

HB322 INTRODUCED



1 HB322
2 FKSU5D-1
3 By Representative Clouse
4 RFD: Transportation, Utilities and Infrastructure
5 First Read: 22-Jan-26



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4 SYNOPSIS:

5 Under existing law, the Underground Damage
6 Prevention Program exists to administer the One-Call
7 Notification System to safeguard against injury and
8 loss of life due to excavation or demolition and to
9 protect underground facilities from costly damage and
10 the interruption of utility or other services to the
11 general public.

12 This bill would establish various procedures for
13 excavators to follow prior to commencing complex or
14 large projects and would extend the statutory sunset
15 clause pertaining to the program.

16 This bill would also make nonsubstantive,
17 technical revisions to update the existing code
18 language to current style.

19
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21 A BILL

22 TO BE ENTITLED

23 AN ACT

24

25 Relating to the Underground Damage Prevention Program;
26 to amend Sections 37-15-2, 37-15-4, 37-15-4.1, 37-15-5,
27 37-15-6, 37-15-8, 37-15-9, 37-15-10, 37-15-10.1, and
28 37-15-10.2, Code of Alabama 1975; and to add Section 37-15-4.2

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29 to the Code of Alabama 1975, to provide various underground
30 damage prevention requirements for excavators before
31 commencing complex or large projects; to extend the statutory
32 sunset clause related to the program; to further provide for
33 hearing procedures; and to make nonsubstantive, technical
34 revisions to update the existing code language to current
35 style.

36 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

37 Section 1. Sections 37-15-2, 37-15-4, 37-15-4.1,
38 37-15-5, 37-15-6, 37-15-8, 37-15-9, 37-15-10, 37-15-10.1, and
39 37-15-10.2, Code of Alabama 1975, are amended to read as
40 follows:

41 "§37-15-2

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

44 (1) APPROXIMATE LOCATION OF UNDERGROUND FACILITIES.

45 Information about an operator's underground facilities which
46 is provided to a person by an operator and must be accurate to
47 within 18 inches measured horizontally from the outside edge
48 of each side of such operator's facility, or a strip of land
49 18 inches either side of the operator's field mark or the
50 marked width of the facility plus 18 inches on each side of
51 the marked width of the facility. The term does not include a
52 designation of location as to the depth below the surface of
53 the ground.

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

56 (3) AUTHORITY BOARD. The Underground Damage Prevention



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57 Board created under Section 37-15-10.1.

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

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

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

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

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

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

77 ~~(5)~~(6) CONTRACT LOCATOR. Any person contracted with an
78 operator specifically to determine and mark the approximate
79 location of the operator's utility lines that exist within the
80 area specified by a notice served on the ~~"~~One-Call
81 Notification System.~~"~~

82 ~~(6)~~(7) DAMAGE. Includes, but is not limited to, the
83 substantial weakening of structural or lateral support of an
84 underground facility, penetration or destruction of any



85 underground facility's protective coating, housing, or other
86 protective device, and the partial or complete severance
87 ~~(partial or complete)~~ of any underground facility, but does
88 not apply to any operator's abandoned underground facility.

89 ~~(7)~~(8) DEMOLITION. Any operation by which a structure
90 or mass of material is wrecked, razed, rendered, moved, or
91 removed by means of any tools, equipment, or explosives.

92 ~~(8)~~(9) DESIGN OR SURVEY LOCATE REQUEST. Any
93 communication to the ~~“~~One-Call Notification System,~~“~~
94 specifically to request existing underground facilities to be
95 located for bidding, predesign, or advance planning purposes.
96 A design locate request may not be made or used for excavation
97 purposes, and an excavation locate request may not be made or
98 used for design or survey purposes.

99 ~~(9)~~(10) EMERGENCY EXCAVATION OR DEMOLITION. An
100 excavation or demolition that is required to eliminate an
101 imminent danger to life, health, property, or the environment
102 or required for the repair or restoration of operator service
103 that is required to be performed before the notification and
104 response procedures required in Section 37-15-4 and 37-15-6
105 may be fully utilized.

106 ~~(10)~~(11) EXCAVATE or EXCAVATION. Any operation for the
107 purpose of the movement or removal of earth, rock, or other
108 material by mechanized equipment, ~~or~~ explosive device, or hand
109 digging. ~~and~~

110 a. The term includes, but is not limited to, augering,
111 backfilling, blasting, boring, digging, ditching, dredging,
112 drilling, grading, pile-driving, plowing-in, pulling-in,



113 ripping, scraping, sub-soiling, trenching, and tunneling.

114 ~~Excavate or excavation~~

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

117 1. Routine roadway maintenance activities carried out
118 by or for those responsible for ~~publicly maintained~~ publicly
119 maintained roadways, provided that the activities meet all of
120 the following requirements: (i) occur entirely within the
121 right-of-way of a public road, street, or highway; (ii) are
122 carried out with reasonable care so as to protect any utility
123 facilities placed in the right-of-way by permit; (iii) are
124 carried out within the limits of any original excavation on
125 the traveled way, shoulder, or drainage ditches of a public
126 road, street, or highway; and, (iv) if involving the
127 replacement of existing structures, including traffic control
128 devices, replace such structures in their approximate previous
129 locations and at their approximate previous depth. ~~Excavate or~~
130 ~~excavation does not include routine~~

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



141 3. Activities carried out by those responsible for
142 publicly maintained roadways when utilizing unmechanized tools
143 or equipment on its property or on its right-of-way.

144 (11)(12) EXCAVATOR. Any person who engages in
145 excavation.

146 (12)(13) EXECUTIVE COMMITTEE. The executive committee
147 created under Section 37-15-10.1.

148 (14) HAND DIGGING. Any movement, placement, or removal
149 of earth, rock, or other materials in or on the ground by use
150 of unmechanized tools or equipment, including, but not limited
151 to, shovels, picks, and post hole diggers. The term does not
152 include any of the following:

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

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

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

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

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



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169 ~~(13)~~ (15) IMPLIED EASEMENT. Any unwritten easement or
170 right-of-way on private property required to provide utility
171 or other services by means of underground facilities on
172 property of the owner requesting such service.

173 ~~(14)~~ (16) MARK or MARKING. The use of stakes, flags,
174 paint, buoys, or clearly identifiable materials placed on the
175 surface of the ground or water to show the approximate
176 location of underground facilities.

177 ~~(15)~~ (17) MECHANIZED EQUIPMENT. Equipment powered or
178 energized by any motor, engine, hydraulic, or pneumatic device
179 and is used for excavation or demolition work l including, but
180 not limited to, tractors, trenchers, bulldozers, power
181 shovels, augers, backhoes, scrapers, pile drivers, drills,
182 cable and pipe plows, or other equipment used for plowing-in
183 or pulling-in cable or pipe.

184 ~~(16)~~ (18) MEMBER. A person who participates in the
185 ~~"~~One-Call Notification System~~"~~ to receive services and is in
186 good standing with the ~~"~~One-Call Notification System~~"~~ in
187 accordance with the guidelines set forth in the corporation's
188 bylaws.

189 ~~(17)~~ (19) NEAR MISS. An event where damage did not
190 occur, but a clear potential for damage was identified.

191 ~~(18)~~ (20) NONINVASIVE METHOD OF EXCAVATION. A method of
192 excavation that does not compromise the integrity of the
193 underground facility. These methods include, but are not
194 limited to, hand digging, pot holing, soft digging, vacuum
195 excavation methods, or other methods approved by the operator.

196 ~~(19)~~ (21) NOTIFICATION AREA. An area or territory which



197 an operator designates as the area where the operator wishes
198 to receive notifications for any excavation in that area. The
199 notification area should encompass the underground
200 distribution system or network of the operator.

201 ~~(20)~~ (22) ONE-CALL NOTIFICATION SYSTEM. A ~~non-profit~~
202 nonprofit corporation, a public corporation, or a governmental
203 entity which will provide a statewide notification service,
204 for the purpose of receiving statewide telephonic toll-free or
205 electronic notification of any planned excavation or
206 demolition activities by excavators or other persons as set
207 forth in Section 37-15-4 and distributing the required
208 excavation or demolition information to its affected member
209 operators as set forth in Section 37-15-5.

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



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225 ~~(22)~~ (24) PERSON. An individual, joint venture,
226 partnership, association, authority, cooperative, firm,
227 corporation, governmental entity, or any subdivision or
228 instrumentality of that entity and its employees, agents, or
229 legal representatives.

230 ~~(23)~~ (25) POSITIVE RESPONSE. The communication among
231 member operators, persons excavating, and the ~~“~~One-Call
232 Notification System~~“~~ concerning the status of locating an
233 underground facility.

234 ~~(24)~~ (26) PREMARK. To delineate the general scope of the
235 excavation on the surface of the ground using white paint,
236 white stakes, or other similar white markings.

237 ~~(25)~~ (27) ROUTINE ROADWAY MAINTENANCE. Maintenance work
238 on a roadway that is not done pursuant to a contract awarded
239 by a state or local government through a bid process for which
240 plan drawings have been developed in advance or work for which
241 detailed and specific scheduling is not possible or feasible,
except that maintenance work that complies with subparagraph
(11)b.1. may be contracted.

244 ~~(26)~~ (28) TOLERANCE ZONE. The width of the underground
245 facility plus 18 inches on either side of the outside edge of
246 the underground facility on a horizontal plane.

247 ~~(27)~~ (29) UNDERGROUND FACILITY. Any cable, pipeline,
248 duct, wire, conduit, or other similar installation, installed
249 underground or underwater, by which an operator transports or
250 delivers materials, information, or services.

251 ~~(28)~~ (30) WILLFUL NONCOMPLIANCE. The intentional refusal
252 or failure to perform, or comply with, a duty created or



253 imposed by this chapter or by the rules adopted pursuant to
254 this chapter.

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

257 ~~(29)~~ (32) WORKING DAY. A 24-hour period commencing the
258 beginning of the start of the next working day from the time
259 of receipt of the notification, excluding Saturday, Sunday,
260 and the following ~~nine~~ holidays: New Year's Day, Memorial Day
261 (observed), Independence Day, Labor Day, Veterans Day,
262 Thanksgiving Day, the Friday following Thanksgiving Day,
263 Christmas Eve, and Christmas Day. When any of these holidays
264 occur on a Saturday, it will be observed on the preceding
265 Friday, and when any of these holidays occur on a Sunday, it
266 will be observed on the following Monday.

267 ~~(30)~~ (33) WORKING DAY HOURS. The time from 7:00 a.m. to
268 5:00 p.m. local time on working days."

269 "§37-15-4

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

279 (b) Before commencing any excavation or demolition
280 operation prohibited by Section 37-15-3, each person



281 responsible for the excavation or demolition shall give
282 telephonic or electronic notice of the intent to excavate or
283 demolish to the underground facility operator or the ~~"One-Call~~
284 Notification System~~"~~ acting on behalf of the operator at least
285 two but not more than 10 working days prior to the start of
286 the proposed excavation, not including the day of
287 notification, and at least two working days but not more than
288 30 calendar days, not including the day of notification, prior
289 to the start of demolition or any blasting operations for
290 either excavation or demolition.

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

308 (d) Notification to the One-Call Notification System of



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

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

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

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

333 ~~(h)~~ (g) Except for those persons submitting design or
334 survey locate requests, no person, including an operator,
335 shall request markings of a site through the One-Call
336 Notification System that meets the operational requirements as



337 described in ~~subsection (a) of~~ Section 37-15-5 (a), unless
338 excavation is scheduled to commence. In addition, no person
339 shall make repeated requests for remarking, unless the
340 repeated request is required for excavating to continue or due
341 to circumstances not reasonably within the control of the
342 person.

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

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

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

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

354 "§37-15-4.1

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



365 request and the company name of the project owner.

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

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

372 (2) Providing to the person submitting the design or
373 survey locate request the best available description of all
374 underground facilities in the area of proposed excavation
375 which may include drawings of underground facilities already
376 built in the area or other facility records that are
377 maintained by the facility operator.

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

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

385 "§37-15-5

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

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

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

392 ~~(3) Operators with more than 25,000 customers or 500~~



393 ~~miles of facilities, that are not members, must join the~~
394 ~~One-Call Notification System by January 1, 2021.~~

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

398 ~~(5)~~(2) Operators of electrical underground facilities
399 that join the One-Call Notification System ~~under the~~
400 ~~requirements of subdivision (3) or (4)~~ having less than five
401 percent underground trench miles compared to the total miles
402 of line~~s~~ are not subject to the membership costs until their
403 underground trench miles exceed the trench mile exemption.

404 These operators shall be required to report annually to the
405 One-Call Notification System their percentage of underground
406 trench miles by the end of each calendar year.

407 ~~(6)~~(3) If an operator of an underground facility fails
408 to become a member of the One-Call Notification System, as
409 required by this chapter, and that failure is a cause of
410 damage to that underground facility caused by a person who has
411 complied with this chapter and~~has~~ have exercised reasonable
412 care in the performance of the excavations that has caused
413 damage to the underground facility, the operator has no right
414 of recovery against the person for the damage to that
415 underground facility.

416 (b) ~~Between April 18, 1994, and January 1, 1995, or any~~
417 ~~time thereafter, any~~ Any nonprofit ~~non-profit~~ corporation,
418 public corporation, or governmental entity desiring to become
419 the One-Call Notification System shall apply to the~~Alabama~~
420 Public Service Commission for a certificate of public



421 convenience and necessity, verifying under oath that the
422 applicant meets the requirements of this chapter. After a
423 public hearing on the application, if the ~~Alabama~~ Public
424 Service Commission deems that the applicant meets the
425 requirements of this chapter, and if it is found that the
426 applicant is fit, willing, and able to properly perform the
427 services proposed and that the proposed service is or will be
428 required by the present or future public convenience or
429 necessity, then ~~in such event~~ the ~~Alabama~~ Public Service
430 Commission may issue a certificate of public convenience and
431 necessity authorizing the applicant to commence its operation
432 as the One-Call Notification System. The ~~Alabama~~ Public
433 Service Commission shall revoke a certificate if the
434 ~~non-profit~~ nonprofit corporation, public corporation, or
435 governmental entity ceases to meet the requirements as set
436 forth in this chapter. The One-Call Notification System must
437 provide a report of operations and financial review or audit
438 to the Public Service Commission annually.

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

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

448 (e) Operators of underground natural gas or hazardous



449 liquid pipeline facilities or the One-Call Notification System
450 acting on their behalf shall develop and implement a public
451 awareness and damage prevention program to educate the general
452 public, excavators, and operators about the availability and
453 use of the One-Call Notification System as required in
454 applicable federal regulations and the requirements of this
455 chapter.

456 (f) The person giving notice of intent to excavate or
457 demolish shall be furnished an individual reference file
458 number for each notification and upon request shall be
459 furnished the names of the operators to whom the notification
460 will be transmitted.

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

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

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

475 (j) All members of the One-Call Notification System
476 shall provide the One-Call Notification System with the



477 following information:

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

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

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

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

497 "§37-15-6

498 (a) (1) Each operator served with notice in accordance
499 with Section 37-15-4, with underground facilities in the area,
500 shall mark or cause to be marked or otherwise provide the
501 approximate location of the operator's underground facilities
502 by marking in a manner as prescribed herein prior to the
503 proposed start of excavation, demolition, or blasting. If any
504 underground facilities become damaged due to an operator



505 furnishing inaccurate information as to the approximate
506 location of the facilities, through no fault of the operator,
507 then the civil liabilities imposed by this chapter do not
508 apply.

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

512 (3) A member operator that states that it does not have
513 accurate information concerning the exact location of its
514 underground facilities is exempt from the requirements of this
515 section, but shall provide the best available information to
516 the person excavating in order to comply with the requirements
517 of this section. A person excavating is not liable for any
518 damage to an underground facility under the exemption in this
519 subdivision if the excavation or demolition is performed with
520 reasonable care as noted in Section 37-15-81, and the excavator
521 uses detection equipment or other acceptable means to
522 determine the location of the underground facilities.

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



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

537 (c) The color code designation referenced in this
538 section shall not be used by any operator or person to mark
539 the boundary or location of any excavation or demolition area.
540 If the excavator elects to mark the proposed excavation or
541 demolition site, the boundary or location shall be identified
542 using white as the identifying color or with natural color
543 wood stakes. White flags or white stakes may have a thin
544 stripe, one inch or less of the designated color code, to
545 indicate the excavator's proposed type of facility, if
546 applicable.

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

554 (e) If all operators notified on the locate request
555 have submitted a positive response that indicates a closed or
556 completed response by the operator to the One-Call
557 Notification System prior to the proposed excavation date, the
558 excavator who made the request, upon verifying the closed or
559 completed status in the positive response system, may begin
560 work prior to the proposed date of excavation given, while



561 following all requirements of Section 37-15-8 or other
562 applicable portions of this chapter~~The requirement for~~
563 ~~providing a positive response shall become effective January~~
564 ~~1, 2021.~~

565 (f) After the required notice of excavation is given
566 and the operator has designated the facility as complete or
567 cleared in the positive response system or has otherwise
568 responded in accordance with this section, if the excavator
569 observes or becomes aware of an unmarked underground facility
570 in the area of proposed excavation, the excavator shall not
571 begin excavating until an additional notice is made to the
572 One-Call Notification System. The excavator may begin after
573 the giving of the notice, but shall exercise reasonable care
574 to avoid the underground facility that was observed.

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

577 "§37-15-8

578 In addition to the notification requirements of Section
579 37-15-4, each person responsible for an excavation or
580 demolition operation designated in Section 37-15-3, when
581 performing excavation or demolition within the tolerance zone,
582 shall do all of the following to avoid damage to or minimize
583 interference with the underground facilities:

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

588 (2) Maintain a clearance of at least 18 inches between



589 any underground facility and the cutting edge or point of
590 mechanized equipment.

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

594 ~~(3)~~(4) Provide such support for underground facilities
595 in and near a construction area, including backfill
596 operations, as may be reasonably required by the operator for
597 the protection of the utilities.

598 ~~(4)~~(5) Protect and preserve the markings of approximate
599 locations of underground facilities until those markings are
600 no longer required for proper and safe excavation or
601 demolition."

602 "§37-15-9

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

613 (b) In addition to subsection (a), each person
614 responsible for any excavation or demolition shall immediately
615 report to the operator or the One-Call Notification System
616 operating on behalf of the underground facility owner and



617 appropriate law enforcement agencies and fire departments any
618 damage to an underground facility that results in escaping
619 flammable, corrosive, explosive, or toxic liquids or gas and
620 shall take reasonable actions necessary to protect persons or
621 property and to minimize safety hazards until those law
622 enforcement agencies and fire departments and the operator
623 arrive at the underground facility.

624 (c) If an event damages any pipe, cable, or its
625 protective covering, or other underground facility, or there
626 is a significant near miss that could have resulted in damage,
627 the operator receiving the notice shall file a report with the
628 One-Call Notification System. Reports must be submitted
629 annually to the system, ~~no later than March 31~~ for the prior
630 calendar year by the deadline date established for the prior
631 year reporting, or more frequently at the option and sole
632 discretion of the operator. Each report must describe, if
633 known, the cause, nature, and location of the damage. The
634 One-Call Notification System shall establish and maintain a
635 process to facilitate submission of reports by operators or
636 persons excavating.

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

644 "§37-15-10



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

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

652 (2) For a second or subsequent violation within a
653 12-month period, the violator shall complete a course of
654 training concerning compliance with this chapter or pay a
655 civil penalty in an amount not to exceed one thousand dollars
656 (\$1,000) per incident, or both.

657 (3) For a third or subsequent violation within a
658 12-month period, the violator shall complete a course of
659 training concerning compliance with this chapter and pay a
660 civil penalty in an amount not to exceed three thousand
661 dollars (\$3,000) per incident.

662 (4) Notwithstanding this subsection, if any violation
663 was the result of gross negligence or willful noncompliance,
664 the violator shall be required to complete a course of
665 training concerning compliance with this chapter and pay a
666 civil penalty in an amount not to exceed ten thousand dollars
667 (\$10,000) per incident.

668 (b) Any person who is required to complete a course of
669 training under this section shall be responsible for paying
670 for the cost of the training. For those instances in which
671 training is ordered, if the person is a firm, partnership,
672 association, corporation, limited liability company, joint



673 venture, department, or subdivision of the state or other
674 governmental entity or any other body or organization, it may
675 be required that at least one manager or supervisor thereof
676 attend any training.

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

681 (d) The amount of such penalties shall be dependent
682 upon the degree of ~~non-compliance~~ noncompliance, the amount of
683 injury or damage caused, the degree of threat to public
684 safety, the degree of public inconvenience caused as a result
685 of the violation, and the number of past violations.
686 Mitigation of the penalty may be shown by good faith efforts
687 of the violator to have complied with this chapter.

688 (e) The Underground Damage Prevention Fund is created
689 within the State Treasury, to be administered by the
690 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
693 collected by the authority under this chapter, including, but
694 not limited to, grants, assessments, and civil penalties,
695 shall be deposited into the fund. Any monies remaining in the
696 ~~Underground Damage Prevention Fund~~ fund at the end of the
697 fiscal year shall not revert to the State General Fund, but
698 shall remain in the Underground Damage Prevention Fund for the
699 exclusive use of the authority. The expenditures of monies in
700 the Underground Damage Prevention Fund shall be at the



701 discretion of the authority board to carry out its duties
702 under this chapter. Excess funds shall be used for purposes
703 related to underground facility damage prevention, including,
704 but not limited to, ~~support~~ public awareness programs and
705 training and education of excavators, operators, locators, and
706 other persons to reduce the number and severity of violations
707 of this chapter.

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

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

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

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



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

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

737 "§37-15-10.1

738 (a) The Underground Damage Prevention Authority is
739 created for the purpose of enforcing this chapter and for
740 reviewing penalty provisions and the adequacy of the
741 enforcement process. It is the intent of the Legislature that
742 the authority and its enforcement activities not be funded by
743 appropriations from the state budget.

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



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

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

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

765 (3) Alabama State Department of Transportation.

766 (4) Alabama county engineers.

767 (5) Cable television industry.

768 (6) Electric utility industry.

769 (7) Municipal utility operator

770 (8) Natural gas distribution industry.

771 (9) One-Call Notification System.

772 (10) Professional excavator industry

773 (11) Professional road builder industry

(12) Professional land surveyor industry

775 (13) Telecommunications industry

776 (14) Transmission pipeline industry

777 (15) Utility facility locating, industry

778 (16) Water utility industry

(17) *Want something in particular*

$$7.80 \quad (-1) \quad \mathbb{P}^1 \quad S \quad 1 \quad 1 \quad 1$$

781 representatives selected from qualified persons as provided in
782 subsection (c) with the exception of the stakeholder
783 representatives from the ~~Alabama~~ Attorney General's office,
784 the ~~Alabama~~ Public Service Commission - gas pipeline safety,



785 and the ~~Alabama~~ State Department of Transportation, who shall
786 be appointed by the head of the respective agency. The initial
787 authority board shall be appointed with staggered terms as
788 determined by the Governor. After the initial appointment,
789 each stakeholder representative shall serve a term of three
790 years or until a replacement is appointed, whichever occurs
791 later. No person shall be appointed for more than two full
792 consecutive terms with the exception of the stakeholder
793 representatives from the ~~Alabama~~ Attorney General's office,
794 the ~~Alabama~~ Public Service Commission - gas pipeline safety,
795 the ~~Alabama~~ State Department of Transportation, and the
796 One-Call Notification System.

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

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

806 (g) Members of the authority board and executive
807 committee may participate in a meeting of the board or
808 committee by means of telephone conference, video conference,
809 or similar communications equipment by means of which all
810 persons participating in the meeting may hear each other at
811 the same time and members of the public may simultaneously
812 listen to the meeting. Participation by such means shall

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813 constitute presence in person at a meeting for all purposes.

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

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

817 (2) Make and enter into contracts.

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

820 The Attorney General shall be compensated at a rate not to
821 exceed the normal hourly rate authorized by the Governor for
822 legal services contracts. The authority shall also reimburse
823 the Attorney General for any expenses incurred in providing
824 legal representation.

825 (4) Oversee the development of or contract for the
826 development and administration of the designated training
827 program.

828 (5) Evaluate and revise the enforcement program process
829 and penalty structure by adopting rules if the current
830 structure does not meet the purpose and intent of this chapter
831 or federal law.

832 (i) No member of the board, individually or jointly,
833 shall be civilly liable for acts within the scope of his or
834 her duties as a board member which are made in good faith and
835 are absent unreasonable, wanton, willful, intentional conduct L
836 or a violation of federal law.

837 (j) The members of the board shall serve without
838 compensation.

839 (k) Nothing in this chapter shall grant the authority
840 jurisdiction over damage to utilities located above the



841 ground.

842 (1) Board members shall not participate in any
843 enforcement action decisions pertaining to the entity they
844 represent."

845 "§37-15-10.2

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

848 (b) The board shall develop and implement a process for
849 the receipt of a complaint of a violation of this chapter. The
850 complaint must be made no later than 30 days after the known
851 occurrence of the violation. A complaint may be filed as
852 information only and designated not to be pursued under the
853 enforcement provisions.

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

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

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

868 (f) The administrator, operating on behalf of the



869 authority, shall notify the complainant and the reported
870 violator of any penalty assessed.

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

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

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

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

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

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

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

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



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

900 (1) All complaints filed pursuant to this chapter shall
901 not be subject to the Alabama Open Records Act. However, the
902 authority shall make available upon request a summary of a
903 complaint after a final resolution has been entered regarding
904 any such complaint requested along with any documents
905 associated with the final resolution of the complaint.
906 However, this restriction shall not prevent a party from
907 obtaining a copy of the complaint by means of a subpoena or
908 other method allowed by the Alabama Rules of Civil Procedure
909 or the Alabama Rules of Criminal Procedure. The Alabama Open
910 Meetings Act shall apply to all meetings and judicial hearings
911 required pursuant to this chapter, except for those meetings
912 of the authority in which the initial determination of
913 violation and recommended fine is discussed and determined.

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

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

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

921 §37-15-4.2

922 (a) The excavator for an excavation project that
923 qualifies for a complex or large project shall provide the
924 underground facility operator, via the one-call notification



925 center, with notice of the planned complex or large project
926 not less than five working days prior to the planned complex
927 or large project pre-excavation planning meeting. The notice
928 shall follow the guidelines established for complex or large
929 projects which shall include, but not be limited to, all of
930 the following:

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

934 (2) Company representative contact information.

935 (3) Field contact representative contact information.

936 (4) List of known contractors and subcontractors.

937 (5) Use of premarking requirements at proposed
938 excavation sites.

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

944 (c) Once the working agreement is finalized, the locate
945 requests for utility markings shall be made in accordance with
946 the location completion schedule and in compliance with the
947 requirements of Section 37-15-4. The operator shall mark the
948 proposed excavation site in compliance with the requirements
949 of Section 37-15-6.

950 (d) An excavator's knowing failure to designate a
951 qualifying project as a complex or large project subject to
952 this section and an excavator or operator's failure to comply

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953 with a working agreement shall be subject to the enforcement
954 provisions of Section 37-15-10.

955 (e) An operator may require an excavator to utilize the
956 complex or large project process if individual locate requests
957 placed as routine requests combined qualify for the complex or
958 large project process.

959 Section 3. This act shall become effective on January
960 1, 2027.