

1 SB58
2 208543-2
3 By Senator Roberts
4 RFD: Transportation and Energy
5 First Read: 02-FEB-21
6 PFD: 01/20/2021

1 SB58

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4 ENROLLED, An Act,

5 Relating to underground utilities; to amend Section
6 37-15-10, Code of Alabama 1975, as amended by Act 2019-407 of
7 the 2019 Regular Session, and Section 2 of Act 2019-407 of the
8 2019 Regular Session, now appearing as Section 37-15-10.1,
9 Code of Alabama 1975, to establish the Underground Damage
10 Prevention Fund in the State Treasury and to further provide
11 for the terms of members of the authority; and to provide for
12 the deposit of monies into that fund.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Section 37-15-10, Code of Alabama 1975,
15 as amended by Act 2019-407 of the 2019 Regular Session, and
16 Section 2 of Act 2019-407 of the 2019 Regular Session, now
17 appearing as Section 37-15-10.1, Code of Alabama 1975, are
18 amended to read as follows:

19 "§37-15-10.

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

23 "(1) For a first violation, the violator shall
24 complete a course of training concerning compliance with this

1 chapter or pay a civil penalty in an amount not to exceed five
2 hundred dollars (\$500) per incident, or both.

3 "(2) For a second or subsequent violation within a
4 12-month period, the violator shall complete a course of
5 training concerning compliance with this chapter or pay a
6 civil penalty in an amount not to exceed one thousand dollars
7 (\$1000) per incident, or both.

8 "(3) For a third or subsequent violation within a
9 12-month period, the violator shall complete a course of
10 training concerning compliance with this chapter and pay a
11 civil penalty in an amount not to exceed three thousand
12 dollars (\$3,000) per incident.

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

19 "(b) Any person who is required to complete a course
20 of training under this section shall be responsible for paying
21 for the cost of the training. For those instances in which
22 training is ordered, if the person is a firm, partnership,
23 association, corporation, limited liability company, joint
24 venture, department, or subdivision of the state or other
25 governmental entity or any other body or organization, it may

1 be required that at least one manager or supervisor thereof
2 attend any training.

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

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

14 "(e) The Underground Damage Prevention Fund is
15 created within the State Treasury, to be administered by the
16 authority. All penalties recovered in ~~such~~ actions brought by
17 the authority under this chapter shall be paid into the
18 Underground Damage Prevention Fund. Any monies remaining in
19 the Underground Damage Prevention Fund at the end of the
20 fiscal year shall not revert to the General Fund, but shall
21 remain in the Underground Damage Prevention Fund for the
22 exclusive use of the authority. The expenditures of monies in
23 the Underground Damage Prevention Fund shall be at the
24 discretion of the authority board to carry out its duties
25 under this chapter. Excess funds shall be used to support

1 public awareness programs and training and education of
2 excavators, operators, locators, and other persons to reduce
3 the number and severity of violations of this chapter.

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

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

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

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

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

6 "§37-15-10.1.

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

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

24 "(c) The authority shall be composed of a board of
25 underground facility protection stakeholders. The board shall

1 be composed of one subject matter expert representative from
2 each of the following stakeholders and all board appointments
3 shall be made by March 31, 2020, as follows:

4 "(1) Alabama Attorney General's Office.

5 "(2) Alabama Public Service Commission - gas
6 pipeline safety.

7 "(3) Alabama Department of Transportation.

8 "(4) Alabama county engineers.

9 "(5) Cable television industry.

10 "(6) Electric utility industry.

11 "(7) Municipal utility operator industry.

12 "(8) Natural gas distribution industry.

13 "(9) One-Call Notification System.

14 "(10) Professional excavator industry.

15 "(11) Professional road builder industry.

16 "(12) Professional land surveyor industry.

17 "(13) Telecommunications industry.

18 "(14) Transmission pipeline industry.

19 "(15) Utility facility locating industry.

20 "(16) Water utility industry.

21 "(17) Wastewater industry.

22 "(d) The Governor shall appoint the stakeholder
23 representatives selected from qualified persons as provided in
24 subsection (c) with the exception of the stakeholder
25 representatives from the Alabama Attorney General's office,

1 the Alabama Public Service Commission - gas pipeline safety,
2 and the Alabama Department of Transportation, who shall be
3 appointed by the head of the respective agency. The initial
4 authority board shall be appointed with staggered terms as
5 determined by the Governor. After the initial appointment,
6 each stakeholder representative shall serve a ~~three-year~~ term
7 of three years or until a replacement is appointed, whichever
8 occurs later. No person shall be appointed for more than two
9 full consecutive terms with the exception of the stakeholder
10 representatives from the Alabama Attorney General's office,
11 the Alabama Public Service Commission - gas pipeline safety,
12 the Alabama Department of Transportation, and the One-Call
13 Notification System.

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

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

23 "(g) Members of the authority board and executive
24 committee may participate in a meeting of the board or
25 committee by means of telephone conference, video conference,

1 or similar communications equipment by means of which all
2 persons participating in the meeting may hear each other at
3 the same time and members of the public may simultaneously
4 listen to the meeting. Participation by such means shall
5 constitute presence in person at a meeting for all purposes.

6 "(h) The board may do all of the following:

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

9 "(2) Make and enter into contracts.

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

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

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

24 "(i) No member of the board, individually or
25 jointly, shall be civilly liable for acts within the scope of

1 his or her duties as a board member which are made in good
2 faith and are absent unreasonable, wanton, willful,
3 intentional conduct or a violation of federal law.

4 "(j) The members of the board shall serve without
5 compensation.

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

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

12 Section 2. Any monies received by the Underground
13 Damage Prevention Authority prior to the effective date of
14 this act which were directed to be paid into the Underground
15 Damage Prevention Fund shall be deposited into the fund.

16 Section 3. This act shall become effective
17 immediately following its passage and approval by the
18 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB58
Senate 23-FEB-21
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 13-APR-21

By: Senator Roberts