



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

A BILL

TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§37-15-2

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

(1) APPROXIMATE LOCATION OF UNDERGROUND FACILITIES.



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

1. Routine roadway maintenance activities carried out by or for those responsible for ~~publicly-maintained~~ publicly maintained roadways, provided that the activities meet all of the following requirements: (i) occur entirely within the right-of-way of a public road, street, or highway; (ii) are carried out with reasonable care so as to protect any utility facilities placed in the right-of-way by permit; (iii) are carried out within the limits of any original excavation on the traveled way, shoulder, or drainage ditches of a public road, street, or highway; and ~~7~~ (iv) if involving the replacement of existing structures, including traffic control



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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





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

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

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

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

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

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

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

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



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

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

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

"§37-15-4

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

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



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

(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.

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



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

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

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

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

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

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



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

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

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

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

"§37-15-4.1

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

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

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

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



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

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

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

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

"§37-15-5

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

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

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

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

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

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



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

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



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

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

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

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

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

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





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

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

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

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

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

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

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

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



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

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

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

"§37-15-6

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

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

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



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

section, but shall provide the best available information to the person excavating in order to comply with the requirements of this section. A person excavating is not liable for any damage to an underground facility under the exemption in this subdivision if the excavation or demolition is performed with reasonable care as noted in Section 37-15-8, and the excavator uses detection equipment or other acceptable means to determine the location of the underground facilities.

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

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

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



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

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

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

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

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



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

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

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

"§37-15-8

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

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

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

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

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

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



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

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

"§37-15-9

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

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

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



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

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

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

"§37-15-10

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

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

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



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

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

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

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

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

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

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





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

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

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

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

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



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

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

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

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

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

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

"§37-15-10.1

(a) The Underground Damage Prevention Authority is



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

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

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

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

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

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

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

(4) Alabama county engineers.



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

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,



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

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

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

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

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

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

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

(2) Make and enter into contracts.

(3) Enter into an interagency agreement with the Attorney ~~General's office~~ General to serve as legal counsel. The Attorney General shall be compensated at a rate not to exceed the normal hourly rate authorized by the Governor for legal services contracts. The authority shall also reimburse



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

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 conduct,  
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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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





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

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

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

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

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

§37-15-4.2

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

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

(2) Company representative contact information.



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

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.