

1 SB199
2 78581-1
3 By Senator Erwin
4 RFD: Commerce, Transportation, and Utilities
5 First Read: 10-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 prohibits a general law whose purpose or
23 effect would be to require a new or increased
24 expenditure of local funds from becoming effective
25 with regard to a local governmental entity without
26 enactment by a 2/3 vote unless: it comes within one
27 of a number of specified exceptions; it is approved

1 by the affected entity; or the Legislature
2 appropriates funds, or provides a local source of
3 revenue, to the entity for the purpose.

4 The purpose or effect of this bill would be
5 to require a new or increased expenditure of local
6 funds within the meaning of Amendment 621. However,
7 the bill does not require approval of a local
8 governmental entity or enactment by a 2/3 vote to
9 become effective because it comes within one of the
10 specified exceptions contained in Amendment 621.

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

16 To amend Sections 37-15-2 to 37-15-10, inclusive,
17 Code of Alabama 1975, relating to the "One-Call Notification
18 System," to create a single statewide "One-Call Notification
19 System" to provide notice of all excavating or demolitions
20 near underground facilities, which would be operated as a
21 notification center either as an incorporated entity or as a
22 non-profit corporation governed by a board of directors, to
23 provide that all operators would participate in and share the
24 costs of the "One-Call Notification System," to provide that
25 color coded aboveground marking would be in accordance with
26 uniform color code standards of the American Public Works
27 Association, to provide that each excavator or demolition

1 operator causing damage would be required to report damage and
2 dangerous leaks to the proper authorities, and to increase
3 penalties for violations; and in connection therewith would
4 have as its purpose or effect the requirement of a new or
5 increased expenditure of local funds within the meaning of
6 Amendment 621 of the Constitution of Alabama of 1901.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

10 "§37-15-2.

11 "As used in this chapter unless the context clearly
12 implies a different meaning:

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

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

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

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

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

13 ~~"(d)~~(f) "Demolition" means any operation by which a
14 structure or mass of material is wrecked, razed, rendered,
15 moved or removed by means of any tools, equipment or
16 explosives.

17 "(g) "Design or Survey Locate Request" means any
18 communication to the "One-Call Notification System"
19 specifically to request existing underground facilities to be
20 located for the purpose of bidding, predesign, or advance
21 planning purposes. A design locate request shall not be used
22 for excavation purposes and likewise, excavation locate
23 requests shall not be used for design or survey purposes.

24 "(h) "Emergency Excavation or Demolition" means any
25 excavation or demolition that is required to eliminate
26 imminent danger to life, health, property, environment, or the
27 repair or restoration of service when the excavation is

1 required to be performed before the notification and response
2 procedures required in Sections 37-15-4 and 37-15-6 may be
3 fully complied with.

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

11 ~~(f)~~(j) "Excavator" means any person who engages in
12 excavation.

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

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

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

1 "(n) Noninvasive method of excavation" means a
2 method of excavation that does not compromise the integrity of
3 the underground facility. These methods include, but are not
4 limited to, hand digging, pot holing, soft digging, vacuum
5 excavation methods, or other methods with the approval of the
6 operator.

7 "(o) Notification Area" means an area or territory
8 which an operator designates as the area where he or she
9 wishes to receive notifications for any excavation in that
10 area. The notification area should encompass the underground
11 distribution system or network of the operator.

12 "~~(j)~~(p) One-Call Notification System" means a
13 non-profit corporation, a public corporation or a governmental
14 entity which will provide a statewide notification service,
15 for the purpose of receiving statewide telephonic toll-free or
16 electronic notification of any planned excavation or
17 demolition activities by excavators or other persons as set
18 forth in Section 37-15-4 and distributing the required
19 excavation or demolition information to its affected member
20 operators as set forth in Section 37-15-5.

21 "~~(k)~~(q) Operator" means any person, governmental
22 agency or political subdivision, or their agents, who owns or
23 operates a public or private underground facility which
24 furnishes services, information or materials, or transports or
25 transmits electric energy, light, water, steam, oil, gases,
26 gas, mixture of gases, petroleum, petroleum products,
27 hazardous or flammable liquids, toxic or corrosive fluids and

1 gases or items of like nature and telecommunications, cable
2 television, water, drainage, sewage and traffic control
3 systems or other systems of like nature.

4 ~~"(l)(r) "Person" means an individual, joint venture,~~
5 ~~partnership, association, authority, cooperative, firm,~~
6 ~~corporation, governmental entity, or any subdivision or~~
7 ~~instrumentality of that entity and their employees, agents or~~
8 ~~legal representatives; however, the term "person" does not~~
9 ~~include and no provision of this chapter shall apply to the~~
10 ~~State Department of Transportation or their officials,~~
11 ~~employees, agents or representatives while in the performance~~
12 ~~of their respective duties. Provided further, that the term~~
13 ~~does not include, and no provision of this chapter shall apply~~
14 ~~to, any county or its officials, employees, agents, or~~
15 ~~representatives while in the performance of their duties.~~
16 ~~Provided further, that such term does not include and no~~
17 ~~provision of this chapter shall apply to any excavating done~~
18 ~~by a railroad when said excavating is done entirely on land~~
19 ~~which the railroad owns or on which the railroad operates or,~~
20 ~~in the event of emergency, on adjacent land.~~

21 "(s) "Tolerance Zone" means the width of the
22 underground facility plus 18 inches on either side of the
23 outside edge of the underground facility on a horizontal
24 plane.

25 ~~"(m)(t) "Underground Facility" means any cable,~~
26 ~~pipeline, duct, wire, conduit or other similar installation,~~

1 installed underground or underwater, by which an operator
2 transports or delivers materials, information, or services.

3 ~~"(n)(u)~~ "Working Day" means a 24 hour period
4 commencing at 12:01 A.M. of the next day following ~~from the~~
5 ~~time of~~ receipt of the notification, excluding Saturday,
6 Sunday and the following nine holidays: New Year's Day,
7 Memorial Day (observed), Independence Day, Labor Day, Veterans
8 Day, Thanksgiving Day, the Friday following Thanksgiving Day,
9 Christmas Eve, and Christmas Day. When any of these holidays
10 occur on a Saturday, it will be observed on the preceding
11 Friday and when any of these holidays occur on a Sunday, it
12 will be observed on the following Monday.

13 "§37-15-3.

14 "No person shall excavate in a street, highway,
15 public easement, private easement or implied easement of an
16 operator, or on property of an operator, or conduct blasting
17 operations, or perform demolition activities in the near
18 proximity of an operator's underground facility without first
19 having ascertained, in the manner prescribed in Sections
20 37-15-4 and 37-15-6, the location of all underground
21 facilities in the area of the proposed excavation, blasting,
22 or demolition; however, in the case of blasting, an excavator
23 may be required to provide additional information to the
24 underground facility operator as to the planned blasting
25 activities to ensure that proper damage prevention methods may
26 be taken. However, violation of this section shall not subject
27 any person to the civil penalties of Section 37-15-10 provided

1 the easement or underground facility is located on property
2 owned by such person and such person ~~did not have~~ has certain
3 knowledge of ~~the~~ no existence or presence of ~~such~~ any easement
4 or underground facility.

5 "§37-15-4.

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

15 "(b) Before commencing any excavation or demolition
16 operation prohibited by Section 37-15-3, each person
17 responsible for such excavation or demolition shall give
18 written, telephonic or electronic notice of such intent to
19 excavate or demolish to the ~~underground facility operator or a~~
20 ~~"One-Call Notification System" acting on behalf of the~~
21 ~~operator~~ at least two but not more than ten working days prior
22 to the start of the proposed excavation and at least two
23 working days but not more than thirty calendar days prior to
24 the start of demolition or any blasting operations for either
25 excavation or demolition. Written notice shall be by
26 registered mail and shall be valid only upon receipt of the
27 written information required by this chapter ~~by the operator~~

1 or by a the "One-Call Notification System" acting on behalf of
2 the operator.

3 "(c) The notice required by subsection (b) of this
4 section must contain the ~~name, address, and telephone number~~
5 ~~of the person responsible for the excavation or the demolition~~
6 ~~and the person giving notice, the proposed starting date and~~
7 ~~time, the type of excavation or demolition operation to be~~
8 ~~conducted, the location of the proposed excavation or~~
9 ~~demolition with sufficient details to enable the operator to~~
10 ~~locate same with reasonable certainty, and whether or not~~
11 ~~explosives are to be used. In the event the location~~
12 ~~requirements of this subsection cannot be met, the excavator~~
13 ~~shall mark the route or boundaries of the site of proposed~~
14 ~~excavation or demolition by means of white as the identifying~~
15 ~~color on stakes, flags, paint, buoys or clearly identifiable~~
16 ~~materials placed on the surface of the ground or water~~
17 excavator's name, address, telephone number, the location of
18 the work, the nature and extent of the excavation or
19 demolition, including, but limited to, the type of work being
20 performed, whether directional boring will be used, whether
21 any explosives will be used, and the start date and duration
22 of the work. For purposes of locating the worksite, the
23 excavator must supply sufficient details to enable the
24 operator to locate the proposed excavation site with
25 reasonable certainty. Additional information may be required
26 which could include, but is not limited to, such information
27 as the closest street address, road crossing, or intersection,

1 the applicable railroad or highway marker, latitude and
2 longitude, or other location identifier in unincorporated
3 areas. In the event the location requirements of this
4 subsection cannot be met, the excavator shall mark the route
5 or boundaries of the site of the proposed excavation or
6 demolition by means of white as the identifying color on
7 stakes, flags, paints, buoys, or clearly identifiable
8 materials placed on the surface of the ground or water. Any
9 excavation that may require blasting or demolition must be
10 noted on the original notification or the excavator is
11 required to update the notification to include information
12 pertaining to any blasting or demolition activities.

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

25 "(e) When engaged in an extensive and contiguous
26 construction, demolition or excavation activity, working
27 agreements may be established to accomplish the intent and

1 purpose of this chapter between operators, public agencies and
2 contractors after initial compliance with the notification
3 provisions of this chapter.

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

15 "(g) Compliance with the notice requirements of this
16 section is not required by persons or operators excavating on
17 their own property or easement when no other persons or
18 operators have underground facilities on the property or
19 easement.

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

1 "(i) Except for those persons submitting design or
2 survey locate requests, no person, including operators, shall
3 request markings of a site through the "One-Call Notification
4 System" unless excavation is scheduled to commence. In
5 addition, no person shall make repeated requests for
6 re-marking, unless the repeated request is required for
7 excavating to continue or due to circumstances not reasonable
8 within the control of the person.

9 "§37-15-5.

10 "(a) Operators who have underground facilities
11 within this state ~~shall either provide an in-house program~~
12 ~~which meets the operational requirements of receiving those~~
13 ~~excavation or demolition notifications as set forth in~~
14 ~~subsections (d) to (g), inclusive, of this section or shall~~
15 ~~participate in a the "One-Call Notification System"; provided,~~
16 ~~however, that any operator who has less than ten thousand~~
17 ~~customers or subscribers and who provides an in-house program~~
18 ~~which meets all of the operational requirements of receiving~~
19 ~~those excavation or demolition notifications as set forth in~~
20 ~~this chapter shall not be required to provide the services of~~
21 ~~the in-house program on working days except during the hours~~
22 ~~that the operator's offices are open to the public and may,~~
23 ~~but shall not be required to, voice record the notification~~
24 ~~calls received.~~

25 "(b) Between April 18, 1994 and January 1, 1995, or
26 any time thereafter until January 1, 2006, any non-profit
27 corporation, public corporation, or governmental entity

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

20 "(c) There shall be a single, comprehensive
21 statewide "One-Call Notification System" in accordance with
22 this chapter to provide notice of all excavations or
23 demolitions near underground facilities.

24 "(d) The "One-Call Notification System" shall be
25 incorporated or operated as a non-profit corporation and
26 governed by a board of directors who represent and are elected
27 by facility operators, excavators, locators, and other

1 stakeholders involved in underground utility damage
2 prevention.

3 "(e) All operators shall participate in and share in
4 the costs of the single, comprehensive statewide "One-Call
5 Notification System" established pursuant to subsection (c).
6 Costs for the "One-Call Notification System" shall be shared
7 in an equitable manner for services received by facility
8 operators as determined by the board of directors.

9 ~~"(c) Operators of underground pipeline facilities or~~
10 ~~a (f) The "One-Call Notification System" acting on their~~
11 ~~behalf must notify the public and known excavators of must~~
12 ~~develop and implement a public awareness and damage prevention~~
13 ~~program to educate the general public, excavators, and~~
14 ~~operators about the availability and use of ~~in-house or the~~~~
15 ~~"One-Call Notification Systems System" as required in~~
16 ~~applicable federal regulations and the requirements of this~~
17 ~~chapter.~~

18 ~~"(d)(g) The person giving notice of intent to~~
19 ~~excavate or demolish shall be furnished an individual~~
20 ~~reference file number for each notification and upon request~~
21 ~~shall be furnished the names of the operators to whom the~~
22 ~~notification will be transmitted.~~

23 ~~"(e)(h) An adequate record of notifications shall be~~
24 ~~maintained by the ~~underground facility operator or a~~ "One-Call~~
25 ~~Notification System" in order to document timely compliance~~
26 ~~with this chapter. These records shall be retained for a~~
27 ~~period of not less than three years and shall be made~~

1 available at a reasonable cost upon proper and adequate
2 advance request.

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

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

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

14 ~~"(1) A list of cities and towns in which they have~~
15 ~~underground facilities in each county;~~ The notification area
16 data in a format as required by the current database system
17 utilized by the "One-Call Notification System" for the
18 locations in which they have underground facilities or for
19 other reasons wish to receive notifications of proposed
20 excavations, demolitions, or blasting. This information shall
21 be updated at least once a year.

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

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

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

18 "§37-15-6.

19 "(a) (1) Each operator served with notice in
20 accordance with Section 37-15-4, with underground facilities
21 in the area, shall ~~locate~~ mark or otherwise provide the
22 approximate location of the operator's underground facilities
23 by marking in a manner as prescribed herein prior to the
24 proposed start of excavation, demolition or blasting. If any
25 underground facilities become damaged due to an operator
26 furnishing inaccurate information as to the approximate
27 location of the facilities, through no fault of the operator,

1 then the civil liabilities imposed by this chapter do not
2 apply.

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

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

16 "(4) Each operator, either upon determining that no
17 underground facility is present on the tract or parcel of land
18 or upon completion of the marking of the location of any
19 underground facilities on the tract or parcel of land shall
20 provide a positive response with information to the "One-Call
21 Notification System" in accordance with procedures developed
22 by the "One-Call Notification System." In no event shall the
23 positive response be provided later than midnight of the
24 second working day following receipt by the "One-Call
25 Notification System" of the actual notice of intent to
26 excavate or demolish filed in accordance with this chapter.

1 The requirements of this subsection shall become effective
2 July 1, 2008.

3 "(b) When marking the approximate location of under-
4 ground facilities, the operator shall follow the color code
5 designation in accordance with the latest edition of the Amer-
6 ican Public Works Association (APWA) Uniform Color Code as
7 follows: ~~described herein, unless otherwise provided for by~~
8 ~~specific administrative rule or regulation promulgated pursu-~~
9 ~~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
"Hazardous Materials, Product Lines and Steam Lines	High Visibility Safety Yellow
"Telephone and Telegraph	Safety Alert Orange
"Police and Fire Communications	Safety Alert Orange
"Cable Television	Safety Alert Orange
"Water and Irrigation	Safety Precaution Blue

1 emergency excavation or demolition ~~to eliminate an imminent~~
2 ~~danger to life, health, property or public services, as~~
3 defined in Section 37-15-2; provided, however, that such
4 person gives, before commencing or as soon as practicable
5 thereafter, notice of the emergency excavation or demolition
6 to ~~each operator having underground facilities located in the~~
7 ~~area or to the "One-Call Notification System" acting on behalf~~
8 ~~of the operator~~. However, every person who shall engage in
9 such emergency excavation or demolition shall take all
10 necessary and reasonable precautions to avoid or minimize
11 damage to existing underground facilities.

12 " (b) ~~An imminent danger to life, health, property or~~
13 ~~public services exists whenever there is a substantial~~
14 ~~likelihood that injury, loss of life, health, or public~~
15 ~~services, or substantial property loss could result before the~~
16 ~~notification and response procedures required in Sections~~
17 ~~37-15-4 and 37-15-6 can be fully complied with~~ Any excavator
18 providing a misrepresentation of an emergency excavation,
19 demolition, or blasting, as defined in Section 37-15-2, may be
20 subject to the civil penalties imposed pursuant to Section
21 37-15-10.

22 "§37-15-8.

23 "In addition to the notification requirements of
24 Section 37-15-4, each person responsible for an excavation or
25 demolition operation designated in Section 37-15-3 shall when
26 performing excavation or demolition within the tolerance zone

1 do all of the following to avoid damage to or minimize
2 interference with the underground facilities:

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

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

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

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

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

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

5 "(4) When utilizing a trenchless excavation
6 technique, perform electronic monitoring of the drilling head
7 during the backream procedure as well as the pilot hole
8 drilling.

9 "(5) Protect and preserve the markings of
10 approximate locations of underground facilities until those
11 markings are no longer required for proper and safe
12 excavations. If at any time during an excavation, an
13 operator's field markings are no longer reasonably visible,
14 the excavator shall notify the "One-Call Notification System."
15 The "One-Call Notification System" shall contact all known
16 members who have underground facilities in the area of the
17 excavation. Upon receiving timely notification or
18 renotification pursuant to this subdivision, the operator
19 shall relocate and remark, as soon as possible, but no later
20 than two working days after receipt of the notification, those
21 underground facilities that may be affected by the excavation
22 to the extent necessary, in conformance with this section.

23 "§37-15-9.

24 "(a) Each person responsible for any excavation or
25 demolition operation that results in any damage to an
26 underground facility shall, immediately upon discovery of such
27 damage, notify the operator of such facility of the location

1 of the damage and shall allow the operator reasonable time to
2 accomplish any necessary repairs before completing the
3 excavation or demolition in the immediate area of the damage
4 to such facility.

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

23 "§37-15-10.

24 ~~"(a) Any person who violates any provision of this~~
25 ~~chapter shall be subject to a civil penalty not to exceed~~
26 ~~\$10,000 for each such violation.~~

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

5 ~~"(c) Prosecution of violations of this chapter shall~~
6 ~~be by district attorney or the Attorney General and shall be~~
7 ~~brought in the circuit court for the county in which the~~
8 ~~violation, or some part thereof, arose or in the circuit court~~
9 ~~for the county in which the defendant resides or maintains his~~
10 ~~principal place of business within the state.~~

11 ~~"(d) The amount of such penalties shall be dependant~~
12 ~~upon the degree of non-compliance, the amount of injury or~~
13 ~~damage caused, the degree of threat to public safety, the~~
14 ~~degree of public inconvenience caused as a result of the~~
15 ~~violation, and the number of past violations. Mitigation of~~
16 ~~the penalty may be shown by "good faith" efforts of the~~
17 ~~violator to have complied with the provisions of this chapter.~~

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

20 ~~"(f) Any person who violates any provision of this~~
21 ~~chapter shall not be subject to payment of the assessed~~
22 ~~penalty in subsection (a) of Section 37-15-10 if they have~~
23 ~~been assessed a civil penalty for this same violation under~~
24 ~~the provisions of the Federal Natural Gas Pipeline Safety Act~~
25 ~~of 1968 or the Federal Hazardous Liquid Pipeline Safety Act of~~
26 ~~1979 or any amendment to these acts.~~

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

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

7 "(1) On the first offense, be subject to a civil
8 penalty not to exceed one thousand five hundred dollars
9 (\$1,500) and may be required to complete a damage prevention
10 education program.

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

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

19 "(b) Any person who knowingly and willfully violates
20 any of the provisions of this chapter is subject to a civil
21 penalty in an amount not to exceed fifty thousand dollars
22 (\$50,000).

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

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

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

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

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

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

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

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

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

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

25 "(g) No civil penalty shall be imposed pursuant to
26 this section against an excavator or operator who violates any
27 of the provisions of this chapter if the violation occurred

1 while the excavator or operator was responding to a service
2 outage or other emergency. Notwithstanding the foregoing, the
3 civil penalty shall be imposed if the violation was willful or
4 malicious.

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

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

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

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

19 §37-15-4.1.

20 (a) Any person may submit a design locate request to
21 the "One-Call Notification System." The design locate request
22 describes the tract or parcel of land for which the design
23 locate request has been submitted with sufficient
24 particularity as defined by policies developed and promulgated
25 by the "One-Call Notification System" to enable the facility
26 operator to ascertain the precise tract or parcel of land
27 involved and state the name, address, telephone number, and

1 facsimile number of the person who has submitted the design
2 locate request and the company name of the project owner.

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

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

9 (2) Provide to the person submitting the design
10 locate request the best available description of all
11 underground facilities in the area of proposed excavation
12 which may include drawings of underground facilities already
13 built in the area or other facility records that are
14 maintained by the facility operator.

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

19 Section 3. Although this bill would have as its
20 purpose or effect the requirement of a new or increased
21 expenditure of local funds, the bill is excluded from further
22 requirements and application under Amendment 621 because the
23 bill defines a new crime or amends the definition of an
24 existing crime.

25 Section 4. This act shall become effective January
26 1, 2007, following its passage and approval by the Governor,
27 or its otherwise becoming law.

