

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

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3  
4 ENGROSSED

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6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to underground utilities; to amend Sections  
12 37-15-2, 37-15-4, 37-15-4.1, 37-15-5, 37-15-6, 37-15-9, and  
13 37-15-10, Code of Alabama 1975, relating to the "One-Call  
14 Notification System," to further provide for the notification  
15 required; to specify when the premarking of sites where  
16 excavation and demolition should occur; to require certain  
17 operators of underground facilities to join the system; to  
18 require the system to submit an annual report of operations  
19 and financial review to the Public Service Commission; to  
20 revise penalties for violations; to provide for the deposit of  
21 penalties into certain funds; to provided limited immunity  
22 after notification under certain conditions; to add Sections  
23 37-15-10.1 and 37-15-10.2, to the Code of Alabama 1975, to  
24 create the Underground Damage Prevention Authority to, with  
25 administrative support from the Public Service Commission,  
26 enforce the requirements of the notification and penalty

1 provisions and to review the adequacy of the enforcement  
2 process.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

7 "§37-15-2.

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 18 inches either side of the operator's field mark or the  
16 marked width of the facility plus 18 inches on each side of  
17 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 for  
23 the excavation of earth, rock, or other material or the  
24 demolition of a structure.

25 "~~(3)~~ (5) CONTRACT LOCATOR. Any person contracted with  
26 an operator specifically to determine and mark the approximate  
27 location of the operator's utility lines that exist within the

1 area specified by a notice served on the "One-Call  
2 Notification System."

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

10 ~~"(5)(7)~~ DEMOLITION. Any operation by which a  
11 structure or mass of material is wrecked, razed, rendered,  
12 moved, or removed by means of any tools, equipment, or  
13 explosives.

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

24 ~~"(7)(9)~~ EMERGENCY EXCAVATION OR DEMOLITION. An  
25 excavation or demolition that is required to eliminate an  
26 imminent danger to life, health, property, or the environment  
27 or required for the repair or restoration of operator service

1 that is required to be performed before the notification and  
2 response procedures required in Section 37-15-4 and 37-15-6  
3 may be fully utilized.

4 "~~(8)~~(10) EXCAVATE or EXCAVATION. Any operation for  
5 the purpose of the movement or removal of earth, rock, or  
6 other material by mechanized equipment or explosive device and  
7 includes, but is not limited to, augering, backfilling,  
8 blasting, boring, digging, ditching, drilling, grading,  
9 pile-driving, plowing-in, pulling-in, ripping, scraping,  
10 sub-soiling, trenching, and tunneling. Excavate or excavation  
11 does not include routine roadway maintenance activities  
12 carried out by or for those responsible for  
13 publicly-maintained roadways, provided that the activities  
14 occur entirely within the right-of-way of a public road,  
15 street, or highway; are carried out with reasonable care so as  
16 to protect any utility facilities placed in the right-of-way  
17 by permit; are carried out within the limits of any original  
18 excavation on the traveled way, shoulder, or drainage ditches  
19 of a public road, street, or highway; and, if involving the  
20 replacement of existing structures, including traffic control  
21 devices, replace such structures in their approximate previous  
22 locations and at their approximate previous depth. Excavate or  
23 excavation does not include routine railroad maintenance  
24 activities conducted within the track structure and its  
25 adjacent right-of-way, provided the activities are performed  
26 by railroad employees or railroad contractors and are carried  
27 out with reasonable care so as to protect any underground

1 facilities placed in the railroad right-of-way by agreement  
2 with the railroad. Nothing in this chapter shall modify or  
3 abrogate any contractual provision entered into between any  
4 railroad and any other party owning or operating an  
5 underground facility or underground utility lines within the  
6 railroad's right-of-way.

7 ~~"(9)~~ (11) EXCAVATOR. Any person who engages in  
8 excavation.

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

11 ~~"(10)~~ (13) IMPLIED EASEMENT. Any unwritten easement  
12 or right-of-way on private property required to provide  
13 utility or other services by means of underground facilities  
14 on property of the owner requesting such service.

15 ~~"(11)~~ (14) MARK or MARKING. The use of stakes, flags,  
16 paint, buoys, or clearly identifiable materials placed on the  
17 surface of the ground or water to show the approximate  
18 location of underground facilities.

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

26 ~~"(13)~~ (16) MEMBER. A person who participates in the  
27 "One-Call Notification System" to receive services and is in

1 good standing with the "One-Call Notification System" in  
2 accordance with the guidelines set forth in the corporation's  
3 bylaws.

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

6 "(14)(18) NONINVASIVE METHOD OF EXCAVATION. A method  
7 of excavation that does not compromise the integrity of the  
8 underground facility. These methods include, but are not  
9 limited to, hand digging, pot holing, soft digging, vacuum  
10 excavation methods, or other methods approved by the operator.

11 "(15)(19) NOTIFICATION AREA. An area or territory  
12 which an operator designates as the area where the operator  
13 wishes to receive notifications for any excavation in that  
14 area. The notification area should encompass the underground  
15 distribution system or network of the operator.

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

25 "(17)(21) OPERATOR. Any person, governmental agency,  
26 or political subdivision, or its agents, who owns or operates  
27 a public or private underground facility which furnishes

1 services, information, or materials, or transports or  
2 transmits electric energy, light, water, steam, oil, gases,  
3 gas, mixture of gases, petroleum, petroleum products,  
4 hazardous or flammable liquids, toxic or corrosive fluids and  
5 gases, or items of like nature, and telecommunications, cable  
6 television, water, drainage, sewage, or other systems of like  
7 nature. The term operator does not apply to any entity listed  
8 above if all of the underground facilities owned and operated  
9 by the entity are for the sole use of the entity and are  
10 located solely on the entity's own property or on property  
11 over which the entity has rights of operation.

12 "~~(18)~~ (22) PERSON. An individual, joint venture,  
13 partnership, association, authority, cooperative, firm,  
14 corporation, governmental entity, or any subdivision or  
15 instrumentality of that entity and its employees, agents, or  
16 legal representatives.

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

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

24 "~~(19)~~ (25) ROUTINE ROADWAY MAINTENANCE. Maintenance  
25 work on a roadway that is not done pursuant to a contract  
26 awarded by a state or local government through a bid process  
27 for which plan drawings have been developed in advance or work

1 for which detailed and specific scheduling is not possible or  
2 feasible.

3 ~~"(20)~~ (26) TOLERANCE ZONE. The width of the  
4 underground facility plus 18 inches on either side of the  
5 outside edge of the underground facility on a horizontal  
6 plane.

7 ~~"(21)~~ (27) UNDERGROUND FACILITY. Any cable, pipeline,  
8 duct, wire, conduit, or other similar installation, installed  
9 underground or underwater, by which an operator transports or  
10 delivers materials, information, or services.

11 "(28) WILLFUL NONCOMPLIANCE. The intentional refusal  
12 or failure to perform, or comply with, a duty created or  
13 imposed by this chapter or by the rules promulgated pursuant  
14 to this chapter.

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

25 "(30) WORKING DAY HOURS. The time from 7:00 A.M. to  
26 5:00 P.M. local time on working days.

27 "§37-15-4.

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

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

26           "(c) The notice required by subsection (b) of this  
27 section must contain the name, address, and telephone number

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

17 "(d) Notification ~~to an operator or to a the~~  
18 "One-Call Notification System" ~~acting on behalf of the~~  
19 ~~operator~~ of an intent to excavate shall be valid for a period  
20 of ~~10~~ 20 working days from the proposed starting date given  
21 for excavation and the notice to demolish shall be valid for a  
22 period of ~~20~~ 30 working days from the starting date given.  
23 Each person responsible for excavation or demolition shall  
24 renew with the ~~underground facility operator or a~~ "One-Call  
25 Notification System" ~~acting on behalf of the operator~~ each  
26 notice of intent to excavate or demolish at least two working  
27 days, not counting the day of notification, prior to the

1 expiration date of the notice if the excavation or demolition  
2 has not been completed.

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

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

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

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

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

1 submitted the design or survey locate request and the company  
2 name of the project owner.

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

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

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

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

22 "§37-15-5.

23 "(a) (1) Operators who have underground facilities  
24 within this state ~~shall either provide an in-house program~~  
25 ~~which meets the operational requirements of receiving those~~  
26 ~~excavation or demolition notifications as set forth in~~  
27 ~~subsections (e) to (h), inclusive, of this section or shall~~

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

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

15 "(3) Operators with more than 25,000 customers or  
16 500 miles of facilities, who are not members, must join the  
17 "One-Call Notification System" within one year from the  
18 effective date of the act adding this subdivision.

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

23 "(5) Operators of electrical underground facilities  
24 who join the "One-Call Notification System" under the  
25 requirements of subdivision (a) (3) or (4) having less than  
26 five percent underground trench miles compared to the total  
27 miles of line, is not subject to the membership costs until

1 their underground trench miles exceed the trench mile  
2 exemption. These operators shall be required to report  
3 annually to the "One-Call Notification System" their  
4 percentage of underground trench miles by the end of each  
5 calendar year.

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

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

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

1 ~~failed to meet the operational requirements for receiving~~  
2 ~~excavation and demolition notifications as required.~~

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

26           "(c) Subject to subsections (a) and (b), there shall  
27 be a statewide "One-Call Notification System" in accordance

1 with this chapter to provide notice of all excavation or  
2 demolition near underground facilities.

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

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

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

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

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

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

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

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

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

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

25           "~~(k)~~(l) All members of the "One-Call Notification  
26 System" who have changes, additions, or new installations of  
27 buried facilities within the boundaries of the State of

1 Alabama shall notify the "One-Call Notification System" of  
2 changes in the information required in subdivision (1) of  
3 subsection ~~(i)~~(j), within 30 days of the completion of such  
4 change, addition, or new installation.

5 "§37-15-6.

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

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

20 "(3) A member operator that states that it does not  
21 have accurate information concerning the exact location of its  
22 underground facilities is exempt from the requirements under  
23 Section 37-15-6, but shall provide the best available  
24 information to the person excavating in order to comply with  
25 the requirements of this section. A person excavating is not  
26 liable for any damage to an underground facility under the  
27 exemption in this subdivision if the excavation or demolition

1 is performed with reasonable care as noted in Section 37-15-8  
2 and the excavator uses detection equipment or other acceptable  
3 means to determine the location of the underground facilities.

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

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

18 "(c) The color code designation referenced in this  
19 section shall not be used by any operator or person to mark  
20 the boundary or location of any excavation or demolition area.  
21 If the excavator elects to mark the proposed excavation or  
22 demolition site, the boundary or location shall be identified  
23 using white as the identifying color or with natural color  
24 wood stakes. White flags or white stakes may have a thin  
25 stripe, one inch or less of the designated color code, to  
26 indicate the excavator's proposed type of facility, if  
27 applicable.

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

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

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

13           "§37-15-9.

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

24           "(b) In addition to subsection (a), each person  
25 responsible for any excavation or demolition shall immediately  
26 report to the operator or the ~~one-call notification center~~  
27 "One-Call Notification System" operating on behalf of the

1 underground facility owner and appropriate law enforcement  
2 agencies and fire departments any damage to an underground  
3 facility that results in escaping flammable, corrosive,  
4 explosive, or toxic liquids or gas and shall take reasonable  
5 actions necessary to protect persons or property and to  
6 minimize safety hazards until those law enforcement agencies  
7 and fire departments and the operator arrive at the  
8 underground facility.

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

21 "§37-15-10.

22 ~~"(a) Any person who violates any provision of this~~  
23 ~~chapter shall be subject to a civil penalty not to exceed~~  
24 ~~\$10,000 for each such violation.~~

25 ~~"(b) An action under this section shall be~~  
26 ~~instigated by any person making a complaint in writing,~~

1 ~~verified by oath, that the person has reason to believe that a~~  
2 ~~violation under this chapter has occurred.~~

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

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

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

16 "(2) For a second or subsequent violation within a  
17 12-month period, the violator shall complete a course of  
18 training concerning compliance with this chapter or pay a  
19 civil penalty in an amount not to exceed one thousand dollars  
20 (\$1000) per incident, or both.

21 "(3) For a third or subsequent violation within a  
22 12-month period, the violator shall complete a course of  
23 training concerning compliance with this chapter and pay a  
24 civil penalty in an amount not to exceed three thousand  
25 dollars (\$3,000) per incident.

26 "(4) Notwithstanding this subsection, if any  
27 violation was the result of gross negligence or willful

1 noncompliance, the violator shall be required to complete a  
2 course of training concerning compliance with this chapter and  
3 pay a civil penalty in an amount not to exceed ten thousand  
4 dollars (\$10,000) per incident.

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

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

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

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

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

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

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

24           ~~"(h)(f)~~ This chapter does not affect any civil  
25 remedies for personal injury or property damage or criminal  
26 sanctions except as otherwise specifically provided for in  
27 this chapter.

1           "(g) Evidence of findings of fact, civil penalties,  
2 or any of the actions or proceedings pursuant to this chapter  
3 shall not be admissible in any other civil causes of actions  
4 related to the excavation or damage for which the penalty or  
5 fine was issued, however, these materials are discoverable in  
6 civil actions arising from the facts herein. This chapter  
7 shall not limit any person's right to pursue any additional  
8 civil remedy otherwise allowed by law.

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

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

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

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

26           §37-15-10.1

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

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

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

24 (1) Alabama Attorney General's Office.

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

27 (3) Alabama Department of Transportation.

- 1 (4) Alabama county engineers.
- 2 (5) Cable television industry.
- 3 (6) Electric utility industry.
- 4 (7) Municipal utility operator industry.
- 5 (8) Natural gas distribution industry.
- 6 (9) One-Call Notification Center.
- 7 (10) Professional excavator industry.
- 8 (11) Professional road builder industry.
- 9 (12) Professional land surveyor industry.
- 10 (13) Telecommunications industry.
- 11 (14) Transmission pipeline industry.
- 12 (15) Utility facility locating industry.
- 13 (16) Water utility industry.
- 14 (17) Wastewater industry.

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

1 safety, the Alabama Department of Transportation, and the  
2 "One-Call Notification Center".

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

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

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

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

22 (1) Adopt rules to conduct the affairs of the  
23 authority.

24 (2) Make and enter into contracts.

25 (3) Enter into an interagency agreement with the  
26 Attorney General's office to serve as legal counsel. The  
27 Attorney General shall be compensated at a rate not to exceed

1 the normal hourly rate authorized by the Governor for legal  
2 services contracts. The authority shall also reimburse the  
3 Attorney General for any expenses incurred in providing legal  
4 representation.

5 (4) Oversee the development of or contract for the  
6 development and administration of the designated training  
7 program.

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

12 ~~(i) The members of the board shall be immune,~~  
13 ~~individually and jointly, from civil liability for any act or~~  
14 ~~omission done or made in the performance of their duties while~~  
15 ~~serving as members of the board, but only in absence of~~  
16 ~~willful misconduct. (i) No member of the board, individually~~  
17 ~~or jointly, shall be civilly liable for acts within the scope~~  
18 ~~of his or her duties as a board member which are made in good~~  
19 ~~faith and are absent unreasonable, wanton, willful,~~  
20 ~~intentional conduct or a violation of federal law.~~

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

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

1           (1) Board members shall not participate in any  
2 enforcement action decisions pertaining to the entity they  
3 represent.

4           (m) The authority shall be governed by the Alabama  
5 Administrative Procedure Act.

6           §37-15-10.2.

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

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

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

23           (d) The administrator, acting on behalf of the  
24 authority, shall submit the complaint and documentation to the  
25 executive committee.

1           (e) The authority executive committee shall 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 shall 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 all of the following:

25           (1) Repeal the initial penalty provisions cited for  
26 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          (1) 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.

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

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

11                   Section 4. This act shall become effective January  
12 1, 2020, following its passage and approval by the Governor,  
13 or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on Transportation and Energy..... 18-APR-19

Read for the second time and placed on the calen-  
dar 2 amendments..... 25-APR-19

Read for the third time and passed as amended .... 07-MAY-19

Yeas 31  
Nays 0

Patrick Harris,  
Secretary.