Plans and specifications - notice of excavation -**
27 **duties of excavators - duties of owners and operators - fee - repeal.**

1 (2.4) AT THE PROJECT OWNER'S EXPENSE, A LICENSED PROFESSIONAL
2 ENGINEER DESIGNING EXCAVATION FOR A SUBSURFACE UTILITY
3 ENGINEERING-REQUIRED PROJECT SHALL:

4 (a) NOTIFY THE NOTIFICATION ASSOCIATION WITH A SUBSURFACE
5 UTILITY ENGINEERING NOTIFICATION;

6 (b) EITHER:

7 (I) MEET OR EXCEED THE ASCE 38 STANDARD FOR DEFINING THE
8 UNDERGROUND FACILITY LOCATION IN THE STAMPED PLANS FOR ALL
9 UNDERGROUND FACILITIES WITHIN THE PROPOSED EXCAVATION AREA; OR

10 (II) DOCUMENT THE REASONS WHY ANY UNDERGROUND FACILITIES
11 DEPICTED IN THE STAMPED PLANS DO NOT MEET OR EXCEED ASCE 38
12 UTILITY QUALITY LEVEL B OR ITS SUCCESSOR UTILITY QUALITY LEVEL;

13 (c) ATTEMPT TO ACHIEVE ASCE 38 UTILITY QUALITY LEVEL B OR
14 ITS SUCCESSOR UTILITY QUALITY LEVEL ON ALL UTILITIES WITHIN THE
15 PROPOSED EXCAVATION AREA UNLESS A REASONABLE RATIONALE BY A
16 LICENSED PROFESSIONAL ENGINEER IS GIVEN FOR NOT DOING SO; AND

17 (d) DOCUMENT THE REASONS WHY ANY UNDERGROUND FACILITIES
18 DEPICTED IN THE STAMPED PLANS DO NOT MEET OR EXCEED ASCE 38
19 UTILITY QUALITY LEVEL A OR ITS SUCCESSOR UTILITY QUALITY LEVEL FOR
20 UNDERGROUND FACILITIES AT THE POINT OF A POTENTIAL CONFLICT WITH
21 THE INSTALLATION OF A GRAVITY-FED SYSTEM.

22 (2.7) AN UNDERGROUND FACILITY OWNER THAT RECEIVES A
23 SUBSURFACE UTILITY ENGINEERING NOTIFICATION OR OTHER REQUEST FOR
24 INFORMATION FROM A DESIGNER SHALL RESPOND TO THE REQUEST WITHIN
25 TEN BUSINESS DAYS AFTER THE REQUEST, NOT INCLUDING THE DAY OF
26 ACTUAL NOTICE, IN ONE OR MORE OF THE FOLLOWING WAYS:

27 (a) PROVIDE UNDERGROUND FACILITY LOCATION RECORDS THAT

1 GIVE THE BEST AVAILABLE INFORMATION ON THE LOCATION, NOT TO
2 INCLUDE DEPTH, OF UNDERGROUND FACILITIES WITHIN THE PROJECT
3 LIMITS;

4 (b) PROVIDE A MARK ON THE GROUND THAT GIVES THE
5 APPROXIMATE LOCATION, NOT TO INCLUDE DEPTH, OF ITS UNDERGROUND
6 FACILITIES WITHIN THE PROJECT LIMITS; OR

7 (c) PROVIDE THE BEST AVAILABLE INFORMATION AS TO THE
8 APPROXIMATE LOCATION, NOT TO INCLUDE DEPTH, OF ITS UNDERGROUND
9 FACILITIES WITHIN THE PROJECT LIMITS.

10 (3) (a) (I) (A) Except in emergency situations and except as to an
11 employee with respect to the employer's underground facilities or as
12 otherwise provided in an agreement with an owner or operator, ~~no~~ A
13 person shall NOT make or begin excavation without first notifying the
14 notification association and, if necessary, the tier two members having
15 underground facilities in the area of ~~such~~ THE excavation. Notice may be
16 given in person, by telephone, BY ELECTRONIC METHODS APPROVED BY
17 THE NOTIFICATION ASSOCIATION, or in writing if delivered.

18 (B) THIS SUBSECTION (3)(a)(I) IS REPEALED, EFFECTIVE JANUARY
19 1, 2021.

20 (II) EFFECTIVE JANUARY 1, 2021, EXCEPT IN EMERGENCY
21 SITUATIONS AND EXCEPT AS TO AN EMPLOYEE WITH RESPECT TO THE
22 EMPLOYER'S UNDERGROUND FACILITIES, A PERSON SHALL NOT MAKE OR
23 BEGIN EXCAVATION WITHOUT FIRST NOTIFYING THE NOTIFICATION
24 ASSOCIATION. NOTICE MAY BE GIVEN BY ELECTRONIC METHODS APPROVED
25 BY THE NOTIFICATION ASSOCIATION OR BY TELEPHONE.

26 (c) (I) Any notice given pursuant to ~~paragraph (b) of this~~
27 ~~subsection (3) shall~~ SUBSECTION (3)(b) OF THIS SECTION MUST include the

1 following:

2 (H) (A) The name and telephone number of the person who is
3 giving the notice;

4 (H) (B) The name and telephone number of the excavator; and

5 (H) (C) The specific location, starting date, and description of the
6 intended excavation activity.

7 (II) IF AN AREA OF EXCAVATION CANNOT BE ACCURATELY
8 DESCRIBED ON THE LOCATE REQUEST, THE EXCAVATOR SHALL NOTIFY THE
9 OWNER OR OPERATOR OF THE AREA OF EXCAVATION USING ONE OR MORE
10 OF THE FOLLOWING METHODS:

11 (A) PHYSICAL DELINEATION WITH WHITE MARKS ON A HARD
12 SURFACE AREA;

13 (B) ELECTRONIC DELINEATION ON A MAP, PLAN SHEET, OR AERIAL
14 PHOTOGRAPH THAT CAN BE TRANSMITTED ELECTRONICALLY FROM THE
15 EXCAVATOR TO THE FACILITY OWNER OR OPERATOR THROUGH THE
16 NOTIFICATION ASSOCIATION; OR

17 (C) SCHEDULING AN ON-SITE MEETING BETWEEN THE EXCAVATOR
18 AND THE OWNER OR OPERATOR.

19 (d) ~~An excavator may request a written record of any information~~
20 ~~from an owner or operator of an underground facility regarding the~~
21 ~~location of specific underground facilities~~ AN EXCAVATOR REQUIRING
22 EXISTING MARKED UNDERGROUND FACILITIES TO BE EXPOSED MAY LIST A
23 SINGLE SECONDARY EXCAVATOR ON ITS NOTICE TO THE NOTIFICATION
24 ASSOCIATION AND EMPLOY THE SERVICES OF THE LISTED SECONDARY
25 EXCAVATOR TO EXPOSE MARKED UNDERGROUND FACILITIES USING
26 REASONABLE CARE TO NOT DAMAGE THE FACILITIES. THE SECONDARY
27 EXCAVATOR MAY EXPOSE MARKED UNDERGROUND FACILITIES UNDER THE

1 EXCAVATOR'S NOTICE TO THE NOTIFICATION ASSOCIATION ONLY IF THE
2 EXCAVATOR HAS COMPLIED WITH THIS SUBSECTION (3).

3 (4) (a) (I) Any owner or operator receiving notice pursuant to
4 subsection (3) of this section shall, at no cost to the excavator AND WITHIN
5 TWO BUSINESS DAYS, NOT INCLUDING THE DAY OF ACTUAL NOTICE, use
6 reasonable care to advise the excavator of the location, NUMBER, and size
7 of any underground facilities in the proposed excavation area, INCLUDING
8 LATERALS IN THE PUBLIC RIGHT-OF-WAY, by marking the location of the
9 facilities with clearly identifiable markings within eighteen inches
10 horizontally from the exterior sides of ~~any such~~ THE facilities. ~~Such~~ THE
11 markings ~~shall~~ MUST include the depth, if known, and shall be made
12 pursuant to the uniform color code as approved by ~~the utility location and~~
13 ~~coordinating council~~ of the American Public Works Association. THE
14 MARKINGS MUST MEET THE MARKING STANDARDS AS ESTABLISHED BY THE
15 SAFETY COMMISSION PURSUANT TO SECTION 9-1.5-104.2 (1)(a)(I). THE
16 DOCUMENTATION REQUIRED BY THIS SUBSECTION (4)(a)(I) SHALL BE
17 PROVIDED TO THE EXCAVATOR THROUGH THE NOTIFICATION ASSOCIATION
18 AND MUST MEET OR EXCEED ANY QUALITY STANDARDS ESTABLISHED BY
19 THE SAFETY COMMISSION PURSUANT TO SECTION 9-1.5-104.2 (1)(a)(I). IN
20 ADDITION TO THE MARKINGS, THE OWNER OR OPERATOR SHALL PROVIDE
21 FOR EACH OF ITS UNDERGROUND FACILITIES:

22 (A) DOCUMENTATION LISTING THE OWNER'S OR OPERATOR'S NAME
23 AND THE SIZE AND TYPE OF EACH MARKED UNDERGROUND FACILITY; AND

24 (B) DOCUMENTATION OF THE LOCATION OF THE UNDERGROUND
25 FACILITIES IN THE FORM OF A DIGITAL SKETCH, A HAND-DRAWN SKETCH,
26 OR A PHOTOGRAPH THAT INCLUDES A READILY IDENTIFIABLE LANDMARK,
27 WHERE PRACTICABLE.

1 (II) A SEWER SYSTEM OWNER OR OPERATOR SHALL PROVIDE ITS
2 BEST AVAILABLE INFORMATION WHEN MARKING THE LOCATION OF SEWER
3 LATERALS IN THE PUBLIC RIGHT-OF-WAY WITH CLEARLY IDENTIFIABLE
4 MARKINGS. "BEST AVAILABLE INFORMATION" INCLUDES TAP
5 MEASUREMENTS AND HISTORIC RECORDS. IF THE SEWER LATERAL CAN BE
6 ELECTRONICALLY LOCATED, THE SEWER SYSTEM OWNER OR OPERATOR
7 SHALL MARK AND DOCUMENT THE LOCATION OF THE SEWER LATERALS IN
8 ACCORDANCE WITH THIS SUBSECTION (4)(a). IF A SEWER SYSTEM OWNER
9 OR OPERATOR OF A SEWER LATERAL CANNOT ELECTRONICALLY LOCATE
10 THE SEWER LATERAL, THE EXCAVATOR SHALL FIND THE SEWER LATERAL.

11 (III) THE MARKING OF CUSTOMER-OWNED LATERALS IN THE PUBLIC
12 RIGHT-OF-WAY IS FOR INFORMATIONAL PURPOSES ONLY, AND AN OWNER
13 OR OPERATOR IS NOT LIABLE TO ANY PARTY FOR DAMAGES OR INJURIES
14 RESULTING FROM DAMAGE DONE TO CUSTOMER-OWNED LATERALS.

15 (IV) ~~In the event any~~ IF A person is involved in excavating across
16 a preexisting underground facility, the owner of such facility shall, upon
17 a predetermined agreement at the request of the excavator or the owner,
18 provide on-site assistance. Any owner or operator receiving notice
19 concerning an excavator's intent to excavate shall use reasonable care to
20 advise the excavator of the absence of any underground facilities in the
21 proposed excavation area by ~~communicating directly with the excavator~~
22 ~~and providing documentation thereof, if requested, or by clearly marking~~
23 ~~that no underground facilities exist in the proposed excavation area.~~
24 ~~Owners and operators~~ PROVIDING POSITIVE RESPONSE DOCUMENTATION
25 TO THE EXCAVATOR THROUGH THE NOTIFICATION ASSOCIATION THAT NO
26 UNDERGROUND FACILITIES EXIST IN THE PROPOSED EXCAVATION AREA. AN
27 OWNER OR OPERATOR shall, within the time limits specified in subsection

1 (6) of this section, provide to the excavator evidence, if any, of
2 UNDERGROUND facilities abandoned after January 1, 2001, known to the
3 owner or operator to be in the proposed excavation area.

4 (b) The marking of underground facilities shall be considered
5 valid so long as the markings are clearly visible, but not for more than
6 thirty calendar days FOLLOWING THE DUE DATE OF THE LOCATE REQUEST
7 INITIATED PURSUANT TO SUBSECTION (3) OF THIS SECTION. If an
8 excavation has not been completed within the thirty-day period, the
9 excavator shall notify ~~the affected owner or operator~~ and the notification
10 association at least two business days, not including the day of actual
11 notice, before the end of ~~such~~ THE thirty-day period.

12 (c) (I) (A) When a person excavates within eighteen inches
13 horizontally from the exterior sides of any MARKED underground facility,
14 ~~such~~ THE person shall USE NONDESTRUCTIVE MEANS OF EXCAVATION TO
15 IDENTIFY UNDERGROUND FACILITIES AND SHALL OTHERWISE exercise ~~such~~
16 reasonable care ~~as necessary~~ to protect any underground facility in or near
17 the excavation area. ~~It shall be the responsibility of~~ WHEN UTILIZING
18 TRENCHLESS EXCAVATION METHODS, THE EXCAVATOR SHALL EXPOSE
19 UNDERGROUND FACILITIES AND VISUALLY OBSERVE THE SAFE CROSSING
20 OF MARKED UNDERGROUND FACILITIES WHEN REQUESTED TO DO SO BY
21 THE UNDERGROUND FACILITY OWNER OR OPERATOR OR THE GOVERNMENT
22 AGENCY THAT ISSUED A PERMIT FOR THE EXCAVATION.

23 (B) The excavator ~~to~~ SHALL maintain adequate and accurate
24 documentation, including ~~but not limited to~~ photographs, video, or
25 sketches AND DOCUMENTATION OBTAINED THROUGH THE NOTIFICATION
26 ASSOCIATION, at the excavation site on the location and identification OF
27 ANY UNDERGROUND FACILITY AND SHALL MAINTAIN ADEQUATE MARKINGS

1 of any underground facility throughout the excavation period. A PERSON
2 SHALL NOT USE A SUBSURFACE UTILITY ENGINEERING NOTIFICATION FOR
3 EXCAVATION PURPOSES.

4 (II) (A) If the documentation OR MARKINGS maintained pursuant
5 to ~~subparagraph (f) of this paragraph (c) becomes~~ SUBSECTION (4)(c)(I)
6 OF THIS SECTION BECOME lost or invalid, the excavator shall notify the
7 notification association or the affected owner or operator THROUGH THE
8 NOTIFICATION ASSOCIATION and request an immediate reverification of
9 the location of any underground facility. Upon receipt of ~~such~~ THE
10 notification, ~~such~~ THE affected owner or operator shall respond as quickly
11 as is practicable. The excavator shall cease excavation activities at the
12 affected location until the location of any underground facilities has been
13 reverified.

14 (B) If the documentation OR MARKINGS maintained pursuant to
15 ~~subparagraph (f) of this paragraph (c) is~~ SUBSECTION (4)(c)(I) OF THIS
16 SECTION ARE determined to be inaccurate, the excavator shall immediately
17 notify the affected owner or operator THROUGH THE NOTIFICATION
18 ASSOCIATION and shall request an immediate reverification of the location
19 of any underground facility. Upon receipt of ~~such~~ THE notification, ~~such~~
20 THE affected owner or operator shall respond as quickly as practicable.
21 The excavator may continue excavation activity if ~~such~~ THE excavator
22 exercises due caution and care to prevent damaging any underground
23 facility.

24 (6) If documentation OR MARKINGS requested and needed by an
25 excavator pursuant to subsection (4) of this section ~~is~~ ARE not provided
26 by the owner or operator ~~pursuant thereto~~ within two business days, not
27 including the day of actual notice, or such later time as agreed upon by

1 the excavator and the owner or operator, or, if the documentation OR
2 MARKINGS provided ~~fails~~ FAIL to identify the location of the underground
3 facilities, the excavator shall immediately give notice ~~to~~ THROUGH the
4 notification association ~~or~~ TO the owner or operator, ~~and~~ may proceed
5 WITH THE EXCAVATION, and ~~shall~~ IS not ~~be~~ liable for such damage except
6 upon proof of ~~such~~ THE excavator's lack of reasonable care.

7 (6.5) IF POSITIVE RESPONSE REQUIRED PURSUANT TO SUBSECTION
8 (4) OF THIS SECTION IS NOT PROVIDED BY THE OWNER OR OPERATOR
9 WITHIN TWO BUSINESS DAYS, NOT INCLUDING THE DAY OF ACTUAL NOTICE,
10 OR BY A LATER TIME AS OTHERWISE AGREED UPON IN WRITING, THE
11 NOTIFICATION ASSOCIATION SHALL SEND AN ADDITIONAL RENOTIFICATION
12 TO THAT OWNER OR OPERATOR. THE NOTIFICATION ASSOCIATION SHALL
13 CONTINUE TO SEND OUT RENOTIFICATIONS DAILY UNTIL THE NOTIFICATION
14 ASSOCIATION RECEIVES THE POSITIVE RESPONSE.

15 (7) (c) The notification association shall create and publicize to its
16 members a reporting process, including the availability of electronic
17 reporting and a threshold at which reporting is required, to compile the
18 following information:

19 (V) ~~The number of persons whose service may have been~~
20 ~~interrupted;~~

21 (e) (I) ON OR BEFORE JULY 1 OF EACH YEAR, THE NOTIFICATION
22 ASSOCIATION SHALL PREPARE AND SUBMIT TO THE SAFETY COMMISSION
23 AN ANNUAL REPORT FOR EACH OWNER OR OPERATOR SUMMARIZING THE
24 FOLLOWING DATA FROM THE PRIOR CALENDAR YEAR:

25 (A) THE NUMBER OF LOCATE REQUESTS SUBMITTED TO THE OWNER
26 OR OPERATOR PURSUANT TO SUBSECTION (4) OF THIS SECTION;

27 (B) THE NUMBER OF NOTICES SUBMITTED TO THE OWNER OR

1 OPERATOR PURSUANT TO SUBSECTION (6) OF THIS SECTION;

2 (C) THE PERCENTAGE OF LOCATE REQUESTS RESULTING IN NOTICES
3 SUBMITTED TO THE OWNER OR OPERATOR PURSUANT TO SUBSECTION (6)
4 OF THIS SECTION;

5 (D) THE NUMBER OF RENOTIFICATIONS SUBMITTED TO THE OWNER
6 OR OPERATOR PURSUANT TO SUBSECTION (6.5) OF THIS SECTION; AND

7 (E) THE PERCENTAGE OF LOCATE REQUESTS RESULTING IN
8 RENOTIFICATIONS SUBMITTED TO THE OWNER OR OPERATOR PURSUANT TO
9 SUBSECTION (6.5) OF THIS SECTION.

10 (II) THE NOTIFICATION ASSOCIATION SHALL MAKE THE DATA IN
11 THE ANNUAL REPORT ELECTRONICALLY ACCESSIBLE TO THE SAFETY
12 COMMISSION FOR CUSTOMIZED REPORTS OR RESEARCH.

13 (9) IF DAMAGE RESULTS IN THE ESCAPE OF ANY
14 PHMSA-REGULATED NATURAL GAS OR OTHER GAS OR HAZARDOUS
15 LIQUID, THE EXCAVATOR SHALL PROMPTLY REPORT TO APPROPRIATE
16 AUTHORITIES BY CALLING THE 911 EMERGENCY TELEPHONE NUMBER OR
17 ANOTHER EMERGENCY TELEPHONE NUMBER. THE REPORTING IS IN
18 ADDITION TO ANY REPORTING REQUIRED TO BE MADE TO ANY STATE OR
19 LOCAL AGENCY.

20 (10) ALL NEW UNDERGROUND FACILITIES, INCLUDING LATERALS
21 UP TO THE STRUCTURE OR BUILDING BEING SERVED, INSTALLED ON OR
22 AFTER JANUARY 1, 2020, MUST BE ELECTRONICALLY LOCATABLE WHEN
23 INSTALLED.

24 (11) NOTHING IN THIS ARTICLE 1.5 AFFECTS OR IMPAIRS ANY
25 LOCAL ORDINANCES OR OTHER PROVISIONS OF LAW REQUIRING PERMITS TO
26 BE OBTAINED BEFORE AN EXCAVATION. A PERMIT ISSUED BY A
27 GOVERNMENT AGENCY DOES NOT RELIEVE AN EXCAVATOR FROM

1 COMPLYING WITH THIS ARTICLE 1.5.

2 (12) THE NOTIFICATION ASSOCIATION SHALL COLLECT A FEE IN AN
3 AMOUNT SPECIFIED BY THE SAFETY COMMISSION BY RULE TO
4 APPROXIMATE ITS DIRECT AND INDIRECT COSTS IN ADMINISTERING THIS
5 ARTICLE 1.5 FOR EACH NOTIFICATION TO THE NOTIFICATION ASSOCIATION
6 MADE PURSUANT TO SUBSECTION (2.4) OR (3) OF THIS SECTION. THE
7 NOTIFICATION ASSOCIATION SHALL TRANSMIT THE MONEY TO THE STATE
8 TREASURER, WHO SHALL CREDIT IT TO THE SAFETY COMMISSION FUND
9 CREATED IN SECTION 9-1.5-104.8.

10 **SECTION 3.** In Colorado Revised Statutes, **add** 9-1.5-104.2,
11 9-1.5-104.4, 9-1.5-104.7, and 9-1.5-104.8 as follows:

12 **9-1.5-104.2. Underground damage prevention safety**
13 **commission - creation - review of violations - enforcement - rules.**

14 (1) (a) THERE IS HEREBY CREATED THE UNDERGROUND DAMAGE
15 PREVENTION SAFETY COMMISSION IN THE DEPARTMENT OF LABOR AND
16 EMPLOYMENT. THE SAFETY COMMISSION IS TRANSFERRED TO THE
17 DEPARTMENT BY A **TYPE 1** TRANSFER AS THAT TERM IS DEFINED IN
18 SECTION 24-1-105. THE SAFETY COMMISSION SHALL:

19 (I) ADVISE THE NOTIFICATION ASSOCIATION AND OTHER STATE
20 AGENCIES, THE GENERAL ASSEMBLY, AND LOCAL GOVERNMENTS ON:

21 (A) BEST PRACTICES AND TRAINING TO PREVENT DAMAGE TO
22 UNDERGROUND UTILITIES; AND

23 (B) POLICIES TO ENHANCE WORKER AND PUBLIC SAFETY,
24 INCLUDING THE ESTABLISHMENT AND PERIODIC UPDATING OF INDUSTRY
25 BEST STANDARDS, INCLUDING MARKING AND DOCUMENTATION BEST
26 PRACTICES AND TECHNOLOGY ADVANCEMENTS; AND

27 (II) REVIEW COMPLAINTS ALLEGING VIOLATIONS OF THIS ARTICLE

1 1.5 INVOLVING PRACTICES RELATED TO UNDERGROUND FACILITIES AND
2 ORDER APPROPRIATE REMEDIAL ACTION OR PENALTIES.

3 (b) THE SAFETY COMMISSION AND THE NOTIFICATION ASSOCIATION
4 SHALL ENTER INTO A MEMORANDUM OF UNDERSTANDING TO FACILITATE
5 IMPLEMENTATION AND ADMINISTRATION OF THIS SECTION AND SECTIONS
6 9-1.5-104.4, 9-1.5-104.7, AND 9-1.5-104.8.

7 (c) NOTWITHSTANDING THE POWERS AND DUTIES ASSIGNED TO THE
8 SAFETY COMMISSION, THIS SECTION AND SECTION 9-1.5-104.4 DO NOT
9 APPLY TO A HOME RULE COUNTY, CITY AND COUNTY, OR MUNICIPALITY,
10 AND NOTHING IN THIS ARTICLE 1.5 AUTHORIZES THE SAFETY COMMISSION
11 TO IMPOSE A CIVIL PENALTY ON OR ENFORCE A RECOMMENDATION OR
12 CORRECTIVE ACTION REGARDING AN ALLEGED VIOLATION OF THIS ARTICLE
13 1.5 AGAINST A HOME RULE COUNTY, CITY AND COUNTY, OR MUNICIPALITY;
14 EXCEPT THAT:

15 (I) THE SAFETY COMMISSION SHALL:

16 (A) INFORM A HOME RULE COUNTY, CITY AND COUNTY, OR
17 MUNICIPALITY OF AN ALLEGED VIOLATION OF THIS ARTICLE 1.5; AND

18 (B) AT THE REQUEST OF THE APPLICABLE HOME RULE COUNTY,
19 CITY AND COUNTY, OR MUNICIPALITY, SUGGEST CORRECTIVE ACTION; AND

20 (II) NOTHING IN THIS SUBSECTION (1)(c) PROHIBITS A HOME RULE
21 COUNTY, CITY AND COUNTY, OR MUNICIPALITY FROM PARTICIPATING IN
22 PROCEEDINGS OF THE SAFETY COMMISSION.

23 (d) THE GOVERNING BODY OF A HOME RULE COUNTY, CITY AND
24 COUNTY, OR MUNICIPALITY SHALL ADOPT BY RESOLUTION, ORDINANCE, OR
25 OTHER OFFICIAL ACTION EITHER:

26 (I) A DAMAGE PREVENTION SAFETY PROGRAM SIMILAR TO THAT
27 ESTABLISHED PURSUANT TO THIS ARTICLE 1.5; OR

1 (II) A WAIVER OF THE EXEMPTION SPECIFIED IN SUBSECTION (1)(c)
2 OF THIS SECTION THAT DELEGATES ITS DAMAGE PREVENTION
3 ENFORCEMENT AUTHORITY TO THE SAFETY COMMISSION.

4 (2) (a) THE GOVERNOR SHALL APPOINT THE FOLLOWING THIRTEEN
5 MEMBERS OF THE SAFETY COMMISSION, TAKING INTO CONSIDERATION
6 NOMINATIONS MADE PURSUANT TO THIS SUBSECTION (2)(a), SUBJECT TO
7 CONSENT BY THE SENATE:

8 (I) LOCAL GOVERNMENTS: THREE MEMBERS, INCLUDING ONE
9 INDIVIDUAL NOMINATED BY COLORADO COUNTIES, INC., TO REPRESENT
10 COUNTIES; ONE INDIVIDUAL NOMINATED BY THE COLORADO MUNICIPAL
11 LEAGUE TO REPRESENT MUNICIPALITIES; AND ONE INDIVIDUAL
12 NOMINATED BY THE SPECIAL DISTRICT ASSOCIATION OF COLORADO TO
13 REPRESENT SPECIAL DISTRICTS;

14 (II) OWNERS OR OPERATORS: FIVE MEMBERS NOMINATED BY
15 MEMBERS OF THE BOARD OF DIRECTORS OF THE NOTIFICATION
16 ASSOCIATION AND REPRESENTING OWNERS OR OPERATORS OF
17 UNDERGROUND FACILITIES, OF WHICH AT LEAST ONE MUST BE A FACILITY
18 REGULATED BY PHMSA AND ONE MUST REPRESENT A
19 NON-RATE-REGULATED UTILITY;

20 (III) EXCAVATORS: FOUR MEMBERS NOMINATED BY THE
21 EXCAVATOR MEMBERS OF THE NOTIFICATION ASSOCIATION; AND

22 (IV) THE NOTIFICATION ASSOCIATION: ONE MEMBER NOMINATED
23 BY THE CHIEF EXECUTIVE OFFICER OF THE NOTIFICATION ASSOCIATION.

24 (b) THE GOVERNOR SHALL MAKE INITIAL APPOINTMENTS BY
25 JANUARY 1, 2019. THE MEMBERS' TERMS OF OFFICE ARE THREE YEARS;
26 EXCEPT THAT THE INITIAL TERM OF ONE OF THE MEMBERS APPOINTED
27 PURSUANT TO:

1 (I) SUBSECTIONS (2)(a)(I), (2)(a)(II), AND (2)(a)(III) OF THIS
2 SECTION IS ONE YEAR; AND

3 (II) SUBSECTIONS (2)(a)(I), (2)(a)(II), AND (2)(a)(III) OF THIS
4 SECTION IS TWO YEARS.

5 (c) WITHIN SIX MONTHS AFTER ITS CREATION, THE SAFETY
6 COMMISSION SHALL ADOPT BYLAWS AND PROVIDE FOR THOSE
7 ORGANIZATIONAL PROCESSES THAT ARE NECESSARY TO COMPLETE THE
8 SAFETY COMMISSION'S TASKS.

9 (d) THE SAFETY COMMISSION MAY PROMULGATE RULES TO
10 IMPLEMENT THIS ARTICLE 1.5 AND MAY REVISE THE RULES AS NEEDED.

11 (3) THE SAFETY COMMISSION SHALL MEET AT LEAST ONCE EVERY
12 THREE MONTHS. THE SAFETY COMMISSION SHALL OPERATE
13 INDEPENDENTLY OF THE NOTIFICATION ASSOCIATION; HOWEVER, THE
14 NOTIFICATION ASSOCIATION AND THE DEPARTMENT OF LABOR AND
15 EMPLOYMENT SHALL PROVIDE ADMINISTRATIVE SUPPORT TO THE SAFETY
16 COMMISSION IN PERFORMING ITS DUTIES AS OUTLINED IN THIS SECTION.

17 (4) THE SAFETY COMMISSION MAY REVIEW COMPLAINTS OF
18 ALLEGED VIOLATIONS OF THIS ARTICLE 1.5. ANY PERSON MAY BRING A
19 COMPLAINT TO THE SAFETY COMMISSION REGARDING AN ALLEGED
20 VIOLATION.

21 (5) TO REVIEW A COMPLAINT OF AN ALLEGED VIOLATION, THE
22 SAFETY COMMISSION SHALL APPOINT AT LEAST THREE AND NOT MORE
23 THAN FIVE OF ITS MEMBERS AS A REVIEW COMMITTEE. THE REVIEW
24 COMMITTEE MUST INCLUDE THE SAME NUMBER OF MEMBERS
25 REPRESENTING EXCAVATORS AND OWNERS OR OPERATORS AND AT LEAST
26 ONE MEMBER THAT DOES NOT REPRESENT EXCAVATORS OR OWNERS OR
27 OPERATORS. A SAFETY COMMISSION MEMBER WHO HAS A CONFLICT OF

1 INTEREST WITH REGARD TO A PARTICULAR MATTER SHALL RECUSE
2 HIMSELF OR HERSELF FROM SERVING ON A REVIEW COMMITTEE WITH
3 REGARD TO THAT MATTER.

4 (6)(a) BEFORE REVIEWING A COMPLAINT, THE REVIEW COMMITTEE
5 SHALL NOTIFY THE PERSON MAKING THE COMPLAINT AND THE ALLEGED
6 VIOLATOR OF ITS INTENT TO REVIEW THE COMPLAINT AND OF THE
7 OPPORTUNITY FOR BOTH PARTIES TO PARTICIPATE. THE NOTIFICATION
8 MUST INCLUDE THE HEARING DATE FOR THE COMPLAINT, WHICH MUST BE
9 SCHEDULED FOR A DATE WITHIN NINETY DAYS AFTER THE DATE ON WHICH
10 THE SAFETY COMMISSION RECEIVED THE COMPLAINT, AND A STATEMENT
11 THAT THE PARTIES MAY SUBMIT WRITTEN OR ORAL COMMENTS AT THE
12 HEARING. THE HEARING DATE CAN BE POSTPONED BY MUTUAL
13 AGREEMENT OF THE PARTIES TO A DATE THAT IS ACCEPTABLE TO THE
14 REVIEW COMMITTEE. THE COMPLAINING PARTY MAY VOLUNTARILY
15 WITHDRAW THE COMPLAINT PRIOR TO A HEARING BY THE REVIEW
16 COMMITTEE. THE SAFETY COMMISSION SHALL PROMULGATE RULES
17 GOVERNING THE CONDUCT OF HEARINGS UNDER THIS SECTION.

18 (b) THE REVIEW COMMITTEE SHALL DETERMINE WHETHER A
19 VIOLATION OF THE LAW HAS OCCURRED AND, IF APPROPRIATE,
20 RECOMMEND REMEDIAL ACTION CONSISTENT WITH THE GUIDANCE
21 DEVELOPED PURSUANT TO SECTION 9-1.5-104.4(2). A RECOMMENDATION
22 OF REMEDIAL ACTION THAT INCLUDES A FINE REQUIRES A UNANIMOUS
23 VOTE OF THE REVIEW COMMITTEE. WITHIN SEVEN BUSINESS DAYS AFTER
24 THE COMPLETION OF THE HEARING, THE REVIEW COMMITTEE SHALL
25 PROVIDE TO THE SAFETY COMMISSION IN WRITING A REPORT OF ITS
26 FINDINGS OF FACTS, ITS DETERMINATION OF WHETHER A VIOLATION OF THE
27 LAW HAS OCCURRED, AND ANY RECOMMENDATION OF REMEDIAL ACTION

1 OR PENALTY.

2 (7) THE SAFETY COMMISSION IS BOUND BY THE REVIEW
3 COMMITTEE'S FINDINGS OF FACT AND DECISION, BUT THE SAFETY
4 COMMISSION MAY ADJUST THE REVIEW COMMITTEE'S RECOMMENDATION
5 OF REMEDIAL ACTION OR PENALTY IF AN ADJUSTMENT IS SUPPORTED BY AT
6 LEAST NINE MEMBERS OF THE SAFETY COMMISSION. WITHIN TEN BUSINESS
7 DAYS AFTER THE SAFETY COMMISSION MEETING TO REVIEW THE FINDINGS
8 AND RECOMMENDATIONS OF THE REVIEW COMMITTEE, THE SAFETY
9 COMMISSION SHALL PROVIDE IN WRITING TO THE PERSON MAKING THE
10 COMPLAINT AND THE ALLEGED VIOLATOR A SUMMARY OF THE REVIEW
11 COMMITTEE'S FINDINGS AND THE SAFETY COMMISSION'S FINAL
12 DETERMINATION WITH RESPECT TO ANY REQUIRED REMEDIAL ACTION OR
13 PENALTY.

14 (8) IF A DECISION BY THE SAFETY COMMISSION INVOLVES A FINE
15 AUTHORIZED BY SECTION 9-1.5-104.4, THE SAFETY COMMISSION SHALL
16 INVOICE FOR AND COLLECT THE FINE INDICATING THAT A VIOLATION OF
17 THIS ARTICLE 1.5 HAS BEEN COMMITTED BY A PERSON OR INVOLVING THE
18 UNDERGROUND FACILITIES OF A PERSON. THE SAFETY COMMISSION MAY
19 ENFORCE THE FINE ASSESSED UNDER THIS ARTICLE 1.5 AS PROVIDED IN
20 SECTION 24-30-202.4.

21 (9) (a) IF A PERSON DOES NOT COMPLY WITH THE SAFETY
22 COMMISSION'S DECISION, THE SAFETY COMMISSION, REPRESENTED BY THE
23 ATTORNEY GENERAL, MAY ENFORCE THIS ARTICLE 1.5 BY BRINGING AN
24 ACTION IN THE DENVER DISTRICT COURT. IN AN ACTION BROUGHT BY THE
25 SAFETY COMMISSION PURSUANT TO THIS SECTION, THE COURT MAY AWARD
26 THE SAFETY COMMISSION ALL COSTS OF INVESTIGATION AND TRIAL,
27 INCLUDING REASONABLE ATTORNEY FEES FIXED BY THE COURT.

1 (b) ANY COSTS INCURRED BY THE SAFETY COMMISSION AS A
2 RESULT OF ADMINISTERING THIS ARTICLE 1.5, INCLUDING LEGAL SERVICES,
3 SHALL BE PAID FROM THE SAFETY COMMISSION FUND CREATED IN SECTION
4 9-1.5-104.8. ANY COSTS AND FEES AWARDED BY THE COURT PURSUANT TO
5 THIS SUBSECTION (9) SHALL BE DEPOSITED IN THE SAFETY COMMISSION
6 FUND CREATED IN SECTION 9-1.5-104.8.

7 (10) (a) A PERSON MAY APPEAL A DECISION BY THE SAFETY
8 COMMISSION BY FILING A WRITTEN NOTICE OF APPEAL WITH THE OFFICE OF
9 ADMINISTRATIVE COURTS NO LATER THAN THIRTY-FIVE DAYS AFTER THE
10 SERVICE OR MAILING OF THE NOTICE SPECIFIED IN SUBSECTION (7) OF THIS
11 SECTION. THE PERSON SHALL ALSO SERVE THE NOTICE OF WRITTEN APPEAL
12 ON THE SAFETY COMMISSION. ANY SERVICE REQUIRED UNDER THIS
13 ARTICLE 1.5 SHALL BE CONDUCTED IN ACCORDANCE WITH THE "STATE
14 ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24.

15 (b) THE OFFICE OF ADMINISTRATIVE COURTS SHALL ASSIGN THE
16 APPEAL TO AN ADMINISTRATIVE LAW JUDGE. A HEARING CONDUCTED BY
17 AN ADMINISTRATIVE LAW JUDGE PURSUANT TO THIS SUBSECTION (10)
18 SHALL BE CONDUCTED IN ACCORDANCE WITH SECTION 24-4-105. THE
19 ADMINISTRATIVE LAW JUDGE MAY AFFIRM, MODIFY, OR SET ASIDE THE
20 SAFETY COMMISSION'S DECISION. THE DECISION OF THE ADMINISTRATIVE
21 LAW JUDGE IS FINAL AGENCY ACTION SUBJECT TO REVIEW BY THE DISTRICT
22 COURT PURSUANT TO SECTION 24-4-106.

23 **9-1.5-104.4. Penalties - guidance.** (1) A PERSON WHO VIOLATES
24 THIS ARTICLE 1.5 IS SUBJECT TO A FINE OF NOT MORE THAN FIVE
25 THOUSAND DOLLARS FOR AN INITIAL VIOLATION AND NOT MORE THAN
26 SEVENTY-FIVE THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION
27 WITHIN A TWELVE-MONTH PERIOD.

1 (2) IN THE PERFORMANCE OF ITS DUTIES REGARDING ANY
2 COMPLAINT, THE SAFETY COMMISSION IS ENCOURAGED TO CONSIDER
3 TRAINING, SUPPORT SERVICES, OR OTHER REMEDIATION MEASURES THAT
4 WILL IMPROVE THE BEHAVIOR OF THE PARTY AND FURTHER THE GOALS OF
5 THIS ARTICLE 1.5 TO ENSURE THE SAFETY OF ALL PARTICIPANTS AND
6 COLORADANS. THE SAFETY COMMISSION SHALL DEVELOP GUIDANCE FOR
7 THE RECOMMENDATION OF REMEDIAL ACTIONS THAT ARE CONSISTENT
8 WITH THE FOLLOWING PRINCIPLES:

9 (a) GUIDANCE SHALL BE DEVELOPED TO HELP THE REVIEW
10 COMMITTEE IN DETERMINING WHETHER AN ALLEGED VIOLATION SHOULD
11 BE CLASSIFIED AS A MINOR, MODERATE, OR MAJOR VIOLATION; AND

12 (b) ALTERNATIVES TO FINES MAY BE CONSIDERED, ESPECIALLY FOR
13 A PARTY THAT THE SAFETY COMMISSION HAS NOT FOUND TO BE
14 RESPONSIBLE FOR A VIOLATION IN THE PREVIOUS TWELVE MONTHS.

15 (3) THE MAXIMUM FINES FOR THE THREE DIFFERENT
16 CLASSIFICATIONS OF VIOLATIONS ARE AS FOLLOWS:

17 **NUMBER OF VIOLATIONS WITHIN THE PREVIOUS TWELVE MONTHS**

	ONE	TWO	THREE	FOUR
18 MINOR	\$ 250	\$ 500	\$ 1,000	\$ 5,000
19 MODERATE	\$1,000	\$ 2,500	\$ 5,000	\$25,000
20 MAJOR	\$5,000	\$25,000	\$50,000	\$75,000

22 **9-1.5-104.7. Damage prevention fund.** (1) THE DAMAGE
23 PREVENTION FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS
24 HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF:

25 (a) ALL RECEIPTS FROM MONEY DIRECTED BY LAW TO BE
26 DEPOSITED TO THE FUND;

27 (b) ALL FINES COLLECTED PURSUANT TO SECTION 9-1.5-104.4; AND

1 (c) ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY
2 APPROPRIATE OR TRANSFER TO THE FUND.

3 (2) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND
4 INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE
5 FUND TO THE FUND.

6 (3) ONLY THE SAFETY COMMISSION MAY AUTHORIZE
7 EXPENDITURES FROM THE FUND. SUBJECT TO ANNUAL APPROPRIATION BY
8 THE GENERAL ASSEMBLY, THE SAFETY COMMISSION MAY USE MONEY
9 DEPOSITED IN THE FUND ONLY TO:

10 (a) DEVELOP AND DISSEMINATE EDUCATIONAL PROGRAMMING
11 DESIGNED TO IMPROVE WORKER AND PUBLIC SAFETY RELATING TO
12 EXCAVATION AND UNDERGROUND FACILITIES; AND

13 (b) PROVIDE GRANTS TO PERSONS WHO HAVE DEVELOPED
14 EDUCATIONAL PROGRAMMING THAT THE NOTIFICATION ASSOCIATION AND
15 THE SAFETY COMMISSION DEEM APPROPRIATE FOR IMPROVING WORKER
16 AND PUBLIC SAFETY RELATING TO EXCAVATION AND UNDERGROUND
17 FACILITIES.

18 **9-1.5-104.8. Safety commission fund.** (1) THE SAFETY
19 COMMISSION FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS
20 HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF:

21 (a) ALL RECEIPTS FROM MONEY DIRECTED BY LAW TO BE
22 DEPOSITED TO THE FUND, INCLUDING COSTS AND FEES AWARDED BY A
23 COURT PURSUANT TO SECTION 9-1.5-104.2 (9)(b);

24 (b) ALL FEES COLLECTED PURSUANT TO SECTION 9-1.5-103 (12);
25 AND

26 (c) ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY
27 APPROPRIATE OR TRANSFER TO THE FUND.

1 (2) THE STATE TREASURER SHALL CREDIT ALL INTEREST AND
2 INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE
3 FUND TO THE FUND.

4 (3) ONLY THE SAFETY COMMISSION MAY AUTHORIZE
5 EXPENDITURES FROM THE FUND. SUBJECT TO ANNUAL APPROPRIATION BY
6 THE GENERAL ASSEMBLY, THE SAFETY COMMISSION MAY USE MONEY
7 DEPOSITED IN THE FUND ONLY TO PAY FOR ITS EXPENSES IN
8 ADMINISTERING THIS ARTICLE 1.5.

9 **SECTION 4.** In Colorado Revised Statutes, **amend** 9-1.5-104.3
10 as follows:

11 **9-1.5-104.3. Alternative dispute resolution.** The notification
12 association shall create a voluntary alternative dispute resolution program
13 in consultation with its members and all affected parties. The alternative
14 dispute resolution program ~~shall~~ MUST be available to all owners or
15 operators, excavators, and other interested parties regarding disputes
16 arising from damage to underground facilities, including, ~~but not limited~~
17 ~~to~~, any cost or damage incurred by the owner or operator or the excavator
18 as a result of any delay in the excavation project while the underground
19 facility is restored, repaired, or replaced, exclusive of civil penalties set
20 forth in AND FINES ASSESSED PURSUANT TO section 9-1.5-104.5 OR
21 **9-1.5-104.4**, that cannot be resolved through consultation and negotiation.
22 The alternative dispute resolution program ~~shall~~ MUST include mediation,
23 arbitration, or other appropriate processes of dispute resolution. The issue
24 of liability and amount of damages under Colorado law may be decided
25 by an appointed arbitrator or by the parties in mediation. Nothing in this
26 section ~~shall be construed to change~~ CHANGES the basis for civil liability
27 for damages.

1 **SECTION 5.** In Colorado Revised Statutes, 9-1.5-105, **amend**
2 (1), (2) introductory portion, (3), (4), and (6); **repeal** (2.3); and **add** (2.1)
3 and (2.4) as follows:

4 **9-1.5-105. Notification association - structure and funding**
5 **requirements - duties of owners and operators - report - repeal.**

6 (1) There is hereby created a nonprofit corporation in the state of
7 Colorado, referred to in this ~~article~~ ARTICLE 1.5 as the "notification
8 association", which ~~shall consist~~ CONSISTS of all owners or operators of
9 underground facilities. All ~~such~~ owners and operators shall join the
10 notification association and shall participate in a statewide program ~~which~~
11 THAT utilizes a single, toll-free telephone ~~number which~~ NUMBER (811)
12 THAT excavators can use to notify the notification association of pending
13 excavation plans. ~~Upon its organization and incorporation, the association~~
14 ~~shall file a letter to such effect with the public utilities commission so that~~
15 ~~the commission may refer inquiries arising under this article to an~~
16 ~~appropriate person.~~

17 (2) All underground facility owners and operators ~~except the~~
18 ~~Colorado department of transportation shall be~~ ARE members of the
19 notification association. ~~which shall be~~ THE NOTIFICATION ASSOCIATION
20 SHALL PROVIDE MEMBERS THAT WERE NOT TIER ONE MEMBERS ON OR
21 BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (2), AS AMENDED, WITH
22 ELECTRONIC NOTIFICATIONS BEGINNING ON JANUARY 1, 2019, AT NO COST
23 FOR TWENTY-FOUR MONTHS. ON OR BEFORE JANUARY 1, 2021, ALL
24 OWNERS AND OPERATORS BECOME FULL MEMBERS OF THE NOTIFICATION
25 ASSOCIATION AND ARE ENTITLED TO RECEIVE FULL SERVICE BENEFITS AS
26 PART OF MEMBERSHIP AS SPECIFIED IN THIS ARTICLE 1.5. NOTHING
27 PRECLUDES A TIER TWO MEMBER FROM BECOMING A TIER ONE MEMBER

1 WITH THE TWO-YEAR WAIVER OF NO-COST NOTIFICATIONS AT ANY TIME
2 BEFORE JANUARY 1, 2021. UNTIL DECEMBER 31, 2020, MEMBERSHIP IS
3 organized as follows:

4 (2.1) SUBSECTION (2) OF THIS SECTION AND THIS SUBSECTION (2.1)
5 ARE REPEALED, EFFECTIVE JANUARY 1, 2021.

6 (2.3) ~~Any association member may alter the status of its~~
7 ~~membership and move from tier one to tier two or from tier two to tier~~
8 ~~one at any time that such member chooses; except that every tier one~~
9 ~~member shall remain a tier one member for at least two years after~~
10 ~~becoming a tier one member.~~

11 (2.4) EFFECTIVE JANUARY 1, 2021, ALL UNDERGROUND FACILITY
12 OWNERS AND OPERATORS ARE MEMBERS OF THE NOTIFICATION
13 ASSOCIATION. ALL MEMBERS ARE FULL MEMBERS OF THE NOTIFICATION
14 ASSOCIATION AND ARE ENTITLED TO RECEIVE FULL SERVICE BENEFITS AS
15 PART OF MEMBERSHIP AS SPECIFIED IN THIS ARTICLE 1.5.

16 (3) (a) (I) Except as provided in subsection (2) of this section,
17 each member of the notification association shall provide all of the
18 locations of any underground facilities ~~which such~~ THAT THE member
19 owns or operates to the notification association, and the association shall
20 maintain ~~such~~ THE information on file for use by excavators.

21 (II) THIS SUBSECTION (3)(a) IS REPEALED, EFFECTIVE JANUARY 1,
22 2021.

23 (b) EFFECTIVE JANUARY 1, 2021, EACH MEMBER OF THE
24 NOTIFICATION ASSOCIATION SHALL PROVIDE ALL OF THE LOCATIONS OF
25 ANY UNDERGROUND FACILITIES THAT THE MEMBER OWNS OR OPERATES
26 AND THE MEMBER'S CONTACT INFORMATION, BOTH OF WHICH SHALL BE
27 UPDATED ANNUALLY, TO THE NOTIFICATION ASSOCIATION, AND THE

1 ASSOCIATION SHALL MAINTAIN THE INFORMATION ON FILE IN A MANNER
2 THAT ENSURES THE CONFIDENTIALITY AND SECURITY OF THE
3 INFORMATION.

4 (c) INFORMATION REGARDING THE LOCATION OF UNDERGROUND
5 FACILITIES PROVIDED TO THE NOTIFICATION ASSOCIATION BY AN OWNER
6 OR OPERATOR OR TO THE SAFETY COMMISSION BY THE NOTIFICATION
7 ASSOCIATION IS EXEMPT FROM THE "COLORADO OPEN RECORDS ACT",
8 PART 2 OF ARTICLE 72 OF TITLE 24, PURSUANT TO SECTION 24-72-204
9 (2)(a)(VIII)(A) REGARDING SPECIALIZED DETAILS OF CRITICAL
10 INFRASTRUCTURE.

11 (4) (a) (I) The notification association ~~shall be~~ IS governed by a
12 board of directors, which ~~is~~ MUST BE representative of the membership of
13 the association.

14 (II) (A) ~~and shall~~ UNTIL DECEMBER 31, 2020, THE BOARD MUST
15 have at least one director that is a tier two member.

16 (B) THIS SUBSECTION (4)(a)(II) IS REPEALED, EFFECTIVE JANUARY
17 1, 2021.

18 (b) The board of directors shall be elected by the membership of
19 the association pursuant to the bylaws of the association.

20 (6) This section ~~shall~~ DOES not apply to:

21 (a) Any owner or occupant of real property under which
22 underground facilities are buried if ~~such~~ THE facilities are used solely to
23 furnish service or commodities to ~~such~~ THE real property and no part of
24 ~~such~~ THE facilities is located in a public street, county road, alley, or
25 right-of-way dedicated to public use; OR

26 (b) ANY HOMEOWNER.

27 **SECTION 6.** In Colorado Revised Statutes, 9-1.5-106, **amend** (3)

1 as follows:

2 **9-1.5-106. Notice requirements - repeal.** (3) (a) (I) The
3 notification association shall provide prompt notice of any proposed
4 excavation to each affected tier one member that has any underground
5 facilities in the area of the proposed excavation site. The notification
6 association shall also provide the excavator with the name and telephone
7 number of each tier two member that has any underground facilities in the
8 area of the proposed excavation.

9 (II) THIS SUBSECTION (3)(a) IS REPEALED, EFFECTIVE JANUARY 1,
10 2021.

11 (b) EFFECTIVE JANUARY 1, 2021, THE NOTIFICATION ASSOCIATION
12 SHALL PROVIDE PROMPT NOTICE OF ANY PROPOSED EXCAVATION TO EACH
13 AFFECTED MEMBER THAT HAS ANY UNDERGROUND FACILITIES IN THE AREA
14 OF THE PROPOSED EXCAVATION SITE.

15 **SECTION 7.** In Colorado Revised Statutes, 24-1-121, **add** (3)(j)
16 as follows:

17 **24-1-121. Department of labor and employment - creation.**

18 (3) The department of labor and employment consists of the following
19 divisions and programs:

20 (j) THE UNDERGROUND DAMAGE PREVENTION SAFETY COMMISSION
21 CREATED BY SECTION 9-1.5-104.2. THE COMMISSION AND ITS POWERS,
22 DUTIES, AND FUNCTIONS ARE TRANSFERRED BY A **TYPE 1** TRANSFER TO
23 THE DEPARTMENT OF LABOR AND EMPLOYMENT.

24 **SECTION 8. Act subject to petition - effective date -**
25 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
26 the expiration of the ninety-day period after final adjournment of the
27 general assembly (August 8, 2018, if adjournment sine die is on May 9,

1 2018); except that, if a referendum petition is filed pursuant to section 1
2 (3) of article V of the state constitution against this act or an item, section,
3 or part of this act within such period, then the act, item, section, or part
4 will not take effect unless approved by the people at the general election
5 to be held in November 2018 and, in such case, will take effect on the
6 date of the official declaration of the vote thereon by the governor.

7 (2) This act applies to conduct occurring on or after the applicable
8 effective date of this act.