

1 SB315
2 198770-2
3 By Senators Roberts, Smitherman, Coleman-Madison and Waggoner
4 RFD: Transportation and Energy
5 First Read: 18-APR-19

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8 SYNOPSIS: Under existing law, a person conducting
9 excavation on property, or demolition near
10 property, where a public easement exists, or where
11 an underground facility operator such as a utility
12 has an easement, is required to notify the
13 underground facility operator so that the
14 underground facility operator can mark the location
15 of its underground facilities. To facilitate
16 notification, the law has authorized the formation
17 of a "One-Call Notification System" which receives
18 and processes the notices.

19 This bill would further provide for the
20 notification required and would specify when the
21 premarking of sites where excavation and demolition
22 should occur.

23 This bill would require certain operators of
24 underground facilities to join the "One-Call
25 Notification System" and would require the system
26 to submit an annual report of operations and
27 financial review to the Public Service Commission.

1 This bill would revise civil penalties for
2 violations of the notification and other
3 requirements, and would specify that certain
4 penalties be deposited into the Underground Damage
5 Prevention Fund.

6 This bill would also create the Underground
7 Damage Prevention Authority to, with administrative
8 support from the Public Service Commission, enforce
9 the requirements of the notification and penalty
10 provisions and review the adequacy of the
11 enforcement process.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT

16
17 Relating to underground utilities; to amend Sections
18 37-15-2, 37-15-4, 37-15-4.1, 37-15-5, 37-15-6, 37-15-9, and
19 37-15-10, Code of Alabama 1975, relating to the "One-Call
20 Notification System," to further provide for the notification
21 required; to specify when the premarking of sites where
22 excavation and demolition should occur; to require certain
23 operators of underground facilities to join the system; to
24 require the system to submit an annual report of operations
25 and financial review to the Public Service Commission; to
26 revise penalties for violations; to provide for the deposit of
27 penalties into certain funds; to provided limited immunity

1 after notification under certain conditions; to add Sections
2 37-15-10.1 and 37-15-10.2, to the Code of Alabama 1975, to
3 create the Underground Damage Prevention Authority to, with
4 administrative support from the Public Service Commission,
5 enforce the requirements of the notification and penalty
6 provisions and to review the adequacy of the enforcement
7 process.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 37-15-2, 37-15-4, 37-15-4.1,
10 37-15-5, 37-15-6, 37-15-9, and 37-15-10, Code of Alabama 1975,
11 are amended to read as follows:

12 "§37-15-2.

13 "As used in this chapter the following words have
14 the following meanings:

15 "(1) APPROXIMATE LOCATION OF UNDERGROUND FACILITIES.
16 Information about an operator's underground facilities which
17 is provided to a person by an operator and must be accurate to
18 within 18 inches measured horizontally from the outside edge
19 of each side of such operator's facility, or a strip of land
20 18 inches either side of the operator's field mark or the
21 marked width of the facility plus 18 inches on each side of
22 the marked width of the facility.

23 "(2) AUTHORITY. The Underground Damage Prevention
24 Authority created under Section 37-15-10.1.

25 "(3) AUTHORITY BOARD. The Underground Damage
26 Prevention Board created under Section 37-15-10.1.

1 "~~(2)~~(4) BLASTING. The use of an explosive device for
2 the excavation of earth, rock, or other material or the
3 demolition of a structure.

4 "~~(3)~~(5) CONTRACT LOCATOR. Any person contracted with
5 an operator specifically to determine and mark the approximate
6 location of the operator's utility lines that exist within the
7 area specified by a notice served on the "One-Call
8 Notification System."

9 "~~(4)~~(6) DAMAGE. Includes, but is not limited to, the
10 substantial weakening of structural or lateral support of an
11 underground facility, penetration or destruction of any
12 underground facility's protective coating, housing, or other
13 protective device, and the severance (partial or complete) of
14 any underground facility, but does not apply to any operator's
15 abandoned underground facility.

16 "~~(5)~~(7) DEMOLITION. Any operation by which a
17 structure or mass of material is wrecked, razed, rendered,
18 moved, or removed by means of any tools, equipment, or
19 explosives.

20 "~~(6)~~(8) DESIGN OR SURVEY LOCATE REQUEST. Any
21 communication to the "One-Call Notification System" ~~or an~~
22 ~~in-house program of an operator which meets the operational~~
23 ~~requirements of receiving those excavation or demolition~~
24 ~~notifications described in subsection (a) of Section 37-15-5,~~
25 specifically to request existing underground facilities to be
26 located for bidding, predesign, or advance planning purposes.
27 A design locate request may not be used for excavation

1 purposes and an excavation locate request may not be used for
2 design or survey purposes.

3 "~~(7)~~(9) EMERGENCY EXCAVATION OR DEMOLITION. An
4 excavation or demolition that is required to eliminate an
5 imminent danger to life, health, property, or the environment
6 or required for the repair or restoration of operator service
7 that is required to be performed before the notification and
8 response procedures required in Section 37-15-4 and 37-15-6
9 may be fully utilized.

10 "~~(8)~~(10) EXCAVATE or EXCAVATION. Any operation for
11 the purpose of the movement or removal of earth, rock, or
12 other material by mechanized equipment or explosive device and
13 includes, but is not limited to, augering, backfilling,
14 blasting, boring, digging, ditching, drilling, grading,
15 pile-driving, plowing-in, pulling-in, ripping, scraping,
16 sub-soiling, trenching, and tunneling. Excavate or excavation
17 does not include routine roadway maintenance activities
18 carried out by or for those responsible for
19 publicly-maintained roadways, provided that the activities
20 occur entirely within the right-of-way of a public road,
21 street, or highway; are carried out with reasonable care so as
22 to protect any utility facilities placed in the right-of-way
23 by permit; are carried out within the limits of any original
24 excavation on the traveled way, shoulder, or drainage ditches
25 of a public road, street, or highway; and, if involving the
26 replacement of existing structures, including traffic control
27 devices, replace such structures in their approximate previous

1 locations and at their approximate previous depth. Excavate or
2 excavation does not include routine railroad maintenance
3 activities conducted within the track structure and its
4 adjacent right-of-way, provided the activities are performed
5 by railroad employees or railroad contractors and are carried
6 out with reasonable care so as to protect any underground
7 facilities placed in the railroad right-of-way by agreement
8 with the railroad. Nothing in this chapter shall modify or
9 abrogate any contractual provision entered into between any
10 railroad and any other party owning or operating an
11 underground facility or underground utility lines within the
12 railroad's right-of-way.

13 ~~"(9)~~ (11) EXCAVATOR. Any person who engages in
14 excavation.

15 "(12) EXECUTIVE COMMITTEE. The executive committee
16 created under Section 37-15-10.1.

17 ~~"(10)~~ (13) IMPLIED EASEMENT. Any unwritten easement
18 or right-of-way on private property required to provide
19 utility or other services by means of underground facilities
20 on property of the owner requesting such service.

21 ~~"(11)~~ (14) MARK or MARKING. The use of stakes, flags,
22 paint, buoys, or clearly identifiable materials placed on the
23 surface of the ground or water to show the approximate
24 location of underground facilities.

25 ~~"(12)~~ (15) MECHANIZED EQUIPMENT. Equipment powered or
26 energized by any motor, engine, hydraulic, or pneumatic device
27 and is used for excavation or demolition work including, but

1 not limited to, tractors, trenchers, bulldozers, power
2 shovels, augers, backhoes, scrapers, pile drivers, drills,
3 cable and pipe plows, or other equipment used for plowing-in
4 or pulling-in cable or pipe.

5 ~~"(13)~~ (16) MEMBER. A person who participates in the
6 "One-Call Notification System" to receive services and is in
7 good standing with the "One-Call Notification System" in
8 accordance with the guidelines set forth in the corporation's
9 bylaws.

10 "(17) NEAR MISS. An event where damage did not
11 occur, but a clear potential for damage was identified.

12 ~~"(14)~~ (18) NONINVASIVE METHOD OF EXCAVATION. A method
13 of excavation that does not compromise the integrity of the
14 underground facility. These methods include, but are not
15 limited to, hand digging, pot holing, soft digging, vacuum
16 excavation methods, or other methods approved by the operator.

17 ~~"(15)~~ (19) NOTIFICATION AREA. An area or territory
18 which an operator designates as the area where the operator
19 wishes to receive notifications for any excavation in that
20 area. The notification area should encompass the underground
21 distribution system or network of the operator.

22 ~~"(16)~~ (20) "ONE-CALL NOTIFICATION SYSTEM". A
23 non-profit corporation, a public corporation, or a
24 governmental entity which will provide a statewide
25 notification service, for the purpose of receiving statewide
26 telephonic toll-free or electronic notification of any planned
27 excavation or demolition activities by excavators or other

1 persons as set forth in Section 37-15-4 and distributing the
2 required excavation or demolition information to its affected
3 member operators as set forth in Section 37-15-5.

4 "~~(17)~~ (21) OPERATOR. Any person, governmental agency,
5 or political subdivision, or its agents, who owns or operates
6 a public or private underground facility which furnishes
7 services, information, or materials, or transports or
8 transmits electric energy, light, water, steam, oil, gases,
9 gas, mixture of gases, petroleum, petroleum products,
10 hazardous or flammable liquids, toxic or corrosive fluids and
11 gases, or items of like nature, and telecommunications, cable
12 television, water, drainage, sewage, or other systems of like
13 nature. The term operator does not apply to any entity listed
14 above if all of the underground facilities owned and operated
15 by the entity are for the sole use of the entity and are
16 located solely on the entity's own property or on property
17 over which the entity has rights of operation.

18 "~~(18)~~ (22) PERSON. An individual, joint venture,
19 partnership, association, authority, cooperative, firm,
20 corporation, governmental entity, or any subdivision or
21 instrumentality of that entity and its employees, agents, or
22 legal representatives.

23 "(23) POSITIVE RESPONSE. The communication among
24 member operators, persons excavating and the "One-Call
25 Notification System" concerning the status of locating an
26 underground facility.

1 "(24) PREMARK. To delineate the general scope of the
2 excavation on the surface of the ground using white paint,
3 white stakes, or other similar white markings.

4 "~~(19)~~ (25) ROUTINE ROADWAY MAINTENANCE. Maintenance
5 work on a roadway that is not done pursuant to a contract
6 awarded by a state or local government through a bid process
7 for which plan drawings have been developed in advance or work
8 for which detailed and specific scheduling is not possible or
9 feasible.

10 "~~(20)~~ (26) TOLERANCE ZONE. The width of the
11 underground facility plus 18 inches on either side of the
12 outside edge of the underground facility on a horizontal
13 plane.

14 "~~(21)~~ (27) UNDERGROUND FACILITY. Any cable, pipeline,
15 duct, wire, conduit, or other similar installation, installed
16 underground or underwater, by which an operator transports or
17 delivers materials, information, or services.

18 "(28) WILLFUL NONCOMPLIANCE. The intentional refusal
19 or failure to perform, or comply with, a duty created or
20 imposed by this chapter or by the rules promulgated pursuant
21 to this chapter.

22 "~~(22)~~ (29) WORKING DAY. A 24-hour period commencing
23 the beginning of the start of the next working day from the
24 time of receipt of the notification, excluding Saturday,
25 Sunday, and the following nine holidays: New Year's Day,
26 Memorial Day (observed), Independence Day, Labor Day, Veterans
27 Day, Thanksgiving Day, the Friday following Thanksgiving Day,

1 Christmas Eve, and Christmas Day. When any of these holidays
2 occur on a Saturday, it will be observed on the preceding
3 Friday and when any of these holidays occur on a Sunday, it
4 will be observed on the following Monday.

5 "(30) WORKING DAY HOURS. The time from 7:00 A.M. to
6 5:00 P.M. local time on working days.

7 "§37-15-4.

8 "(a) A permit issued pursuant to law authorizing
9 excavation or demolition operations shall not be deemed to
10 relieve a person from the responsibility for complying with
11 the provisions of this chapter. Any public agency issuing such
12 permit shall notify the person receiving the permit of the
13 notification requirements of this chapter; however, failure to
14 provide such notification shall not make the State Department
15 of Transportation subject to the penalties provided for in
16 Section 37-15-10.

17 "(b) Before commencing any excavation or demolition
18 operation prohibited by Section 37-15-3, each person
19 responsible for such excavation or demolition shall give
20 ~~written,~~ telephonic, or electronic notice of such intent to
21 excavate or demolish to the underground facility operator or ~~a~~
22 the "One-Call Notification System" acting on behalf of the
23 operator at least two but not more than 10 working days prior
24 to the start of the proposed excavation, not including the day
25 of notification, and at least two working days but not more
26 than 30 calendar days, not including the day of notification,
27 prior to the start of demolition or any blasting operations

1 for either excavation or demolition. ~~Written notice shall be~~
2 ~~by registered mail, return receipt requested, and shall be~~
3 ~~valid only upon receipt of the written information required by~~
4 ~~this chapter by the operator or by a "One-Call Notification~~
5 ~~System" acting on behalf of the operator.~~

6 "(c) The notice required by subsection (b) of this
7 section must contain the name, address, and telephone number
8 of the person responsible for the excavation or the demolition
9 and the person giving notice, the proposed starting date and
10 time, the type of excavation or demolition operation to be
11 conducted, the location of the proposed excavation or
12 demolition with sufficient details to enable the operator to
13 locate same with reasonable certainty, and whether or not
14 explosives are to be used. In the event the location
15 requirements of this subsection cannot be met, the excavator
16 shall ~~mark~~ premark the route or boundaries of the site of
17 proposed excavation or demolition by means of white as the
18 identifying color on stakes, flags, paint, buoys, or clearly
19 identifiable materials placed on the surface of the ground or
20 water prior to the notification to the "One-Call Notification
21 System". However, premarking is not required when the
22 premarking could reasonably interfere with traffic or
23 pedestrian control.

24 "(d) Notification ~~to an operator or to a the~~
25 "One-Call Notification System" ~~acting on behalf of the~~
26 ~~operator~~ of an intent to excavate shall be valid for a period
27 of ~~10~~ 20 working days from the proposed starting date given

1 for excavation and the notice to demolish shall be valid for a
2 period of ~~20~~ 30 working days from the starting date given.
3 Each person responsible for excavation or demolition shall
4 renew with the ~~underground facility operator or a~~ "One-Call
5 Notification System" ~~acting on behalf of the operator~~ each
6 notice of intent to excavate or demolish at least two working
7 days, not counting the day of notification, prior to the
8 expiration date of the notice if the excavation or demolition
9 has not been completed.

10 "(e) When engaged in an extensive and contiguous
11 construction, demolition, or excavation activity, working
12 agreements may be established to accomplish the intent and
13 purpose of this chapter between operators, public agencies,
14 and contractors after initial compliance with the notification
15 provisions of this chapter.

16 "(f) Compliance with the notice requirements of this
17 section is not required of persons plowing less than 12 inches
18 in depth for agricultural purposes.

19 "(g) Compliance with the notice requirements of this
20 section is not required by persons or operators excavating on
21 their own property or easement when no other persons or
22 operators have underground facilities on the property or
23 easement.

24 "(h) Except for those persons submitting design or
25 survey locate requests, no person, including an operator,
26 shall request markings of a site through the "One-Call
27 Notification System" ~~or an in-house program~~ that meets the

1 operational requirements as described in subsection (a) of
2 Section 37-15-5, unless excavation is scheduled to commence.
3 In addition, no person shall make repeated requests for
4 remarking, unless the repeated request is required for
5 excavating to continue or due to circumstances not reasonably
6 within the control of the person.

7 "(i) Any person who complies with the notification
8 requirements of this chapter is not liable for damage to an
9 operator's underground facility if all of the following are
10 satisfied:

11 "(1) The operator received the notification required
12 by Section 27-15-4.

13 "(2) The operator failed to locate its underground
14 facilities as required by Section 37-15-6.

15 "(3) The damage is a proximate result of the
16 operator's failure to locate its underground facilities as
17 required by Section 37-15-6.

18 "§37-15-4.1.

19 "(a) Any person may submit a design or survey locate
20 request to the "One-Call Notification System" ~~or to an~~
21 ~~operator that provides an in-house program that meets the~~
22 ~~operational requirements as described in subsection (a) of~~
23 ~~Section 37-15-5.~~ The design or survey locate request shall
24 describe the tract or parcel of land for which the design or
25 survey locate request has been submitted with sufficient
26 particularity as defined by policies developed and promulgated
27 by the "One-Call Notification System" ~~or to an operator that~~

1 ~~provides an in-house program that meets the operational~~
2 ~~requirements as described in subsection (a) of Section 37-15-5~~
3 to enable the facility operator to ascertain the precise tract
4 or parcel of land involved and state the name, address,
5 telephone number, and facsimile number of the person who has
6 submitted the design or survey locate request and the company
7 name of the project owner.

8 "(b) Within five working days after a design or
9 survey locate request has been submitted to the "One-Call
10 Notification System" ~~or to an operator that provides an~~
11 ~~in-house program that meets the operational requirements as~~
12 ~~described in subsection (a) of Section 37-15-5~~ for a proposed
13 project, the operator shall respond by one of the following
14 methods:

15 "(1) Marking the approximate location of all
16 underground facilities in the area of proposed excavation.

17 "(2) Providing to the person submitting the design
18 or survey locate request the best available description of all
19 underground facilities in the area of proposed excavation
20 which may include drawings of underground facilities already
21 built in the area or other facility records that are
22 maintained by the facility operator.

23 "(3) Allowing the person submitting the design or
24 survey locate request or any other authorized person to
25 inspect or copy the drawings or other records for all
26 underground facilities within the proposed area of excavation.

27 "§37-15-5.

1 "(a) (1) Operators who have underground facilities
2 within this state ~~shall either provide an in-house program~~
3 ~~which meets the operational requirements of receiving those~~
4 ~~excavation or demolition notifications as set forth in~~
5 ~~subsections (e) to (h), inclusive, of this section or shall~~
6 participate in and utilize the services of the a "One-Call
7 Notification System"; ~~provided, however, that any operator who~~
8 ~~has less than ten thousand customers or subscribers and who~~
9 ~~provides an in-house program which meets all of the~~
10 ~~operational requirements of receiving those excavation or~~
11 ~~demolition notifications as set forth in this chapter shall~~
12 ~~not be required to provide the services of the in-house~~
13 ~~program on working days except during the hours that the~~
14 ~~operator's offices are open to the public and may, but shall~~
15 ~~not be required to, voice record the notification calls~~
16 ~~received.~~

17 "(2) Operators that are members of the "One-Call
18 Notification System" on the effective date of the act adding
19 this subdivision must remain members.

20 "(3) Operators with more than 25,000 customers or
21 500 miles of facilities, who are not members, must join the
22 "One-Call Notification System" within one year from the
23 effective date of the act adding this subdivision.

24 "(4) Operators that do not meet the thresholds
25 described in subdivisions (2) or (3), must join the "One-Call
26 Notification System" within two years from the effective date
27 of the act adding this subdivision.

1 "(5) Operators of electrical underground facilities
2 who join the "One-Call Notification System" under the
3 requirements of subdivision (a) (3) or (4) having less than
4 five percent underground trench miles compared to the total
5 miles of line, is not subject to the membership costs until
6 their underground trench miles exceed the trench mile
7 exemption. These operators shall be required to report
8 annually to the "One-Call Notification System" their
9 percentage of underground trench miles by the end of each
10 calendar year.

11 "(6) If an operator of an underground facility fails
12 to become a member of the "One-Call Notification System", as
13 required by this chapter, and that failure is a cause of
14 damage to that underground facility caused by a person who has
15 complied with this chapter and has exercised reasonable care
16 in the performance of the excavations that has caused damage
17 to the underground facility, the operator has no right of
18 recovery against the person for the damage to that underground
19 facility.

20 ~~"(2) Any operator, who elects not to participate in~~
21 ~~the "One-Call Notification System" and instead elects to~~
22 ~~provide an in-house notification system for receiving~~
23 ~~excavation and demolition notifications as provided in~~
24 ~~subdivision (1) and whose facilities are damaged by an~~
25 ~~excavator who has contacted the "One-Call Notification System"~~
26 ~~and the operator's in-house program concerning the location of~~
27 ~~underground facilities, shall be responsible for any damages~~

1 ~~to its underground facilities by the excavator if the operator~~
2 ~~failed to meet the operational requirements for receiving~~
3 ~~excavation and demolition notifications as required.~~

4 (b) Between April 18, 1994, and January 1, 1995, or
5 any time thereafter any non-profit corporation, public
6 corporation, or governmental entity desiring to become a the
7 "One-Call Notification System" shall apply to the Alabama
8 Public Service Commission for a certificate of public
9 convenience and necessity, verifying under oath that applicant
10 meets the requirements of this chapter. After a public hearing
11 on the application, if the Alabama Public Service Commission
12 deems that applicant meets the requirements of this chapter,
13 and if it is found that applicant is fit, willing, and able to
14 properly perform the services proposed and that the proposed
15 service is or will be required by the present or future public
16 convenience or necessity, then in such event the Alabama
17 Public Service Commission ~~shall~~ may issue a certificate of
18 public convenience and necessity authorizing applicant to
19 commence its operation as a the "One-Call Notification
20 System". The Alabama Public Service Commission shall further
21 have the authority, and is required, to revoke a certificate
22 if the non-profit corporation, public corporation, or
23 governmental entity ceases to meet the requirements as set
24 forth in this chapter. The "One-Call Notification System" must
25 provide a report of operations and financial review or audit
26 to the Public Service Commission annually.

1 ~~"(c)~~ Subject to subsections (a) and (b), there shall
2 be a statewide "One-Call Notification System" in accordance
3 with this chapter to provide notice of all excavation or
4 demolition near underground facilities.

5 ~~"(c)~~ (d) The "One-Call Notification System" shall be
6 incorporated or operated as a non-profit corporation and
7 governed by a board of directors representing its membership
8 in accordance with the "One-Call Notification System" Bylaws.

9 ~~"(d)~~ (e) Operators of underground natural gas or
10 hazardous liquid pipeline facilities or the "One-Call
11 Notification System" acting on their behalf shall develop and
12 implement a public awareness and damage prevention program to
13 educate the general public, excavators, and operators about
14 the availability and use of the "One-Call Notification System"
15 as required in applicable federal regulations and the
16 requirements of this chapter.

17 ~~"(e)~~ (f) The person giving notice of intent to
18 excavate or demolish shall be furnished an individual
19 reference file number for each notification and upon request
20 shall be furnished the names of the operators to whom the
21 notification will be transmitted.

22 ~~"(f)~~ (g) An adequate record of notifications shall be
23 maintained by the underground facility operator or the
24 "One-Call Notification System" in order to document timely
25 compliance with this chapter. These records shall be retained
26 for a period of not less than three years and shall be made

1 available at a reasonable cost upon proper and adequate
2 advance request.

3 ~~"(g)(h)~~ The services of the "One-Call Notification
4 System" should be provided on working days ~~at least between~~
5 ~~the hours of 8 A.M. and 5 P.M~~ in accordance with the
6 established working day hours.

7 ~~"(h)(i)~~ ~~A~~ The "One-Call Notification System" should
8 voice record the notification telephone calls and after hours
9 calls should at least reach a voice recording which explains
10 emergency procedures.

11 ~~"(i)(j)~~ All members of the "One-Call Notification
12 System" shall provide the "One-Call Notification System" with
13 the following information:

14 "(1) The notification area data in a format as
15 required by the current database system utilized by the
16 "One-Call Notification System" for the locations in which
17 members have underground facilities or for other reasons wish
18 to receive notifications of proposed excavations, demolitions,
19 or blasting. This information shall be updated at least once a
20 year.

21 "(2) The name, address, and telephone number of a
22 person to receive emergency notifications.

23 ~~"(j)(k)~~ The "One-Call Notification System" shall
24 promptly transmit the information received from the excavator,
25 as set forth in Section 37-15-4, to its appropriate member
26 operators.

1 "~~(k)~~(l) All members of the "One-Call Notification
2 System" who have changes, additions, or new installations of
3 buried facilities within the boundaries of the State of
4 Alabama shall notify the "One-Call Notification System" of
5 changes in the information required in subdivision (1) of
6 subsection ~~(i)~~(j), within 30 days of the completion of such
7 change, addition, or new installation.

8 "§37-15-6.

9 "(a) (1) Each operator served with notice in
10 accordance with Section 37-15-4, with underground facilities
11 in the area, shall mark or cause to be marked or otherwise
12 provide the approximate location of the operator's underground
13 facilities by marking in a manner as prescribed herein prior
14 to the proposed start of excavation, demolition, or blasting.
15 If any underground facilities become damaged due to an
16 operator furnishing inaccurate information as to the
17 approximate location of the facilities, through no fault of
18 the operator, then the civil liabilities imposed by this
19 chapter do not apply.

20 "(2) In lieu of such marking, the operator may
21 request to be present at the site upon commencement of the
22 excavation, demolition, or blasting.

23 "(3) A member operator that states that it does not
24 have accurate information concerning the exact location of its
25 underground facilities is exempt from the requirements under
26 Section 37-15-6, but shall provide the best available
27 information to the person excavating in order to comply with

1 the requirements of this section. A person excavating is not
2 liable for any damage to an underground facility under the
3 exemption in this subdivision if the excavation or demolition
4 is performed with reasonable care as noted in Section 37-15-8
5 and the excavator uses detection equipment or other acceptable
6 means to determine the location of the underground facilities.

7 "~~(3)~~(4) When an excavator encounters an unmarked
8 underground facility on an excavation site where notice of
9 intent to excavate has been made in accordance with the
10 provisions of Section 37-15-4, and attempts a follow-up or
11 second notice relative to revising the original notice to the
12 "One-Call Notification System" or the operator, all operators
13 thus notified must attempt to contact the excavator within
14 four hours and provide a response relative to any of their
15 known underground facilities, active or abandoned, at the site
16 of the excavation.

17 "(b) When marking the approximate location of
18 underground facilities, the operator shall follow the color
19 code designation in accordance with the latest edition of the
20 American Public Works Association Uniform Color Code.

21 "(c) The color code designation referenced in this
22 section shall not be used by any operator or person to mark
23 the boundary or location of any excavation or demolition area.
24 If the excavator elects to mark the proposed excavation or
25 demolition site, the boundary or location shall be identified
26 using white as the identifying color or with natural color
27 wood stakes. White flags or white stakes may have a thin

1 stripe, one inch or less of the designated color code, to
2 indicate the excavator's proposed type of facility, if
3 applicable.

4 "(d) Each operator, upon determining that no
5 underground facility is present on the tract or parcel of land
6 or upon completion of the marking of the location of any
7 underground facilities on the tract or parcel of land shall
8 provide a positive response with information to the "One-Call
9 Notification System" in accordance with the procedures
10 developed by the "One-Call Notification System".

11 "(e) The requirement for providing a positive
12 response shall become effective 12 months after the effective
13 date of the act adding this amendatory language.

14 ~~"(d) (f)~~ Any contract locator acting on behalf of an
15 operator is subject to this section.

16 "§37-15-9.

17 "(a) Each person responsible for any excavation or
18 demolition operation that results in any damage to an
19 underground facility, immediately upon discovery of such
20 damage, shall notify the operator of such facility of the
21 location of the damage or the ~~one-call notification center~~
22 "One-Call Notification System" operating on behalf of the
23 underground facility owner and shall allow the operator
24 reasonable time to accomplish any necessary repairs before
25 completing the excavation or demolition in the immediate area
26 of the damage to such facility.

1 "(b) In addition to subsection (a), each person
2 responsible for any excavation or demolition shall immediately
3 report to the operator or the ~~one-call notification center~~
4 "One-Call Notification System" operating on behalf of the
5 underground facility owner and appropriate law enforcement
6 agencies and fire departments any damage to an underground
7 facility that results in escaping flammable, corrosive,
8 explosive, or toxic liquids or gas and shall take reasonable
9 actions necessary to protect persons or property and to
10 minimize safety hazards until those law enforcement agencies
11 and fire departments and the operator arrive at the
12 underground facility.

13 "(c) If an event damages any pipe, cable, or its
14 protective covering, or other underground facility, or there
15 is a significant near miss that could have resulted in damage,
16 the operator receiving the notice shall file a report with the
17 "One-Call Notification System". Reports must be submitted
18 annually to the system, no later than March 31 for the prior
19 calendar year, or more frequently at the option and sole
20 discretion of the operator. Each report must describe, if
21 known, the cause, nature, and location of the damage. The
22 "One-Call Notification System" shall establish and maintain a
23 process to facilitate submission of reports by operators or
24 persons excavating.

25 "§37-15-10.

1 ~~"(a) Any person who violates any provision of this~~
2 ~~chapter shall be subject to a civil penalty not to exceed~~
3 ~~\$10,000 for each such violation.~~

4 ~~"(b) An action under this section shall be~~
5 ~~instigated by any person making a complaint in writing,~~
6 ~~verified by oath, that the person has reason to believe that a~~
7 ~~violation under this chapter has occurred.~~

8 ~~"(c) Prosecution of violations of this chapter shall~~
9 ~~be by district attorney or the Attorney General and shall be~~
10 ~~brought in the circuit court for the county in which the~~
11 ~~violation, or some part thereof, arose or in the circuit court~~
12 ~~for the county in which the defendant resides or maintains his~~
13 ~~or her principal place of business within the state.~~

14 "(a) Any person who violates this chapter, or the
15 rules adopted under this chapter, shall be subject to a civil
16 penalty as follows:

17 "(1) For a first violation, the violator shall
18 complete a course of training concerning compliance with this
19 chapter or pay a civil penalty in an amount not to exceed five
20 hundred dollars (\$500) per incident, or both.

21 "(2) For a second or subsequent violation within a
22 12-month period, the violator shall complete a course of
23 training concerning compliance with this chapter or pay a
24 civil penalty in an amount not to exceed one thousand dollars
25 (\$1000) per incident, or both.

26 "(3) For a third or subsequent violation within a
27 12-month period, the violator shall complete a course of

1 training concerning compliance with this chapter and pay a
2 civil penalty in an amount not to exceed three thousand
3 dollars (\$3,000) per incident.

4 "(4) Notwithstanding this subsection, if any
5 violation was the result of gross negligence or willful
6 noncompliance, the violator shall be required to complete a
7 course of training concerning compliance with this chapter and
8 pay a civil penalty in an amount not to exceed ten thousand
9 dollars (\$10,000) per incident.

10 "(b) Any person who is required to complete a course
11 of training under this section shall be responsible for paying
12 for the cost of the training. For those instances in which
13 training is ordered, if the person is a firm, partnership,
14 association, corporation, limited liability company, joint
15 venture, department, or subdivision of the state or other
16 governmental entity or any other body or organization, it may
17 be required that at least one manager or supervisor thereof
18 attend any training.

19 "(c) The penalties provided under this section may
20 be subject to periodic review by the authority board and
21 revised by rule as needed to ensure enforcement penalties are
22 deemed effective and are in compliance with federal law.

23 "(d) The amount of such penalties shall be dependent
24 upon the degree of non-compliance, the amount of injury or
25 damage caused, the degree of threat to public safety, the
26 degree of public inconvenience caused as a result of the
27 violation, and the number of past violations. Mitigation of

1 the penalty may be shown by "good faith" efforts of the
2 violator to have complied with the provisions of this chapter.

3 ~~"(e) All penalties recovered in such actions shall
4 be paid into the General Fund of the State of Alabama.~~

5 ~~"(f) In any successful action or petition brought
6 under this section, the court shall award the office of the
7 Attorney General or the office of the district attorney
8 reasonable attorney's fees and costs.~~

9 ~~"(g) Any person who violates any provision of this
10 chapter shall not be subject to payment of the assessed
11 penalty in subsection (a) if he or she has been assessed a
12 civil penalty for this same violation under the provisions of
13 the Federal Natural Gas Pipeline Safety Act of 1968 or the
14 Federal Hazardous Liquid Pipeline Safety Act of 1979 or any
15 amendment to these acts.~~

16 "(e) All penalties recovered in such actions shall
17 be paid into the Underground Damage Prevention Fund. Any
18 monies remaining in the Underground Damage Prevention Fund at
19 the end of the fiscal year shall not revert to the General
20 Fund, but shall remain in the Underground Damage Prevention
21 Fund for the exclusive use of the authority. The expenditures
22 of monies in the Underground Damage Prevention Fund shall be
23 at the discretion of the authority board to carry out its
24 duties under this chapter. Excess funds shall be used to
25 support public awareness programs, training and education of
26 excavators, operators, locators, and other persons to reduce
27 the number and severity of violations of this chapter.

1 "~~(h)~~(f) This chapter does not affect any civil
2 remedies for personal injury or property damage or criminal
3 sanctions except as otherwise specifically provided for in
4 this chapter.

5 "(g) Evidence of findings of fact, civil penalties,
6 or any of the actions or proceedings pursuant to this chapter
7 shall not be admissible in any other civil causes of actions
8 related to the excavation or damage for which the penalty or
9 fine was issued. This chapter shall not limit any person's
10 right to pursue any additional civil remedy otherwise allowed
11 by law.

12 "~~(i)~~(h) No civil penalty may be imposed pursuant to
13 this section against an excavator or operator who violates any
14 provision of this chapter if the violation occurred while the
15 excavator or operator was responding to an emergency.
16 Notwithstanding the foregoing, the civil penalty shall be
17 imposed if the violation was willful or malicious.

18 "~~(j)~~(i) This section shall not be construed to limit
19 any provision of law granting governmental immunity to state
20 or local entities or to impose any liability or duty of care
21 not otherwise imposed by law upon any state or local entity.

22 "~~(k)~~(j) Any person who willfully or maliciously
23 removes or otherwise destroys a marking used by an operator to
24 mark the location of any underground facility, except in the
25 ordinary course of excavation, is guilty of a Class C
26 misdemeanor."

1 Section 2. Sections 37-15-10.1 and 37-15-10.2 are
2 added to the Code of Alabama 1975, to read as follows:

3 §37-15-10.1

4 (a) There is created an Underground Damage
5 Prevention Authority for the purpose of enforcing this chapter
6 and for reviewing penalty provisions and the adequacy of the
7 enforcement process. It is the intent of the Legislature that
8 the authority and its enforcement activities not be funded by
9 appropriations from the state budget.

10 (b) The authority shall utilize the services of the
11 Alabama Public Service Commission to provide administrative
12 support for the authority, subject to the concurrence by the
13 authority board. The Public Service Commission shall charge
14 the expenses associated with the administrative duties of the
15 authority back to the authority, subject to the concurrence of
16 the authority board. The administrative support provided by
17 the Alabama Public Service Commission to the authority is in
18 an administrative capacity only and nothing in this chapter
19 shall expand the jurisdiction of the Alabama Public Service
20 Commission in any way.

21 (c) The authority shall be composed of a board of
22 underground facility protection stakeholders. The board shall
23 be composed of one subject matter expert representative from
24 each of the following stakeholders and all board appointments
25 shall be made within 90 days of the effective date of this act
26 as follows:

- 27 (1) Alabama Attorney General's Office.

1 (2) Alabama Public Service Commission - gas pipeline
2 safety.

3 (3) Alabama Department of Transportation.

4 (4) Alabama county engineers.

5 (5) Cable television industry.

6 (6) Electric utility industry.

7 (7) Municipal utility operator industry.

8 (8) Natural gas distribution industry.

9 (9) One-Call Notification Center.

10 (10) Professional excavator industry.

11 (11) Professional road builder industry.

12 (12) Professional land surveyor industry.

13 (13) Telecommunications industry.

14 (14) Transmission pipeline industry.

15 (15) Utility facility locating industry.

16 (16) Water utility industry.

17 (17) Wastewater industry.

18 (d) The Governor shall appoint the stakeholder
19 representatives selected from qualified persons as provided in
20 subsection (c) with the exception of the stakeholder
21 representatives from the Alabama Attorney General's office,
22 the Alabama PSC-gas pipeline safety, and the Alabama
23 Department of Transportation, who shall be appointed by the
24 head of the respective agency. The initial authority board
25 shall be appointed with staggered terms as determined by the
26 Governor. After the initial appointment, each stakeholder
27 representative shall serve a three-year term. No person shall

1 be appointed for more than two full consecutive terms with the
2 exception of the stakeholder representatives from the Alabama
3 Attorney General's office, the Alabama PSC - gas pipeline
4 safety, the Alabama Department of Transportation, and the
5 "One-Call Notification Center".

6 (e) Membership of the authority board shall be
7 inclusive and reflect the racial, gender, geographic,
8 urban/rural, and economic diversity of the state.

9 (f) The board shall elect an executive committee
10 made up of five representatives from the authority board as
11 provided in this section excluding those entities representing
12 a state agency, who will be responsible for levying civil
13 penalties and taking actions as described in Section 35-15-10,
14 this section, and Section 35-15-10.2.

15 (g) Members of the authority board and executive
16 committee may participate in a meeting of the board or
17 committee by means of telephone conference, video conference,
18 or similar communications equipment by means of which all
19 persons participating in the meeting may hear each other at
20 the same time and members of the public may simultaneously
21 listen to the meeting. Participation by such means shall
22 constitute presence in person at a meeting for all purposes.

23 (h) The board has the power and authority to do all
24 of the following:

25 (1) Adopt rules to conduct the affairs of the
26 authority.

27 (2) Make and enter into contracts.

1 (3) Enter into an interagency agreement with the
2 Attorney General's office to serve as legal counsel. The
3 Attorney General shall be compensated at a rate not to exceed
4 the normal hourly rate authorized by the Governor for legal
5 services contracts. The authority shall also reimburse the
6 Attorney General for any expenses incurred in providing legal
7 representation.

8 (4) Oversee the development of or contract for the
9 development and administration of the designated training
10 program.

11 (5) Evaluate and revise the enforcement program
12 process and penalty structure by promulgating rules if the
13 current structure does not meet the purpose and intent of this
14 chapter or federal law.

15 (i) The members of the board shall be immune,
16 individually and jointly, from civil liability for any act or
17 omission done or made in the performance of their duties while
18 serving as members of the board, but only in absence of
19 willful misconduct.

20 (j) The members of the board shall serve without
21 compensation.

22 (k) Nothing in this chapter shall grant the
23 authority jurisdiction over damage to utilities located above
24 the ground.

25 (l) Board members shall not participate in any
26 enforcement action decisions pertaining to the entity they
27 represent.

1 (m) The authority shall be governed by the Alabama
2 Administrative Procedure Act.

3 §37-15-10.2.

4 (a) Any person who violates this chapter may be
5 reported to the authority for the alleged violation.

6 (b) The board shall develop and implement a process
7 for the receipt of a complaint of a violation of this chapter.
8 The complaint must be made no later than 30 days after the
9 known occurrence of the violation. A complaint may be filed as
10 information only and designated not to be pursued under the
11 enforcement provisions.

12 (c) Upon receipt of a complaint of a violation of
13 this chapter, the administrator, operating on behalf of the
14 authority, shall provide notice to the reported violator
15 advising that a complaint of violation has been made setting
16 out the time and place of the alleged violation, the identity
17 of who reported the violation, his or her right to file a
18 written response within 14 days, and his or her right to
19 appeal from an adverse decision.

20 (d) The administrator, acting on behalf of the
21 authority, shall submit the complaint and documentation to the
22 executive committee.

23 (e) The authority executive committee shall review
24 the complaint and any documentation regarding the complaint
25 and make any needed recommendation for penalty action.

1 (f) The administrator, operating on behalf of the
2 authority, shall notify the complainant and the reported
3 violator of any penalty assessed.

4 (g) Once the reported violator is notified of the
5 designated penalty as described in Section 37-15-10, the
6 violator may pay the penalty to the Underground Damage
7 Prevention Fund or dispute the penalty and request a hearing
8 before the full authority board.

9 (h) The request for a hearing before the authority
10 board must be done within 30 days of the issuance of
11 notification of the violation.

12 (i) The full authority board shall meet no more than
13 quarterly, based on need. The hearings shall be held at the
14 place set forth in the citation notice of hearing. There shall
15 be no presumption of correctness attached to any finding of
16 fact or any assessment of a penalty that is appealed to the
17 authority board, and the proceedings and hearing before the
18 authority board shall be tried de novo. The complainant must
19 attend the hearing.

20 (j) The authority board in the appeal process has
21 the authority to do all of the following:

22 (1) Repeal the initial penalty provisions cited for
23 the alleged violation of this chapter.

24 (2) Uphold the initial penalty provisions cited for
25 the alleged violation of this chapter.

26 (3) Issue a new penalty provision related to the
27 alleged violation of this chapter.

1 (4) Issue an order stating the outcome of the
2 hearing including any assigned penalty.

3 (k) A person aggrieved by the final order, within 30
4 days from the date of the final order, may seek judicial
5 review in the circuit court by filing a notice of appeal.

6 (l) All complaints filed pursuant to this chapter
7 shall not be subject to the Alabama Open Records Act. However,
8 the authority shall make available upon request a summary of a
9 requested complaint after a final resolution has been entered
10 regarding any such complaint requested along with any
11 documents associated with the final resolution of the
12 complaint. However, this restriction shall not prevent a party
13 from obtaining a copy of the complaint by means of a subpoena
14 or other method allowed by the Alabama Rules of Civil
15 Procedure or the Alabama Rules of Criminal Procedure. The
16 Alabama Open Meetings Act shall apply to all meetings and
17 judicial hearings required pursuant to this chapter, except
18 for those meetings of the authority in which the initial
19 determination of violation and recommended fine is discussed
20 and determined.

21 (m) The authority may bring an action against any
22 person or entity to collect any fines, penalties, or other
23 monies owed to the authority.

24 (n) The authority shall be governed by the Alabama
25 Administrative Procedure Act.

26 Section 3. Although this bill would have as its
27 purpose or effect the requirement of a new or increased

1 expenditure of local funds, the bill is excluded from further
2 requirements and application under Amendment 621, now
3 appearing as Section 111.05 of the Official Recompilation of
4 the Constitution of Alabama of 1901, as amended, because the
5 bill defines a new crime or amends the definition of an
6 existing crime.

7 Section 4. This act shall become effective January
8 1, 2020, following its passage and approval by the Governor,
9 or its otherwise becoming law.