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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. "Excavating"  
22                  shall not include routine roadway maintenance activities  
23                  carried out by road maintenance or railroad employees or  
24                  contractors, provided that such activities occur entirely  
25                  within the right of way of a public road, street, railroad, or  
26                  highway of the state; are carried out with reasonable care so  
27                  as to protect any utility facilities placed in the right of  
28                  way by permit; are carried out within the limits of any  
29                  original excavation on the traveled way, shoulders or drainage

1 ditches of a public road, street, railroad or highway, and do  
2 not exceed 18 inches in depth below the grade existing prior  
3 to such activities; and, if involving the replacement of  
4 existing structures, replace such structures in their previous  
5 locations and at their previous depth.

6 ~~"(f)~~ (i) "Excavator" means any person who engages in  
7 excavation.

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

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

16 ~~"(i)~~ (l) "Mechanized Equipment" means equipment  
17 powered or energized by any motor, engine, or hydraulic or  
18 pneumatic device and is used for excavation or demolition work  
19 including, but not limited to, tractors, trenchers,  
20 bulldozers, power shovels, augers, backhoes, scrapers, pile  
21 drivers, drills, cable and pipe plows, or other equipment used  
22 for plowing-in or pulling-in cable or pipe.

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

27 "(n) NONINVASIVE METHOD OF EXCAVATION. A method of  
28 excavation that does not compromise the integrity of the  
29 underground facility. These methods include, but are not

1 limited to, hand digging, pot holing, soft digging, vacuum  
2 excavation methods, or other methods with the approval of the  
3 operator.

4 "(o) NOTIFICATION AREA. An area or territory which  
5 an operator designates as the area where he or she wishes to  
6 receive notifications for any excavation in that area. The  
7 notification area should encompass the underground  
8 distribution system or network of the operator.

9 "~~(j)~~(p) "One-Call Notification System" means a non-  
10 profit corporation, a public corporation or a governmental  
11 entity which will provide a statewide notification service,  
12 for the purpose of receiving statewide telephonic toll-free or  
13 electronic notification of any planned excavation or  
14 demolition activities by excavators or other persons as set  
15 forth in Section 37-15-4 and distributing the required  
16 excavation or demolition information to its affected member  
17 operators as set forth in Section 37-15-5.

18 "~~(k)~~(q) "Operator" means any person, governmental  
19 agency, or political subdivision, or ~~their~~ its agents, who  
20 owns or operates a public or private underground facility  
21 which furnishes services, information, or materials, or  
22 transports or transmits electric energy, light, water, steam,  
23 oil, gases, gas, mixture of gases, petroleum, petroleum  
24 products, hazardous or flammable liquids, toxic or corrosive  
25 fluids and gases, or items of like nature and  
26 telecommunications, cable television, water, drainage, sewage  
27 and traffic control systems, or other systems of like nature.

28 "~~(l)~~(r) "Person" means an individual, joint venture,  
29 partnership, association, authority, cooperative, firm,

1 corporation, governmental entity, or any subdivision or  
2 instrumentality of that entity and ~~their~~ its employees,  
3 agents, or legal representatives; ~~however, the term "person"~~  
4 ~~does not include and no provision of this chapter shall apply~~  
5 ~~to the State Department of Transportation or their~~ its  
6 ~~officials, employees, agents, or representatives while in the~~  
7 ~~performance of their respective duties. Provided further, that~~  
8 ~~the term does not include, and no provision of this chapter~~  
9 ~~shall apply to, any county or its officials, employees,~~  
10 ~~agents, or representatives while in the performance of their~~  
11 ~~duties. Provided further, that such term does not include and~~  
12 ~~no provision of this chapter shall apply to any railroad which~~  
13 ~~operates, owns, or permits underground facilities under land~~  
14 ~~which the railroad owns or operates or to any excavating done~~  
15 ~~by a railroad when said excavating is done entirely on land~~  
16 ~~which the railroad owns or on which the railroad operates or,~~  
17 ~~in the event of emergency, on adjacent land.~~

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

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

25 ~~"(n)(u)~~ "Working Day" means a 24 hour period  
26 commencing from the time of receipt of the notification,  
27 excluding Saturday, Sunday, and the following nine holidays:  
28 New Year's Day, Memorial Day (observed), Independence Day,  
29 Labor Day, Veterans Day, Thanksgiving Day, the Friday

1 following Thanksgiving Day, Christmas Eve, and Christmas Day.  
2 When any of these holidays occur on a Saturday, it will be  
3 observed on the preceding Friday and when any of these  
4 holidays occur on a Sunday, it will be observed on the  
5 following Monday.

6 "§37-15-3.

7 "No person shall excavate in a street, highway,  
8 public easement, private easement, or implied easement of an  
9 operator, or on property of an operator, or conduct blasting  
10 operations, or perform demolition activities in the near  
11 proximity of an operator's underground facility without first  
12 having ascertained, in the manner prescribed in Sections 37-  
13 15-4 and 37-15-6, the location of all underground facilities  
14 in the area of the proposed excavation, blasting, or  
15 demolition; however, violation of this section shall not  
16 subject any person to the civil penalties of Section 37-15-10  
17 provided the easement or underground facility is located on  
18 property owned by such person and such person did not have  
19 knowledge of the existence or presence of such easement or  
20 underground facility.

21 "§37-15-4.

22 "(a) A permit issued pursuant to law authorizing  
23 excavation or demolition operations shall not be deemed to  
24 relieve a person from the responsibility for complying with  
25 the provisions of this chapter. Any public agency issuing such  
26 permit shall notify the person receiving the permit of the  
27 notification requirements of this chapter; however, failure to  
28 provide such notification shall not make the State Department



1 of Transportation subject to the penalties provided for in  
2 Section 37-15-10.

3 "(b) Before commencing any excavation or demolition  
4 operation prohibited by Section 37-15-3, each person  
5 responsible for such excavation or demolition shall give  
6 written, telephonic, or electronic notice of such intent to  
7 excavate or demolish to the underground facility operator or a  
8 "One-Call Notification System" acting on behalf of the  
9 operator at least two but not more than ~~ten~~ 10 working days  
10 prior to the start of the proposed excavation and at least ~~two~~  
11 2 working days but not more than ~~thirty~~ 30 calendar days prior  
12 to the start of demolition or any blasting operations for  
13 either excavation or demolition. Written notice shall be by  
14 registered mail, return receipt requested, and shall be valid  
15 only upon receipt of the written information required by this  
16 chapter by the operator or by ~~a~~ the "One-Call Notification  
17 System" acting on behalf of the operator.

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

1 color on stakes, flags, paint, buoys or clearly identifiable  
2 materials placed on the surface of the ground or water.

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

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

21 "(f) Compliance with the notice requirements of this  
22 section is not required ~~of any governmental entity doing~~  
23 ~~maintenance work within dedicated state, county, or city road~~  
24 ~~rights-of-way; or of persons plowing less than 12 inches in~~  
25 ~~depth for agricultural purposes<sup>2</sup>); or of municipal or public~~  
26 ~~corporations operating water and sewer boards, which produce,~~  
27 ~~treat, and sell water and provide fire protection in~~  
28 ~~accordance with Insurance Service Office fire protection~~  
29 ~~standards while doing work on any easements, rights-of-way or~~

1 ~~other property owned by said board or to which said board had~~  
2 ~~access; or of any rural water system.~~

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

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

16 "(h) Except for those persons submitting design or  
17 survey locate requests, no person, including operators, shall  
18 request markings of a site through the "One-Call Notification  
19 System" unless excavation is scheduled to commence. In  
20 addition, no person shall make repeated requests for  
21 re-marking, unless the repeated request is required for  
22 excavating to continue or due to circumstances not reasonably  
23 within the control of the person.

24 "§37-15-5.

25 "(a) (1) Operators who have underground facilities  
26 within this state ~~shall either provide an in-house program~~  
27 ~~which meets the operational requirements of receiving those~~  
28 ~~excavation or demolition notifications as set forth in~~  
29 ~~subsections (d) (f) to (g) (j), inclusive, of this section or~~

1 shall participate in a the "One-Call Notification System.";   
2 ~~provided, however, that any operator who has less than ten~~   
3 ~~thousand customers or subscribers and who provides an in-house~~   
4 ~~program which meets all of the operational requirements of~~   
5 ~~receiving those excavation or demolition notifications as set~~   
6 ~~forth in this chapter shall not be required to provide the~~   
7 ~~services of the in-house program on working days except during~~   
8 ~~the hours that the operator's offices are open to the public~~   
9 ~~and may, but shall not be required to, voice record the~~   
10 ~~notification calls received.~~

11 "(2) Any operator, who elects not to participate in   
12 the "One-Call Notification System" ~~and instead elects to~~   
13 ~~provide an in-house notification system for receiving~~   
14 ~~excavation and demolition notifications as provided in~~   
15 ~~subdivision (1) and whose facilities are damaged by an~~   
16 excavator who has contacted the "One-Call Notification System"   
17 ~~and the operator's in-house program~~ concerning the location of   
18 underground facilities, shall be responsible for any damages   
19 to its underground facilities by the excavator ~~if~~ due to the   
20 operator's failure to meet the operational requirements for   
21 receiving excavation and demolition notifications as required.

22 "(b) Between April 18, 1994, and January 1, 1995, or   
23 any time ~~thereafter~~ until January 1, 2015, any non-profit   
24 corporation, public corporation, or governmental entity   
25 desiring to become a "One-Call Notification System" shall   
26 apply to the Alabama Public Service Commission for a   
27 certificate of public convenience and necessity, verifying   
28 under oath that said applicant meets the requirements of this   
29 chapter. After a public hearing on said application, if the

1 Alabama Public Service Commission deems that said applicant  
2 meets the requirements of this chapter, and if it is found  
3 that said applicant is fit, willing and able to properly  
4 perform the services proposed and that the proposed service is  
5 or will be required by the present or future public  
6 convenience or necessity, then in such event the Alabama  
7 Public Service Commission shall issue a certificate of public  
8 convenience and necessity authorizing said applicant to  
9 commence its operation as a "One-Call Notification System".  
10 The Alabama Public Service Commission shall further have the  
11 authority, and is required, to revoke said certificate if said  
12 non-profit corporation, public corporation, or governmental  
13 entity ceases to meet the requirements as set forth in this  
14 chapter.

15 "(c) Subject to subsection (a), there shall be a  
16 single, statewide "One-Call Notification System" in accordance  
17 with this chapter to provide notice of all excavations or  
18 demolitions near underground facilities.

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

22 ~~"(e)~~ (e) Operators of underground pipeline facilities  
23 or a the "One-Call Notification System" acting on their behalf  
24 must notify the public and known excavators of shall develop  
25 and implement a public awareness and damage prevention program  
26 to educate the general public, excavators, and operators about  
27 the availability and use of in-house or the "One-Call  
28 Notification Systems System" as required in applicable federal  
29 regulations and the requirements of this chapter.

1           "~~(d)~~(f) The person giving notice of intent to  
2 excavate or demolish shall be furnished an individual  
3 reference file number for each notification and upon request  
4 shall be furnished the names of the operators to whom the  
5 notification will be transmitted.

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

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

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

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

24           "(1) ~~A list of cities and towns in which they have~~  
25 ~~underground facilities in each county;~~ The notification area  
26 data in a format as required by the current database system  
27 utilized by the "One-Call Notification System" for the  
28 locations in which they have underground facilities or for  
29 other reasons wish to receive notifications of proposed

1 excavations, demolitions, or blasting. This information shall  
2 be updated at least once a year.

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

7 ~~"(3) Total trench or right-of-way miles of~~  
8 ~~underground facilities within the boundaries of the State of~~  
9 ~~Alabama updated at least once a year;~~

10 ~~"(4)(2) The name, address, and telephone number of a~~  
11 ~~person to receive emergency notifications.~~

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

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

24 "§37-15-6.

25 "(a) (1) Each operator served with notice in  
26 accordance with Section 37-15-4, with underground facilities  
27 in the area, shall ~~locate~~ mark or cause to be marked or  
28 otherwise provide the approximate location of the operator's  
29 underground facilities by marking in a manner as prescribed

1 herein prior to the proposed start of excavation, demolition,  
2 or blasting. If any underground facilities become damaged due  
3 to an operator furnishing inaccurate information as to the  
4 approximate location of the facilities, through no fault of  
5 the operator, then the civil liabilities imposed by this  
6 chapter do not apply.

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

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

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

<del>"UTILITY OR TYPE</del>	<del>GROUP IDENTIFYING</del>
<del>OF FACILITY</del>	<del>COLOR</del>



<del>"UTILITY OR TYPE</del>	<del>GROUP IDENTIFYING</del>
<del>OF FACILITY</del>	<del>COLOR</del>
<del>"Electric Power</del> <del>Distribution and</del> <del>Transmission</del>	<del>Safety Red</del>
<del>"Municipal</del> <del>Electric</del>	<del>Safety Red</del>
<del>"Gas Distribution</del> <del>and Transmission</del>	<del>High Visibility</del> <del>Safety Yellow</del>
<del>"Oil Distribution</del> <del>and Transmission</del>	<del>High Visibility</del> <del>Safety Yellow</del>
<del>"Hazardous</del> <del>Materials, Product</del> <del>Lines and Steam</del> <del>Lines</del>	<del>High Visibility</del> <del>Safety Yellow</del>
<del>"Telephone and</del> <del>Telegraph</del>	<del>Safety Alert</del> <del>Orange</del>
<del>"Police and Fire</del> <del>Communications</del>	<del>Safety Alert</del> <del>Orange</del>
<del>"Cable Television</del>	<del>Safety Alert</del> <del>Orange</del>
<del>"Water and</del> <del>Irrigation</del>	<del>Safety Precaution</del> <del>Blue</del>
<del>"Slurry Lines</del>	<del>Safety Precaution</del> <del>Blue</del>
<del>"Sewer and Drain</del> <del>Lines</del>	<del>Safety Green</del>

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~~"(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 identifying color, to indicate the excavator's proposed type of facility, if applicable.~~

17

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

19

~~"§37-15-7.~~

20

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

1 excavation or demolition shall take all necessary and  
2 reasonable precautions to avoid or minimize damage to existing  
3 underground facilities.

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

13 "§37-15-8.

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

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

24 ~~"(b) Employ detection equipment or non-invasive~~  
25 ~~methods to determine the precise location of an operator's~~  
26 ~~underground facilities when excavation is to be done within~~  
27 ~~the area marked as the approximate location of the operator's~~  
28 ~~underground facilities and maintain a clearance between any~~  
29 ~~underground facility and the cutting edge or point of any~~

1 ~~mechanized equipment, taking into account the known limit of~~  
2 ~~control of such cutting edge or point, as may be reasonably~~  
3 ~~necessary to avoid damage to such facility; and~~

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

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

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

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

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

24 "§37-15-9.

25 "(a) Each person responsible for any excavation or  
26 demolition operation that results in any damage to an  
27 underground facility shall, immediately upon discovery of such  
28 damage, notify the operator of such facility of the location  
29 of the damage, or the "One Call Notification Center" operating

1 on behalf the underground facility owner, and shall allow the  
2 operator reasonable time to accomplish any necessary repairs  
3 before completing the excavation or demolition in the  
4 immediate area of the damage to such facility.

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

25 "§37-15-10.

26 "(a) Any person who violates any provision of this  
27 chapter shall be subject to a civil penalty not to exceed  
28 \$10,000 for each such violation.

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

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

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

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

20           "(f) Any person who violates any provision of this  
21 chapter shall not be subject to payment of the assessed  
22 penalty in subsection (a) of Section 37-15-10 if they have  
23 been assessed a civil penalty for this same violation under  
24 the provisions of the Federal Natural Gas Pipeline Safety Act  
25 of 1968 or the Federal Hazardous Liquid Pipeline Safety Act of  
26 1979 or any amendment to these acts.

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

1           "(h) No civil penalty may be imposed pursuant to  
2 this section against an excavator or operator who violates any  
3 of the provisions of this chapter if the violation occurred  
4 while the excavator or operator was responding to an  
5 emergency. Notwithstanding the foregoing, the civil penalty  
6 shall be imposed if the violation was willful or malicious.

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

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

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

18           §37-15-4.1.

19           (a) Any person may submit a design or survey locate  
20 request to the "One-Call Notification System." The design or  
21 survey locate request describes the tract or parcel of land  
22 for which the design or survey locate request has been  
23 submitted with sufficient particularity as defined by policies  
24 developed and promulgated by the "One-Call Notification  
25 System" to enable the facility operator to ascertain the  
26 precise tract or parcel of land involved and state the name,  
27 address, telephone number, and facsimile number of the person  
28 who has submitted the design locate or survey request and the  
29 company name of the project owner.

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

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

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

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

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

25 Section 4. This act shall become effective January  
26 1, 2015, following its passage and approval by the Governor,  
27 or its otherwise becoming law.