

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

25           "~~(3)~~ (5) CONTRACT LOCATOR. Any person contracted by  
26 an 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           " (4) (6) DAMAGE. Includes, but is not limited to,  
2 the substantial weakening of structural or lateral support of  
3 an 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           " ~~(5)~~ (7) DEMOLITION. Any operation by which a  
9 structure or mass of material is wrecked, razed, rendered,  
10 moved, or removed by means of any tools, equipment, or  
11 explosives.

12           " ~~(6)~~ (8) DESIGN OR SURVEY LOCATE REQUEST. Any  
13 communication to the "One-Call Notification System" ~~or an in-~~  
14 ~~house program of an operator which meets the operational~~  
15 ~~requirements of receiving those excavation or demolition~~  
16 ~~notifications described in subsection (a) of Section 37-15-5,~~  
17 specifically to request existing underground facilities to be  
18 located for bidding, predesign, or advance planning purposes.  
19 A design locate request may not be used for excavation  
20 purposes and an excavation locate request may not be used for  
21 design or survey purposes.

22           " ~~(7)~~ (9) EMERGENCY EXCAVATION or DEMOLITION. An  
23 excavation or demolition that is required to eliminate an  
24 imminent danger to life, health, property, or the environment  
25 or required for the repair or restoration of operator service  
26 that is required to be performed before the notification and  
27 response procedures required in Sections 37-15-4 and 37-15-6  
28 may be fully utilized.

1                   "~~8~~ (10) EXCAVATE or EXCAVATION. Any operation for  
2 the purpose of the movement or removal of earth, rock, or  
3 other material by mechanized equipment or explosive device and  
4 includes, but is not limited to, augering, backfilling,  
5 blasting, boring, digging, ditching, drilling, grading,  
6 pile-driving, plowing-in, pulling-in, ripping, scraping,  
7 sub-soiling, trenching and tunneling. Excavate or excavation  
8 does not include routine roadway maintenance activities  
9 carried out by or for those responsible for  
10 publicly-maintained roadways, provided that the activities  
11 occur entirely within the right of way of a public road,  
12 street, or highway; are carried out with reasonable care so as  
13 to protect any utility facilities placed in the right-of-way  
14 by permit; are carried out within the limits of any original  
15 excavation on the traveled way, shoulders or drainage ditches  
16 of a public road, street, or highway; and, if involving the  
17 replacement of existing structures, including traffic control  
18 devices, replace such structures in their approximate previous  
19 locations and at their approximate previous depth. Excavate or  
20 excavation shall not include routine railroad maintenance  
21 activities conducted within the track structure and its  
22 adjacent right of way, provided the activities are performed  
23 by railroad employees or railroad contractors and are carried  
24 out with reasonable care so as to protect any underground  
25 facilities placed in the railroad right-of-way by agreement  
26 with the railroad. Nothing in this chapter shall modify or  
27 abrogate any contractual provision entered into between any  
28 railroad and any other party owning or operating an

1 underground facility or underground utility lines within the  
2 railroad's right-of-way.

3 "~~(9)~~ (11) EXCAVATOR. Any person who engages in  
4 excavation.

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

7 "~~(10)~~ (13) IMPLIED EASEMENT. Any unwritten easement  
8 or right-of-way on private property required to provide  
9 utility or other services by means of underground facilities  
10 on property of the owner requesting such service.

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

15 "~~(12)~~ (15) MECHANIZED EQUIPMENT. Equipment powered or  
16 energized by any motor, engine, hydraulic or pneumatic device  
17 and is used for excavation or demolition work including, but  
18 not limited to, tractors, trenchers, bulldozers, power  
19 shovels, augers, backhoes, scrapers, pile drivers, drills,  
20 cable and pipe plows, or other equipment used for plowing-in  
21 or pulling-in cable or pipe.

22 "~~(13)~~ (16) MEMBER. A person who participates in the  
23 "One-Call Notification System" to receive services and is in  
24 good standing with the "One-Call Notification System" in  
25 accordance with the guidelines set forth in the corporation's  
26 bylaws.

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

1           "~~(14)~~ (18) NONINVASIVE METHOD OF EXCAVATION. A method  
2 of excavation that does not compromise the integrity of the  
3 underground facility. These methods include, but are not  
4 limited to, hand digging, pot holing, soft digging, vacuum  
5 excavation methods, or other methods approved by the operator.

6           "~~(15)~~ (19) NOTIFICATION AREA. An area or territory  
7 which an operator designates as the area where the operator  
8 wishes to receive notifications for any excavation in that  
9 area. The notification area should encompass the underground  
10 distribution system or network of the operator.

11           "~~(16)~~ (20) "ONE-CALL NOTIFICATION SYSTEM". A  
12 non-profit corporation, a public corporation, or a  
13 governmental entity which will provide a statewide  
14 notification service, for the purpose of receiving statewide  
15 telephonic toll-free or electronic notification of any planned  
16 excavation or demolition activities by excavators or other  
17 persons as set forth in Section 37-15-4 and distributing the  
18 required excavation or demolition information to its affected  
19 member operators as set forth in Section 37-15-5.

20           "~~(17)~~ (21) OPERATOR. Any person, governmental agency,  
21 or political subdivision, or its agents, who owns or operates  
22 a public or private underground facility which furnishes  
23 services, information, or materials, or transports or  
24 transmits electric energy, light, water, steam, oil, gases,  
25 gas, mixture of gases, petroleum, petroleum products,  
26 hazardous or flammable liquids, toxic or corrosive fluids and  
27 gases, or items of like nature and telecommunications, cable  
28 television, water, drainage, sewage or other systems of like  
29 nature. The term operator does not apply to any entity listed

1 above if all of the underground facilities owned and operated  
2 by the entity are for the sole use of the entity and are  
3 located solely on the entity's own property or on property  
4 over which the entity has rights of operation.

5 "~~(18)~~ (22) PERSON. An individual, joint venture,  
6 partnership, association, authority, cooperative, firm,  
7 corporation, governmental entity, or any subdivision or  
8 instrumentality of that entity and its employees, agents, or  
9 legal representatives.

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

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

17 ~~(19)~~ (25) ROUTINE ROADWAY MAINTENANCE. Maintenance  
18 work on a roadway that is not done pursuant to a contract  
19 awarded by a state or local government through a bid process  
20 for which plan drawings have been developed in advance or work  
21 for which detailed and specific scheduling is not possible or  
22 feasible.

23 "~~(20)~~ (26) TOLERANCE ZONE. The width of the  
24 underground facility plus 18 inches on either side of the  
25 outside edge of the underground facility on a horizontal  
26 plane.

27 "~~(21)~~ (27) UNDERGROUND FACILITY. Any cable, pipeline,  
28 duct, wire, conduit, or other similar installation, installed

1 underground or underwater, by which an operator transports or  
2 delivers materials, information, or services.

3 "(28) WILLFUL NONCOMPLIANCE. The intentional refusal  
4 or failure to perform, or comply with, a duty created or  
5 imposed by this chapter or by the rules promulgated pursuant  
6 to this chapter.

7 "~~(22)~~ (29) WORKING DAY. A 24-hour period commencing  
8 the beginning of the start of the next working day from the  
9 time of receipt of the notification, excluding Saturday,  
10 Sunday, and the following nine holidays: New Year's Day,  
11 Memorial Day (observed), Independence Day, Labor Day, Veterans  
12 Day, Thanksgiving Day, the Friday following Thanksgiving Day,  
13 Christmas Eve, and Christmas Day. When any of these holidays  
14 occur on a Saturday, it will be observed on the preceding  
15 Friday and when any of these holidays occur on a Sunday, it  
16 will be observed on the following Monday.

17 "(30) WORKING DAY HOURS. The time from 7:00 A.M. to  
18 5:00 P.M. local time on working days.

19 "§37-15-3. Prohibition

20 "No person shall excavate in a street, highway,  
21 public easement, private easement, or implied easement of an  
22 operator, or on property of an operator, or conduct blasting  
23 operations, or perform demolition activities in the near  
24 proximity of an operator's underground facility without first  
25 having ascertained, in the manner prescribed in Sections 37-  
26 15-4 and 37-15-6, the location of all underground facilities  
27 in the area of the proposed excavation, blasting, or  
28 demolition; however, violation of this section shall not  
29 subject any person to the civil penalties of Section 37-15-10

1 provided the easement or underground facility is located on  
2 property owned by such person and such person did not have  
3 knowledge of the existence or presence of such easement or  
4 underground facility.

5 "§37-15-4. Notice of Intent to Excavate or Demolish

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

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



1 ~~this chapter by the operator or by a "One-Call Notification~~  
2 ~~System" acting on behalf of the operator.~~

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

21           "(d) Notification ~~to an operator or to a the~~  
22 "One-Call Notification System" ~~acting on behalf of the~~  
23 ~~operator~~ of an intent to excavate shall be valid for a period  
24 of ~~10~~ 20 working days from the proposed starting date given  
25 for excavation and the notice to demolish shall be valid for a  
26 period of ~~20~~ 30 working days from the starting date given.  
27 Each person responsible for excavation or demolition shall  
28 renew with the ~~underground facility operator or a~~ "One-Call  
29 Notification System" ~~acting on behalf of the operator~~ each

1 notice of intent to excavate or demolish at least two working  
2 days, not counting the day of notification, prior to the  
3 expiration date of the notice if the excavation or demolition  
4 has not been completed.

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

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

14 "(g) Compliance with the notice requirements of this  
15 section is not required by persons or operators excavating on  
16 their own property or easement when no other persons or  
17 operators have underground facilities on the property or  
18 easement.

19 "(h) Except for those persons submitting design or  
20 survey locate requests, no person, including operators,  
21 shall request markings of a site through the "One-Call  
22 Notification System" ~~or an in-house program~~ that meets the  
23 operational requirements as described in subsection (a) of  
24 Section 37-15-5, unless excavation is scheduled to commence.  
25 In addition, no person shall make repeated requests for  
26 remarking, unless the repeated request is required for  
27 excavating to continue or due to circumstances not reasonably  
28 within the control of the person.

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

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

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

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

12           §37-15-4.1. Design and Survey Locate Requests

13           (a) Any person may submit a design or survey locate  
14 request to the "One-Call Notification System" ~~or to an~~  
15 ~~operator that provides an in-house program that meets the~~  
16 ~~operational requirements as described in subsection (a) of~~  
17 ~~Section 37-15-5.~~ The design or survey locate request shall  
18 describe the tract or parcel of land for which the design or  
19 survey locate request has been submitted with sufficient  
20 particularity as defined by policies developed and promulgated  
21 by the "One-Call Notification System" ~~or to an operator that~~  
22 ~~provides an in-house program that meets the operational~~  
23 ~~requirements as described in subsection (a) of Section 37-15-5~~  
24 to enable the facility operator to ascertain the precise tract  
25 or parcel of land involved and state the name, address,  
26 telephone number, and facsimile number of the person who has  
27 submitted the design locate or survey request and the company  
28 name of the project owner.

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

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

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

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

20 "§37-15-5. Underground Damage Prevention Program

21 "(a) (1) Operators who have underground facilities  
22 within this state ~~shall either provide an in-house program~~  
23 ~~which meets the operational requirements of receiving those~~  
24 ~~excavation or demolition notifications as set forth in~~  
25 ~~subsections (c) to (h), inclusive, of this section or shall~~  
26 participate in and utilize the services of the a "One-Call  
27 Notification System"; ~~provided, however, that any operator who~~  
28 ~~has less than ten thousand customers or subscribers and who~~  
29 ~~provides an in-house program which meets all of the~~

1 ~~operational requirements of receiving those excavation or~~  
2 ~~demolition notifications as set forth in this chapter shall~~  
3 ~~not be required to provide the services of the in-house~~  
4 ~~program on working days except during the hours that the~~  
5 ~~operator's offices are open to the public and may, but shall~~  
6 ~~not be required to, voice record the notification calls~~  
7 ~~received.~~

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

11 "(3) Operators with more than 25,000 customers or  
12 500 miles of facilities, who are not members, must join the  
13 "One-Call Notifications System" within one year from the  
14 effective date of this act adding this subdivision.

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

19 "(5) Operators of electrical underground facilities  
20 who join the "One-Call Notification System" under the  
21 requirements of subdivision (a) (3) or (4) having less than  
22 five percent underground trench miles compared to the total  
23 miles of line, is not subject to the membership costs until  
24 their underground trench miles exceeds the trench mile  
25 exemption. These operators will be required to report  
26 annually to the "One-Call Notification System" their  
27 percentage of underground trench mile by the end of each  
28 calendar year.

1           "(6) If an operator of an underground facility fails  
2 to become member of the "One-Call Notification System", as  
3 required by this chapter, and that failure is a cause of  
4 damage to that underground facility cause by an person who has  
5 complied with this chapter and has exercised reasonable care  
6 in the performance of the excavations that has caused damage  
7 to the underground facility, the operator has no right of  
8 recovery against the person for the damage to that underground  
9 facility.

10           "(7) Notwithstanding the above provisions, the  
11 provisions in subsection (1) through (6) are repealed after  
12 seven years from the effective date of the bill.

13           ~~"(2) Any operator, who elects not to participate in~~  
14 ~~the "One-Call Notification System" and instead elects to~~  
15 ~~provide an in-house notification system for receiving~~  
16 ~~excavation and demolition notifications as provided in~~  
17 ~~subdivision (1) and whose facilities are damaged by an~~  
18 ~~excavator who has contacted the "One-Call Notification System"~~  
19 ~~and the operator's in-house program concerning the location of~~  
20 ~~underground facilities, shall be responsible for any damages~~  
21 ~~to its underground facilities by the excavator if the operator~~  
22 ~~failed to meet the operational requirements for receiving~~  
23 ~~excavation and demolition notifications as required.~~

24           "(b) Between April 18, 1994, and January 1, 1995, or  
25 any time thereafter, any non-profit corporation, public  
26 corporation, or governmental entity desiring to become a the  
27 "One-Call Notification System" shall apply to the Alabama  
28 Public Service Commission for a certificate of public  
29 convenience and necessity, verifying under oath that applicant

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

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

22 "(e) (d) The "One-Call Notification System" shall be  
23 incorporated or operated as a nonprofit corporation and  
24 governed by a board of directors representing its membership  
25 in accordance with the "One-Call Notification System" Bylaws.

26 "(d) (e) Operators of underground natural gas or  
27 hazardous liquid pipeline facilities or the "One-Call  
28 Notification System" acting on their behalf shall develop and  
29 implement a public awareness and damage prevention program to

1 educate the general public, excavators, and operators about  
2 the availability and use of the "One-Call Notification System"  
3 as required in applicable federal regulations and the  
4 requirements of this chapter.

5 ~~"(e)~~ (f) The person giving notice of intent to  
6 excavate or demolish shall be furnished an individual  
7 reference file number for each notification and upon request  
8 shall be furnished the names of the operators to whom the  
9 notification will be transmitted.

10 ~~"(f)~~ (g) An adequate record of notifications shall be  
11 maintained by the underground facility operator or the  
12 "One-Call Notification System" in order to document timely  
13 compliance with this chapter. These records shall be retained  
14 for a period of not less than three years and shall be made  
15 available at a reasonable cost upon proper and adequate  
16 advance request.

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

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

25 ~~"(i)~~ (j) All members of the "One-Call Notification  
26 System" shall provide the "One-Call Notification System" with  
27 the following information:

28 "(1) The notification area data in a format as  
29 required by the current database system utilized by the



1 "One-Call Notification System" for the locations in which  
2 members have underground facilities or for other reasons wish  
3 to receive notifications of proposed excavations, demolitions,  
4 or blasting. This information shall be updated at least once a  
5 year.

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

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

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

19 "§37-15-6. Response to Notice of Intent to Excavate  
20 or Demolish

21 "(a) (1) Each operator served with notice in  
22 accordance with Section 37-15-4, with underground facilities  
23 in the area, shall mark or cause to be marked or otherwise  
24 provide the approximate location of the operator's underground  
25 facilities by marking in a manner as prescribed herein prior  
26 to the proposed start of excavation, demolition, or blasting.  
27 If any underground facilities become damaged due to an  
28 operator furnishing inaccurate information as to the  
29 approximate location of the facilities, through no fault of

1 the operator, then the civil liabilities imposed by this  
2 chapter do not apply.

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

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

17 "(3) (4) When an excavator encounters an unmarked  
18 underground facility on an excavation site where notice of  
19 intent to excavate has been made in accordance with the  
20 provisions of Section 37-15-4, and attempts a follow-up or  
21 second notice relative to revising the original notice to the  
22 "One-Call Notification System" or the operator, all operators  
23 thus notified must attempt to contact the excavator within  
24 four hours and provide a response relative to any of their  
25 known underground facilities, active or abandoned, at the site  
26 of the excavation.

27 "(b) When marking the approximate location of  
28 underground facilities, the operator shall follow the color

1 code designation in accordance with the latest edition of the  
2 American Public Works Association Uniform Color Code.

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

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

20 "(e) The requirement for providing a positive  
21 response will become effective 12 months after the effective  
22 date of this act adding this mandatory language.

23 "~~(d)~~ (f) Any contract locator acting on behalf of an  
24 operator shall be subject to this section.

25 "§37-15-7. Emergency Excavation or Demolition

26 "(a) Compliance with the notice requirements of  
27 Section 37-15-4 is not required of persons responsible for  
28 emergency excavation or demolition; provided, however, that

1 such person gives, before commencing or as soon as practicable  
2 thereafter, notice of the emergency excavation or demolition  
3 to each operator having underground facilities located in the  
4 area or to the "One-Call Notification System" acting on behalf  
5 of the operator. However, every person who shall engage in  
6 such emergency excavation or demolition shall take all  
7 necessary and reasonable precautions to avoid or minimize  
8 damage to existing underground facilities.

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

12 "§37-15-8. Precaution to Avoid Damage

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

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

24 "(2) Maintain a clearance of at least 18 inches  
25 between any underground facility and the cutting edge or point  
26 of mechanized equipment.

27 "(3) Provide such support for underground facilities  
28 in and near the construction area, including backfill

1 operations, as may be reasonably required by the operator for  
2 the protection of the utilities.

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

7 "§37-15-9. Excavation or Demolition Damage

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

18 "(b) In addition to subsection (a), each person  
19 responsible for any excavation or demolition shall immediately  
20 report to the operator or the ~~one call notification center~~  
21 "One-Call Notification System" operating on behalf the  
22 underground facility owner and appropriate law enforcement  
23 agencies and fire departments any damage to an underground  
24 facility that results in escaping flammable, corrosive,  
25 explosive, or toxic liquids or gas and shall take reasonable  
26 actions necessary to protect persons or property and to  
27 minimize safety hazards until those law enforcement agencies  
28 and fire departments and the operator arrive at the  
29 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 any provision of this~~  
15 ~~chapter shall be subject to a civil penalty not to exceed~~  
16 ~~\$10,000 for each such violation.~~

17           ~~"(b) An action under this section shall be~~  
18 ~~instigated by any person making a complaint in writing,~~  
19 ~~verified by oath, that said person has reason to believe that~~  
20 ~~a violation under this chapter has occurred.~~

21           ~~"(c) Prosecution of violations of this chapter shall~~  
22 ~~be by district attorney or the Attorney General and shall be~~  
23 ~~brought in the circuit court for the county in which the~~  
24 ~~violation, or some part thereof, arose or in the circuit court~~  
25 ~~for the county in which the defendant resides or maintains his~~  
26 ~~or her principal place of business within the state.~~

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

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

5           (2) For a second or subsequent violation within a  
6 12-month period, the violator shall complete a course of  
7 training concerning compliance with this chapter or pay a  
8 civil penalty in an amount not to exceed one thousand dollars  
9 (\$1000) per incident, or both.

10          (3) For a third or subsequent violation within a  
11 12-month period, the violator shall complete a course of  
12 training concerning compliance with this chapter and pay a  
13 civil penalty in an amount not to exceed three thousand  
14 dollars (\$3,000) per incident.

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

21          (b) Any person who is required to complete a course  
22 of training under this section shall be responsible for paying  
23 for the cost of the training. For those instances in which  
24 training is ordered, if the person is a firm, partnership,  
25 association, corporation, limited liability company, joint  
26 venture, department or subdivision of the state or other  
27 governmental entity or any other body or organization, it may  
28 be required that at least one manager or supervisor thereof  
29 attend any training.

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

5           "(d) The amount of such penalties shall be dependant  
6 upon the degree of non-compliance, the amount of injury or  
7 damage caused, the degree of threat to public safety, the  
8 degree of public inconvenience caused as a result of the  
9 violation, and the number of past violations. Mitigation of  
10 the penalty may be shown by "good faith" efforts of the  
11 violator to have complied with the provisions of this chapter.

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

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

18           ~~"(g) Any person who violates any provision of this~~  
19 ~~chapter shall not be subject to payment of the assessed~~  
20 ~~penalty in subsection (a) if he or she has been assessed a~~  
21 ~~civil penalty for this same violation under the provisions of~~  
22 ~~the Federal Natural Gas Pipeline Safety Act of 1968 or the~~  
23 ~~Federal Hazardous Liquid Pipeline Safety Act of 1979 or any~~  
24 ~~amendment to these acts.~~

25           "(e) All penalties recovered in such actions shall  
26 be paid into the Underground Damage Prevention Fund. Any  
27 monies remaining in the Underground Damage Prevention Fund at  
28 the end of the fiscal year shall not revert to the General  
29 Fund, but shall remain in the Underground Damage Prevention



1 Fund for the exclusive use of the authority. The expenditures  
2 of monies in the Underground Damage Prevention Fund shall be  
3 at the discretion of the authority board to carry out it  
4 duties under this chapter. Excess funds shall be used to  
5 support public awareness programs, training and education of  
6 excavators, operators, locators, and other persons to reduce  
7 the number and severity of violations of this chapter.

8 " ~~(h)~~ (f) This chapter does not affect any civil  
9 remedies for personal injury or property damage or criminal  
10 sanctions except as otherwise specifically provided for in  
11 this chapter.

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

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

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

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

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

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

8           "§37-15-10.1. ENFORCEMENT AUTHORITY

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

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

26           (c) The authority shall be composed of a board of  
27 underground facility protection stakeholders. The board shall  
28 be composed of one subject matter expert representative from  
29 each of the following stakeholders and all board appointments

1 shall be made within 90 days of the effective date of this act  
2 as follows:

- 3 1) Alabama Attorney General's Office.
- 4 2) Alabama Public Service Commission - gas  
5 pipeline safety.
- 6 3) Alabama Department of Transportation.
- 7 4) Alabama county engineers.
- 8 5) Cable television industry.
- 9 6) Electric utility industry.
- 10 7) Municipal utility operator industry.
- 11 8) Natural gas distribution industry.
- 12 9) One Call Notification Center.
- 13 10) Professional excavator industry.
- 14 11) Professional road builder industry.
- 15 12) Professional land surveyor industry.
- 16 13) Telecommunications industry.
- 17 14) Transmission pipeline industry.
- 18 15) Utility facility locating industry.
- 19 16) Water utility industry.
- 20 17) Wastewater industry.

21 (d) The Governor shall appoint the stakeholder  
22 representatives selected from qualified persons as provided in

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

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

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

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

1 listen to the meeting. Participation by such means shall  
2 constitute presence in person at a meeting for all purposes.

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

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

7 (2) Make and enter into contracts.

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

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

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

22 ~~(i) The members of the Board shall be immune,~~  
23 ~~individually and jointly, from civil liability for any act or~~  
24 ~~omission done or made in the performance of their duties while~~  
25 ~~serving as members of the board, but only in absence of~~  
26 ~~willful misconduct.~~ (i) No member of the board, individually  
27 or jointly, shall be civilly liable for acts within the scope  
28 or his or her duties as a board member which are made in good  
29 faith and are absent unreasonable, wanton, willful,

1 intentional conduct or a violation of federal law.

2 (j) The members of the board shall serve without  
3 compensation.

4 (k) Nothing in this chapter shall grant the  
5 authority jurisdiction over damage to utilities located above  
6 the ground.

7 (l) Board members shall not participate in any  
8 enforcement action decisions pertaining to the entity they  
9 represent.

10 (m) The authority shall be governed by the Alabama  
11 Administrative Procedures Act.

12 §37-15-10.2. ENFORCEMENT PROCESS

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

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

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

1           (d) The administrator, acting on behalf of the  
2 authority, shall submit the complaint and documentation to the  
3 executive committee.

4           (e) The authority executive committee will review  
5 the complaint and any documentation regarding the complaint  
6 and make any needed recommendation for penalty action.

7           (f) The administrator, operating on behalf of the  
8 authority, shall notify the complainant and the reported  
9 violator of any penalty assessed.

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

15           (h) The request for a hearing before the authority  
16 board must be done within 30 days of the issuance of  
17 notification of the violation.

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

26           (j) The authority board in the appeal process has  
27 the authority to do the following:

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

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

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

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

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

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

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

28                  (n) The authority shall be governed by the Alabama  
29 Administrative Procedures Act.



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

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