

"§37-15-1. Purpose and Intent

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

"§37-15-2. Definitions

As used in this chapter the following words have the following meanings:

(1) APPROXIMATE LOCATION OF UNDERGROUND FACILITIES.

Information about an operator's underground facilities which is provided to a person by an operator and must be accurate to within 18 inches measured horizontally from the outside edge of each side of such operator's facility, or a strip of land eighteen inches either side of the operator's field mark or the marked width of the facility plus eighteen inches on each side of the marked width of the facility.

(2) AUTHORITY. The Underground Damage Prevention Authority created under Section 37-15-10.1."

(3) AUTHORITY BOARD. The Underground Damage Prevention Board created under Section 37-15-10.1."

(4) BLASTING. The use of an explosive device for the excavation of earth, rock, or other material or the demolition of a structure.

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

(6) DAMAGE. Includes, but is not limited to, the substantial weakening of structural or lateral support of an underground facility, penetration or destruction of any underground facility's protective coating, housing or other protective device, and the severance (partial or complete) of any underground facility, but does not apply to any operator's abandoned underground facility.

(7) DEMOLITION. Any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any tools, equipment, or explosives.

(8) DESIGN OR SURVEY LOCATE REQUEST. Any communication to the "One-Call Notification System" specifically to request existing underground facilities to be located for bidding, predesign, or advance planning purposes. A design locate request may not be used for excavation purposes and an excavation locate request may not be used for design or survey purposes.

(9) EMERGENCY EXCAVATION or DEMOLITION. An excavation or demolition that is required to eliminate an imminent danger to life, health, property, or the environment or required for the repair or restoration of operator service that is required to be performed before the notification and response procedures required in Sections 37-15-4 and 37-15-6 may be fully utilized.

(10) EXCAVATE or EXCAVATION. Any operation for the purpose of the movement or removal of earth, rock, or other material by mechanized equipment or explosive device and includes, but is not limited to, augering, backfilling, blasting, boring, digging, ditching, drilling, grading,

pile-driving, plowing-in, pulling-in, ripping, scraping, sub-soiling, trenching and tunneling. Excavate or excavation does not include routine roadway maintenance activities carried out by or for those responsible for publicly-maintained roadways, provided that the activities occur entirely within the right of way of a public road, street, or highway; are carried out with reasonable care so as to protect any utility facilities placed in the right-of-way by permit; are carried out within the limits of any original excavation on the traveled way, shoulders or drainage ditches of a public road, street, or highway; and, if involving the replacement of existing structures, including traffic control devices, replace such structures in their approximate previous locations and at their approximate previous depth. Excavate or excavation shall not include routine railroad maintenance activities conducted within the track structure and its adjacent right of way, provided the activities are performed by railroad employees or railroad contractors and are carried out with reasonable care so as to protect any underground facilities placed in the railroad right-of-way by agreement with the railroad. Nothing in this chapter shall modify or abrogate any contractual provision entered into between any railroad and any other party owning or operating an underground facility or underground utility lines within the railroad's right-of-way.

(11) EXCAVATOR. Any person who engages in excavation.

12) EXECUTIVE COMMITTEE. The executive committee created under Section 37-15-10.1.

(13) IMPLIED EASEMENT. Any unwritten easement or right-of-way on private property required to provide utility or other services by means of underground facilities on property of the owner requesting such service.

(14) MARK or MARKING. The use of stakes, flags, paint, buoys, or clearly identifiable materials placed on the surface of the ground or water to show the approximate location of underground facilities.

(15) MECHANIZED EQUIPMENT. Equipment powered or energized by any motor, engine, hydraulic or pneumatic device and is used for excavation or demolition work including, but not limited to, tractors, trenchers, bulldozers, power shovels, augers, backhoes, scrapers, pile drivers, drills, cable and pipe plows, or other equipment used for plowing-in or pulling-in cable or pipe.

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

(17) NEAR MISS. An event where damage did not occur, but a clear potential for damage was identified.

(18) NONINVASIVE METHOD OF EXCAVATION. A method of excavation that does not compromise the integrity of the underground facility. These methods include, but are not limited to, hand digging, pot holing, soft digging, vacuum excavation methods, or other methods approved by the operator.

(19) NOTIFICATION AREA. An area or territory which an operator designates as the area where the operator wishes to receive notifications for any excavation in that area. The

notification area should encompass the underground distribution system or network of the operator.

(20) "ONE-CALL NOTIFICATION SYSTEM". A non-profit corporation, a public corporation, or a governmental entity which will provide a statewide notification service, for the purpose of receiving statewide telephonic toll-free or electronic notification of any planned excavation or demolition activities by excavators or other persons as set forth in Section 37-15-4 and distributing the required excavation or demolition information to its affected member operators as set forth in Section 37-15-5.

(21) OPERATOR. Any person, governmental agency, or political subdivision, or its agents, who owns or operates a public or private underground facility which furnishes services, information, or materials, or transports or transmits electric energy, light, water, steam, oil, gases, gas, mixture of gases, petroleum, petroleum products, hazardous or flammable liquids, toxic or corrosive fluids and gases, or items of like nature and telecommunications, cable television, water, drainage, sewage or other systems of like nature. The term operator does not apply to any entity listed above if all of the underground facilities owned and operated by the entity are for the sole use of the entity and are located solely on the entity's own property or on property over which the entity has rights of operation.

(22) PERSON. An individual, joint venture, partnership, association, authority, cooperative, firm, corporation, governmental entity, or any subdivision or

instrumentality of that entity and its employees, agents, or legal representatives.

(23) POSITIVE RESPONSE. The communication among member operators, persons excavating and the "One-Call Notification System" concerning the status of locating an underground facility.

(24) PREMARK. To delineate the general scope of the excavation on the surface of the ground using white paint, white stakes, or other similar white markings.

(25) ROUTINE ROADWAY MAINTENANCE. Maintenance work on a roadway that is not done pursuant to a contract awarded by a state or local government through a bid process for which plan drawings have been developed in advance or work for which detailed and specific scheduling is not possible or feasible.

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

(27) UNDERGROUND FACILITY. Any cable, pipeline, duct, wire, conduit, or other similar installation, installed underground or underwater, by which an operator transports or delivers materials, information, or services.

(28) WILLFUL NONCOMPLIANCE. The intentional refusal or failure to perform, or comply with, a duty created or imposed by this chapter or by the rules promulgated pursuant to this chapter.

(29) WORKING DAY. A 24-hour period commencing the beginning of the start of the next working day from the time of receipt of the notification, excluding Saturday, Sunday, and the following nine holidays: New Year's Day, Memorial Day

(observed), Independence Day, Labor Day, Veterans Day, Thanksgiving Day, the Friday following Thanksgiving Day, Christmas Eve, and Christmas Day. When any of these holidays occur on a Saturday, it will be observed on the preceding Friday and when any of these holidays occur on a Sunday, it will be observed on the following Monday.

(30) WORKING DAY HOURS. The time from 7:00 A.M. to 5:00 P.M. local time on working days.

"§37-15-3. Prohibition

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

"§37-15-4. Notice of Intent to Excavate or Demolish

(a) A permit issued pursuant to law authorizing excavation or demolition operations shall not be deemed to relieve a person from the responsibility for complying with the provisions of this chapter. Any public agency issuing such permit shall notify the person receiving the permit of the

notification requirements of this chapter; however, failure to provide such notification shall not make the State Department of Transportation subject to the penalties provided for in Section 37-15-10.

(b) Before commencing any excavation or demolition operation prohibited by Section 37-15-3, each person responsible for such excavation or demolition shall give telephonic or electronic notice of such intent to excavate or demolish to the underground facility operator or the "One-Call Notification System" acting on behalf of the operator at least two but not more than 10 working days prior to the start of the proposed excavation, not including the day of notification, and at least two working days but not more than 30 calendar days, not including the day of notification, prior to the start of demolition or any blasting operations for either excavation or demolition.

(c) The notice required by subsection (b) of this section must contain the name, address, and telephone number of the person responsible for the excavation or the demolition and the person giving notice, the proposed starting date and time, the type of excavation or demolition operation to be conducted, the location of the proposed excavation or demolition with sufficient details to enable the operator to locate same with reasonable certainty, and whether or not explosives are to be used. In the event the location requirements of this subsection cannot be met, the excavator shall premark the route or boundaries of the site of proposed excavation or demolition by means of white as the identifying color on stakes, flags, paint, buoys or clearly identifiable

materials placed on the surface of the ground or water prior to the notification to the "One-Call Notification System". However, premarking is not required when the premarking could reasonably interfere with traffic or pedestrian control.

(d) Notification to the "One-Call Notification System" of an intent to excavate shall be valid for a period of 20 working days from the proposed starting date given for excavation and the notice to demolish shall be valid for a period of 30 working days from the starting date given. Each person responsible for excavation or demolition shall renew with the "One-Call Notification System" each notice of intent to excavate or demolish at least two working days, not counting the day of notification, prior to the expiration date of the notice if the excavation or demolition has not been completed.

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

(f) Compliance with the notice requirements of this section is not required of persons plowing less than 12 inches in depth for agricultural purposes.

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

(h) Except for those persons submitting design or survey locate requests, no person, including operators, shall request markings of a site through the "One-Call Notification System" that meets the operational requirements as described in subsection (a) of Section 37-15-5, unless excavation is scheduled to commence. In addition, no person shall make repeated requests for remarking, unless the repeated request is required for excavating to continue or due to circumstances not reasonably within the control of the person.

(i) Any person who complies with the notification requirements of this chapter is not liable for damage to an operator's underground facility if all of the following are satisfied:

(1) The operator received the notification required by Section 27-15-4.

(2) The operator failed to locate its underground facilities as required by Section 37-15-6.

(3) The damage is a proximate result of the operator's failure to locate its underground facilities as required by Section 37-15-6.

§37-15-4.1. Design and Survey Locate Requests

(a) Any person may submit a design or survey locate request to the "One-Call Notification System". The design or survey locate request shall describe the tract or parcel of land for which the design or survey locate request has been submitted with sufficient particularity as defined by policies developed and promulgated by the "One-Call Notification System" to enable the facility operator to ascertain the

precise tract or parcel of land involved and state the name, address, telephone number, and facsimile number of the person who has submitted the design locate or survey request and the company name of the project owner.

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

(1) Marking the approximate location of all underground facilities in the area of proposed excavation.

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

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

"§37-15-5. Underground Damage Prevention Program

(a) (1) Operators who have underground facilities within this state shall participate in and utilize the services of the "One-Call Notification System";

(2) Operators that are members of the "One-Call Notification System" on the effective date of this act adding this subdivision must remain members.

((3) Operators with more than 25,000 customers or 500 miles of facilities, who are not members, must join the

"One-Call Notifications System" within one year from the effective date of this act adding this subdivision.

(4) Operators that do not meet the thresholds described in subdivisions (2) or (3), must join the "One-Call Notification System" within two years from the effective date of this act adding this subdivision.

(5) Operators of electrical underground facilities who join the "One-Call Notification System" under the requirements of subdivision (a) (3) or (4) having less than five percent underground trench miles compared to the total miles of line, is not subject to the membership costs until their underground trench miles exceeds the trench mile exemption. These operators will be required to report annually to the "One-Call Notification System" their percentage of underground trench mile by the end of each calendar year.

(6) If an operator of an underground facility fails to become member of the "One-Call Notification System", as required by this chapter, and that failure is a cause of damage to that underground facility cause by an person who has complied with this chapter and has exercised reasonable care in the performance of the excavations that has caused damage to the underground facility, the operator has no right of recovery against the person for the damage to that underground facility.

(7) Notwithstanding the above provisions, the provisions in subsection (1) through (6) are repealed after seven years from the effective date of the bill.

(b) Between April 18, 1994, and January 1, 1995, or any time thereafter, any non-profit corporation, public corporation, or governmental entity desiring to become the "One-Call Notification System" shall apply to the Alabama Public Service Commission for a certificate of public convenience and necessity, verifying under oath that applicant meets the requirements of this chapter. After a public hearing on said application, if the Alabama Public Service Commission deems that applicant meets the requirements of this chapter, and if it is found that applicant is fit, willing and able to properly perform the services proposed and that the proposed service is or will be required by the present or future public convenience or necessity, then in such event the Alabama Public Service Commission may issue a certificate of public convenience and necessity authorizing applicant to commence its operation as the "One-Call Notification System". The Alabama Public Service Commission shall further have the authority, and is required, to revoke a certificate if the non-profit corporation, public corporation, or governmental entity ceases to meet the requirements as set forth in this chapter. The "One-Call Notification System" must provide a report of operations and financial review or audit to the Public Service Commission annually.

(c) Subject to subsection (a) and (b), there shall be a statewide "One-Call Notification System" in accordance with this chapter to provide notice of all excavation or demolition near underground facilities.

(d) The "One-Call Notification System" shall be incorporated or operated as a nonprofit corporation and

governed by a board of directors representing its membership in accordance with the "One-Call Notification System" Bylaws.

(e) Operators of underground natural gas or hazardous liquid pipeline facilities or the "One-Call Notification System" acting on their behalf shall develop and implement a public awareness and damage prevention program to educate the general public, excavators, and operators about the availability and use of the "One-Call Notification System" as required in applicable federal regulations and the requirements of this chapter.

(f) The person giving notice of intent to excavate or demolish shall be furnished an individual reference file number for each notification and upon request shall be furnished the names of the operators to whom the notification will be transmitted.

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

(h) The services of the "One-Call Notification System" should be provided on working days in accordance with the established working day hours.

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

(j) All members of the "One-Call Notification System" shall provide the "One-Call Notification System" with the following information:

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

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

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

(l) All members of a the "One-Call Notification System" who have changes, additions, or new installations of buried facilities within the boundaries of the State of Alabama shall notify the "One-Call Notification System" of changes in the information required in subdivision (1) of subsection (i)(j), within 30 days of the completion of such change, addition, or new installation.

"§37-15-6. Response to Notice of Intent to Excavate or Demolish

(a) (1) Each operator served with notice in accordance with Section 37-15-4, with underground facilities in the area, shall mark or cause to be marked or otherwise provide the approximate location of the operator's underground

facilities by marking in a manner as prescribed herein prior to the proposed start of excavation, demolition, or blasting. If any underground facilities become damaged due to an operator furnishing inaccurate information as to the approximate location of the facilities, through no fault of the operator, then the civil liabilities imposed by this chapter do not apply.

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

(3) A member operator that states that it does not have accurate information concerning the exact location of its underground facilities is exempt from the requirements under Section 37-15-6 but shall provide the best available information to the person excavating in order to comply with the requirements of this section. A person excavating is not liable for any damage to an underground facility under the exemption in this subdivision if the excavation or demolition is performed with reasonable care as noted in Section 37-15-8 and the excavator uses detection equipment or other acceptable means to determine the location of the underground facilities.

(4) When an excavator encounters an unmarked underground facility on an excavation site where notice of intent to excavate has been made in accordance with the provisions of Section 37-15-4, and attempts a follow-up or second notice relative to revising the original notice to the "One-Call Notification System" or the operator, all operators thus notified must attempt to contact the excavator within four hours and provide a response relative to any of their

known underground facilities, active or abandoned, at the site of the excavation.

(b) When marking the approximate location of underground facilities, the operator shall follow the color code designation in accordance with the latest edition of the American Public Works Association Uniform Color Code.

(c) The color code designation referenced in 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 designated color code, to indicate the excavator's proposed type of facility, if applicable.

(d) Each operator, upon determining that no underground facility is present on the tract or parcel of land or upon completion of the marking of the location of any underground facilities on the tract or parcel of land shall provide a positive response with information to the "One-Call Notification System" in accordance with the procedures developed by the "One-Call Notification System".

(e) The requirement for providing a positive response will become effective 12 months after the effective date of this act adding this mandatory language.

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

"§37-15-7. Emergency Excavation or Demolition

(a) Compliance with the notice requirements of Section 37-15-4 is not required of persons responsible for emergency excavation or demolition; provided, however, that such person gives, before commencing or as soon as practicable thereafter, notice of the emergency excavation or demolition to each operator having underground facilities located in the area or to the "One-Call Notification System" acting on behalf of the operator. However, every person who shall engage in such emergency excavation or demolition shall take all necessary and reasonable precautions to avoid or minimize damage to existing underground facilities.

(b) An excavator misrepresenting an emergency excavation or demolition is subject to the civil penalties imposed pursuant to Section 37-15-10.

"§37-15-8. Precaution to Avoid Damage

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

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

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

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

(4) Protect and preserve the markings of approximate locations of underground facilities until those markings are no longer required for proper and safe excavation or demolition.

"§37-15-9. Excavation or Demolition Damage

"(a) Each person responsible for any excavation or demolition operation that results in any damage to an underground facility, immediately upon discovery of such damage, shall notify the operator of such facility of the location of the damage, or the "One-Call Notification System" operating on behalf the underground facility owner, and shall allow the operator reasonable time to accomplish any necessary repairs before completing the excavation or demolition in the immediate area of the damage to such facility.

(b) In addition to subsection (a), each person responsible for any excavation or demolition shall immediately report to the operator or the "One-Call Notification System" operating on behalf the underground facility owner and appropriate law enforcement agencies and fire departments any damage to an underground facility that results in escaping flammable, corrosive, explosive, or toxic liquids or gas and shall take reasonable actions necessary to protect persons or property and to minimize safety hazards until those law enforcement agencies and fire departments and the operator arrive at the underground facility.

(c) If an event damages any pipe, cable or its protective covering, or other underground facility, or there is a significant near miss that could have resulted in damage, the operator receiving the notice shall file a report with the "One-Call Notification System". Reports must be submitted annually to the System, no later than March 31 for the prior calendar year, or more frequently at the option and sole discretion of the operator. Each report must describe, if known, the cause, nature, and location of the damage. The "One-Call Notification System" shall establish and maintain a process to facilitate submission of reports by operators or persons excavating.

"§37-15-10. Civil Penalties and Enforcement

(a) Any person who violates this chapter, or the rules adopted under this chapter, shall be subject to a civil penalty as follows:

(1) For a first violation, the violator shall complete a course of training concerning compliance with this chapter or pay a civil penalty in an amount not to exceed five hundred dollars (\$500) per incident, or both.

(2) For a second or subsequent violation within a 12-month period, the violator shall complete a course of training concerning compliance with this chapter or pay a civil penalty in an amount not to exceed one thousand dollars (\$1000) per incident, or both.

(3) For a third or subsequent violation within a 12-month period, the violator shall complete a course of training concerning compliance with this chapter and pay a civil penalty in an amount not to exceed three thousand

dollars (\$3,000) per incident.

(4) Notwithstanding this subsection, if any violation was the result of gross negligence or willful noncompliance, the violator shall be required to complete a course of training concerning compliance with this chapter as and pay a civil penalty in an not to exceed ten thousand dollars (\$10,000) per incident.

(b) Any person who is required to complete a course of training under this section shall be responsible for paying for the cost of the training. For those instances in which training is ordered, if the person is a firm, partnership, association, corporation, limited liability company, joint venture, department or subdivision of the state or other governmental entity or any other body or organization, it may be required that at least one manager or supervisor thereof attend any training.

(c) These penalties provided under this section may be subject to periodic review by the authority board and revised by rule as needed to ensure enforcement penalties are deemed effective and are in compliance with federal law.

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

(e) The Underground Damage Prevention Fund is created within the State Treasury, to be administered by the

authority. All penalties recovered in actions brought by the authority under this chapter shall be paid into the Underground Damage Prevention Fund. Any monies remaining in the Underground Damage Prevention Fund at the end of the fiscal year shall not revert to the General Fund, but shall remain in the Underground Damage Prevention Fund for the exclusive use of the authority. The expenditures of monies in the Underground Damage Prevention Fund shall be at the discretion of the authority board to carry out its duties under this chapter. Excess funds shall be used to support public awareness programs, training and education of excavators, operators, locators, and other persons to reduce the number and severity of violations of this chapter.

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

(g) Evidence of findings of fact, civil penalties or any of the actions or proceedings pursuant to this chapter shall not be admissible in any other civil causes of actions related to the excavation or damage for which the penalty or fine was issued, however, these materials are discoverable in civil actions arising from the facts herein. This chapter shall not limit any person's right to pursue any additional civil remedy otherwise allowed by law.

(h) No civil penalty may be imposed pursuant to this section against an excavator or operator who violates any provisions of this chapter if the violation occurred while the excavator or operator was responding to an emergency.

Notwithstanding the foregoing, the civil penalty shall be imposed if the violation was willful or malicious.

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

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

Section 2. Sections 37-15-10.1 and 37-15-10.2 are added to the Code of Alabama 1975, to read as follows:

"§37-15-10.1. ENFORCEMENT AUTHORITY

(a) There is created an Underground Damage Prevention Authority for the purpose of enforcing this chapter and for reviewing penalty provisions and the adequacy of the enforcement process. It is the intent of the Legislature that the authority and its enforcement activities not be funded by appropriations from the state budget.

(b) The authority shall utilize the services of the Alabama Public Service Commission to provide administrative support for the authority, subject to the concurrence by the authority Board. The Public Service Commission shall charge the expenses associated with the administrative duties of the authority back to the authority, subject to the concurrence of the authority Board. The administrative support provided by the Alabama Public Service Commission to the authority is in an administrative capacity only and nothing in this chapter

shall expand the jurisdiction of the Alabama Public Service Commission in any way.

(c) The authority shall be composed of a board of underground facility protection stakeholders. The board shall be composed of one subject matter expert representative from each of the following stakeholders and all board appointments shall be made within 90 days of the effective date of this act as follows:

- 1) Alabama Attorney General's Office.
- 2) Alabama Public Service Commission - gas pipeline safety.
- 3) Alabama Department of Transportation.
- 4) Alabama county engineers.
- 5) Cable television industry.
- 6) Electric utility industry.
- 7) Municipal utility operator industry.
- 8) Natural gas distribution industry.
- 9) One Call Notification Center.
- 10) Professional excavator industry.
- 11) Professional road builder industry.
- 12) Professional land surveyor industry.
- 13) Telecommunications industry.
- 14) Transmission pipeline industry.

15)Utility facility locating industry.

16)Water utility industry.

17)Wastewater industry.

(d) The Governor shall appoint the stakeholder representatives selected from qualified persons as provided in subsection (c), with the exception of the stakeholder representatives from the Alabama Attorney General's office, the Alabama PSC-gas pipeline safety, and the Alabama Department of Transportation, who shall be appointed by the head of the respective agency. The initial authority board shall be appointed with staggering terms as determined by the Governor. After the initial appointment, each stakeholder representative shall serve a three-year term. No person shall be appointed for more than two full consecutive terms with the exception of the stakeholder representatives from the Alabama Attorney General's office, the Alabama PSC - gas pipeline safety, the Alabama Department of Transportation, and the "One -Call Notification Center".

(e) Membership of the authority board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.

(f) The board shall elect an executive committee made up of five representatives from the authority board as provided in this section excluding those entities representing a state agency, who will be responsible for levying civil penalties and taking actions as described in Section 37-15-10, this section, and 37-15-10.2.

(g) Members of the authority board and executive committee may participate in a meeting of the board or committee by means of telephone conference, video conference, or similar communications equipment by means of which all persons participating in the meeting may hear each other at the same time and members of the public may simultaneously listen to the meeting. Participation by such means shall constitute presence in person at a meeting for all purposes.

(h) The board has the power and authority to do all of the following:

(1) Adopt rules to conduct the affairs of the authority.

(2) Make and enter into contracts.

(3) Enter into an interagency agreement with the Attorney General's office to serve as legal counsel. The Attorney General shall be compensated at a rate not to exceed the normal hourly rate authorized by the Governor for legal services contracts. The authority shall also reimburse the Attorney General for any expenses incurred in providing legal representation.

(4) Oversee the development of or contract for the development and administration of the designated training program.

(5) Evaluate and revise the enforcement program process and penalty structure by promulgating rules if the current structure does not meet the purpose and intent of this chapter or federal law.

(i) No member of the board, individually or jointly, shall be civilly liable for acts within the scope of his or

her duties as a board member which are made in good faith and are absent unreasonable, wanton, willful, intentional conduct or a violation of federal law.

(j) The members of the board shall serve without compensation.

(k) Nothing in this chapter shall grant the authority jurisdiction over damage to utilities located above the ground.

(l) Board members shall not participate in any enforcement action decisions pertaining to the entity they represent.

(m) The authority shall be governed by the Alabama Administrative Procedures Act.

§37-15-10.2. ENFORCEMENT PROCESS

(a) Any person who violates this chapter may be reported to the authority for the alleged violation.

(b) The board shall develop and implement a process for the receipt of a complaint of a violation of this chapter. The complaint must be made no later than 30 days after the known occurrence of the violation. A complaint may be filed as information only and designated not to be pursued under the enforcement provisions.

(c) Upon receipt of a complaint of a violation of this chapter, the administrator, operating on behalf of the authority, shall provide notice to the reported violator advising that a complaint of violation has been made setting out the time and place of the alleged violation, the identity of who reported the violation, his or her right to file a

written response within 14 days, and his or her right to appeal from an adverse decision.

(d) The administrator, acting on behalf of the authority, shall submit the complaint and documentation to the executive committee.

(e) The authority executive committee will review the complaint and any documentation regarding the complaint and make any needed recommendation for penalty action.

(f) The administrator, operating on behalf of the authority, shall notify the complainant and the reported violator of any penalty assessed.

(g) Once the reported violator is notified of the designated penalty as described in Section 37-15-10, the violator may pay the penalty to the Underground Damage Prevention Fund or dispute the penalty and request a hearing before the full authority board.

(h) The request for a hearing before the authority board must be done within 30 days of the issuance of notification of the violation.

(i) The full authority board shall meet no more than quarterly, based on need. The hearings will be held at the place set forth in the citation notice of hearing. There shall be no presumption of correctness attached to any finding of fact or any assessment of a penalty that is appealed to the authority board, and the proceedings and hearing before the authority board shall be tried de novo. The complainant must attend the hearing.

(j) The authority board in the appeal process has the authority to do the following:

(1) Repeal the initial penalty provisions cited for the alleged violation of this chapter.

(2) Uphold the initial penalty provisions cited for the alleged violation of this chapter.

(3) Issue a new penalty provision related to the alleged violation of this chapter.

(4) Issue an order stating the outcome of the hearing including any assigned penalty.

(k) A person aggrieved by the final order, within 30 days from the date of the final order, may seek judicial review in the circuit court by filing a notice of appeal.

(l) All complaints filed pursuant to this chapter shall not be subject to the Alabama Open Records Act. However, the authority shall make available upon request a summary of a requested complaint after a final resolution has been entered regarding any such complaint requested along with any documents associated with the final resolution of the complaint. However, this restriction shall not prevent a party from obtaining a copy of the complaint by means of a subpoena or other method allowed by the Alabama Rules of Civil Procedure or the Alabama Rules of Criminal Procedure. The Alabama Open Meetings Act shall apply to all meetings and judicial hearings required pursuant to this chapter, except for those meetings of the authority in which the initial determination of violation and recommended fine is discussed and determined.

(m) The authority may bring an action against any person or entity to collect any fines, penalties or other monies owed to the authority.

(n) The authority shall be governed by the Alabama Administrative Procedures Act.

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

Section 4. This act shall become effective January 1, 2020 following its passage and approval by the Governor, or its otherwise becoming law.