

CALL BEFORE YOU DIG

LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting. (5-4-105, MCA; [Chapter 309, Laws of 2017](#)) The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The legislation links below open to the page showing the status and history of bills introduced on this topic in the past. The bill text and any related fiscal notes can be accessed through the link at the top of that page.

Legislation can be complex and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.

Background Materials and Research

Topic Summary:

House Bill 365, passed and approved by the 2017 Legislature, significantly changed Montana's one-call laws, also known as call-before-you-dig laws or Montana 811. In July 2015 the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) finalized a rule establishing a process for evaluating state excavation damage prevention law enforcement programs and enforcing minimum federal damage prevention standards in states where laws were determined to be inadequate. Federal legislation gave PHMSA the new enforcement authority over excavators who damage pipelines in states with inadequate excavation damage prevention law enforcement programs.

In December 2016, PHMSA notified Montana that its call-before-you-dig program was formerly out-of-compliance. Montana was one of five states that lacked an enforcement mechanism in its damage prevention or one-call law. Prior to passage of HB 365, there was no relationship between Montana's damage prevention program and any governmental entity in the state other than the one-call members themselves. Because there was no enforcement, PHMSA, in late 2016, was formally authorized to take enforcement action against excavators in Montana for certain violations. For example, if an excavator in Montana failed to utilize Montana's one-call law and damaged a gas pipeline, instead of facing a first time damage fee of 25% of the total cost of repairing the underground facility not to exceed \$125 for the first incident, the excavator would face a federal fee of up to \$200,000 a day.

The owners of underground utilities in Montana, as well as excavators, and numerous other stakeholders agreed that this was not an ideal situation and worked together on legislation to bring Montana into compliance with federal laws and restore oversight of the program to the state. A few highlights of HB 365:

- Establishes enforcement of damage prevention laws and regulations in Montana through the Department of Labor and Industry with the assistance of an underground facility protection advisory council;
- Establishes penalties for failure to comply with the law and establishes a fee paid by stakeholders, based on locate requests, to pay for the new administration and enforcement;
- Limits exemptions to one-call requirements, but also attempts to meet unique needs, for example, the needs of farmers conducting soil testing;
- Advances call-before-you-dig education programs through a grant program to notification centers to fund training and educational programs; and
- Provides much, much greater detail on the required use of one-call in Montana, how underground facilities are located and marked, notification timelines, and formal responses to excavators confirming that locates complete.

After passage of HB 365, PHMSA re-evaluated Montana’s law. Montana’s revisions took effect in part in July, and only applied to incidents beginning in October. PHMSA in early 2018 deemed Montana’s new law adequate.

Legislative Services Division Materials:

[Digging into One-Call](#)

[Memo on Noncompliance](#)

Other Materials:

[PHMSA Letter of Adequacy](#)

[Montana 8-1-1](#)

Introduced Legislation

*Chapter number assigned means bill was passed and approved. Most recent action.

2017

[House Bill No. 365](#) – Chapter Number Assigned -- AN ACT GENERALLY REVISING LAWS REGARDING EXCAVATIONS NEAR UNDERGROUND FACILITIES; CREATING AN UNDERGROUND FACILITY PROTECTION ADVISORY COUNCIL; ALLOCATING THE COUNCIL TO THE DEPARTMENT OF LABOR AND INDUSTRY; ESTABLISHING THE COUNCIL'S DUTIES AND RESPONSIBILITIES; ESTABLISHING THE DEPARTMENT'S DUTIES AND RESPONSIBILITIES; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; REQUIRING THE DEPARTMENT TO AWARD GRANTS TO NOTIFICATION CENTERS; ESTABLISHING A GRANT PROGRAM; ALLOWING FOR THE COLLECTION OF FEES, FINES, AND CIVIL PENALTIES BY THE DEPARTMENT; PROVIDING DIRECTION ON THE COLLECTION OF FEES, FINES, AND CIVIL PENALTIES; ESTABLISHING CIVIL PENALTIES; ESTABLISHING DAMAGE LIABILITY REQUIREMENTS; PROVIDING FOR MEDIATION OF CIVIL PENALTIES; ALLOWING THE DEPARTMENT TO REVIEW CIVIL PENALTIES IN A CONTESTED CASE; ESTABLISHING AN ANNUAL FEE PAID BY

UNDERGROUND FACILITY OWNERS; REQUIRING THE REPORTING OF INCIDENTS; ESTABLISHING SAFE EXCAVATION REQUIREMENTS PERTAINING TO UNDERGROUND FACILITIES; ESTABLISHING AN UNDERGROUND FACILITY PROTECTION ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 69-4-501, 69-4-502, 69-4-503, 69-4-504, 69-4-508, AND 69-4-512, MCA; REPEALING SECTIONS 69-4-505, 69-4-513, AND 69-4-514, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

2015

None

2013

None

2011

[House Bill No. 503](#)– (H) Died in Standing Committee -- AN ACT GENERALLY REVISING LAWS REGARDING EXCAVATIONS NEAR UNDERGROUND FACILITIES; CREATING AN UNDERGROUND UTILITY SAFETY BOARD; ALLOCATING THE BOARD TO THE DEPARTMENT OF LABOR AND INDUSTRY; ESTABLISHING THE BOARD'S DUTIES AND RESPONSIBILITIES; REQUIRING BOARD REVIEW OF DISPUTED CLAIMS; REQUIRING NOTIFICATION CENTERS TO PROVIDE REPORTS; GRANTING THE BOARD RULEMAKING AUTHORITY; ALLOWING FOR THE COLLECTION OF A FEE; ESTABLISHING FINES; AMENDING SECTIONS 17-7-502, 69-4-501, 69-4-502, 69-4-503, 69-4-504, 69-4-505, 69-4-512, AND 69-4-514, MCA; REPEALING SECTIONS 69-4-508 AND 69-4-513, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

2009

None