

1 HB461
2 117279-1
3 By Representative Johnson
4 RFD: Government Operations
5 First Read: 28-JAN-10

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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" which receives
18 and processes the notices, but participation in the
19 designated "one-call" system is optional with an
20 underground facility operator who elects to conduct
21 its own "in-house" program for notification. Thus,
22 a person excavating in an area may be required to
23 determine which underground facility operators are
24 operating in the area and to notify an underground
25 facility operator separately if it does not
26 participate in the one-call system.

1 This bill would provide for definitions and
2 for the operational provisions of the underground
3 damage prevention process to be clarified and
4 updated with current technologies. The bill would
5 provide that an operator who does not participate
6 in the "One-Call Notification System" may under
7 certain conditions waive the right to recover the
8 costs of damages to the operator's facilities by an
9 excavator. The bill would provide for notifications
10 to underground facility operators regarding design
11 or survey locate requests. The bill also provides
12 for additional civil penalty provisions for
13 violations of this act and would make it a Class C
14 misdemeanor to intentionally destroy markers of
15 underground facilities.

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

1 funds, or provides a local source of revenue, to
2 the entity for the purpose.

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

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT
14

15 To amend Section 37-15-2 and Sections 37-15-4 to
16 37-15-10, inclusive, Code of Alabama 1975, relating to the
17 "One-Call Notification System," established for the purpose of
18 receiving notifications by persons conducting excavations or
19 demolitions on or near certain property where underground
20 facilities may be located, to limit the recovery of costs for
21 damages to underground facilities when an underground facility
22 operator elects to conduct an in-house program to receive
23 notifications in lieu of participating in the one-call
24 notification system; to further provide for definitions and
25 for operational provisions of the underground damage
26 prevention process; to provide for notification of underground
27 facility operators of design and survey locate requests; to

1 provide certain civil and criminal penalties; and in
2 connection therewith would have as its purpose or effect the
3 requirement of a new or increased expenditure of local funds
4 within the meaning of Amendment 621 of the Constitution of
5 Alabama of 1901, now appearing as Section 111.05 of the
6 Official Recompilation of the Constitution of Alabama of 1901,
7 as amended.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

12 "§37-15-2.

13 "As used in this chapter ~~unless the context clearly~~
14 ~~implies a different meaning,~~ the following words have the
15 following meanings:

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

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

4 ~~"(3) CALENDAR DAY~~. A 24-hour period beginning at
5 12:01 a.m. and ending at midnight of the same day.

6 ~~"(4) CONTRACT LOCATOR~~. Any person contracted by an
7 operator specifically to determine and mark the approximate
8 location of the operator's utility lines that may exist within
9 the area specified by a notice served on the "One-Call
10 Notification System."

11 ~~"(c) "Damage"~~ includes (5) DAMAGE. Includes, but is
12 not limited to, the substantial weakening of structural or
13 lateral support of an underground facility, penetration or
14 destruction of any underground facility's protective coating,
15 housing or other protective device, and the severance (partial
16 or complete) of any underground facility, but does not apply
17 to any operator's abandoned underground facility.

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

22 ~~"(7) DESIGN OR SURVEY LOCATE REQUEST~~. Any
23 communication to the "One-Call Notification System"
24 specifically to request existing underground facilities to be
25 located for the purpose of bidding, predesign, or advance
26 planning purposes. A design locate request may not be used for

1 excavation purposes and an excavation locate request may not
2 be used for design or survey purposes.

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

10 ~~"(e) "Excavate" or "Excavation" means any (9)~~
11 EXCAVATE or EXCAVATION. Any operation for the purpose of the
12 movement or removal of earth, rock, or other material by
13 mechanized equipment or explosive device and includes, but is
14 not limited to, augering, backfilling, blasting, boring,
15 digging, ditching, drilling, grading, plowing-in, pulling-in,
16 ripping, scraping, sub-soiling, trenching and tunneling.

17 ~~"(f) "Excavator" means any (10) EXCAVATOR. Any~~
18 person who engages in excavation.

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

24 ~~"(h) "Mark" or "Marking" means the (12) MARK or~~
25 MARKING. The use of stakes, flags, paint, buoys, or clearly
26 identifiable materials placed on the surface of the ground or

1 water to show the approximate location of underground
2 facilities.

3 ~~"(i) "Mechanized Equipment" means equipment (13)~~
4 MECHANIZED EQUIPMENT. Equipment powered or energized by any
5 motor, engine, or hydraulic or pneumatic device and is used
6 for excavation or demolition work including, but not limited
7 to, tractors, trenchers, bulldozers, power shovels, augers,
8 backhoes, scrapers, pile drivers, drills, cable and pipe
9 plows, or other equipment used for plowing-in or pulling-in
10 cable or pipe.

11 "(14) MEMBER. A person who participates in the
12 "One-Call Notification System" to receive services and is in
13 good standing with the "One-Call Notification System" in
14 accordance with the guidelines set forth in the corporation's
15 bylaws.

16 "(15) NONINVASIVE METHOD OF EXCAVATION. A method of
17 excavation that does not compromise the integrity of the
18 underground facility. These methods include, but are not
19 limited to, hand digging, pot holing, soft digging, vacuum
20 excavation methods, or other methods with the approval of the
21 operator.

22 "(16) NOTIFICATION AREA. An area or territory which
23 an operator designates as the area where he or she wishes to
24 receive notifications for any excavation in that area. The
25 notification area should encompass the underground
26 distribution system or network of the operator.

1 ~~"(j) "One-Call Notification System" means a (17)~~
2 ONE-CALL NOTIFICATION SYSTEM. A non-profit corporation, a
3 public corporation, or a governmental entity which will
4 provide a statewide notification service, for the purpose of
5 receiving statewide telephonic toll-free or electronic
6 notification of any planned excavation or demolition
7 activities by excavators or other persons as set forth in
8 Section 37-15-4 and distributing the required excavation or
9 demolition information to its affected member operators as set
10 forth in Section 37-15-5.

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

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

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

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

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

20 ~~"(n) "Working Day" means a 24 hour (22) WORKING DAY.~~
21 A 24-hour period commencing from the time of receipt of the
22 notification, excluding Saturday, Sunday, and the following
23 nine holidays: New Year's Day, Memorial Day (observed),
24 Independence Day, Labor Day, Veterans Day, Thanksgiving Day,
25 the Friday following Thanksgiving Day, Christmas Eve, and
26 Christmas Day. When any of these holidays occur on a Saturday,
27 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~~ the "One-Call Notification
27 System" acting on behalf of the operator.

1 "(c) The notice required by subsection (b) of this
2 section ~~must~~ shall contain the ~~name, address, and telephone~~
3 ~~number of the person responsible for the excavation or the~~
4 ~~demolition and the person giving notice, the proposed starting~~
5 ~~date and time, the type of excavation or demolition operation~~
6 ~~to be 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 excavator's name, address, telephone number, the location of
16 the work, the nature and extent of the excavation or
17 demolition, including, but limited to, the type of work being
18 performed, whether directional boring will be used, whether
19 any explosives will be used, and the start date and duration
20 of the work. For purposes of locating the work site, the
21 excavator shall supply sufficient details to enable the
22 operator to locate the proposed excavation site with
23 reasonable certainty. Additional information may be required
24 which may include, but is not limited to, information such as
25 the closest street address, road crossing, or intersection,
26 the applicable railroad or highway marker, latitude and
27 longitude, or other location identifier in unincorporated

1 areas. In the event the location requirements of this
2 subsection cannot be met, the excavator shall mark the route
3 or boundaries of the site of the proposed excavation or
4 demolition by means of white as the identifying color on
5 stakes, flags, paints, buoys, or clearly identifiable
6 materials placed on the surface of the ground or water. Any
7 excavation that may require blasting or demolition shall be
8 noted on the original notification or the excavator is
9 required to update the notification to include information
10 pertaining to any blasting or demolition activities.

11 "(d) Notification to an operator or to a "One-Call
12 Notification System" acting on behalf of the operator of an
13 intent to excavate shall be valid for a period of ~~fourteen~~ 14
14 calendar days from the proposed starting date given and the
15 notice to demolish shall be valid for a period of ~~thirty~~ 30
16 calendar days from the starting date given. Each person
17 responsible for excavation or demolition shall renew with the
18 underground facility operator or a "One-Call Notification
19 System" acting on behalf of the operator each notice of intent
20 to excavate or demolish at least two working days prior to the
21 expiration date of the notice if the excavation or demolition
22 has not been completed.

23 "(e) When engaged in an extensive and contiguous
24 construction, demolition or excavation activity, working
25 agreements may be established to accomplish the intent and
26 purpose of this chapter between operators, public agencies,

1 and contractors after initial compliance with the notification
2 provisions of this chapter.

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

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

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

1 "(i) Except for those persons submitting design or
2 survey locate requests, no person, including operators, shall
3 request markings of a site through the "One-Call Notification
4 System" unless excavation is scheduled to commence. In
5 addition, no person shall make repeated requests for
6 re-marking, unless the repeated request is required for
7 excavating to continue or due to circumstances not reasonably
8 within the control of the person.

9 "§37-15-5.

10 "(a) (1) Operators who have underground facilities
11 within this state shall either provide an in-house program
12 which meets the operational requirements of receiving those
13 excavation or demolition notifications as set forth in
14 subsections ~~(d)~~ (f) to ~~(g)~~ (j), inclusive, of this section or
15 shall participate in ~~a~~ the "One-Call Notification System.";
16 provided, however, that any operator ~~who has less than ten~~
17 ~~thousand customers or subscribers~~ and who provides an in-house
18 program ~~which meets all of the operational requirements of~~
19 ~~receiving those excavation or demolition notifications as set~~
20 ~~forth in this chapter~~ shall not be required to provide the
21 services of the in-house program on working days except during
22 the hours that the operator's offices are open to the public
23 and any operator who has less than 10,000 customers or
24 subscribers who provides an in-house program may, but shall
25 not be required to, voice record the notification calls
26 received.

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

12 "(b) Between April 18, 1994, and January 1, 1995, or
13 any time ~~thereafter~~ until January 1, 2011, any non-profit
14 corporation, public corporation, or governmental entity
15 desiring to become a "One-Call Notification System" shall
16 apply to the Alabama Public Service Commission for a
17 certificate of public convenience and necessity, verifying
18 under oath that said applicant meets the requirements of this
19 chapter. After a public hearing on said application, if the
20 Alabama Public Service Commission deems that said applicant
21 meets the requirements of this chapter, and if it is found
22 that said applicant is fit, willing and able to properly
23 perform the services proposed and that the proposed service is
24 or will be required by the present or future public
25 convenience or necessity, then in such event the Alabama
26 Public Service Commission shall issue a certificate of public
27 convenience and necessity authorizing said applicant to

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

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

11 "(d) The "One-Call Notification System" shall be
12 incorporated or operated as a nonprofit corporation and
13 governed by a board of directors who represent and are elected
14 by members of the "One-Call Notification System."

15 "(e) All operators who participate in the "One-Call
16 Notification System" shall share in the costs of the single
17 statewide "One-Call Notification System" established pursuant
18 to subsection (c). Costs for the "One-Call Notification
19 System" shall be shared in an equitable manner for services
20 received by facility owners as determined by the board of
21 directors.

22 ~~"(c)(f)~~ 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

1 Notification ~~Systems System~~" as ~~required in applicable federal~~
2 ~~regulations and the requirements of this chapter.~~

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

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

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

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

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

26 ~~"(1) A list of cities and towns in which they have~~
27 ~~underground facilities in each county;~~ The notification area

1 data in a format as required by the current database system
2 utilized by the "One-Call Notification System" for the
3 locations in which they have underground facilities or for
4 other reasons wish to receive notifications of proposed
5 excavations, demolitions, or blasting. This information shall
6 be updated at least once a year.

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

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

14 ~~"(4)(2) The name, address, and telephone number of a~~
15 ~~person to receive emergency notifications.~~

16 ~~"(i) A(1) The "One-Call Notification System" shall~~
17 ~~promptly transmit the information received from the excavator,~~
18 ~~as set forth in Section 37-15-4, to its appropriate member~~
19 ~~operators.~~

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

1 "§37-15-6.

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

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

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

26 "(4) Each member operator, either upon determining
27 that no underground utility facility is present on the tract

1 or parcel of land or upon completion of the marking of the
2 location of any underground facilities on the tract or parcel
3 of land as required by this section shall provide a positive
4 response with information to the "One-Call Notification
5 System" in accordance with procedures developed by the
6 "One-Call Notification System." In no event shall the positive
7 response be provided later than midnight of the second working
8 day following receipt by the "One-Call Notification System" of
9 the actual notice of intent to excavate or demolish filed in
10 accordance with this section. The requirements of this
11 subdivision shall become effective 18 months after the
12 effective date of the act adding this subdivision.

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

"UTILITY OR TYPE	GROUP IDENTIFYING
OF FACILITY	COLOR
"Electric Power	Safety Red
Distribution and	
Transmission	
"Municipal	Safety Red

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

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

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

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

18 "§37-15-7.

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

1 Notification System" acting on behalf of the operator.
2 However, every person who shall engage in such emergency
3 excavation or demolition shall take all necessary and
4 reasonable precautions to avoid or minimize damage to existing
5 underground facilities.

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

15 "§37-15-8.

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

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

26 ~~"(b) Employ detection equipment or non-invasive~~
27 ~~methods to determine the precise location of an operator's~~

1 ~~underground facilities when excavation is to be done within~~
2 ~~the area marked as the approximate location of the operator's~~
3 ~~underground facilities and maintain a clearance between any~~
4 ~~underground facility and the cutting edge or point of any~~
5 ~~mechanized equipment, taking into account the known limit of~~
6 ~~control of such cutting edge or point, as may be reasonably~~
7 ~~necessary to avoid damage to such facility; and~~

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

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

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

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

24 ~~"(4) Protect and preserve the markings of~~
25 ~~approximate locations of underground facilities until those~~
26 ~~markings are no longer required for proper and safe~~
27 ~~excavations.~~

1 "§37-15-9.

2 "(a) Each person responsible for any excavation or
3 demolition operation that results in any damage to an
4 underground facility shall, immediately upon discovery of such
5 damage, notify the operator of such facility of the location
6 of the damage and shall allow the operator reasonable time to
7 accomplish any necessary repairs before completing the
8 excavation or demolition in the immediate area of the damage
9 to such facility.

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

1 "§37-15-10.

2 ~~"(a) Any person who violates any provision of this~~
3 ~~chapter shall be subject to a civil penalty not to exceed~~
4 ~~\$10,000 for each such violation.~~

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

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

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

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

24 ~~"(f) Any person who violates any provision of this~~
25 ~~chapter shall not be subject to payment of the assessed~~
26 ~~penalty in subsection (a) of Section 37-15-10 if they have~~
27 ~~been assessed a civil penalty for this same violation under~~

1 the provisions of the Federal Natural Gas Pipeline Safety Act
2 of 1968 or the Federal Hazardous Liquid Pipeline Safety Act of
3 1979 or any amendment to these acts.

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

7 "(a) Unless subsection (b) applies, any person who
8 violates this chapter shall be subject to the following:

9 "(1) On the first offense, be subject to a civil
10 penalty not to exceed one thousand five hundred dollars
11 (\$1,500) and may be required to complete a damage prevention
12 education program.

13 "(2) On the second offense within a 12-month period,
14 be subject to a civil penalty not to exceed five thousand
15 dollars (\$5,000) and may be required to repeat the damage
16 prevention education program.

17 "(3) On subsequent offenses within a 12-month
18 period, be subject to a civil penalty not to exceed
19 twenty-five thousand dollars (\$25,000) per violation and
20 referral to the appropriate licensing board.

21 "(b) Any person who knowingly and willfully violates
22 this chapter is subject to a civil penalty in an amount not to
23 exceed fifty thousand dollars (\$50,000).

24 "(c) Good faith, flagrancy, or the magnitude of the
25 offense may permit deviation from the limits in subsections
26 (a) or (b). In determining the amount of any penalty, the
27 following shall be considered:

1 "(1) The nature, circumstances, and gravity of the
2 violation.

3 "(2) The degree of the person's culpability.

4 "(3) The person's history of prior offenses.

5 "(4) The person's level of cooperation with the
6 requirements of this chapter.

7 "(5) The effect of the penalty on the person's
8 ability to continue business.

9 "(6) The good faith on the part of the person in
10 attempting to remedy the cause of the violation.

11 "(d) An action to recover a civil penalty under this
12 section may be brought by an operator, excavator, aggrieved
13 party, district attorney, or the Attorney General. Venue for
14 the action shall be proper in the district court of the county
15 in which the operator, excavator, or aggrieved party resides
16 or maintains a principal place of business in this state or in
17 the county in which the conduct giving rise to the civil
18 penalty occurred.

19 "(e) Any civil penalty imposed pursuant to this
20 section, including reasonable attorney's fees, shall be paid
21 to the prevailing party.

22 "(f) The penalties provided herein are in addition
23 to any other remedy at law available to an excavator or to the
24 operator of a damaged underground facility.

25 "(c) No civil penalty may be imposed pursuant to
26 this section against an excavator or operator who violates any
27 of the provisions of this chapter if the violation occurred

1 while the excavator or operator was responding to a service
2 outage or other emergency. Notwithstanding the foregoing, the
3 civil penalty shall be imposed if the violation was willful or
4 malicious.

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

9 "(i) This section is not intended to affect any
10 civil remedy otherwise provided by law for personal injury or
11 for property damage.

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

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

19 §37-15-4.1.

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

1 facsimile number of the person who has submitted the design
2 locate request and the company name of the project owner.

3 (b) Within 10 working days after a design locate
4 request has been submitted to the "One-Call Notification
5 System" for a proposed project, the operator shall respond by
6 one of the following methods:

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

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

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

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

1 Section 4. This act shall become effective January
2 1, 2011, following its passage and approval by the Governor,
3 or its otherwise becoming law.