

1 HB476
2 80400-1
3 By Representatives Carothers and Johnson
4 RFD: State Government
5 First Read: 24-JAN-06

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8 SYNOPSIS: Under existing law, any non-profit
9 corporation, public corporation, or governmental
10 entity may apply to the Alabama Public Service
11 Commission for a certificate of public convenience
12 and necessity to operate as a "one-call
13 notification system." Each person who plans to
14 excavate or conduct blasting on a public street or
15 highway, or easement or private easement, or
16 underground facility must ascertain the location of
17 any underground facilities and must give prior
18 notice to the "one-call notification system" of the
19 intent to excavate or blast and the area involved.
20 The notice must contain certain information about
21 the person and any details of the proposed
22 excavation or blast area to ensure that underground
23 facilities are not damaged. A person, governmental
24 entity, or political subdivision which owns or
25 operates a public or private underground facility
26 which furnishes services, information, materials,
27 or transmits utilities, gases, flammable liquids,

1 toxic fluids, or water or sewage must mark
2 aboveground the location of the underground
3 material, data, or utility so the person excavating
4 or blasting is able to avoid damage to the
5 underground facility.

6 This bill would create a single statewide
7 "One-Call Notification System" to provide notice of
8 all excavating or demolitions near underground
9 facilities. The system would be operated as a
10 notification center either as an incorporated
11 entity or as a non-profit corporation governed by a
12 board of directors. All operators would participate
13 in and share the costs of the "One-Call
14 Notification System." Color coded aboveground
15 marking would be in accordance with uniform color
16 code standards of the American Public Works
17 Association. Each excavator or demolition operator
18 causing damage would be required to report damage
19 and dangerous leaks to the proper authorities. This
20 bill would also increase penalties for violations.

21 Amendment 621 of the Constitution of Alabama
22 of 1901, now appearing as Section 111.05 of the
23 Official Recompilation of the Constitution of
24 Alabama of 1901, as amended, prohibits a general
25 law whose purpose or effect would be to require a
26 new or increased expenditure of local funds from
27 becoming effective with regard to a local

1 governmental entity without enactment by a 2/3 vote
2 unless: it comes within one of a number of
3 specified exceptions; it is approved by the
4 affected entity; or the Legislature appropriates
5 funds, or provides a local source of revenue, to
6 the entity for the purpose.

7 The purpose or effect of this bill would be
8 to require a new or increased expenditure of local
9 funds within the meaning of the amendment. However,
10 the bill does not require approval of a local
11 governmental entity or enactment by a 2/3 vote to
12 become effective because it comes within one of the
13 specified exceptions contained in the amendment.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 To amend Sections 37-15-2 to 37-15-10, inclusive,
20 Code of Alabama 1975, relating to the "One-Call Notification
21 System," to create a single statewide "One-Call Notification
22 System" to provide notice of all excavating or demolitions
23 near underground facilities, which would be operated as a
24 notification center either as an incorporated entity or as a
25 non-profit corporation governed by a board of directors, to
26 provide that all operators would participate in and share the
27 costs of the "One-Call Notification System," to provide that

1 color coded aboveground marking would be in accordance with
2 uniform color code standards of the American Public Works
3 Association, to provide that each excavator or demolition
4 operator causing damage would be required to report damage and
5 dangerous leaks to the proper authorities, and to increase
6 penalties for violations; and in connection therewith would
7 have as its purpose or effect the requirement of a new or
8 increased expenditure of local funds within the meaning of
9 Amendment 621 of the Constitution of Alabama of 1901, now
10 appearing as Section 111.05 of the Official Recompilation of
11 the Constitution of Alabama of 1901, as amended.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Sections 37-15-2 through 37-15-10, Code
14 of Alabama 1975, are amended to read as follows:

15 "§37-15-2.

16 "As used in this chapter unless the context clearly
17 implies a different meaning:

18 "(a) "Approximate Location" of underground
19 facilities means information about an operator's underground
20 facilities which is provided to a person by an operator and
21 must be accurate to within 18 inches measured horizontally
22 from the outside edge of each side of such operator's
23 facility, or a strip of land eighteen inches either side of
24 the operator's field mark or the marked width of the facility
25 plus eighteen inches on each side of the marked width of the
26 facility.

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

4 "(c) "Calendar Day" means a 24-hour period beginning
5 at 12:01 a.m. and ending at midnight of the same day.

6 "(d) "Contract Locator" means any person contracted
7 by an operator specifically to determine and mark the
8 approximate location of the operator's utility lines that may
9 exist within the area specified by a notice served on the
10 "One-Call Notification System."

11 "~~(c)~~(e) "Damage" includes, but is not limited to,
12 the substantial weakening of structural or lateral support of
13 an underground facility, penetration or destruction of any
14 underground facility's protective coating, housing or other
15 protective device, and the severance (partial or complete) of
16 any underground facility, but does not apply to any operator's
17 abandoned underground facility.

18 "~~(d)~~(f) "Demolition" means any operation by which a
19 structure or mass of material is wrecked, razed, rendered,
20 moved or removed by means of any tools, equipment or
21 explosives.

22 "(g) "Design or Survey Locate Request" means any
23 communication to the "One-Call Notification System"
24 specifically to request existing underground facilities to be
25 located for the purpose of bidding, predesign, or advance
26 planning purposes. A design locate request shall not be used

1 for excavation purposes and likewise, excavation locate
2 requests shall not be used for design or survey purposes.

3 "(h) "Emergency Excavation or Demolition" means any
4 excavation or demolition that is required to eliminate
5 imminent danger to life, health, property, environment, or the
6 repair or restoration of service when the excavation is
7 required to be performed before the notification and response
8 procedures required in Sections 37-15-4 and 37-15-6 may be
9 fully complied with.

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

17 "(f)(j) "Excavator" means any person who engages in
18 excavation.

19 "(g)(k) "Implied Easement" means any unwritten
20 easement or right-of-way on private property required to
21 provide utility or other services by means of underground
22 facilities on property of the owner requesting such service.

23 "(h)(l) "Mark" or "Marking" means the use of stakes,
24 flags, paint, buoys or clearly identifiable materials placed
25 on the surface of the ground or water to show the approximate
26 location of underground facilities.

1 ~~(i)~~(m) "Mechanized Equipment" means equipment
2 powered or energized by any motor, engine, hydraulic or
3 pneumatic device and is used for excavation or demolition work
4 including, but not limited to, tractors, trenchers,
5 bulldozers, power shovels, augers, backhoes, scrapers, pile
6 drivers, drills, cable and pipe plows or other equipment used
7 for plowing-in or pulling-in cable or pipe.

8 "(n) Member means a person who participates in the
9 One-Call Notification System to receive services and is in
10 good standing with the One-Call Notification System in
11 accordance with the guidelines set for in the corporation's
12 by-laws.

13 "(o) "Noninvasive method of excavation" means a
14 method of excavation that does not compromise the integrity of
15 the underground facility. These methods include, but are not
16 limited to, hand digging, pot holing, soft digging, vacuum
17 excavation methods, or other methods with the approval of the
18 operator.

19 "(p) "Notification Area" means an area or territory
20 which an operator designates as the area where he or she
21 wishes to receive notifications for any excavation in that
22 area. The notification area should encompass the underground
23 distribution system or network of the operator.

24 ~~(j)~~(g) "One-Call Notification System" means a
25 non-profit corporation, a public corporation or a governmental
26 entity which will provide a statewide notification service,
27 for the purpose of receiving statewide telephonic toll-free or

1 electronic notification of any planned excavation or
2 demolition activities by excavators or other persons as set
3 forth in Section 37-15-4 and distributing the required
4 excavation or demolition information to its affected member
5 operators as set forth in Section 37-15-5.

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

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

1 ~~Provided further, that such term does not include and no~~
2 ~~provision of this chapter shall apply to any excavating done~~
3 ~~by a railroad when said excavating is done entirely on land~~
4 ~~which the railroad owns or on which the railroad operates or,~~
5 ~~in the event of emergency, on adjacent land.~~

6 "(t) "Tolerance Zone" means the width of the
7 underground facility plus 18 inches on either side of the
8 outside edge of the underground facility on a horizontal
9 plane.

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

14 ~~"(n)(v)~~ "Working Day" means a 24 hour period
15 commencing at 12:01 A.M. of the next day following ~~from the~~
16 ~~time of~~ receipt of the notification, excluding Saturday,
17 Sunday and the following nine holidays: New Year's Day,
18 Memorial Day (observed), Independence Day, Labor Day, Veterans
19 Day, Thanksgiving Day, the Friday following Thanksgiving Day,
20 Christmas Eve, and Christmas Day. When any of these holidays
21 occur on a Saturday, it will be observed on the preceding
22 Friday and when any of these holidays occur on a Sunday, it
23 will be observed on the following Monday.

24 "§37-15-3.

25 "No person shall excavate in a street, highway,
26 public easement, private easement or implied easement of an
27 operator, or on property of an operator, or conduct blasting

1 operations, or perform demolition activities in the near
2 proximity of an operator's underground facility without first
3 having ascertained, in the manner prescribed in Sections
4 37-15-4 and 37-15-6, the location of all underground
5 facilities in the area of the proposed excavation, blasting,
6 or demolition; however, in the case of blasting, an excavator
7 may be required to provide additional information to the
8 underground facility operator as to the planned blasting
9 activities to ensure that proper damage prevention methods may
10 be taken. However, violation of this section shall not subject
11 any person to the civil penalties of Section 37-15-10 provided
12 the easement or underground facility is located on property
13 owned by such person and such person ~~did not have~~ has certain
14 knowledge of ~~the~~ no existence or presence of ~~such~~ any easement
15 or underground facility.

16 "§37-15-4.

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

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

1 responsible for such excavation or demolition shall give
2 written, telephonic or electronic notice of such intent to
3 excavate or demolish to the ~~underground facility operator or a~~
4 "One-Call Notification System" ~~acting on behalf of the~~
5 ~~operator~~ at least two but not more than ten working days prior
6 to the start of the proposed excavation and at least two
7 working days but not more than thirty calendar days prior to
8 the start of demolition or any blasting operations for either
9 excavation or demolition. Written notice shall be by
10 registered mail, return receipt requested, and shall be valid
11 only upon receipt of the written information required by this
12 chapter ~~by the operator or by a~~ or the "One-Call Notification
13 System" ~~acting on behalf of the operator~~.

14 "(c) The notice required by subsection (b) of this
15 section must contain the ~~name, address, and telephone number~~
16 ~~of the person responsible for the excavation or the demolition~~
17 ~~and the person giving notice, the proposed starting date and~~
18 ~~time, the type of excavation or demolition operation to be~~
19 ~~conducted, the location of the proposed excavation or~~
20 ~~demolition with sufficient details to enable the operator to~~
21 ~~locate same with reasonable certainty, and whether or not~~
22 ~~explosives are to be used. In the event the location~~
23 ~~requirements of this subsection cannot be met, the excavator~~
24 ~~shall mark the route or boundaries of the site of proposed~~
25 ~~excavation or demolition by means of white as the identifying~~
26 ~~color on stakes, flags, paint, buoys or clearly identifiable~~
27 ~~materials placed on the surface of the ground or water~~

1 excavator's name, address, telephone number, the location of
2 the work, the nature and extent of the excavation or
3 demolition, including, but limited to, the type of work being
4 performed, whether directional boring will be used, whether
5 any explosives will be used, and the start date and duration
6 of the work. For purposes of locating the worksite, the
7 excavator must supply sufficient details to enable the
8 operator to locate the proposed excavation site with
9 reasonable certainty. Additional information may be required
10 which could include, but is not limited to, such information
11 as the closest street address, road crossing, or intersection,
12 the applicable railroad or highway marker, latitude and
13 longitude, or other location identifier in unincorporated
14 areas. In the event the location requirements of this
15 subsection cannot be met, the excavator shall mark the route
16 or boundaries of the site of the proposed excavation or
17 demolition by means of white as the identifying color on
18 stakes, flags, paints, buoys, or clearly identifiable
19 materials placed on the surface of the ground or water. Any
20 excavation that may require blasting or demolition must be
21 noted on the original notification or the excavator is
22 required to update the notification to include information
23 pertaining to any blasting or demolition activities.

24 "(d) Notification to ~~an operator or to a the~~
25 "One-Call Notification System" ~~acting on behalf of the~~
26 ~~operator~~ of an intent to excavate shall be valid for a period
27 of fourteen calendar days from the proposed starting date

1 given and the notice to demolish shall be valid for a period
2 of thirty calendar days from the starting date given. Each
3 person responsible for excavation or demolition shall renew
4 with the ~~underground facility operator or a~~ "One-Call
5 Notification System" ~~acting on behalf of the operator~~ each
6 notice of intent to excavate or demolish at least two working
7 days prior to the expiration date of the notice if the
8 excavation or demolition has not been completed.

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

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

26 "(g) Compliance with the notice requirements of this
27 section is not required by persons or operators excavating on

1 their own property or easement when no other persons or
2 operators have underground facilities on the property or
3 easement.

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

12 "(i) Except for those persons submitting design or
13 survey locate requests, no person, including operators, shall
14 request markings of a site through the "One-Call Notification
15 System" unless excavation is scheduled to commence. In
16 addition, no person shall make repeated requests for
17 re-marking, unless the repeated request is required for
18 excavating to continue or due to circumstances not reasonable
19 within the control of the person.

20 "§37-15-5.

21 "(a) Operators who have underground facilities
22 within this state ~~shall either provide an in-house program~~
23 ~~which meets the operational requirements of receiving those~~
24 ~~excavation or demolition notifications as set forth in~~
25 ~~subsections (d) to (g), inclusive, of this section or shall~~
26 ~~participate in a the "One-Call Notification System"; provided,~~
27 ~~however, that any operator who has less than ten thousand~~

1 ~~customers or subscribers and who provides an in-house program~~
2 ~~which meets all of the operational requirements of receiving~~
3 ~~those excavation or demolition notifications as set forth in~~
4 ~~this chapter shall not be required to provide the services of~~
5 ~~the in-house program on working days except during the hours~~
6 ~~that the operator's offices are open to the public and may,~~
7 ~~but shall not be required to, voice record the notification~~
8 ~~calls received.~~

9 "(b) Between April 18, 1994 and January 1, 1995, or
10 any time thereafter until January 1, 2006, any non-profit
11 corporation, public corporation, or governmental entity
12 desiring to become a "One-Call Notification System" shall
13 apply to the Alabama Public Service Commission for a
14 certificate of public convenience and necessity, verifying
15 under oath that said applicant meets the requirements of this
16 chapter. After a public hearing on said application, if the
17 Alabama Public Service Commission deems that said applicant
18 meets the requirements of this chapter, and if it is found
19 that said applicant is fit, willing and able to properly
20 perform the services proposed and that the proposed service is
21 or will be required by the present or future public
22 convenience or necessity, then in such event the Alabama
23 Public Service Commission shall issue a certificate of public
24 convenience and necessity authorizing said applicant to
25 commence its operation as a "One-Call Notification System".
26 The Alabama Public Service Commission shall further have the
27 authority, and is required, to revoke said certificate if said

1 non-profit corporation, public corporation, or governmental
2 entity ceases to meet the requirements as set forth in this
3 chapter.

4 "(c) There shall be a single statewide "One-Call
5 Notification System" in accordance with this chapter to
6 provide notice of all excavations or demolitions near
7 underground facilities.

8 "(d) The "One-Call Notification System" shall be
9 incorporated or operated as a non-profit corporation and
10 governed by a board of directors who represent and are elected
11 by members of the One-Call Notification System.

12 "(e) All operators shall participate in and share in
13 the costs of the single statewide "One-Call Notification
14 System" established pursuant to subsection (c). Costs for the
15 "One-Call Notification System" shall be shared in an equitable
16 manner for services received by facility operators as
17 determined by the board of directors.

18 ~~"(c) Operators of underground pipeline facilities or~~
19 ~~a (f) The "One-Call Notification System" acting on their~~
20 ~~behalf must notify the public and known excavators of must~~
21 ~~develop and implement a public awareness and damage prevention~~
22 ~~program to educate the general public, excavators, and~~
23 ~~operators about the availability and use of ~~in-house or the~~~~
24 ~~"One-Call Notification Systems System" as required in~~
25 ~~applicable federal regulations and the requirements of this~~
26 ~~chapter.~~

1 ~~"(d)(g)~~ The person giving notice of intent to
2 excavate or demolish shall be furnished an individual
3 reference file number for each notification and upon request
4 shall be furnished the names of the operators to whom the
5 notification will be transmitted.

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

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

17 ~~"(g)(j)~~ ~~A~~ The "One-Call Notification System" should
18 voice record the notification telephone calls and after hours
19 calls should at least reach a voice recording which explains
20 emergency procedures.

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

24 ~~"(1) A list of cities and towns in which they have~~
25 ~~underground facilities in each county;~~ The notification area
26 data in a format as required by the current database system
27 utilized by the "One-Call Notification System" for the

1 locations in which they have underground facilities or for
2 other reasons wish to receive notifications of proposed
3 excavations, demolitions, or blasting. This information shall
4 be updated at least once a year.

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

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

12 ~~"(4)(2) The name, address, and telephone number of a~~
13 ~~person to receive emergency notifications.~~

14 ~~"(i) A (1) The "One-Call Notification System" shall~~
15 ~~promptly transmit the information received from the excavator,~~
16 ~~as set forth in Section 37-15-4, to its appropriate member~~
17 ~~operators.~~

18 ~~"(j)(m) All operators who are members of a the~~
19 ~~"One-Call Notification System" and who have changes,~~
20 ~~additions, or new installations of buried facilities within~~
21 ~~the boundaries of the State of Alabama shall notify the~~
22 ~~"One-Call Notification System" of changes in the information~~
23 ~~required in subdivisions subdivision (1), (2), and (4) of~~
24 ~~subsection (h) (k) of this section, within 30 days of the~~
25 ~~completion of such change, addition or new installation.~~

26 "§37-15-6.

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

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

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

25 "(4) Each operator, either upon determining that no
26 underground facility is present on the tract or parcel of land
27 or upon completion of the marking of the location of any

1 underground facilities on the tract or parcel of land shall
2 provide a positive response with information to the "One-Call
3 Notification System" in accordance with procedures developed
4 by the "One-Call Notification System." In no event shall the
5 positive response be provided later than midnight of the
6 second working day following receipt by the "One-Call
7 Notification System" of the actual notice of intent to
8 excavate or demolish filed in accordance with this chapter.
9 The requirements of this subsection shall become effective 18
10 months from the effective date of the act adding this
11 subdivision.

12 "(b) When marking the approximate location of under-
13 ground facilities, the operator shall follow the color code
14 designation in accordance with the latest edition of the Amer-
15 ican Public Works Association (APWA) Uniform Color Code as
16 follows: described herein, unless otherwise provided for by
17 specific administrative rule or regulation promulgated pursu-
18 ant to this chapter, namely:

"UTILITY OR TYPE OF FACILITY	GROUP IDENTIFYING COLOR
"Electric Power Distribution and Transmission	Safety Red
"Municipal Electric	Safety Red
"Gas Distribution and Transmission	High Visibility Safety Yellow
"Oil Distribution and Transmission	High Visibility Safety Yellow

"UTILITY OR TYPE OF FACILITY	GROUP IDENTIFYING COLOR
1 "Hazardous Materials, Product Lines 2 and Steam Lines	High Visibility Safety Yellow
3 "Telephone and Telegraph	Safety Alert Orange
4 "Police and Fire Communications	Safety Alert Orange
5 "Cable Television	Safety Alert Orange
6 "Water and Irrigation	Safety Precaution Blue
7 "Slurry Lines	Safety Precaution Blue
8 "Sewer and Drain Lines	Safety Green

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

13 ~~"(d)(c) The group identifying colors designated~~
14 ~~color code designation referenced in this subsection (b) of~~
15 ~~Section 37-15-6 shall not be used by any operator or person to~~
16 ~~mark the boundary or location of any excavation or demolition~~
17 ~~area. If the excavator elects to mark the proposed excavation~~
18 ~~or demolition site, the boundary or location shall be~~
19 ~~identified using white as the identifying color or with~~
20 ~~natural color wood stakes. White flags or white stakes may~~
21 ~~have a thin stripe, one inch or less of the above group~~

1 identifying color, to indicate the excavator's proposed type
2 of facility, if applicable.

3 "(d) Any contract locator acting on behalf of an
4 operator shall be subject to the provisions of this chapter.

5 "§37-15-7.

6 "(a) Compliance with the notice requirements of
7 Section 37-15-4, is not required of persons responsible for
8 emergency excavation or demolition ~~to eliminate an imminent~~
9 ~~danger to life, health, property or public services, as~~
10 defined in Section 37-15-2; provided, however, that such
11 person gives, before commencing or as soon as practicable
12 thereafter, notice of the emergency excavation or demolition
13 to ~~each operator having underground facilities located in the~~
14 ~~area or to the "One-Call Notification System" acting on behalf~~
15 ~~of the operator~~. However, every person who shall engage in
16 such emergency excavation or demolition shall take all
17 necessary and reasonable precautions to avoid or minimize
18 damage to existing underground facilities.

19 ~~"(b) An imminent danger to life, health, property or~~
20 ~~public services exists whenever there is a substantial~~
21 ~~likelihood that injury, loss of life, health, or public~~
22 ~~services, or substantial property loss could result before the~~
23 ~~notification and response procedures required in Sections~~
24 ~~37-15-4 and 37-15-6 can be fully complied with~~ Any excavator
25 providing a misrepresentation of an emergency excavation,
26 demolition, or blasting, as defined in Section 37-15-2, may be

1 subject to the civil penalties imposed pursuant to Section
2 37-15-10.

3 "§37-15-8.

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

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

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

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

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

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

9 "(3) Provide such support for underground facilities
10 in and near the construction area, including backfill
11 operations, as may be reasonably required by the operator for
12 the protection of the facilities.

13 "(4) When utilizing a trenchless excavation
14 technique, perform electronic monitoring of the drilling head
15 during the backream procedure as well as the pilot hole
16 drilling.

17 "(5) Protect and preserve the markings of
18 approximate locations of underground facilities until those
19 markings are no longer required for proper and safe
20 excavations. If at any time during an excavation, an
21 operator's field markings are no longer reasonably visible,
22 the excavator shall notify the "One-Call Notification System."
23 The "One-Call Notification System" shall contact all known
24 members who have underground facilities in the area of the
25 excavation. Upon receiving timely notification or
26 renotification pursuant to this subdivision, the operator
27 shall relocate and remark, as soon as possible, but no later

1 than two working days after receipt of the notification, those
2 underground facilities that may be affected by the excavation
3 to the extent necessary, in conformance with this section.

4 "§37-15-9.

5 "(a) Each person responsible for any excavation or
6 demolition operation that results in any damage to an
7 underground facility shall, immediately upon discovery of such
8 damage, notify the operator of such facility of the location
9 of the damage and shall allow the operator reasonable time to
10 accomplish any necessary repairs before completing the
11 excavation or demolition in the immediate area of the damage
12 to such facility.

13 ~~"(b) Each person responsible for any excavation or~~
14 ~~demolition operation that results in damage to an underground~~
15 ~~facility permitting the escape of any flammable, toxic or~~
16 ~~corrosive gas or liquid shall, immediately upon discovery of~~
17 ~~such damage, notify the operator and take other action as may~~
18 ~~be reasonably necessary, to protect persons and property and~~
19 ~~to minimize the hazards, until arrival of the operator's~~
20 ~~personnel, police or fire department~~ In addition to subsection
21 (a), each person responsible for any excavation or demolition
22 operation that results in any damage to an underground
23 facility shall immediately report to the operator and
24 appropriate law enforcement agencies and fire departments any
25 damage to an underground facility that results in escaping
26 flammable, corrosive, explosive, or toxic liquids or gas and
27 take reasonable actions necessary to protect persons or

1 property and to minimize safety hazards until those law
2 enforcement agencies and fire departments and the operator
3 arrive at the underground facility.

4 "§37-15-10.

5 ~~"(a) Any person who violates any provision of this~~
6 ~~chapter shall be subject to a civil penalty not to exceed~~
7 ~~\$10,000 for each such violation.~~

8 ~~"(b) An action under this section shall be~~
9 ~~instigated by any person making a complaint in writing,~~
10 ~~verified by oath, that said person has reason to believe that~~
11 ~~a violation under this chapter has occurred.~~

12 ~~"(c) Prosecution of violations of this chapter shall~~
13 ~~be by district attorney or the Attorney General and shall be~~
14 ~~brought in the circuit court for the county in which the~~
15 ~~violation, or some part thereof, arose or in the circuit court~~
16 ~~for the county in which the defendant resides or maintains his~~
17 ~~principal place of business within the state.~~

18 ~~"(d) The amount of such penalties shall be dependant~~
19 ~~upon the degree of non-compliance, the amount of injury or~~
20 ~~damage caused, the degree of threat to public safety, the~~
21 ~~degree of public inconvenience caused as a result of the~~
22 ~~violation, and the number of past violations. Mitigation of~~
23 ~~the penalty may be shown by "good faith" efforts of the~~
24 ~~violator to have complied with the provisions of this chapter.~~

25 ~~"(e) All penalties recovered in such actions shall~~
26 ~~be paid into the General Fund of the State of Alabama.~~

1 ~~"(f) Any person who violates any provision of this~~
2 ~~chapter shall not be subject to payment of the assessed~~
3 ~~penalty in subsection (a) of Section 37-15-10 if they have~~
4 ~~been assessed a civil penalty for this same violation under~~
5 ~~the provisions of the Federal Natural Gas Pipeline Safety Act~~
6 ~~of 1968 or the Federal Hazardous Liquid Pipeline Safety Act of~~
7 ~~1979 or any amendment to these acts.~~

8 ~~"(g) This chapter does not affect any civil remedies~~
9 ~~for personal injury or property damage or criminal sanctions~~
10 ~~except as otherwise specifically provided for in this chapter.~~

11 "(a) Unless subsection (b) applies, any person who
12 violates the requirements of this chapter shall be subject to
13 the following:

14 "(1) On the first offense, be subject to a civil
15 penalty not to exceed one thousand five hundred dollars
16 (\$1,500) and may be required to complete a damage prevention
17 education program.

18 "(2) On the second offense within a 12-month period,
19 be subject to a civil penalty not to exceed five thousand
20 dollars (\$5,000) and may be required to repeat the damage
21 prevention education program.

22 "(3) On subsequent offenses within a 12-month
23 period, be subject to a civil penalty not to exceed
24 twenty-five thousand dollars (\$25,000) per violation and
25 referral to the appropriate licensing board.

26 "(b) Any person who knowingly and willfully violates
27 any of the provisions of this chapter is subject to a civil

1 penalty in an amount not to exceed fifty thousand dollars
2 (\$50,000).

3 "(c) Good faith, flagrancy, or the magnitude of the
4 offense may permit deviation from the limits in subsections
5 (a) or (b). In determining the amount of any penalty, the
6 following shall be considered:

7 "(1) The nature, circumstances, and gravity of the
8 violation.

9 "(2) The degree of the person's culpability.

10 "(3) The person's history of prior offenses.

11 "(4) The person's level of cooperation with the
12 requirements of this chapter.

13 "(5) The effect of the penalty on the person's
14 ability to continue business.

15 "(6) The good faith on the part of the person in
16 attempting to remedy the cause of the violation.

17 "(d) An action to recover a civil penalty under this
18 section may be brought by an operator, excavator, aggrieved
19 party, district attorney, or the Attorney General. Venue for
20 the action shall be proper in the district court of the county
21 in which the operator, excavator, or aggrieved party resides
22 or maintains a principal place of business in this state or in
23 the county in which the conduct giving rise to the civil
24 penalty occurred.

25 "(e) Any civil penalty imposed pursuant to this
26 section, including reasonable attorney's fees, shall be paid
27 to the prevailing party.

1 "(f) The penalties provided herein are in addition
2 to any other remedy at law available to an excavator or to the
3 operator of a damaged underground facility.

4 "(g) No civil penalty shall be imposed pursuant to
5 this section against an excavator or operator who violates any
6 of the provisions of this chapter if the violation occurred
7 while the excavator or operator was responding to a service
8 outage or other emergency. Notwithstanding the foregoing, the
9 civil penalty shall be imposed if the violation was willful or
10 malicious.

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

15 "(i) This section is not intended to affect any
16 civil remedy otherwise provided by law for personal injury or
17 for property damage.

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

23 Section 2. A new Section 37-15-4.1 is added to the
24 Code of Alabama 1975, to read as follows:

25 §37-15-4.1.

26 (a) Any person may submit a design locate request to
27 the "One-Call Notification System." The design locate request

1 describes the tract or parcel of land for which the design
2 locate request has been submitted with sufficient
3 particularity as defined by policies developed and promulgated
4 by the "One-Call Notification System" to enable the facility
5 operator to ascertain the precise tract or parcel of land
6 involved and state the name, address, telephone number, and
7 facsimile number of the person who has submitted the design
8 locate request and the company name of the project owner.

9 (b) Within 10 working days after a design locate
10 request has been submitted to the "One-Call Notification
11 System" for a proposed project, the operator shall respond by
12 one of the following methods:

13 (1) Mark the approximate location of all underground
14 facilities in the area of proposed excavation.

15 (2) Provide to the person submitting the design
16 locate request the best available description of all
17 underground facilities in the area of proposed excavation
18 which may include drawings of underground facilities already
19 built in the area or other facility records that are
20 maintained by the facility operator.

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

25 Section 3. The provisions of this act shall be
26 liberally construed as to effectuate the purposes of this act
27 and the operation of the One-Call Notification System.

1 Section 4. Although this bill would have as its
2 purpose or effect the requirement of a new or increased
3 expenditure of local funds, the bill is excluded from further
4 requirements and application under Amendment 621, now
5 appearing as Section 111.05 of the Official Recompilation of
6 the Constitution of Alabama of 1901, as amended, because the
7 bill defines a new crime or amends the definition of an
8 existing crime.

9 Section 5. This act shall become effective January
10 1, 2007, following its passage and approval by the Governor,
11 or its otherwise becoming law.