

2
3 HOUSE TRANSPORTATION, UTILITIES AND INFRASTRUCTURE COMMITTEE
4 SUBSTITUTE FOR HB110

5
6
7
8
9 SYNOPSIS: Under existing law, a person conducting
10 excavation on property, or demolition near
11 property, where a public easement exists, or where
12 an underground facility operator such as a utility
13 has an easement, is required to notify the
14 underground facility operator so that the
15 underground facility operator can mark the location
16 of its underground facilities. To facilitate
17 notification, the law has authorized the formation
18 of a "one-call notification system" which receives
19 and processes the notices, but participation in the
20 designated "one-call" system is optional with an
21 underground facility operator if the underground
22 facility operator elects to conduct its own
23 "in-house" program for notification. Thus, a person
24 excavating in an area may be required to determine
25 which underground facility operators are operating
26 in the area and to notify an underground facility

1 operator separately if it does not participate in
2 the one-call system.

3 This bill would provide that an operator of
4 underground facilities which elects not to
5 participate in the "one-call notification system"
6 would be responsible for damages to its facilities
7 if the operator fails to meet the operational
8 requirements for an in-house system.

9 This bill would also amend the definition of
10 person for purposes of the law.

11
12 A BILL
13 TO BE ENTITLED
14 AN ACT
15

16 To amend Sections 37-15-2 and 37-15-5 of the Code of
17 Alabama 1975, relating to the "One-Call Notification System"
18 established for the purpose of receiving notifications by
19 persons conducting excavations or demolitions on or near
20 certain property where underground facilities may be located;
21 to further provide for the definition of person; and to
22 provide that underground facility operators who elect to
23 conduct an in-house program to receive notifications in lieu
24 of participating in the one-call notification system would be
25 responsible under certain conditions for damages to its
26 underground facilities.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 37-15-2 and 37-15-5 of the Code
2 of Alabama 1975, are amended to read as follows:

3 "§37-15-2.

4 "As used in this chapter unless the context clearly
5 implies a different meaning:

6 "(a) "Approximate Location" of underground
7 facilities means information about an operator's underground
8 facilities which is provided to a person by an operator and
9 must be accurate to within 18 inches measured horizontally
10 from the outside edge of each side of such operator's
11 facility, or a strip of land eighteen inches either side of
12 the operator's field mark or the marked width of the facility
13 plus eighteen inches on each side of the marked width of the
14 facility.

15 (b) "Blasting" means the use of an explosive device
16 for the excavation of earth, rock, or other material or the
17 demolition of a structure.

18 "(c) "Damage" includes, but is not limited to, the
19 substantial weakening of structural or lateral support of an
20 underground facility, penetration or destruction of any
21 underground facility's protective coating, housing, or other
22 protective device, and the severance (partial or complete) of
23 any underground facility, but does not apply to any operator's
24 abandoned underground facility.

25 "(d) "Demolition" means any operation by which a
26 structure or mass of material is wrecked, razed, rendered,

1 moved, or removed by means of any tools, equipment, or
2 explosives.

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

10 "(f) "Excavator" means any person who engages in
11 excavation.

12 "(g) "Implied Easement" means any unwritten easement
13 or right-of-way on private property required to provide
14 utility or other services by means of underground facilities
15 on property of the owner requesting such service.

16 "(h) "Mark" or "Marking" means the use of stakes,
17 flags, paint, buoys, or clearly identifiable materials placed
18 on the surface of the ground or water to show the approximate
19 location of underground facilities.

20 "(i) "Mechanized Equipment" means equipment powered
21 or energized by any motor, engine, hydraulic or pneumatic
22 device and is used for excavation or demolition work
23 including, but not limited to, tractors, trenchers,
24 bulldozers, power shovels, augers, backhoes, scrapers, pile
25 drivers, drills, cable and pipe plows, or other equipment used
26 for plowing-in or pulling-in cable or pipe.

1 "(j) "One-Call Notification System" means a
2 non-profit corporation, a public corporation, or a
3 governmental entity which will provide a statewide
4 notification service, for the purpose of receiving statewide
5 telephonic toll-free notification of any planned excavation or
6 demolition activities by excavators or other persons as set
7 forth in Section 37-15-4 and distributing the required
8 excavation or demolition information to its affected member
9 operators as set forth in Section 37-15-5.

10 "(k) "Operator" means any person, governmental
11 agency, or political subdivision, or their agents, who owns or
12 operates a public or private underground facility which
13 furnishes services, information, or materials, or transports
14 or transmits electric energy, light, water, steam, oil, gases,
15 gas, mixture of gases, petroleum, petroleum products,
16 hazardous or flammable liquids, toxic or corrosive fluids and
17 gases or items of like nature and telecommunications, cable
18 television, water, drainage, sewage, and traffic control
19 systems or other systems of like nature.

20 "(l) "Person" means an individual, joint venture,
21 partnership, association, authority, cooperative, firm,
22 corporation, governmental entity, or any subdivision or
23 instrumentality of that entity and their employees, agents, or
24 legal representatives; however, the term "person" does not
25 include and no provision of this chapter shall apply to the
26 State Department of Transportation or their officials,
27 employees, agents, or representatives while in the performance

1 of their respective duties. Provided further, that the term
2 does not include, and no provision of this chapter shall apply
3 to, any county or its officials, employees, agents, or
4 representatives while in the performance of their duties.
5 Provided further, that such term does not include and no
6 provision of this chapter shall apply to any railroad which
7 operates, owns, or permits underground facilities under land
8 which the railroad owns or operates or to any excavating done
9 by a railroad when said excavating is done entirely on land
10 which the railroad owns or on which the railroad operates or,
11 in the event of emergency, on adjacent land.

12 "(m) "Underground Facility" means any cable,
13 pipeline, duct, wire, conduit, or other similar installation,
14 installed underground or underwater, by which an operator
15 transports or delivers materials, information, or services.

16 "(n) "Working Day" means a 24-hour period commencing
17 from the time of receipt of the notification, excluding
18 Saturday, Sunday, and the following nine holidays: New Year's
19 Day, Memorial Day (observed), Independence Day, Labor Day,
20 Veterans Day, Thanksgiving Day, the Friday following
21 Thanksgiving Day, Christmas Eve, and Christmas Day. When any
22 of these holidays occur on a Saturday, it will be observed on
23 the preceding Friday and when any of these holidays occur on a
24 Sunday, it will be observed on the following Monday.

25 "§37-15-5.

26 "(a) (1) Operators who have underground facilities
27 within this state shall either provide an in-house program

1 which meets the operational requirements of receiving those
2 excavation or demolition notifications as set forth in
3 subsections (d) to (g), inclusive, of this section or shall
4 participate in a "One-Call Notification System"; provided,
5 however, that any operator who has less than ten thousand
6 customers or subscribers and who provides an in-house program
7 which meets all of the operational requirements of receiving
8 those excavation or demolition notifications as set forth in
9 this chapter shall not be required to provide the services of
10 the in-house program on working days except during the hours
11 that the operator's offices are open to the public and may,
12 but shall not be required to, voice record the notification
13 calls received.

14 "(2) Any operator, who elects not to participate in
15 the "One-Call Notification System" and instead elects to
16 provide an in-house notification system for receiving
17 excavation and demolition notifications as provided in
18 subdivision (1) and whose facilities are damaged by an
19 excavator who has contacted the "One-Call Notification System"
20 and the operator's in-house program concerning the location of
21 underground facilities, shall be responsible for any damages
22 to its underground facilities by the excavator if the operator
23 failed to meet the operational requirements for receiving
24 excavation and demolition notifications as required.

25 "(b) Between April 18, 1994 and January 1, 1995, or
26 any time thereafter, any non-profit corporation, public
27 corporation, or governmental entity desiring to become a

1 "One-Call Notification System" shall apply to the Alabama
2 Public Service Commission for a certificate of public
3 convenience and necessity, verifying under oath that said
4 applicant meets the requirements of this chapter. After a
5 public hearing on said application, if the Alabama Public
6 Service Commission deems that said applicant meets the
7 requirements of this chapter, and if it is found that said
8 applicant is fit, willing and able to properly perform the
9 services proposed and that the proposed service is or will be
10 required by the present or future public convenience or
11 necessity, then in such event the Alabama Public Service
12 Commission shall issue a certificate of public convenience and
13 necessity authorizing said applicant to commence its operation
14 as a "One-Call Notification System". The Alabama Public
15 Service Commission shall further have the authority, and is
16 required, to revoke said certificate if said non-profit
17 corporation, public corporation, or governmental entity ceases
18 to meet the requirements as set forth in this chapter.

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

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

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

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

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

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

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

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

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

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

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

6 "(i) A "One-Call Notification System" shall promptly
7 transmit the information received from the excavator, as set
8 forth in Section 37-15-4, to its appropriate member operators.

9 "(j) All operators who are members of a "One-Call
10 Notification System" and have changes, additions, or new
11 installations of buried facilities within the boundaries of
12 the State of Alabama shall notify the "One-Call Notification
13 System" of changes in the information required in subdivisions
14 (1), (2), and (4) of subsection (h) of this section, within 30
15 days of the completion of such change, addition, or new
16 installation."

17 Section 2. This act shall become effective January
18 1, following its passage and approval by the Governor, or its
19 otherwise becoming law.