

1 SB315
2 202102-2
3 By Senators Roberts, Smitherman, Coleman-Madison and Waggoner
4 RFD: Transportation and Energy
5 First Read: 18-APR-19

1 SB315

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4 ENROLLED, An Act,

5 Relating to underground utilities; to amend Sections
6 37-15-2, 37-15-4, 37-15-4.1, 37-15-5, 37-15-6, 37-15-9, and
7 37-15-10, Code of Alabama 1975, relating to the "One-Call
8 Notification System," to further provide for the notification
9 required; to specify when the premarking of sites where
10 excavation and demolition should occur; to require certain
11 operators of underground facilities to join the system; to
12 require the system to submit an annual report of operations
13 and financial review to the Public Service Commission; to
14 revise penalties for violations; to provide for the deposit of
15 penalties into certain funds; to provided limited immunity
16 after notification under certain conditions; to add Sections
17 37-15-10.1 and 37-15-10.2, to the Code of Alabama 1975, to
18 create the Underground Damage Prevention Authority to, with
19 administrative support from the Public Service Commission,
20 enforce the requirements of the notification and penalty
21 provisions and to review the adequacy of the enforcement
22 process.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

4 "§37-15-2.

5 "As used in this chapter the following words have
6 the following meanings:

7 "(1) APPROXIMATE LOCATION OF UNDERGROUND FACILITIES.
8 Information about an operator's underground facilities which
9 is provided to a person by an operator and must be accurate to
10 within 18 inches measured horizontally from the outside edge
11 of each side of such operator's facility, or a strip of land
12 18 inches either side of the operator's field mark or the
13 marked width of the facility plus 18 inches on each side of
14 the marked width of the facility.

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

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

19 "~~(2)~~ (4) BLASTING. The use of an explosive device for
20 the excavation of earth, rock, or other material or the
21 demolition of a structure.

22 "~~(3)~~ (5) CONTRACT LOCATOR. Any person contracted with
23 an operator specifically to determine and mark the approximate
24 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

1 imminent danger to life, health, property, or the environment
2 or required for the repair or restoration of operator service
3 that is required to be performed before the notification and
4 response procedures required in Section 37-15-4 and 37-15-6
5 may be fully utilized.

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

1 activities conducted within the track structure and its
2 adjacent right-of-way, provided the activities are performed
3 by railroad employees or railroad contractors and are carried
4 out with reasonable care so as to protect any underground
5 facilities placed in the railroad right-of-way by agreement
6 with the railroad. Nothing in this chapter shall modify or
7 abrogate any contractual provision entered into between any
8 railroad and any other party owning or operating an
9 underground facility or underground utility lines within the
10 railroad's right-of-way.

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

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

15 "~~(10)~~(13) IMPLIED EASEMENT. Any unwritten easement
16 or right-of-way on private property required to provide
17 utility or other services by means of underground facilities
18 on property of the owner requesting such service.

19 "~~(11)~~(14) MARK or MARKING. The use of stakes, flags,
20 paint, buoys, or clearly identifiable materials placed on the
21 surface of the ground or water to show the approximate
22 location of underground facilities.

23 "~~(12)~~(15) MECHANIZED EQUIPMENT. Equipment powered or
24 energized by any motor, engine, hydraulic, or pneumatic device
25 and is used for excavation or demolition work including, but

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

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

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

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

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

22 "(16) (20) "ONE-CALL NOTIFICATION SYSTEM". A
23 non-profit corporation, a public corporation, or a
24 governmental entity which will provide a statewide
25 notification service, for the purpose of receiving statewide

1 telephonic toll-free or electronic notification of any planned
2 excavation or demolition activities by excavators or other
3 persons as set forth in Section 37-15-4 and distributing the
4 required excavation or demolition information to its affected
5 member operators as set forth in Section 37-15-5.

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

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

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

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

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

14 "~~(20)~~ (26) TOLERANCE ZONE. The width of the
15 underground facility plus 18 inches on either side of the
16 outside edge of the underground facility on a horizontal
17 plane.

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

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

1 "~~(22)~~ (29) WORKING DAY. A 24-hour period commencing
2 the beginning of the start of the next working day from the
3 time of receipt of the notification, excluding Saturday,
4 Sunday, and the following nine holidays: New Year's Day,
5 Memorial Day (observed), Independence Day, Labor Day, Veterans
6 Day, Thanksgiving Day, the Friday following Thanksgiving Day,
7 Christmas Eve, and Christmas Day. When any of these holidays
8 occur on a Saturday, it will be observed on the preceding
9 Friday and when any of these holidays occur on a Sunday, it
10 will be observed on the following Monday.

11 "(30) WORKING DAY HOURS. The time from 7:00 A.M. to
12 5:00 P.M. local time on working days.

13 "§37-15-4.

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

23 "(b) Before commencing any excavation or demolition
24 operation prohibited by Section 37-15-3, each person
25 responsible for such excavation or demolition shall give

1 ~~written,~~ telephonic, or electronic notice of such intent to
2 excavate or demolish to the underground facility operator or ~~a~~
3 the "One-Call Notification System" acting on behalf of the
4 operator at least two but not more than 10 working days prior
5 to the start of the proposed excavation, not including the day
6 of notification, and at least two working days but not more
7 than 30 calendar days, not including the day of notification,
8 prior to the start of demolition or any blasting operations
9 for either excavation or demolition. ~~Written notice shall be~~
10 ~~by registered mail, return receipt requested, and shall be~~
11 ~~valid only upon receipt of the written information required by~~
12 ~~this chapter by the operator or by a "One-Call Notification~~
13 ~~System" acting on behalf of the operator.~~

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

1 identifying color on stakes, flags, paint, buoys, or clearly
2 identifiable materials placed on the surface of the ground or
3 water prior to the notification to the "One-Call Notification
4 System". However, premarking is not required when the
5 premarking could reasonably interfere with traffic or
6 pedestrian control.

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

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

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

4 "(g) Compliance with the notice requirements of this
5 section is not required by persons or operators excavating on
6 their own property or easement when no other persons or
7 operators have underground facilities on the property or
8 easement.

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

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

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

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

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

6 "§37-15-4.1.

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

23 "(b) Within five working days after a design or
24 survey locate request has been submitted to the "One-Call
25 Notification System" ~~or to an operator that provides an~~

1 ~~in-house program that meets the operational requirements as~~
2 ~~described in subsection (a) of Section 37-15-5~~ for a proposed
3 project, the operator shall respond by one of the following
4 methods:

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

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

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

17 "§37-15-5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 ~~"(f)~~ (g) An adequate record of notifications shall be
23 maintained by the underground facility operator or the
24 "One-Call Notification System" in order to document timely
25 compliance with this chapter. These records shall be retained

1 for a period of not less than three years and shall be made
2 available at a reasonable cost upon proper and adequate
3 advance request.

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

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

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

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

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

24 ~~"(j)(k)~~ The "One-Call Notification System" shall
25 promptly transmit the information received from the excavator,

1 as set forth in Section 37-15-4, to its appropriate member
2 operators.

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

10 "§37-15-6.

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

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

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

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

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

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

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

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

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

23 "§37-15-9.

24 "(a) Each person responsible for any excavation or
25 demolition operation that results in any damage to an

1 underground facility, immediately upon discovery of such
2 damage, shall notify the operator of such facility of the
3 location of the damage or the ~~one-call notification center~~
4 "One-Call Notification System" operating on behalf of the
5 underground facility owner and shall allow the operator
6 reasonable time to accomplish any necessary repairs before
7 completing the excavation or demolition in the immediate area
8 of the damage to such facility.

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

21 "(c) If an event damages any pipe, cable, or its
22 protective covering, or other underground facility, or there
23 is a significant near miss that could have resulted in damage,
24 the operator receiving the notice shall file a report with the
25 "One-Call Notification System". Reports must be submitted

1 annually to the system, no later than March 31 for the prior
2 calendar year, or more frequently at the option and sole
3 discretion of the operator. Each report must describe, if
4 known, the cause, nature, and location of the damage. The
5 "One-Call Notification System" shall establish and maintain a
6 process to facilitate submission of reports by operators or
7 persons excavating.

8 "§37-15-10.

9 ~~"(a) Any person who violates any provision of this~~
10 ~~chapter shall be subject to a civil penalty not to exceed~~
11 ~~\$10,000 for each such violation.~~

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

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

22 "(a) Any person who violates this chapter, or the
23 rules adopted under this chapter, shall be subject to a civil
24 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 and
19 pay a civil penalty in an amount 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

1 venture, department, or subdivision of the state or other
2 governmental entity or any other body or organization, it may
3 be required that at least one manager or supervisor thereof
4 attend any training.

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

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

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

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

22 ~~"(g) Any person who violates any provision of this~~
23 ~~chapter shall not be subject to payment of the assessed~~
24 ~~penalty in subsection (a) if he or she has been assessed a~~
25 ~~civil penalty for this same violation under the provisions of~~

1 ~~the Federal Natural Gas Pipeline Safety Act of 1968 or the~~
2 ~~Federal Hazardous Liquid Pipeline Safety Act of 1979 or any~~
3 ~~amendment to these acts.~~

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

16 ~~"(h)(f)~~ This chapter does not affect any civil
17 remedies for personal injury or property damage or criminal
18 sanctions except as otherwise specifically provided for in
19 this chapter.

20 "(g) Evidence of findings of fact, civil penalties,
21 or any of the actions or proceedings pursuant to this chapter
22 shall not be admissible in any other civil causes of actions
23 related to the excavation or damage for which the penalty or
24 fine was issued, however, these materials are discoverable in
25 civil actions arising from the facts herein. This chapter

1 shall not limit any person's right to pursue any additional
2 civil remedy otherwise allowed by law.

3 ~~"(i)~~ (h) No civil penalty may be imposed pursuant to
4 this section against an excavator or operator who violates any
5 provision of this chapter if the violation occurred while the
6 excavator or operator was responding to an emergency.

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

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

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

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

20 §37-15-10.1

21 (a) There is created an Underground Damage
22 Prevention Authority for the purpose of enforcing this chapter
23 and for reviewing penalty provisions and the adequacy of the
24 enforcement process. It is the intent of the Legislature that

1 the authority and its enforcement activities not be funded by
2 appropriations from the state budget.

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

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

20 (1) Alabama Attorney General's Office.

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

23 (3) Alabama Department of Transportation.

24 (4) Alabama county engineers.

25 (5) Cable television industry.

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

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

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

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

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

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

24 (j) The members of the board shall serve without
25 compensation.

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

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

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

9 §37-15-10.2.

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

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

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

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 shall 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 shall 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.

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

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

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

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

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

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

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

1 for those meetings of the authority in which the initial
2 determination of violation and recommended fine is discussed
3 and determined.

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

7 (n) The authority shall be governed by the Alabama
8 Administrative Procedure Act.

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

17 Section 4. This act shall become effective January
18 1, 2020, following its passage and approval by the Governor,
19 or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB315

Senate 07-MAY-19

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Passed: 23-MAY-19

By: Senator Roberts