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## Energy and Telecommunications Interim Committee

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### 63rd Montana Legislature

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DAWN FIELD, Secretary

March 7, 2014

**TO:** Energy and Telecommunications Interim Committee (ETIC) members

**FR:** ETIC staff

**RE:** One-Call Program

The ETIC dedicated a portion of their time during the 2011-12 interim to a discussion of Montana's one-call law -- better known as "call before you dig". The ETIC learned how Montana's one-call law works and aspects of the law that may be inadequate, in part due to federal rulemaking. The ETIC also asked one-call stakeholders to work toward a consensus on how to improve Montana's one-call law. Stakeholders ultimately recommended that the Legislature wait for federal rulemaking to be final before proceeding. If committee members would like copies of the 2012 ETIC's final report, staff can provide it at the March meeting.

For the last four years, federal officials have urged states to strengthen their one-call programs, paying particular attention to natural gas and hazardous liquid pipelines. With passage of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES), the federal government was authorized to establish a process for potentially taking enforcement action in states that have laws that are lacking. In late 2013, the Montana Public Service Commission was notified by federal officials that Montana law is lacking. The complete letter is attached. It notes, "Currently, Montana's one-call law includes no state enforcement authority. As such, Montana's excavators could face federal enforcement actions. The current maximum federal penalty levels are \$200,000 for each violation for each day the violation continues except that the maximum civil penalty may not exceed \$2 million for any related series of violations."

In April 2012 the federal Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) published a Notice of Proposed Rulemaking that provided federal authority for PHMSA to enforce one-call laws in states where the agency determines state laws for enforcement are inadequate. The rulemaking sets the conditions of potential federal intervention in state enforcement activities. Federal rulemaking is expected to be complete later this year. At the March ETIC meeting, the committee will hear from stakeholders concerning Montana's current law and the federal rulemaking.

In Montana, the federal natural gas and hazardous liquid pipeline safety program is operated in conjunction with the PSC's Pipeline Safety and Engineering Unit. Enforcement by excavators and underground facility owners for violations of Montana's underground utility damage prevention laws are outlined in Title 69, chapter 4, part 5, MCA. The state law does not include enforcement. Penalties are \$125 for the first incident, \$500 for the second, and \$1,000 for subsequent.

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U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

DEC 17 2013

The Honorable Bill Gallagher  
Chairman  
Montana Public Service Commission  
1701 Prospect Avenue  
P.O. Box 202601  
Helena, MT 59620-2601

Dear Chairman Gallagher:

I am requesting your support in addressing an important pipeline safety initiative. Excavation damage continues to be a leading cause of pipeline incidents that can result in death, major injury, and environmental damage. Data shows that effective enforcement of a State's one-call law reduces excavation damage and pipeline incidents. However, Montana's State one-call law, the Montana Dig Law, is currently not being enforced. The Pipeline and Hazardous Materials Safety Administration's (PHMSA) data shows that in Montana since 1986, there have been 30 major pipeline accidents caused by excavation, which have resulted in 5 injuries and 1 fatality.

The Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 provided PHMSA with limited authority to conduct administrative civil enforcement proceedings against excavators who damage pipelines in a State that has failed to adequately enforce its excavation damage prevention laws. On April 2, 2012, PHMSA published a Notice of Proposed Rulemaking to establish criteria and procedures for determining the adequacy of State pipeline excavation damage prevention law enforcement programs, establish an administrative process for making adequacy determinations, establish the Federal requirements PHMSA will enforce in States with inadequate excavation damage prevention law enforcement programs, and establish the adjudication process for administrative enforcement proceedings against excavators where Federal authority is exercised.

When PHMSA issues a final rule on excavation damage prevention, we will begin evaluating State one-call enforcement programs.

Currently, Montana's one-call law includes no State enforcement authority. As such, Montana's excavators could face Federal enforcement actions. The current maximum Federal penalty levels are \$200,000 for each violation for each day the violation continues except that the maximum civil penalty may not exceed \$2,000,000 for any related series of violations.

PHMSA continues to believe that enforcement is best addressed at the State level. PHMSA offers resources such as grants, letters of support, safety workshops, and presentations to help States succeed in efforts to improve their damage prevention programs. We very much appreciate the efforts to address damage prevention in Montana. We are aware that previous

Page 2

The Honorable Bill Gallagher

efforts of the Montana Public Service Commission and other key stakeholders in seeking legislative updates have been unsuccessful. PHMSA representatives have also met with interested parties in Montana, and we will continue to reach out periodically to offer support.

If we can be of any further assistance to you, please contact Annmarie Robertson, Damage Prevention Program Manager, by phone at 317-253-1622 or by email at [annmarie.robertson@dot.gov](mailto:annmarie.robertson@dot.gov).

Sincerely,



Alan K. Mayberry  
Deputy Associate Administrator  
for Policy and Programs

cc: The Honorable Cliff Larsen  
Senator  
Chair of Energy and Telecommunications Committee  
Montana General Assembly  
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