

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

1 157851-5:n:02/20/2014:ALLEN/vr

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8 SYNOPSIS: Under existing law, a person conducting
9 excavation on property, or demolition near
10 property, where a public easement exists, or where
11 an underground facility operator such as a utility
12 has an easement, is required to notify the
13 underground facility operator so that the
14 underground facility operator can mark the location
15 of its underground facilities. To facilitate
16 notification, the law has authorized the formation
17 of a "One-Call Notification System" to receive and
18 process notices. Participation in the "One-Call
19 Notification System" is optional if an underground
20 facility that meets certain criteria elections to
21 conduct its own in-house program to receive
22 notification.

23 This bill would provide for definitions and
24 for the operational provisions of the underground
25 damage prevention process to be clarified and
26 updated with current technologies. The bill
27 provides for clarification of emergency excavation

1 and penalty provisions for misuse of the emergency
2 provision. The bill provides for guidelines to
3 prevent damage when excavating near underground
4 facilities. The bill also requires any damages to
5 an underground facility that could result in
6 dangerous conditions to be reported to both the
7 facility owner and emergency officials as required
8 in federal regulations. The bill also provides for
9 additional civil penalties for violations of this
10 act and would make it a Class C misdemeanor to
11 intentionally destroy markers of underground
12 facilities. The bill would provide for
13 notifications to underground facility operators
14 regarding design or survey locate requests.

15 Amendment 621 of the Constitution of Alabama
16 of 1901, now appearing as Section 111.05 of the
17 Official Recompilation of the Constitution of
18 Alabama of 1901, as amended, prohibits a general
19 law whose purpose or effect would be to require a
20 new or increased expenditure of local funds from
21 becoming effective with regard to a local
22 governmental entity without enactment by a 2/3 vote
23 unless: it comes within one of a number of
24 specified exceptions; it is approved by the
25 affected entity; or the Legislature appropriates
26 funds, or provides a local source of revenue, to
27 the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the amendment. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the amendment.

A BILL

TO BE ENTITLED

AN ACT

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

1 Recompilation of the Constitution of Alabama of 1901, as
2 amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

7 "§37-15-2.

8 "As used in this chapter ~~unless the context clearly~~
9 ~~implies a different meaning~~ the following words have the
10 following meanings:

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

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

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

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

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

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

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

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

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

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

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

8 "(f) "Excavator" means any (9) EXCAVATOR. Any person
9 who engages in excavation.

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

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

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

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

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

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

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

26 "(k) "Operator" means any (17) OPERATOR. Any person,
27 governmental agency, or political subdivision, or their its

1 agents, who owns or operates a public or private underground
2 facility which furnishes services, information, or materials,
3 or transports or transmits electric energy, light, water,
4 steam, oil, gases, gas, mixture of gases, petroleum, petroleum
5 products, hazardous or flammable liquids, toxic or corrosive
6 fluids and gases, or items of like nature, and
7 telecommunications, cable television, water, drainage, sewage,
8 and ~~traffic control systems~~ or other systems of like nature.

9 The term operator does not apply to any entity listed above if
10 all of the underground facilities owned and operated by the
11 entity are for the sole use of the entity and are located
12 solely on the entity's own property or on property over which
13 the entity has rights of operation.

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

1 operates, owns, or permits underground facilities under land
2 which the railroad owns or operates or to any excavating done
3 by a railroad when the excavating is done entirely on land
4 which the railroad owns or on which the railroad operates or,
5 in the event of emergency, on adjacent land.

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

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

14 "(m) "Underground Facility" means any (21)
15 UNDERGROUND FACILITY. Any cable, pipeline, duct, wire,
16 conduit, or other similar installation, installed underground
17 or underwater, by which an operator transports or delivers
18 materials, information, or services.

19 "(n) "Working Day" means a (22) WORKING DAY. A
20 24-hour period commencing from the time of receipt of the
21 notification, excluding Saturday, Sunday, and the following
22 nine holidays: New Year's Day, Memorial Day (observed),
23 Independence Day, Labor Day, Veterans Day, Thanksgiving Day,
24 the Friday following Thanksgiving Day, Christmas Eve, and
25 Christmas Day. When any of these holidays occur on a Saturday,
26 it will be observed on the preceding Friday and when any of

1 these holidays occur on a Sunday, it will be observed on the
2 following Monday.

3 "§37-15-4.

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

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

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

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

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

"(f) Compliance with the notice requirements of this section is not required of any governmental entity doing maintenance work within dedicated state, county, or city road rights of way; or of persons plowing less than 12 inches in depth for agricultural purposes; or of municipal or public corporations operating water and sewer boards, which produce, treat, and sell water and provide fire protection in accordance with Insurance Service Office fire protection standards while doing work on any easements, rights of way, or other property owned by said board or to which said board had access; or of any rural water system.

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

"(h) Compliance with the notice requirements of this section is not required by operators when excavating at a depth of 18 inches or less for the purpose of extending their underground facility from an easement or right-of-way on to the property of the person to be served by these extended

1 facilities; if in the process of the extension, no mechanized
2 equipment is used in any excavation within the easement or
3 right of way.

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

14 "§37-15-5.

15 "(a) Operators who have underground facilities
16 within this state shall either provide an in-house program
17 which meets the operational requirements of receiving those
18 excavation or demolition notifications as set forth in
19 subsections ~~(d)~~(e) to ~~(g)~~(h), inclusive, of this section or
20 shall participate in a "One-Call Notification System";
21 provided, however, that any operator who has less than ten
22 thousand customers or subscribers and who provides an in-house
23 program which meets all of the operational requirements of
24 receiving those excavation or demolition notifications as set
25 forth in this chapter shall not be required to provide the
26 services of the in-house program on working days except during
27 the hours that the operator's offices are open to the public

1 and may, but shall not be required to, voice record the
2 notification calls received.

3 "(2) Any operator, who elects not to participate in
4 the "One-Call Notification System" and instead elects to
5 provide an in-house notification system for receiving
6 excavation and demolition notifications as provided in
7 subdivision (1) and whose facilities are damaged by an
8 excavator who has contacted the "One-Call Notification System"
9 and the operator's in-house program concerning the location of
10 underground facilities, shall be responsible for any damages
11 to its underground facilities by the excavator if the operator
12 failed to meet the operational requirements for receiving
13 excavation and demolition notifications as required.

14 "(b) Between April 18, 1994 and January 1, 1995, or
15 any time thereafter any non-profit corporation, public
16 corporation, or governmental entity desiring to become a
17 "One-Call Notification System" shall apply to the Alabama
18 Public Service Commission for a certificate of public
19 convenience and necessity, verifying under oath that applicant
20 meets the requirements of this chapter. After a public hearing
21 on the application, if the Alabama Public Service Commission
22 deems that applicant meets the requirements of this chapter,
23 and if it is found that applicant is fit, willing, and able to
24 properly perform the services proposed and that the proposed
25 service is or will be required by the present or future public
26 convenience or necessity, then in such event the Alabama
27 Public Service Commission shall issue a certificate of public

1 convenience and necessity authorizing applicant to commence
2 its operation as a "One-Call Notification System". The Alabama
3 Public Service Commission shall further have the authority,
4 and is required, to revoke a certificate if the non-profit
5 corporation, public corporation, or governmental entity ceases
6 to meet the requirements as set forth in this chapter.

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

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

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

24 "(e) (f) An adequate record of notifications shall be
25 maintained by the underground facility operator or a the
26 "One-Call Notification System" in order to document timely
27 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 "(f) (g) The services of ~~any~~ the "One-Call
5 Notification System" ~~acting on behalf of operators~~ should be
6 provided on working days at least between the hours of 8 A.M.
7 and 5 P.M.

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

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

23 "(2) ~~The Townships, Ranges and Sections in each~~
24 ~~county in which they have underground facilities or for other~~
25 ~~reasons wish to receive notification of proposed excavations,~~
26 ~~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
26 to an operator furnishing inaccurate information as to the
27 approximate location of the facilities, through no fault of

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

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

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

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

23 "UTILITY OR TYPE OF FA-

24 CILITY

 GROUP IDENTIFYING COLOR

25 "Electric Power Distri- Safety Red

~~"UTILITY OR TYPE OF FA-~~

CILITY

GROUP IDENTIFYING COLOR

1	bution and Transmission	
2	"Municipal Electric	Safety Red
3	"Gas Distribution and	High Visibility Safety
4	Transmission	Yellow
5	"Oil Distribution and	High Visibility Safety
6	Transmission	Yellow
7	"Hazardous Materials,	High Visibility Safety
8	Product Lines and Steam	Yellow
9	Lines	
10	"Telephone and Telegraph	Safety Alert Orange
11	"Police and Fire Commu-	Safety Alert Orange
12	nications	
13	"Cable Television	Safety Alert Orange
14	"Water and Irrigation	Safety Precaution Blue
15	"Slurry Lines	Safety Precaution Blue
16	"Sewer and Drain Lines	Safety Green
17	"(c) Marks or markings shall indicate the name,	
18	initials, or logo of the owner and operator of the underground	
19	facility and the width of the underground facility if it is	
20	greater than two inches.	

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

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

14 "§37-15-7.

15 "(a) Compliance with the notice requirements of
16 Section 37-15-4, is not required of persons responsible for
17 emergency excavation or demolition to eliminate an imminent
18 danger to life, health, property, or public services;
19 provided, however, that such person gives, before commencing
20 or as soon as practicable thereafter, notice of the emergency
21 excavation or demolition to each operator having underground
22 facilities located in the area or to the "One-Call
23 Notification System" acting on behalf of the operator.
24 However, every person who shall engage in such emergency
25 excavation or demolition shall take all necessary and
26 reasonable precautions to avoid or minimize damage to existing
27 underground facilities.

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

"§37-15-8.

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

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

"(b) Employ detection equipment or non-invasive methods to determine the precise location of an operator's underground facilities when excavation is to be done within the area marked as the approximate location of the operator's underground facilities and maintain a clearance between any underground facility and the cutting edge or point of any mechanized equipment, taking into account the known limit of

1 control of such cutting edge or point, as may be reasonably
2 necessary to avoid damage to such facility; and

3 "(c) Provide such support for underground facilities
4 in and near the excavation or demolition area, including
5 during any backfilling operations, as may be reasonably
6 necessary for the protection of such facilities.

7 "(1) Determine the location of any marked
8 underground facility utilizing noninvasive methods of
9 excavation. For parallel type excavations, the existing
10 facility shall be exposed at intervals as often as necessary
11 to avoid damages.

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

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

19 "(4) Protect and preserve the markings of
20 approximate locations of underground facilities until those
21 markings are no longer required for proper and safe excavation
22 or demolition.

23 "§37-15-9.

24 "(a) Each person responsible for any excavation or
25 demolition operation that results in any damage to an
26 underground facility shall, immediately upon discovery of such
27 damage, shall notify the operator of such facility of the

1 location of the damage or the one-call notification center
2 operating on behalf of the underground facility owner and
3 shall allow the operator reasonable time to accomplish any
4 necessary repairs before completing the excavation or
5 demolition in the immediate area of the damage to such
6 facility.

7 " (b) Each person responsible for any excavation or
8 demolition operation that results in damage to an underground
9 facility permitting the escape of any flammable, toxic, or
10 corrosive gas or liquid shall, immediately upon discovery of
11 such damage, notify the operator and take other action as may
12 be reasonably necessary, to protect persons and property and
13 to minimize the hazards, until arrival of the operator's
14 personnel, police or fire department. In addition to
15 subsection (a), each person responsible for any excavation or
16 demolition shall immediately report to the operator or the
17 one-call notification center operating on behalf of the
18 underground facility owner and appropriate law enforcement
19 agencies and fire departments any damage to an underground
20 facility that results in escaping flammable, corrosive,
21 explosive, or toxic liquids or gas and shall take reasonable
22 actions necessary to protect persons or property and to
23 minimize safety hazards until those law enforcement agencies
24 and fire departments and the operator arrive at the
25 underground facility.

26 "§37-15-10.

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

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

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

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

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

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

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

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

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

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

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

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

§37-15-4.1.

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

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

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

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

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

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

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