

1 HB93
2 137180-4
3 By Representative Johnson (R)
4 RFD: Transportation, Utilities and Infrastructure
5 First Read: 07-FEB-12
6 PFD: 02/02/2012

1 ENGROSSED

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3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 To amend Sections 37-15-2 and 37-15-5 of the Code of
9 Alabama 1975, relating to the "One-Call Notification System"
10 established for the purpose of receiving notifications by
11 persons conducting excavations or demolitions on or near
12 certain property where underground facilities may be located;
13 to further provide for the definition of person; and to
14 provide that underground facility operators who elect to
15 conduct an in-house program to receive notifications in lieu
16 of participating in the one-call notification system would be
17 responsible under certain conditions for damages to its
18 underground facilities.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Sections 37-15-2 and 37-15-5 of the Code
21 of Alabama 1975, are amended to read as follows:

22 "§37-15-2.

23 "As used in this chapter unless the context clearly
24 implies a different meaning:

25 "(a) "Approximate Location" of underground
26 facilities means information about an operator's underground
27 facilities which is provided to a person by an operator and

1 must be accurate to within 18 inches measured horizontally
2 from the outside edge of each side of such operator's
3 facility, or a strip of land eighteen inches either side of
4 the operator's field mark or the marked width of the facility
5 plus eighteen inches on each side of the marked width of the
6 facility.

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

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

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

21 (e) "Excavate" or "Excavation" means any operation
22 for the purpose of the movement or removal of earth, rock, or
23 other material by mechanized equipment or explosive device and
24 includes, but is not limited to, augering, backfilling,
25 blasting, boring, digging, ditching, drilling, grading,
26 plowing-in, pulling-in, ripping, scraping, sub-soiling,
27 trenching, and tunneling.

1 "(f) "Excavator" means any person who engages in
2 excavation.

3 "(g) "Implied Easement" means any unwritten easement
4 or right-of-way on private property required to provide
5 utility or other services by means of underground facilities
6 on property of the owner requesting such service.

7 "(h) "Mark" or "Marking" means the use of stakes,
8 flags, paint, buoys, or clearly identifiable materials placed
9 on the surface of the ground or water to show the approximate
10 location of underground facilities.

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

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

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

11 "(l) "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 employees, agents, or
15 legal representatives; however, the term "person" does not
16 include and no provision of this chapter shall apply to the
17 State Department of Transportation or their officials,
18 employees, agents, or representatives while in the performance
19 of their respective duties. Provided further, that the term
20 does not include, and no provision of this chapter shall apply
21 to, any county or its officials, employees, agents, or
22 representatives while in the performance of their duties.
23 Provided further, that such term does not include and no
24 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

1 which the railroad owns or on which the railroad operates or,
2 in the event of emergency, on adjacent land.

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

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

16 "§37-15-5.

17 "(a) (1) Operators who have underground facilities
18 within this state shall either provide an in-house program
19 which meets the operational requirements of receiving those
20 excavation or demolition notifications as set forth in
21 subsections (d) to (g), inclusive, of this section or shall
22 participate in a "One-Call Notification System"; provided,
23 however, that any operator who has less than ten thousand
24 customers or subscribers and who provides an in-house program
25 which meets all of the operational requirements of receiving
26 those excavation or demolition notifications as set forth in
27 this chapter shall not be required to provide the services of

1 the in-house program on working days except during the hours
2 that the operator's offices are open to the public and may,
3 but shall not be required to, voice record the notification
4 calls received.

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

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

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

10 "(c) Operators of underground pipeline facilities or
11 a "One-Call Notification System" acting on their behalf must
12 notify the public and known excavators of the availability and
13 use of in-house or "One-Call Notification Systems" as required
14 in applicable federal regulations.

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

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

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

4 "(g) A "One-Call Notification System" should voice
5 record the notification telephone calls and after hours calls
6 should at least reach a voice recording which explains
7 emergency procedures.

8 "(h) All operators who are members of a "One-Call
9 Notification System" shall provide the "One-Call Notification
10 System" with the following information:

11 "(1) A list of cities and towns in which they have
12 underground facilities in each county;

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

17 "(3) Total trench or right-of-way miles of
18 underground facilities within the boundaries of the State of
19 Alabama updated at least once a year;

20 "(4) The name, address, and telephone number of a
21 person to receive emergency notifications.

22 "(i) A "One-Call Notification System" shall promptly
23 transmit the information received from the excavator, as set
24 forth in Section 37-15-4, to its appropriate member operators.

25 "(j) All operators who are members of a "One-Call
26 Notification System" and have changes, additions, or new
27 installations of buried facilities within the boundaries of

1 the State of Alabama shall notify the "One-Call Notification
2 System" of changes in the information required in subdivisions
3 (1), (2), and (4) of subsection (h) of this section, within 30
4 days of the completion of such change, addition, or new
5 installation."

6 Section 2. This act shall become effective January
7 1, following its passage and approval by the Governor, or its
8 otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Transportation,
Utilities and Infrastructure 07-FEB-12

Read for the second time and placed
on the calendar with 1 substitute
and..... 23-FEB-12

Read for the third time and passed
as amended..... 08-MAR-12

Yeas 98, Nays 0, Abstains 0

Greg Pappas
Clerk