

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

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
Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING INCREASED ENFORCEMENT OF REQUIREMENTS RELATED**
102 **TO THE LOCATION OF UNDERGROUND FACILITIES, AND, IN**
103 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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

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.*

SENATE
3rd Reading Unamended
April 27, 2018

SENATE
Amended 2nd Reading
April 26, 2018

facilities. Violations of the excavation damage prevention law are 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), (6.7),
4 (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 PENETRATION OR DESTRUCTION OF

1 ANY PROTECTIVE COATING, HOUSING, OR OTHER PROTECTIVE DEVICE OF
2 AN UNDERGROUND FACILITY, THE DENTING OR PARTIAL OR COMPLETE
3 SEVERANCE OF AN UNDERGROUND FACILITY, OR THE RENDERING OF ANY
4 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 EXISTING AGRICULTURAL ACTIVITY THAT IS
15 ROUTINE FOR THAT RANCH OR FARM;

16 (II) LAND CLEARING IF THE ACTIVITY DOES NOT INVOLVE DEEP
17 RIPPING OR DEEP ROOT REMOVAL OF TREES OR SHRUBS; OR

18 (III) ROUTINE MAINTENANCE OF:

19 (A) AN EXISTING IRRIGATION FACILITY IF THE FACILITY HAS BEEN
20 SUBJECTED TO MAINTENANCE IN THE PREVIOUS TWENTY-FOUR MONTHS;

21 OR

22 (B) EXISTING FENCE LINES.

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

1 (3.7) "LICENSED PROFESSIONAL ENGINEER" MEANS A
2 PROFESSIONAL ENGINEER AS DEFINED IN SECTION 12-25-102.

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

10 (6.8) "SUBSURFACE UTILITY ENGINEERING-REQUIRED PROJECT"
11 MEANS A PROJECT THAT MEETS ALL OF THE FOLLOWING CONDITIONS:

12 (a) THE PROJECT INVOLVES A CONSTRUCTION CONTRACT WITH A
13 PUBLIC ENTITY, AS THAT TERM IS DEFINED IN SECTION 24-91-102;

14 (b) THE PROJECT INVOLVES PRIMARILY HORIZONTAL
15 CONSTRUCTION AND DOES NOT INVOLVE PRIMARILY THE CONSTRUCTION
16 OF BUILDINGS;

17 (c) (I) THE PROJECT:

18 (A) HAS AN ANTICIPATED EXCAVATION FOOTPRINT THAT EXCEEDS
19 TWO FEET IN DEPTH AND THAT IS A CONTIGUOUS ONE THOUSAND SQUARE
20 FEET; OR

21 (B) INVOLVES UTILITY BORING.

22 (II) FOR PURPOSES OF THIS SUBSECTION (6.8)(c), THE TERM "TWO
23 FEET IN DEPTH" DOES NOT INCLUDE ROTOMILLING, AND THE CONTIGUOUS
24 ONE THOUSAND SQUARE FEET DOES NOT INCLUDE FENCING AND SIGNING
25 PROJECTS.

26 (d) THE PROJECT REQUIRES THE DESIGN SERVICES OF A LICENSED
27 PROFESSIONAL ENGINEER.

1 (6.9) "UNDERGROUND DAMAGE PREVENTION SAFETY COMMISSION"
2 OR "SAFETY COMMISSION" MEANS THE ENFORCEMENT AUTHORITY
3 ESTABLISHED IN SECTION 9-1.5-104.2.

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

7 **9-1.5-103. Plans and specifications - notice of excavation -**
8 **duties of excavators - duties of owners and operators - fee - repeal.**

9 (2.4) AT THE PROJECT OWNER'S EXPENSE, A LICENSED PROFESSIONAL
10 ENGINEER DESIGNING _____ FOR A SUBSURFACE UTILITY
11 ENGINEERING-REQUIRED PROJECT SHALL:

12 (a) NOTIFY THE NOTIFICATION ASSOCIATION WITH A SUBSURFACE
13 UTILITY ENGINEERING NOTIFICATION;

14 (b) EITHER:

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

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

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

25 (d) DOCUMENT THE REASONS WHY ANY UNDERGROUND FACILITIES
26 DEPICTED IN THE STAMPED PLANS DO NOT MEET OR EXCEED ASCE 38
27 UTILITY QUALITY LEVEL A OR ITS SUCCESSOR UTILITY QUALITY LEVEL FOR

1 UNDERGROUND FACILITIES AT THE POINT OF A POTENTIAL CONFLICT WITH
2 THE INSTALLATION OF A GRAVITY-FED SYSTEM.

3 (2.7) AN UNDERGROUND FACILITY OWNER THAT RECEIVES A
4 SUBSURFACE UTILITY ENGINEERING NOTIFICATION OR OTHER REQUEST FOR
5 INFORMATION FROM A DESIGNER SHALL RESPOND TO THE REQUEST WITHIN
6 TEN BUSINESS DAYS AFTER THE REQUEST, NOT INCLUDING THE DAY OF
7 ACTUAL NOTICE, IN ONE OR MORE OF THE FOLLOWING WAYS:

8 (a) PROVIDE UNDERGROUND FACILITY LOCATION RECORDS THAT
9 GIVE THE _____ AVAILABLE INFORMATION ON THE LOCATION, NOT TO
10 INCLUDE DEPTH, OF UNDERGROUND FACILITIES WITHIN THE PROJECT
11 LIMITS;

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

15 (c) PROVIDE THE _____ AVAILABLE INFORMATION AS TO THE
16 APPROXIMATE LOCATION, NOT TO INCLUDE DEPTH, OF ITS UNDERGROUND
17 FACILITIES WITHIN THE PROJECT LIMITS.

18 (3) (a) (I) (A) Except in emergency situations and except as to an
19 employee OR AN EMPLOYER'S CONTRACTOR with respect to the employer's
20 underground facilities or as otherwise provided in an agreement with an
21 owner or operator, ~~no~~ A person shall NOT make or begin excavation
22 without first notifying the notification association and, if necessary, the
23 tier two members having underground facilities in the area of ~~such~~ THE
24 excavation. Notice may be given in person, by telephone, BY ELECTRONIC
25 METHODS APPROVED BY THE NOTIFICATION ASSOCIATION, or in writing if
26 delivered.

27 (B) THIS SUBSECTION (3)(a)(I) IS REPEALED, EFFECTIVE JANUARY

1 1, 2021.

2 (II) EFFECTIVE JANUARY 1, 2021, EXCEPT IN EMERGENCY
3 SITUATIONS AND EXCEPT AS TO AN EMPLOYEE OR AN EMPLOYER'S
4 CONTRACTOR WITH RESPECT TO THE EMPLOYER'S UNDERGROUND
5 FACILITIES, A PERSON SHALL NOT MAKE OR BEGIN EXCAVATION WITHOUT
6 FIRST NOTIFYING THE NOTIFICATION ASSOCIATION. NOTICE MAY BE GIVEN
7 BY ELECTRONIC METHODS APPROVED BY THE NOTIFICATION ASSOCIATION
8 OR BY TELEPHONE.

9 (c) (I) Any notice given pursuant to ~~paragraph (b) of this~~
10 ~~subsection (3) shall~~ SUBSECTION (3)(b) OF THIS SECTION MUST include the
11 following:

12 (A) The name and telephone number of the person who is
13 giving the notice;

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

15 (C) The specific location, starting date, and description of the
16 intended excavation activity.

17 (II) IF AN AREA OF EXCAVATION CANNOT BE ACCURATELY
18 DESCRIBED ON THE LOCATE REQUEST, THE EXCAVATOR SHALL NOTIFY THE
19 OWNER OR OPERATOR OF THE AREA OF EXCAVATION USING ONE OR MORE
20 OF THE FOLLOWING METHODS:

21 (A) PHYSICAL DELINEATION WITH WHITE MARKS ON A HARD
22 SURFACE AREA;

23 (B) ELECTRONIC DELINEATION ON A MAP, PLAN SHEET, OR AERIAL
24 PHOTOGRAPH THAT CAN BE TRANSMITTED ELECTRONICALLY FROM THE
25 EXCAVATOR TO THE FACILITY OWNER OR OPERATOR THROUGH THE
26 NOTIFICATION ASSOCIATION; OR

27 (C) SCHEDULING AN ON-SITE MEETING BETWEEN THE EXCAVATOR

1 AND THE OWNER OR OPERATOR.

2 (d) ~~An excavator may request a written record of any information~~
3 ~~from an owner or operator of an underground facility regarding the~~
4 ~~location of specific underground facilities~~ AN EXCAVATOR REQUIRING
5 EXISTING MARKED UNDERGROUND FACILITIES TO BE EXPOSED MAY LIST A
6 SINGLE SECONDARY EXCAVATOR ON ITS NOTICE TO THE NOTIFICATION
7 ASSOCIATION AND EMPLOY THE SERVICES OF THE LISTED SECONDARY
8 EXCAVATOR TO EXPOSE MARKED UNDERGROUND FACILITIES USING
9 REASONABLE CARE TO NOT DAMAGE THE FACILITIES. THE SECONDARY
10 EXCAVATOR MAY EXPOSE MARKED UNDERGROUND FACILITIES UNDER THE
11 EXCAVATOR'S NOTICE TO THE NOTIFICATION ASSOCIATION ONLY IF THE
12 EXCAVATOR HAS COMPLIED WITH THIS SUBSECTION (3).

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

1 AND MUST MEET OR EXCEED ANY QUALITY STANDARDS ESTABLISHED BY
2 THE SAFETY COMMISSION PURSUANT TO SECTION 9-1.5-104.2 (1)(a)(I). IN
3 ADDITION TO THE MARKINGS, THE OWNER OR OPERATOR SHALL PROVIDE
4 FOR EACH OF ITS UNDERGROUND FACILITIES:

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

7 (B) DOCUMENTATION OF THE LOCATION OF THE UNDERGROUND
8 FACILITIES IN THE FORM OF A DIGITAL SKETCH, A HAND-DRAWN SKETCH,
9 OR A PHOTOGRAPH THAT INCLUDES A READILY IDENTIFIABLE LANDMARK,
10 WHERE PRACTICABLE.

11 (II) A SEWER SYSTEM OWNER OR OPERATOR SHALL PROVIDE ITS
12 BEST AVAILABLE INFORMATION WHEN MARKING THE LOCATION OF SEWER
13 LATERALS IN THE PUBLIC RIGHT-OF-WAY WITH CLEARLY IDENTIFIABLE
14 MARKINGS. "BEST AVAILABLE INFORMATION" INCLUDES TAP
15 MEASUREMENTS AND HISTORIC RECORDS. IF THE SEWER LATERAL CAN BE
16 ELECTRONICALLY LOCATED, THE SEWER SYSTEM OWNER OR OPERATOR
17 SHALL MARK AND DOCUMENT THE LOCATION OF THE SEWER LATERALS IN
18 ACCORDANCE WITH THIS SUBSECTION (4)(a). IF A SEWER SYSTEM OWNER
19 OR OPERATOR OF A SEWER LATERAL CANNOT ELECTRONICALLY LOCATE
20 THE SEWER LATERAL, THE EXCAVATOR SHALL FIND THE SEWER LATERAL.

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

25 (IV) ~~In the event any~~ IF A person is involved in excavating across
26 a preexisting underground facility, the owner of such facility shall, upon
27 a predetermined agreement at the request of the excavator or the owner,

1 provide on-site assistance. Any owner or operator receiving notice
2 concerning an excavator's intent to excavate shall use reasonable care to
3 advise the excavator of the absence of any underground facilities in the
4 proposed excavation area by ~~communicating directly with the excavator~~
5 ~~and providing documentation thereof, if requested, or by clearly marking~~
6 ~~that no underground facilities exist in the proposed excavation area.~~
7 Owners and operators PROVIDING POSITIVE RESPONSE DOCUMENTATION
8 TO THE EXCAVATOR THROUGH THE NOTIFICATION ASSOCIATION THAT NO
9 UNDERGROUND FACILITIES EXIST IN THE PROPOSED EXCAVATION AREA. AN
10 OWNER OR OPERATOR shall, within the time limits specified in subsection
11 (6) of this section, provide to the excavator evidence, if any, of
12 UNDERGROUND facilities abandoned after January 1, 2001, known to the
13 owner or operator to be in the proposed excavation area.

14 (b) The marking of underground facilities shall be considered
15 valid so long as the markings are clearly visible, but not for more than
16 thirty calendar days FOLLOWING THE DUE DATE OF THE LOCATE REQUEST
17 INITIATED PURSUANT TO SUBSECTION (3) OF THIS SECTION; EXCEPT THAT,
18 IF AN EXCAVATION NOTICE IS LIMITED TO ONLY ANNUAL ROAD
19 MAINTENANCE THAT DOES NOT EXCEED SIX INCHES IN DEPTH CONDUCTED
20 BY A GOVERNMENTAL AGENCY ON AN EXISTING UNPAVED ROAD, THE
21 MARKING SHALL BE CONSIDERED VALID FOR UP TO ONE HUNDRED EIGHTY
22 DAYS. UPON RECEIPT OF THE NOTIFICATION, AN OWNER OR OPERATOR HAS
23 TEN BUSINESS DAYS TO COORDINATE THE EXCAVATION ACTIVITY WITH THE
24 GOVERNMENTAL AGENCY. If an excavation has not been completed within
25 the thirty-day APPLICABLE period, the excavator shall notify ~~the affected~~
26 ~~owner or operator and~~ the notification association at least two business
27 days, not including the day of actual notice, before the end of such

1 ~~thirty-day~~ THE APPLICABLE period.

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

13 (B) The excavator ~~to~~ SHALL maintain adequate and accurate
14 documentation, including ~~but not limited to~~ photographs, video, or
15 sketches AND DOCUMENTATION OBTAINED THROUGH THE NOTIFICATION
16 ASSOCIATION, at the excavation site on the location and identification OF
17 ANY UNDERGROUND FACILITY AND SHALL MAINTAIN ADEQUATE MARKINGS
18 of any underground facility throughout the excavation period. A PERSON
19 SHALL NOT USE A SUBSURFACE UTILITY ENGINEERING NOTIFICATION FOR
20 EXCAVATION PURPOSES.

21 (II) (A) If the documentation OR MARKINGS maintained pursuant
22 to ~~subparagraph (I) of this paragraph (c) becomes~~ SUBSECTION (4)(c)(I)
23 OF THIS SECTION BECOME lost or invalid, the excavator shall notify the
24 notification association or the affected owner or operator THROUGH THE
25 NOTIFICATION ASSOCIATION and request an immediate reverification of
26 the location of any underground facility. Upon receipt of ~~such~~ THE
27 notification, ~~such~~ THE affected owner or operator shall respond as quickly

1 as is practicable. The excavator shall cease excavation activities at the
2 affected location until the location of any underground facilities has been
3 reverified.

4 (B) If the documentation OR MARKINGS maintained pursuant to
5 ~~subparagraph (f) of this paragraph (c)~~ is SUBSECTION (4)(c)(I) OF THIS
6 SECTION ARE determined to be inaccurate, the excavator shall immediately
7 notify the affected owner or operator THROUGH THE NOTIFICATION
8 ASSOCIATION and shall request an immediate reverification of the location
9 of any underground facility. Upon receipt of ~~such~~ THE notification, ~~such~~
10 THE affected owner or operator shall respond as quickly as practicable.
11 The excavator may continue excavation activity if ~~such~~ THE excavator
12 exercises due caution and care to prevent damaging any underground
13 facility.

14 (6) If documentation OR MARKINGS requested and needed by an
15 excavator pursuant to subsection (4) of this section ~~is~~ ARE not provided
16 by the owner or operator pursuant thereto within two business days, not
17 including the day of actual notice, or such later time as agreed upon by
18 the excavator and the owner or operator, or, if the documentation OR
19 MARKINGS provided ~~fails~~ FAIL to identify the location of the underground
20 facilities, the excavator shall immediately give notice ~~to~~ THROUGH the
21 notification association ~~or~~ TO the owner or operator, ~~and~~ may proceed
22 WITH THE EXCAVATION, and ~~shall~~ IS not ~~be~~ liable for such damage except
23 upon proof of ~~such~~ THE excavator's lack of reasonable care.

24 (6.5) IF POSITIVE RESPONSE REQUIRED PURSUANT TO SUBSECTION
25 (4) OF THIS SECTION IS NOT PROVIDED BY THE OWNER OR OPERATOR
26 WITHIN TWO BUSINESS DAYS, NOT INCLUDING THE DAY OF ACTUAL NOTICE,
27 OR BY A LATER TIME AS OTHERWISE AGREED UPON IN WRITING, THE

1 NOTIFICATION ASSOCIATION SHALL SEND AN ADDITIONAL RENOTIFICATION
2 TO THAT OWNER OR OPERATOR. THE NOTIFICATION ASSOCIATION SHALL
3 CONTINUE TO SEND OUT RENOTIFICATIONS DAILY UNTIL THE NOTIFICATION
4 ASSOCIATION RECEIVES THE POSITIVE RESPONSE.

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

9 (V) ~~The number of persons whose service may have been~~
10 ~~interrupted;~~

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

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

17 (B) THE NUMBER OF NOTICES SUBMITTED TO THE OWNER OR
18 OPERATOR PURSUANT TO SUBSECTION (6) OF THIS SECTION;

19 (C) THE PERCENTAGE OF LOCATE REQUESTS RESULTING IN NOTICES
20 SUBMITTED TO THE OWNER OR OPERATOR PURSUANT TO SUBSECTION (6)
21 OF THIS SECTION;

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

24 (E) THE PERCENTAGE OF LOCATE REQUESTS RESULTING IN
25 RENOTIFICATIONS SUBMITTED TO THE OWNER OR OPERATOR PURSUANT TO
26 SUBSECTION (6.5) OF THIS SECTION.

27 (II) THE NOTIFICATION ASSOCIATION SHALL MAKE THE DATA IN

1 THE ANNUAL REPORT ELECTRONICALLY ACCESSIBLE TO THE SAFETY
2 COMMISSION FOR CUSTOMIZED REPORTS OR RESEARCH.

3 (9) IF DAMAGE RESULTS IN THE ESCAPE OF ANY INTERSTATE OR
4 INTRASTATE NATURAL GAS OR OTHER GAS OR HAZARDOUS LIQUID, THE
5 EXCAVATOR OR PERSON THAT CAUSED THE DAMAGE SHALL PROMPTLY
6 REPORT TO THE OWNER AND OPERATOR AND THE APPROPRIATE
7 AUTHORITIES BY CALLING THE 911 EMERGENCY TELEPHONE NUMBER OR
8 ANOTHER EMERGENCY TELEPHONE NUMBER. THE REPORTING IS IN
9 ADDITION TO ANY REPORTING REQUIRED TO BE MADE TO ANY STATE OR
10 LOCAL AGENCY.

11 (10) ALL NEW UNDERGROUND FACILITIES, INCLUDING LATERALS
12 UP TO THE STRUCTURE OR BUILDING BEING SERVED, INSTALLED ON OR
13 AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (10) MUST BE
14 ELECTRONICALLY LOCATABLE WHEN INSTALLED.

15 (11) NOTHING IN THIS ARTICLE 1.5 AFFECTS OR IMPAIRS ANY
16 LOCAL ORDINANCES OR OTHER PROVISIONS OF LAW REQUIRING PERMITS TO
17 BE OBTAINED BEFORE AN EXCAVATION. A PERMIT ISSUED BY A
18 GOVERNMENT AGENCY DOES NOT RELIEVE AN EXCAVATOR FROM
19 COMPLYING WITH THIS ARTICLE 1.5.

20

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21 **SECTION 3.** In Colorado Revised Statutes, **add** 9-1.5-104.2,
22 9-1.5-104.4, 9-1.5-104.7, and 9-1.5-104.8 as follows:

23 **9-1.5-104.2. Underground damage prevention safety**
24 **commission - creation - review of violations - enforcement - rules.**

25 (1) (a) THERE IS HEREBY CREATED THE UNDERGROUND DAMAGE
26 PREVENTION SAFETY COMMISSION IN THE DEPARTMENT OF LABOR AND
27 EMPLOYMENT. THE SAFETY COMMISSION IS TRANSFERRED TO THE

1 DEPARTMENT BY A **TYPE 2** TRANSFER AS THAT TERM IS DEFINED IN
2 SECTION 24-1-105. THE SAFETY COMMISSION SHALL:

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

5 (A) BEST PRACTICES AND TRAINING TO PREVENT DAMAGE TO
6 UNDERGROUND UTILITIES;

7 (B) POLICIES TO ENHANCE PUBLIC SAFETY, INCLUDING THE
8 ESTABLISHMENT AND PERIODIC UPDATING OF INDUSTRY BEST STANDARDS,
9 INCLUDING MARKING AND DOCUMENTATION BEST PRACTICES AND
10 TECHNOLOGY ADVANCEMENTS; AND

11 (C) POLICIES AND BEST PRACTICES TO IMPROVE EFFICIENCY AND
12 COST SAVINGS TO THE 811 PROGRAM, INCLUDING THE REVIEW,
13 ESTABLISHMENT, AND PERIODIC UPDATING OF INDUSTRY BEST STANDARDS,
14 TO ENSURE THE HIGHEST LEVEL OF PRODUCTIVITY AND SERVICE FOR THE
15 BENEFIT OF BOTH EXCAVATORS AND OWNERS AND OPERATORS; AND

16 (II) REVIEW COMPLAINTS ALLEGING VIOLATIONS OF THIS ARTICLE
17 1.5 INVOLVING PRACTICES RELATED TO UNDERGROUND FACILITIES AND
18 ORDER APPROPRIATE REMEDIAL ACTION OR PENALTIES.

19 (b) THE SAFETY COMMISSION AND THE NOTIFICATION ASSOCIATION
20 SHALL ENTER INTO A MEMORANDUM OF UNDERSTANDING TO FACILITATE
21 IMPLEMENTATION AND ADMINISTRATION OF THIS SECTION AND SECTIONS
22 9-1.5-104.4, 9-1.5-104.7, AND 9-1.5-104.8. THE MEMORANDUM OF
23 UNDERSTANDING MUST INCLUDE PROVISIONS OUTLINING THE ROLES AND
24 RESPONSIBILITIES OF THE SAFETY COMMISSION REGARDING STATEWIDE
25 ENFORCEMENT AND THE ROLES AND RESPONSIBILITIES OF THE
26 NOTIFICATION ASSOCIATION IN ADMINISTERING THE NOTIFICATION
27 ASSOCIATION AS OUTLINED IN SECTION 9-1.5-105.

1 (c) NOTWITHSTANDING THE POWERS AND DUTIES ASSIGNED TO THE
2 SAFETY COMMISSION, THIS SECTION AND SECTION 9-1.5-104.4 DO NOT
3 APPLY TO A HOME RULE COUNTY, CITY AND COUNTY, MUNICIPALITY, OR
4 POWER AUTHORITY ESTABLISHED PURSUANT TO SECTION 29-1-204 (1).
5 AND NOTHING IN THIS ARTICLE 1.5 AUTHORIZES THE SAFETY COMMISSION
6 TO IMPOSE A _____ PENALTY ON OR ENFORCE A RECOMMENDATION OR
7 REMEDIAL ACTION REGARDING AN ALLEGED VIOLATION OF THIS ARTICLE
8 1.5 AGAINST A HOME RULE COUNTY, CITY AND COUNTY, MUNICIPALITY, OR
9 POWER AUTHORITY; EXCEPT THAT:

10 (I) THE SAFETY COMMISSION SHALL:

11 (A) INFORM A HOME RULE COUNTY, CITY AND COUNTY, _____
12 MUNICIPALITY, OR POWER AUTHORITY OF AN ALLEGED VIOLATION OF THIS
13 ARTICLE 1.5; AND

14 (B) AT THE REQUEST OF THE APPLICABLE HOME RULE COUNTY,
15 CITY AND COUNTY, MUNICIPALITY, OR POWER AUTHORITY, SUGGEST
16 CORRECTIVE ACTION; AND

17 (II) NOTHING IN THIS SUBSECTION (1)(c) PROHIBITS A HOME RULE
18 COUNTY, CITY AND COUNTY, MUNICIPALITY, OR POWER AUTHORITY FROM
19 PARTICIPATING IN PROCEEDINGS OF THE SAFETY COMMISSION.

20 (d) THE GOVERNING BODY OF A HOME RULE COUNTY, CITY AND
21 COUNTY, MUNICIPALITY, OR POWER AUTHORITY ESTABLISHED PURSUANT
22 TO SECTION 29-1-204 (1) SHALL ADOPT BY RESOLUTION, ORDINANCE, OR
23 OTHER OFFICIAL ACTION EITHER:

24 (I) ITS OWN DAMAGE PREVENTION SAFETY PROGRAM SIMILAR TO
25 THAT ESTABLISHED PURSUANT TO THIS ARTICLE 1.5; OR

26 (II) A WAIVER THAT DELEGATES ITS DAMAGE PREVENTION SAFETY
27 PROGRAM TO THE SAFETY COMMISSION.

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

5 (I) ONE INDIVIDUAL NOMINATED BY COLORADO COUNTIES, INC.,
6 TO REPRESENT COUNTIES;

7 (II) ONE INDIVIDUAL NOMINATED BY THE COLORADO MUNICIPAL
8 LEAGUE TO REPRESENT MUNICIPALITIES;

9 (III) ONE INDIVIDUAL NOMINATED BY THE SPECIAL DISTRICT
10 ASSOCIATION OF COLORADO TO REPRESENT SPECIAL DISTRICTS;

11 (IV) ONE INDIVIDUAL NOMINATED BY COLORADO'S ENERGY
12 INDUSTRY TO REPRESENT ENERGY PRODUCERS;

13 (V) ONE INDIVIDUAL NOMINATED BY THE COLORADO
14 CONTRACTORS ASSOCIATION TO REPRESENT CONTRACTORS;

15 (VI) TWO INDIVIDUALS NOMINATED BY THE EXCAVATOR MEMBERS
16 OF THE NOTIFICATION ASSOCIATION TO REPRESENT EXCAVATORS;

17 (VII) ONE INDIVIDUAL NOMINATED BY THE AMERICAN COUNCIL
18 OF ENGINEERING COMPANIES OF COLORADO TO REPRESENT ENGINEERS;

19 (VIII) ONE INDIVIDUAL NOMINATED BY INVESTOR-OWNER
20 UTILITIES TO REPRESENT INVESTOR-OWNER UTILITIES;

21 (IX) ONE INDIVIDUAL NOMINATED BY THE COLORADO RURAL
22 ELECTRIC ASSOCIATION TO REPRESENT RURAL ELECTRIC COOPERATIVES;

23 (X) ONE INDIVIDUAL NOMINATED BY THE COLORADO PIPELINE
24 ASSOCIATION TO REPRESENT PIPELINE COMPANIES;

25 (XI) ONE INDIVIDUAL NOMINATED BY THE COLORADO
26 TELECOMMUNICATIONS AND BROADBAND INDUSTRY TO REPRESENT
27 TELECOMMUNICATIONS AND BROADBAND COMPANIES;

1 (XII) ONE INDIVIDUAL NOMINATED BY THE COLORADO WATER
2 UTILITY COUNCIL TO REPRESENT WATER UTILITIES;

3 (XIII) ONE INDIVIDUAL NOMINATED BY THE DEPARTMENT OF
4 TRANSPORTATION TO REPRESENT TRANSPORTATION; AND

5 (XIV) ONE INDIVIDUAL NOMINATED BY THE COMMISSIONER OF
6 AGRICULTURE WHO IS ACTIVELY ENGAGED IN FARMING OR RANCHING.

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

11 (I) SUBSECTIONS (2)(a)(I) TO (2)(a)(V) OF THIS SECTION IS ONE
12 YEAR; AND

13 (II) SUBSECTIONS (2)(a)(VI) TO (2)(a)(X) OF THIS SECTION IS TWO
14 YEARS.

15 (c) WITHIN SIX MONTHS AFTER ITS CREATION, THE SAFETY
16 COMMISSION SHALL ADOPT BYLAWS AND PROVIDE FOR THOSE
17 ORGANIZATIONAL PROCESSES THAT ARE NECESSARY TO COMPLETE THE
18 SAFETY COMMISSION'S TASKS.

19 (d) THE SAFETY COMMISSION MAY PROMULGATE RULES TO
20 IMPLEMENT THIS SECTION AND SECTIONS 9-1.5-104.4, 9-1.5-104.7, AND
21 9-1.5-104.8 AND MAY REVISE THE RULES AS NEEDED.

22 (3) THE SAFETY COMMISSION SHALL MEET AT LEAST ONCE EVERY
23 THREE MONTHS. THE SAFETY COMMISSION SHALL OPERATE
24 INDEPENDENTLY OF THE NOTIFICATION ASSOCIATION; HOWEVER, THE
25 NOTIFICATION ASSOCIATION AND THE DEPARTMENT OF LABOR AND
26 EMPLOYMENT SHALL PROVIDE ADMINISTRATIVE SUPPORT TO THE SAFETY
27 COMMISSION IN PERFORMING ITS DUTIES AS OUTLINED IN THIS SECTION.

1 (4) THE SAFETY COMMISSION MAY REVIEW COMPLAINTS OF
2 ALLEGED VIOLATIONS OF THIS ARTICLE 1.5. ANY PERSON MAY BRING A
3 COMPLAINT TO THE SAFETY COMMISSION REGARDING AN ALLEGED
4 VIOLATION. A PERSON WHO BRINGS A FRIVOLOUS COMPLAINT, AS
5 DETERMINED BY THE SAFETY COMMISSION, COMMITS A MINOR VIOLATION
6 AND IS SUBJECT TO A FINE AS AUTHORIZED BY SECTION 9-1.5-104.4.

7 (5) TO REVIEW A COMPLAINT OF AN ALLEGED VIOLATION, THE
8 SAFETY COMMISSION SHALL APPOINT AT LEAST THREE AND NOT MORE
9 THAN FIVE OF ITS MEMBERS AS A REVIEW COMMITTEE. THE REVIEW
10 COMMITTEE MUST INCLUDE THE SAME NUMBER OF MEMBERS
11 REPRESENTING EXCAVATORS AND OWNERS OR OPERATORS AND AT LEAST
12 ONE MEMBER THAT DOES NOT REPRESENT EXCAVATORS OR OWNERS OR
13 OPERATORS. A SAFETY COMMISSION MEMBER WHO HAS A CONFLICT OF
14 INTEREST WITH REGARD TO A PARTICULAR MATTER SHALL RECUSE
15 HIMSELF OR HERSELF FROM SERVING ON A REVIEW COMMITTEE WITH
16 REGARD TO THAT MATTER.

17 (6)(a) BEFORE REVIEWING A COMPLAINT, THE REVIEW COMMITTEE
18 SHALL NOTIFY THE PERSON MAKING THE COMPLAINT AND THE ALLEGED
19 VIOLATOR OF ITS INTENT TO REVIEW THE COMPLAINT AND OF THE
20 OPPORTUNITY FOR BOTH PARTIES TO PARTICIPATE. THE NOTIFICATION
21 MUST INCLUDE THE HEARING DATE FOR THE COMPLAINT, WHICH MUST BE
22 SCHEDULED FOR A DATE WITHIN NINETY DAYS AFTER THE DATE ON WHICH
23 THE SAFETY COMMISSION RECEIVED THE COMPLAINT, AND A STATEMENT
24 THAT THE PARTIES MAY SUBMIT WRITTEN OR ORAL COMMENTS AT THE
25 HEARING. THE HEARING DATE CAN BE POSTPONED BY MUTUAL
26 AGREEMENT OF THE PARTIES TO A DATE THAT IS ACCEPTABLE TO THE
27 REVIEW COMMITTEE. THE COMPLAINING PARTY MAY VOLUNTARILY

1 WITHDRAW THE COMPLAINT PRIOR TO A HEARING BY THE REVIEW
2 COMMITTEE. THE SAFETY COMMISSION SHALL PROMULGATE RULES
3 GOVERNING THE CONDUCT OF HEARINGS UNDER THIS SECTION.

4 (b) THE REVIEW COMMITTEE SHALL DETERMINE WHETHER A
5 VIOLATION OF THE LAW HAS OCCURRED AND, IF APPROPRIATE,
6 RECOMMEND REMEDIAL ACTION CONSISTENT WITH THE GUIDANCE
7 DEVELOPED PURSUANT TO SECTION 9-1.5-104.4(2). A RECOMMENDATION
8 OF REMEDIAL ACTION THAT INCLUDES A FINE REQUIRES A UNANIMOUS
9 VOTE OF THE REVIEW COMMITTEE. THE REVIEW COMMITTEE SHALL NOT
10 RECOMMEND REMEDIAL ACTION OR A FINE AGAINST A HOMEOWNER,
11 RANCHER, OR FARMER, AS DEFINED IN SECTION 42-20-108.5, UNLESS THE
12 REVIEW COMMITTEE FINDS BY CLEAR AND CONVINCING EVIDENCE THAT A
13 VIOLATION OF THE LAW HAS OCCURRED. WITHIN SEVEN BUSINESS DAYS
14 AFTER THE COMPLETION OF THE HEARING, THE REVIEW COMMITTEE SHALL
15 PROVIDE TO THE SAFETY COMMISSION IN WRITING A REPORT OF ITS
16 FINDINGS OF FACTS, ITS DETERMINATION OF WHETHER A VIOLATION OF THE
17 LAW HAS OCCURRED, AND ANY RECOMMENDATION OF REMEDIAL ACTION
18 OR PENALTY.

19 (7) THE SAFETY COMMISSION IS BOUND BY THE REVIEW
20 COMMITTEE'S FINDINGS OF FACT AND DECISION, BUT THE SAFETY
21 COMMISSION MAY ADJUST THE REVIEW COMMITTEE'S RECOMMENDATION
22 OF REMEDIAL ACTION OR PENALTY IF AN ADJUSTMENT IS SUPPORTED BY AT
23 LEAST TWELVE MEMBERS OF THE SAFETY COMMISSION. WITHIN TEN
24 BUSINESS DAYS AFTER THE SAFETY COMMISSION MEETING TO REVIEW THE
25 FINDINGS AND RECOMMENDATIONS OF THE REVIEW COMMITTEE, THE
26 SAFETY COMMISSION SHALL PROVIDE IN WRITING TO THE PERSON MAKING
27 THE COMPLAINT AND THE ALLEGED VIOLATOR A SUMMARY OF THE REVIEW

1 COMMITTEE'S FINDINGS AND THE SAFETY COMMISSION'S FINAL
2 DETERMINATION WITH RESPECT TO ANY REQUIRED REMEDIAL ACTION OR
3 PENALTY. THE DECISION OF THE SAFETY COMMISSION IS FINAL AGENCY
4 ACTION SUBJECT TO REVIEW BY THE DISTRICT COURT PURSUANT TO
5 SECTION 24-4-106.

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

13 (9) (a) IF A PERSON DOES NOT COMPLY WITH THE SAFETY
14 COMMISSION'S DECISION, THE SAFETY COMMISSION, REPRESENTED BY THE
15 ATTORNEY GENERAL, MAY ENFORCE THIS ARTICLE 1.5 BY BRINGING AN
16 ACTION IN THE DENVER DISTRICT COURT. IN AN ACTION BROUGHT BY THE
17 SAFETY COMMISSION PURSUANT TO THIS SECTION, THE COURT MAY AWARD
18 THE SAFETY COMMISSION ALL COSTS OF INVESTIGATION AND TRIAL,
19 INCLUDING REASONABLE ATTORNEY FEES FIXED BY THE COURT.

20 (b) ANY COSTS INCURRED BY THE SAFETY COMMISSION AS A
21 RESULT OF ADMINISTERING THIS ARTICLE 1.5, INCLUDING LEGAL SERVICES,
22 SHALL BE PAID FROM THE SAFETY COMMISSION FUND CREATED IN SECTION
23 9-1.5-104.8. ANY COSTS AND FEES AWARDED BY THE COURT PURSUANT TO
24 THIS SUBSECTION (9) SHALL BE DEPOSITED IN THE SAFETY COMMISSION
25 FUND CREATED IN SECTION 9-1.5-104.8.

26 ==
27 **9-1.5-104.4. Penalties - guidance.** (1) A PERSON WHO VIOLATES

1 THIS ARTICLE 1.5 IS SUBJECT TO A FINE OF NOT MORE THAN FIVE
2 THOUSAND DOLLARS FOR AN INITIAL VIOLATION AND NOT MORE THAN
3 SEVENTY-FIVE THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION
4 WITHIN A TWELVE-MONTH PERIOD.

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

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

16 (b) ALTERNATIVES TO FINES MAY BE CONSIDERED, ESPECIALLY FOR
17 A PARTY THAT THE SAFETY COMMISSION HAS NOT FOUND TO BE
18 RESPONSIBLE FOR A VIOLATION IN THE PREVIOUS TWELVE MONTHS; AND

19 (c) IN CONSIDERING THE APPROPRIATE REMEDIAL ACTION, THE
20 SAFETY COMMISSION MAY CONSIDER THE NUMBER OF VIOLATIONS
21 RELATIVE TO THE NUMBER OF NOTIFICATIONS RECEIVED.

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

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

	ONE	TWO	THREE	FOUR	
25					
26	MINOR	\$ 250	\$ 500	\$ 1,000	\$ 5,000
27	MODERATE	\$1,000	\$ 2,500	\$ 5,000	\$25,000

1 MAJOR \$5,000 \$25,000 \$50,000 \$75,000

2 (4) THE FOLLOWING ARE NOT SUBJECT TO A FINE OTHERWISE
3 AUTHORIZED PURSUANT TO THIS SECTION:

4 (a) WITH REGARD TO AN EXCAVATION OCCURRING ON A RANCH OR
5 FARM, A RANCHER OR A FARMER, AS DEFINED IN SECTION 42-20-108.5,
6 UNLESS THE EXCAVATION IS FOR A NONAGRICULTURAL PURPOSE; AND

7 (b) WITH REGARD TO A FAILURE TO NOTIFY THE NOTIFICATION
8 ASSOCIATION OR THE AFFECTED OWNER OR OPERATOR AND TO DAMAGE TO
9 AN UNDERGROUND FACILITY DURING EXCAVATION, A HOMEOWNER,
10 RANCHER, OR FARMER, AS DEFINED IN SECTION 42-20-108.5, WORKING ON
11 THE HOMEOWNER'S, RANCHER'S, OR FARMER'S PROPERTY.

12 **9-1.5-104.7. Damage prevention fund.** (1) THE DAMAGE
13 PREVENTION FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS
14 HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF:

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

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

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

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

23 (3) ONLY THE SAFETY COMMISSION MAY AUTHORIZE
24 EXPENDITURES FROM THE FUND. SUBJECT TO ANNUAL APPROPRIATION BY
25 THE GENERAL ASSEMBLY, THE SAFETY COMMISSION MAY USE MONEY
26 DEPOSITED IN THE FUND ONLY TO:

27 (a) DEVELOP AND DISSEMINATE EDUCATIONAL PROGRAMMING

1 DESIGNED TO IMPROVE WORKER AND PUBLIC SAFETY RELATING TO
2 EXCAVATION AND UNDERGROUND FACILITIES; AND

3 (b) PROVIDE GRANTS TO PERSONS WHO HAVE DEVELOPED
4 EDUCATIONAL PROGRAMMING THAT THE NOTIFICATION ASSOCIATION AND
5 THE SAFETY COMMISSION DEEM APPROPRIATE FOR IMPROVING WORKER
6 AND PUBLIC SAFETY RELATING TO EXCAVATION AND UNDERGROUND
7 FACILITIES.

8 **9-1.5-104.8. Safety commission fund.** (1) THE SAFETY
9 COMMISSION FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS
10 HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF:

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

14
15 (b) ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY
16 APPROPRIATE OR TRANSFER TO THE FUND.

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

20 (3) ONLY THE SAFETY COMMISSION MAY AUTHORIZE
21 EXPENDITURES FROM THE FUND. SUBJECT TO ANNUAL APPROPRIATION BY
22 THE GENERAL ASSEMBLY, THE SAFETY COMMISSION MAY USE MONEY
23 DEPOSITED IN THE FUND ONLY TO PAY FOR ITS EXPENSES IN
24 ADMINISTERING THIS ARTICLE 1.5.

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

27 **9-1.5-104.3. Alternative dispute resolution.** The notification

1 association shall create a voluntary alternative dispute resolution program
2 in consultation with its members and all affected parties. The alternative
3 dispute resolution program ~~shall~~ MUST be available to all owners or
4 operators, excavators, and other interested parties regarding disputes
5 arising from damage to underground facilities, including, ~~but not limited~~
6 ~~to~~, any cost or damage incurred by the owner or operator or the excavator
7 as a result of any delay in the excavation project while the underground
8 facility is restored, repaired, or replaced, exclusive of civil penalties set
9 forth in AND FINES ASSESSED PURSUANT TO section 9-1.5-104.5 OR
10 **9-1.5-104.4**, that cannot be resolved through consultation and negotiation.
11 The alternative dispute resolution program ~~shall~~ MUST include mediation,
12 arbitration, or other appropriate processes of dispute resolution. The issue
13 of liability and amount of damages under Colorado law may be decided
14 by an appointed arbitrator or by the parties in mediation. Nothing in this
15 section ~~shall be construed to change~~ CHANGES the basis for civil liability
16 for damages.

17 **SECTION 5.** In Colorado Revised Statutes, 9-1.5-104.5, **amend**
18 **(3)(c)** as follows:

19 **9-1.5-104.5. Civil penalties - applicability.** (3) (c) The penalties
20 AND REMEDIES provided in this article 1.5 are in addition to any other
21 remedy at law or equity available to an excavator or to the owner or
22 operator of a damaged underground facility, AND SECTIONS 9-1.5-104.2
23 AND 9-1.5-104.4, REGARDING THE SAFETY COMMISSION'S ENFORCEMENT
24 AUTHORITY, DO NOT LIMIT OR RESTRICT ANY OTHER REMEDY AT LAW OR
25 EQUITY AVAILABLE TO AN EXCAVATOR OR TO THE OWNER OR OPERATOR
26 OF A DAMAGED UNDERGROUND FACILITY.

27 **SECTION 6.** In Colorado Revised Statutes, 9-1.5-105, **amend**

1 (1), (2) introductory portion, (3), (4), and (6); **repeal** (2.3); and **add** (2.1)
2 and (2.4) as follows:

3 **9-1.5-105. Notification association - structure and funding**
4 **requirements - duties of owners and operators - report - repeal.**

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

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

1 BEFORE JANUARY 1, 2021. UNTIL DECEMBER 31, 2020, MEMBERSHIP IS
2 organized as follows:

3 (2.1) (a) SUBSECTION (2) OF THIS SECTION AND THIS SUBSECTION
4 (2.1) ARE REPEALED, EFFECTIVE JANUARY 1, 2021.

5 (b) ON OR BEFORE MARCH 1, 2020, THE NOTIFICATION
6 ASSOCIATION SHALL PROVIDE A REPORT TO THE SENATE TRANSPORTATION
7 COMMITTEE AND THE HOUSE OF REPRESENTATIVES TRANSPORTATION AND
8 ENERGY COMMITTEE, OR THEIR SUCCESSOR COMMITTEES, ABOUT ITS
9 EFFORTS TO PREPARE FOR TIER TWO MEMBERS TRANSITIONING TO TIER ONE
10 MEMBERSHIP. THE REPORT MUST INCLUDE, BUT NEED NOT BE LIMITED TO,
11 THE STEPS THAT HAVE BEEN IMPLEMENTED TO ENSURE EFFICIENCIES IN
12 NOTIFICATION PROCEDURES AND OPERATIONS, A COST ANALYSIS OF THE
13 TRANSITION, AND INFORMATION REGARDING ANY NEW TECHNOLOGICAL
14 ADVANCES ADOPTED TO IMPROVE EFFICIENCIES. IN PREPARING THE
15 REPORT, THE NOTIFICATION ASSOCIATION SHALL SOLICIT INPUT FROM
16 MEMBERS.

17 ~~(2.3) Any association member may alter the status of its~~
18 ~~membership and move from tier one to tier two or from tier two to tier~~
19 ~~one at any time that such member chooses; except that every tier one~~
20 ~~member shall remain a tier one member for at least two years after~~
21 ~~becoming a tier one member.~~

22 (2.4) EFFECTIVE JANUARY 1, 2021, ALL UNDERGROUND FACILITY
23 OWNERS AND OPERATORS ARE MEMBERS OF THE NOTIFICATION
24 ASSOCIATION. ALL MEMBERS ARE 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.

27 (3) (a) (I) Except as provided in subsection (2) of this section,

1 each member of the notification association shall provide all of the
2 locations of any underground facilities ~~which such~~ THAT THE member
3 owns or operates to the notification association, and the association shall
4 maintain ~~such~~ THE information on file for use by excavators.

5 (II) THIS SUBSECTION (3)(a) IS REPEALED, EFFECTIVE JANUARY 1,
6 2021.

7 (b) EFFECTIVE JANUARY 1, 2021, EACH MEMBER OF THE
8 NOTIFICATION ASSOCIATION SHALL PROVIDE GENERAL INFORMATION
9 REGARDING ALL OF THE LOCATIONS OF ANY UNDERGROUND FACILITIES
10 THAT THE MEMBER OWNS OR OPERATES, FOR EXCAVATION NOTIFICATION
11 PURPOSES ONLY. AND THE MEMBER'S CONTACT INFORMATION, BOTH OF
12 WHICH SHALL BE UPDATED ANNUALLY, TO THE NOTIFICATION
13 ASSOCIATION, AND THE ASSOCIATION SHALL MAINTAIN THE INFORMATION
14 ON FILE IN A MANNER THAT ENSURES THE CONFIDENTIALITY AND SECURITY
15 OF THE INFORMATION.

16 (c) INFORMATION REGARDING THE LOCATION OF UNDERGROUND
17 FACILITIES PROVIDED TO THE NOTIFICATION ASSOCIATION BY AN OWNER
18 OR OPERATOR OR TO THE SAFETY COMMISSION BY THE NOTIFICATION
19 ASSOCIATION IS EXEMPT FROM THE "COLORADO OPEN RECORDS ACT",
20 PART 2 OF ARTICLE 72 OF TITLE 24, PURSUANT TO SECTION 24-72-204
21 (2)(a)(VIII)(A) REGARDING SPECIALIZED DETAILS OF CRITICAL
22 INFRASTRUCTURE.

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

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

1 (B) THIS SUBSECTION (4)(a)(II) IS REPEALED, EFFECTIVE JANUARY
2 1, 2021.

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

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

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

11 (b) ANY HOMEOWNER.

12 **SECTION 7.** In Colorado Revised Statutes, 9-1.5-106, **amend** (3)
13 as follows:

14 **9-1.5-106. Notice requirements - repeal.** (3) (a) (I) The
15 notification association shall provide prompt notice of any proposed
16 excavation to each affected tier one member that has any underground
17 facilities in the area of the proposed excavation site. The notification
18 association shall also provide the excavator with the name and telephone
19 number of each tier two member that has any underground facilities in the
20 area of the proposed excavation.

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

23 (b) EFFECTIVE JANUARY 1, 2021, THE NOTIFICATION ASSOCIATION
24 SHALL PROVIDE PROMPT NOTICE OF ANY PROPOSED EXCAVATION TO EACH
25 AFFECTED MEMBER THAT HAS ANY UNDERGROUND FACILITIES IN THE AREA
26 OF THE PROPOSED EXCAVATION SITE.

27 **SECTION 8.** In Colorado Revised Statutes, **add** 9-1.5-108 as

1 follows:

2 **9-1.5-108. Repeal - sunset review.** (1) THIS SECTION AND
3 SECTIONS 9-1.5-104.2, 9-1.5-104.4, 9-1.5-104.7, AND 9-1.5-104.8 ARE
4 REPEALED, EFFECTIVE SEPTEMBER 1, 2028.

5 **(2) BEFORE THE REPEAL, THE FUNCTIONS OF THE UNDERGROUND**
6 **DAMAGE PREVENTION SAFETY COMMISSION RELATED TO UNDERGROUND**
7 **FACILITIES SPECIFIED IN SECTIONS 9-1.5-104.2, 9-1.5-104.4, 9-1.5-104.7,**
8 **AND 9-1.5-104.8 ARE SCHEDULED FOR REVIEW IN ACCORDANCE WITH**
9 **SECTION 24-34-104.**

10 **SECTION 9.** In Colorado Revised Statutes, 24-34-104, add
11 **(29)(a)(III) as follows:**

12 **24-34-104. General assembly review of regulatory agencies**
13 **and functions for repeal, continuation, or reestablishment - legislative**
14 **declaration - repeal.** (29) (a) The following agencies, functions, or both,
15 are scheduled for repeal on September 1, 2018:

16 **(III) THE FUNCTIONS OF THE UNDERGROUND DAMAGE PREVENTION**
17 **SAFETY COMMISSION RELATED TO UNDERGROUND FACILITIES SPECIFIED IN**
18 **SECTIONS 9-1.5-104.2, 9-1.5-104.4, 9-1.5-104.7, AND 9-1.5-104.8.**

19 **SECTION 10.** In Colorado Revised Statutes, 24-1-121, add (3)(j)
20 as follows:

21 **24-1-121. Department of labor and employment - creation.**

22 (3) The department of labor and employment consists of the following
23 divisions and programs:

24 (j) THE UNDERGROUND DAMAGE PREVENTION SAFETY COMMISSION
25 CREATED BY SECTION 9-1.5-104.2. THE COMMISSION AND ITS POWERS,
26 DUTIES, AND FUNCTIONS ARE TRANSFERRED BY A **TYPE 2** TRANSFER TO
27 THE DEPARTMENT OF LABOR AND EMPLOYMENT.

1 **SECTION 11. Appropriation.** (1) For the 2018-19 state fiscal
2 year, \$81,841 is appropriated to the department of labor and employment.
3 This appropriation is from the general fund. To implement this act, the
4 department may use this appropriation as follows:

5 (a) \$69,054 for use by the division of oil and public safety for the
6 underground damage safety commission, which amount is based on an
7 assumption that the division will require an additional 0.8 FTE; and

8 (b) \$12,787 for the purchase of legal services.

9 (2) For the 2018-19 state fiscal year, \$12,787 is appropriated to
10 the department of law. This appropriation is from reappropriated funds
11 received from the department of labor and employment under subsection
12 (1)(b) of this section and is based on an assumption that the department
13 of law will require an additional 0.1 FTE. To implement this act, the
14 department of law may use this appropriation to provide legal services for
15 the department of labor and employment.

16 **SECTION 12. Act subject to petition - effective date -**
17 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
18 the expiration of the ninety-day period after final adjournment of the
19 general assembly (August 8, 2018, if adjournment sine die is on May 9,
20 2018); except that, if a referendum petition is filed pursuant to section 1
21 (3) of article V of the state constitution against this act or an item, section,
22 or part of this act within such period, then the act, item, section, or part
23 will not take effect unless approved by the people at the general election
24 to be held in November 2018 and, in such case, will take effect on the
25 date of the official declaration of the vote thereon by the governor.

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