

UNDERGROUND DAMAGE PREVENTION LEGISLATION

ALABAMA ACT 94-487

S. 299

By: Senators Campbell, Barron, Denton, Dial, Hill, Little, Waggoner, Bolling, Langford, Bedsole, Hale, Owens, Ellis, Dixon, Ghee, and Parsons Enrolled, An Act,

To provide for a means to safeguard the public against injury and loss of life or the interruption of public services caused by damage to various underground facilities by communicating and coordinating adequate prior notification of excavation or demolition activities that might damage or interrupt services provided by certain underground facilities; to prohibit certain activities without first having ascertained the location of any potentially affected underground facilities; to prescribe procedures for notification of an intent to undertake certain activities; to prescribe certain activities to be included in an underground damage prevention program; to prescribe procedures for response to both emergency and routine notification and for reporting damage resulting from certain activities; to prescribe civil penalties for violations and exceptions to such penalties; to provide for the liberal construction and severability of any part of this act and to provide that this act shall become effective on January 1, 1995.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Purpose and Intent

The purpose of this act is to safeguard against injury and loss of life due to excavation or demolition and to protect underground facilities from costly damage and the interruption of utility or other services to the general public.

Section 2. Definitions

As used in this act unless the context clearly implies a different meaning:

- (a) "Approximate Location" of underground facilities means 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 eighteen inches either side of the operator's field mark or the marked width of the facility plus eighteen inches on each side of the marked width of the facility;
- (b) "Blasting" means the use of an explosive device for the excavation of earth, rock or other material or the demolition of a structure;
- (c) "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 severance (partial or complete) of any underground facility, but does not apply to any operator's abandoned underground facility;

(d) "Demolition" means 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;

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

(f) "Excavator" means any person who engages in excavation;

(g) "Implied Easement" means 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 services;

(h) "Mark" or "Marking" means 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;

(i) "Mechanized Equipment" means equipment powered or energized by any motor, engine, hydraulic or pneumatic device 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;

(j) "One-Call Notification System" means a non-profit corporation, a public corporation or a governmental entity which will provide a statewide notification service, for the purpose of receiving statewide telephonic toll-free notification of any planned excavation or demolition activities by excavators or other persons as set forth in Section 4 of this act and distributing the required excavation or demolition information to its affected member operators as set forth in Section 5 of this act;

(k) "Operator" means any person, governmental agency or political subdivision, or their 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 and traffic control systems or other systems of like nature;

(1) "Person" means an individual, joint venture, partnership, association, authority, cooperative, firm, corporation, governmental entity, or any subdivision or instrumentality of that entity and their employees, agents or legal representatives; however, the term "person" does not include and no provision of this act shall apply to the state highway department or their officials, employees, agents or representatives while in the performance of their respective duties.

Provided further, that the term does not include, and no provision of this act shall apply to, any county or its officials, employees, agents, or representatives while in the performance of their duties. Provided further, that such term does not include and no provision of this act shall apply to any excavating done by a railroad when said excavating is done entirely on land which the railroad owns or on which the railroad operates or, in the event of emergency, on adjacent land.

(m) "Underground Facility" means 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;

(n) "Working Day" means a 24 hour period commencing 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, Veteran's Day, Thanksgiving Day, the Friday following Thanksgiving Day, 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.

Section 3. Prohibition

No person shall excavate in a street, highway, public easement, private easement or implied easement of an operator, or on property of an operator, or conduit blasting operations, or perform demolition activities in the near proximity of an operator's underground facility without first having ascertained, in the manner prescribed in Section 4 and 6 of this act, the location of all underground facilities in the area of the proposed excavation, blasting, or demolition; however, violation of this section shall not subject any person to the civil penalties of Section 10 provided the easement or underground facility is located on property owned by such person and such person did not have knowledge of the existence or presence of such easement or underground facility.

Section 4. Notice of Intent to Excavate or Demolish

(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 the provisions of this act. Any public agency issuing such permit shall notify the person receiving the permit of the notification requirements of this act; however, failure to provide such notification shall not make the state highway department subject to the penalties provided for in Section 10 of this act.

(b) Before commencing any excavation or demolition operation prohibited by Section 3 of this act, each person responsible for such excavation or demolition shall give written, telephonic or electronic notice of such intent to excavate or demolish to the underground facility operator or a "One-Call Notification System" acting on behalf of the operator at least two but not more than ten working days prior to the start of the proposed excavation and at least two working days but not more than thirty calendar days prior to the start of demolition or any blasting operations for either excavation or demolition. Written notice shall be by registered mail and shall be valid only upon receipt of the written information required by this act by the operator or by a "One-Call Notification System" acting on behalf of the operator.

(c) The notice required by subsection (b) of this section 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.

(d) Notification to an operator or to a "One-Call Notification System" acting on behalf of the operator of an intent to excavate shall be valid for a period of fourteen calendar days from the proposed starting date given and the notice to demolish shall be valid for a period of thirty calendar days from the starting date given. Each person responsible for excavation or demolition shall renew with the underground facility operator or a "One-Call Notification System" acting on behalf of the operator each notice of intent to excavate or demolish at least two working days prior to the expiration date of the notice if the excavation or demolition has not been completed.

(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 act between operators, public agencies and contractors after initial compliance with the notification provisions of this act.

(f) Compliance with the notice requirements of this section is not required of any governmental entity doing maintenance work within dedicated state, county or city road rights-of-way; or of persons plowing less than 12 inches in depth for agricultural purposes; or of municipal or public corporations operating water and sewer boards, which produce, treat and sell water and provide fire protection in accordance with Insurance Service Office fire protection standards while doing work on any easements, rights-of-way or other property owned by said board or to which said board had access; or of any rural water system.

(g) 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.

Section 5. Underground Damage Prevention Program

(a) Operators who have underground facilities within this state shall either provide an in-house program which meets the operational requirements of receiving those excavation or demolition notifications as set forth in sections 5(d), 5(e), 5(f) and 5(g) of this act or shall participate in a "One-Call Notification System"; provided, however, that any operator who has less than ten thousand customers or subscribers and who provide an in-house program which meets all of the operational requirements of receiving those excavation or demolition notifications as set forth in this act shall not be required to provide the services of the in-house program on working days except during the hours that the operator's offices are open to the public and may, but shall not be required to, voice record the notification calls received;

(b) Between the date on which this act becomes law and its effective date (January 1, 1995), or any time thereafter, any non-profit corporation, public corporation, or governmental entity desiring to become a "One-Call Notification System" shall apply to the Alabama Public Service Commission for a certificate of public convenience and necessity, verifying under oath that said applicant

meets the requirements of this act. After a public hearing on said application, if the Alabama Public Service Commission deems that said applicant meets the requirements of this act, and if it is found that said applicant is fit, willing and able to properly perform the services proposed and that the proposed service is or will be required by the present or future public convenience or necessity, then in such event the Alabama Public Service Commission shall issue a certificate of public convenience and necessity authorizing said applicant to commence its operation as a "One-Call Notification System." The Alabama Public Service Commission shall further have the authority, and is required, to revoke said certificate if said non-profit corporation, public corporation, or governmental entity ceases to meet the requirements as set forth in this act.

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

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

(e) An adequate record of notifications shall be maintained by the underground facility operator or a "One-Call Notification System" in order to document timely compliance with this act. 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.

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

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

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

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

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

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

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

(i) A "One-Call Notification System" shall promptly transmit the information received from the excavator, as set forth in Section 4 of this act, to its appropriate member operators.

(j) All operators who are members of a "One-Call Notification System" and 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 Sections 5(h)(1), 5(h)(2) and 5(h)(4) of this act, within 30 days of the completion of such change, addition or new installation.

Section 6. Response to Notice of Intent to Excavate or Demolish

(a) (1) Each operator served with notice in accordance with Section 4, with underground facilities in the area, shall locate 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 act do not apply.

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

(3) 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 4 of this act, 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 positive 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 described herein, unless otherwise provided for by specific administrative rule or regulation promulgated pursuant to this act, namely:

UTILITY OR TYPE OF FACILITY GROUP IDENTIFYING COLOR

Electric Power Distribution and Transmission Municipal Electric	Safety Red
Gas Distribution and Transmissions Oil Distribution and Transmission Hazardous Materials	High Visibility Safety Yellow
Telephone and Telegraph Police and Fire Communications Cable Television	Safety Alert Orange
Water and Irrigation Slurry Lines	Safety Precaution Blue
Sewer and Drain Lines	Safety Green

(c) Marks or markings shall indicate the name, initials or logo of the owner and operator of the underground facility and the width of the underground facility if it is greater than two inches.

(d) The group identifying colors designated in Section 6(b) 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 wood stakes. White flags or white stakes may have a thin stripe, one inch or less of the above group identifying colors, to indicate the excavator's proposed type of facility, if applicable.

Section 7. Emergency Excavation or Demolition

(a) Compliance with the notice requirements of Section 4 of this act, is not required of persons responsible for emergency excavation or demolition to eliminate an imminent danger to life, health, property or public services; provided, however, that such person gives, before commencing or as soon as practicable thereafter, notice of the emergency excavation or demolition to each operator having underground facilities located in the area or to the "One-Call Notification System" acting on behalf of the operator. However, every person who shall engage in such emergency excavation or demolition shall take all necessary and reasonable precautions to avoid or minimize damage to existing underground facilities.

(b) An imminent danger to life, health, property or public services exists whenever there is a substantial likelihood that injury, loss of life, health, or public services, or substantial property loss could result before the notification and response procedures required in Sections 4 and 6 of this act can be fully complied with.

Section 8. Precaution to Avoid Damage

In addition to the notification requirements of Section 4 of this act, each person responsible for an excavation or demolition operation designated in Section 3 of this act shall:

(a) Conduct excavation or demolition activities so as to avoid damage to or minimize interference with existing underground facilities in and near the excavation or demolition area;

(b) Employ detection equipment or non-invasive methods to determine the precise location of an operator's underground facilities when excavation is due to be done within the area marked as the appropriate location of the operator's underground facilities and maintain a clearance between any underground facility and the cutting edge or point of any mechanized equipment, taking into account the known limit of control of such cutting edge or point, as may be reasonably necessary to avoid damage to such facility; and

(c) Provide such support for underground facilities in and near the excavation or demolition area, including during any backfilling operations, as may be reasonably necessary for the protection of such facilities.

Section 9. Excavation or Demolition Damage

(a) Each person responsible for any excavation or demolition operation that results in any damage to an underground facility shall, immediately upon discovery of such damage, notify the operator of such facility of the location of the damage 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) Each person responsible for any excavation or demolition operation that results in damage to an underground facility permitting the escape of any flammable, toxic or corrosive gas or liquid shall, immediately upon discovery of such damage, notify the operator and take other action as may be reasonably necessary, to protect persons and property and to minimize the hazards, until arrival of the operator's personnel, police or fire department.

Section 10. Civil Penalties

(a) Any person who violates any provision of this act shall be subject to a civil penalty not to exceed \$10,000 for each such violation.

(b) An action under this section shall be instigated by any person making a complaint in writing, verified by oath that said person has reason to believe that a violation under this act has occurred.

(c) Prosecution of violations of this act shall be by district attorney or the attorney general and shall be brought in the circuit court for the county in which the violation, or some part thereof, arose or in the circuit court for the county in which the defendant resides or maintains his principal place of business within the state.

(d) The amount of such penalties shall be dependant upon the degree of non-compliance, the amount of 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 the provisions of this act.

(e) All penalties recovered in such actions shall be paid into the general fund of the State of Alabama.

(f) Any person who violates any provision of this act shall not be subject to payment of the assessed penalty in Section 10(a) if they have been assessed a civil penalty for this same violation under the provisions of the Federal Natural Gas Pipeline Safety Act of 1968 or the Federal Hazardous Liquid Pipeline Safety Act of 1979 or any amendment to these acts.

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

Section 11. Liberal Construction

The provisions of this act shall be liberally construed as to effectuate the purposes of this act and the operation of a "One-Call Notification System."

Section 12. Severability

The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, such declarations shall not affect the part, which remains.

Section 13. Repealer

All laws or parts of laws which conflict with this act are hereby repealed.

Section 14. Effective Date

This act shall become effective on January 1, 1995.

Amendments

Rep. Knight (A)

H.B. 761

ENGROSSED

A BILL TO BE ENTITLED AN ACT

To amend Section 37-15-4, Code of Alabama 1975, to provide further for location of any proposed excavation or demolition and for exemptions to the notice requirements.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 37-15-4, Code of Alabama 1975, is amended to read as follows:

"§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 the provisions of this chapter. Any public agency issuing such permit shall notify the person receiving the permit of the notification requirements of this chapter; 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 such excavation or demolition shall give written, telephonic or electronic notice of such intent to excavate or demolish to the underground facility operator or a "One-Call Notification System" acting on behalf of the operator at least two but not more than ten working days prior to the start of the proposed excavation and at least two working days but not more than thirty calendar days prior to the start of demolition or any blasting operations for either excavation or demolition. Written notice shall be by registered mail and shall be valid only upon receipt of the written information required by this chapter by the operator or by a "One-Call Notification System" acting on behalf of the operator.

"(c) The notice required by subsection (b) of this section 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 mark the route or boundaries of the site of proposed excavation or demolition by means of white paint as the identifying color on stakes, flags, paint, buoys or clearly identifiable materials placed on the surface of the ground or water.

"(d) Notification to an operator or to a "One-Call Notification System" acting on behalf of the operator of an intent to excavate shall be valid for a period of fourteen calendar days from the proposed starting date given and the notice to demolish shall be valid for a period of thirty calendar days from the starting date given. Each person responsible for excavation or demolition shall renew with the underground facility operator or a "One-Call Notification System" acting on behalf of the operator each notice of intent to excavate or demolish at least two working days prior to the expiration date of the notice if the excavation or demolition has not been completed.

"(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) Compliance with the notice requirements of this section is not required of any governmental entity doing maintenance work within dedicated state, county or city road rights-of-way; or of persons plowing less than 12 inches in depth for agricultural purposes; or of municipal or public corporations operating water and sewer boards, which produce, treat and sell water and provide fire protection in accordance with Insurance Service Office fire protection standards while doing work on any easements, rights-of-way or other property owned by said board or to which said board had access; or of any rural water system.

"(g) 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) Compliance with the notice requirements of this section is not required by operators when excavating at a depth of 18 inches or less for the purpose of extending their underground facility from an easement or right-of-way on to the property of the person to be served by these extended facilities; if in the process of the excavation, no mechanized equipment is used in any excavation within the easement or right-of-way."

Section 2. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

House of Representatives

R.1 R.F.D....Comm., Trans. & Utilities....April 2, 1996

R.F. R. 2 Cal.....April 3, 1996

R. 3 at length and passed as amended...April 9, 1996

Yeas 85 Nays 0

Greg Pappas

Clerk

1996 REGULAR SESSION

AMENDMENT TO H. 761 BY: KNIGHT (A)

Amend H. 761 on page 4, line 2, by striking the word "paint" and substituting in lieu thereof the following:

"As the identifying color on stakes, flags, paint, buoys or clearly identifiable materials placed on the surface of the ground or water"