

**Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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

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), (6.7),
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 PARTIAL OR COMPLETE SEVERANCE OF
3 AN UNDERGROUND FACILITY, OR THE RENDERING OF ANY UNDERGROUND
4 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 IF THE ACTIVITY DOES NOT INVOLVE DEEP
17 RIPPING OR ROOT REMOVAL; OR

18 (III) ROUTINE MAINTENANCE OF AN EXISTING IRRIGATION FACILITY
19 IF THE FACILITY HAS BEEN SUBJECTED TO MAINTENANCE IN THE PREVIOUS
20 TWENTY-FOUR MONTHS OR EXISTING FENCE LINES.

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

26 (3.7) "LICENSED PROFESSIONAL ENGINEER" MEANS A
27 PROFESSIONAL ENGINEER AS DEFINED IN SECTION 12-25-102.

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

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

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

(b) THE PROJECT INVOLVES PRIMARILY HORIZONTAL CONSTRUCTION;

(c) (I) THE PROJECT:

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

(B) INVOLVES UTILITY BORING.

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

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

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

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

5 **9-1.5-103. Plans and specifications - notice of excavation -**
6 **duties of excavators - duties of owners and operators - fee - repeal.**

7 (2.4) AT THE PROJECT OWNER'S EXPENSE, A LICENSED PROFESSIONAL
8 ENGINEER DESIGNING _____ FOR A SUBSURFACE UTILITY
9 ENGINEERING-REQUIRED PROJECT SHALL:

10 (a) NOTIFY THE NOTIFICATION ASSOCIATION WITH A SUBSURFACE
11 UTILITY ENGINEERING NOTIFICATION;

12 (b) EITHER:

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

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

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

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

1 (2.7) AN UNDERGROUND FACILITY OWNER THAT RECEIVES A
2 SUBSURFACE UTILITY ENGINEERING NOTIFICATION OR OTHER REQUEST FOR
3 INFORMATION FROM A DESIGNER SHALL RESPOND TO THE REQUEST WITHIN
4 TEN BUSINESS DAYS AFTER THE REQUEST, NOT INCLUDING THE DAY OF
5 ACTUAL NOTICE, IN ONE OR MORE OF THE FOLLOWING WAYS:

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

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

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

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

25 (B) THIS SUBSECTION (3)(a)(I) IS REPEALED, EFFECTIVE JANUARY
26 1, 2021.

27 (II) EFFECTIVE JANUARY 1, 2021, EXCEPT IN EMERGENCY

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

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

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

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

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

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

19 (A) PHYSICAL DELINEATION WITH WHITE MARKS ON A HARD
20 SURFACE AREA;

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

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

27 (d) ~~An excavator may request a written record of any information~~

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

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

1 ADDITION TO THE MARKINGS, THE OWNER OR OPERATOR SHALL PROVIDE
2 FOR EACH OF ITS UNDERGROUND FACILITIES:

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

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

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

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

23 (IV) ~~In the event any~~ IF A person is involved in excavating across
24 a preexisting underground facility, the owner of such facility shall, upon
25 a predetermined agreement at the request of the excavator or the owner,
26 provide on-site assistance. Any owner or operator receiving notice
27 concerning an excavator's intent to excavate shall use reasonable care to

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

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

20 (c) (I) (A) When a person excavates within eighteen inches
21 horizontally from the exterior sides of any MARKED underground facility,
22 ~~such~~ THE person shall USE NONDESTRUCTIVE MEANS OF EXCAVATION TO
23 IDENTIFY UNDERGROUND FACILITIES AND SHALL OTHERWISE exercise ~~such~~
24 reasonable care ~~as necessary~~ to protect any underground facility in or near
25 the excavation area. ~~It shall be the responsibility of~~ WHEN UTILIZING
26 TRENCHLESS EXCAVATION METHODS, THE EXCAVATOR SHALL EXPOSE
27 UNDERGROUND FACILITIES AND VISUALLY OBSERVE THE SAFE CROSSING

1 OF MARKED UNDERGROUND FACILITIES WHEN REQUESTED TO DO SO BY
2 THE UNDERGROUND FACILITY OWNER OR OPERATOR OR THE GOVERNMENT
3 AGENCY THAT ISSUED A PERMIT FOR THE EXCAVATION.

4 (B) The excavator ~~to~~ SHALL maintain adequate and accurate
5 documentation, including ~~but not limited to~~ photographs, video, or
6 sketches AND DOCUMENTATION OBTAINED THROUGH THE NOTIFICATION
7 ASSOCIATION, at the excavation site on the location and identification OF
8 ANY UNDERGROUND FACILITY AND SHALL MAINTAIN ADEQUATE MARKINGS
9 of any underground facility throughout the excavation period. A PERSON
10 SHALL NOT USE A SUBSURFACE UTILITY ENGINEERING NOTIFICATION FOR
11 EXCAVATION PURPOSES.

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

22 (B) If the documentation OR MARKINGS maintained pursuant to
23 ~~subparagraph (f) of this paragraph (c) is~~ SUBSECTION (4)(c)(I) OF THIS
24 SECTION ARE determined to be inaccurate, the excavator shall immediately
25 notify the affected owner or operator THROUGH THE NOTIFICATION
26 ASSOCIATION and shall request an immediate reverification of the location
27 of any underground facility. Upon receipt of ~~such~~ THE notification, ~~such~~

1 THE affected owner or operator shall respond as quickly as practicable.
2 The excavator may continue excavation activity if ~~such~~ THE excavator
3 exercises due caution and care to prevent damaging any underground
4 facility.

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

15 (6.5) IF POSITIVE RESPONSE REQUIRED PURSUANT TO SUBSECTION
16 (4) OF THIS SECTION IS NOT PROVIDED BY THE OWNER OR OPERATOR
17 WITHIN TWO BUSINESS DAYS, NOT INCLUDING THE DAY OF ACTUAL NOTICE,
18 OR BY A LATER TIME AS OTHERWISE AGREED UPON IN WRITING, THE
19 NOTIFICATION ASSOCIATION SHALL SEND AN ADDITIONAL RENOTIFICATION
20 TO THAT OWNER OR OPERATOR. THE NOTIFICATION ASSOCIATION SHALL
21 CONTINUE TO SEND OUT RENOTIFICATIONS DAILY UNTIL THE NOTIFICATION
22 ASSOCIATION RECEIVES THE POSITIVE RESPONSE.

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

27 (V) ~~The number of persons whose service may have been~~

1 ~~interrupted;~~

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

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

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

10 (C) THE PERCENTAGE OF LOCATE REQUESTS RESULTING IN NOTICES
11 SUBMITTED TO THE OWNER OR OPERATOR PURSUANT TO SUBSECTION (6)
12 OF THIS SECTION;

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

15 (E) THE PERCENTAGE OF LOCATE REQUESTS RESULTING IN
16 RENOTIFICATIONS SUBMITTED TO THE OWNER OR OPERATOR PURSUANT TO
17 SUBSECTION (6.5) OF THIS SECTION.

18 (II) THE NOTIFICATION ASSOCIATION SHALL MAKE THE DATA IN
19 THE ANNUAL REPORT ELECTRONICALLY ACCESSIBLE TO THE SAFETY
20 COMMISSION FOR CUSTOMIZED REPORTS OR RESEARCH.

21 (9) IF DAMAGE RESULTS IN THE ESCAPE OF ANY NATURAL GAS
22 OR OTHER GAS OR HAZARDOUS LIQUID, THE EXCAVATOR SHALL PROMPTLY
23 REPORT TO THE OWNER AND OPERATOR AND THE APPROPRIATE
24 AUTHORITIES BY CALLING THE 911 EMERGENCY TELEPHONE NUMBER OR
25 ANOTHER EMERGENCY TELEPHONE NUMBER. THE REPORTING IS IN
26 ADDITION TO ANY REPORTING REQUIRED TO BE MADE TO ANY STATE OR
27 LOCAL AGENCY.

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

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

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

18 **SECTION 3.** In Colorado Revised Statutes, **add** 9-1.5-104.2,
19 9-1.5-104.4, 9-1.5-104.7, and 9-1.5-104.8 as follows:

20 **9-1.5-104.2. Underground damage prevention safety**
21 **commission - creation - review of violations - enforcement - rules.**

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

27 (I) ADVISE THE NOTIFICATION ASSOCIATION AND OTHER STATE

1 AGENCIES, THE GENERAL ASSEMBLY, AND LOCAL GOVERNMENTS ON:

2 (A) BEST PRACTICES AND TRAINING TO PREVENT DAMAGE TO
3 UNDERGROUND UTILITIES; AND

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

8 (II) REVIEW COMPLAINTS ALLEGING VIOLATIONS OF THIS ARTICLE
9 1.5 INVOLVING PRACTICES RELATED TO UNDERGROUND FACILITIES AND
10 ORDER APPROPRIATE REMEDIAL ACTION OR PENALTIES.

11 (b) THE SAFETY COMMISSION AND THE NOTIFICATION ASSOCIATION
12 SHALL ENTER INTO A MEMORANDUM OF UNDERSTANDING TO FACILITATE
13 IMPLEMENTATION AND ADMINISTRATION OF THIS SECTION AND SECTIONS
14 9-1.5-104.4, 9-1.5-104.7, AND 9-1.5-104.8.

15 (c) NOTWITHSTANDING THE POWERS AND DUTIES ASSIGNED TO THE
16 SAFETY COMMISSION, THIS SECTION AND SECTION 9-1.5-104.4 DO NOT
17 APPLY TO A HOME RULE COUNTY, CITY AND COUNTY, OR MUNICIPALITY,
18 AND NOTHING IN THIS ARTICLE 1.5 AUTHORIZES THE SAFETY COMMISSION
19 TO IMPOSE A PENALTY ON OR ENFORCE A RECOMMENDATION OR
20 REMEDIAL ACTION REGARDING AN ALLEGED VIOLATION OF THIS ARTICLE
21 1.5 AGAINST A HOME RULE COUNTY, CITY AND COUNTY, OR MUNICIPALITY;
22 EXCEPT THAT:

23 (I) THE SAFETY COMMISSION SHALL:

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

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

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

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

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

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

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

15 (I) ONE INDIVIDUAL NOMINATED BY COLORADO COUNTIES, INC.,
16 TO REPRESENT COUNTIES;

17 (II) ONE INDIVIDUAL NOMINATED BY THE COLORADO MUNICIPAL
18 LEAGUE TO REPRESENT MUNICIPALITIES;

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

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

23 (V) ONE INDIVIDUAL NOMINATED BY THE COLORADO
24 CONTRACTORS ASSOCIATION TO REPRESENT CONTRACTORS;

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

27 (VII) ONE INDIVIDUAL NOMINATED BY THE AMERICAN COUNCIL

1 OF ENGINEERING COMPANIES OF COLORADO TO REPRESENT ENGINEERS;

2 (VIII) ONE INDIVIDUAL NOMINATED BY INVESTOR-OWNER
3 UTILITIES TO REPRESENT INVESTOR-OWNER UTILITIES;

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

6 (X) ONE INDIVIDUAL NOMINATED BY THE COLORADO PIPELINE
7 ASSOCIATION TO REPRESENT PIPELINE COMPANIES;

8 (XI) ONE INDIVIDUAL NOMINATED BY THE COLORADO
9 TELECOMMUNICATIONS ASSOCIATION TO REPRESENT
10 TELECOMMUNICATIONS COMPANIES;

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

13 (XIII) ONE INDIVIDUAL NOMINATED BY THE DEPARTMENT OF
14 TRANSPORTATION TO REPRESENT TRANSPORTATION; AND

15 (XIV) ONE INDIVIDUAL NOMINATED BY THE CHIEF EXECUTIVE
16 OFFICER OF THE NOTIFICATION ASSOCIATION.

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

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

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

25 (c) WITHIN SIX MONTHS AFTER ITS CREATION, THE SAFETY
26 COMMISSION SHALL ADOPT BYLAWS AND PROVIDE FOR THOSE
27 ORGANIZATIONAL PROCESSES THAT ARE NECESSARY TO COMPLETE THE

1 SAFETY COMMISSION'S TASKS.

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

4 (3) THE SAFETY COMMISSION SHALL MEET AT LEAST ONCE EVERY
5 THREE MONTHS. THE SAFETY COMMISSION SHALL OPERATE
6 INDEPENDENTLY OF THE NOTIFICATION ASSOCIATION; HOWEVER, THE
7 NOTIFICATION ASSOCIATION AND THE DEPARTMENT OF LABOR AND
8 EMPLOYMENT SHALL PROVIDE ADMINISTRATIVE SUPPORT TO THE SAFETY
9 COMMISSION IN PERFORMING ITS DUTIES AS OUTLINED IN THIS SECTION.

10 (4) THE SAFETY COMMISSION MAY REVIEW COMPLAINTS OF
11 ALLEGED VIOLATIONS OF THIS ARTICLE 1.5. ANY PERSON MAY BRING A
12 COMPLAINT TO THE SAFETY COMMISSION REGARDING AN ALLEGED
13 VIOLATION.

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

24 (6)(a) BEFORE REVIEWING A COMPLAINT, THE REVIEW COMMITTEE
25 SHALL NOTIFY THE PERSON MAKING THE COMPLAINT AND THE ALLEGED
26 VIOLATOR OF ITS INTENT TO REVIEW THE COMPLAINT AND OF THE
27 OPPORTUNITY FOR BOTH PARTIES TO PARTICIPATE. THE NOTIFICATION

1 MUST INCLUDE THE HEARING DATE FOR THE COMPLAINT, WHICH MUST BE
2 SCHEDULED FOR A DATE WITHIN NINETY DAYS AFTER THE DATE ON WHICH
3 THE SAFETY COMMISSION RECEIVED THE COMPLAINT, AND A STATEMENT
4 THAT THE PARTIES MAY SUBMIT WRITTEN OR ORAL COMMENTS AT THE
5 HEARING. THE HEARING DATE CAN BE POSTPONED BY MUTUAL
6 AGREEMENT OF THE PARTIES TO A DATE THAT IS ACCEPTABLE TO THE
7 REVIEW COMMITTEE. THE COMPLAINING PARTY MAY VOLUNTARILY
8 WITHDRAW THE COMPLAINT PRIOR TO A HEARING BY THE REVIEW
9 COMMITTEE. THE SAFETY COMMISSION SHALL PROMULGATE RULES
10 GOVERNING THE CONDUCT OF HEARINGS UNDER THIS SECTION.

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

22 (7) THE SAFETY COMMISSION IS BOUND BY THE REVIEW
23 COMMITTEE'S FINDINGS OF FACT AND DECISION, BUT THE SAFETY
24 COMMISSION MAY ADJUST THE REVIEW COMMITTEE'S RECOMMENDATION
25 OF REMEDIAL ACTION OR PENALTY IF AN ADJUSTMENT IS SUPPORTED BY AT
26 LEAST NINE MEMBERS OF THE SAFETY COMMISSION. WITHIN TEN BUSINESS
27 DAYS AFTER THE SAFETY COMMISSION MEETING TO REVIEW THE FINDINGS

1 AND RECOMMENDATIONS OF THE REVIEW COMMITTEE, THE SAFETY
2 COMMISSION SHALL PROVIDE IN WRITING TO THE PERSON MAKING THE
3 COMPLAINT AND THE ALLEGED VIOLATOR A SUMMARY OF THE REVIEW
4 COMMITTEE'S FINDINGS AND THE SAFETY COMMISSION'S FINAL
5 DETERMINATION WITH RESPECT TO ANY REQUIRED REMEDIAL ACTION OR
6 PENALTY. THE DECISION OF THE SAFETY COMMISSION IS FINAL AGENCY
7 ACTION SUBJECT TO REVIEW BY THE DISTRICT COURT PURSUANT TO
8 SECTION 24-4-106.

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

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

23 (b) ANY COSTS INCURRED BY THE SAFETY COMMISSION AS A
24 RESULT OF ADMINISTERING THIS ARTICLE 1.5, INCLUDING LEGAL SERVICES,
25 SHALL BE PAID FROM THE SAFETY COMMISSION FUND CREATED IN SECTION
26 9-1.5-104.8. ANY COSTS AND FEES AWARDED BY THE COURT PURSUANT TO
27 THIS SUBSECTION (9) SHALL BE DEPOSITED IN THE SAFETY COMMISSION

1 FUND CREATED IN SECTION 9-1.5-104.8.

2 ==

3 **9-1.5-104.4. Penalties - guidance.** (1) A PERSON WHO VIOLATES
4 THIS ARTICLE 1.5 IS SUBJECT TO A FINE OF NOT MORE THAN FIVE
5 THOUSAND DOLLARS FOR AN INITIAL VIOLATION AND NOT MORE THAN
6 SEVENTY-FIVE THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION
7 WITHIN A TWELVE-MONTH PERIOD.

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

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

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

22 (c) IN CONSIDERING THE APPROPRIATE REMEDIAL ACTION, THE
23 SAFETY COMMISSION MAY CONSIDER THE NUMBER OF VIOLATIONS
24 RELATIVE TO THE NUMBER OF NOTIFICATIONS RECEIVED.

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

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

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

5 **9-1.5-104.7. Damage prevention fund.** (1) THE DAMAGE
6 PREVENTION FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS
7 HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF:

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

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

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

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

16 (3) ONLY THE SAFETY COMMISSION MAY AUTHORIZE
17 EXPENDITURES FROM THE FUND. SUBJECT TO ANNUAL APPROPRIATION BY
18 THE GENERAL ASSEMBLY, THE SAFETY COMMISSION MAY USE MONEY
19 DEPOSITED IN THE FUND ONLY TO:

20 (a) DEVELOP AND DISSEMINATE EDUCATIONAL PROGRAMMING
21 DESIGNED TO IMPROVE WORKER AND PUBLIC SAFETY RELATING TO
22 EXCAVATION AND UNDERGROUND FACILITIES; AND

23 (b) PROVIDE GRANTS TO PERSONS WHO HAVE DEVELOPED
24 EDUCATIONAL PROGRAMMING THAT THE NOTIFICATION ASSOCIATION AND
25 THE SAFETY COMMISSION DEEM APPROPRIATE FOR IMPROVING WORKER
26 AND PUBLIC SAFETY RELATING TO EXCAVATION AND UNDERGROUND
27 FACILITIES.

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

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

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

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

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

14 (3) ONLY THE SAFETY COMMISSION MAY AUTHORIZE
15 EXPENDITURES FROM THE FUND. SUBJECT TO ANNUAL APPROPRIATION BY
16 THE GENERAL ASSEMBLY, THE SAFETY COMMISSION MAY USE MONEY
17 DEPOSITED IN THE FUND ONLY TO PAY FOR ITS EXPENSES IN
18 ADMINISTERING THIS ARTICLE 1.5.

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

21 **9-1.5-104.3. Alternative dispute resolution.** The notification
22 association shall create a voluntary alternative dispute resolution program
23 in consultation with its members and all affected parties. The alternative
24 dispute resolution program ~~shall~~ MUST be available to all owners or
25 operators, excavators, and other interested parties regarding disputes
26 arising from damage to underground facilities, including, ~~but not limited~~
27 ~~to~~, any cost or damage incurred by the owner or operator or the excavator

1 as a result of any delay in the excavation project while the underground
2 facility is restored, repaired, or replaced, exclusive of civil penalties set
3 forth in AND FINES ASSESSED PURSUANT TO section 9-1.5-104.5 OR
4 **9-1.5-104.4**, that cannot be resolved through consultation and negotiation.
5 The alternative dispute resolution program ~~shall~~ MUST include mediation,
6 arbitration, or other appropriate processes of dispute resolution. The issue
7 of liability and amount of damages under Colorado law may be decided
8 by an appointed arbitrator or by the parties in mediation. Nothing in this
9 section ~~shall be construed to change~~ CHANGES the basis for civil liability
10 for damages.

11 **SECTION 5.** In Colorado Revised Statutes, 9-1.5-105, **amend**
12 (1), (2) introductory portion, (3), (4), and (6); **repeal** (2.3); and **add** (2.1)
13 and (2.4) as follows:

14 **9-1.5-105. Notification association - structure and funding**
15 **requirements - duties of owners and operators - report - repeal.**

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

27 (2) All underground facility owners and operators ~~except the~~

1 ~~Colorado department of transportation shall be~~ ARE members of the
2 notification association. ~~which shall be~~ THE NOTIFICATION ASSOCIATION
3 SHALL PROVIDE MEMBERS THAT WERE NOT TIER ONE MEMBERS ON OR
4 BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (2), AS AMENDED, WITH
5 ELECTRONIC NOTIFICATIONS BEGINNING ON JANUARY 1, 2019, AT NO COST
6 FOR TWENTY-FOUR MONTHS. ON OR BEFORE JANUARY 1, 2021, ALL
7 OWNERS AND OPERATORS BECOME FULL MEMBERS OF THE NOTIFICATION
8 ASSOCIATION AND ARE ENTITLED TO RECEIVE FULL SERVICE BENEFITS AS
9 PART OF MEMBERSHIP AS SPECIFIED IN THIS ARTICLE 1.5. NOTHING
10 PRECLUDES A TIER TWO MEMBER FROM BECOMING A TIER ONE MEMBER
11 WITH THE TWO-YEAR WAIVER OF NO-COST NOTIFICATIONS AT ANY TIME
12 BEFORE JANUARY 1, 2021. UNTIL DECEMBER 31, 2020, MEMBERSHIP IS
13 organized as follows:

14 (2.1) SUBSECTION (2) OF THIS SECTION AND THIS SUBSECTION (2.1)
15 ARE REPEALED, EFFECTIVE JANUARY 1, 2021.

16 (2.3) ~~Any association member may alter the status of its~~
17 ~~membership and move from tier one to tier two or from tier two to tier~~
18 ~~one at any time that such member chooses; except that every tier one~~
19 ~~member shall remain a tier one member for at least two years after~~
20 ~~becoming a tier one member.~~

21 (2.4) EFFECTIVE JANUARY 1, 2021, ALL UNDERGROUND FACILITY
22 OWNERS AND OPERATORS ARE MEMBERS OF THE NOTIFICATION
23 ASSOCIATION. ALL MEMBERS ARE 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.

26 (3) (a) (I) Except as provided in subsection (2) of this section,
27 each member of the notification association shall provide all of the

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

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

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

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

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

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

27 (B) THIS SUBSECTION (4)(a)(II) IS REPEALED, EFFECTIVE JANUARY

1 1, 2021.

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

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

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

10 (b) ANY HOMEOWNER.

11 **SECTION 6.** In Colorado Revised Statutes, 9-1.5-106, **amend** (3)
12 as follows:

13 **9-1.5-106. Notice requirements - repeal.** (3) (a) (I) The
14 notification association shall provide prompt notice of any proposed
15 excavation to each affected tier one member that has any underground
16 facilities in the area of the proposed excavation site. The notification
17 association shall also provide the excavator with the name and telephone
18 number of each tier two member that has any underground facilities in the
19 area of the proposed excavation.

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

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

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

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

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

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

8 **SECTION 8. Act subject to petition - effective date -**

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

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