



Legislative Memorandum

SB18-167 Concerning Increased Enforcement of Requirements Related to the Location of Underground Facilities

Senators Scott (R-Grand Junction), Donovan (D-Vail)

Representatives Winter (D-Westminster), Saine (R-Dacono)

The purpose of this memo is to provide a summary of the key provisions of Senate Bill 18-167, a bill that was adopted by the Colorado General Assembly toward the end of the 2018 legislative session. The Governor has until June 8 to sign or veto this legislation or it will become law without a signature.

Senate Bill 18-167 substantially revises the current Colorado “call before you dig” law. As of August 8, 2018, SB18-167 creates a true “one-call” system for both excavators and owner-operators of underground facilities and imposes additional accountability requirements if companies do not follow the call before you dig system. SB18-167 phases out the current two-tier system by January 2021. After that time, all underground facility owners and operators will be full members of the Colorado 811 notification system.

SB18-167 modifies existing definitions of terms used in the current “one call” law and adds newly defined terms. One of the most significant changes to the defined terms is the “agriculture” exemption from the definition of the term “excavation.” Ranchers and farmers are exempt from the requirements of the one-call law if a proposed excavation involves routine ranching or farming activities, surface land clearing, or routine maintenance of existing irrigation facilities or existing fence lines.

One of the new requirements of the one-call law relates to “subsurface utility engineering-required projects.” These are projects that involve a construction contract with a governmental entity that will require an excavation more than two feet deep and have a contiguous area of one thousand square feet or more. If a project meets these criteria, the designing engineer is required to notify the notification association, and underground facility owners (i.e., electric co-ops) are required to provide facility location records within ten days after receiving the request. The purpose of this new requirement is to require the exchange of information at the design stage of certain projects, not just immediately before excavation.

The current law that requires excavators to provide notice to both the notification association and tier 2 members before proceeding with excavation is amended by SB18-167 to provide that as of January 1, 2021, only the notification association must be given notice. SB18-167 provides that if the area of excavation cannot be accurately described on the locate request, the excavator must notify the owner or operator by using either physical marks on the ground or maps or aerial photographs. If neither of these methods is appropriate, the excavator must schedule an on-site meeting with the owner or operator.

SB18-167 requires facility owners or operators to locate underground facilities within two business days of receiving notice of a proposed excavation by the notification association. The markings used for the locates are to be approved by a safety commission that is created by the bill. Owners or operators are also required to provide information about the size and type of facility and sketches or photographs of the facilities as required by the safety commission.

One of the important features of SB18-167 is the creation of the “underground damage prevention safety commission,” a 15-person board that is comprised of representatives from local governments, facility owners and operators, excavators, and the Chief Executive Officer of Colorado 811, among others. The safety commission is empowered to develop best practices to prevent damage to underground utilities and to review complaints of alleged violations and impose fines or other penalties.

When reviewing a complaint of an alleged violation, the safety commission is required to appoint a review committee to assess the complaints. If the review committee recommends a fine, a unanimous vote is required.

Fines for violations:

	One	Two	Three	Four
Minor	\$250	\$500	\$1,000	\$5,000
Moderate	\$1,000	\$2,500	\$5,000	\$25,000
Major	\$5,000	\$25,000	\$50,000	\$75,000

Effective January 1, 2021, each member of the notification association (all underground facility owners and operators, **including electric cooperatives**) are required to provide general information regarding all locations of any underground facilities that the member owns or operates for excavation notification purposes only. Co-op contact information must be updated annually with Colorado 811 and Colorado 811 is required to maintain the information in a manner that will ensure confidentiality and security of the information. *Specialized details of critical infrastructure is exempt from the Colorado Open Record Act.* The bill also requires that all new underground facilities installed on or after January 1, 2020, must be electronically locatable.