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SYNOPSIS: Under existing law, a person conducting excavation on property, or demolition near property, where a public easement exists, or where an underground facility operator such as a utility has an easement, is required to notify the underground facility operator so that the underground facility operator can mark the location of its underground facilities. To facilitate notification, the law has authorized the formation of a "One-Call Notification System" which receives and processes the notices, but participation in the designated "one-call" system is optional with an underground facility operator who elects to conduct its own "in-house" program for notification. Thus, a person excavating in an area may be required to determine which underground facility operators are operating in the area and to notify an underground facility operator separately if it does not participate in the one-call system.

This bill would provide for definitions and for the operational provisions of the underground damage prevention process to be clarified and

1 updated with current technologies. The bill would  
2 provide that an operator who does not participate  
3 in the "One-Call Notification System" may under  
4 certain conditions waive the right to recover the  
5 costs of damages to the operator's facilities by an  
6 excavator. The bill would provide for notifications  
7 to underground facility operators regarding design  
8 or survey locate requests. The bill also provides  
9 for additional civil penalty provisions for  
10 violations of this act and would make it a Class C  
11 misdemeanor to intentionally destroy markers of  
12 underground facilities.

13 Amendment 621 of the Constitution of Alabama  
14 of 1901, now appearing as Section 111.05 of the  
15 Official Recompilation of the Constitution of  
16 Alabama of 1901, as amended, prohibits a general  
17 law whose purpose or effect would be to require a  
18 new or increased expenditure of local funds from  
19 becoming effective with regard to a local  
20 governmental entity without enactment by a 2/3 vote  
21 unless: it comes within one of a number of  
22 specified exceptions; it is approved by the  
23 affected entity; or the Legislature appropriates  
24 funds, or provides a local source of revenue, to  
25 the entity for the purpose.

26 The purpose or effect of this bill would be  
27 to require a new or increased expenditure of local  
28 funds within the meaning of the amendment. However,  
29 the bill does not require approval of a local

1 governmental entity or enactment by a 2/3 vote to  
2 become effective because it comes within one of the  
3 specified exceptions contained in the amendment.  
4

5 A BILL  
6 TO BE ENTITLED  
7 AN ACT  
8

9 To amend Section 37-15-2 and Sections 37-15-4 to 37-  
10 15-10, inclusive, Code of Alabama 1975, relating to the "One-  
11 Call Notification System," established for the purpose of  
12 receiving notifications by persons conducting excavations or  
13 demolitions on or near certain property where underground  
14 facilities may be located, to limit the recovery of costs for  
15 damages to underground facilities when an underground facility  
16 operator elects to conduct an in-house program to receive  
17 notifications in lieu of participating in the one-call  
18 notification system; to further provide for definitions and  
19 for operational provisions of the underground damage  
20 prevention process; to provide for notification of underground  
21 facility operators of design and survey locate requests; to  
22 provide certain civil and criminal penalties; and in  
23 connection therewith would have as its purpose or effect the  
24 requirement of a new or increased expenditure of local funds  
25 within the meaning of Amendment 621 of the Constitution of  
26 Alabama of 1901, now appearing as Section 111.05 of the  
27 Official Recompilation of the Constitution of Alabama of 1901,  
28 as amended.

29 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 37-15-2 and Sections 37-15-4  
2 through 37-15-10, inclusive, Code of Alabama 1975, are amended  
3 to read as follows:

4 "§37-15-2.

5 "As used in this chapter ~~unless the context clearly~~  
6 ~~implies a different meaning,~~ the following words have the  
7 following meanings:

8 "~~(a) "Approximate Location" of underground~~  
9 ~~facilities means information~~ (1) APPROXIMATE LOCATION OF  
10 UNDERGROUND FACILITIES. Information about an operator's  
11 underground facilities which is provided to a person by an  
12 operator and must be accurate to within 18 inches measured  
13 horizontally from the outside edge of each side of such  
14 operator's facility, or a strip of land ~~eighteen~~ 18 inches  
15 either side of the operator's field mark or the marked width  
16 of the facility plus ~~eighteen~~ 18 inches on each side of the  
17 marked width of the facility.

18 "~~(b) "Blasting" means the~~ (2) BLASTING. The use of  
19 an explosive device for the excavation of earth, rock, or  
20 other material or the demolition of a structure.

21 "(3) CALENDAR DAY. A 24-hour period beginning at  
22 12:01 a.m. and ending at midnight of the same day.

23 "(4) CONTRACT LOCATOR. Any person contracted by an  
24 operator specifically to determine and mark the approximate  
25 location of the operator's utility lines that may exist within  
26 the area specified by a notice served on the "One-Call  
27 Notification System."

28 "~~(c) "Damage" includes~~ (5) DAMAGE. Includes, but is  
29 not limited to, the substantial weakening of structural or

1 lateral support of an underground facility, penetration or  
2 destruction of any underground facility's protective coating,  
3 housing or other protective device, and the severance (partial  
4 or complete) of any underground facility, but does not apply  
5 to any operator's abandoned underground facility.

6 ~~"(d) "Demolition" means any~~ (6) DEMOLITION. Any  
7 operation by which a structure or mass of material is wrecked,  
8 razed, rendered, moved, or removed by means of any tools,  
9 equipment, or explosives.

10 "(7) DESIGN OR SURVEY LOCATE REQUEST. Any  
11 communication to the "One-Call Notification System"  
12 specifically to request existing underground facilities to be  
13 located for the purpose of bidding, predesign, or advance  
14 planning purposes. A design locate request may not be used for  
15 excavation purposes and an excavation locate request may not  
16 be used for design or survey purposes.

17 "(8) EMERGENCY EXCAVATION or DEMOLITION. Any  
18 excavation or demolition that is required to eliminate  
19 imminent danger to life, health, property, environment, or the  
20 repair or restoration of service when the excavation is  
21 required to be performed before the notification and response  
22 procedures required in Sections 37-15-4 and 37-15-6 may be  
23 fully complied with.

24 ~~"(e) "Excavate" or "Excavation" means any~~ (9)  
25 EXCAVATE or EXCAVATION. Any operation for the purpose of the  
26 movement or removal of earth, rock, or other material by  
27 mechanized equipment or explosive device and includes, but is  
28 not limited to, augering, backfilling, blasting, boring,

1 digging, ditching, drilling, grading, plowing-in, pulling-in,  
2 ripping, scraping, sub-soiling, trenching and tunneling.

3 ~~"(f) "Excavator" means any (10) EXCAVATOR. Any~~  
4 person who engages in excavation.

5 ~~"(g) "Implied Easement" means any (11) IMPLIED~~  
6 EASEMENT. Any unwritten easement or right-of-way on private  
7 property required to provide utility or other services by  
8 means of underground facilities on property of the owner  
9 requesting such service.

10 ~~"(h) "Mark" or "Marking" means the (12) MARK or~~  
11 MARKING. The use of stakes, flags, paint, buoys, or clearly  
12 identifiable materials placed on the surface of the ground or  
13 water to show the approximate location of underground  
14 facilities.

15 ~~"(i) "Mechanized Equipment" means equipment (13)~~  
16 MECHANIZED EQUIPMENT. Equipment powered or energized by any  
17 motor, engine, or hydraulic or pneumatic device and is used  
18 for excavation or demolition work including, but not limited  
19 to, tractors, trenchers, bulldozers, power shovels, augers,  
20 backhoes, scrapers, pile drivers, drills, cable and pipe  
21 plows, or other equipment used for plowing-in or pulling-in  
22 cable or pipe.

23 "(14) MEMBER. A person who participates in the "One-  
24 Call Notification System" to receive services and is in good  
25 standing with the "One-Call Notification System" in accordance  
26 with the guidelines set forth in the corporation's bylaws.

27 "(15) NONINVASIVE METHOD OF EXCAVATION. A method of  
28 excavation that does not compromise the integrity of the  
29 underground facility. These methods include, but are not

1 limited to, hand digging, pot holing, soft digging, vacuum  
2 excavation methods, or other methods with the approval of the  
3 operator.

4 "(16) NOTIFICATION AREA. An area or territory which  
5 an operator designates as the area where he or she wishes to  
6 receive notifications for any excavation in that area. The  
7 notification area should encompass the underground  
8 distribution system or network of the operator.

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

19 ~~"(k) "Operator" means any~~ (18) OPERATOR. Any person,  
20 governmental agency, or political subdivision, or ~~their~~ its  
21 agents, who owns or operates a public or private underground  
22 facility which furnishes services, information, or materials,  
23 or transports or transmits electric energy, light, water,  
24 steam, oil, gases, gas, mixture of gases, petroleum, petroleum  
25 products, hazardous or flammable liquids, toxic or corrosive  
26 fluids and gases, or items of like nature and  
27 telecommunications, cable television, water, drainage, sewage  
28 and traffic control systems, or other systems of like nature.

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

19                   "(20) TOLERANCE ZONE. The width of the underground  
20 facility plus 18 inches on either side of the outside edge of  
21 the underground facility on a horizontal plane.

22                   ~~"(m) "Underground Facility" means any~~ (21)  
23 UNDERGROUND FACILITY. Any cable, pipeline, duct, wire,  
24 conduit, or other similar installation, installed underground  
25 or underwater, by which an operator transports or delivers  
26 materials, information, or services.

27                   ~~"(n) "Working Day" means a 24 hour~~ (22) WORKING DAY.  
28 A 24-hour period commencing from the time of receipt of the  
29 notification, excluding Saturday, Sunday, and the following

1 nine holidays: New Year's Day, Memorial Day (observed),  
2 Independence Day, Labor Day, Veterans Day, Thanksgiving Day,  
3 the Friday following Thanksgiving Day, Christmas Eve, and  
4 Christmas Day. When any of these holidays occur on a Saturday,  
5 it will be observed on the preceding Friday and when any of  
6 these holidays occur on a Sunday, it will be observed on the  
7 following Monday.

8 "§37-15-3.

9 "No person shall excavate in a street, highway,  
10 public easement, private easement, or implied easement of an  
11 operator, or on property of an operator, or conduct blasting  
12 operations, or perform demolition activities in the near  
13 proximity of an operator's underground facility without first  
14 having ascertained, in the manner prescribed in Sections 37-  
15 15-4 and 37-15-6, the location of all underground facilities  
16 in the area of the proposed excavation, blasting, or  
17 demolition; however, violation of this section shall not  
18 subject any person to the civil penalties of Section 37-15-10  
19 provided the easement or underground facility is located on  
20 property owned by such person and such person did not have  
21 knowledge of the existence or presence of such easement or  
22 underground facility.

23 "§37-15-4.

24 "(a) A permit issued pursuant to law authorizing  
25 excavation or demolition operations shall not be deemed to  
26 relieve a person from the responsibility for complying with  
27 the provisions of this chapter. Any public agency issuing such  
28 permit shall notify the person receiving the permit of the  
29 notification requirements of this chapter; however, failure to

1 provide such notification shall not make the State Department  
2 of Transportation subject to the penalties provided for in  
3 Section 37-15-10.

4 "(b) Before commencing any excavation or demolition  
5 operation prohibited by Section 37-15-3, each person  
6 responsible for such excavation or demolition shall give  
7 written, telephonic, or electronic notice of such intent to  
8 excavate or demolish to the underground facility operator or a  
9 "One-Call Notification System" acting on behalf of the  
10 operator at least two but not more than ~~ten~~ 10 working days  
11 prior to the start of the proposed excavation and at least two  
12 working days but not more than ~~thirty~~ 30 calendar days prior  
13 to the start of demolition or any blasting operations for  
14 either excavation or demolition. Written notice shall be by  
15 registered mail, return receipt requested, and shall be valid  
16 only upon receipt of the written information required by this  
17 chapter by the operator or by a the "One-Call Notification  
18 System" acting on behalf of the operator.

19 "(c) The notice required by subsection (b) of this  
20 section ~~must~~ shall contain the ~~name, address, and telephone~~  
21 ~~number of the person responsible for the excavation or the~~  
22 ~~demolition and the person giving notice, the proposed starting~~  
23 ~~date and time, the type of excavation or demolition operation~~  
24 ~~to be conducted, the location of the proposed excavation or~~  
25 ~~demolition with sufficient details to enable the operator to~~  
26 ~~locate same with reasonable certainty, and whether or not~~  
27 ~~explosives are to be used. In the event the location~~  
28 ~~requirements of this subsection cannot be met, the excavator~~  
29 ~~shall mark the route or boundaries of the site of proposed~~

1 ~~excavation or demolition by means of white as the identifying~~  
2 ~~color on stakes, flags, paint, buoys or clearly identifiable~~  
3 ~~materials placed on the surface of the ground or water.~~

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

27           "(d) Notification to an operator or to a "One-Call  
28 Notification System" acting on behalf of the operator of an  
29 intent to excavate shall be valid for a period of ~~fourteen~~ 14

1 calendar days from the proposed starting date given and the  
2 notice to demolish shall be valid for a period of ~~thirty~~ 30  
3 calendar days from the starting date given. Each person  
4 responsible for excavation or demolition shall renew with the  
5 underground facility operator or a "One-Call Notification  
6 System" acting on behalf of the operator each notice of intent  
7 to excavate or demolish at least two working days prior to the  
8 expiration date of the notice if the excavation or demolition  
9 has not been completed.

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

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

27 "(g) Compliance with the notice requirements of this  
28 section is not required by persons or operators excavating on  
29 their own property or easement when no other persons or

1 operators have underground facilities on the property or  
2 easement.

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

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

19 "§37-15-5.

20 "(a) (1) Operators who have underground facilities  
21 within this state shall either provide an in-house program  
22 which meets the operational requirements of receiving those  
23 excavation or demolition notifications as set forth in  
24 subsections ~~(d)~~ (f) to ~~(g)~~ (j), inclusive, of this section or  
25 shall participate in a the "One-Call Notification System.";  
26 provided, however, that any operator who has less than ten  
27 thousand customers or subscribers and who provides an in-house  
28 program which meets all of the operational requirements of  
29 receiving those excavation or demolition notifications as set

1 forth in this chapter shall not be required to provide the  
2 services of the in-house program on working days except during  
3 the hours that the operator's offices are open to the public  
4 and may, but shall not be required to, voice record the  
5 notification calls received.

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

17 "(b) Between April 18, 1994, and January 1, 1995, or  
18 any time ~~thereafter~~ until January 1, 2011, any non-profit  
19 corporation, public corporation, or governmental entity  
20 desiring to become a "One-Call Notification System" shall  
21 apply to the Alabama Public Service Commission for a  
22 certificate of public convenience and necessity, verifying  
23 under oath that said applicant meets the requirements of this  
24 chapter. After a public hearing on said application, if the  
25 Alabama Public Service Commission deems that said applicant  
26 meets the requirements of this chapter, and if it is found  
27 that said applicant is fit, willing and able to properly  
28 perform the services proposed and that the proposed service is  
29 or will be required by the present or future public

1 convenience or necessity, then in such event the Alabama  
2 Public Service Commission shall issue a certificate of public  
3 convenience and necessity authorizing said applicant to  
4 commence its operation as a "One-Call Notification System"-.."  
5 The Alabama Public Service Commission shall further have the  
6 authority, and is required, to revoke said certificate if said  
7 non-profit corporation, public corporation, or governmental  
8 entity ceases to meet the requirements as set forth in this  
9 chapter.

10 "(c) Subject to subsection (a), there shall be a  
11 single, statewide "One-Call Notification System" in accordance  
12 with this chapter to provide notice of all excavations or  
13 demolitions near underground facilities.

14 "(d) The "One-Call Notification System" shall be  
15 incorporated or operated as a nonprofit corporation and  
16 governed by a board of directors who represent the members of  
17 the "One-Call Notification System" according to the bylaws of  
18 the organization.

19 "(e) All operators who participate in the "One-Call  
20 Notification System" shall share in the costs of the single  
21 statewide "One-Call Notification System" established pursuant  
22 to subsection (c). Costs for the "One-Call Notification  
23 System" shall be shared in an equitable manner for services  
24 received by facility owners as determined by the board of  
25 directors.

26 ~~"(e)(f)~~ (f) Operators of underground pipeline facilities  
27 or a the "One-Call Notification System" acting on their behalf  
28 must notify the public and known excavators of shall develop  
29 and implement a public awareness and damage prevention program

1 to educate the general public, excavators, and operators about  
2 the availability and use of in-house or the "One-Call  
3 Notification Systems System" ~~as required in applicable federal~~  
4 ~~regulations~~ and the requirements of this chapter.

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

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

17 ~~"(f)~~ (i) The services of ~~any~~ the "One-Call  
18 Notification System" ~~acting on behalf of operators~~ should be  
19 provided on working days at least between the hours of ~~8 A.M.~~  
20 a.m. and ~~5 P.M.~~ p.m.

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

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

28 ~~"(1) A list of cities and towns in which they have~~  
29 ~~underground facilities in each county;~~ The notification area

1 data in a format as required by the current database system  
2 utilized by the "One-Call Notification System" for the  
3 locations in which they have underground facilities or for  
4 other reasons wish to receive notifications of proposed  
5 excavations, demolitions, or blasting. This information shall  
6 be updated at least once a year.

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

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

14 ~~"(4)(2)~~ The name, address, and telephone number of a  
15 person to receive emergency notifications.

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

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

28 "§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           "(b) When marking the approximate location of  
26 underground facilities, the operator shall follow the color  
27 code designation ~~described herein, unless otherwise provided~~  
28 ~~for by specific administrative rule or regulation promulgated~~  
29 ~~pursuant to this chapter, namely:~~ in accordance with the

1 latest edition of the American Public Works Association  
2 Uniform Color Code.

<del>"UTILITY OR TYPE OF FACILITY</del>	<del>GROUP IDENTIFYING COLOR</del>
<del>"Electric Power Distribution and Transmission</del>	<del>Safety Red</del>
<del>"Municipal Electric</del>	<del>Safety Red</del>
<del>"Gas Distribution and Transmission</del>	<del>High Visibility Safety Yellow</del>
<del>"Oil Distribution and Transmission</del>	<del>High Visibility Safety Yellow</del>
<del>"Hazardous Materials, Product Lines and Steam Lines</del>	<del>High Visibility Safety Yellow</del>
<del>"Telephone and Telegraph</del>	<del>Safety Alert Orange</del>
<del>"Police and Fire Communications</del>	<del>Safety Alert Orange</del>
<del>"Cable Television</del>	<del>Safety Alert Orange</del>
<del>"Water and Irrigation</del>	<del>Safety Precaution Blue</del>
<del>"Slurry Lines</del>	<del>Safety Precaution</del>

~~"UTILITY OR TYPE~~      ~~GROUP IDENTIFYING~~  
~~OF FACILITY~~              ~~COLOR~~  
  
                                    Blue  
  
"Sewer and Drain      Safety Green  
Lines

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

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

~~"(d) Any contract locator acting on behalf of an operator shall be subject to this section.~~

~~"§37-15-7.~~

~~"(a) Compliance with the notice requirements of Section 37-15-4~~7~~ is not required of persons responsible for emergency excavation or demolition to eliminate an imminent danger to life, health, property, or public services; provided, however, that such person gives, before commencing~~

1 or as soon as practicable thereafter, notice of the emergency  
2 excavation or demolition to each operator having underground  
3 facilities located in the area or to the "One-Call  
4 Notification System" acting on behalf of the operator.

5 However, every person who shall engage in such emergency  
6 excavation or demolition shall take all necessary and  
7 reasonable precautions to avoid or minimize damage to existing  
8 underground facilities.

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

18 "§37-15-8.

19 "In addition to the notification requirements of  
20 Section 37-15-4, each person responsible for an excavation or  
21 demolition operation designated in Section 37-15-3 shall when  
22 performing excavation or demolition within the tolerance zone  
23 do all of the following to avoid damage to or minimize  
24 interference with the underground facilities:

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

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

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

14           "(1) Determine the exact location of any marked  
15 underground facility utilizing noninvasive methods of  
16 excavation. For parallel type excavations, the existing  
17 facility shall be exposed at intervals as often as necessary  
18 to avoid damages.

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

22           "(3) Provide such support for underground facilities  
23 in and near the construction area, including backfill  
24 operations, as may be reasonably required by the operator for  
25 the protection of the utilities.

26           "(4) Protect and preserve the markings of  
27 approximate locations of underground facilities until those  
28 markings are no longer required for proper and safe  
29 excavations.

1           "§37-15-9.

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

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

28           "§37-15-10.

1           ~~"(a) Any person who violates any provision of this~~  
2 ~~chapter shall be subject to a civil penalty not to exceed~~  
3 ~~\$10,000 for each such violation.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15           "(e) Any civil penalty imposed pursuant to this  
16 section, shall be paid to the prevailing party.

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

20           "(g) No civil penalty may be imposed pursuant to  
21 this section against an excavator or operator who violates any  
22 of the provisions of this chapter if the violation occurred  
23 while the excavator or operator was responding to an  
24 emergency. Notwithstanding the foregoing, the civil penalty  
25 shall be imposed if the violation was willful or malicious.

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

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

4           "(j) Any person who willfully or maliciously removes  
5 or otherwise destroys a marking used by an operator to mark  
6 the location of any underground facility, except in the  
7 ordinary course of excavation, is guilty of a Class C  
8 misdemeanor."

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

11           §37-15-4.1.

12           (a) Any person may submit a design or survey locate  
13 request to the "One-Call Notification System." The design or  
14 survey locate request describes the tract or parcel of land  
15 for which the design or survey locate request has been  
16 submitted with sufficient particularity as defined by policies  
17 developed and promulgated by the "One-Call Notification  
18 System" to enable the facility operator to ascertain the  
19 precise tract or parcel of land involved and state the name,  
20 address, telephone number, and facsimile number of the person  
21 who has submitted the design locate or survey request and the  
22 company name of the project owner.

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

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

1                   (2) Provide to the person submitting the design or  
2 survey locate request the best available description of all  
3 underground facilities in the area of proposed excavation  
4 which may include drawings of underground facilities already  
5 built in the area or other facility records that are  
6 maintained by the facility operator.

7                   (3) Allow the person submitting the design or survey  
8 locate request or any other authorized person to inspect or  
9 copy the drawings or other records for all underground  
10 facilities within the proposed area of excavation.

11                   Section 3. Although this bill would have as its  
12 purpose or effect the requirement of a new or increased  
13 expenditure of local funds, the bill is excluded from further  
14 requirements and application under Amendment 621, now  
15 appearing as Section 111.05 of the Official Recompilation of  
16 the Constitution of Alabama of 1901, as amended, because the  
17 bill defines a new crime or amends the definition of an  
18 existing crime.

19                   Section 4. This act shall become effective January  
20 1, 2011, following its passage and approval by the Governor,  
21 or its otherwise becoming law.