

1 SB148  
2 157851-6  
3 By Senators Allen and Marsh  
4 RFD: Commerce, Transportation, and Utilities  
5 First Read: 14-JAN-14

1 SB148

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3  
4 ENROLLED, An Act,

5 To amend Sections 37-15-2, 37-15-4, 37-15-5,  
6 37-15-6, 37-15-7, 37-15-8, 37-15-9, and 37-15-10 of the Code  
7 of Alabama 1975, relating to the "One-Call Notification  
8 System," established for the purpose of receiving  
9 notifications by persons conducting excavations or demolitions  
10 on or near certain property where underground facilities may  
11 be located, to further provide for definitions and for  
12 operational provisions of the underground damage prevention  
13 process; to provide for notification of underground facility  
14 operators of design and survey locate requests; to provide  
15 certain civil and criminal penalties; and in connection  
16 therewith would have as its purpose or effect the requirement  
17 of a new or increased expenditure of local funds within the  
18 meaning of Amendment 621 of the Constitution of Alabama of  
19 1901, now appearing as Section 111.05 of the Official  
20 Recompilation of the Constitution of Alabama of 1901, as  
21 amended.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 37-15-2, 37-15-4, 37-15-5,  
24 37-15-6, 37-15-7, 37-15-8, 37-15-9, and 37-15-10 of the Code  
25 of Alabama 1975, are amended to read as follows:

1           "§37-15-2.

2           "As used in this chapter ~~unless the context clearly~~  
3 ~~implies a different meaning~~ the following words have the  
4 following meanings:

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

15           "~~(b) "Blasting"~~ means the (2) BLASTING. The use of  
16 an explosive device for the excavation of earth, rock, or  
17 other material or the demolition of a structure.

18           "(3) CONTRACT LOCATOR. Any person contracted with an  
19 operator specifically to determine and mark the approximate  
20 location of the operator's utility lines that exist within the  
21 area specified by a notice served on the "One-Call  
22 Notification System."

23           "~~(c) "Damage"~~ includes, (4) DAMAGE. Includes, but is  
24 not limited to, the substantial weakening of structural or  
25 lateral support of an underground facility, penetration or

1 destruction of any underground facility's protective coating,  
2 housing, or other protective device, and the severance  
3 (partial or complete) of any underground facility, but does  
4 not apply to any operator's abandoned underground facility.

5 ~~"(d) "Demolition" means any~~ (5) DEMOLITION. Any  
6 operation by which a structure or mass of material is wrecked,  
7 razed, rendered, moved, or removed by means of any tools,  
8 equipment, or explosives.

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

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

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

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

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

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

1 plows, or other equipment used for plowing-in or pulling-in  
2 cable or pipe.

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

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

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

18 ~~"(j) "One-Call Notification System" means a~~ (16)  
19 "ONE-CALL NOTIFICATION SYSTEM". A non-profit corporation, a  
20 public corporation, or a governmental entity which will  
21 provide a statewide notification service, for the purpose of  
22 receiving statewide telephonic toll-free or electronic  
23 notification of any planned excavation or demolition  
24 activities by excavators or other persons as set forth in  
25 Section 37-15-4 and distributing the required excavation or

1 demolition information to its affected member operators as set  
2 forth in Section 37-15-5.

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

18 ~~"(l) "Person" means an (18) PERSON. An individual,~~  
19 joint venture, partnership, association, authority,  
20 cooperative, firm, corporation, governmental entity, or any  
21 subdivision or instrumentality of that entity and ~~their~~ its  
22 employees, agents, or legal representatives; ~~however, the term~~  
23 ~~"person" does not include and no provision of this chapter~~  
24 ~~shall apply to the State Department of Transportation or their~~  
25 ~~officials, employees, agents, or representatives while in the~~



1 ~~performance of their respective duties. Provided further, that~~  
2 ~~the term does not include, and no provision of this chapter~~  
3 ~~shall apply to, any county or its officials, employees,~~  
4 ~~agents, or representatives while in the performance of their~~  
5 ~~duties. Provided further, that such term does not include and~~  
6 ~~no provision of this chapter shall apply to any railroad which~~  
7 ~~operates, owns, or permits underground facilities under land~~  
8 ~~which the railroad owns or operates or to any excavating done~~  
9 ~~by a railroad when the excavating is done entirely on land~~  
10 ~~which the railroad owns or on which the railroad operates or,~~  
11 ~~in the event of emergency, on adjacent land.~~

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

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

20 ~~"(m) "Underground Facility" means any~~ (21)  
21 UNDERGROUND FACILITY. Any cable, pipeline, duct, wire,  
22 conduit, or other similar installation, installed underground  
23 or underwater, by which an operator transports or delivers  
24 materials, information, or services.

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

11           "§37-15-4.

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

21           "(b) Before commencing any excavation or demolition  
22 operation prohibited by Section 37-15-3, each person  
23 responsible for such excavation or demolition shall give  
24 written, telephonic, or electronic notice of such intent to  
25 excavate or demolish to the underground facility operator or a

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

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

1           "(d) Notification to an operator or to a "One-Call  
2 Notification System" acting on behalf of the operator of an  
3 intent to excavate shall be valid for a period of ~~fourteen~~  
4 ~~calendar~~ 10 working days from the proposed starting date given  
5 for excavation and the notice to demolish shall be valid for a  
6 period of ~~thirty-calendar~~ 20 working days from the starting  
7 date given. Each person responsible for excavation or  
8 demolition shall renew with the underground facility operator  
9 or a "One-Call Notification System" acting on behalf of the  
10 operator each notice of intent to excavate or demolish at  
11 least two working days prior to the expiration date of the  
12 notice if the excavation or demolition has not been completed.

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

19           "(f) Compliance with the notice requirements of this  
20 section is not required ~~of any governmental entity doing~~  
21 ~~maintenance work within dedicated state, county, or city road~~  
22 ~~rights-of-way; or of persons plowing less than 12 inches in~~  
23 ~~depth for agricultural purposes; or of municipal or public~~  
24 ~~corporations operating water and sewer boards, which produce,~~  
25 ~~treat, and sell water and provide fire protection in~~

1 ~~accordance with Insurance Service Office fire protection~~  
2 ~~standards while doing work on any easements, rights-of-way, or~~  
3 ~~other property owned by said board or to which said board had~~  
4 ~~access; or of any rural water system.~~

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

10 ~~"(h) Compliance with the notice requirements of this~~  
11 ~~section is not required by operators when excavating at a~~  
12 ~~depth of 18 inches or less for the purpose of extending their~~  
13 ~~underground facility from an easement or right-of-way on to~~  
14 ~~the property of the person to be served by these extended~~  
15 ~~facilities; if in the process of the extension, no mechanized~~  
16 ~~equipment is used in any excavation within the easement or~~  
17 ~~right-of-way.~~

18 "(h) Except for those persons submitting design or  
19 survey locate requests, no person, including an operator,  
20 shall request markings of a site through the "One-Call  
21 Notification System" or an in-house program that meets the  
22 operational requirements as described in subsection (a) of  
23 Section 37-15-5, unless excavation is scheduled to commence.  
24 In addition, no person shall make repeated requests for  
25 re-marking, unless the repeated request is required for

1 excavating to continue or due to circumstances not reasonably  
2 within the control of the person.

3 "§37-15-5.

4 "(a) Operators who have underground facilities  
5 within this state shall either provide an in-house program  
6 which meets the operational requirements of receiving those  
7 excavation or demolition notifications as set forth in  
8 subsections ~~(d)~~(e) to ~~(g)~~(h), inclusive, of this section or  
9 shall participate in a "One-Call Notification System";  
10 provided, however, that any operator who has less than ten  
11 thousand customers or subscribers and who provides an in-house  
12 program which meets all of the operational requirements of  
13 receiving those excavation or demolition notifications as set  
14 forth in this chapter shall not be required to provide the  
15 services of the in-house program on working days except during  
16 the hours that the operator's offices are open to the public  
17 and may, but shall not be required to, voice record the  
18 notification calls received.

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

1 underground facilities, shall be responsible for any damages  
2 to its underground facilities by the excavator if the operator  
3 failed to meet the operational requirements for receiving  
4 excavation and demolition notifications as required.

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

1           "(c) The "One-Call Notification System" shall be  
2 incorporated or operated as a non-profit corporation and  
3 governed by a board of directors.

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

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

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



1           ~~"(f)(g)~~ The services of ~~any the~~ "One-Call  
2 Notification System" ~~acting on behalf of operators~~ should be  
3 provided on working days at least between the hours of 8 A.M.  
4 and 5 P.M.

5           ~~"(g)(h)~~ A "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           ~~"(h)(i)~~ All ~~operators who are~~ members of ~~a the~~  
10 "One-Call Notification System" shall provide the "One-Call  
11 Notification System" with the following information:

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

20           ~~"(2) The Townships, Ranges and Sections in each~~  
21 ~~county in which they have underground facilities or for other~~  
22 ~~reasons wish to receive notification of proposed excavations,~~  
23 ~~demolition or blasting.~~

1           "~~(3) Total trench or right-of-way miles of~~  
2 ~~underground facilities within the boundaries of the State of~~  
3 ~~Alabama updated at least once a year.~~

4           "~~(4)~~ (2) The name, address, and telephone number of a  
5 person to receive emergency notifications.

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

10           "~~(j)~~ (k) All ~~operators who are~~ members of a the  
11 "One-Call Notification System" ~~and who~~ have changes,  
12 additions, or new installations of buried facilities within  
13 the boundaries of the State of Alabama shall notify the  
14 "One-Call Notification System" of changes in the information  
15 required in ~~subdivisions~~ subdivision ~~(1), (2), and (4)~~ of  
16 subsection ~~(h)~~ (j) of this section, within 30 days of the  
17 completion of such change, addition, or new installation.

18           "§37-15-6.

19           "(a) (1) Each operator served with notice in  
20 accordance with Section 37-15-4, with underground facilities  
21 in the area, shall ~~locate~~ mark or cause to be marked or  
22 otherwise provide the approximate location of the operator's  
23 underground facilities by marking in a manner as prescribed  
24 herein prior to the proposed start of excavation, demolition,  
25 or blasting. If any underground facilities become damaged due

1 to an operator furnishing inaccurate information as to the  
2 approximate location of the facilities, through no fault of  
3 the operator, then the civil liabilities imposed by this  
4 chapter do not apply.

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

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

18 "(b) When marking the approximate location of under-  
19 ground facilities, the operator shall follow the color code  
20 designation ~~described herein, unless otherwise provided for by~~  
21 ~~specific administrative rule or regulation promulgated pursu-~~  
22 ~~ant to this chapter, namely: in accordance with the latest~~  
23 ~~edition of the American Public Works Association Uniform Color~~  
24 ~~Code.~~

1	<del>"UTILITY OR TYPE OF FACILITY</del>	
2		<del>GROUP IDENTIFYING COLOR</del>
3	<del>"Electric Power Distribution and Transmission</del>	<del>Safety Red</del>
4		
5	<del>"Municipal Electric</del>	<del>Safety Red</del>
6	<del>"Gas Distribution and Transmission</del>	<del>High Visibility Safety Yellow</del>
7		
8	<del>"Oil Distribution and Transmission</del>	<del>High Visibility Safety Yellow</del>
9		
10	<del>"Hazardous Materials, Product Lines and Steam Lines</del>	<del>High Visibility Safety Yellow</del>
11		
12		
13	<del>"Telephone and Telegraph</del>	<del>Safety Alert Orange</del>
14	<del>"Police and Fire Communications</del>	<del>Safety Alert Orange</del>
15		
16	<del>"Cable Television</del>	<del>Safety Alert Orange</del>
17	<del>"Water and Irrigation</del>	<del>Safety Precaution Blue</del>
18	<del>"Slurry Lines</del>	<del>Safety Precaution Blue</del>
19	<del>"Sewer and Drain Lines</del>	<del>Safety Green</del>

20                   ~~"(c) Marks or markings shall indicate the name,~~  
21 ~~initials, or logo of the owner and operator of the underground~~

1 ~~facility and the width of the underground facility if it is~~  
2 ~~greater than two inches.~~

3 ~~"(d)(c) The group identifying colors designated~~  
4 ~~color code designation referenced in subsection (b) of Section~~  
5 ~~37-15-6 this section~~ shall not be used by any operator or  
6 person to mark the boundary or location of any excavation or  
7 demolition area. If the excavator elects to mark the proposed  
8 excavation or demolition site, the boundary or location shall  
9 be identified using white as the identifying color or with  
10 natural color wood stakes. White flags or white stakes may  
11 have a thin stripe, one inch or less of the ~~above group~~  
12 ~~identifying color~~ designated color code, to indicate the  
13 excavator's proposed type of facility, if applicable.

14 "(d) Any contract locator acting on behalf of an  
15 operator is subject to this section.

16 "§37-15-7.

17 "(a) Compliance with the notice requirements of  
18 Section 37-15-4~~7~~ is not required of persons responsible for  
19 emergency excavation or demolition ~~to eliminate an imminent~~  
20 ~~danger to life, health, property, or public services;~~  
21 provided, however, that such person gives, before commencing  
22 or as soon as practicable thereafter, notice of the emergency  
23 excavation or demolition to each operator having underground  
24 facilities located in the area or to the "One-Call  
25 Notification System" acting on behalf of the operator.

1       However, every person who shall engage in such emergency  
2       excavation or demolition shall take all necessary and  
3       reasonable precautions to avoid or minimize damage to existing  
4       underground facilities.

5               ~~"(b) An imminent danger to life, health, property,~~  
6       ~~or public services exists whenever there is a substantial~~  
7       ~~likelihood that injury, loss of life, health, or public~~  
8       ~~services, or substantial property loss could result before the~~  
9       ~~notification and response procedures required in Sections~~  
10       ~~37-15-4 and 37-15-6 can be fully complied with An excavator~~  
11       ~~misrepresenting an emergency excavation or demolition is~~  
12       ~~subject to the civil penalties imposed pursuant to Section~~  
13       ~~37-15-10.~~

14               "§37-15-8.

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

21               ~~"(a) Conduct excavation or demolition activities so~~  
22       ~~as to avoid damage to or minimize interference with existing~~  
23       ~~underground facilities in and near the excavation or~~  
24       ~~demolition area;~~

1           ~~"(b) Employ detection equipment or non-invasive~~  
2 ~~methods to determine the precise location of an operator's~~  
3 ~~underground facilities when excavation is to be done within~~  
4 ~~the area marked as the approximate location of the operator's~~  
5 ~~underground facilities and maintain a clearance between any~~  
6 ~~underground facility and the cutting edge or point of any~~  
7 ~~mechanized equipment, taking into account the known limit of~~  
8 ~~control of such cutting edge or point, as may be reasonably~~  
9 ~~necessary to avoid damage to such facility; and~~

10           ~~"(c) Provide such support for underground facilities~~  
11 ~~in and near the excavation or demolition area, including~~  
12 ~~during any backfilling operations, as may be reasonably~~  
13 ~~necessary for the protection of such facilities.~~

14           "(1) Determine the location of any marked  
15 underground facility utilizing noninvasive methods of  
16 excavation. For parallel type excavations, the existing  
17 facility shall be exposed at intervals as often as necessary  
18 to avoid damages.

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

22           "(3) Provide such support for underground facilities  
23 in and near a construction area, including backfill  
24 operations, as may be reasonably required by the operator for  
25 the protection of the utilities.

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

5           "§37-15-9.

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

16          "~~(b) Each person responsible for any excavation or~~  
17          ~~demolition operation that results in damage to an underground~~  
18          ~~facility permitting the escape of any flammable, toxic, or~~  
19          ~~corrosive gas or liquid shall, immediately upon discovery of~~  
20          ~~such damage, notify the operator and take other action as may~~  
21          ~~be reasonably necessary, to protect persons and property and~~  
22          ~~to minimize the hazards, until arrival of the operator's~~  
23          ~~personnel, police or fire department. In addition to~~  
24          ~~subsection (a), each person responsible for any excavation or~~  
25          ~~demolition shall immediately report to the operator or the~~



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

10 "§37-15-10.

11 "(a) Any person who violates any provision of this  
12 chapter shall be subject to a civil penalty not to exceed  
13 \$10,000 for each such violation.

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

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

24 "(d) The amount of such penalties shall be dependant  
25 upon the degree of non-compliance, the amount of injury or

1 damage caused, the degree of threat to public safety, the  
2 degree of public inconvenience caused as a result of the  
3 violation, and the number of past violations. Mitigation of  
4 the penalty may be shown by "good faith" efforts of the  
5 violator to have complied with the provisions of this chapter.

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

8 "(f) In any successful action or petition brought  
9 under this section, the court shall award the office of the  
10 Attorney General or the office of the district attorney  
11 reasonable attorney's fees and costs.

12 "~~(f)~~ (g) Any person who violates any provision of  
13 this chapter shall not be subject to payment of the assessed  
14 penalty in subsection (a) of Section 37-15-10 if ~~they have~~ he  
15 or she has been assessed a civil penalty for this same  
16 violation under the provisions of the Federal Natural Gas  
17 Pipeline Safety Act of 1968 or the Federal Hazardous Liquid  
18 Pipeline Safety Act of 1979 or any amendment to these acts.

19 "~~(g)~~ (h) This chapter does not affect any civil  
20 remedies for personal injury or property damage or criminal  
21 sanctions except as otherwise specifically provided for in  
22 this chapter.

23 "(i) No civil penalty may be imposed pursuant to  
24 this section against an excavator or operator who violates any  
25 provision of this chapter if the violation occurred while the

1 excavator or operator was responding to an emergency.  
2 Notwithstanding the foregoing, the civil penalty shall be  
3 imposed if the violation was willful or malicious.

4 "(j) This section shall not be construed to limit  
5 any provision of law granting governmental immunity to state  
6 or local entities or to impose any liability or duty of care  
7 not otherwise imposed by law upon any state or local entity.

8 "(k) Any person who willfully or maliciously removes  
9 or otherwise destroys a marking used by an operator to mark  
10 the location of any underground facility, except in the  
11 ordinary course of excavation, is guilty of a Class C  
12 misdemeanor."

13 Section 2. A new Section 37-15-4.1 is added to the  
14 Code of Alabama 1975, to read as follows:

15 §37-15-4.1.

16 (a) Any person may submit a design or survey locate  
17 request to the "One-Call Notification System or to an operator  
18 that provides an in-house program that meets the operational  
19 requirements as described in subsection (a) of Section  
20 37-15-5." The design or survey locate request shall describe  
21 the tract or parcel of land for which the design or survey  
22 locate request has been submitted with sufficient  
23 particularity as defined by policies developed and  
24 promulgated by the "One-Call Notification System" or to an  
25 operator that provides an in-house program that meets the

1 operational requirements as described in subsection (a) of  
2 Section 37-15-5 to enable the facility operator to ascertain  
3 the precise tract or parcel of land involved and state the  
4 name, address, telephone number, and facsimile number of the  
5 person who has submitted the design or survey locate request  
6 and the company name of the project owner.

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

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

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

22 (3) Allowing the person submitting the design or  
23 survey locate request or any other authorized person to  
24 inspect or copy the drawings or other records for all  
25 underground facilities within the proposed area of excavation.

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

9           Section 4. This act shall become effective January  
10 1, 2015, following its passage and approval by the Governor,  
11 or its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB148

Senate 20-FEB-14

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

Patrick Harris  
Secretary

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House of Representatives  
Passed: 18-MAR-14

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By: Senator Allen