

1 "§37-15-1. Purpose and Intent

2 The purpose of this act is to safeguard against
3 injury and loss of life due to excavation or demolition and to
4 protect underground facilities from costly damage and the
5 interruption of utility or other services to the general
6 public.

7 "§37-15-2. Definitions

8 As used in this chapter the following words have the
9 following meanings:

10 (1) APPROXIMATE LOCATION OF UNDERGROUND FACILITIES.

11 Information about an operator's underground facilities which
12 is provided to a person by an operator and must be accurate to
13 within 18 inches measured horizontally from the outside edge
14 of each side of such operator's facility, or a strip of land
15 eighteen inches either side of the operator's field mark or
16 the marked width of the facility plus eighteen inches on each
17 side of the marked width of the facility.

18 (2) AUTHORITY. The Underground Damage Prevention

19 Authority created under Section 37-15-10.1."

20 (3) AUTHORITY BOARD. The Underground Damage

21 Prevention Board created under Section 37-15-10.1."

22 (4) BLASTING. The use of an explosive device for the

23 excavation of earth, rock, or other material or the demolition
24 of a structure.

25 (5) CONTRACT LOCATOR. Any person contracted by an

26 operator specifically to determine and mark the approximate
27 location of the operator's utility lines that may exist within
28 the area specified by a notice served on the "One-Call
29 Notification System."

1 (6) DAMAGE. Includes, but is not limited to, the
2 substantial weakening of structural or lateral support of an
3 underground facility, penetration or destruction of any
4 underground facility's protective coating, housing or other
5 protective device, and the severance (partial or complete) of
6 any underground facility, but does not apply to any operator's
7 abandoned underground facility.

8 (7) DEMOLITION. Any operation by which a structure
9 or mass of material is wrecked, razed, rendered, moved, or
10 removed by means of any tools, equipment, or explosives.

11 (8) DESIGN OR SURVEY LOCATE REQUEST. Any
12 communication to the "One-Call Notification System"
13 specifically to request existing underground facilities to be
14 located for bidding, predesign, or advance planning purposes.
15 A design locate request may not be used for excavation
16 purposes and an excavation locate request may not be used for
17 design or survey purposes.

18 (9) EMERGENCY EXCAVATION or DEMOLITION. An
19 excavation or demolition that is required to eliminate an
20 imminent danger to life, health, property, or the environment
21 or required for the repair or restoration of operator service
22 that is required to be performed before the notification and
23 response procedures required in Sections 37-15-4 and 37-15-6
24 may be fully utilized.

25 (10) EXCAVATE or EXCAVATION. Any operation for the
26 purpose of the movement or removal of earth, rock, or other
27 material by mechanized equipment or explosive device and
28 includes, but is not limited to, augering, backfilling,
29 blasting, boring, digging, ditching, drilling, grading,

1 pile-driving, plowing-in, pulling-in, ripping, scraping,
2 sub-soiling, trenching and tunneling. Excavate or excavation
3 does not include routine roadway maintenance activities
4 carried out by or for those responsible for
5 publicly-maintained roadways, provided that the activities
6 occur entirely within the right of way of a public road,
7 street, or highway; are carried out with reasonable care so as
8 to protect any utility facilities placed in the right-of-way
9 by permit; are carried out within the limits of any original
10 excavation on the traveled way, shoulders or drainage ditches
11 of a public road, street, or highway; and, if involving the
12 replacement of existing structures, including traffic control
13 devices, replace such structures in their approximate previous
14 locations and at their approximate previous depth. Excavate or
15 excavation shall not include routine railroad maintenance
16 activities conducted within the track structure and its
17 adjacent right of way, provided the activities are performed
18 by railroad employees or railroad contractors and are carried
19 out with reasonable care so as to protect any underground
20 facilities placed in the railroad right-of-way by agreement
21 with the railroad. Nothing in this chapter shall modify or
22 abrogate any contractual provision entered into between any
23 railroad and any other party owning or operating an
24 underground facility or underground utility lines within the
25 railroad's right-of-way.

26 (11) EXCAVATOR. Any person who engages in
27 excavation.

28 12) EXECUTIVE COMMITTEE. The executive committee
29 created under Section 37-15-10.1.

1 (13) IMPLIED EASEMENT. Any unwritten easement or
2 right-of-way on private property required to provide utility
3 or other services by means of underground facilities on
4 property of the owner requesting such service.

5 (14) MARK or MARKING. The use of stakes, flags,
6 paint, buoys, or clearly identifiable materials placed on the
7 surface of the ground or water to show the approximate
8 location of underground facilities.

9 (15) MECHANIZED EQUIPMENT. Equipment powered or
10 energized by any motor, engine, hydraulic or pneumatic device
11 and is used for excavation or demolition work including, but
12 not limited to, tractors, trenchers, bulldozers, power
13 shovels, augers, backhoes, scrapers, pile drivers, drills,
14 cable and pipe plows, or other equipment used for plowing-in
15 or pulling-in cable or pipe.

16 (16) MEMBER. A person who participates in the "One-
17 Call Notification System" to receive services and is in good
18 standing with the "One-Call Notification System" in accordance
19 with the guidelines set forth in the corporation's bylaws.

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

22 (18) NONINVASIVE METHOD OF EXCAVATION. A method of
23 excavation that does not compromise the integrity of the
24 underground facility. These methods include, but are not
25 limited to, hand digging, pot holing, soft digging, vacuum
26 excavation methods, or other methods approved by the operator.

27 (19) NOTIFICATION AREA. An area or territory which
28 an operator designates as the area where the operator wishes
29 to receive notifications for any excavation in that area. The

1 notification area should encompass the underground
2 distribution system or network of the operator.

3 (20) "ONE-CALL NOTIFICATION SYSTEM". A
4 non-profit corporation, a public corporation, or a
5 governmental entity which will provide a statewide
6 notification service, for the purpose of receiving statewide
7 telephonic toll-free or electronic notification of any planned
8 excavation or demolition activities by excavators or other
9 persons as set forth in Section 37-15-4 and distributing the
10 required excavation or demolition information to its affected
11 member operators as set forth in Section 37-15-5.

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

26 (22) PERSON. An individual, joint venture,
27 partnership, association, authority, cooperative, firm,
28 corporation, governmental entity, or any subdivision or

1 instrumentality of that entity and its employees, agents, or
2 legal representatives.

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

7 (24) PREMARK. To delineate the general scope of the
8 excavation on the surface of the ground using white paint,
9 white stakes, or other similar white markings.

10 (25) ROUTINE ROADWAY MAINTENANCE. Maintenance work
11 on a roadway that is not done pursuant to a contract awarded
12 by a state or local government through a bid process for which
13 plan drawings have been developed in advance or work for which
14 detailed and specific scheduling is not possible or feasible.

15 (26) TOLERANCE ZONE. The width of the underground
16 facility plus 18 inches on either side of the outside edge of
17 the underground facility on a horizontal plane.

18 (27) UNDERGROUND FACILITY. Any cable, pipeline,
19 duct, wire, conduit, or other similar installation, installed
20 underground or underwater, by which an operator transports or
21 delivers materials, information, or services.

22 (28) WILLFUL NONCOMPLIANCE. The intentional refusal
23 or failure to perform, or comply with, a duty created or
24 imposed by this chapter or by the rules promulgated pursuant
25 to this chapter.

26 (29) WORKING DAY. A 24-hour period commencing the
27 beginning of the start of the next working day from the time
28 of receipt of the notification, excluding Saturday, Sunday,
29 and the following nine holidays: New Year's Day, Memorial Day

1 (observed), Independence Day, Labor Day, Veterans Day,
2 Thanksgiving Day, the Friday following Thanksgiving Day,
3 Christmas Eve, and Christmas Day. When any of these holidays
4 occur on a Saturday, it will be observed on the preceding
5 Friday and when any of these holidays occur on a Sunday, it
6 will be observed on the following Monday.

7 (30) WORKING DAY HOURS. The time from 7:00 A.M. to
8 5:00 P.M. local time on working days.

9 "§37-15-3. Prohibition

10 No person shall excavate in a street, highway,
11 public easement, private easement, or implied easement of an
12 operator, or on property of an operator, or conduct blasting
13 operations, or perform demolition activities in the near
14 proximity of an operator's underground facility without first
15 having ascertained, in the manner prescribed in Sections 37-
16 15-4 and 37-15-6, the location of all underground facilities
17 in the area of the proposed excavation, blasting, or
18 demolition; however, violation of this section shall not
19 subject any person to the civil penalties of Section 37-15-10
20 provided the easement or underground facility is located on
21 property owned by such person and such person did not have
22 knowledge of the existence or presence of such easement or
23 underground facility.

24 "§37-15-4. Notice of Intent to Excavate or Demolish

25 (a) A permit issued pursuant to law authorizing
26 excavation or demolition operations shall not be deemed to
27 relieve a person from the responsibility for complying with
28 the provisions of this chapter. Any public agency issuing such
29 permit shall notify the person receiving the permit of the

1 notification requirements of this chapter; however, failure to
2 provide such notification shall not make the State Department
3 of Transportation subject to the penalties provided for in
4 Section 37-15-10.

5 (b) Before commencing any excavation or demolition
6 operation prohibited by Section 37-15-3, each person
7 responsible for such excavation or demolition shall give
8 telephonic or electronic notice of such intent to excavate or
9 demolish to the underground facility operator or the "One-Call
10 Notification System" acting on behalf of the operator at least
11 two but not more than 10 working days prior to the start of
12 the proposed excavation, not including the day of
13 notification, and at least two working days but not more than
14 30 calendar days, not including the day of notification, prior
15 to the start of demolition or any blasting operations for
16 either excavation or demolition.

17 (c) The notice required by subsection (b) of this
18 section must contain the name, address, and telephone number
19 of the person responsible for the excavation or the demolition
20 and the person giving notice, the proposed starting date and
21 time, the type of excavation or demolition operation to be
22 conducted, the location of the proposed excavation or
23 demolition with sufficient details to enable the operator to
24 locate same with reasonable certainty, and whether or not
25 explosives are to be used. In the event the location
26 requirements of this subsection cannot be met, the excavator
27 shall premark the route or boundaries of the site of proposed
28 excavation or demolition by means of white as the identifying
29 color on stakes, flags, paint, buoys or clearly identifiable

1 materials placed on the surface of the ground or water prior
2 to the notification to the "One-Call Notification System".
3 However, premarking is not required when the premarking could
4 reasonably interfere with traffic or pedestrian control.

5 (d) Notification to the "One-Call Notification
6 System" of an intent to excavate shall be valid for a period
7 of 20 working days from the proposed starting date given for
8 excavation and the notice to demolish shall be valid for a
9 period of 30 working days from the starting date given. Each
10 person responsible for excavation or demolition shall renew
11 with the "One-Call Notification System" each notice of intent
12 to excavate or demolish at least two working days, not
13 counting the day of notification, prior to the expiration date
14 of the notice if the excavation or demolition has not been
15 completed.

16 (e) When engaged in an extensive and contiguous
17 construction, demolition or excavation activity, working
18 agreements may be established to accomplish the intent and
19 purpose of this chapter between operators, public agencies,
20 and contractors after initial compliance with the notification
21 provisions of this chapter.

22 (f) Compliance with the notice requirements of this
23 section is not required of persons plowing less than 12 inches
24 in depth for agricultural purposes.

25 (g) Compliance with the notice requirements of this
26 section is not required by persons or operators excavating on
27 their own property or easement when no other persons or
28 operators have underground facilities on the property or
29 easement.

1 (h) Except for those persons submitting design or
2 survey locate requests, no person, including operators,
3 shall request markings of a site through the "One-Call
4 Notification System" that meets the operational requirements
5 as described in subsection (a) of Section 37-15-5, unless
6 excavation is scheduled to commence. In addition, no person
7 shall make repeated requests for remarking, unless the
8 repeated request is required for excavating to continue or due
9 to circumstances not reasonably within the control of the
10 person.

11 (i) Any person who complies with the notification
12 requirements of this chapter is not liable for damage to an
13 operator's underground facility if all of the following are
14 satisfied:

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

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

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

22 §37-15-4.1. Design and Survey Locate Requests

23 (a) Any person may submit a design or survey locate
24 request to the "One-Call Notification System". The design or
25 survey locate request shall describe the tract or parcel of
26 land for which the design or survey locate request has been
27 submitted with sufficient particularity as defined by policies
28 developed and promulgated by the "One-Call Notification
29 System" to enable the facility operator to ascertain the

1 precise tract or parcel of land involved and state the name,
2 address, telephone number, and facsimile number of the person
3 who has submitted the design locate or survey request and the
4 company name of the project owner.

5 (b) Within five working days after a design or
6 survey locate request has been submitted to the "One-Call
7 Notification System" for a proposed project, the operator
8 shall respond by one of the following methods:

9 (1) Marking the approximate location of all
10 underground facilities in the area of proposed excavation.

11 (2) Providing to the person submitting the design or
12 survey locate request the best available description of all
13 underground facilities in the area of proposed excavation
14 which may include drawings of underground facilities already
15 built in the area or other facility records that are
16 maintained by the facility operator.

17 (3) Allowing the person submitting the design or
18 survey locate request or any other authorized person to
19 inspect or copy the drawings or other records for all
20 underground facilities within the proposed area of excavation.

21 "§37-15-5. Underground Damage Prevention Program

22 (a) (1) Operators who have underground facilities
23 within this state shall participate in and utilize the
24 services of the "One-Call Notification System";

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

28 ((3) Operators with more than 25,000 customers or
29 500 miles of facilities, who are not members, must join the

1 "One-Call Notifications System" within one year from the
2 effective date of this act adding this subdivision.

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

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

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

26 (7) Notwithstanding the above provisions, the
27 provisions in subsection (1) through (6) are repealed after
28 seven years from the effective date of the bill.

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

24 (c) Subject to subsection (a) and (b), there shall be
25 a statewide "One-Call Notification System" in accordance with
26 this chapter to provide notice of all excavation or demolition
27 near underground facilities.

28 (d) The "One-Call Notification System" shall be
29 incorporated or operated as a nonprofit corporation and

1 governed by a board of directors representing its membership
2 in accordance with the "One-Call Notification System" Bylaws.

3 (e) Operators of underground natural gas or
4 hazardous liquid pipeline facilities or the "One-Call
5 Notification System" acting on their behalf shall develop and
6 implement a public awareness and damage prevention program to
7 educate the general public, excavators, and operators about
8 the availability and use of the "One-Call Notification System"
9 as required in applicable federal regulations and the
10 requirements of this chapter.

11 (f) The person giving notice of intent to excavate
12 or demolish shall be furnished an individual reference file
13 number for each notification and upon request shall be
14 furnished the names of the operators to whom the notification
15 will be transmitted.

16 (g) An adequate record of notifications shall be
17 maintained by the underground facility operator or the
18 "One-Call Notification System" in order to document timely
19 compliance with this chapter. These records shall be retained
20 for a period of not less than three years and shall be made
21 available at a reasonable cost upon proper and adequate
22 advance request.

23 (h) The services of the "One-Call Notification
24 System" should be provided on working days in accordance with
25 the established working day hours.

26 (i) The "One-Call Notification System" should voice
27 record the notification telephone calls and after hours calls
28 should at least reach a voice recording which explains
29 emergency procedures.

1 (j) All members of the "One-Call Notification
2 System" shall provide the "One-Call Notification System" with
3 the following information:

4 (1) The notification area data in a format as
5 required by the current database system utilized by the
6 "One-Call Notification System" for the locations in which
7 members have underground facilities or for other reasons wish
8 to receive notifications of proposed excavations, demolitions,
9 or blasting. This information shall be updated at least once a
10 year.

11 (2) The name, address, and telephone number of a
12 person to receive emergency notifications.

13 (k) The "One-Call Notification System" shall
14 promptly transmit the information received from the excavator,
15 as set forth in Section 37-15-4, to its appropriate member
16 operators.

17 (l) All members of a the "One-Call Notification
18 System" who have changes, additions, or new installations of
19 buried facilities within the boundaries of the State of
20 Alabama shall notify the "One-Call Notification System" of
21 changes in the information required in subdivision (1) of
22 subsection (i)(j), within 30 days of the completion of such
23 change, addition, or new installation.

24 "§37-15-6. Response to Notice of Intent to Excavate
25 or Demolish

26 (a) (1) Each operator served with notice in
27 accordance with Section 37-15-4, with underground facilities
28 in the area, shall mark or cause to be marked or otherwise
29 provide the approximate location of the operator's underground

1 facilities by marking in a manner as prescribed herein prior
2 to the proposed start of excavation, demolition, or blasting.
3 If any underground facilities become damaged due to an
4 operator furnishing inaccurate information as to the
5 approximate location of the facilities, through no fault of
6 the operator, then the civil liabilities imposed by this
7 chapter do not apply.

8 (2) In lieu of such marking, the operator may
9 request to be present at the site upon commencement of the
10 excavation, demolition, or blasting.

11 (3) A member operator that states that it does not
12 have accurate information concerning the exact location of its
13 underground facilities is exempt from the requirements under
14 Section 37-15-6 but shall provide the best available
15 information to the person excavating in order to comply with
16 the requirements of this section. A person excavating is not
17 liable for any damage to an underground facility under the
18 exemption in this subdivision if the excavation or demolition
19 is performed with reasonable care as noted in Section 37-15-8
20 and the excavator uses detection equipment or other acceptable
21 means to determine the location of the underground facilities.

22 (4) When an excavator encounters an unmarked
23 underground facility on an excavation site where notice of
24 intent to excavate has been made in accordance with the
25 provisions of Section 37-15-4, and attempts a follow-up or
26 second notice relative to revising the original notice to the
27 "One-Call Notification System" or the operator, all operators
28 thus notified must attempt to contact the excavator within
29 four hours and provide a response relative to any of their

1 known underground facilities, active or abandoned, at the site
2 of the excavation.

3 (b) When marking the approximate location of
4 underground facilities, the operator shall follow the color
5 code designation in accordance with the latest edition of the
6 American Public Works Association Uniform Color Code.

7 (c) The color code designation referenced in this
8 section shall not be used by any operator or person to mark
9 the boundary or location of any excavation or demolition area.
10 If the excavator elects to mark the proposed excavation or
11 demolition site, the boundary or location shall be identified
12 using white as the identifying color or with natural color
13 wood stakes. White flags or white stakes may have a thin
14 stripe, one inch or less of the designated color code, to
15 indicate the excavator's proposed type of facility, if
16 applicable.

17 (d) Each operator, upon determining that no
18 underground facility is present on the tract or parcel of land
19 or upon completion of the marking of the location of any
20 underground facilities on the tract or parcel of land shall
21 provide a positive response with information to the "One-Call
22 Notification System" in accordance with the procedures
23 developed by the "One-Call Notification System".

24 (e) The requirement for providing a positive
25 response will become effective 12 months after the effective
26 date of this act adding this mandatory language.

27 (f) Any contract locator acting on behalf of an
28 operator shall be subject to this section.

1 "§37-15-7. Emergency Excavation or Demolition

2 (a) Compliance with the notice requirements of
3 Section 37-15-4 is not required of persons responsible for
4 emergency excavation or demolition; provided, however, that
5 such person gives, before commencing or as soon as practicable
6 thereafter, notice of the emergency excavation or demolition
7 to each operator having underground facilities located in the
8 area or to the "One-Call Notification System" acting on behalf
9 of the operator. However, every person who shall engage in
10 such emergency excavation or demolition shall take all
11 necessary and reasonable precautions to avoid or minimize
12 damage to existing underground facilities.

13 (b) An excavator misrepresenting an emergency
14 excavation or demolition is subject to the civil penalties
15 imposed pursuant to Section 37-15-10.

16 "§37-15-8. Precaution to Avoid Damage

17 In addition to the notification requirements of
18 Section 37-15-4, each person responsible for an excavation or
19 demolition operation designated in Section 37-15-3, when
20 performing excavation or demolition within the tolerance zone,
21 shall do all of the following to avoid damage to or minimize
22 interference with the underground facilities:

23 (1) Determine the location of any marked underground
24 facility utilizing noninvasive methods of excavation. For
25 parallel type excavations, the existing facility shall be
26 exposed at intervals as often as necessary to avoid damages.

27 (2) Maintain a clearance of at least 18 inches
28 between any underground facility and the cutting edge or point
29 of mechanized equipment.

1 (3) Provide such support for underground facilities
2 in and near the construction area, including backfill
3 operations, as may be reasonably required by the operator for
4 the protection of the utilities.

5 (4) Protect and preserve the markings of approximate
6 locations of underground facilities until those markings are
7 no longer required for proper and safe excavation or
8 demolition.

9 "§37-15-9. Excavation or Demolition Damage

10 "(a) Each person responsible for any excavation or
11 demolition operation that results in any damage to an
12 underground facility, immediately upon discovery of such
13 damage, shall notify the operator of such facility of the
14 location of the damage, or the "One-Call Notification System"
15 operating on behalf the underground facility owner, and shall
16 allow the operator reasonable time to accomplish any necessary
17 repairs before completing the excavation or demolition in the
18 immediate area of the damage to such facility.

19 (b) In addition to subsection (a), each person
20 responsible for any excavation or demolition shall immediately
21 report to the operator or the "One-Call Notification System"
22 operating on behalf the underground facility owner and
23 appropriate law enforcement agencies and fire departments any
24 damage to an underground facility that results in escaping
25 flammable, corrosive, explosive, or toxic liquids or gas and
26 shall take reasonable actions necessary to protect persons or
27 property and to minimize safety hazards until those law
28 enforcement agencies and fire departments and the operator
29 arrive at the underground facility.

1 (c) If an event damages any pipe, cable or it
2 protective covering, or other underground facility, or there
3 is a significant near miss that could have resulted in damage,
4 the operator receiving the notice shall file a report with the
5 "One-Call Notification System". Reports must be submitted
6 annually to the System, no later than March 31 for the prior
7 calendar year, or more frequently at the option and sole
8 discretion of the operator. Each report must describe, if
9 known, the cause, nature, and location of the damage. The
10 "One-Call Notification System" shall establish and maintain a
11 process to facilitate submission of reports by operators or
12 persons excavating.

13 "§37-15-10. Civil Penalties and Enforcement

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
28 training concerning compliance with this chapter and pay a
29 civil penalty in an amount not to exceed three thousand

1 dollars (\$3,000) per incident.

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

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

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

21 (d)The amount of such penalties shall be dependant
22 upon the degree of non-compliance, the amount of injury or
23 damage caused, the degree of threat to public safety, the
24 degree of public inconvenience caused as a result of the
25 violation, and the number of past violations. Mitigation of
26 the penalty may be shown by "good faith" efforts of the
27 violator to have complied with the provisions of this chapter.

28 (e) All penalties recovered in such actions shall be
29 paid into the Underground Damage Prevention Fund. Any monies

1 remaining in the Underground Damage Prevention Fund at the end
2 of the fiscal year shall not revert to the General Fund, but
3 shall remain in the Underground Damage Prevention Fund for the
4 exclusive use of the authority. The expenditures of monies in
5 the Underground Damage Prevention Fund shall be at the
6 discretion of the authority board to carry out its duties under
7 this chapter. Excess funds shall be used to support public
8 awareness programs, training and education of excavators,
9 operators, locators, and other persons to reduce the number
10 and severity of violations of this chapter.

11 (f) This chapter does not affect any civil remedies
12 for personal injury or property damage or criminal sanctions
13 except as otherwise specifically provided for in this chapter.

14 (g) Evidence of findings of fact, civil penalties or
15 any of the actions or proceedings pursuant to this chapter
16 shall not be admissible in any other civil causes of actions
17 related to the excavation or damage for which the penalty or
18 fine was issued, however, these materials are discoverable in
19 civil actions arising from the facts herein. This chapter
20 shall not limit any person's right to pursue any additional
21 civil remedy otherwise allowed by law.

22 (h) No civil penalty may be imposed pursuant to this
23 section against an excavator or operator who violates any
24 provisions of this chapter if the violation occurred while the
25 excavator or operator was responding to an emergency.

26 Notwithstanding the foregoing, the civil penalty shall be
27 imposed if the violation was willful or malicious.

28 (i) This section shall not be construed to limit any
29 provision of law granting governmental immunity to state or

1 local entities or to impose any liability or duty of care not
2 otherwise imposed by law upon any state or local entity.

3 (j) Any person who willfully or maliciously removes
4 or otherwise destroys a marking used by an operator to mark
5 the location of any underground facility, except in the
6 ordinary course of excavation, is guilty of a Class C
7 misdemeanor.

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

10 "§37-15-10.1. ENFORCEMENT AUTHORITY

11 (a) There is created an Underground Damage
12 Prevention Authority for the purpose of enforcing this chapter
13 and for reviewing penalty provisions and the adequacy of the
14 enforcement process. It is the intent of the Legislature that
15 the authority and its enforcement activities not be funded by
16 appropriations from the state budget.

17 (b) The authority shall utilize the services of the
18 Alabama Public Service Commission to provide administrative
19 support for the authority, subject to the concurrence by the
20 authority Board. The Public Service Commission shall charge
21 the expenses associated with the administrative duties of the
22 authority back to the authority, subject to the concurrence of
23 the authority Board. The administrative support provided by
24 the Alabama Public Service Commission to the authority is in
25 an administrative capacity only and nothing in this chapter
26 shall expand the jurisdiction of the Alabama Public Service
27 Commission in any way.

28 (c) The authority shall be composed of a board of
29 underground facility protection stakeholders. The board shall

1 be composed of one subject matter expert representative from
2 each of the following stakeholders and all board appointments
3 shall be made within 90 days of the effective date of this act
4 as follows:

5 1) Alabama Attorney General's Office.

6 2) Alabama Public Service Commission - gas
7 pipeline safety.

8 3) Alabama Department of Transportation.

9 4) Alabama county engineers.

10 5) Cable television industry.

11 6) Electric utility industry.

12 7) Municipal utility operator industry.

13 8) Natural gas distribution industry.

14 9) One Call Notification Center.

15 10) Professional excavator industry.

16 11) Professional road builder industry.

17 12) Professional land surveyor industry.

18 13) Telecommunications industry.

19 14) Transmission pipeline industry.

20 15) Utility facility locating industry.

21 16) Water utility industry.

22 17) Wastewater industry.

1 (d) The Governor shall appoint the stakeholder
2 representatives selected from qualified persons as provided in
3 subsection (c), with the exception of the stakeholder
4 representatives from the Alabama Attorney General's office,
5 the Alabama PSC-gas pipeline safety, and the Alabama
6 Department of Transportation, who shall be appointed by the
7 head of the respective agency. The initial authority board
8 shall be appointed with staggering terms as determined by the
9 Governor. After the initial appointment, each stakeholder
10 representative shall serve a three-year term. No person shall
11 be appointed for more than two full consecutive terms with the
12 exception of the stakeholder representatives from the Alabama
13 Attorney General's office, the Alabama PSC - gas pipeline
14 safety, the Alabama Department of Transportation, and the
15 "One -Call Notification Center".

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

19 (f) The board shall elect an executive committee
20 made up of five representatives from the authority board as
21 provided in this section excluding those entities representing
22 a state agency, who will be responsible for levying civil
23 penalties and taking actions as described in Section 37-15-10,
24 this section, and 37-15-10.2.

25 (g) Members of the authority board and executive
26 committee may participate in a meeting of the board or
27 committee by means of telephone conference, video conference,
28 or similar communications equipment by means of which all
29 persons participating in the meeting may hear each other at

1 the same time and members of the public may simultaneously
2 listen to the meeting. Participation by such means shall
3 constitute presence in person at a meeting for all purposes.

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

6 (1) Adopt rules to conduct the affairs of the
7 authority.

8 (2) Make and enter into contracts.

9 (3) Enter into an interagency agreement with the
10 Attorney General's office to serve as legal counsel. The
11 Attorney General shall be compensated at a rate not to exceed
12 the normal hourly rate authorized by the Governor for legal
13 services contracts. The authority shall also reimburse the
14 Attorney General for any expenses incurred in providing legal
15 representation.

16 (4) Oversee the development of or contract for the
17 development and administration of the designated training
18 program.

19 (5) Evaluate and revise the enforcement program
20 process and penalty structure by promulgating rules if the
21 current structure does not meet the purpose and intent of this
22 chapter or federal law.

23 (i) No member of the board, individually or jointly,
24 shall be civilly liable for acts within the scope or his or
25 her duties as a board member which are made in good faith and
26 are absent unreasonable, wanton, willful, intentional conduct
27 or a violation of federal law.

28 (j) The members of the board shall serve without
29 compensation.

1 (k) Nothing in this chapter shall grant the
2 authority jurisdiction over damage to utilities located above
3 the ground.

4 (l) Board members shall not participate in any
5 enforcement action decisions pertaining to the entity they
6 represent.

7 (m) The authority shall be governed by the Alabama
8 Administrative Procedures Act.

9 §37-15-10.2. ENFORCEMENT PROCESS

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

12 (b) The board shall develop and implement a process
13 for the receipt of a complaint of a violation of this chapter.
14 The complaint must be made no later than 30 days after the
15 known occurrence of the violation. A complaint may be filed as
16 information only and designated not to be pursued under the
17 enforcement provisions.

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

26 (d) The administrator, acting on behalf of the
27 authority, shall submit the complaint and documentation to the
28 executive committee.

1 (e) The authority executive committee will review
2 the complaint and any documentation regarding the complaint
3 and make any needed recommendation for penalty action.

4 (f) The administrator, operating on behalf of the
5 authority, shall notify the complainant and the reported
6 violator of any penalty assessed.

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

12 (h) The request for a hearing before the authority
13 board must be done within 30 days of the issuance of
14 notification of the violation.

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

23 (j) The authority board in the appeal process has
24 the authority to do the following:

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

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

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

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

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

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

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

26 (n) The authority shall be governed by the Alabama
27 Administrative Procedures Act.

28

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

9 Section 4. This act shall become effective January
10 1, 2020 following its passage and approval by the Governor,
11 or its otherwise becoming law.