

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

SYNOPSIS: Under existing law, a person conducting excavation on property, or demolition near property, where a public easement exists, or where an underground facility operator such as a utility has an easement, is required to notify the underground facility operator so that the underground facility operator can mark the location of its underground facilities.

This bill would provide for definitions and for the operational provisions of the underground damage prevention process to be clarified and updated with current technologies. The bill provides for clarification of emergency excavation and penalty provisions subject for misuse of the emergency provision. The bill provides for guidelines to prevent damage when excavating near underground facilities. The bill also requires any damages to an underground facility that could result in dangerous conditions to report the damage to both the facility owner and emergency officials as required in federal regulations. The bill also provides for additional civil penalty provisions

1 for violations of this act and would make it a
2 Class C misdemeanor to intentionally destroy
3 markers of underground facilities. The bill would
4 provide for notifications to underground facility
5 operators regarding design or survey locate
6 requests.

7
8 A BILL

9 TO BE ENTITLED

10 AN ACT

11
12 To amend Section 37-15-2 and Sections 37-15-4 to 37-
13 15-10, inclusive, Code of Alabama 1975, relating to the "One-
14 Call Notification System," established for the purpose of
15 receiving notifications by persons conducting excavations or
16 demolitions on or near certain property where underground
17 facilities may be located, to further provide for definitions
18 and for operational provisions of the underground damage
19 prevention process; to provide for notification of underground
20 facility operators of design and survey locate requests; to
21 provide certain civil and criminal penalties.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Section 37-15-2 and Sections 37-15-4
24 through 37-15-10, inclusive, Code of Alabama 1975, are amended
25 to read as follows:

26 "§37-15-2.

27 "As used in this chapter unless the context clearly
28 implies a different meaning:

1 "(a) "Approximate Location" of underground
2 facilities means information about an operator's underground
3 facilities which is provided to a person by an operator and
4 must be accurate to within 18 inches measured horizontally
5 from the outside edge of each side of such operator's
6 facility, or a strip of land eighteen inches either side of
7 the operator's field mark or the marked width of the facility
8 plus eighteen inches on each side of the marked width of the
9 facility.

10 "(b) "Blasting" means the use of an explosive device
11 for the excavation of earth, rock, or other material or the
12 demolition of a structure.

13 "(c) CONTRACT LOCATOR. Any person contracted by an
14 operator specifically to determine and mark the approximate
15 location of the operator's utility lines that may exist within
16 the area specified by a notice served on the "One-Call
17 Notification System."

18 "~~(e)~~(d) "Damage" includes but is not limited to,
19 the substantial weakening of structural or lateral support of
20 an underground facility, penetration or destruction of any
21 underground facility's protective coating, housing or other
22 protective device, and the severance (partial or complete) of
23 any underground facility, but does not apply to any operator's
24 abandoned underground facility.

25 "~~(d)~~ (e) "Demolition" means any operation by which a
26 structure or mass of material is wrecked, razed, rendered,
27 moved, or removed by means of any tools, equipment, or
28 explosives.

1 "(f) DESIGN OR SURVEY LOCATE REQUEST. Any
2 communication to the "One-Call Notification System"
3 specifically to request existing underground facilities to be
4 located for the purpose of bidding, predesign, or advance
5 planning purposes. A design locate request may not be used for
6 excavation purposes and an excavation locate request may not
7 be used for design or survey purposes.

8 "(g) EMERGENCY EXCAVATION or DEMOLITION. Any
9 excavation or demolition that is required to eliminate
10 imminent danger to life, health, property, environment, or the
11 repair or restoration of service when the excavation is
12 required to be performed before the notification and response
13 procedures required in Sections 37-15-4 and 37-15-6 may be
14 fully complied with.

15 "(e)(h) "Excavate" or "Excavation" means any
16 operation for the purpose of the movement or removal of earth,
17 rock, or other material by mechanized equipment or explosive
18 device and includes, but is not limited to, augering,
19 backfilling, blasting, boring, digging, ditching, drilling,
20 grading, pile-driving, plowing-in, pulling-in, ripping,
21 scraping, sub-soiling, trenching and tunneling. "Excavate" or
22 "Excavation" shall not include routine roadway maintenance
23 activities carried out by road maintenance or railroad
24 employees or contractors, provided that such activities occur
25 entirely within the right of way of a public road, street,
26 railroad, or highway of the state; are carried out with
27 reasonable care so as to protect any utility facilities placed
28 in the right of way by permit; are carried out within the
29 limits of any original excavation on the traveled way,

1 shoulders or drainage ditches of a public road, street,
2 railroad or highway, and do not exceed 18 inches in depth
3 below the grade existing prior to such activities; and, if
4 involving the replacement of existing structures, replace such
5 structures in their previous locations and at their previous
6 depth. "Excavate" or "Excavation" shall not include routine
7 railroad maintenance activities conducted within the track
8 structure and its adjacent right of way, provided this work is
9 performed by railroad employees or railroad contractors and is
10 carried out with reasonable care so as to protect any
11 underground facilities placed in the railroad right-of-way by
12 agreement with the railroad. Nothing in this chapter shall
13 modify or abrogate any contractual provision entered into
14 between any railroad and any other party owning or operating
15 an underground facility or underground utility lines within
16 the railroad's right-of-way.

17 "~~(f)~~(i) "Excavator" means any person who engages in
18 excavation.

19 "~~(g)~~(j) "Implied Easement" means any unwritten
20 easement or right-of-way on private property required to
21 provide utility or other services by means of underground
22 facilities on property of the owner requesting such service.

23 "~~(h)~~(k) "Mark" or "Marking" means the use of stakes,
24 flags, paint, buoys, or clearly identifiable materials placed
25 on the surface of the ground or water to show the approximate
26 location of underground facilities.

27 "~~(i)~~(l) "Mechanized Equipment" means equipment
28 powered or energized by any motor, engine, or hydraulic or
29 pneumatic device and is used for excavation or demolition work

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

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

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

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

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

1 "~~(k)~~(q) "Operator" means any person, governmental
2 agency, or political subdivision, or ~~their~~ its agents, who
3 owns or operates a public or private underground facility
4 which furnishes services, information, or materials, or
5 transports or transmits electric energy, light, water, steam,
6 oil, gases, gas, mixture of gases, petroleum, petroleum
7 products, hazardous or flammable liquids, toxic or corrosive
8 fluids and gases, or items of like nature and
9 telecommunications, cable television, water, drainage, sewage
10 and traffic control systems, or other systems of like nature.

11 "~~(l)~~(r) "Person" means an individual, joint venture,
12 partnership, association, authority, cooperative, firm,
13 corporation, governmental entity, or any subdivision or
14 instrumentality of that entity and ~~their~~ its employees,
15 agents, or legal representatives; ~~however, the term "person"~~
16 ~~does not include and no provision of this chapter shall apply~~
17 ~~to the State Department of Transportation or their~~ its
18 ~~officials, employees, agents, or representatives while in the~~
19 ~~performance of their respective duties. Provided further, that~~
20 ~~the term does not include, and no provision of this chapter~~
21 ~~shall apply to, any county or its officials, employees,~~
22 ~~agents, or representatives while in the performance of their~~
23 ~~duties. Provided further, that such term does not include and~~
24 ~~no provision of this chapter shall apply to any railroad which~~
25 ~~operates, owns, or permits underground facilities under land~~
26 ~~which the railroad owns or operates or to any excavating done~~
27 ~~by a railroad when said excavating is done entirely on land~~
28 ~~which the railroad owns or on which the railroad operates or,~~
29 ~~in the event of emergency, on adjacent land.~~

1 "(s) TOLERANCE ZONE. The width of the underground
2 facility plus 18 inches on either side of the outside edge of
3 the underground facility on a horizontal plane.

4 "~~(m)~~(t) "Underground Facility" means any cable,
5 pipeline, duct, wire, conduit, or other similar installation,
6 installed underground or underwater, by which an operator
7 transports or delivers materials, information, or services.

8 "~~(n)~~(u) "Working Day" means a 24 hour period
9 commencing from the time of receipt of the notification,
10 excluding Saturday, Sunday, and the following nine holidays:
11 New Year's Day, Memorial Day (observed), Independence Day,
12 Labor Day, Veterans Day, Thanksgiving Day, the Friday
13 following Thanksgiving Day, Christmas Eve, and Christmas Day.
14 When any of these holidays occur on a Saturday, it will be
15 observed on the preceding Friday and when any of these
16 holidays occur on a Sunday, it will be observed on the
17 following Monday.

18 "§37-15-3.

19 "No person shall excavate in a street, highway,
20 public easement, private easement, or implied easement of an
21 operator, or on property of an operator, or conduct blasting
22 operations, or perform demolition activities in the near
23 proximity of an operator's underground facility without first
24 having ascertained, in the manner prescribed in Sections 37-
25 15-4 and 37-15-6, the location of all underground facilities
26 in the area of the proposed excavation, blasting, or
27 demolition; however, violation of this section shall not
28 subject any person to the civil penalties of Section 37-15-10
29 provided the easement or underground facility is located on

1 property owned by such person and such person did not have
2 knowledge of the existence or presence of such easement or
3 underground facility.

4 "§37-15-4.

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

14 "(b) Before commencing any excavation or demolition
15 operation prohibited by Section 37-15-3, each person
16 responsible for such excavation or demolition shall give
17 written, telephonic, or electronic notice of such intent to
18 excavate or demolish to the underground facility operator or a
19 "One-Call Notification System" acting on behalf of the
20 operator at least two but not more than ~~ten~~ 10 working days
21 prior to the start of the proposed excavation and at least ~~two~~
22 2 working days but not more than ~~thirty~~ 30 calendar days prior
23 to the start of demolition or any blasting operations for
24 either excavation or demolition. Written notice shall be by
25 registered mail, return receipt requested, and shall be valid
26 only upon receipt of the written information required by this
27 chapter by the operator or by a the "One-Call Notification
28 System" acting on behalf of the operator.

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

15 "(d) Notification to an operator or to a "One-Call
16 Notification System" acting on behalf of the operator of an
17 intent to excavate shall be valid for a period of ~~fourteen~~
18 ~~calendar~~ 10 working days from the proposed starting date given
19 for excavation and the notice to demolish shall be valid for a
20 period of ~~thirty calendar~~ 20 working days from the starting
21 date given. Each person responsible for excavation or
22 demolition shall renew with the underground facility operator
23 or a "One-Call Notification System" acting on behalf of the
24 operator each notice of intent to excavate or demolish at
25 least ~~two~~ 2 working days prior to the expiration date of the
26 notice if the excavation or demolition has not been completed.

27 "(e) When engaged in an extensive and contiguous
28 construction, demolition or excavation activity, working
29 agreements may be established to accomplish the intent and

1 purpose of this chapter between operators, public agencies,
2 and contractors after initial compliance with the notification
3 provisions of this chapter.

4 "(f) Compliance with the notice requirements of this
5 section is not required ~~of any governmental entity doing~~
6 ~~maintenance work within dedicated state, county, or city road~~
7 ~~rights of way; or of persons plowing less than 12 inches in~~
8 ~~depth for agricultural purposes²); or of municipal or public~~
9 ~~corporations operating water and sewer boards, which produce,~~
10 ~~treat, and sell water and provide fire protection in~~
11 ~~accordance with Insurance Service Office fire protection~~
12 ~~standards while doing work on any easements, rights of way or~~
13 ~~other property owned by said board or to which said board had~~
14 ~~access; or of any rural water system.~~

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

20 "~~(h) Compliance with the notice requirements of this~~
21 ~~section is not required by operators when excavating at a~~
22 ~~depth of 18 inches or less for the purpose of extending their~~
23 ~~underground facility from an easement or right of way on to~~
24 ~~the property of the person to be served by these extended~~
25 ~~facilities; if in the process of the extension, no mechanized~~
26 ~~equipment is used in any excavation within the easement or~~
27 ~~right of way.~~

28 "(h) Except for those persons submitting design or
29 survey locate requests, no person, including operators, shall

1 request markings of a site through the "One-Call Notification
2 System" unless excavation is scheduled to commence. In
3 addition, no person shall make repeated requests for
4 remarking, unless the repeated request is required for
5 excavating to continue or due to circumstances not reasonably
6 within the control of the person.

7 "§37-15-5.

8 "(a)(1) Operators who have underground facilities
9 within this state ~~shall either provide an in house program~~
10 ~~which meets the operational requirements of receiving those~~
11 ~~excavation or demolition notifications as set forth in~~
12 ~~subsections (d) (f) to (g) (j), inclusive, of this section or~~
13 ~~shall participate in a the "One-Call Notification System."~~;
14 ~~provided, however, that any operator who has less than ten~~
15 ~~thousand customers or subscribers and who provides an in house~~
16 ~~program which meets all of the operational requirements of~~
17 ~~receiving those excavation or demolition notifications as set~~
18 ~~forth in this chapter shall not be required to provide the~~
19 ~~services of the in house program on working days except during~~
20 ~~the hours that the operator's offices are open to the public~~
21 ~~and may, but shall not be required to, voice record the~~
22 ~~notification calls received.~~

23 "(2) Any operator, who elects not to participate in
24 the "One-Call Notification System" ~~and instead elects to~~
25 ~~provide an in house notification system for receiving~~
26 ~~excavation and demolition notifications as provided in~~
27 ~~subdivision (1) and whose facilities are damaged by an~~
28 ~~excavator who has contacted the "One-Call Notification System"~~
29 ~~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~~ due to the
3 operator's failure to meet the operational requirements for
4 receiving excavation and demolition notifications as required.

5 "(b) Between April 18, 1994, and January 1, 1995, or
6 any time ~~thereafter~~ until January 1, 2015, any non-profit
7 corporation, public corporation, or governmental entity
8 desiring to become a "One-Call Notification System" shall
9 apply to the Alabama Public Service Commission for a
10 certificate of public convenience and necessity, verifying
11 under oath that said applicant meets the requirements of this
12 chapter. After a public hearing on said application, if the
13 Alabama Public Service Commission deems that said applicant
14 meets the requirements of this chapter, and if it is found
15 that said applicant is fit, willing and able to properly
16 perform the services proposed and that the proposed service is
17 or will be required by the present or future public
18 convenience or necessity, then in such event the Alabama
19 Public Service Commission shall issue a certificate of public
20 convenience and necessity authorizing said applicant to
21 commence its operation as a "One-Call Notification System".
22 The Alabama Public Service Commission shall further have the
23 authority, and is required, to revoke said certificate if said
24 non-profit corporation, public corporation, or governmental
25 entity ceases to meet the requirements as set forth in this
26 chapter.

27 "(c) Subject to subsection (a), there shall be a
28 single, statewide "One-Call Notification System" in accordance

1 with this chapter to provide notice of all excavations or
2 demolitions near underground facilities.

3 "(d) The "One-Call Notification System" shall be
4 incorporated or operated as a nonprofit corporation and
5 governed by a board of directors.

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

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

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

26 ~~"(f)(h)~~ The services of ~~any~~ the "One-Call
27 Notification System" ~~acting on behalf of operators~~ should be
28 provided on working days at least between the hours of 8 ~~A.M.~~
29 a.m. and 5 ~~P.M.~~ p.m.

1 "~~(g)~~(i) A "One-Call Notification System" should
2 voice record the notification telephone calls and after hours
3 calls should at least reach a voice recording which explains
4 emergency procedures.

5 "~~(h)~~(j) All ~~operators who are~~ members of a the "One-
6 Call Notification System" shall provide the "One-Call
7 Notification System" with the following information:

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

16 "~~(2) The Townships, Ranges and Sections in each~~
17 ~~county in which they have underground facilities or for other~~
18 ~~reasons wish to receive notification of proposed excavations,~~
19 ~~demolition, or blasting;~~

20 "~~(3) Total trench or right of way miles of~~
21 ~~underground facilities within the boundaries of the State of~~
22 ~~Alabama updated at least once a year;~~

23 "~~(4)~~(2) The name, address, and telephone number of a
24 person to receive emergency notifications.

25 "~~(i)~~A(k) The "One-Call Notification System" shall
26 promptly transmit the information received from the excavator,
27 as set forth in Section 37-15-4, to its appropriate member
28 operators.

1 "~~(j)~~(1) All operators who are members of a the "One-
2 Call Notification System" ~~and~~ who have changes, additions, or
3 new installations of buried facilities within the boundaries
4 of the State of Alabama shall notify the "One-Call
5 Notification System" of changes in the information required in
6 ~~subdivisions~~ subdivision (1), ~~(2), and (4)~~ of subsection ~~(h)~~
7 ~~of this section~~ (j), within 30 days of the completion of such
8 change, addition, or new installation.

9 "§37-15-6.

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

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

24 "(3) When an excavator encounters an unmarked
25 underground facility on an excavation site where notice of
26 intent to excavate has been made in accordance with the
27 provisions of Section 37-15-4, and attempts a follow-up or
28 second notice relative to revising the original notice to the
29 "One-Call Notification System" or the operator, all operators

1 thus notified must attempt to contact the excavator within
2 four hours and provide a ~~positive~~ response relative to any of
3 their known underground facilities, active or abandoned, at
4 the site of the excavation.

5 "(b) When marking the approximate location of
6 underground facilities, the operator shall follow the color
7 code designation ~~described herein, unless otherwise provided~~
8 ~~for by specific administrative rule or regulation promulgated~~
9 ~~pursuant to this chapter, namely:~~ in accordance with the
10 latest edition of the American Public Works Association
11 Uniform Color Code.

"UTILITY OR TYPE	GROUP IDENTIFYING
OF FACILITY	COLOR

"Electric Power	Safety Red
Distribution and	
Transmission	

"Municipal	Safety Red
Electric	

"Gas Distribution	High Visibility
and Transmission	Safety Yellow

"Oil Distribution	High Visibility
and Transmission	Safety Yellow

"Hazardous	High Visibility
Materials, Product	Safety Yellow
Lines and Steam	
Lines	

"Telephone and	Safety Alert
---------------------------	-------------------------

"UTILITY OR TYPE	GROUP IDENTIFYING
OF FACILITY	COLOR
Telegraph	Orange
"Police and Fire	Safety Alert
Communications	Orange
"Cable Television	Safety Alert
	Orange
"Water and	Safety Precaution
Irrigation	Blue
"Slurry Lines	Safety Precaution
	Blue
"Sewer and Drain	Safety Green
Lines	

1

2

~~"(c) Marks or markings shall indicate the name, initials or logo of the owner and operator of the underground facility and the width of the underground facility if it is greater than two inches.~~

6

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

14

1 identifying color, to indicate the excavator's proposed type
2 of facility, if applicable.

3 "(d) Any contract locator acting on behalf of an
4 operator shall be subject to this section.

5 "§37-15-7.

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

19 ~~"(b) An imminent danger to life, health, property,~~
20 ~~or public services exists whenever there is a substantial~~
21 ~~likelihood that injury, loss of life, health, or public~~
22 ~~services, or substantial property loss could result before the~~
23 ~~notification and response procedures required in Sections 37-~~
24 ~~15-4 and 37-15-6 can be fully complied with Any excavator~~
25 providing a misrepresentation of an emergency excavation,
26 demolition, or blasting may be subject to the civil penalties
27 imposed pursuant to Section 37-15-10.

28 "§37-15-8.

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

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

11 ~~"(b) Employ detection equipment or non-invasive~~
12 ~~methods to determine the precise location of an operator's~~
13 ~~underground facilities when excavation is to be done within~~
14 ~~the area marked as the approximate location of the operator's~~
15 ~~underground facilities and maintain a clearance between any~~
16 ~~underground facility and the cutting edge or point of any~~
17 ~~mechanized equipment, taking into account the known limit of~~
18 ~~control of such cutting edge or point, as may be reasonably~~
19 ~~necessary to avoid damage to such facility; and~~

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

24 "(1) Determine the location of any marked
25 underground facility utilizing noninvasive methods of
26 excavation. For parallel type excavations, the existing
27 facility shall be exposed at intervals as often as necessary
28 to avoid damages.

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

4 "(3) Provide such support for underground facilities
5 in and near the construction area, including backfill
6 operations, as may be reasonably required by the operator for
7 the protection of the utilities.

8 "(4) Protect and preserve the markings of
9 approximate locations of underground facilities until those
10 markings are no longer required for proper and safe
11 excavations.

12 "§37-15-9.

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

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

1 subsection (a), each person responsible for any excavation or
2 demolition operation that results in any damage to an
3 underground facility shall immediately report to the operator
4 or the "One Call Notification Center" operating on behalf the
5 underground facility owner, and appropriate law enforcement
6 agencies and fire departments any damage to an underground
7 facility that results in escaping flammable, corrosive,
8 explosive, or toxic liquids or gas and take reasonable actions
9 necessary to protect persons or property and to minimize
10 safety hazards until those law enforcement agencies and fire
11 departments and the operator arrive at the underground
12 facility.

13 "§37-15-10.

14 "(a) Any person who violates any provision of this
15 chapter shall be subject to a civil penalty not to exceed
16 \$10,000 for each such violation.

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

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

27 "(d) The amount of such penalties shall be dependant
28 upon the degree of non-compliance, the amount of injury or
29 damage caused, the degree of threat to public safety, the

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

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

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

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

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

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

27 "(j) Any person who willfully or maliciously removes
28 or otherwise destroys a marking used by an operator to mark
29 the location of any underground facility, except in the

1 ordinary course of excavation, is guilty of a Class C
2 misdemeanor."

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

5 §37-15-4.1.

6 (a) Any person may submit a design or survey locate
7 request to the "One-Call Notification System." The design or
8 survey locate request describes the tract or parcel of land
9 for which the design or survey locate request has been
10 submitted with sufficient particularity as defined by policies
11 developed and promulgated by the "One-Call Notification
12 System" to enable the facility operator to ascertain the
13 precise tract or parcel of land involved and state the name,
14 address, telephone number, and facsimile number of the person
15 who has submitted the design locate or survey request and the
16 company name of the project owner.

17 (b) Within 5 working days after a design or survey
18 locate request has been submitted to the "One-Call
19 Notification System" for a proposed project, the operator
20 shall respond by one of the following methods:

21 (1) Mark the approximate location of all underground
22 facilities in the area of proposed excavation.

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

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

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

13 Section 4. This act shall become effective January
14 1, 2015, following its passage and approval by the Governor,
15 or its otherwise becoming law.