

**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
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.

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 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), and (11) as follows:

4 **9-1.5-103. Plans and specifications - notice of excavation -**
5 **duties of excavators - duties of owners and operators - fee - repeal.**

6 (2.4) AT THE PROJECT OWNER'S EXPENSE, A LICENSED PROFESSIONAL
7 ENGINEER DESIGNING _____ FOR A SUBSURFACE UTILITY
8 ENGINEERING-REQUIRED PROJECT SHALL:

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

11 (b) EITHER:

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

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

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

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

27 (2.7) AN UNDERGROUND FACILITY OWNER THAT RECEIVES A

1 SUBSURFACE UTILITY ENGINEERING NOTIFICATION OR OTHER REQUEST FOR
2 INFORMATION FROM A DESIGNER SHALL RESPOND TO THE REQUEST WITHIN
3 TEN BUSINESS DAYS AFTER THE REQUEST, NOT INCLUDING THE DAY OF
4 ACTUAL NOTICE, IN ONE OR MORE OF THE FOLLOWING WAYS:

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

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

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

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

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

26 (II) EFFECTIVE JANUARY 1, 2021, EXCEPT IN EMERGENCY
27 SITUATIONS AND EXCEPT AS TO AN EMPLOYEE OR AN EMPLOYER'S

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

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

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

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

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

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

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

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

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

26 (d) ~~An excavator may request a written record of any information~~
27 ~~from an owner or operator of an underground facility regarding the~~

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

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

1 FOR EACH OF ITS UNDERGROUND FACILITIES:

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

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

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

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

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

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

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

26 (c) (I) (A) When a person excavates within eighteen inches
27 horizontally from the exterior sides of any MARKED underground facility,

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

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

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

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

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

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

1 ASSOCIATION RECEIVES THE POSITIVE RESPONSE.

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

6 (V) ~~The number of persons whose service may have been~~
7 ~~interrupted;~~

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

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

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

16 (C) THE PERCENTAGE OF LOCATE REQUESTS RESULTING IN NOTICES
17 SUBMITTED TO THE OWNER OR OPERATOR PURSUANT TO SUBSECTION (6)
18 OF THIS SECTION;

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

21 (E) THE PERCENTAGE OF LOCATE REQUESTS RESULTING IN
22 RENOTIFICATIONS SUBMITTED TO THE OWNER OR OPERATOR PURSUANT TO
23 SUBSECTION (6.5) OF THIS SECTION.

24 (II) THE NOTIFICATION ASSOCIATION SHALL MAKE THE DATA IN
25 THE ANNUAL REPORT ELECTRONICALLY ACCESSIBLE TO THE SAFETY
26 COMMISSION FOR CUSTOMIZED REPORTS OR RESEARCH.

27 (9) IF DAMAGE RESULTS IN THE ESCAPE OF ANY INTERSTATE OR

1 INTRASTATE NATURAL GAS OR OTHER GAS OR HAZARDOUS LIQUID, THE
2 EXCAVATOR OR PERSON THAT CAUSED THE DAMAGE SHALL PROMPTLY
3 REPORT TO THE OWNER AND OPERATOR AND THE APPROPRIATE
4 AUTHORITIES BY CALLING THE 911 EMERGENCY TELEPHONE NUMBER OR
5 ANOTHER EMERGENCY TELEPHONE NUMBER. THE REPORTING IS IN
6 ADDITION TO ANY REPORTING REQUIRED TO BE MADE TO ANY STATE OR
7 LOCAL AGENCY.

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

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

17

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 2** 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;

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

13 (II) REVIEW COMPLAINTS ALLEGING VIOLATIONS OF THIS ARTICLE
14 1.5 INVOLVING PRACTICES RELATED TO UNDERGROUND FACILITIES AND
15 ORDER APPROPRIATE REMEDIAL ACTION OR PENALTIES.

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

25 (c) NOTWITHSTANDING THE POWERS AND DUTIES ASSIGNED TO THE
26 SAFETY COMMISSION, THIS SECTION AND SECTION 9-1.5-104.4 DO NOT
27 APPLY TO A HOME RULE COUNTY, CITY AND COUNTY, OR MUNICIPALITY,

1 AND NOTHING IN THIS ARTICLE 1.5 AUTHORIZES THE SAFETY COMMISSION
2 TO IMPOSE A _____ PENALTY ON OR ENFORCE A RECOMMENDATION OR
3 REMEDIAL ACTION REGARDING AN ALLEGED VIOLATION OF THIS ARTICLE
4 1.5 AGAINST A HOME RULE COUNTY, CITY AND COUNTY, OR MUNICIPALITY;
5 EXCEPT THAT:

6 (I) THE SAFETY COMMISSION SHALL:

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

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

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

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

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

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

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

25 (I) ONE INDIVIDUAL NOMINATED BY COLORADO COUNTIES, INC.,
26 TO REPRESENT COUNTIES;

27 (II) ONE INDIVIDUAL NOMINATED BY THE COLORADO MUNICIPAL

- 1 LEAGUE TO REPRESENT MUNICIPALITIES;
- 2 (III) ONE INDIVIDUAL NOMINATED BY THE SPECIAL DISTRICT
- 3 ASSOCIATION OF COLORADO TO REPRESENT SPECIAL DISTRICTS;
- 4 (IV) ONE INDIVIDUAL NOMINATED BY COLORADO'S ENERGY
- 5 INDUSTRY TO REPRESENT ENERGY PRODUCERS;
- 6 (V) ONE INDIVIDUAL NOMINATED BY THE COLORADO
- 7 CONTRACTORS ASSOCIATION TO REPRESENT CONTRACTORS;
- 8 (VI) TWO INDIVIDUALS NOMINATED BY THE EXCAVATOR MEMBERS
- 9 OF THE NOTIFICATION ASSOCIATION TO REPRESENT EXCAVATORS;
- 10 (VII) ONE INDIVIDUAL NOMINATED BY THE AMERICAN COUNCIL
- 11 OF ENGINEERING COMPANIES OF COLORADO TO REPRESENT ENGINEERS;
- 12 (VIII) ONE INDIVIDUAL NOMINATED BY INVESTOR-OWNER
- 13 UTILITIES TO REPRESENT INVESTOR-OWNER UTILITIES;
- 14 (IX) ONE INDIVIDUAL NOMINATED BY THE COLORADO RURAL
- 15 ELECTRIC ASSOCIATION TO REPRESENT RURAL ELECTRIC COOPERATIVES;
- 16 (X) ONE INDIVIDUAL NOMINATED BY THE COLORADO PIPELINE
- 17 ASSOCIATION TO REPRESENT PIPELINE COMPANIES;
- 18 (XI) ONE INDIVIDUAL NOMINATED BY THE COLORADO
- 19 TELECOMMUNICATIONS AND BROADBAND INDUSTRY TO REPRESENT
- 20 TELECOMMUNICATIONS AND BROADBAND COMPANIES;
- 21 (XII) ONE INDIVIDUAL NOMINATED BY THE COLORADO WATER
- 22 UTILITY COUNCIL TO REPRESENT WATER UTILITIES;
- 23 (XIII) ONE INDIVIDUAL NOMINATED BY THE DEPARTMENT OF
- 24 TRANSPORTATION TO REPRESENT TRANSPORTATION; AND
- 25 (XIV) ONE INDIVIDUAL NOMINATED BY THE COMMISSIONER OF
- 26 AGRICULTURE WHO IS ACTIVELY ENGAGED IN FARMING OR RANCHING.
- 27 (b) THE GOVERNOR SHALL MAKE INITIAL APPOINTMENTS BY

1 JANUARY 1, 2019. THE MEMBERS' TERMS OF OFFICE ARE THREE YEARS;
2 EXCEPT THAT THE INITIAL TERM OF ONE OF THE MEMBERS APPOINTED
3 PURSUANT TO:

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

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

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

12 (d) THE SAFETY COMMISSION MAY PROMULGATE RULES TO
13 IMPLEMENT THIS SECTION AND SECTIONS 9-1.5-104.4, 9-1.5-104.7, AND
14 9-1.5-104.8 AND MAY REVISE THE RULES AS NEEDED.

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

21 (4) THE SAFETY COMMISSION MAY REVIEW COMPLAINTS OF
22 ALLEGED VIOLATIONS OF THIS ARTICLE 1.5. ANY PERSON MAY BRING A
23 COMPLAINT TO THE SAFETY COMMISSION REGARDING AN ALLEGED
24 VIOLATION.

25 (5) TO REVIEW A COMPLAINT OF AN ALLEGED VIOLATION, THE
26 SAFETY COMMISSION SHALL APPOINT AT LEAST THREE AND NOT MORE
27 THAN FIVE OF ITS MEMBERS AS A REVIEW COMMITTEE. THE REVIEW

1 COMMITTEE MUST INCLUDE THE SAME NUMBER OF MEMBERS
2 REPRESENTING EXCAVATORS AND OWNERS OR OPERATORS AND AT LEAST
3 ONE MEMBER THAT DOES NOT REPRESENT EXCAVATORS OR OWNERS OR
4 OPERATORS. A SAFETY COMMISSION MEMBER WHO HAS A CONFLICT OF
5 INTEREST WITH REGARD TO A PARTICULAR MATTER SHALL RECUSE
6 HIMSELF OR HERSELF FROM SERVING ON A REVIEW COMMITTEE WITH
7 REGARD TO THAT MATTER.

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

22 (b) THE REVIEW COMMITTEE SHALL DETERMINE WHETHER A
23 VIOLATION OF THE LAW HAS OCCURRED AND, IF APPROPRIATE,
24 RECOMMEND REMEDIAL ACTION CONSISTENT WITH THE GUIDANCE
25 DEVELOPED PURSUANT TO SECTION 9-1.5-104.4(2). A RECOMMENDATION
26 OF REMEDIAL ACTION THAT INCLUDES A FINE REQUIRES A UNANIMOUS
27 VOTE OF THE REVIEW COMMITTEE. WITHIN SEVEN BUSINESS DAYS AFTER

1 THE COMPLETION OF THE HEARING, THE REVIEW COMMITTEE SHALL
2 PROVIDE TO THE SAFETY COMMISSION IN WRITING A REPORT OF ITS
3 FINDINGS OF FACTS, ITS DETERMINATION OF WHETHER A VIOLATION OF THE
4 LAW HAS OCCURRED, AND ANY RECOMMENDATION OF REMEDIAL ACTION
5 OR PENALTY.

6 (7) THE SAFETY COMMISSION IS BOUND BY THE REVIEW
7 COMMITTEE'S FINDINGS OF FACT AND DECISION, BUT THE SAFETY
8 COMMISSION MAY ADJUST THE REVIEW COMMITTEE'S RECOMMENDATION
9 OF REMEDIAL ACTION OR PENALTY IF AN ADJUSTMENT IS SUPPORTED BY AT
10 LEAST NINE MEMBERS OF THE SAFETY COMMISSION. WITHIN TEN BUSINESS
11 DAYS AFTER THE SAFETY COMMISSION MEETING TO REVIEW THE FINDINGS
12 AND RECOMMENDATIONS OF THE REVIEW COMMITTEE, THE SAFETY
13 COMMISSION SHALL PROVIDE IN WRITING TO THE PERSON MAKING THE
14 COMPLAINT AND THE ALLEGED VIOLATOR A SUMMARY OF THE REVIEW
15 COMMITTEE'S FINDINGS AND THE SAFETY COMMISSION'S FINAL
16 DETERMINATION WITH RESPECT TO ANY REQUIRED REMEDIAL ACTION OR
17 PENALTY. THE DECISION OF THE SAFETY COMMISSION IS FINAL AGENCY
18 ACTION SUBJECT TO REVIEW BY THE DISTRICT COURT PURSUANT TO
19 SECTION 24-4-106.

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

27 (9) (a) IF A PERSON DOES NOT COMPLY WITH THE SAFETY

1 COMMISSION'S DECISION, THE SAFETY COMMISSION, REPRESENTED BY THE
2 ATTORNEY GENERAL, MAY ENFORCE THIS ARTICLE 1.5 BY BRINGING AN
3 ACTION IN THE DENVER DISTRICT COURT. IN AN ACTION BROUGHT BY THE
4 SAFETY COMMISSION PURSUANT TO THIS SECTION, THE COURT MAY AWARD
5 THE SAFETY COMMISSION ALL COSTS OF INVESTIGATION AND TRIAL,
6 INCLUDING REASONABLE ATTORNEY FEES FIXED BY THE COURT.

7 (b) ANY COSTS INCURRED BY THE SAFETY COMMISSION AS A
8 RESULT OF ADMINISTERING THIS ARTICLE 1.5, INCLUDING LEGAL SERVICES,
9 SHALL BE PAID FROM THE SAFETY COMMISSION FUND CREATED IN SECTION
10 9-1.5-104.8. ANY COSTS AND FEES AWARDED BY THE COURT PURSUANT TO
11 THIS SUBSECTION (9) SHALL BE DEPOSITED IN THE SAFETY COMMISSION
12 FUND CREATED IN SECTION 9-1.5-104.8.

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14 **9-1.5-104.4. Penalties - guidance.** (1) A PERSON WHO VIOLATES
15 THIS ARTICLE 1.5 IS SUBJECT TO A FINE OF NOT MORE THAN FIVE
16 THOUSAND DOLLARS FOR AN INITIAL VIOLATION AND NOT MORE THAN
17 SEVENTY-FIVE THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION
18 WITHIN A TWELVE-MONTH PERIOD.

19 (2) IN THE PERFORMANCE OF ITS DUTIES REGARDING ANY
20 COMPLAINT, THE SAFETY COMMISSION IS ENCOURAGED TO CONSIDER
21 TRAINING, SUPPORT SERVICES, OR OTHER REMEDIATION MEASURES THAT
22 WILL IMPROVE THE BEHAVIOR OF THE PARTY AND FURTHER THE GOALS OF
23 THIS ARTICLE 1.5 TO ENSURE THE SAFETY OF ALL PARTICIPANTS AND
24 COLORADANS. THE SAFETY COMMISSION SHALL DEVELOP GUIDANCE FOR
25 THE RECOMMENDATION OF REMEDIAL ACTIONS THAT ARE CONSISTENT
26 WITH THE FOLLOWING PRINCIPLES:

27 (a) GUIDANCE SHALL BE DEVELOPED TO HELP THE REVIEW

1 COMMITTEE IN DETERMINING WHETHER AN ALLEGED VIOLATION SHOULD
2 BE CLASSIFIED AS A MINOR, MODERATE, OR MAJOR VIOLATION;

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

6 (c) IN CONSIDERING THE APPROPRIATE REMEDIAL ACTION, THE
7 SAFETY COMMISSION MAY CONSIDER THE NUMBER OF VIOLATIONS
8 RELATIVE TO THE NUMBER OF NOTIFICATIONS RECEIVED.

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

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

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

15
16 (4) THE FOLLOWING ARE NOT SUBJECT TO A FINE OTHERWISE
17 AUTHORIZED PURSUANT TO THIS SECTION:

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

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

26 **9-1.5-104.7. Damage prevention fund.** (1) THE DAMAGE
27 PREVENTION FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS

1 HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF:

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

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

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

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

10 (3) ONLY THE SAFETY COMMISSION MAY AUTHORIZE
11 EXPENDITURES FROM THE FUND. SUBJECT TO ANNUAL APPROPRIATION BY
12 THE GENERAL ASSEMBLY, THE SAFETY COMMISSION MAY USE MONEY
13 DEPOSITED IN THE FUND ONLY TO:

14 (a) DEVELOP AND DISSEMINATE EDUCATIONAL PROGRAMMING
15 DESIGNED TO IMPROVE WORKER AND PUBLIC SAFETY RELATING TO
16 EXCAVATION AND UNDERGROUND FACILITIES; AND

17 (b) PROVIDE GRANTS TO PERSONS WHO HAVE DEVELOPED
18 EDUCATIONAL PROGRAMMING THAT THE NOTIFICATION ASSOCIATION AND
19 THE SAFETY COMMISSION DEEM APPROPRIATE FOR IMPROVING WORKER
20 AND PUBLIC SAFETY RELATING TO EXCAVATION AND UNDERGROUND
21 FACILITIES.

22 **9-1.5-104.8. Safety commission fund.** (1) THE SAFETY
23 COMMISSION FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS
24 HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF:

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

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

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

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

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

9-1.5-104.3. Alternative dispute resolution. The notification
association shall create a voluntary alternative dispute resolution program
in consultation with its members and all affected parties. The alternative
dispute resolution program ~~shall~~ MUST be available to all owners or
operators, excavators, and other interested parties regarding disputes
arising from damage to underground facilities, including, ~~but not limited~~
~~to~~, any cost or damage incurred by the owner or operator or the excavator
as a result of any delay in the excavation project while the underground
facility is restored, repaired, or replaced, exclusive of civil penalties set
forth in AND FINES ASSESSED PURSUANT TO section 9-1.5-104.5 OR
9-1.5-104.4, that cannot be resolved through consultation and negotiation.
The alternative dispute resolution program ~~shall~~ MUST include mediation,
arbitration, or other appropriate processes of dispute resolution. The issue
of liability and amount of damages under Colorado law may be decided

1 by an appointed arbitrator or by the parties in mediation. Nothing in this
2 section ~~shall be construed to change~~ CHANGES the basis for civil liability
3 for damages.

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

6 **9-1.5-104.5. Civil penalties - applicability.** (3)(c) The penalties
7 AND REMEDIES provided in this article 1.5 are in addition to any other
8 remedy at law or equity available to an excavator or to the owner or
9 operator of a damaged underground facility, AND SECTIONS 9-1.5-104.2
10 AND 9-1.5-104.4, REGARDING THE SAFETY COMMISSION'S ENFORCEMENT
11 AUTHORITY, DO NOT LIMIT OR RESTRICT ANY OTHER REMEDY AT LAW OR
12 EQUITY AVAILABLE TO AN EXCAVATOR OR TO THE OWNER OR OPERATOR
13 OF A DAMAGED UNDERGROUND FACILITY.

14 **SECTION 6.** In Colorado Revised Statutes, 9-1.5-105, **amend**
15 (1), (2) introductory portion, (3), (4), and (6); **repeal** (2.3); and **add** (2.1)
16 and (2.4) as follows:

17 **9-1.5-105. Notification association - structure and funding**
18 **requirements - duties of owners and operators - report - repeal.**

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

1 ~~the commission may refer inquiries arising under this article to an~~
2 ~~appropriate person.~~

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

17 (2.1) SUBSECTION (2) OF THIS SECTION AND THIS SUBSECTION (2.1)
18 ARE REPEALED, EFFECTIVE JANUARY 1, 2021.

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

24 (2.4) EFFECTIVE JANUARY 1, 2021, ALL UNDERGROUND FACILITY
25 OWNERS AND OPERATORS ARE MEMBERS OF THE NOTIFICATION
26 ASSOCIATION. ALL MEMBERS ARE FULL MEMBERS OF THE NOTIFICATION
27 ASSOCIATION AND ARE ENTITLED TO RECEIVE FULL SERVICE BENEFITS AS

1 PART OF MEMBERSHIP AS SPECIFIED IN THIS ARTICLE 1.5.

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

7 (II) THIS SUBSECTION (3)(a) IS REPEALED, EFFECTIVE JANUARY 1,
8 2021.

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

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

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

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

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

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

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

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

13 (b) ANY HOMEOWNER.

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

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

23 (II) THIS SUBSECTION (3)(a) IS REPEALED, EFFECTIVE JANUARY 1,
24 2021.

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

1 OF THE PROPOSED EXCAVATION SITE.

2 **SECTION 8.** In Colorado Revised Statutes, 24-1-121, **add** (3)(j)
3 as follows:

4 **24-1-121. Department of labor and employment - creation.**

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

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

11 **SECTION 9. Appropriation. (1) For the 2018-19 state fiscal**
12 **year, \$81,841 is appropriated to the department of labor and employment.**
13 **This appropriation is from the general fund. To implement this act, the**
14 **department may use this appropriation as follows:**

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

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

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

26 **SECTION 10. Act subject petition - effective date -**
27 **applicability. (1) This act takes effect at 12:01 a.m. on the day following**

1 the expiration of the ninety-day period after final adjournment of the
2 general assembly (August 8, 2018, if adjournment sine die is on May 9,
3 2018); except that, if a referendum petition is filed pursuant to section 1
4 (3) of article V of the state constitution against this act or an item, section,
5 or part of this act within such period, then the act, item, section, or part
6 will not take effect unless approved by the people at the general election
7 to be held in November 2018 and, in such case, will take effect on the
8 date of the official declaration of the vote thereon by the governor.

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