

TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: TACIR Commission Members

FROM: Harry A. Green
Executive Director

DATE: July 1, 2010

SUBJECT: Utility Damage Prevention Status Report

Public Chapter 470, Acts of 2009, directed TACIR to study the effectiveness of Tennessee's current underground utility damage prevention program and report to the General Assembly by January 2010. Because of pending federal action, the Act's sponsors, Sen. Mark Norris and Rep. Gary Odom, introduced legislation to extend the reporting deadline to January 2011. (Public Chapter 825 of 2010) The study is to consider

- federal standards and other state initiatives to improve their programs and whether a reduction in underground damage has resulted;
- whether any legislative action is needed to improve the effectiveness of the program, including but not limited to, provisions related to program enforcement; and
- if a need for improvement is found, what entity or entities would be best suited to undertake further responsibilities.

The 2009 bill as introduced proposed broad changes in Tennessee's Underground Utility Damage Prevention Act (Tennessee Code Annotated § 65-31-101 *et seq.*), including some controversial ones affecting utility operators other than the natural gas pipeline operators regulated by the Tennessee Regulatory Authority (TRA).

Actions to Date:

- In September 2009 representatives of the Tennessee Regulatory Authority (TRA) and Tennessee's One-Call System (TNOCS) testified in favor of the legislation before the commission.
- In December 2009, the commission heard testimony from various other stakeholders, several of which opposed changes.
- Since December, TACIR staff has interviewed several people including representatives of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA), the TRA and TNOCS.
- Staff has also talked to officials of other Tennessee departments and interested stakeholder groups.
- Staff has reviewed available national utility damage prevention models and compared Tennessee's laws to those of other states.

Attachment A summarizes issues identified to date.

How Does Tennessee Compare to Other States in Utility Damage Prevention?

Attachment B is a table prepared by PHMSA summarizing the extent to which each state has implemented the "Nine Elements of Effective Damage Prevention" from the federal PIPES Act of 2006. Evaluators also relied to some extent on the Common Ground Alliance Best Practices. Both sets of criteria are viewed as national models for utility damage prevention.¹

The PIPES Act Elements:

Element 1 - Enhanced Communication between Operators and Excavators

Element 2 – Fostering Support and Partnership of all Stakeholders

Element 3 – Operator's Use of Performance Measures for Locators

Element 4 – Partnership in Employee Training

Element 5 – Partnership in Public Education

Element 6 – Enforcement Agencies' Role to Help Resolve Issues

Element 7 – Fair and Consistent Enforcement of the Law

Element 8 – Use of Technology to Improve the Locating Process

Element 9 – Data Analysis to Continually Improve Program Effectiveness

Eight states (Arizona, Georgia, Louisiana, Maine, Minnesota, New Hampshire, Vermont, and Virginia) are marked as having "largely implemented" all nine elements. An additional four states lack only one element. (Iowa, Massachusetts, Texas, and Utah.)

¹ See also <http://primis.phmsa.dot.gov/comm/DamagePrevention.htm>

According to the table, Tennessee has largely implemented three elements and partially implemented five. Element 3 is noted as “No information available or not applicable.” A review of the comments on Tennessee’s individual evaluation form indicates little or no implementation in the following areas:

- Collection of damage data—Although operators are encouraged to fill out damage report forms, it is not required. (1.o) Data is also not available to the public. (9.h.)
- Representation of Stakeholders on One-Call Board—All of Tennessee’s members are facility owners. Although there is one excavator member, he/she is non-voting. Although not noted by PHMSA, the board also lacks any general government members.
- Results of damage reports are quantified against a standardized risk factor, (e.g. damages per 1000 locates.) (9.f.)

Tennessee received partial credit for many items, however, because of the proposed legislation, not because of actual practice. For example, PHMSA noted that

- Tennessee presently lacks due process for resolving disputes related to damage prevention but that it is addressed in the proposed legislation
- A damage prevention enforcement authority is not defined by state law or regulation; local law enforcement are responsible for enforcement. Proposed legislation would address this.²

What is the Status of the Proposed Federal Rules?

In October 2009, PHMSA issued an Advance Notice of Proposed Rulemaking (ANPRM) under the federal Pipeline Inspection, Protection, Enforcement and Safety Act (PIPES) Act of 2006 in which it noted that excavation damage to gas and hazardous liquid pipelines is the single leading cause of pipeline failure incidents, and more effective state damage prevention programs are a key to further reductions in pipeline damage incidents.³ Damage prevention, however, has been and continues to be mainly a state function, not a federal responsibility. The federal government has no direct authority over the non-pipeline utilities.

The questions listed in The ANPRM were included in docket book materials for the December 2009 meeting.

(http://www.state.tn.us/tacir/PDF_FILES/Agenda/Dec09/Tab%207.pdf)

According to the advance rulemaking notice, **“a threshold criterion for determining the adequacy of a state’s damage prevention enforcement program will be**

² See also <http://primis.phmsa.dot.gov/comm/SDPPCDiscussion.htm>

³ 74 Fed. Reg. 208 (29 October 2009).

whether the state has established and exercised its authority to assess civil penalties for violation of its one-call law.” This is a key issue, but the notice goes on to list others that PHMSA proposes to consider when evaluating the enforcement component of state damage prevention programs.

The ANPRM also solicited comments on

- the administrative process PHMSA would follow to make its adequacy determination;
- federal standards for excavators that PHMSA would enforce;
- the adjudication process it would follow when a state program was deemed inadequate; and
- existing requirements for pipeline operators to participate in one-call organizations, respond to dig tickets, and perform their locating and marking responsibilities.

Federal officials have suggested that many states need to strengthen their underground utility protection laws, but have not been specific about the consequences if states do not. The Tennessee Regulatory Authority may be at risk of losing funds for gas pipeline inspections, as well as control over the program if some of the revisions are not made.

On May 24, 2010 TACIR staff interviewed Annmarie Robertson, Damage Prevention Program Manager for PHMSA. (Ms. Robertson is also the former Director of Pipeline Safety for the Indiana Utility Regulatory Commission.) She indicated that the Notice of Proposed Rulemaking would likely be issued in **Fall 2010** and that the actual rule issued in **Fall 2011**.

Attachment A

SUMMARY OF UTILITY DAMAGE PREVENTION ISSUES

MANDATORY MEMBERSHIP IN ONE-CALL

Issue: Presently, only natural gas utilities are required to belong to Tennessee's One-Call system, although many other utilities belong voluntarily. The proposed legislation would have required all utility owners and operators to join. Proponents of mandatory membership believe that having greater involvement would improve coordination among various stakeholders and improve safety. Opponents, however, are skeptical that it has been proposed primarily to increase revenues.

- Should membership in Tennessee's One Call System be mandatory for all utilities?
- If so, what exceptions should be permitted?
- What should membership fees be? Should they be graduated or have different levels for various sizes, types, or usage rates of members? (Some apparently believe the present fees are already too high.)
- If mandatory membership is expanded should all utilities be represented on the One-Call Board of Directors?
- How should other stakeholders, such as excavators be treated?

FUNDING FOR EXISTING AND EXPANDED UTILITY DAMAGE PREVENTION

Issue: The TRA's pipeline inspection program is funded through federal funds and user inspection fees. It receives no state dollars. Federal officials imply that the base federal funding could be at risk for failure to implement certain changes, particularly civil penalties.

- If overall regulation of utility damage is increased, where will the funding come from? (higher fees, expanded fee base, other?)
- If the federal government increases the standards for utility damage prevention, what would Tennessee lose for failure to comply?
- What control should the One-Call Center have over increased fees? What control should the state have? (Proposed legislation seemed to allow the One-Call Center to decide how much funding it would provide for enforcement.)

ROLE OF THE STATE GOVERNMENT

Issue: Many states have designated a state agency or the state attorney general to oversee and enforce underground utility damage prevention laws. Tennessee uses local law enforcement for this purpose. Some believe that it is a low priority for them, and that sanctions are applied inconsistently across the state. Some stakeholders do not want more state regulation.

- Should the state government play a greater role in the enforcement of utility damage prevention laws?

- If so, what agency(ies) should handle it? (TRA? Attorney General? Environment and Conservation? Other?)

STATE OVERSIGHT OF ONE-CALL AGENCY

Issue: Except for authorizing operators to form a one-call service, Tennessee's statutes appear to provide little oversight or control over the service. Although this is not uncommon, some other states (Missouri, South Carolina) require annual audits and reports to a state entity such as a Public Service Commission, the Legislature, etc.) or actually select the One-Call vendor through a competitive process. Virginia's State Corporation Commission regulates and certifies the One-Call Center.

CIVIL PENALTIES

Issue: Tennessee is one of the few states that has only criminal penalties for violations of its utility damage prevention laws. Federal officials have particularly noted this as a weakness in Tennessee's program.

- Should Tennessee move to a system of civil penalties for underground utility damage?
- If so, what entity should have the authority to assess, levy, and collect the penalties?
- Should there be any flexibility in the levying of penalties for mitigating circumstances such as intentionality, previous record, risk to public safety, etc.?

HIGHWAY RIGHTS-OF-WAY

Issue: Local highway officials would like to have more control over construction and maintenance of utilities placed in their rights of way.

PLANNING and DESIGN

Issue: Tennessee's present One-Call law only requires calling before digging begins, and does not address access to one-call information during the planning and design phases of projects. Some engineers and utilities have requested that such information be available. Some other states provide for greater involvement during planning and design than Tennessee does. (Ohio, Montana, Pennsylvania, Utah, Virginia.)

DATA COLLECTION

Issue: Stakeholders in Tennessee are not required to report damage incidents to the One-Call Center making evaluation of the problem more difficult. Data that is presently available is self-reported and is voluntary.

Stakeholder Communications

PHMSA Pipeline Safety Program

Results of State Damage Prevention Program Characterizations (SDPPC)

PHMSA's SDPPC initiative evaluates state programs against the nine elements of effective damage prevention programs cited by Congress in the Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act of 2006. Its purpose is to gain a better understanding of the successes and challenges existing in state damage prevention programs, where these programs may need improvement, and where PHMSA can focus further assistance. A [brief summary discussion](#) of the initiative is available.

To support this effort, PHMSA developed a [program characterization tool](#) to help ensure consistent evaluation of state programs. Additionally, [brief summaries of the state damage prevention programs](#) were developed during the discussions with the representative stakeholders. Following are the current state damage prevention program characterization results. These may change from time to time as states take steps to strengthen their programs. More detailed information about damage prevention successes, challenges and initiatives for each state will be available soon.








SDPPC
Feedback

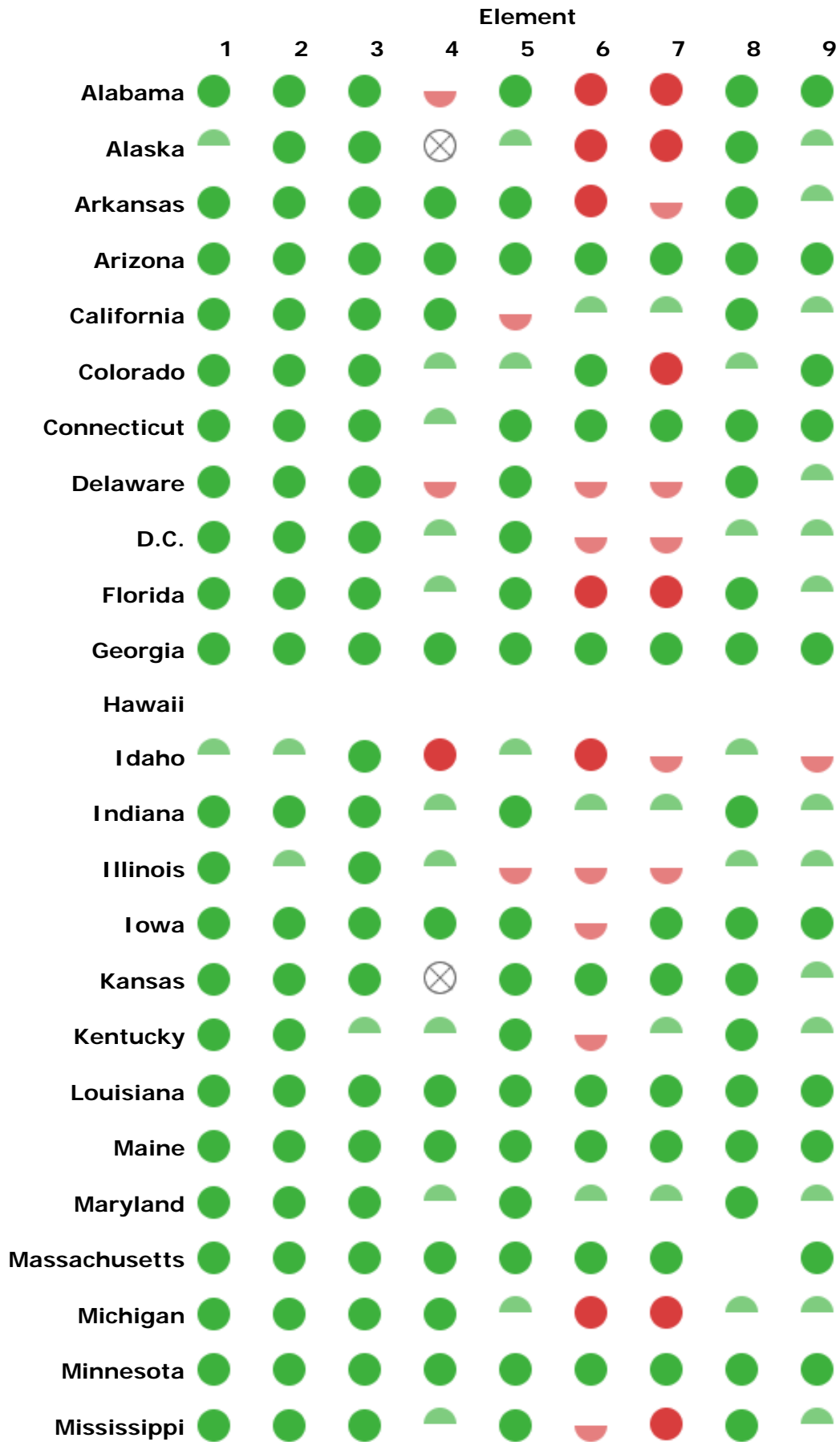
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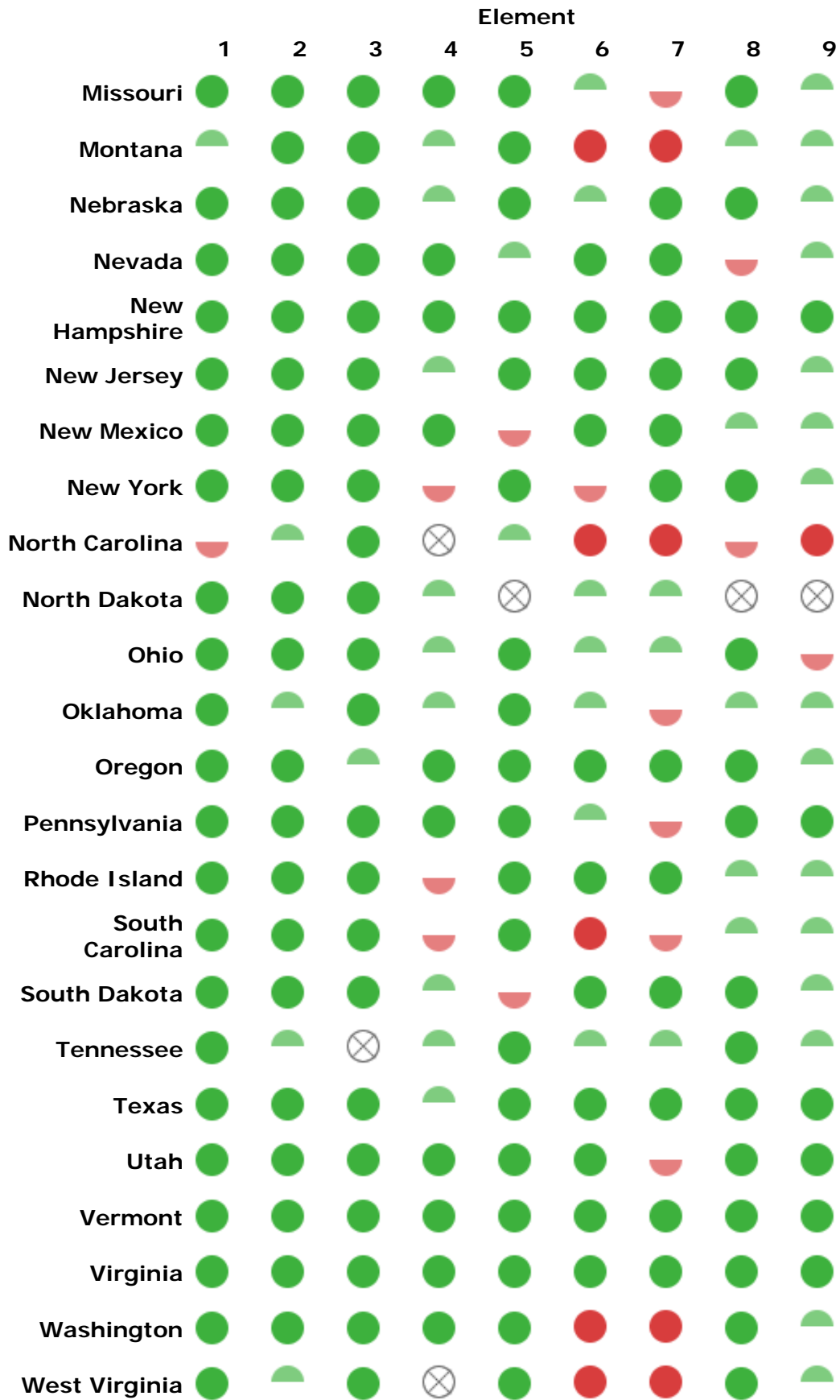
The Nine Elements of Effective Damage Prevention Programs include:

- Element 1 - Enhanced Communication between Operators and Excavators
- Element 2 - Fostering Support and Partnership of all Stakeholders
- Element 3 - Operator's Use of Performance Measures for Locators
- Element 4 - Partnership in Employee Training
- Element 5 - Partnership in Public Education
- Element 6 - Enforcement Agencies' Role to Help Resolve Issues
- Element 7 - Fair and Consistent Enforcement of the Law
- Element 8 - Use of Technology to Improve the Locating Process
- Element 9 - Data Analysis to Continually Improve Program Effectiveness

Symbol Legend:

-  Largely implemented program element
-  Partially implemented or not fully developed program element; actions are underway or planned for improvements
-  Element partially implemented/marginally effective program element needs improvement; no actions underway/planned for improvement
-  Program element is not implemented and needs to be addressed
-  No information available or not applicable





	Element								
	1	2	3	4	5	6	7	8	9
Wisconsin	●	●	●	◐	●	◑	◑	●	◐
Wyoming	●	●	●	◐	●	◑	◐	●	◐
Puerto Rico									

Brief Summaries of State Damage Prevention Program Characterizations

Alabama	Alabama One Call has been the key driver in the state’s damage prevention effort since inception of a one call center in 1975. The one-call center continues to try to improve the damage prevention efforts and education process through cooperative training, programs, and legislation. Alabama One Call and the state pipeline safety office have been unsuccessful in gaining support for legislative changes; however, there are ongoing efforts to work with those groups in opposition to change, to educate them and include them in the process. Many of the damage prevention issues are specific to the underground facility owner and changes must be supported at the corporate level. Alabama One Call continues to work to gain support for improved programs and laws.
Alaska	Alaska DigLine is the leader for the state damage prevention program. One-call membership is not currently mandatory. Juneau has a separate system for locate calls. Alaska DigLine would like to work collaboratively with stakeholders to make improvements that are appropriate for Alaska but is challenged in garnering stakeholder support. Damage prevention program characterization results are based on the knowledge of Alaska DigLine representatives. Element 4 could not be scored on a statewide basis for all stakeholders, but Alaska DigLine does have a strong training program for its staff. The uniqueness of Alaska may result in some program elements being impractical to implement. PHMSA representatives plan to work with Alaska stakeholders to assist in this effort.
Arkansas	The biggest challenges for the Arkansas program are in the enforcement process and the perceived need to adopt a process model to improve enforcement and damage prevention overall. Having an elected official as the designated enforcement authority is not considered effective. A consistent, qualified enforcement staff is needed, along with a defined enforcement process and resources. Use of additional state resources and grant monies would be needed. Discussions about needed changes are ongoing among stakeholders. This will be a long process that will require input and effort from all stakeholders. A second area of need is to improve the use of the CGA Damage Information Reporting Tool (DIRT) or an equivalent damage reporting tool, on a consistent basis.
Arizona	The Arizona Corporation Commission (ACC) Pipeline Safety Program and Arizona Blue Stake Program are well-established programs. One challenge mentioned by both organizations is to get better reporting to the CGA Damage Information Reporting Tool (DIRT) or an equivalent system and to have more specific regionalized damage data.
California	California is a large state and has two one-call organizations. The biggest challenge seems to be to get the damage prevention law revised to identify and establish a single entity, composed of a balanced committee of stakeholders, for enforcement and dispute resolution. The CA Regional Common Ground Alliance (CGA) is looking at this issue. Another major area for improvement could be the consolidation/unification of public education efforts to provide consistent messages and leverage resources to increase effectiveness and efficiency.

Colorado	<p>Participants in the damage prevention characterization effort agree that there is effective damage prevention communication and support in the state. They agree that enforcement needs to be improved via legislative action. Training programs and public education are done by various stakeholder entities, as opposed to a “multi-stakeholder committee”, which are not always coordinated but seem to be adequate. Colorado has for many years collected and analyzed damage data, and utilizes this information to direct resources.</p>
Connecticut	<p>The Connecticut damage prevention program includes mandatory reporting of all underground facility hits and enforcement through the Public Utilities Commission (PUC). The PUC also has authority over the one-call center budget and operations. Extensive use is made of data to analyze the damage prevention program. The PUC recently added an individual to its field staff whose role is 100% damage prevention including education of stakeholders. A current area of emphasis is outreach to gain grass roots support for damage prevention programs. Connecticut will consider establishment of local-level damage prevention initiatives and teams.</p>
Delaware	<p>Delaware is working to improve its damage prevention program. A legislative committee has been reviewing the damage prevention law, and is developing a program that focuses on education at this point. Resources are lacking at the Delaware Public Utilities Commission (PUC) to take on responsibility for enforcement, so at this point enforcement will stay with the state attorney general. It is anticipated that the one-call organization will have a program that incorporates education and warning letters and will refer violations to the attorney general’s office for pursuit of civil penalties when appropriate. The one-call organization has met with the attorney general’s office to propose this system and plans to continue with these efforts.</p>
D.C.	<p>The District of Columbia damage prevention program is quite similar to Maryland’s program. The DC Public Utilities Commission (PUC) enforces compliance for pipeline operators through its pipeline safety program. Enforcement for other parties would be through action brought by Corporation Counsel for DC in Superior Court, but this is not practiced. DC and Maryland recently began collecting high-level damage data on a voluntary basis. This data is not as granular as that collected by the CGA Damage Information Reporting Tool (DIRT) but will be used to target education activities as much as possible. Operators report damage data to DIRT.</p>
Florida	<p>The Florida Public Service Commission (FPSC) did not participate in the state damage prevention program characterization teleconference but did provide comments and suggested characterization marks for all of the criteria in Elements 3 & 4, and for Criterion 5.e, 7.j, and 9.a. All of the responses noted for Element 3 are from FPSC in their entirety. Element 4 responses are combined from Sunshine State One-Call of Florida (SSOCOF) representatives and in consideration of FPSC input. Florida does not have a dispute resolution program and enforcement is not routinely practiced. Florida does have stakeholder input for developing the state damage prevention process. Efforts are underway to improve data collection and enforcement. Legislation was introduced in 2010 to address the following topics:</p> <ul style="list-style-type: none"> • Adopt low impact marking provisions to minimize the amount and duration of paint on the ground.

	<ul style="list-style-type: none"> • Clarify the intent to have statewide damage prevention regulation. Local governments are passing ordinances (e.g., mandatory white lining, use of only chalk based paint, etc.) that will create requirements different from Chapter 556, F.S. and make it difficult for utilities and contractors to know the rules. • Require SSOCOF to establish a voluntary alternative dispute resolution process to resolve disputes arising from excavation activities. • Provide an increase in penalties for violations of Ch. 556, F. S., including development of a process to allow SSOCOF to contract with the Division of Administrative Hearings (DOAH) to determine appropriate penalties for serious "incidents" (death, hospitalization, significant property damage) involving pipelines (natural gas, gasoline) that are identified as "high priority" installations by the operators of those installations. <ul style="list-style-type: none"> ○ Other Changes to Ch. 556, F. S: Clarify provisions for underwater marking; Delete the obsolete provision to conduct a feasibility study in 2007; Delete redundant provisions regarding a limited waiver of sovereign immunity; Prohibit using any member/s required and shared information from being used for sales and marketing purposes; Require reports to SSOCOF of Ch. 556, F. S., violations filed with Clerks of Court.
Georgia	Georgia has been actively pursuing effective damage prevention for several years. The program incorporates a comprehensive enforcement program. Current initiatives underway include virtual white-lining and improving transparency for enforcement cases.
Hawaii	pending
Idaho	Idaho has two call centers serving the state – one for northern five counties and the other for the rest of the state. They have defined territories. Idaho’s damage prevention program is in its early stages and not fully developed; however, organized efforts are underway to align the program with the nine elements on a statewide basis. There exists a network of Utility Coordinating Councils, and representatives from each of these councils serve on the statewide Damage Prevention Council. All stakeholders are invited and encouraged to participate.
Indiana	Indiana passed legislation in 2009 incorporating many changes to help align the state damage prevention program with the nine elements. Rules, processes and procedures are under development to implement the law and program changes. Indiana anticipates to be fully aligned with the nine elements upon completion of this process.
Illinois	Illinois has two one-call centers. Digger is for locates within the city limits of Chicago and JULIE for the rest of the state. The two centers appear to have some inconsistencies in their approach to the nine elements. Illinois also has a split enforcement system. In the outstate enforcement utilizes the Illinois Commerce Commission (ICC) enforcement agency, and appeals are made to an advisory board-type system and then to the ICC. In the Chicago city limits Digger follows the municipal code and transportation ordinance, with the city doing enforcement according to the administrative code of the city. This leads to some inconsistent actions within the City of Chicago. ICC data indicates damages to gas facilities per

	<p>1000 locates are much higher in Chicago than for rest of state. Elements 6 and 7 in particular need to be addressed to bring consistency to the Illinois state damage prevention program. Call Centers are beginning to take steps to address some inconsistencies. If the results were completed separately for the two call centers rather than at a statewide level, the JULIE results would reflect a stronger alignment with the nine elements. A new one-call law went into effect January 1, 2010. Illinois is also working on statewide marking standard. Several "Noteworthy Changes to the Illinois Underground Utility Facilities Damage Prevention Act" were appended to state damage prevention program characterization worksheet.</p>
Iowa	<p>The Iowa one-call law gives authority to Iowa One Call to set policy and provides a strong foundation for meeting many of the nine elements. Iowa has an active attorney general damage prevention enforcement process with a full time investigator and attorney. This process has taken actions including fines, injunctions and increased penalties for second offenses, although a limitation is that an action requires the filing of a complaint. Iowa Utilities Board staff review pipeline operator damage prevention performance during inspections, and additional documentation of this review is being added to inspection forms. Iowa's program does not provide for a dispute resolution process outside of enforcement, but Iowa representatives participating in exercise believe that the existing enforcement program is effective.</p>
Kansas	<p>Kansas has implemented mandatory reporting to its Virtual Private Damage Information Reporting Tool (DIRT) for operators who receive 2000 or more locate tickets per year. Kansas also has an active enforcement program in the two largest metropolitan areas. As more data is gathered, Kansas will be able to continue to target improvements in its damage prevention efforts.</p>
Kentucky	<p>Kentucky is taking steps to align its damage prevention program with the nine elements. Recently-passed legislation provides for enforcement of the state damage prevention law by state and local law enforcement. The one-call operator, KY 811, is working to educate law enforcement agencies about this new authority. A legislative bill introduced in 2010 addressed membership requirements, data reporting requirements and installation of locatable facilities; however, those legislative efforts were unsuccessful. Kentucky plans to review its enforcement authority and enforcement program to determine if changes are needed for improvement.</p>
Louisiana	<p>Enforcement of Louisiana's damage prevention program is conducted by the state police. The Regional Common Ground Alliance (CGA) is new for Louisiana and getting participation from as many stakeholders as possible is a current initiative. The Department of Natural Resources Pipeline Division has actively pursued getting gas operators to become members of Louisiana One Call.</p>
Maine	<p>Maine's state Managing Underground Safety Training (MUST) group is an organization largely focused on damage prevention training. The Regional MUST group is similar to a regional Common Ground Alliance (CGA) partner and involves a wide spectrum of stakeholders. Key program elements of Maine's damage prevention program include mandatory reporting of violations, enforcement, education, data collection and reporting. A current area of focus is on improving educational materials for notification requirements.</p>

Maryland	Maryland's one-call organization, Miss Utility, has a Subscriber Committee which is open to all facility owners to participate. Decisions are made by vote of this committee. The Maryland/District of Columbia Damage Prevention Committee is an active stakeholder group that meets monthly to address damage prevention matters. Current damage prevention enforcement authority in Maryland lies with the attorney general, but the Public Utility Commission and Miss Utility representatives are not aware of any enforcement activity, policies or procedures through the attorney general's office. Legislation was passed in January 2010 that established an advisory committee for enforcement and made other needed changes.
Massachusetts	Massachusetts appears to have a robust damage prevention program and there are no initiatives underway to make any changes in it. The New England Regional Managing Underground Safety Training (MUST) programs provide for much of the broad stakeholder input anticipated by the nine elements. Central to the Massachusetts damage prevention program is the state damage prevention law (Massachusetts General Law (M.G.L), Chapter 82, Sections 40 (a) through (e), and the Code of Massachusetts Regulation (C.M.R), State Of Massachusetts Dig Safe Rules, 220 C.M.R. 99.00: Procedures for the Determination and Enforcement of Violations of M.G.L. c. 82, s. 40 ("DIG SAFE"), Sections 99.01 through 99.12). Data on violations is available only upon request under Freedom of Information Act (FOIA) rules. Positive response is not fully implemented. There is no perceived need for changes and there are no planned changes to the program at this time. The requirement to call 911 upon release of hazardous materials is not included in the Massachusetts law but is encouraged.
Michigan	In lieu of changing the law, Michigan established damage prevention best practices and it is anticipated that these will be incorporated into a new damage prevention law. A legislative team is working to review options and develop legislative language that would meet the needs of the Michigan stakeholders. An education committee is working to close holes in the state damage prevention associations. Michigan's program faces challenges in that participants can only spend a certain amount of time on the damage prevention program as resources are limited.
Minnesota	Minnesota features a very active damage prevention program with all nine elements largely implemented. Minnesota has a strong working relationship between the state Office of Pipeline Safety and Gopher State One Call, the state's one-call notification system, which enhances the damage prevention effort. Minnesota is moving from reacting to damage data to trying to identify trends and preventing damages through education and awareness, and continues to seek ways to improve the program and reduce damages.

Mississippi	Mississippi has been working to improve its damage prevention program in recent years. It is anticipated that the Mississippi damage prevention program will be strengthened this year by the coalition of 35 local damage prevention councils into the Mississippi Damage Prevention Council (MDPC). This will function much like a state-level Common Ground Alliance (CGA). The one-call center (MS 811) currently has the lead in much of the damage prevention education and training. There is no enforcement authority designated in the state's damage prevention law. Consequently, most of the characterization criteria associated with dispute resolution and enforcement (see Elements 6 & 7) are not implemented at this time. Mississippi has had success in recent legislative efforts and hopes to continue to build stakeholder support for a stronger one call law through organized efforts such as the Damage Prevention Summit and the MDPC.
Missouri	Missouri has drafted several changes to its one call law that include language for performance measures for locators for all regulated utilities and is working to build consensus before introducing the bill. Recent studies show damages per year for other utilities to be about five times the number of damages to gas pipeline facilities. Missouri has proposed in the draft changes to have a clearly defined role in resolving/mediating damage prevention disputes. Missouri is also discussing with its attorney general the existing enforcement process and how to develop a more effective program.
Montana	UDIG is the one-call notification service that represents 2 of the 56 MT counties (Flathead and Lincoln). Utilities Underground Location Center (UULC) call centers in Washington or Oregon handle the rest. Answers in Montana's damage prevention program characterization relative to the one-call center generally address UULC only. The Montana Utilities Coordinating Council (MUCC) is not the official damage prevention lead recognized by state law. However, it has representatives of most stakeholder groups and its activities address many of the items noted in the characterization questionnaire for each element. MUCC and the Montana Public Service Commission will pursue legislative changes to Montana's damage prevention law in 2010 and beyond, to address the nine elements. A significant issue in Montana is that there is no enforcement authority and, thus, no enforcement of the current damage prevention law. Resolution of this situation will be pursued in upcoming legislation.
Nebraska	Nebraska's damage prevention program is considered robust by the representatives involved in the characterization discussion. The damage prevention statute has been in effect since 1994. Enforcement and dispute resolution are complaint-driven through the attorney general's office, and this process is considered to work. Efforts are underway to collect damage data and use this information to help direct damage prevention efforts. A regional Common Ground Alliance (CGA) is very active and brings stakeholders together to address the statewide program.

Nevada	The Public Utilities Commission of Nevada (PUCN) characterized the Nevada Damage Prevention Program as proactive, strongly enforced, and based on the following three key elements: 1) Keep the law basic, clear and simple, and enforce it. 2) Conduct strong, proactive enforcement – if not enforced, not effective. 3) Use random field inspections, this is strength. Nevada conducts a stakeholder forum through the Nevada Regional Common Ground Alliance (NRCGA), which has many initiatives underway. Nevada’s program emphasizes use of the NRCGA for stakeholder communications, public education, training, etc., and uses USAN for the mechanics of its one-call system.
New Hampshire	In New Hampshire the state Managing Underground Safety Training (MUST) group is used mostly for training. A regional MUST group is similar to a regional Common Ground Alliance (CGA) partner and involves a wide-spectrum of stakeholders. A current area of focus for New Hampshire is addressing exemptions for municipalities. They are also looking at making enforcement data more publicly available.
New Jersey	The one-call center in New Jersey is operated by a vendor under contract with the state. The call center operator recently changed, with the new operator, One Call Concepts, assuming the operation on February 17, 2010. The New Jersey damage prevention program is defined in New Jersey statute N.J.S.A. 48:2-73, et seq. and enabling rules N.J.A.C. 14:2 (Title 48, Chapter 2, Article 9 “Emergencies and Damage Prevention”. The Bureau of Public Utilities is the designated state agency to designate the operator of, and provide policy oversight to, the one-call damage prevention system and enforce the provisions of the act.
New Mexico	A significant program upgrade is in progress to fully implement the Common Ground Alliance (CGA) Damage Information Reporting Tool (DIRT). This program improvement is expected to be fully implemented during the first quarter of calendar year 2010. Funding concerns appear to restrict the ability to provide for a broad-based approach to Public Awareness (Element 5).
New York	Both the upstate and the downstate one call centers in New York make use of an organizational structure that includes damage prevention councils. There are eight such councils that serve the upstate regions and one that covers the downstate regions. These councils involve all stakeholders and appear to be an effective tool in getting out the damage prevention message. This process appears to be effective for involving multiple stakeholders on a regular basis. Defined processes are lacking with regard to pre-enforcement dispute resolution. With respect to regulations and processes for enforcement, there appears to be nothing used as a positive incentive for good performance; however, the New York Public Service Commission has an active enforcement program that incorporates civil penalties and data collection.
North Carolina	North Carolina faces challenges in developing stakeholder support for improved damage prevention programs and legislation. North Carolina plans to apply for a state damage prevention grant from PHMSA in order to conduct outreach, provide locator training and build support for legislation and improvement of damage prevention through a series of damage prevention meetings.

North Dakota	The North Dakota Public Service Commission (ND PSC) Damage Prevention Plan enforcement program is complaint-driven. Because the one-call center was not a participant in the characterization discussion, some elements lack the information needed to categorize the status of the program. North Dakota is in the early stages of developing a program that is consistent with the nine elements and drafted a written program in 2009. The ND PSC is transitioning, with the Program Manager retiring in early 2010.
Ohio	Ohio has implemented a process to draft changes to its damage prevention law. These proposed changes were included in Senate Bill 152. These changes would have addressed several sub-parts within the nine elements and would have significantly improved the Ohio damage prevention effort, making a major step toward having an effective damage prevention program. For example, Elements 6 & 7 would be fully implemented by the passage of SB 152. However, this legislation failed to pass in 2010. The stakeholders plan to continue to work to make legislative changes to improve the state law. Ohio is hoping to acquire a grant to assist in improving element 5, Public Education. Ohio has two one-call centers and SB 152 would have allowed the two to merge into a single one, Ohio Utilities Protection Service (OUPS). A virtual damage information reporting tool (DIRT) is being used to collect and analyze damage data.
Oklahoma	Oklahoma stakeholders are working to build support for legislation to make changes to the Oklahoma one-call law to include the establishment of an advisory board-type process for enforcement. Support for the bill is currently lacking. Oklahoma has an active training and education program and the Public Service Commission and one-call center both are engaged in the damage prevention process.
Oregon	Oregon Utility Notification Center (OUNC) is the state agency that administers Oregon's excavation laws and the statewide toll free "One-Call" number. The Governor-appointed Board of Directors serves to administer the OUNC, and also carries out a variety of public relations and educational programs, such as "Dig Safely" and "Call Before You Dig". The "One-Call Center" is located in Portland and is staffed by about 50 operators. The Center is available to process locate requests seven days a week, 24 hours a day. OUNC works closely with the Oregon Public Utilities Commission. Oregon's damage prevention program is well underway with respect to the nine elements, and stakeholders continue to work on improvement, particularly in the area of data analysis and transparency.
Pennsylvania	Pennsylvania One Call System (PA One Call) is a progressive one-call center, currently working to streamline data collection efforts so reporting is consistent. Existing statewide damage prevention program current challenges relate to Elements 6 and 7. Dispute resolution processes are under development. The level of confidence in the existing enforcement program is not consistent among respondents, and it appears that the process could be improved. Pennsylvania has applied for state damage prevention grant from PHMSA.

Rhode Island	The Rhode Island Dig Safe damage prevention law was amended in February 2009 to enhance several aspects of damage prevention. There are no current initiatives to make further changes. One significant area of weakness in Rhode Island, as compared to other New England Dig Safe states, is training, including other areas where credit has been given to the efforts of the state Managing Underground Safety Training (MUST) Group. The Public Utilities Commission representative interviewed for Rhode Island noted that the MUST Group is not a notably effective organization and that it only meets annually.
South Carolina	The South Carolina Office of Regulatory Staff is responsible for utility regulation, including gas pipeline safety, in South Carolina. The state's damage prevention program is challenged with respect to Elements 6 and 7, and there are no plans in place for legislative changes to address those areas. South Carolina does have a Regional Common Ground Alliance (CGA) as of 2009 with stakeholder participation.
South Dakota	The South Dakota One Call Board has a key role in South Dakota's damage prevention program. The Board has statutory authority to resolve complaints and issue civil penalties. Not all of the nine elements have been fully implemented, and in some cases it is considered by stakeholders that no changes need to be implemented, based on cost or lack of value for South Dakota.
Tennessee	Tennessee is currently working on legislation to incorporate mandatory one-call membership and damage prevention enforcement utilizing an advisory board-type system and is working to build stakeholder support for the bill. Enforcement responsibility currently lies with local law enforcement and enforcement is not regularly practiced. Tennessee One-Call, tn811, has an active damage prevention committee that involves all stakeholders as well as utility coordinating councils at grass roots level. Tennessee law requires positive response and white-lining. Tennessee encourages participation in the Common Ground Alliance (CGA) Damage Information Reporting Tool (DIRT) and plans to improve its processes for making program decisions and revisions based on reviews of appropriate data as the program develops. Regarding Element 3, the characterization is based on the Tennessee Regulatory Authority's knowledge of some jurisdictional pipeline operators. Interstate pipeline policies are not known, nor are small operators' policies. Regarding Element 4, training activities are generally done within each stakeholder group, but there is some crossover, and Tennessee hopes to improve coordination as its damage prevention program evolves.

Texas	Texas has three one-call organizations and all three are governed by a state governing board, the Texas One-Call Board (TX OCB). The TX OCB is composed of various stakeholder representatives appointed by the Governor. There are 6 industry and 6 public stakeholder members. Texas Utility Code Chapter 251 and Title 16 Texas Administrative Code Chapter 18 (TUC 251 and TAC 18, respectively) address damage prevention requirements in Texas. TAC 18 specifically applies when excavating near pipelines, but effectively applies to all excavators. Damage prevention relative to oil and gas pipelines is administered by the Texas Rail Road Commission (TX RRC) under TAC 18. TX Railroad Commission (TX RRC) enforces damage prevention requirements for pipelines. Other enforcement is by county attorneys general. Current areas of focus include making data enhancements and developing training programs for enforcement purposes.
Utah	Within the past two years Utah has passed legislation to strengthen its damage prevention program. The new legislation covered the areas of markings, roles and responsibilities, and requirement for contacting 911, and put in place the Damage Dispute Board. The state pipeline safety office has enforcement authority over operators. Other enforcement would be through the attorney general's office and it does not appear that this authority is being used. However, a dispute resolution board was established (see Element 6) to address violations. Utah reports seeing a reduction in gas pipeline damages as a result of the new initiatives and legislation.
Vermont	An important event for Vermont's damage prevention program was the receipt of a 2008 state damage prevention program grant from PHMSA. The grant provided the funds for contracting the University of Vermont to analyze Vermont's program, compare it to other states, and make recommendations for improvements. The University of Vermont report was issued in August 2009. Vermont was able to develop a better understanding of the successes and challenges of its damage prevention program with respect to the nine elements and begin to plan a path forward. Vermont Department of Public Service is hoping to receive a 2010 grant to fund the recommendations for improvements from the University of Vermont report.
Virginia	Virginia has a strong and active damage prevention program that addresses all nine elements. Virginia continues to seek ways to improve its program and has all stakeholders actively involved, with the Virginia Corporation Commission assuming the lead role. Enforcement provisions apply to pipelines only but any damage may be reported and investigated.
Washington	Current key challenges to Washington's damage prevention program are Elements 6 (Dispute Resolution), 7 (Enforcement) and, to a lesser extent, 9 (Program Review). Stakeholders are working on revisions to the state's dig law that they hope to introduce in the 2011 legislative session.
West Virginia	The Miss Utility organization is the central focus of damage prevention in the state. There is no recognizable means of dispute resolution or damage prevention enforcement authority in the state. As in many states, there is no "multi-stakeholder training committee" in place. Most damage prevention education is provided by Miss Utility or, perhaps, via the efforts of individual stakeholder organizations. West Virginia is applying for a state damage prevention grant from PHMSA in 2010.

Wisconsin	A rulemaking is underway in Wisconsin that will mandate participation in the Common Ground Alliance (CGA) Damage Information Reporting Tool (DIRT). A damage prevention enforcement process is not currently in place, other than Public Utility Commission (PUC) enforcement for jurisdictional pipeline operators, and no actions are underway for improvement at this time. Data collection is an important step in determining a path forward for the state's damage prevention plan. The State of Wisconsin will be laying off PUC employees for a couple of weeks in 2010 due to state budget constraints.
Wyoming	Wyoming enacted legislation in 2010 to incorporate enforcement into its damage prevention law. Items addressed include: civil penalties for damages to underground public utilities (through district or county court); notification requirements for excavations and damages; definitions; mitigation of damages; safety training programs; and membership requirements for operators. Wyoming has a strong locator training program and works in partnership with Casper College. The state is actively seeking stakeholder participation and working on developing a program that aligns with the nine elements.
Puerto Rico	pending