



**House Transportation, Utilities and Infrastructure
Reported Substitute for HB322**

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A BILL

TO BE ENTITLED

AN ACT

9 Relating to the Underground Damage Prevention Program;
10 to amend Sections 37-15-2, 37-15-4, 37-15-4.1, 37-15-5,
11 37-15-6, 37-15-8, 37-15-9, 37-15-10, 37-15-10.1, and
12 37-15-10.2, Code of Alabama 1975; and to add Section 37-15-4.2
13 to the Code of Alabama 1975, to provide various underground
14 damage prevention requirements for excavators before
15 commencing complex or large projects; to extend the statutory
16 sunset clause related to the program; to further provide for
17 hearing procedures; and to make nonsubstantive, technical
18 revisions to update the existing code language to current
19 style.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 37-15-2, 37-15-4, 37-15-4.1,
22 37-15-5, 37-15-6, 37-15-8, 37-15-9, 37-15-10, 37-15-10.1, and
23 37-15-10.2, Code of Alabama 1975, are amended to read as
24 follows:

25 "§37-15-2

As used in this chapter the following words have the following meanings:

(1) APPROXIMATE LOCATION OF UNDERGROUND FACILITIES.



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29 Information about an operator's underground facilities which
30 is provided to a person by an operator and must be accurate to
31 within 18 inches measured horizontally from the outside edge
32 of each side of such operator's facility, or a strip of land
33 18 inches either side of the operator's field mark or the
34 marked width of the facility plus 18 inches on each side of
35 the marked width of the facility. The term does not include a
36 designation of location as to the depth below the surface of
37 the ground.

38 (2) AUTHORITY. The Underground Damage Prevention
39 Authority created under Section 37-15-10.1.

40 (3) AUTHORITY BOARD. The Underground Damage Prevention
41 Board created under Section 37-15-10.1.

42 (4) BLASTING. The use of an explosive device for the
43 excavation of earth, rock, or other material or the demolition
44 of a structure.

45 (5)a. COMPLEX OR LARGE PROJECT. Any excavation activity
46 that meets one or more of the following criteria:

47 1. The activity is initially planned to extend beyond a
48 standard 40-working day notification period.

49 2. The project involves five or more work crews
50 operating concurrently. Concurrent work crews may work for
51 more than one general contractor on a project.

52 3. The project requires multiple locate requests for
53 the same activity within the same geographic area, submitted
54 within a single working day notification period, with all
55 activity occurring within the initial life of a single locate
56 request.



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57 b. This definition establishes the scope for projects
 58 exceeding typical requirements for time, resources, and
 59 coordination across multiple crews or requests within a single
 60 designated notification period

61 ~~(5)~~ (6) CONTRACT LOCATOR. Any person contracted with an
 62 operator specifically to determine and mark the approximate
 63 location of the operator's utility lines that exist within the
 64 area specified by a notice served on the ~~"~~One-Call
 65 Notification System.~~"~~

66 ~~(6)~~ (7) DAMAGE. Includes, but is not limited to, the
 67 substantial weakening of structural or lateral support of an
 68 underground facility, penetration or destruction of any
 69 underground facility's protective coating, housing, or other
 70 protective device, and the partial or complete severance
 71 ~~(partial or complete)~~ of any underground facility, but does
 72 not apply to any operator's abandoned underground facility.

73 ~~(7)~~ (8) DEMOLITION. Any operation by which a structure
 74 or mass of material is wrecked, razed, rendered, moved, or
 75 removed by means of any tools, equipment, or explosives.

76 ~~(8)~~ (9) DESIGN OR SURVEY LOCATE REQUEST. Any
 77 communication to the ~~"~~One-Call Notification System,~~"~~
 78 specifically to request existing underground facilities to be
 79 located for bidding, predesign, or advance planning purposes.
 80 A design locate request may not be made or used for excavation
 81 purposes, and an excavation locate request may not be made or
 82 used for design or survey purposes.

83 ~~(9)~~ (10) EMERGENCY EXCAVATION OR DEMOLITION. An
 84 excavation or demolition that is required to eliminate an



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85 imminent danger to life, health, property, or the environment
 86 or required for the repair or restoration of operator service
 87 that is required to be performed before the notification and
 88 response procedures required in Section 37-15-4 and 37-15-6
 89 may be fully utilized.

90 ~~(10)~~ (11) EXCAVATE or EXCAVATION. Any operation for the
 91 purpose of the movement or removal of earth, rock, or other
 92 material by mechanized equipment or explosive device, or hand
 93 digging. and

94 a. The term includes, but is not limited to, augering,
 95 backfilling, blasting, boring, digging, ditching, dredging,
 96 drilling, grading, marine construction, pile-driving,
 97 plowing-in, pulling-in, ripping, scraping, sub-soiling,
 98 trenching, and tunneling on or below the ground or submerged
 99 under water. ~~Excavate or excavation~~

100 b. The term does not include ~~routine~~ any of the
 101 following:

102 1. Routine roadway maintenance activities carried out
 103 by or for those responsible for ~~publicly-maintained~~ publicly
 104 maintained roadways, provided that the activities meet all of
 105 the following requirements: (i) occur entirely within the
 106 right-of-way of a public road, street, or highway; (ii) are
 107 carried out with reasonable care so as to protect any utility
 108 facilities placed in the right-of-way by permit; (iii) are
 109 carried out within the limits of any original excavation on
 110 the traveled way, shoulder, or drainage ditches of a public
 111 road, street, or highway; and (iv) if involving the
 112 replacement of existing structures, including traffic control



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113 devices, replace such structures in their approximate previous
 114 locations and at their approximate previous depth. ~~Excavate or~~
 115 ~~excavation does not include routine~~

116 2. Routine railroad maintenance activities conducted
 117 within the track structure and its adjacent right-of-way,
 118 provided the activities are performed by railroad employees or
 119 railroad contractors and are carried out with reasonable care
 120 so as to protect any underground facilities placed in the
 121 railroad right-of-way by agreement with the railroad. Nothing
 122 in this chapter shall modify or abrogate any contractual
 123 provision entered into between any railroad and any other
 124 party owning or operating an underground facility or
 125 underground utility lines within the railroad's right-of-way.

126 3. Activities carried out by those responsible for
 127 publicly maintained roadways when utilizing unmechanized tools
 128 or equipment on its property or on its right-of-way when
 129 carried out with reasonable care so as to protect any utility
 130 facilities placed in the right-of-way by permit and carried
 131 out within the limits of any original excavation on the
 132 traveled way, shoulder, or drainage ditches of a public road,
 133 street, or highway.

134 (11) (12) EXCAVATOR. Any person who engages in
 135 excavation.

136 (12) (13) EXECUTIVE COMMITTEE. The executive committee
 137 created under Section 37-15-10.1.

138 (14) HAND DIGGING. Any movement, placement, or removal
 139 of earth, rock, or other materials in or on the ground by use
 140 of unmechanized tools or equipment, including, but not limited



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141 to, shovels, picks, and post hole diggers. The term does not
142 include any of the following:

143 a. A property owner utilizing unmechanized tools or
144 equipment on their own property.

145 b. The use of unmechanized tools or equipment by or on
146 behalf of a member operator to a depth not greater than 18
147 inches for repairing, connecting, protecting, or routine
148 maintenance of the member operator's underground facilities.

149 c. An operator utilizing unmechanized tools or
150 equipment in the response to a locate request for the purpose
151 of identifying their facility.

152 d. An operator replacing above ground structure in its
153 approximate previous location and at its approximate previous
154 depth.

155 e. A person providing or performing land surveying or
156 engineering activities or services as defined by the State
157 Board of Licensure for Professional Engineers and Land
158 Surveyors.

159 (13)(15) IMPLIED EASEMENT. Any unwritten easement or
160 right-of-way on private property required to provide utility
161 or other services by means of underground facilities on
162 property of the owner requesting such service.

163 (14)(16) MARK or MARKING. The use of stakes, flags,
164 paint, buoys, or clearly identifiable materials placed on the
165 surface of the ground or water to show the approximate
166 location of underground facilities.

167 (15)(17) MECHANIZED EQUIPMENT. Equipment powered or
168 energized by any motor, engine, hydraulic, or pneumatic device



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169 and is used for excavation or demolition work, including, but
 170 not limited to, tractors, trenchers, bulldozers, power
 171 shovels, augers, backhoes, scrapers, pile drivers, drills,
 172 cable and pipe plows, or other equipment used for plowing-in
 173 or pulling-in cable or pipe.

174 ~~(16)~~ (18) MEMBER. A person who participates in the
 175 ~~"One-Call Notification System"~~ to receive services and is in
 176 good standing with the ~~"One-Call Notification System"~~ in
 177 accordance with the guidelines set forth in the corporation's
 178 bylaws.

179 ~~(17)~~ (19) NEAR MISS. An event where damage did not
 180 occur, but a clear potential for damage was identified.

181 ~~(18)~~ (20) NONINVASIVE METHOD OF EXCAVATION. A method of
 182 excavation that does not compromise the integrity of the
 183 underground facility. These methods include, but are not
 184 limited to, hand digging, pot holing, soft digging, vacuum
 185 excavation methods, or other methods approved by the operator.

186 ~~(19)~~ (21) NOTIFICATION AREA. An area or territory which
 187 an operator designates as the area where the operator wishes
 188 to receive notifications for any excavation in that area. The
 189 notification area should encompass the underground
 190 distribution system or network of the operator.

191 ~~(20)~~ (22) ONE-CALL NOTIFICATION SYSTEM. A ~~non-profit~~
 192 nonprofit corporation, a public corporation, or a governmental
 193 entity which will provide a statewide notification service,
 194 for the purpose of receiving statewide telephonic toll-free or
 195 electronic notification of any planned excavation or
 196 demolition activities by excavators or other persons as set



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197 forth in Section 37-15-4 and distributing the required
 198 excavation or demolition information to its affected member
 199 operators as set forth in Section 37-15-5.

200 ~~(21)~~(23) OPERATOR. Any person, governmental agency, or
 201 political subdivision, or its agents, who owns or operates a
 202 public or private underground facility which furnishes
 203 services, information, or materials, or transports or
 204 transmits electric energy, light, water, steam, oil, gases,
 205 gas, mixture of gases, petroleum, petroleum products,
 206 hazardous or flammable liquids, toxic or corrosive fluids and
 207 gases, or items of like nature, and telecommunications, cable
 208 television, water, drainage, sewage, or other systems of like
 209 nature. The term "operator" does not apply to any entity
 210 listed above described in this subdivision if all of the
 211 underground facilities owned and operated by the entity are
 212 for the sole use of the entity and are located solely on the
 213 entity's own property or on property over which the entity has
 214 rights of operation.

215 ~~(22)~~(24) PERSON. An individual, joint venture,
 216 partnership, association, authority, cooperative, firm,
 217 corporation, governmental entity, or any subdivision or
 218 instrumentality of that entity and its employees, agents, or
 219 legal representatives.

220 ~~(23)~~(25) POSITIVE RESPONSE. The communication among
 221 member operators, persons excavating, and the "One-Call
 222 Notification System" concerning the status of locating an
 223 underground facility.

224 ~~(24)~~(26) PREMARK. To delineate the general scope of the



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225 excavation on the surface of the ground using white paint,
226 white stakes, or other similar white markings.

227 ~~(25)~~ (27) ROUTINE ROADWAY MAINTENANCE. Maintenance work
228 on a roadway that is not done pursuant to a contract awarded
229 by a state or local government through a bid process for which
230 plan drawings have been developed in advance or work for which
231 detailed and specific scheduling is not possible or feasible,
232 except that maintenance work that complies with subparagraph
233 (11)b.1. may be contracted.

234 ~~(26)~~ (28) TOLERANCE ZONE. The width of the underground
235 facility plus 18 inches on either side of the outside edge of
236 the underground facility on a horizontal plane.

237 ~~(27)~~ (29) UNDERGROUND FACILITY. Any cable, pipeline,
238 duct, wire, conduit, or other similar installation, installed
239 underground or underwater, by which an operator transports or
240 delivers materials, information, or services.

241 ~~(28)~~ (30) WILLFUL NONCOMPLIANCE. The intentional refusal
242 or failure to perform, or comply with, a duty created or
243 imposed by this chapter or by the rules adopted pursuant to
244 this chapter.

245 (31) WORKING AGREEMENT. An agreement established as
246 part of the complex or large project process.

247 ~~(29)~~ (32) WORKING DAY. A 24-hour period commencing the
248 beginning of the start of the next working day from the time
249 of receipt of the notification, excluding Saturday, Sunday,
250 and the following ~~nine~~—holidays: New Year's Day, Memorial Day
251 (observed), Independence Day, Labor Day, Veterans Day,
252 Thanksgiving Day, the Friday following Thanksgiving Day,



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253 Christmas Eve, and Christmas Day. When any of these holidays
254 occur on a Saturday, it will be observed on the preceding
255 Friday, and when any of these holidays occur on a Sunday, it
256 will be observed on the following Monday.

257 ~~(30)~~ (33) WORKING DAY HOURS. The time from 7:00 a.m. to
258 5:00 p.m. local time on working days."

259 "§37-15-4

260 (a) A permit issued pursuant to law authorizing
261 excavation or demolition operations shall not be deemed to
262 relieve a person from the responsibility for complying with
263 this chapter. Any public agency issuing such permit shall
264 notify the person receiving the permit of the notification
265 requirements of this chapter~~r.~~ however However, failure to
266 provide such notification shall not make the State Department
267 of Transportation subject to the penalties provided for in
268 Section 37-15-10.

269 (b) Before commencing any excavation or demolition
270 operation prohibited by Section 37-15-3, each person
271 responsible for the excavation or demolition shall give
272 telephonic or electronic notice of the intent to excavate or
273 demolish to the underground facility operator or the ~~u~~One-Call
274 Notification System~~u~~ acting on behalf of the operator at least
275 two but not more than 10 working days prior to the start of
276 the proposed excavation, not including the day of
277 notification, and at least two working days but not more than
278 30 calendar days, not including the day of notification, prior
279 to the start of demolition or any blasting operations for
280 either excavation or demolition.



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(c) The notice required by subsection (b) must contain the name, address, and telephone number of the person responsible for the excavation or the demolition and the person giving notice, the proposed starting date and time, the type of excavation or demolition operation to be conducted, the location of the proposed excavation or demolition with sufficient details to enable the operator to locate same with reasonable certainty, and whether or not explosives are to be used. In the event the location requirements of this subsection cannot be met, the excavator shall premark the route or boundaries of the site of proposed excavation or demolition by means of white as the identifying color on stakes, flags, paint, buoys, or clearly identifiable materials placed on the surface of the ground or water prior to the notification to the One-Call Notification System. However, premarking is not required when the premarking could reasonably interfere with traffic or pedestrian control.

298 (d) Notification to the One-Call Notification System of
299 an intent to excavate shall be valid for a period of 20
300 working days from the proposed starting date given for
301 excavation, and the notice to demolish shall be valid for a
302 period of 30 working days from the starting date given. Each
303 person responsible for excavation or demolition shall renew
304 with the One-Call Notification System each notice of intent to
305 excavate or demolish at least two working days, not ~~counting~~
306 including the day of notification, prior to the expiration
307 date of the notice if the excavation or demolition has not
308 been completed.



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309 ~~(e) When engaged in an extensive and contiguous~~
 310 ~~construction, demolition, or excavation activity, working~~
 311 ~~agreements may be established to accomplish the intent and~~
 312 ~~purpose of this chapter between operators, public agencies,~~
 313 ~~and contractors after initial compliance with the notification~~
 314 ~~provisions of this chapter.~~

315 ~~(f)~~ (e) Compliance with the notice requirements of this
 316 section is not required of persons plowing less than 12 inches
 317 in depth for agricultural purposes.

318 ~~(g)~~ (f) Compliance with the notice requirements of this
 319 section is not required by persons or operators excavating on
 320 their own property or easement when no other persons or
 321 operators have underground facilities on the property or
 322 easement.

323 ~~(h)~~ (g) Except for those persons submitting design or
 324 survey locate requests, no person, including an operator,
 325 shall request markings of a site through the One-Call
 326 Notification System that meets the operational requirements as
 327 described in ~~subsection (a) of~~ Section 37-15-5 (a), unless
 328 excavation is scheduled to commence. In addition, no person
 329 shall make repeated requests for remarking, unless the
 330 repeated request is required for excavating to continue or due
 331 to circumstances not reasonably within the control of the
 332 person.

333 ~~(i)~~ (h) Any person who complies with the notification
 334 requirements of this chapter is not liable for damage to an
 335 operator's underground facility if all of the following are
 336 satisfied:



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337 (1) The operator received the notification required by
338 this section.

339 (2) The operator failed to locate its underground
340 facilities as required by Section 37-15-6.

341 (3) The damage is a proximate result of the operator's
342 failure to locate its underground facilities as required by
343 Section 37-15-6."

344 "§37-15-4.1

345 (a) Any person may submit a design or survey locate
346 request to the One-Call Notification System. The design or
347 survey locate request shall describe the tract or parcel of
348 land for which the design or survey locate request has been
349 submitted with sufficient particularity as defined by policies
350 developed ~~and promulgated~~ by the One-Call Notification System
351 to enable the facility operator to ascertain the precise tract
352 or parcel of land involved ~~and~~. The request shall state the
353 name, address, and telephone number, ~~and facsimile number~~ of
354 the person who has submitted the design or survey locate
355 request and the company name of the project owner.

356 (b) Within five working days after a design or survey
357 locate request has been submitted to the One-Call Notification
358 System for a proposed project, the operator shall respond by
359 one of the following methods:

360 (1) Marking the approximate location of all underground
361 facilities in the area of proposed excavation.

362 (2) Providing to the person submitting the design or
363 survey locate request the best available description of all
364 underground facilities in the area of proposed excavation



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365 which may include drawings of underground facilities already
 366 built in the area or other facility records that are
 367 maintained by the facility operator.

368 (3) Allowing the person submitting the design or survey
 369 locate request or any other authorized person to inspect or
 370 copy the drawings or other records for all underground
 371 facilities within the proposed area of excavation.

372 (4) The complex or large project process as provided in
 373 Section 37-15-4.2 may be used for complex or large survey or
 374 design projects."

375 "§37-15-5

376 (a) Until January 1, ~~2027~~ 2037:

377 (1) Operators who have underground facilities within
 378 this state shall participate in and utilize the services of
 379 the One-Call Notification System.

380 ~~(2) Operators that are members of the One-Call~~
 381 ~~Notification System on January 1, 2020, must remain members.~~

382 ~~(3) Operators with more than 25,000 customers or 500~~
 383 ~~miles of facilities, that are not members, must join the~~
 384 ~~One-Call Notification System by January 1, 2021.~~

385 ~~(4) Operators that do not meet the thresholds described~~
 386 ~~in subdivision (2) or (3), must join the One-Call Notification~~
 387 ~~System by January 1, 2022.~~

388 ~~(5) (2) Operators of electrical underground facilities~~
 389 that join the One-Call Notification System ~~under the~~
 390 ~~requirements of subdivision (3) or (4)~~ having less than five
 391 percent underground trench miles compared to the total miles
 392 of line~~s~~ are not subject to the membership costs until their



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393 underground trench miles exceed the trench mile exemption.
 394 These operators shall be required to report annually to the
 395 One-Call Notification System their percentage of underground
 396 trench miles by the end of each calendar year.

397 ~~(6)~~ (3) If an operator of an underground facility fails
 398 to become a member of the One-Call Notification System, as
 399 required by this chapter, and that failure is a cause of
 400 damage to that underground facility caused by a person who has
 401 complied with this chapter and ~~has~~ have exercised reasonable
 402 care in the performance of the excavations that has caused
 403 damage to the underground facility, the operator has no right
 404 of recovery against the person for the damage to that
 405 underground facility.

406 (b) ~~Between April 18, 1994, and January 1, 1995, or any~~
 407 ~~time thereafter, any~~ Any nonprofit ~~non-profit~~ corporation,
 408 public corporation, or governmental entity desiring to become
 409 the One-Call Notification System shall apply to the ~~Alabama~~
 410 Public Service Commission for a certificate of public
 411 convenience and necessity, verifying under oath that the
 412 applicant meets the requirements of this chapter. After a
 413 public hearing on the application, if the ~~Alabama~~ Public
 414 Service Commission deems that the applicant meets the
 415 requirements of this chapter, and if it is found that the
 416 applicant is fit, willing, and able to properly perform the
 417 services proposed and that the proposed service is or will be
 418 required by the present or future public convenience or
 419 necessity, then ~~in such event~~ the ~~Alabama~~ Public Service
 420 Commission may issue a certificate of public convenience and



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421 necessity authorizing the applicant to commence its operation
422 as the One-Call Notification System. The ~~Alabama~~ Public
423 Service Commission shall revoke a certificate if the
424 ~~non-profit~~ nonprofit corporation, public corporation, or
425 governmental entity ceases to meet the requirements as set
426 forth in this chapter. The One-Call Notification System must
427 provide a report of operations and financial review or audit
428 to the Public Service Commission annually.

429 (c) Subject to subsections (a) and (b), there shall be
430 a statewide One-Call Notification System in accordance with
431 this chapter to provide notice of all excavation or demolition
432 near underground facilities.

433 (d) The One-Call Notification System shall be
434 incorporated or operated as a ~~non-profit~~ nonprofit corporation
435 and governed by a board of directors representing its
436 membership in accordance with the One-Call Notification System
437 bylaws.

438 (e) Operators of underground natural gas or hazardous
439 liquid pipeline facilities or the One-Call Notification System
440 acting on their behalf shall develop and implement a public
441 awareness and damage prevention program to educate the general
442 public, excavators, and operators about the availability and
443 use of the One-Call Notification System as required in
444 applicable federal regulations and the requirements of this
445 chapter.

446 (f) The person giving notice of intent to excavate or
447 demolish shall be furnished an individual reference file
448 number for each notification and upon request shall be



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449 furnished the names of the operators to whom the notification
450 will be transmitted.

451 (g) An adequate record of notifications shall be
452 maintained by the underground facility operator or the
453 One-Call Notification System in order to document timely
454 compliance with this chapter. These records shall be retained
455 for a period of not less than three years and shall be made
456 available at a reasonable cost upon proper and adequate
457 advance request.

458 (h) The services of the One-Call Notification System
459 should be provided on working days in accordance with the
460 established working day hours.

461 (i) The One-Call Notification System should voice
462 record the notification telephone calls, and ~~after hours~~
463 after-hours calls should at least reach a voice recording
464 which explains emergency procedures.

465 (j) All members of the One-Call Notification System
466 shall provide the One-Call Notification System with the
467 following information:

468 (1) The notification area data in a format as required
469 by the current database system utilized by the One-Call
470 Notification System for the locations in which members have
471 underground facilities or for other reasons wish to receive
472 notifications of proposed excavations, demolitions, or
473 blasting. This information shall be updated at least once a
474 year.

475 (2) The name, address, and telephone number of a person
476 to receive emergency notifications.



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477 (k) The One-Call Notification System shall promptly
478 transmit the information received from the excavator, as set
479 forth in Section 37-15-4, to its appropriate member operators.

480 (1) All members of the One-Call Notification System who
481 have changes, additions, or new installations of buried
482 facilities within the boundaries of the State of Alabama shall
483 notify the One-Call Notification System of changes in the
484 information required in subdivision ~~(1) of subsection~~ (j) (1),
485 within 30 days of the completion of such change, addition, or
486 new installation."

487 "§37-15-6

488 (a) (1) Each operator served with notice in accordance
489 with Section 37-15-4, with underground facilities in the area,
490 shall mark or cause to be marked or otherwise provide the
491 approximate location of the operator's underground facilities
492 by marking in a manner as prescribed herein prior to the
493 proposed start of excavation, demolition, or blasting. If any
494 underground facilities become damaged due to an operator
495 furnishing inaccurate information as to the approximate
496 location of the facilities, through no fault of the operator,
497 then the civil liabilities imposed by this chapter do not
498 apply.

499 (2) In lieu of such marking, the operator may request
500 to be present at the site upon commencement of the excavation,
501 demolition, or blasting.

502 (3) A member operator that states that it does not have
503 accurate information concerning the exact location of its
504 underground facilities is exempt from the requirements of this



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505 section, but shall provide the best available information to
506 the person excavating in order to comply with the requirements
507 of this section. A person excavating is not liable for any
508 damage to an underground facility under the exemption in this
509 subdivision if the excavation or demolition is performed with
510 reasonable care as noted in Section 37-15-81 and the excavator
511 uses detection equipment or other acceptable means to
512 determine the location of the underground facilities.

513 (4) When an excavator encounters an unmarked
514 underground facility on an excavation site where notice of
515 intent to excavate has been made in accordance with the
516 provisions of Section 37-15-4, and attempts a follow-up or
517 second notice relative to revising the original notice to the
518 One-Call Notification System or the operator, all operators
519 thus notified must attempt to contact the excavator within
520 four hours and provide a response relative to any of their
521 known underground facilities, active or abandoned, at the site
522 of the excavation.

523 (b) When marking the approximate location of
524 underground facilities, the operator shall follow the color
525 code designation in accordance with the latest edition of the
526 American Public Works Association Uniform Color Code.

527 (c) The color code designation referenced in this
528 section shall not be used by any operator or person to mark
529 the boundary or location of any excavation or demolition area.
530 If the excavator elects to mark the proposed excavation or
531 demolition site, the boundary or location shall be identified
532 using white as the identifying color or with natural color



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533 wood stakes. White flags or white stakes may have a thin
 534 stripe, one inch or less of the designated color code, to
 535 indicate the excavator's proposed type of facility, if
 536 applicable.

537 (d) Each operator, upon determining that no underground
 538 facility is present on the tract or parcel of land or upon
 539 completion of the marking of the location of any underground
 540 facilities on the tract or parcel of land, shall provide a
 541 positive response with information to the One-Call
 542 Notification System in accordance with the procedures
 543 developed by the One-Call Notification System.

544 (e) If all operators notified on the locate request
 545 have submitted a positive response that indicates a closed or
 546 completed response by the operator to the One-Call
 547 Notification System prior to the proposed excavation date, the
 548 excavator who made the request, upon verifying the closed or
 549 completed status in the positive response system, may begin
 550 work prior to the proposed date of excavation given, while
 551 following all requirements of Section 37-15-8 or other
 552 applicable portions of this chapter ~~The requirement for~~
 553 ~~providing a positive response shall become effective January~~
 554 ~~1, 2021.~~

555 (f) After the required notice of excavation is given
 556 and the operator has designated the facility as complete or
 557 cleared in the positive response system or has otherwise
 558 responded in accordance with this section, if the excavator
 559 observes or becomes aware of an unmarked underground facility
 560 in the area of proposed excavation, the excavator shall not



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561 begin excavating until an additional notice is made to the
 562 One-Call Notification System. The excavator may begin after
 563 the giving of the notice, but shall exercise reasonable care
 564 to avoid the underground facility that was observed.

565 ~~(f)~~ (g) Any contract locator acting on behalf of an
 566 operator is subject to this section."

567 "§37-15-8

568 In addition to the notification requirements of Section
 569 37-15-4, each person responsible for an excavation or
 570 demolition operation designated in Section 37-15-3, when
 571 performing excavation or demolition within the tolerance zone,
 572 shall do all of the following to avoid damage to or minimize
 573 interference with the underground facilities:

574 (1) Determine the location of any marked underground
 575 facility utilizing noninvasive methods of excavation. For
 576 parallel type excavations, the existing facility shall be
 577 exposed at intervals as often as necessary to avoid damages.

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

581 (3) When crossing the facility within the tolerance
 582 zone, use reasonable care to ascertain the depth of the
 583 underground utilities below the surface of the ground.

584 ~~(3)~~ (4) Provide such support for underground facilities
 585 in and near a construction area, including backfill
 586 operations, as may be reasonably required by the operator for
 587 the protection of the utilities.

588 ~~(4)~~ (5) Protect and preserve the markings of approximate



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589 locations of underground facilities until those markings are
590 no longer required for proper and safe excavation or
591 demolition."

592 "§37-15-9

593 (a) Each person responsible for any excavation or
594 demolition operation that results in any damage to an
595 underground facility, immediately upon discovery of such
596 damage, shall notify the operator of such facility of the
597 location of the damage or the One-Call Notification System
598 operating on behalf of the underground facility owner and
599 shall allow the operator reasonable time to accomplish any
600 necessary repairs before completing the excavation or
601 demolition in the immediate area of the damage to such
602 facility.

603 (b) In addition to subsection (a), each person
604 responsible for any excavation or demolition shall immediately
605 report to the operator or the One-Call Notification System
606 operating on behalf of the underground facility owner and
607 appropriate law enforcement agencies and fire departments any
608 damage to an underground facility that results in escaping
609 flammable, corrosive, explosive, or toxic liquids or gas and
610 shall take reasonable actions necessary to protect persons or
611 property and to minimize safety hazards until those law
612 enforcement agencies and fire departments and the operator
613 arrive at the underground facility.

614 (c) If an event damages any pipe, cable, or its
615 protective covering, or other underground facility, or there
616 is a significant near miss that could have resulted in damage,



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617 the operator receiving the notice shall file a report with the
618 One-Call Notification System. Reports must be submitted
619 annually to the system, ~~no later than March 31~~ for the prior
620 calendar year by the deadline date established for the prior
621 year reporting, or more frequently at the option and sole
622 discretion of the operator. Each report must describe, if
623 known, the cause, nature, and location of the damage. The
624 One-Call Notification System shall establish and maintain a
625 process to facilitate submission of reports by operators or
626 persons excavating.

627 (d) A public agency shall not be liable for physical or
628 other damages that occur to an underground facility during the
629 course of performing routine roadway maintenance when the
630 underground facility was installed within the public
631 right-of-way in violation of the public agency's requirements
632 or not in accordance with the utility permit under which the
633 installation was performed."

634 "§37-15-10

635 (a) Any person who violates this chapter, or the rules
636 adopted under this chapter, shall be subject to a civil
637 penalty as follows:

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

642 (2) For a second or subsequent violation within a
643 12-month period, the violator shall complete a course of
644 training concerning compliance with this chapter or pay a



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645 civil penalty in an amount not to exceed one thousand dollars
646 (\$1,000) per incident, or both.

647 (3) For a third or subsequent violation within a
648 12-month period, the violator shall complete a course of
649 training concerning compliance with this chapter and pay a
650 civil penalty in an amount not to exceed three thousand
651 dollars (\$3,000) per incident.

652 (4) Notwithstanding this subsection, if any violation
653 was the result of gross negligence or willful noncompliance,
654 the violator shall be required to complete a course of
655 training concerning compliance with this chapter and pay a
656 civil penalty in an amount not to exceed ten thousand dollars
657 (\$10,000) per incident.

658 (b) Any person who is required to complete a course of
659 training under this section shall be responsible for paying
660 for the cost of the training. For those instances in which
661 training is ordered, if the person is a firm, partnership,
662 association, corporation, limited liability company, joint
663 venture, department, or subdivision of the state or other
664 governmental entity or any other body or organization, it may
665 be required that at least one manager or supervisor thereof
666 attend any training.

667 (c) The penalties provided under this section may be
668 subject to periodic review by the authority board and revised,
669 by rule, as needed to ensure enforcement penalties are deemed
670 effective and are in compliance with federal law.

671 (d) The amount of such penalties shall be dependent
672 upon the degree of ~~non-compliance~~ noncompliance, the amount of



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673 injury or damage caused, the degree of threat to public
674 safety, the degree of public inconvenience caused as a result
675 of the violation, and the number of past violations.

676 Mitigation of the penalty may be shown by good faith efforts
677 of the violator to have complied with this chapter.

678 (e) The Underground Damage Prevention Fund is created
679 within the State Treasury, to be administered by the
680 authority. ~~All penalties recovered in actions brought by the~~
681 ~~authority under this chapter shall be paid into the~~
682 ~~Underground Damage Prevention Fund.~~ All sources of funds
683 collected by the authority under this chapter, including, but
684 not limited to, grants, assessments, and civil penalties,
685 shall be deposited into the fund. Any monies remaining in the
686 ~~Underground Damage Prevention Fund~~ fund at the end of the
687 fiscal year shall not revert to the State General Fund, but
688 shall remain in the Underground Damage Prevention Fund for the
689 exclusive use of the authority. The expenditures of monies in
690 the Underground Damage Prevention Fund shall be at the
691 discretion of the authority board to carry out its duties
692 under this chapter. Excess funds shall be used for purposes
693 related to underground facility damage prevention, including,
694 but not limited to, ~~support~~ public awareness programs and
695 training and education of excavators, operators, locators, and
696 other persons to reduce the number and severity of violations
697 of this chapter.

698 (f) This chapter does not affect any civil remedies for
699 personal injury or property damage or criminal sanctions
700 except as otherwise specifically provided for in this chapter.



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701 (g) Evidence of findings of fact, civil penalties, or
702 any of the actions or proceedings pursuant to this chapter
703 shall not be admissible in any other civil causes of actions
704 related to the excavation or damage for which the penalty or
705 fine was issued ~~not~~ however However, these materials are
706 discoverable in civil actions arising from the facts herein.
707 This chapter does not limit any person's right to pursue any
708 additional civil remedy otherwise allowed by law.

709 (h) No civil penalty may be imposed pursuant to this
710 section against an excavator or operator who violates any
711 provision of this chapter if the violation occurred while the
712 excavator or operator was responding to an emergency.
713 Notwithstanding the foregoing, the civil penalty shall be
714 imposed if the violation was willful or malicious.

715 (i) This section shall not be construed to limit any
716 provision of law granting governmental immunity to state or
717 local entities or to impose any liability or duty of care not
718 otherwise imposed by law upon any state or local entity.

719 (j) Any person who willfully or maliciously removes or
720 otherwise destroys a marking used by an operator to mark the
721 location of any underground facility, except in the ordinary
722 course of excavation, is guilty of a Class C misdemeanor.

723 (k) Any monies received by the Underground Damage
724 Prevention Authority prior to April 22, 2021, which were
725 directed to be paid into the Underground Damage Prevention
726 Fund, shall be deposited into the fund."

727 "§37-15-10.1

728 (a) The Underground Damage Prevention Authority is



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729 created for the purpose of enforcing this chapter and for
730 reviewing penalty provisions and the adequacy of the
731 enforcement process. It is the intent of the Legislature that
732 the authority and its enforcement activities not be funded by
733 appropriations from the state budget.

734 (b) The authority ~~shall~~ may utilize the services of the
735 ~~Alabama~~ Public Service Commission to provide administrative
736 support for the authority, or the authority may contract with
737 a third-party administrator, subject to the concurrence by the
738 authority board. The Public Service Commission, or the
739 third-party administrator, shall charge the expenses
740 associated with the administrative duties of the authority
741 back to the authority, subject to the concurrence of the
742 authority board. The administrative support provided by the
743 ~~Alabama~~ Public Service Commission to the authority is in an
744 administrative capacity only and nothing in this chapter shall
745 expand the jurisdiction of the ~~Alabama~~ Public Service
746 Commission in any way.

747 (c) The authority shall be composed of a board of
748 underground facility protection stakeholders. The board shall
749 be composed of one subject matter expert representative from
750 each of the following stakeholders and all board appointments
751 shall be made by March 31, 2020, as follows:

752 (1) ~~Alabama~~ Attorney General's Office.

753 (2) ~~Alabama~~ Public Service Commission - gas pipeline
754 safety.

755 (3) ~~Alabama~~ State Department of Transportation.

756 (4) Alabama county engineers.



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757 (5) Cable television industry.
758 (6) Electric utility industry.
759 (7) Municipal utility operator industry.
760 (8) Natural gas distribution industry.
761 (9) One-Call Notification System.
762 (10) Professional excavator industry.
763 (11) Professional road builder industry.
764 (12) Professional land surveyor industry.
765 (13) Telecommunications industry.
766 (14) Transmission pipeline industry.
767 (15) Utility facility locating industry.
768 (16) Water utility industry.
769 (17) Wastewater industry.
770 (d) The Governor shall appoint the stakeholder
771 representatives selected from qualified persons as provided in
772 subsection (c) with the exception of the stakeholder
773 representatives from the ~~Alabama~~ Attorney General's office,
774 the ~~Alabama~~ Public Service Commission - gas pipeline safety,
775 and the ~~Alabama~~ State Department of Transportation, who shall
776 be appointed by the head of the respective agency. The initial
777 authority board shall be appointed with staggered terms as
778 determined by the Governor. After the initial appointment,
779 each stakeholder representative shall serve a term of three
780 years or until a replacement is appointed, whichever occurs
781 later. No person shall be appointed for more than two full
782 consecutive terms with the exception of the stakeholder
783 representatives from the ~~Alabama~~ Attorney General's office,
784 the ~~Alabama~~ Public Service Commission - gas pipeline safety,



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785 the ~~Alabama~~ State Department of Transportation, and the
786 One-Call Notification System.

787 (e) Membership of the authority board shall be
788 inclusive and reflect the racial, gender, geographic,
789 ~~urban/rural~~ urban, rural, and economic diversity of the state.

790 (f) The board shall elect an executive committee made
791 up of five representatives from the authority board as
792 provided in this section excluding those entities representing
793 a state agency, who will be responsible for levying civil
794 penalties and taking actions as described in Section 37-15-10,
795 this section, and Section 37-15-10.2.

796 (g) Members of the authority board and executive
797 committee may participate in a meeting of the board or
798 committee by means of telephone conference, video conference,
799 or similar communications equipment by means of which all
800 persons participating in the meeting may hear each other at
801 the same time and members of the public may simultaneously
802 listen to the meeting. Participation by such means shall
803 constitute presence in person at a meeting for all purposes.

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

805 (1) Adopt rules to conduct the affairs of the
806 authority.

807 (2) Make and enter into contracts.

808 (3) Enter into an interagency agreement with the
809 Attorney ~~General's office~~ General to serve as legal counsel.

810 The Attorney General shall be compensated at a rate not to
811 exceed the normal hourly rate authorized by the Governor for
812 legal services contracts. The authority shall also reimburse



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813 the Attorney General for any expenses incurred in providing
814 legal representation.

815 (4) Oversee the development of or contract for the
816 development and administration of the designated training
817 program.

818 (5) Evaluate and revise the enforcement program process
819 and penalty structure by adopting rules if the current
820 structure does not meet the purpose and intent of this chapter
821 or federal law.

822 (i) No member of the board, individually or jointly,
823 shall be civilly liable for acts within the scope of his or
824 her duties as a board member which are made in good faith and
825 are absent unreasonable, wanton, willful, intentional conductL
826 or a violation of federal law.

827 (j) The members of the board shall serve without
828 compensation.

829 (k) Nothing in this chapter shall grant the authority
830 jurisdiction over damage to utilities located above the
831 ground.

832 (l) Board members shall not participate in any
833 enforcement action decisions pertaining to the entity they
834 represent."

835 "§37-15-10.2

836 (a) Any person who violates this chapter may be
837 reported to the authority for the alleged violation.

838 (b) The board shall develop and implement a process for
839 the receipt of a complaint of a violation of this chapter. The
840 complaint must be made no later than 30 days after the known



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841 occurrence of the violation. A complaint may be filed as
842 information only and designated not to be pursued under the
843 enforcement provisions.

844 (c) Upon receipt of a complaint of a violation of this
845 chapter, the administrator, operating on behalf of the
846 authority, shall provide notice to the reported violator
847 advising that a complaint of violation has been made setting
848 out the time and place of the alleged violation, the identity
849 of who reported the violation, his or her right to file a
850 written response within 14 days, and his or her right to
851 appeal from an adverse decision.

852 (d) The administrator, acting on behalf of the
853 authority, shall submit the complaint and documentation to the
854 executive committee.

855 (e) The authority executive committee shall review the
856 complaint and any documentation regarding the complaint and
857 make any needed recommendation for penalty action.

858 (f) The administrator, operating on behalf of the
859 authority, shall notify the complainant and the reported
860 violator of any penalty assessed.

861 (g) Once the reported violator is notified of the
862 designated penalty as described in Section 37-15-10, the
863 violator may pay the penalty to the Underground Damage
864 Prevention Fund or dispute the penalty and request a hearing
865 before the full authority board.

866 (h) The request for a hearing before the authority
867 board must be made within 30 days of the issuance of
868 notification of the violation.



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869 (i) The full authority board shall meet no more than
870 quarterly, based on need. The hearings shall be held at the
871 place set forth in the notice of hearing. There shall be no
872 presumption of correctness attached to any finding of fact or
873 any assessment of a penalty that is appealed to the authority
874 board, and the proceedings and hearing before the authority
875 board shall be tried de novo. The complainant ~~must~~ and alleged
876 violator may request to attend the hearing.

877 (j) The authority board in the appeal process may do
878 all of the following:

879 (1) Repeal the initial penalty provisions cited for the
880 alleged violation of this chapter.

881 (2) Uphold the initial penalty provisions cited for the
882 alleged violation of this chapter.

883 (3) Issue a new penalty provision related to the
884 alleged violation of this chapter.

885 (4) Issue an order stating the outcome of the hearing L
886 including any assigned penalty.

887 (k) A person aggrieved by the final order, within 30
888 days from the date of the final order, may seek judicial
889 review in the circuit court by filing a notice of appeal.

890 (1) All complaints filed pursuant to this chapter shall
891 not be subject to the Alabama Open Records Act. However, the
892 authority shall make available upon request a summary of a
893 complaint after a final resolution has been entered regarding
894 any such complaint requested along with any documents
895 associated with the final resolution of the complaint.
896 However, this restriction shall not prevent a party from



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897 obtaining a copy of the complaint by means of a subpoena or
898 other method allowed by the Alabama Rules of Civil Procedure
899 or the Alabama Rules of Criminal Procedure. The Alabama Open
900 Meetings Act shall apply to all meetings and judicial hearings
901 required pursuant to this chapter, except for those meetings
902 of the authority in which the initial determination of
903 violation and recommended fine is discussed and determined.

904 (m) The authority may bring an action against any
905 person or entity to collect any fines, penalties, or other
906 monies owed to the authority.

907 (n) The authority shall be governed by the Alabama
908 Administrative Procedure Act."

909 Section 2. Section 37-15-4.2 is added to Chapter 15 of
910 Title 37, Code of Alabama 1975, to read as follows:

911 §37-15-4.2

912 (a) The excavator for an excavation project that
913 qualifies for a complex or large project shall provide the
914 underground facility operator, via the one-call notification
915 center, with notice of the planned complex or large project
916 not less than five working days prior to the planned complex
917 or large project pre-excavation planning meeting. The notice
918 shall follow the guidelines established for complex or large
919 projects which shall include, but not be limited to, all of
920 the following:

921 (1) Scope of project details and expected timelines for
922 the work to be concluded, including descriptions of project
923 phase, if appropriate.

924 (2) Company representative contact information.



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925 (3) Field contact representative contact information.

926 (4) List of known contractors and subcontractors.

927 (5) Use of premarking requirements at proposed

928 excavation sites.

929 (b) The excavator, operators, and locators involved in
930 the complex or large project shall negotiate in good faith to
931 reach a working agreement, which shall include, but not be
932 limited to, the agreed upon scope of work, timeline for
933 excavation activity, and location completion schedule.

934 (c) Once the working agreement is finalized, the locate
935 requests for utility markings shall be made in accordance with
936 the location completion schedule and in compliance with the
937 requirements of Section 37-15-4. The operator shall mark the
938 proposed excavation site in compliance with the requirements
939 of Section 37-15-6.

940 (d) An excavator's knowing failure to designate a
941 qualifying project as a complex or large project subject to
942 this section and an excavator or operator's failure to comply
943 with a working agreement shall be subject to the enforcement
944 provisions of Section 37-15-10.

945 (e) An operator may require an excavator to utilize the
946 complex or large project process if individual locate requests
947 placed as routine requests combined qualify for the complex or
948 large project process.

949 Section 3. This act shall become effective on January
950 1, 2027.