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FISCAL NOTE

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Prime Sponsors: Sen. Scott; Donovan Rep. Winter; Saine	Bill Status: Senate Transportation
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Bill Topic: ENFORCE REQMNTS 811 LOCATE UNDERGROUND FACILITIES

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input checked="" type="checkbox"/> Statutory Public Entity

This bill creates the Underground Damage Prevention Safety Commission in the Colorado Department of Labor and Employment; two cash funds to support the work of the commission and increased safety education; and makes a variety of changes to the state's excavation laws for the purpose of improving enforcement. It will increase state revenue and expenditures on an ongoing basis. It will also create new expenditure impacts for local government entities, special districts, and the statutory public entity Colorado 811.

Appropriation Summary: In FY 2018-19, the bill requires an appropriation of \$91,387 to the Colorado Department of Labor and Employment.

Fiscal Note Status: This fiscal note reflects the introduced bill. It should be considered preliminary, as not all departments were able to respond fully within provided time lines.

**Table 1
State Fiscal Impacts Under SB 18-267**

		FY 2018-19	FY 2019-20
Revenue	Safety Commission Fund	-	\$178,500
	Damage Prevention Fund	-	at least \$5,000
	Judicial Stabilization Fund	-	less than (\$5,000)
	Total	-	at least \$178,500
Expenditures	General Fund	\$91,387	-
	Safety Commission Fund	-	\$138,072
	State Highway Fund	\$2,910,000	\$2,910,000
	Centrally Appropriated	\$18,703	\$34,656
	Federal Funds	-	-
	Total	\$3,020,090	\$3,082,728
	Total FTE	1.2 FTE	2.1 FTE
Transfers		-	-

Summary of Legislation

This bill makes changes to the state's utility notification system in order to support increased enforcement related to the excavation of underground facilities.

Colorado 811. Under current law, a statutory public entity, the Utility Notification Center of Colorado (Colorado 811), supports utility notification in the state. Anyone conducting an excavation is required to contact Colorado 811 to be informed of underground facilities within the excavation area, which owners and operators of those underground facilities are required to mark. Violations of these laws are currently enforced through civil actions.

Colorado 811 is required to raise their utility notification fee from excavation companies to be deposited into the Safety Commission Fund and used to pay the expenses for the newly created Underground Damage Prevention Safety Commission (commission). In addition, Colorado 811 is required to prepare and submit an annual report to the commission with data related to location requests specific to each owner or operator of an underground facility.

Underground Damage Prevention Safety Commission and Review Committee. The Underground Damage Prevention Safety Commission will advise stakeholders on best practices and safety-enhancement policies, and review complaints alleging violations of the state's excavation laws. The commission is created as a Type 1 agency in the Colorado Department of Labor and Employment (CDLE). Colorado 811 and CDLE are required to provide administrative support to the commission.

The commission consists of 13 Governor-appointed members, including members of local governments, owners or operators of underground facilities, excavators, and a representative of Colorado 811. Appointments must be made by January 1, 2019, and the commission must adopt bylaws and a fee structure to support its direct and indirect costs by July 1, 2019. The commission must also enter into a memorandum of understanding with Colorado 811.

The commission must meet at least four times per year to hear complaints. A review committee, consisting of three to five commission members, will make an initial determination on alleged violations and recommend remedial action where appropriate. Remedial action may include a fine ranging from \$250 to \$75,000, as outlined in the State Revenue section and Table 3.

The full commission determines the final action regarding alleged violations, and fines must be approved unanimously. Fines are credited to the Damage Prevention Fund, proceeds from which will fund the commission's development of educational programming designed to improve worker and public safety relating to excavation and underground facilities.

Safety Commission Fund and Damage Prevention Fund. The bill creates two new funds which are both subject to annual appropriation by the General Assembly.

Safety Commission Fund. The Safety Commission Fund receives the additional notification fee amount paid to Colorado 811 by excavators to cover commission's costs, as well as court settlement funds, to the extent those occur.

Damage Prevention Fund. All fines levied on violators are paid to the Damage Prevention Fund, which supports educational programming related to excavation and underground facilities.

Owners and operators of underground facilities. The bill requires all new underground facilities installed on or after January 1, 2020, to have electronic location technology. Owners and operators of underground facilities are not liable for damages or injuries related to information they provide related to the location of underground facilities.

Engineers designing government subsurface utility engineering projects. The bill requires a licensed professional engineer designing a government "subsurface utility engineering-required project" to submit a location request to Colorado 811 during the design phase. The bill sets deadlines and protocols for these requests. Engineers must also ensure that those project plans meet certain standards developed by the American Society of Civil Engineers for defining the accuracy of an underground facility location.

Excavators. The bill requires excavators to keep all underground facility location documents on the job site. Excavators are also required to call 911 for any incident involving materials regulated by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA).

Under the bill, excavation is defined to exclude certain agricultural activities, such as cultivation, land clearing, or routine maintenance of irrigation facilities or fence lines.

Local governments and special districts. Local government and special district entities are required to adhere to the notification requirements outlined in the bill. 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.

Colorado Department of Transportation. The bill repeals the Colorado Department of Transportation's (CDOT's) exemption from membership in Colorado 811.

Membership tiers. Owners and operators of underground facilities comprise the membership of Colorado 811. Under current law, there are two primary membership levels for owners and operators of underground facilities, with different rights and responsibilities. When an excavator calls Colorado 811 to provide notification of an intended excavation, Tier 1 members receive notice directly from Colorado 811 to arrange for the marking of their underground facilities. For Tier 2 members, Colorado 811 notifies the excavator that a Tier 2 member's facility may be impacted by the excavation, but it is the responsibility of the excavator to notify the Tier 2 member directly to arrange for the marking of their underground facilities.

Effective January 1, 2021, all underground facility owners and operators are Tier 1 members of Colorado 811 with full benefits. Excavators will no longer be required to contact former Tier 2 owners or operators to arrange for the marking of their underground facilities. Between January 1, 2019, and January 1, 2021, the bill requires Colorado 811 to provide any member who was not a Tier 1 member as of January 1, 2019, with electronic notifications of intended excavations at no cost.

Colorado Open Records Act. Finally, information regarding the location of underground facilities is exempt from the Colorado Open Records Act (CORA), pursuant to the existing exemption for specialized details of critical infrastructure.

Background

Colorado 811. The Utility Notification Center of Colorado, or Colorado 811, is a statutory public entity authorized under Title 9, Article 1.5, C.R.S., to operate as the statewide, one-call system for locating underground facilities. The organization also promotes statewide public safety awareness, damage prevention programs, and other educational services. Its 2017 capital and operating budget was about \$6.8 million and 63 FTE, funded primarily through fees paid by owners and operators of underground facilities each time one of their facilities is affected by an excavation. There are currently about 1,100 Tier 1 members, and about 650 Tier 2 members of the organization. In 2017, Colorado 811 received about 850,000 incoming notifications related to pending excavations and made about 5.1 million outgoing notifications to owners and operators of underground facilities. The outgoing notification fee is currently \$1.45 per transmission. All members pay a one-time membership fee of \$25.

Pipeline and Hazardous Materials Safety Administration. In 2016, the U.S. Department of Transportation's PHMSA conducted an adequacy evaluation of Colorado's excavation damage prevention law enforcement and determined that the state's excavation-related enforcement is inadequate. Based on this finding, the state was issued a deadline of 2021 to upgrade its 811 enforcement, or have its federal pipeline safety grant reduced in 2022. PHMSA grant funding is issued to the Public Utilities Commission in the Department of Regulatory Agencies (DORA) and primarily funds distribution pipeline inspectors who conduct safety analyses and failure reviews. DORA is expected to receive about \$700,000 of federal funding from this source in 2018.

Data and Assumptions

Cost savings. According to a study commissioned by the U.S. Department of Transportation's Federal Highway Administration and conducted by Purdue University in 2002, which used a sample of 71 projects in four states (North Carolina, Ohio, Texas, and Virginia), performing comprehensive mapping of underground facilities creates the potential to save project dollars by avoiding utility relocations, reducing project delays, improving overall safety, and reducing contractor risk. These offsets to the upfront costs for state departments are not accounted for in this fiscal note.

Memorandum of understanding. It is assumed that the memorandum of understanding put in place between Colorado 811 and the commission will provide further codification of administrative responsibilities and seek to avoid duplicative efforts.

Commission and review committee meeting schedule. This fiscal note assumes the commission will meet four times a year and its review committee will meet monthly.

State Revenue

The bill will increase state revenue to the Safety Commission Fund from fees and legal settlements. Fees are expected to be increased to cover commission costs, estimated at \$178,500 in FY 2019-20, while legal settlement amounts have not been estimated. Beginning in FY 2019-20, the bill is also expected to increase state revenue to the Damage Prevention Fund from fines by at least \$5,000 per year. Finally, the bill will minimally reduce state cash fund revenue from filing fees by less than \$5,000 to the Judicial Department.

Fee impact on owners or operators of underground facilities. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. Fee amounts shown in Table 2 are estimates only; actual fee calculations will be set by the commission through rule based on its direct and indirect costs and the estimated number of notifications subject to the fee. The fee increase is expected to begin in FY 2019-20 and will be credited to the Safety Commission Fund.

Table 2
Fee Impact on Owners and Operators of Underground Facilities Under SB 18-167

Fiscal Year	Type of Fee	Current Fee	Fee Estimate	Number of Notifications Subject to Fee	Total Fee Impact
FY 2019-20	CO 811 Notification Fee	\$1.450	\$1.485	5.1 million	\$178,500

Legal settlement funds. Legal settlement amounts have not been estimated for this fiscal note, but will be deposited into the Safety Commission Fund to the extent they occur.

Fines issued by the commission. As shown in Table 3, fines assessed by the commission under the bill may range from \$250 to \$75,000, credited to the Damage Prevention Fund. Any fine amount must be approved unanimously by the full commission. While the fiscal note generally assumes that professionals will comply with state laws, fines are expected to increase by at least \$5,000 initially in FY 2019-20.

Table 3
Fine Structure Under SB 18-167
per number of violations in a 12-month period

	One Violation	Two Violations	Three Violations	Four Violations
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

Court fees. By creating a new enforcement mechanism in lieu of a civil penalty, the bill is anticipated to reduce state cash fund revenue from civil filing fees by less than \$5,000 per year, which are currently credited primarily to the Judicial Stabilization Fund in the Judicial Department.

TABOR Refund

The bill increases state revenue subject to TABOR by \$178,500 in FY 2019-20. State revenue is not currently expected to exceed the TABOR limit in FY 2019-20 and no refund is required. However, refunds in future years when the state next collects a TABOR surplus will be increased.

State Expenditures

The bill will increase state expenditures in CDLE by \$110,090 and 1.2 FTE in FY 2018-19, paid from the General Fund, and \$172,728 and 2.1 FTE in FY 2019-20, paid from the Safety Commission Fund — these amounts are shown in Table 4. It will also increase costs in CDOT by at least \$2.9 million, paid from the State Highway Fund. DORA will secure its expenditures of federal PHMSA grant funding in future years. Other departments that perform excavations, in particular the Department of Public Health and Environment (CDPHE) and the Department of Natural Resources (DNR), will have indeterminate expenditure increases. The Judicial Department and the Department of Personnel and Administration (DPA) will have workload impacts related to the adjudication processes outlined in the bill.

Table 4
CDLE Expenditures Under SB 18-167

Cost Components	FY 2018-19	FY 2019-20
Department of Labor and Employment		
Personal Services	\$55,570	\$111,140
Operating Expenses and Capital Outlay Costs	\$10,451	\$1,900
Legal Services	\$12,787	\$10,656
Board Reimbursement	\$12,579	\$14,376
Centrally Appropriated Costs*	\$18,703	\$34,656
FTE – Personal Services	1.1 FTE	2.0 FTE
FTE – Legal Services	0.1 FTE	0.1 FTE
CDLE Subtotal	\$110,090	\$172,728

* Centrally appropriated costs are not included in the bill's appropriation.

Colorado Department of Labor and Employment. Beginning January 1, 2019, the CDLE will add 1.0 FTE Program Manager, 0.5 FTE Accounting Technician, and 0.5 FTE Administrative Assistant to support the work of the commission. The program manager and assistant, in coordination with Colorado 811, will review complaints, prepare documentation for review committee and commission hearings, assist in development of fact-finding reports, participate in educational programming activities, and prepare reports. The accounting technician will process and manage financials for the Safety Commission Fund and the Damage Prevention Fund. Standard operating and capital outlay costs are included.

Legal services. Legal services are required for initial rulemaking and commission support, estimated at 120 hours and 0.1 FTE in FY 2018-19, and 100 hours and 0.1 FTE in FY 2019-20 and ongoing, at the hourly rate of \$106.56. The bill allows for the commission, represented by the Attorney General's office, to bring a court action if a person does not comply with the commission's decision, for which additional resources may be requested through the annual budget process.

Board reimbursement. The fiscal note assumes that at least six board members will require travel reimbursement for commission meetings, for four meetings per year, and that at least two review committee members will require travel reimbursement for review committee meetings, for twelve meetings per year. Lodging and meals have been estimated at \$128 per eligible member, assuming one overnight. Mileage reimbursement has been estimated at 350 miles per eligible member at the rate of \$0.49 per mile.

Colorado Department of Transportation. CDOT will have three primary expenditures under the bill — subsurface utility engineering project costs, Colorado 811 notification fees, and utility location costs — estimated to cost at least \$2.9 million annually, paid from the State Highway Fund, which is continuously appropriated to CDOT and allocated at the discretion of the Transportation Commission.

Subsurface utility engineering. CDOT is expected to have annual average costs of \$1,650,000 to perform the subsurface utility engineering required under the bill. These costs will vary from year to year depending on CDOT's construction budget and project complexity, and will overlap some with CDOT's current internal initiative to update its processes related to subsurface utility engineering.

Membership costs. CDOT has fiber, signal and electrical in the right-of-way throughout the state. While CDOT is not a formal Tier 1 member, certain regions with a high number of utility locates have opted into the membership. Based on the number of notifications transmitted annually, it is estimated that this cost to the department would be approximately \$300,000 annually.

Utility location. If the location and sharing of utility facilities falls on CDOT staff, it is estimated to cost at least \$960,000 annually. This amount may be higher if location services work is contracted out.

Department of Regulatory Agencies. As discussed in the Background section, the bill is expected to secure federal PHMSA grant funding that supports pipeline inspectors in the Public Utilities Commission. Additionally, the State Board of Licensure for Architects, Professional Engineers, and Professional Land Surveyors Engineering will perform outreach to inform engineers of the Colorado 811 notifications under the bill in the course of its normal business.

Departments of Natural Resources and Public Health and Environment. Departments that are involved in excavation projects — particularly DNR and CDPHE — will have increased costs to locate and include underground facilities in engineering plans. These amounts have not been determined and will be addressed during the annual budget process.

Department of Natural Resources. DNR owns a considerable amount of underground facilities inside Colorado Parks and Wildlife properties, such as water, sewer, and electric lines. Costs will increase in DNR to meet the engineering planning requirements under the bill.

Department of Public Health and Environment. CDPHE's Brownfields and Superfund programs have projects that involve excavation. Under the bill, Brownfields-related clean-ups of illegal dumps, defunct waste facilities, or large waste tire pits may result in increased planning and design costs ranging from \$5,000 to \$20,000, while larger Superfund-related clean-ups may result in increased planning and design costs ranging from \$100,000 to \$500,000. CDPHE is generally involved in three to four clean-up projects per year, funded through cash funds, federal funds, or a combination of both.

Department of Personnel and Administration. The Office of Administrative Courts is responsible for hearing appeals of commission decisions, which are expected to vary annually. To the extent additional resources are required, DPA will make a request through the annual budget process.

Judicial Department. The bill will have a minimal impact on trial courts in the Judicial Department. By creating an administrative process for violations, civil filings may be reduced. However, the bill also allows for review of final commission actions by the courts. While it is unknown how frequently excavation claims are currently adjudicated in the trial courts, the fiscal note assumes that no change in appropriations is required.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$18,703 in FY 2018-19 and \$34,656 in FY 2019-20.

Local Government and Special District Impact

Similar to state agencies, local governments and special districts will have a variety of impacts under the bill.

Engineering projects for government entities. Engineering plans designed for a local government or special district involving underground utilities will require additional processes in the design phase, which will increase design costs and may necessitate the hiring of additional engineering and surveying staff in some entities.

Underground facility notification. Local governments and special districts that own or operate underground facilities and that were Tier 2 members prior to the bill will, after two years of free access to Colorado 811 notifications, have significantly increased costs beginning January 1, 2021, to pay Colorado 811's per notification fee.

Excavation penalties. Local governments involved in excavation work that violate safety rules are subject to new penalties, but the fiscal note assumes these entities will comply with state law and this impact will be minimal.

Electronic locatability of underground facilities. Local governments and special districts will be required to install electronic tracking technology on all underground facilities installed after January 1, 2020, which will increase costs.

Home rule local governments. If home rule local governments waive their exemption from the commission's enforcement authority, their workload will increase to adopt a similar enforceable damage prevention safety program within their jurisdiction.

Denver County Court. The bill allows for the commission, represented by the Attorney General's office, to bring a court action in Denver County Court if a person does not comply with the commission's decision. This will result in a workload increase for the Denver County Court, managed and funded by the City and County of Denver.

Local government representatives. Three members of local governments will serve on the commission, which will increase workload for those local government members.

Statutory Public Entity Impact

Colorado 811 will incorporate the workload required under the bill within its existing resources. This includes providing administrative support to and serving as members of the commission; modifying the Colorado 811 fee structure by rule; administering an enhanced notification system, which codifies its current practice; storing electronic records of the state's underground infrastructure; providing free Tier 1 services to Tier 2 members for two calendar years from 2019 to 2021; and reporting annually to the commission.

Effective Date

The bill takes effect August 8, 2018, if the General Assembly adjourns on May 9, 2018, as scheduled, and no referendum petition is filed. It applies to conduct occurring on or after the effective date.

State Appropriations

For FY 2018-19, the bill requires a General Fund appropriation of \$91,387 and 1.2 FTE to the Colorado Department of Labor and Employment. Of this amount, \$12,787 and 0.1 FTE is reappropriated to the Department of Law.

State and Local Government Contacts

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|------------------------|------------------|-------------------------------|
| Agriculture | Corrections | Counties |
| Information Technology | Labor | Law |
| Local Affairs | Military Affairs | Municipalities |
| Natural Resources | Personnel | Public Health and Environment |
| Public Safety | RTD | Regulatory Agencies |
| Special Districts | Transportation | |