

**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**

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**SENATE SPONSORSHIP**

**Scott and Donovan,** Martinez Humenik

**HOUSE SPONSORSHIP**

**Winter and Saine,** Becker J.

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**Senate Committees**

Transportation  
Finance  
Appropriations

**House Committees**

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**A BILL FOR AN ACT**

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

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**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.

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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 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;     

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 CHIEF EXECUTIVE  
26 OFFICER OF THE NOTIFICATION ASSOCIATION.

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 ARTICLE 1.5 AND MAY REVISE THE RULES AS NEEDED.

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

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

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

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

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

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

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

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

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

26 (9) (a) IF A PERSON DOES NOT COMPLY WITH THE SAFETY  
27 COMMISSION'S DECISION, THE SAFETY COMMISSION, REPRESENTED BY THE

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

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

12 ==

13 **9-1.5-104.4. Penalties - guidance.** (1) A PERSON WHO VIOLATES  
14 THIS ARTICLE 1.5 IS SUBJECT TO A FINE OF NOT MORE THAN FIVE  
15 THOUSAND DOLLARS FOR AN INITIAL VIOLATION AND NOT MORE THAN  
16 SEVENTY-FIVE THOUSAND DOLLARS FOR EACH SUBSEQUENT VIOLATION  
17 WITHIN A TWELVE-MONTH PERIOD.

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

26 (a) GUIDANCE SHALL BE DEVELOPED TO HELP THE REVIEW  
27 COMMITTEE IN DETERMINING WHETHER AN ALLEGED VIOLATION SHOULD

1 BE CLASSIFIED AS A MINOR, MODERATE, OR MAJOR VIOLATION;     

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

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

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

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

	<b>ONE</b>	<b>TWO</b>	<b>THREE</b>	<b>FOUR</b>
11 MINOR	\$ 250	\$ 500	\$ 1,000	\$ 5,000
12 MODERATE	\$1,000	\$ 2,500	\$ 5,000	\$25,000
13 MAJOR	\$5,000	\$25,000	\$50,000	\$75,000

15 **9-1.5-104.7. Damage prevention fund.** (1) THE DAMAGE  
16 PREVENTION FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS  
17 HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF:

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

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

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

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

26 (3) ONLY THE SAFETY COMMISSION MAY AUTHORIZE  
27 EXPENDITURES FROM THE FUND. SUBJECT TO ANNUAL APPROPRIATION BY

1 THE GENERAL ASSEMBLY, THE SAFETY COMMISSION MAY USE MONEY  
2 DEPOSITED IN THE FUND ONLY TO:

3 (a) DEVELOP AND DISSEMINATE EDUCATIONAL PROGRAMMING  
4 DESIGNED TO IMPROVE WORKER AND PUBLIC SAFETY RELATING TO  
5 EXCAVATION AND UNDERGROUND FACILITIES; AND

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

11 **9-1.5-104.8. Safety commission fund.** (1) THE SAFETY  
12 COMMISSION FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS  
13 HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF:

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

17         
18 (b) ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY  
19 APPROPRIATE OR TRANSFER TO THE FUND.

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

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



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

3           **9-1.5-104.3. Alternative dispute resolution.** The notification  
4 association shall create a voluntary alternative dispute resolution program  
5 in consultation with its members and all affected parties. The alternative  
6 dispute resolution program ~~shall~~ MUST be available to all owners or  
7 operators, excavators, and other interested parties regarding disputes  
8 arising from damage to underground facilities, including, ~~but not limited~~  
9 ~~to~~, any cost or damage incurred by the owner or operator or the excavator  
10 as a result of any delay in the excavation project while the underground  
11 facility is restored, repaired, or replaced, exclusive of civil penalties set  
12 forth in AND FINES ASSESSED PURSUANT TO section 9-1.5-104.5 OR  
13 **9-1.5-104.4**, that cannot be resolved through consultation and negotiation.  
14 The alternative dispute resolution program ~~shall~~ MUST include mediation,  
15 arbitration, or other appropriate processes of dispute resolution. The issue  
16 of liability and amount of damages under Colorado law may be decided  
17 by an appointed arbitrator or by the parties in mediation. Nothing in this  
18 section ~~shall be construed to change~~ CHANGES the basis for civil liability  
19 for damages.

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

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

1 EQUITY AVAILABLE TO AN EXCAVATOR OR TO THE OWNER OR OPERATOR  
2 OF A DAMAGED UNDERGROUND FACILITY.

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

6 **9-1.5-105. Notification association - structure and funding**  
7 **requirements - duties of owners and operators - report - repeal.**

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

19 (2) All underground facility owners and operators ~~except the~~  
20 ~~Colorado department of transportation shall be~~ ARE members of the  
21 notification association. ~~which shall be~~ THE NOTIFICATION ASSOCIATION  
22 SHALL PROVIDE MEMBERS THAT WERE NOT TIER ONE MEMBERS ON OR  
23 BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (2), AS AMENDED, WITH  
24 ELECTRONIC NOTIFICATIONS BEGINNING ON JANUARY 1, 2019, AT NO COST  
25 FOR TWENTY-FOUR MONTHS. ON OR BEFORE JANUARY 1, 2021, ALL  
26 OWNERS AND OPERATORS BECOME 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. NOTHING  
2 PRECLUDES A TIER TWO MEMBER FROM BECOMING A TIER ONE MEMBER  
3 WITH THE TWO-YEAR WAIVER OF NO-COST NOTIFICATIONS AT ANY TIME  
4 BEFORE JANUARY 1, 2021. UNTIL DECEMBER 31, 2020, MEMBERSHIP IS  
5 organized as follows:

6 (2.1) SUBSECTION (2) OF THIS SECTION AND THIS SUBSECTION (2.1)  
7 ARE REPEALED, EFFECTIVE JANUARY 1, 2021.

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

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

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

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

25 (b) EFFECTIVE JANUARY 1, 2021, EACH MEMBER OF THE  
26 NOTIFICATION ASSOCIATION SHALL PROVIDE GENERAL INFORMATION  
27 REGARDING ALL OF THE LOCATIONS OF ANY UNDERGROUND FACILITIES

1 THAT THE MEMBER OWNS OR OPERATES, FOR EXCAVATION NOTIFICATION  
2 PURPOSES ONLY. AND THE MEMBER'S CONTACT INFORMATION, BOTH OF  
3 WHICH SHALL BE UPDATED ANNUALLY, TO THE NOTIFICATION  
4 ASSOCIATION, AND THE ASSOCIATION SHALL MAINTAIN THE INFORMATION  
5 ON FILE IN A MANNER THAT ENSURES THE CONFIDENTIALITY AND SECURITY  
6 OF THE INFORMATION.

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

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

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

19 (B) THIS SUBSECTION (4)(a)(II) IS REPEALED, EFFECTIVE JANUARY  
20 1, 2021.

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

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

24 (a) Any owner or occupant of real property under which  
25 underground facilities are buried if ~~such~~ THE facilities are used solely to  
26 furnish service or commodities to ~~such~~ THE real property and no part of  
27 ~~such~~ THE facilities is located in a public street, county road, alley, or

1 right-of-way dedicated to public use; OR

2 (b) ANY HOMEOWNER.

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

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

12 (II) THIS SUBSECTION (3)(a) IS REPEALED, EFFECTIVE JANUARY 1,  
13 2021.

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

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

20 **24-1-121. Department of labor and employment - creation.**

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

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

27 **SECTION 9.** **Act subject to petition - effective date -**

1     **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
2     the expiration of the ninety-day period after final adjournment of the  
3     general assembly (August 8, 2018, if adjournment sine die is on May 9,  
4     2018); except that, if a referendum petition is filed pursuant to section 1  
5     (3) of article V of the state constitution against this act or an item, section,  
6     or part of this act within such period, then the act, item, section, or part  
7     will not take effect unless approved by the people at the general election  
8     to be held in November 2018 and, in such case, will take effect on the  
9     date of the official declaration of the vote thereon by the governor.

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