

1 SB58
2 208543-1
3 By Senator Roberts
4 RFD: Transportation and Energy
5 First Read: 02-FEB-21
6 PFD: 01/20/2021

SYNOPSIS: Under existing law, penalties recovered by the Underground Damage Prevention Authority for violations of Act 2019-407 of the 2019 Regular Session are to be deposited into an Underground Damage Prevention Fund within the State Treasury.

This bill would clarify that the Underground Damage Prevention Fund is established within the State Treasury, and would provide that any monies received by the Underground Damage Prevention Authority prior to the effective date of this act which were directed to be paid into the fund shall be deposited into the fund.

This bill would also provide that members of the authority may serve until a replacement is appointed.

A BILL
TO BE ENTITLED
AN ACT

1 Relating to underground utilities; to amend Section
2 37-15-10, Code of Alabama 1975, as amended by Act 2019-407 of
3 the 2019 Regular Session, and Section 2 of Act 2019-407 of the
4 2019 Regular Session, now appearing as Section 37-15-10.1,
5 Code of Alabama 1975, to establish the Underground Damage
6 Prevention Fund in the State Treasury and to further provide
7 for the terms of members of the authority; and to provide for
8 the deposit of monies into that fund.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Section 37-15-10, Code of Alabama 1975,
11 as amended by Act 2019-407 of the 2019 Regular Session, and
12 Section 2 of Act 2019-407 of the 2019 Regular Session, now
13 appearing as Section 37-15-10.1, Code of Alabama 1975, are
14 amended to read as follows:

15 "§37-15-10.

16 "(a) Any person who violates this chapter, or the
17 rules adopted under this chapter, shall be subject to a civil
18 penalty as follows:

19 "(1) For a first violation, the violator shall
20 complete a course of training concerning compliance with this
21 chapter or pay a civil penalty in an amount not to exceed five
22 hundred dollars (\$500) per incident, or both.

23 "(2) For a second or subsequent violation within a
24 12-month period, the violator shall complete a course of
25 training concerning compliance with this chapter or pay a
26 civil penalty in an amount not to exceed one thousand dollars
27 (\$1000) per incident, or both.

1 "(3) For a third or subsequent violation within a
2 12-month period, the violator shall complete a course of
3 training concerning compliance with this chapter and pay a
4 civil penalty in an amount not to exceed three thousand
5 dollars (\$3,000) per incident.

6 "(4) Notwithstanding this subsection, if any
7 violation was the result of gross negligence or willful
8 noncompliance, the violator shall be required to complete a
9 course of training concerning compliance with this chapter and
10 pay a civil penalty in an amount not to exceed ten thousand
11 dollars (\$10,000) per incident.

12 "(b) Any person who is required to complete a course
13 of training under this section shall be responsible for paying
14 for the cost of the training. For those instances in which
15 training is ordered, if the person is a firm, partnership,
16 association, corporation, limited liability company, joint
17 venture, department, or subdivision of the state or other
18 governmental entity or any other body or organization, it may
19 be required that at least one manager or supervisor thereof
20 attend any training.

21 "(c) The penalties provided under this section may
22 be subject to periodic review by the authority board and
23 revised by rule as needed to ensure enforcement penalties are
24 deemed effective and are in compliance with federal law.

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

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

5 "(e) The Underground Damage Prevention Fund is
6 created within the State Treasury, to be administered by the
7 authority. All penalties recovered in ~~such~~ actions brought by
8 the authority under this chapter shall be paid into the
9 Underground Damage Prevention Fund. Any monies remaining in
10 the Underground Damage Prevention Fund at the end of the
11 fiscal year shall not revert to the General Fund, but shall
12 remain in the Underground Damage Prevention Fund for the
13 exclusive use of the authority. The expenditures of monies in
14 the Underground Damage Prevention Fund shall be at the
15 discretion of the authority board to carry out its duties
16 under this chapter. Excess funds shall be used to support
17 public awareness programs and training and education of
18 excavators, operators, locators, and other persons to reduce
19 the number and severity of violations of this chapter.

20 "(f) This chapter does not affect any civil remedies
21 for personal injury or property damage or criminal sanctions
22 except as otherwise specifically provided for in this chapter.

23 "(g) Evidence of findings of fact, civil penalties,
24 or any of the actions or proceedings pursuant to this chapter
25 shall not be admissible in any other civil causes of actions
26 related to the excavation or damage for which the penalty or
27 fine was issued; however, these materials are discoverable in

1 civil actions arising from the facts herein. This chapter does
2 not limit any person's right to pursue any additional civil
3 remedy otherwise allowed by law.

4 "(h) No civil penalty may be imposed pursuant to
5 this section against an excavator or operator who violates any
6 provision of this chapter if the violation occurred while the
7 excavator or operator was responding to an emergency.

8 Notwithstanding the foregoing, the civil penalty shall be
9 imposed if the violation was willful or malicious.

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

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

19 "§37-15-10.1.

20 "(a) The Underground Damage Prevention Authority is
21 created for the purpose of enforcing this chapter and for
22 reviewing penalty provisions and the adequacy of the
23 enforcement process. It is the intent of the Legislature that
24 the authority and its enforcement activities not be funded by
25 appropriations from the state budget.

26 "(b) The authority shall utilize the services of the
27 Alabama Public Service Commission to provide administrative

1 support for the authority, subject to the concurrence by the
2 authority board. The Public Service Commission shall charge
3 the expenses associated with the administrative duties of the
4 authority back to the authority, subject to the concurrence of
5 the authority board. The administrative support provided by
6 the Alabama Public Service Commission to the authority is in
7 an administrative capacity only and nothing in this chapter
8 shall expand the jurisdiction of the Alabama Public Service
9 Commission in any way.

10 "(c) The authority shall be composed of a board of
11 underground facility protection stakeholders. The board shall
12 be composed of one subject matter expert representative from
13 each of the following stakeholders and all board appointments
14 shall be made by March 31, 2020, as follows:

15 "(1) Alabama Attorney General's Office.

16 "(2) Alabama Public Service Commission - gas
17 pipeline safety.

18 "(3) Alabama Department of Transportation.

19 "(4) Alabama county engineers.

20 "(5) Cable television industry.

21 "(6) Electric utility industry.

22 "(7) Municipal utility operator industry.

23 "(8) Natural gas distribution industry.

24 "(9) One-Call Notification System.

25 "(10) Professional excavator industry.

26 "(11) Professional road builder industry.

27 "(12) Professional land surveyor industry.

1 "(13) Telecommunications industry.

2 "(14) Transmission pipeline industry.

3 "(15) Utility facility locating industry.

4 "(16) Water utility industry.

5 "(17) Wastewater industry.

6 "(d) The Governor shall appoint the stakeholder
7 representatives selected from qualified persons as provided in
8 subsection (c) with the exception of the stakeholder
9 representatives from the Alabama Attorney General's office,
10 the Alabama Public Service Commission - gas pipeline safety,
11 and the Alabama Department of Transportation, who shall be
12 appointed by the head of the respective agency. The initial
13 authority board shall be appointed with staggered terms as
14 determined by the Governor. After the initial appointment,
15 each stakeholder representative shall serve a ~~three-year~~ term
16 of three years or until a replacement is appointed, whichever
17 occurs later. No person shall be appointed for more than two
18 full consecutive terms with the exception of the stakeholder
19 representatives from the Alabama Attorney General's office,
20 the Alabama Public Service Commission - gas pipeline safety,
21 the Alabama Department of Transportation, and the One-Call
22 Notification System.

23 "(e) Membership of the authority board shall be
24 inclusive and reflect the racial, gender, geographic,
25 urban/rural, and economic diversity of the state.

26 "(f) The board shall elect an executive committee
27 made up of five representatives from the authority board as

1 provided in this section excluding those entities representing
2 a state agency, who will be responsible for levying civil
3 penalties and taking actions as described in Section 37-15-10,
4 this section, and Section 37-15-10.2.

5 "(g) Members of the authority board and executive
6 committee may participate in a meeting of the board or
7 committee by means of telephone conference, video conference,
8 or similar communications equipment by means of which all
9 persons participating in the meeting may hear each other at
10 the same time and members of the public may simultaneously
11 listen to the meeting. Participation by such means shall
12 constitute presence in person at a meeting for all purposes.

13 "(h) The board may do all of the following:

14 "(1) Adopt rules to conduct the affairs of the
15 authority.

16 "(2) Make and enter into contracts.

17 "(3) Enter into an interagency agreement with the
18 Attorney General's office to serve as legal counsel. The
19 Attorney General shall be compensated at a rate not to exceed
20 the normal hourly rate authorized by the Governor for legal
21 services contracts. The authority shall also reimburse the
22 Attorney General for any expenses incurred in providing legal
23 representation.

24 "(4) Oversee the development of or contract for the
25 development and administration of the designated training
26 program.

1 "(5) Evaluate and revise the enforcement program
2 process and penalty structure by adopting rules if the current
3 structure does not meet the purpose and intent of this chapter
4 or federal law.

5 "(i) No member of the board, individually or
6 jointly, shall be civilly liable for acts within the scope of
7 his or her duties as a board member which are made in good
8 faith and are absent unreasonable, wanton, willful,
9 intentional conduct or a violation of federal law.

10 "(j) The members of the board shall serve without
11 compensation.

12 "(k) Nothing in this chapter shall grant the
13 authority jurisdiction over damage to utilities located above
14 the ground.

15 "(l) Board members shall not participate in any
16 enforcement action decisions pertaining to the entity they
17 represent."

18 Section 2. Any monies received by the Underground
19 Damage Prevention Authority prior to the effective date of
20 this act which were directed to be paid into the Underground
21 Damage Prevention Fund shall be deposited into the fund.

22 Section 3. This act shall become effective
23 immediately following its passage and approval by the
24 Governor, or its otherwise becoming law.