

# CHANGES TO THE LAWS IN YOUR STATE

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Presented for informational purposes only. Information and laws are subject to change. Please consult the One Call center website or other sources for current information. The Pipeline Association for Public Awareness attempted to verify all information for accuracy as of the date of this publication, but is not responsible for incorrect or missing information. The Pipeline Hazardous Materials Safety Administration also has compiled extensive documentation for each state, which can be found by visiting: <https://primis.phmsa.dot.gov/comm/damagepreventionsummary.htm>

## ALABAMA

Alabama underwent monumental changes with SB 315 (2019). Below are The Administrative Rules that were generated from the new law and went into effect on 11/14/2020.

**Administrative Rule Chapter 910-X-1-.01- Filed 9/21/2020; In Effect 11/14/2020-** Established the Alabama Underground Damage Prevention Authority (ALUDPA) and its Executive Committee for the purpose of enforcement, reviewing penalty provisions, and the adequacy of enforcement process.

**Administrative Rule Chapter 910-X-2- Filed 9/21/2020; In Effect 11/14/2020-** Established the rules, organization, and protocols of the damage prevention authority. The Alabama Underground Damage Prevention Authority is composed of a seventeen subject matter experts from the following stakeholder groups: County Engineers, Cable television, electric, municipal utility operator, natural gas distribution, one call center, professional excavator, professional road builder, Land survey, telecommunications, transmission pipeline, utility facility locating, water utility, waste water, Attorney General office, Alabama Public Service Commission (gas pipeline safety), and Alabama Department of Transportation. Further establishes an Executive Committee made up of a maximum five-member committee who are elected from members of the Damage Prevention Authority. The duties of the Executive Committee include but are not limited to the following: (a) Conduct meetings and reviews of alleged violation complaints (b) Determine whether violations have occurred, (c) Dismiss those complaints in which it determines a violation has not occurred, and (d) Upon finding that a violation has occurred, determine and levy penalties, order training, and otherwise take action.

**Administrative Rule Chapter 910-X-3- Filed 9/21/2020; In Effect 11/14/2020-** Established the compliant filing process, an appeal process, enforcement rules, and adherence to the Alabama Open Meetings and Open Records Acts. The Alabama Public Service Commission shall serve as administrator of the filing process on behalf of the authority. The PUC shall receive and gather alleged violation documentation and submit to ALUDPA executive committee for review and enforcement recommendations. The PUC will notify parties of outcomes to complaints. Parties to the complaint have thirty days to request an appeal hearing before the ALUDPA. Further, a person aggrieved by the final order of the ALUDPA, within 30 days from the date of the final order, may seek judicial review in the circuit court by filing a notice of appeal.

**Administrative Rule Chapter 910-X-4- Filed 9/21/2020; In Effect 11/14/2020-** Establishes a penalty structure as follows: (a) For a first violation, the violator shall complete a course of training concerning compliance or pay a civil penalty in an amount not to exceed five hundred dollars per incident, or both, (b) For a second or subsequent

violation within a twelve (12) month period, the violator shall complete a course of training concerning compliance or pay a civil penalty in an amount not to exceed one thousand dollars per incident, or both, (c) For a third or subsequent violation within a twelve (12) month period, the violator shall complete a course of training concerning compliance and pay a civil penalty in an amount not to exceed three thousand dollars per incident, (d) if any violation was the result of gross negligence or willful noncompliance, the violator shall be required to complete a course of training concerning compliance and pay a civil penalty in an amount not to exceed ten thousand dollars per incident. **Special note:** Emergency excavations are exempt from civil penalties except in cases of violations deemed willful or malicious. Further, any person who willfully or maliciously removes or otherwise destroys a marking used by an operator to mark the location of any underground facility, except in the ordinary course of excavation, is guilty of a Class C misdemeanor.

**Administrative Rule Chapter 910-X-5- Filed 9/21/2020; In Effect 11/14/2020-** Establishes procedures for collected penalties and payment of penalties as follows: (a) Monies collected from assessed penalties will be deposited in the Underground Damage Prevention Fund, (b) Any monies remaining in the Underground Damage Prevention Fund at the end of the fiscal year shall not revert to the General Fund, but shall remain in the Underground Damage Prevention Fund, (c) The expenditures of monies in the Underground Damage Prevention Fund shall be at the discretion of the Authority Board to carry out its duties, (d) Excess funds shall be used to support public awareness programs, training and education of excavators, operators, locators, and other persons to reduce the number and severity of violations.

## CALIFORNIA

**Assembly Bill 1166 Signed 10/02/2019-** This bill has brought extensive changes to the damage prevention laws through a minimum of 2021. We will discuss these changes in terms of actual bill law modifications per year and move into rulemaking outcomes.

### Important note from previous legislation to take effect in 2020:

If an operator or local agency knows that it has a subsurface installation embedded or partially embedded in the pavement that is not visible from the surface, the operator or local agency shall contact the excavator before pavement removal to communicate and determine a plan of action to protect that subsurface installation and excavator.

The excavator shall notify the appropriate regional notification center of the failure of an operator to identify subsurface installations.

**July 1, 2020,** The California Underground Facilities Safe Excavation Board shall enforce the provisions with limited exemptions. The board

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shall not initiate an enforcement action pursuant to this subdivision for a violation that occurred prior to July 1, 2020

## Important note from previous legislation to take effect in 2021:

After January 1, 2021, require every operator to supply an electronic positive response through the regional notification center before the legal excavation start date and time. The bill authorized 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. The bill would require the board to determine which facts or circumstances constitute good cause. The bill required the board, on or before January 1, 2021, to adopt emergency regulations, as prescribed, to implement these provisions.

## Rulemaking Outcomes as follows:

**Funding of California Underground Facilities Safe Excavation Board (Dig Safe Board)** Each member of a regional notification center who receives more than 200 locate request transmissions in the previous calendar year shall pay a fee to support the operational expenses of the Dig Safe Board. Failure to pay will result in a 5% late fee.

**Valid and Current Contact Information:** Each member operator shall provide at least one valid and current contact that includes the name, telephone number, and email address of an individual or business unit that can reach a person authorized to respond to inquiries regarding the determination of the exact location of subsurface installations operated by the member. Further, each excavator will provide up to date contact information of a person with knowledge for that excavation during the period in which the ticket is valid. This information will be provided to the notification center.

**Continual Excavation Ticket:** Request for a continual excavation ticket shall communicate information about the extent of the area of excavation, the location of subsurface infrastructure within the area of continual excavation, and the type of work described within the continual excavation ticket to all workers, including any subcontractors, authorized by the excavator to perform work within the area of continual excavation. Further, the Notification Center shall send out a reminder no earlier than two months and no later than ten days that the continual excavation ticket is set to expire. Finally, excavator/operator shall conduct an onsite meeting and plan following renewal of a continual excavation ticket near high priority subsurface installations.

**Use of Equipment Other Than Hand Tools:** An excavator may use equipment other than hand tools within the tolerance zone for the purpose of determining the exact location of the underground utility under defined circumstances. (see <https://digsafe.fire.ca.gov/>. for exact specifications.)

**Penalties for Violations:** Prior to assessing sanctions; the Dig Safe Board shall consider certain criteria such as history of violations, type of violation, and efforts taken to prevent a violation. Further, prior to determining corrective action or monetary penalty, Dig Safe Board must consider certain evidence such as willingness to comply with corrective action order. (see <https://digsafe.fire.ca.gov/>. for all inclusive considerations.)

**Other Notable Additions:** (a) Damage notification to notification center within 2 hours of actual knowledge under particular circumstances, (b) Onsite planning meeting requirements and guidelines, (c) Clarity on definitions including but not limited to: "Business day" means a week-day Monday through Friday from 8:00 a.m. to 5:00 p.m. and "Damage" means any damage to a subsurface installation caused by excavation or excavation related work, including breaks, leaks, nicks, dents, strikes, gouges, grooves, cracks, or punctures to a subsurface installation, (d) Define who investigates and incident, what triggers an investigation and

how the information may be gathered., (e) How to report a violation, how to respond to alleged violations, appeals process and protocols, and payment of penalty.

**AB754 Passed 10/03/2019-** This bill requires as January 1, 2021, that a requirement to notify the appropriate notification center of intent to excavate shall appear within the California Solar Permitting Guidebook. Further, provides a release of liability for damages for a city or a county when approving a permit for the construction of solar energy systems.

**SB865 Passed 9/29/2020-** This bill introduced immediate changes to the damage prevention law along with future changes. First, current changes are as follows: (a) requires the Dig Safe Board to offer violators the option of completing an educational course in lieu of paying a fine for violations that are neither egregious nor persistent, (b) Requires the excavator to notify the regional notification center within 48 hours of discovering or causing damage, (c) Requires a regional notification center to provide notification records to the board quarterly and provide notifications of damage to the board within 5 business days of receipt at the regional notification center.

On or After January 1, 2022: Requires the board, to be within the Office of Energy Infrastructure Safety within the Natural Resources Agency. The bill would require policy committee review at least once every 3 years.

Beginning 1/01/2023: All new subsurface installations, with limited exemptions, be mapped using a geographic information system and maintained as permanent records of the operator.

## COLORADO

**Best Practice – Subsurface Utility Engineering (SUE) Approved 4/9/2020-** Discusses best practices for SUE; approved by the Underground Damage Prevention Safety Commission

## Important notes from previous legislation:

More changes will be in effect as of January 1, 2021 in terms of one call requirements to the association and the mandate to provide information to the notification association of all locations of any underground facilities that the member owns or operates.

It is highly recommended to reach out to the Colorado 811 center to get a comprehensive list of all changes and effective date. [Link below.](#)

## FLORIDA

**HB 1095 Passed 6/30/2020 Effective 7/01/2020-** Florida introduced several changes to its damage prevention law including but not limited to: (a) enforcement abilities to the State Fire Marshal and their designated agents, (b) Violations for failure to follow safe excavation practices within the tolerance zone, (c) Supervision when using mechanized equipment within tolerance zones, (d) Increased penalties (\$2500.00 plus court costs) for each violation involving underground facilities transporting hazardous materials regulated by the Pipeline and Hazardous Materials Safety Administration, (e) Second degree misdemeanor for removing or damaging permanent line markers used to identify approximate location of underground facilities, (f) Excavator must notify by phone or email High Priority Subsurface Installations of the actual start date and time of excavation, (g) Reports of an "incident", are to be provided to the State fire Marshal. The Fire Marshal or their agents may investigate to establish an incident occurred and if it was caused by a violation. (h) Additional civil penalties for violations that caused incident of up to \$50,000. This civil penalty is decreased to \$ 10,000 if incident is caused by state agencies or political subdivisions. (i) Second degree misdemeanor if excavator or operator willfully fails to respond to a citation.

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## INDIANA

**HB 1218 3/30/2020-** Any underground facilities installed or replaced after June 30, 2020 on public right of ways or private property shall be locatable using standard above ground locating equipment.

## MAINE

**HB 1892 3/10/2020-** This bill clarifies that liquefied propane gas distribution systems that have underground pipes are defined as underground facilities. Further, highway drain culverts and underdrains are not defined as underground facilities. Finally, penalties are increased from \$500.00 to \$1000.00 for first violations and from \$5000.00 to \$10,000 for further violations within the prior 12 months.

## MINNESOTA

**One Call Process Change: 11/12/20-** New Start Time Beginning December 1, 2020, web-submitted notifications of intent to excavate will be assigned a work start date and time that is either a) requested by the excavator, or b) assigned by the notification center to comply with the legal minimum required notice when measured from the time of acceptance of the notification after any review by the notification center has been completed.

## 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.

## OKLAHOMA

**SB 1225 Passed 5/19/2020; Effective 11/01/2020-** This bill added defined limits of excavation not to exceed five hundred (500) linear feet in incorporated areas or one linear mile in unincorporated areas per notification. Further, it grants public agencies access to the record of underground facilities.

## WASHINGTON

**SB 6420 Passed 3/25/2020; Effective 6/11/2020-** This bill added a provision that locating marks are not required to indicate depth due to topography changes over time. Further, the excavator is to contact 911 should any damage cause an emergency. A couple of notable changes are (a) the 13-member safety committee insurance industry seat is replaced with water-sewer district seat and the review committee shall be a balanced group to include at least one excavator and one facility operator.

## WASHINGTON D.C.

**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 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.

## WISCONSIN

Diggers hotline debuts voluntary positive response – 4/23/2020

## WYOMING

**HB 57 Passed 3/12/2020-** This bill introduced new definitions as follows: (a) “Area of risk” means an area not to exceed fifty feet from each side of an underground facility that is located under or near a county road and that: Contains hazardous materials that present an extreme risk to the health and safety of persons; or is buried at a depth of less than twenty-four (24) inches. (b) “Routine county road maintenance” means the regular grading of a county road for the purpose of maintaining the surface condition of the road or a roadside drainage ditch, that does not extend more than four inches below the surface and does not result in alteration of the original grade, width, or flow line. Further, this bill provides a provision that an operator deems they are in an area of high risk may provide that county with a written notice to include specific descriptions. This is important provision, as routine county road maintenance is now exempt unless the work is in an area of risk.  
Positive Response to go live 3/1/2021

## 2020/2021 BILLS INTRODUCED

**Nevada SB67 – 12/15/2020**  
**Maryland SB 877- Vetoed by Governor 5/7/2020**  
**New York AB 1696 Introduced 1/11/2021**  
**Oklahoma HB 2028 Introduced 2/01/2021**  
**Tennessee SB 271 Introduced 1/21/21**  
**Tennessee HB 54 Introduced 1/13/2021** 

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## ENFORCEMENT AGENCIES

Enforcement of the damage prevention laws in your state can be a bit confusing to navigate. Questions such as: who is enforced, who enforces it, and what is enforceable are frequent throughout the US. To help you with your navigation below we have categorized states in accordance with enforcement venues. Please note

some states have more than one avenue of enforcement and may appear more than once in the list below. The Pipeline Hazardous Materials Safety Administration also has compiled extensive documentation for each state, which can be found at the following link:

<https://primis.phmsa.dot.gov/comm/DamagePreventionSummary.htm?nocache=6529>

- **Public Utilities Commission:** Alabama, Alaska, Arizona, Connecticut, Delaware, Georgia, Hawaii, Illinois- Illinois Commerce Commission, Indiana- Indiana Utility Regulatory Commission, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin
- **Attorney General:** Arkansas, Iowa, Nebraska, Nevada, South Carolina, Texas, Utah, Washington D.C.
- **Relevant County Court:** Alabama, Alaska, Arkansas, New Mexico
- **Division of Safety:** Idaho, Washington
- **Standalone Damage Prevention Boards/ Committees:** Alabama, California, Colorado, Maryland, Mississippi, North Carolina, Puerto Rico
- **Railroad Commission:** Texas
- **Department of Labor:** Montana
- **Department of Natural Resources:** Louisiana
- **Department of Consumer and Regulatory Affairs/Mayor:** Washington D.C.
- **State Fire Marshal:** California, Florida
- **State One Call:** North Dakota, South Dakota, Wyoming
- **Law Enforcement:** Florida
- **Federal Office of Pipeline Safety:** Alaska, Maine (may defer)