

CHANGES TO THE LAWS IN YOUR STATE

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As states start to form various types of enforcement for their damage prevention laws, recognizing changes to these laws are becoming a little more complicated. Due to this, it is recommended that you stay involved with your state one call, review state codes, administrative codes, enforcement authority rule making decisions, state resolutions, and (of course) “Changes to the Laws in Your State” article that is produced yearly.

ALABAMA

SB 58 signed 4/15/21- Alabama made some minor clean up modifications to their state damage prevention laws. First, the damage prevention fund is under the Department of Treasury. Second, modifications of member terms to the Underground Damage Prevention Authority to include a term of three years or “until a replacement is appointed which ever comes later”. This would allow for seats on the Authority to remain active, eliminating the possibility of vacant seats.

<http://www.al811.com/>

CALIFORNIA

Senate Bill 865 Signed 9/29/2020: RESOLUTION No. 21-02-01 approved 2/9/2021- This bill deletes education and outreach program provisions and, instead, requires the board, for violations that are neither egregious nor persistent, to offer violators the option of completing an educational course in lieu of paying a fine. Further, authorizes enforcement by certain entities, including specified agencies following a recommendation of the board against contractors, telephone corporations, gas corporations, electrical corporations, water corporations, operators of hazardous liquid pipeline facilities, and local agencies.

Assembly Bill 930 Signed 9/16/21- This bill requires a court or arbitrator to award reasonable attorney’s costs and fees, including expert witness fees, to an excavator if the court or arbitrator determines that the excavator is not liable for damages to a subsurface installation for reasons related to inaccurate field marking.

Senate Bill 297 Signed 10/8/2021- The bill prescribes a civil penalty of up to \$100,000.00 to be imposed on an operator or excavator, who knowingly and willfully violates provisions relating to excavations and subsurface installations and damages a gas or hazardous liquid pipeline subsurface installation in a way that results in the escape of any flammable, toxic, or corrosive gas or liquid.

Important implementation dates to remember from previous legislation:

On or after January 1, 2021, (a) Requires the maintenance of one call notifications for a period of three years, (b) Notification center shall provide to the Dig Board all notifications made on a quarterly interval and provide damage notifications within 5 days from receipt of notification, (c) Require every operator to supply an electronic positive response through the regional notification center before the legal excavation start date and time. The bill authorizes the board, upon a showing of good cause by an operator, to extend the time by which the operator is required to comply

with this requirement, through December 31, 2021. Further, requires the board to determine which facts or circumstances constitute good cause, (d) An excavator discovering or causing damage to a subsurface installation, including all breaks, leaks, nicks, dents, gouges, grooves, or other damage to subsurface installation lines, conduits, coatings, or cathodic protection, shall immediately notify the operator, (e) Excavator must notify the regional call center within 48 hours of discovering damage, and (f) Excavator shall notify 911 upon discovering or causing damage to a gas, hazardous liquid pipeline or any high priority facility.

On and after January 1, 2022, The board shall be within the Office of Energy Infrastructure Safety within the Natural Resources Agency. Also, If damage occurs due to noncompliance of excavator, excavator shall be liable to operator for costs and expenses related to damage. However, exemptions exist for operators who are not members of a regional notification center.

On or after January 1, 2023, All new subsurface installations shall be mapped using a geographic information system and maintained as permanent records of the operator. The exceptions for this obligation are “oil and gas flowlines 3 inches or less in diameter that are located within the administrative boundaries of an oil field.”

www.digalert.org
www.usanorth811.org
<https://energysafety.ca.gov/who-we-are/underground-safety-board/>

COLORADO

HB 1095- Signed 5/21/2021- This bill modifies the one call exemption for county employees performing maintenance in the right of way. The one call must be made, for both routine and emergency excavations, if the excavation will include the following:” (a) lowering the existing grade or elevation of the road or any adjacent shoulder or designed and constructed elevation of any adjacent ditch flowline or (b) Disturb more than six inches in depth as it is conducted”.

<http://colorado811.org/>

IDAHO

SB 1056 Passed 4/14/2021- This bill moves the damage prevention board to the division of the Occupational and Professional Licenses. Further, all monies collected are to be deposited into the Occupational License fund. Finally, Section 55-2204 (Use of Funds) is repealed in its entirety.

<https://www.digline.com/>

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ILLINOIS (CHICAGO ONLY)

City of Chicago Document Tracking Sheet 02021-3238 9/14/2021.

Amendment of Municipal Code 10-21-020 Changes include: (a) Changing the name of the 24 hour call center from DIGGER to Chicago 811, (b) Provides excavation exemptions for “digging with hand tools to a depth below the surface of up to six inches” and “land surveying operations to expose or identify underground facilities for completion of a locate request that does not involve the use of power equipment”, and (c) Adds definition for “Mismark” meaning “a facility mark outside the maximum parameters of the approximate location of the underground facility”.

Amendment of Municipal Code 10-21-040 This Amendment clarifies the requirement for facility owner to provide maps to Chicago 811 and report and mapping changes within 30 days after change. Further, a facility owner who receives notice of unmarked, mismarked, or an incomplete marked facility shall review and update any and all facility maps to ensure that the maps are complete and accurate.

Amendment of Municipal Code 10-21-045 Inserts provision as follows: “In addition to federal, state, and city requirements, every person who engages in excavation or demolition shall adhere to rules issued by the Commissioner as well as to any practices adopted in those rules”

Amendment of Municipal Code 10-21-050 This Amendment includes substantial changes to the Municipal Code for excavator duties as follows: (a) Excavator shall physically outline the dig site if needed, (b) “It shall be a violation for the person undertaking the excavation to request markings at the same location without having begun excavation within the 14-day period after initial marking as indicated in the original notice through 811 Chicago.”, (c) Defines provisions for commencing excavation. Excavator cannot commence excavation until a dig request is submitted, received a 811 Chicago dig number with dig ticket, the approximate location of underground facilities have been marked, after the 48 hours of receipt of dig ticket, and the requested date and time indicated on dig ticket, (d) “If, after proper notification through 811 Chicago, the person engaged in the excavation observes clear evidence of the presence of an unmarked, mismarked, or incomplete marked underground facility in the area of the proposed excavation, excavator shall cease the excavation until either the underground facility has been marked or two hours after an additional call is made to 811 Chicago. Further, a person who calls 811 Chicago shall specify which underground facilities are marked, mismarked, or unmarked”, (e) Requirement to Exercise due care at all times to avoid damaging underground facilities, (f) Between 20 and 26 days after a request for either a dig ticket or a dig ticket extension, request an extension when the excavation project will continue beyond the time limited by the dig ticket or its most recent extension. Please note that extensions may only be requested at locations where excavation work has begun and activity is ongoing, (g) Emergency excavation shall not begin until after the approximate location of underground facilities has been marked or more than two hours have gone by since notifying 811 Chicago of the emergency. If the conditions at the site dictate an earlier start than the required wait time, the person engaging in the excavation will have the burden of justification for an earlier start time, and (h) Excavation that needs to occur to find the facility and the reinstallation of traffic control devices constitutes an emergency.

Amendment of Municipal Code 10-21-060 This Amendment involves changes to the facility locating obligations as follows: (a) Mismarking a facility is a violation, (b) Requires positive response for no facilities in the area of construction, (c) Facilities have a “two hour” response window upon notification that facilities were not marked or marking was not completed, and (d) Clarifies a remarking/refresh provision.

Amendment of Municipal Code 10-21-080 This Amendment requires

the facility owner to notify Chicago 811 of damage to facility.

Amendment of Municipal Code 10-21-110 This Amendment changes the penalty schedule to include that a person who violates may be fined up to \$1000.00 for each separate offense in addition to the following penalties: (1) 1st offense the City shall order training, (2) 2nd offense the City shall fine \$1500.00, (3) 3rd offense \$3000.00, (4) 4th offense and each subsequent offense, \$3500.00 and increase fine increments of \$500.00 for each offense up to a maximum of \$10,000.00. Further, it provides an inclusion of penalty for facility owner who maintains incorrect maps.

Amendment of Municipal Code 10-21-230 This Amendment provides for the selection of a Chairman for the evaluation panel.

Amendment of Municipal Code 10-21-270 This Amendment transfers from the Commissioner to Chicago Department of Transportation (CDOT), the obligation of issuing Administrative Notice of Violation.

Amendment of Municipal Code 10-21-280 This Amendment allows for Administration Notice of Violation to be served by email provided to Chicago 811.

Amendment of Municipal Code 10-21-320 This Amendment allows for the continuance under particular circumstances should the respondent fail to appear at scheduled hearing.

<https://ipi.cityofchicago.org/Digger>

KENTUCKY

SB 172 Signed 3/24/2021- This bill inserts a provision for damage reporting to facility owner and (if needed) safety authorities even if activities are otherwise exempt from making the one call. Also, adds an exemption for the activity of “Nonintrusive excavating to inspect or perform maintenance for an existing utility pole”.

HB 303 Signed 3/23/2021- This bill makes substantial changes to the one call/damage prevention process.

Very important for excavators, the tolerance zone for facilities expands from 18” to 24”. Second, changes ticket wait time to redefine working day as: “shall commence at 12:01 a.m. eastern time and end at 12 midnight eastern time excluding the day the locate request was made”, not including weekends or federal/state approved holidays.

Creates new and revised definitions for the following: Person, Positive response, Unique Identification Number/Locate Request number, Locator, Second Notice, Tolerance Zone (“ means a strip of land at least four 4’ wide but not wider than the width of the underground facility plus two 2’ on either side of the outer limits of the facility”), Untonable facility, Work Site Contact, and Fiber to the premise.

Operator locating practices/times have significantly changed and are as follows: Provides an exception for locating within 2 working days for:

- Agreed upon start time: The Commission shall make available on their website a marking schedule agreement for excavator/operator if applicable.
- Large project requests: Operators shall notify the excavator that the project is a large project and shall respond to locate request within 5 working days or prior to the start date of excavation if agreed upon.
- Design information tickets: An operator may reject a design locate request and not be held in violation under certain circumstances.
- Unmapped/untunable facilities: Unmapped or untunable facility request, within two working days the operator shall notify the excavator that an excavation area has been determined to be an unmapped or untunable

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project, and the operator shall respond to the request within five working days for a normal locate request or eight working days for a large project request or prior to the scheduled excavation start date if agreed upon.

- Fiber-to-the-premises broadband deployment excavation request, in locations not already served by fiber-to-the-premises, within four working days.
- One working day after receiving a second notice request from an excavator.
- Provides a provision that an operator is temporarily relieved of marking obligations due to extraordinary circumstances until the operator can recover from such circumstance. An extraordinary circumstance includes: weather, force majeure (Unforeseeable circumstance that prevents a person from fulfilling a contract), disasters or civil unrest.
- If evidence of an unmarked underground facility is uncovered, the operator shall have six business hours to identify the underground facility

Other notable changes: (a) Excludes any entity or individual owning or operating underground storage tanks from the definition of facility operator, (b) Positive response requirement, (c) Adds a marking color code Safety alert orange for fiber optic and critical telecommunications, (d) A provision that states “The two full working days provided have elapsed if all affected operators have notified the person”, (e) Extends allowable locate ticket length limits from 2000’ to 5000’, (f) Must hand dig within the tolerance zone except on certain and specific criteria, (g) Except for gas or hazardous liquid facilities and waiting the additional day after the excavator has made a second locate request, the excavator shall not be liable for damages unless found intentional or negligent, (h) Increased additional penalties if violation includes damage to gas or hazardous liquids, and (i) Provision to amend Kentucky Contact Center board seats to include no more than 21 voting members and 6 nonvoting members, add seats for voting members representing commercial excavators and oil and gas operators, criteria for who can hold a nonvoting/advisory seat and criteria for electing advisory members to the seat.

<https://kentucky811.org/>

LOUISIANA

SB 169 Passed 6/1/2021; Effective 8/1/2012- This bill added a definition for Normal Commercial Farming Operations which means the following operations or activities for agriculture cultivation purposes are: (a) Operations or activities that do not encroach upon a private utility or pipeline servitude, public right-of-way, or a public franchise area. (b) Operations or activities that do encroach upon a private utility or pipeline servitude and the depth of the excavation is less than twelve inches in the soil below the existing surface grade. Also, added a requirement for minimum ground cover for natural gas pipeline under specific criteria.

HB 69 Passed 6/1/2021; Effective 1/2/2022- This bill adds the requirements for white lining and positive response.

<https://www.louisiana811.com/>

MAINE

Docket Number 2020-00264 65-407 Chapter 895 1/5/2021 The new rule requires contacting 911 if contact or damage results in the release of gas or hazardous liquid. Also notable: Requires that excavator and operator report damage to Commission via phone, places provision that if lines are mismarked; the excavator shall not be held liable if they have complied with their obligations, added exemptions for quarries, borrow pits, grading roads under specific criteria and increased monetary fines for first violation of not to exceed \$1000.00 and subsequent violations to not exceed \$10,000.00.

<http://www.digsafe.com>

MARYLAND

SB 877/HB 1330 Vetoes 5/7/2021 Overrode 2/11/21- Maryland made substantial revisions to their damage prevention law within this bill. The following is a “high level “overview, however, it is recommended to visit the one call for in-depth details to these changes.

Definitions added are as follows: Clear evidence “means a visible indication that an underground facility or structure is not mark as required”, Contract locator, Cross-Bore, Damage –“means any excavation activity that results in the need to repair an underground facility due to a weakening or the partial or complete destruction of the facility, including the protective coding, lateral support, cathodic protection, or housing for underground facility.”, Detectable underground facility, Damage, Excavator, Extent of work, Locatable underground facility, Mark, Primary contractor, Temporary excavator, and Trenchless technology.

Other notable changes include the following: (a) Private residence excavation exemption removed for any excavations over 6” in depth, (b) As of 10/01/2021, all newly installed facilities shall be locatable and any previously locatable facilities shall be restored to locatable in certain conditions, (c) Changes to the “Authority” to include restrictions for member appointment eligibility, replacement protocols, enforcement protocols, probable violator procedures, and allowed funding for Authority, (d) Emergency response protocols for excavator and facility owners to include facility response within 2 hours and marking started within 3 hours, (e) Repeat/refresh/remark ticket calling provisions, (f) Excavator requirement to have a copy of one call ticket available on excavation site, (g) Trenchless Technology requirements, (h) Obligations of a primary contractor, how to report a temporary excavator on the current one call ticket, what defines a temporary excavator, and primary contractor oversight obligations for the temporary excavator, (i) New designer ticket obligations to include potential cross-bore obstruction, (j) Penalty considerations, increased penalties for subsequent violations to four thousand dollars, guidelines for determining what is a subsequent violation, penalties for fraudulent emergency ticket, and a two hundred dollar penalty for failing to appear before the Authority.

<https://www.missutility.net/maryland/>

MISSISSIPPI

HB 1334 Passed 6/25/2020- As of January 1, 2021, Utility Operators shall participate in the positive response system and within 2 working days respond through the positive response system to the excavator that facilities have been marked, there are no facilities present in area of excavation, or facilities can only be located through excavation. Operators shall be provided reasonable amount of time to locate facilities through excavation not to exceed 4 days from original notice.

<https://www.ms811.org/>

WASHINGTON D.C. DISTRICT OF COLUMBIA

CB 230117 Passed 1/22/2021- This bill made several substantial amendments to (which is now known as), “Underground Facilities Protection Amendment Act of 2020” as follows: (a) With limited exemptions, no person shall excavate without first notifying at least 96 hours, but no more than 10 days (excluding Saturdays, Sundays, and legal holidays), (b) If it is determined by a utility operator that a proposed excavation is planned in such proximity to an underground facility that may be damaged, dislocated, or disturbed, the utility operator shall identify the approximate horizontal location of the underground facility on the ground within 2 feet from the outermost part of the underground facility within 72 hours (excluding Saturdays, Sundays, and legal holidays) by

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marking, staking, locating, or otherwise providing the location of the utility operator's underground facility. The method of identifying the location shall conform to standards and requirements, including the use of the color-coding system, established in regulations issued by the Mayor, (c) Mandatory positive response to include mandatory wait time for excavator until that response is received. "No person may begin excavation or demolition until receiving notification from the one-call center that the notices from the utility operators have been provided.", (d) Mandatory support of underground facility after exposure, (e) Mandatory hand digging to expose underground facility, (f) If a person engaged in or preparing to engage in excavation observes evidence of the presence of an unmarked underground facility in the area of a planned or ongoing excavation or observes a discrepancy between the marked or unmarked underground facilities, the person may not begin or continue the excavation until : Has repeated the notification to the one-call center and has received notification from the one-call center that the notices from the utility operators been provided, (g) In the case of damage to an underground facility, the excavator shall notify the utility operator, 911, and any other agency identified by the Mayor, (h) Civil penalties for violations are increased to \$2,500 for the first violation, \$5,000 for the second violation, and \$10,000 for the third or subsequent violation., (i) Civil fines and penalties may be imposed by the Mayor, (j) The Mayor may establish an advisory committee to advise on the implementation of this act and shall nominate and appoint persons to serve on the advisory committee. This committee must have representation from the following: Utility operator, the Public Service Commission, the one-call center, the excavation industry, and utility locator services. The committee serves solely in an advisory capacity only, (k) Rulemaking authority granted to the Mayor.

It is highly recommended to consult your one call center for detailed changes prior to excavating.

<https://www.missutility.net/washington-dc/>

OKLAHOMA

HB 2028 Passed 5/10/2021 This bill makes several changes to Oklahoma One Call law as follows: (a) Ticket life of 14 days, (b) Mandatory one call membership for operators, (c) Positive response, (d) In cases of excessive requests when no excavation is taking place, excavator may be liable to the owner or operator for the reasonable cost of such marking, (e) If requests for emergency locates are made by an excavator when there is no emergency, the excavator may be liable to the owner or operator for the reasonable cost of emergency response, and (f) Specific excavation requirements near hydrocarbon and hazardous liquid underground facilities.

<https://www.okie811.org/>

TENNESSEE

HB 54/SB 374 Passed 5/18/2021– This bill made significant changes to Tennessee one call law as follows: (a) Definition for damage notice meaning a notification made to the one-call service by a person who has caused damage to an underground facility, (b) Hand digging in tolerance zone or mechanical tools when approved by the operator, (c) An excavator shall exercise reasonable care to avoid damage caused by an excavation within the safety zone around the marked location of the underground utilities by hand digging when practical, utilizing pneumatic hand tools, or utilizing mechanical or technical methods approved by the facility owner or operator. Hand digging and non-invasive methods are not required for removal of pavement or concrete, (d) Definition for safety zone meaning a strip of land at least (4') wide, but not wider than the width of the utility plus (2') on either side of the utility, (e) White lining provisions (special note that these provisions are detailed in Rule 9541-9544 below), (f) Excavator shall report damage to one call and notify effected underground utility. If release of gas or hazardous liquid must contact emergency services and take necessary action to protect, property, and to minimize hazards, (g) During initial excavation, if an underground utility is found to be unsound due to deterioration, then the person responsible

for excavation shall immediately notify the utility company involved and allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of the utility, (h) Increased penalties for second and subsequent violations of \$10,000 per incident. Increased penalties for gross negligence to \$15,000.00 per incident, (i) Increased penalties under the TCA, Sec 65-28-108(a), (Pipeline Corporations; Penalty Division) from \$10,000.00 to \$100,000.00 for each violation for each day such violation persists not to exceed \$1,000,000.00 increased from previous amount of \$500,000.00, (j) Operators who fail to join the one-call service and utilize the services of the notification center are only subject to the civil penalties, (k) Operators shall report damages to Common Ground Alliance Dirt Report or to the One Call Center, and the operator shall not charge the person giving notice to the one-call service, the excavator, or property owner for the marking of its facilities.

Rule: 9541-9544 Effective 9/6/2021- This rule is part of the rulemaking authority of the enforcement board to provide clarifications and establish protocols. It is quite detailed as follows: (a) Any person may report an alleged violation of the Act by completing and submitting an electronic complaint. This form can be found on the Commission's website, (b) Alleged violations must be reported to the Executive Committee within ninety (90) days of the person or entity becoming aware of the circumstances constituting the alleged violation and reports of alleged violations should include as much relevant information concerning the circumstances as possible, including, but not limited to, damage and/or incident reports, photographs, statements and other informational documents, (c) Provides definition for Investigative Staff meaning the employee(s) of the Commission designated to investigate complaints. Further, establishes investigation protocols and authorized actions of the Investigative staff for alleged violations, (d) Establishes procedures and proceedings for contested cases, (e) An excavator shall exercise reasonable care to avoid damage caused by an excavation within the safety zone, (f) The Board further adopts the best practices for excavation as stated in Common Ground Alliance, Best Practices: The Definitive Guide for Underground Safety and Damage Prevention, Ch. 5, Excavation, and Appx. D (Ver. 17.0, March 2020), (g) Reasonable care protocols for excavation and trenchless excavation technology, and (h) Clarifies white lining obligations and exemptions.

<https://www.tn.gov/tpuc/divisions/uudp-underground-utility-damage-prevention.html>

<http://www.tenn811.com/>

VIRGINIA

20VAC5-309. Rules for Enforcement of the Underground Utility Damage Prevention Act (amending 20VAC5-309-150) Effective 1/1/2022

The amendments allow for a qualified contractor, in addition to the excavator, to complete the post-excavation video inspection for trenchless excavation across gravity fed sewer mains and combination storm and sanitary sewer system utility lines.

<http://register.dls.virginia.gov/details.aspx?id=9970>

<https://va811.com/>

2020/2021 Bills introduced

Illinois HB 0249 Introduced 3/37/2021

Illinois SB 3560 Introduced 1/19/2022

Indiana SB 0375 Introduced 1/11/2022

Iowa HF 741 Introduced 4/15/2021

Massachusetts S 2293 Introduced 1/20/2022

Nebraska LB 884 Introduced 1/13/2022

West Virginia 214-02 Proposed Rule of Procedure filed 4/21/2021 