

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**

Finance  
Appropriations

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**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.**

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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

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

SENATE  
3rd Reading Unamended  
April 27, 2018

SENATE  
Amended 2nd Reading  
April 26, 2018

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

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

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

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

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

contact the tier 2 member to arrange for the marking of the underground facilities. Effective January 1, 2021, all underground facility owners and operators are full members of the notification association with full benefits, and excavators will no longer need to contact the owners or operators to arrange for the marking.

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

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

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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 EXISTING AGRICULTURAL ACTIVITY THAT IS  
15 ROUTINE FOR THAT RANCH OR FARM;

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

18 (III) ROUTINE MAINTENANCE OF:

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

21 OR

22 (B) EXISTING FENCE LINES.

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

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

3

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

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

17 (c) (I) THE PROJECT:

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

21 (B) INVOLVES UTILITY BORING.

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

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

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

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

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

14 (b) EITHER:

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

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

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

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

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

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

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

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

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

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

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

1 1, 2021.

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

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

12 (A) The name and telephone number of the person who is  
13 giving the notice;  
14 (B) The name and telephone number of the excavator; and  
15 (C) The specific location, starting date, and description of the  
16 intended excavation activity.

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

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

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

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

1 AND THE OWNER OR OPERATOR.

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

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

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

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

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

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

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

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

1 provide on-site assistance. Any owner or operator receiving notice  
2 concerning an excavator's intent to excavate shall use reasonable care to  
3 advise the excavator of the absence of any underground facilities in the  
4 proposed excavation area by ~~communicating directly with the excavator~~  
5 and providing documentation thereof, if requested, or by clearly marking  
6 that ~~no underground facilities exist in the proposed excavation area~~.

7 **Owners and operators** PROVIDING POSITIVE RESPONSE DOCUMENTATION  
8 TO THE EXCAVATOR THROUGH THE NOTIFICATION ASSOCIATION THAT NO  
9 UNDERGROUND FACILITIES EXIST IN THE PROPOSED EXCAVATION AREA. AN  
10 OWNER OR OPERATOR shall, within the time limits specified in subsection  
11 (6) of this section, provide to the excavator evidence, if any, of  
12 UNDERGROUND facilities abandoned after January 1, 2001, known to the  
13 owner or operator to be in the proposed excavation area.

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

1       thirty-day THE APPLICABLE period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20       =

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

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

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

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

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

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

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

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

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

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

10 (I) THE SAFETY COMMISSION SHALL:

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

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

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

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

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

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

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

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

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

23 (X) ONE INDIVIDUAL NOMINATED BY THE COLORADO PIPELINE

24 ASSOCIATION TO REPRESENT PIPELINE COMPANIES:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 

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

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

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

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

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

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

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

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

|             | <b>ONE</b> | <b>TWO</b> | <b>THREE</b> | <b>FOUR</b> |
|-------------|------------|------------|--------------|-------------|
| 26 MINOR    | \$ 250     | \$ 500     | \$ 1,000     | \$ 5,000    |
| 27 MODERATE | \$1,000    | \$ 2,500   | \$ 5,000     | \$25,000    |

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

2      (4) THE FOLLOWING ARE NOT SUBJECT TO A FINE OTHERWISE

3      AUTHORIZED PURSUANT TO THIS SECTION:

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

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

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

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

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

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

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

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

27      (a) DEVELOP AND DISSEMINATE EDUCATIONAL PROGRAMMING

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

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

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

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

14       

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (2.4) EFFECTIVE JANUARY 1, 2021, ALL UNDERGROUND FACILITY  
23 OWNERS AND OPERATORS ARE MEMBERS OF THE NOTIFICATION  
24 ASSOCIATION. ALL MEMBERS ARE FULL MEMBERS OF THE NOTIFICATION  
25 ASSOCIATION AND ARE ENTITLED TO RECEIVE FULL SERVICE BENEFITS AS  
26 PART OF MEMBERSHIP AS SPECIFIED IN THIS ARTICLE 1.5.

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

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

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

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

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

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

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

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

11 (b) ANY HOMEOWNER.

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

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

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

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

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

1      follows:

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

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

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

12     **24-34-104. General assembly review of regulatory agencies**  
13     **and functions for repeal, continuation, or reestablishment - legislative**  
14     **declaration - repeal.** (29)(a) The following agencies, functions, or both,  
15     are scheduled for repeal on September 1, 2028:

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

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

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

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

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

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

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

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

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

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

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