

Alabama One Call Study Commission Final Report

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I. Executive Summary

In 1994, Alabama Act 94-487, the Underground Damage Prevention Legislation was enacted (*Ala. Code* §§ 37-15-1 – 37-15-11 (2012)). As stated in the law, Section 1:

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.

The statute includes provisions for a notification system and response required for excavation or demolition activities, underground utility damage prevention programs, emergency excavation or demolition activities, precautions to avoid damage, and civil penalties for not complying with the statute.

The law was amended in 2014 and 2015 to address federal requirements concerning exemptions related to notifying utility facility owners ahead of excavation and other minor changes. In an effort to develop additional improvements to the law, the Alabama One Call Study Commission (AOCSC) was formed as a result of Alabama Senate Joint Resolution (SJR) 76, sponsored by Senator Jabo Waggoner, and passed in 2015. Specifically, the AOCSC was created to study and make recommendations to the Legislature and Governor regarding the state's underground damage prevention law regarding:

1. The expedience and validity of only having a single One-Call notification system to serve the entire State of Alabama, including the appropriate governance, legislative oversight, and membership outreach practices of the organization;
2. The adequacy of the enforcement provisions of current law; and
3. Other items related to the One-Call law that may increase the level of safety of its citizens.

The AOCSC consisted of 28 members, appointed per SJR 76 by various governmental, private industry, and trade association entities across the state.

To meet the objectives outlined in Senate Joint Resolution 76, the AOCSC met over a two year period with both in person and conference call meetings. Sub committees were established to review and present recommendations to the full commission as needed.

This report is the Commission's final report to the Governor and the Legislature.

Single One-Call System

Under the current statute, utility facility owners are required to either (a) be a member of a one call notification system or (b) establish an in-house program to receive notifications from excavators ahead of construction activity. The purpose of such notice is to ensure any utility

facility locations are marked in the area prior to excavation to protect the public, the contractor, and the utility facilities.

Currently, Alabama Line Location Center Inc. d/b/a Alabama 811 is the only active statewide One Call Center in Alabama. It has been active in the state since 1975 as a joint venture operating under Alabama Line Location Center and was incorporated as a 501(c)6 not-for-profit in 1994 as Alabama Line Location Center, Inc. and operates under the Certificate of Necessity and Convenience awarded by the Alabama Public Service Commission as required under the current state statute. There are over 420 Alabama 811 members who receive notices of pending excavations (locate requests) within the member's service area. Locate request volume has grown from just over 7,000 per year in 1975 to just under 550,000 per year in 2016.

There are many entities with underground facilities that continue to operate in-house notification systems, in lieu of participating as members of Alabama 811. The current law requires such programs to adhere to a limited number of provisions required of a statewide one call notification system, including not having to be certified for operation by the Alabama Public Service Commission.

Pursuant to SJR 76, the Commission spent considerable time discussing the validity of having or not having a single statewide one-call system in which all entities with underground facilities participate. Some of the key items discussed included:

- *Alabama is one of three (3) states that does not have some form of defined membership requirements* except the requirement that all natural gas and pipeline companies must participate in a qualified one call center. In review of other state laws it was determined that fourteen (14) have no membership exemptions while thirty-three (33) others have defined membership requirements with designated exemptions.
- Current law and practice places a tremendous burden in the excavation community to determine what utility facilities may be present at an excavation site since membership in Alabama 811 is not required and there is no centralized resource for excavations to determine non-members of Alabama 811.
- There is no active entity ensuring that in-house program operations are meeting the requirements of the law so excavators can meet their obligations under the state statute.
- Some concerns expressed with mandatory membership included cost prohibitive and escalating membership fees, the inability to opt out, the lack of oversight by a state / public entity, board structure, and the impact of an unfunded mandate.
- The Alabama 811 Board of Directors has agreed to consider board expansion and revised by-laws as needed if membership in a single statewide one call center is required by law.

While there was significant support among the commission membership for amending the current law to require some form of required membership in a single one-call system, a few commission members continue to oppose changing the current law. In the course of its meetings, there was thoughtful and productive dialogue regarding the value of a single one-call system, yet the commission did not reach a unanimous decision for a specific legislative proposal. This report, however, contains an extensive summary of the issues that would need to be considered for such a proposal, including the results of an anonymous survey of the commission regarding the key issues discussed.

Adequacy of Enforcement

Alabama's current statute includes an enforcement provision where violators of the law may be reported to the district attorney in the county where the violation occurred or in the county where the defendant resides or maintains his principal place of business, or filed directly with the Attorney General's office. The law allows a civil penalty up to \$10,000 per incident. Over the years, there has been a minimal number of violation complaints filed. As a result, many stakeholders feel that the current law lacks the ability to act as a deterrent for those who fail to make an effort toward safe excavation practices and quality utility locates. Furthermore, due to the oversight that the federal government has over the natural gas and pipeline industry, the Pipeline Hazardous Materials Safety Administration (PHMSA) which is under the federal Department of Transportation (DOT), reviewed Alabama's program in 2014 and found that portions of Alabama's law did not comply with federal guidelines relative to excavation notification exemptions for in damage prevention programs for natural gas and pipeline companies. Grants and other federal funding have been limited or at risk of being eliminated due to the non-compliance with federal requirements. Alabama has made changes to the existing law to meet these requirements in 2014 and 2015 through a stakeholder effort by the Alabama Damage Prevention Alliance (ADPA) who drafted and worked with various stakeholder groups to obtain support for the legislative changes.

In 2016, Alabama was reviewed by PHMSA regarding the enforcement program established in state statute. Through this evaluation, Alabama's Governor and Attorney General were notified that the enforcement program currently operated in Alabama for damage prevention programs was deemed inadequate. This determination allows for PHMSA to take over the program and enforce at the federal levels any damage to a natural gas or pipeline due to excavation activities. While a federal takeover has not occurred, the fines range from \$200,000 to \$2,000,000 per incident and would be levied on either the natural gas or pipeline operator for non-compliance and/or the excavator who damaged the natural gas or pipeline facility. The main reason for the determination of inadequacy was the lack of enforcement activity by the enforcement agency in Alabama. In addition to opening the door for federal enforcement, Alabama is also now subject to losing base grant funds that are used to operate the Department of Pipeline Safety under the Alabama Public Service Commission.

In an effort to address the deficiencies identified by PHMSA, the AOCSC reviewed enforcement programs in other states regarding their structure, operations and reported effectiveness. It was

found that there are many versions of enforcement programs across the United States. Some are specific to particular underground facility industries while most encompass all underground facility damage. Some programs are enforced through damage reporting while others are enforced through complaint/violation reporting. The AOCSC also reviewed new ideas for program structures and proposed options that have not been noted for other states in its review of what type of enforcement program would be of the best benefit to the underground facility owners and excavators as well as the safety of the general public.

This effort resulted in the AOCSC agreeing to support a new enforcement approach for the state. The final proposed program agreed to by the AOCSC for Alabama includes a complaint/violation based reporting system. The AOCSC felt that this would be the most fair to administer for all underground damage prevention stakeholders since it held each accountable for complying with the portions of the state statute that directly impacted their stakeholder group. In addition, the complaint/violation process allows the opportunity to potentially deter behavior prior to activities that may result in a damage to an underground facility and that potentially put the safety of the excavator and community at risk.

The proposed enforcement process was developed and agreed to by the members of the AOCSC as outlined in detail in Section V(a) and Appendix I and Appendix J. This enforcement program includes having the administration process through a central entity, the Alabama Public Service Commission (APSC), the inclusion of a stakeholder review board and executive committee, and an option for appeal to a neutral Judge Panel seated from supernumerary judges.

It should also be noted that some of the Commission members stated they will only support the new enforcement proposal if it is coupled with some type of required membership in a single, statewide one-call system. Discussions were held whether it was feasible to investigate options to encourage membership through enforcement actions without requiring in the statute directly. The stakeholders representing the excavation industry expressed their strong belief that any type of enforcement would have to coincide with defined membership requirements. Their position was it would be unfair for the excavating community, who realistically have the majority of complaints of violation filed against them in the enforcement process, to be held in violation of the law for potential non-notification when there was no easily accessible way to determine which utilities were present on an excavation site other than through the single notification of the one call center. The excavation community did not feel they could support any enforcement program that did not include membership provisions.

In conclusion, the AOCSC conducted an anonymous survey of its members in September 2017. As noted later in this report, 75% of the members responded. The results indicated that 95% of the respondents support (1) amending existing law and (2) including both membership and enforcement provisions in the changes.

The AOCSC also sought to review and discuss issues with regards to enhancing and improving public safety as a guideline for a stronger damage prevention program.

II. Introduction and Purpose

a. Senate Joint Resolution 76

The Alabama One Call Study Commission (AOCSC) was formed by Senate Joint Resolution 76 and signed by Governor Bentley on June 9, 2015. The AOCSC was created to study and make recommendations to the Legislature and Governor regarding:

1. The expedience and validity of only having a single One-Call notification system to serve the entire State of Alabama, including the appropriate governance, legislative oversight, and membership outreach practices of the organization;
2. the adequacy of the enforcement provisions of current law; and
3. other items related to the One-Call law that may increase the level of safety of its citizens.

Senate Joint Resolution 76 in its entirety is included as Appendix A of this report.

b. Alabama 811 and current state law

Alabama Line Location Center Inc. d/b/a Alabama 811 is the active One Call Center in Alabama. It has been active in the state since 1975 as a joint venture operating under Alabama Line Location Center and incorporated as a 501(c)6 not-for-profit in 1994 as Alabama Line Location Center, Inc. and operates under the Certificate of Necessity and Convenience awarded by the Alabama Public Service Commission as required under current state statute.

Alabama's current Underground Damage Prevention Legislation was initially passed in 1994 and has had revisions made in 2014 and 2015. A copy of the current Underground Damage Prevention Statute (§37-15) is attached as Appendix D.

c. Alabama One Call Study Commission Members

The members appointed to serve on the AOCSC are noted below with the entity they represent:

Organization/Entity-Appointed By Official	Member
Alabama Attorney General Luther Strange and re-appointed by Attorney General Steve Marshall	Olivia Martin Office of Attorney General
Alabama Association of General Contractors	Roy Weaver Weaver, LLC
Alabama Cable Telecommunications Association	Chad Copeland Troy Cable
Alabama League of Municipalities	Tenee Frazier Alabama League of Municipalities
Alabama 811	Annette Reburn Alabama 811
Alabama Railway Association	Elizabeth Kennedy Lawlor Norfolk Southern Corp

Alabama Rural Electric Association	George Kitchens Joe Wheeler EMC <hr/> Sean Strickler Alabama Rural Electric Authority
Alabama Association of County Commissioners	John Bedford Colbert County
Electric Cities of Alabama	Brian Chandler City of Troy Utilities <hr/> Jon Hand Electric Cities of Alabama
Alabama Department of Transportation	Stacey Glass Alabama Department of Transportation
Alabama Senate President Pro Tem - Senator Del Marsh	Tim Ayers Alabama Utility Contractors Association <hr/> Mike Morgan AT&T
Alabama Governor Robert Bentley	S. Allen Baker Balch & Bingham <hr/> Jimmy Gray Central Alabama Electric Cooperative <hr/> Ed Guy Spire (Formerly Alagasco) <hr/> John Kauffman Verizon
Alabama Public Service Commission President Twinkle Andress Cavanaugh – Gas Pipeline Safety Expert and 3 Regulated Utilities	Wallace Jones Alabama PSC <hr/> Bill Gardner (Co-Chair) Spire (Formerly Mobile Gas) <hr/> Bob Gardner (Chair) Spire (Formerly Alagasco) <hr/> Ken Gilmore Alabama Power Company

Alabama Speaker of the House - Representative Mike Hubbard	Dywane Griner USIC <hr/> Billy Pickard Kinder Morgan
Associated Builders & Contractors	George Ballock Building and Earth
Alabama Water & Wastewater Institute	Eric Carson City of Auburn
Alabama Law Enforcement Agency	John Hamm Alabama Law Enforcement Agency
Alabama Office of Prosecution Services	Beau Brown Alabama Office of Prosecution Services

d. Timeline

To meet the objectives outlined in Senate Joint Resolution 76, the AOCSC met over a two year period with both in person and conference call meetings. Sub committees were established to review and present recommendations to the full commission as needed.

The following table outlines the meetings conducted by the AOCSC and includes a brief summary of the meetings. It also includes meetings that were held with specific stakeholders at the request of AOCSC members. The approved minutes of all AOCSC and sub committee meetings conducted are included under Appendix N.

	Meeting Date	Meeting Location	Topics	Percent Attendance by Members
1	7/28/15	Montgomery, AL	Resolution, commission leadership, approach to issues	96%
2	8/26/15	Fultondale, AL	Overview and Tour of Alabama 811	88%
3	9/8/15	Conference Call	Alabama 811	84%
4	9/25/15	Verbena, AL	One call membership	81%
5	10/1/15	Conference Call	Utility damage incident investigation	70%
6	10/14/15	Irondale, AL	Federal requirements for effective enforcement and one call membership	75%
7	11/5/15	Conference Call	Enforcement & commission report	71%
8	11/18/15	Clanton, AL	Enforcement, one call membership and commission report	64%

9	1/19/16	Montgomery, AL	Mississippi one call membership and enforcement	71%
10	2/22/16	Montgomery, AL	Enforcement & one call membership	61%
11	3/18/16	Montgomery, AL	Enforcement	75%
12	4/15/16	Montgomery, AL	Enforcement & one call membership	64%
13	5/13/16	Montgomery, AL	Enforcement & one call membership	61%
Sub Comm	6/30/16	Conference Call	Enforcement Sub Committee	
14	7/14/16	Montgomery, AL	Enforcement & one call membership	54%
15	8/19/16	Montgomery, AL	Enforcement & one call membership	71%
Sub Comm	8/29/16	Conference Call	Enforcement Sub Committee	
Sub Comm	9/13/16	Montgomery, AL	Meeting with PSC Commissioners re: Enforcement	
16	9/19/16	Pelham, AL	Enforcement, other potential improvements	50%
	10/16/16	Birmingham, AL	Alabama Electric Cities General Manager meeting - Engineering and Operations Conference	
17	10/25/16	Montgomery, AL	Enforcement & one call membership	57%
Sub Comm	11/15/16	Montgomery, AL	Membership Sub Committee	
18	11/15/16	Montgomery, AL	Enforcement	68%
19	12/16/16	Montgomery, AL	Enforcement & one call membership	57%
Sub Comm	1/19/17	Conference Call	Enforcement Sub Committee	
20	1/23/17	Montgomery, AL	Enforcement & one call membership	71%
21	2/13/17	Conference call	Enforcement	71%
22	2/27/17	Conference call	Enforcement & one call membership	50%
23	3/10/17	Montgomery, AL	Enforcement, one call membership, final report	75%
24	4/17/17	Montgomery, AL	Enforcement, one call membership, final report	57%
25	6/5/17	Conference call	One call membership, final report	57%
	6/14/17	Montgomery, AL	Meeting with League of Municipalities	

	6/21/17	Montgomery, AL	Update to Alabama Public Service Commission	
26	7/6/17	Montgomery, AL	One call membership, final report	43%
27	8/3/17	Montgomery, AL	Enforcement, one call membership, final report	50%
28	9/18/17	Clanton, AL	One call membership, commission survey, final report	57%
29	11/16/17	Montgomery, AL	One call membership, enforcement, Final report draft	54%

III. Current State

a. Existing Legislation in Alabama

Alabama's Underground Damage Prevention statute was first passed in 1994 (§37-15). That legislation stayed effective with minor changes until 2014 when revisions were made to remove specific excavation exemptions, update definitions, ensure wording was consistent with current program operations and improve some inconclusive provisions. There were also minor changes made in the 2015 session to clarify wording of the term excavation to meet with federal approval.

Under the existing statutes the major areas focused on regarding damage prevention include:

- Requirements for Excavators on notification requirements and safe digging practices
- Requirements for Underground Facility Owners on damage prevention program and response to notification for proposed excavation
- Requirements for the One Call Center on operations
- Definition of Terms
- Enforcement and Penalty Provisions

Excavators are required to contact the facility owners no less than two working days prior to the start of excavation and thirty days prior to the start of any blasting activities. They are required to contact the utilities directly or the one call center representing those utilities. The Underground Facility Owners are required to have an in-house damage prevention program established to receive and respond to excavation locate requests or participate in the designated one call center. Membership in the one call center is voluntary. Underground Facility Owners are required after receiving notice, to mark their facilities within the given two working day timeframe prior to the start of excavation.

The One Call Center is required to be a non-profit organization, be operational for designated hours and notify members promptly upon receipt of notice of excavation near the member facility owners properties. The purpose of the One Call Center is to provide a centralized notification system to allow the excavating public to use to notify area underground facility

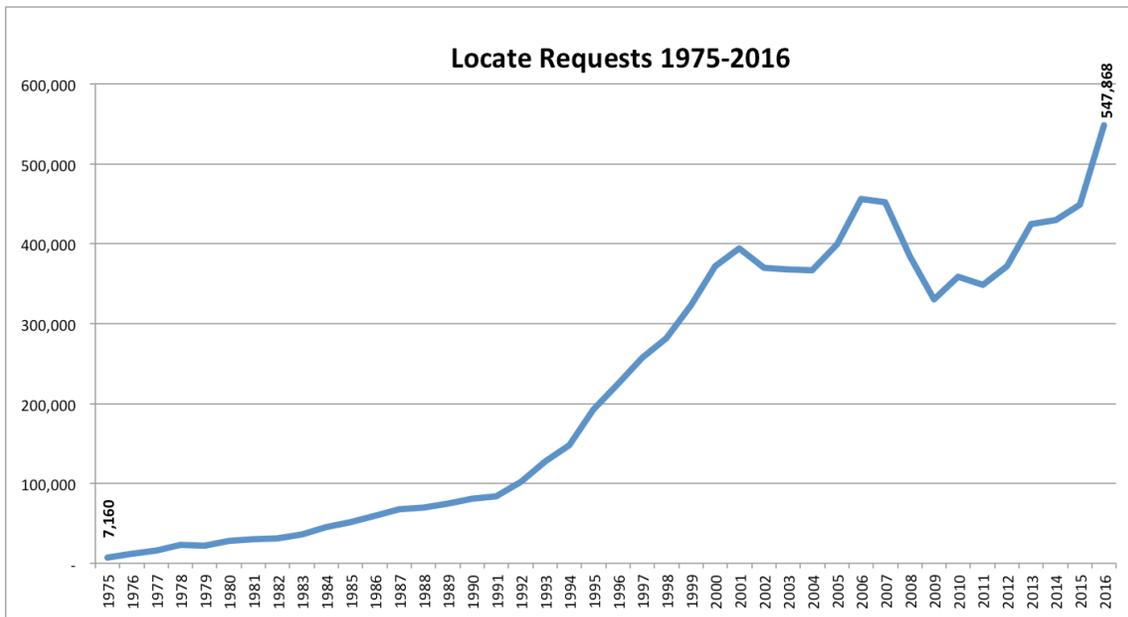
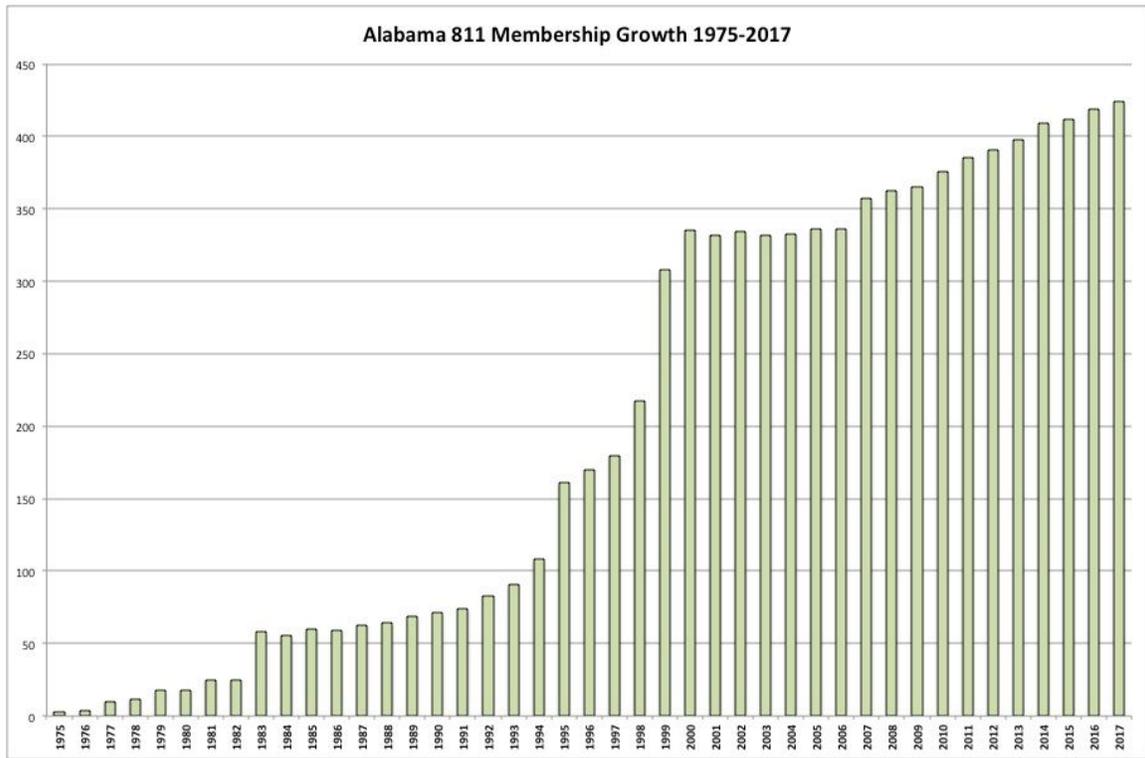
owners with a single point of contact of their intent to excavate and allow the facility owners the opportunity to mark those facilities prior to the start of excavation. This allows for a convenient single notification point for the excavation community and the ability to share in the cost of one call services by the facility owners. The One Call Center is established under state statute and granted operating rights under the Public Service Commission Certificate of Necessity and Convenience.

In regards to enforcement, Alabama's law requires complaints to be filed with the Attorney General or the District Attorney in the county where the violation occurred or where the violator has their principal place of business. There is a civil penalty up to \$10,000 per incident that can be levied for violations. There have been a minimal number of complaints filed and processed since enacted in 1994. Some reasons that have been communicated as to why complaints have not been filed are due to the complexity of filing with the District Attorney or Attorney General, and the reality of the workload and other priorities of the District Attorneys, which does not encourage making excavation damage complaints a priority over other legal concerns. The fact that any penalties assessed are directed back to the State General Fund and not to the county to offset their cost or pursuing the violations is another constraint. For the Attorney General's office, complaints filed with their office are normally referred back to the local level. Therefore, there has been a general frustration in trying to enforce the law, both from the standpoint of excavation activities and from member facilities companies complying with the state requirements.

b. Alabama 811 History and Operations

Alabama 811 is the designated one call center for the State of Alabama as granted by the Certificate of Necessity and Convenience by the Alabama Public Service Commission. The one call center process is designed to allow for a single notification from the excavator to be routed to the appropriate member underground facility owners to allow them the opportunity to mark the approximate location of their facilities prior to the start of excavation. Member facility owners provide a service area where they wish to receive notification and when the proposed excavation site conflicts with their service area, the member facility owner is notified through electronic notifications. Once the member facility owner receives the notification of excavation activity, they are responsible for marking, or having the lines marked, before the date of proposed excavation. Alabama 811 is available 24 hours, 7 days a week for both voice calls and online locate request entry. Alabama 811 is currently located in Fultondale, Alabama.

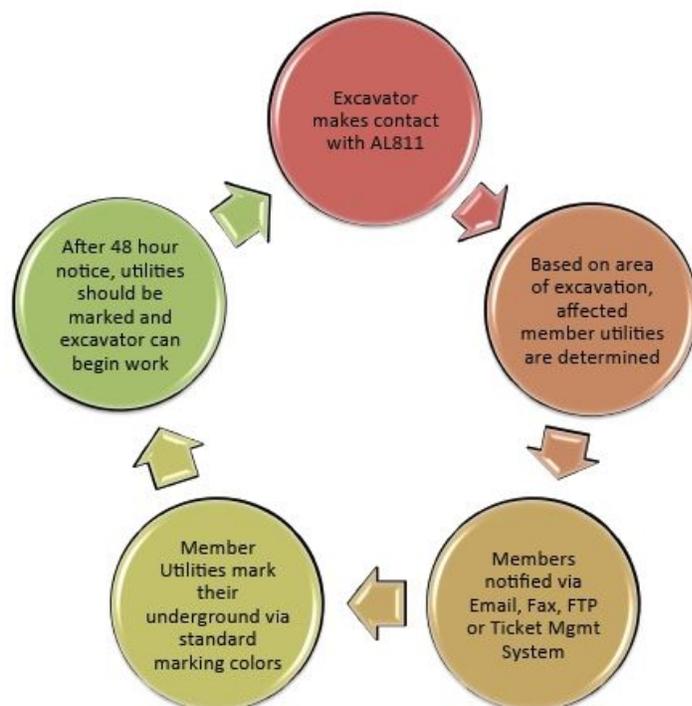
Alabama 811 began operations in 1975 as a joint venture between Alabama Gas Corporation, Alabama Power Company and South Central Bell under the name of Alabama Line Location



Center (ALLC). Alabama’s one call program was one of the first state programs in the Southeast. After the first year of operations, other facility owners expressed an interest in participation in the one call process. Membership has grown from 3 members in 1975 to over 420 members in 2017. Large growth in membership occurred in 1994 when the Underground Damage Prevention Legislation was enacted and again in 1999 when the national Pipeline Safety Act

mandated that all gas and pipeline owners participated in a qualified one call program in the state in which they operated facilities.

How Alabama 811 Works



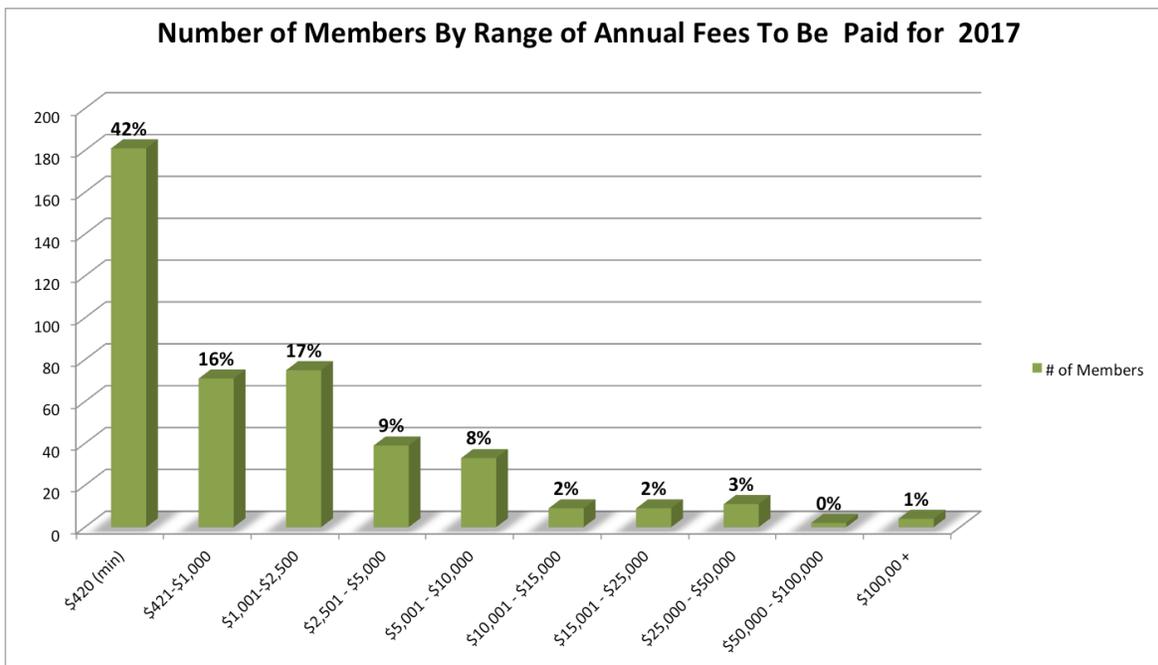
Alabama 811 locate request volume has continued to grow over the years due to increased excavation activity, public awareness and education campaigns, improved safety requirements and an increase in the amount of underground facilities that are being placed underground. Locate requests volume has grown from just over 7,000 in 1975 to just under 550,000 in 2016. For every locate request processed, Alabama 811 notifies the appropriate member utilities companies by transmitting the locate request information to them. For 2016, Alabama 811 transmitted approximately 4,780,000 transmission to its member utility companies.

Alabama 811 is funded by its member utilities. Member utilities pay to receive the notification of proposed excavation activity within their defined service area. The service is free to the excavating community. It is worth noting that underground facility owners are also excavators, therefore they both fund the operations and utilize the services of the one call center. Currently Alabama 811 has four (4) levels of membership:

- **Principal Members** - Voting member that pays an additional fixed cost above the General member transmission cost and has a designated seat on the Board. There is one Principal member board seat per Principal member. On average the three principal members pay approximately 37% of the annual revenues.
- **General Members** - Voting member that pays a cost per transmission of locate request notification. The per transmission rate is based on the previous year's transmissions for all members and the current year budget. There is a minimum rate of \$420 per year. The minimum rate applies to members who receive less than a calculated minimum transmission count which normally ranges between 500-600 locate requests per year. There are two designated seats on the Board representing the General Members. On average the remaining 400+ general members pay approximately 55% of the annual revenues.

- Associate Members - Non voting members. An Associate Member provides services to member companies, such as contract locating, and pays a reduced cost per transmission. On average the associate members pay approximately 8% of the annual revenues.
- Supporting Members - Non voting member. A Supporting Member is an entity that supports the damage prevention industry, such as an supply vendor, and pays a standard annual rate.

Member fees are calculated by taking the previous year transmission divided by the proposed budget. The General Members pay a direct per transmission rate, the Principal members pay a weighted per transmission price above the general member transmission rate. There is a minimum charge of \$420 a year for those members receiving less than a designated number of transmissions per year. That number on average ranges between 500-600 locates per year. Approximately 42% of the members fall within the minimum rate. **Approximately 84% of the members pay less than \$5,000 per year.**



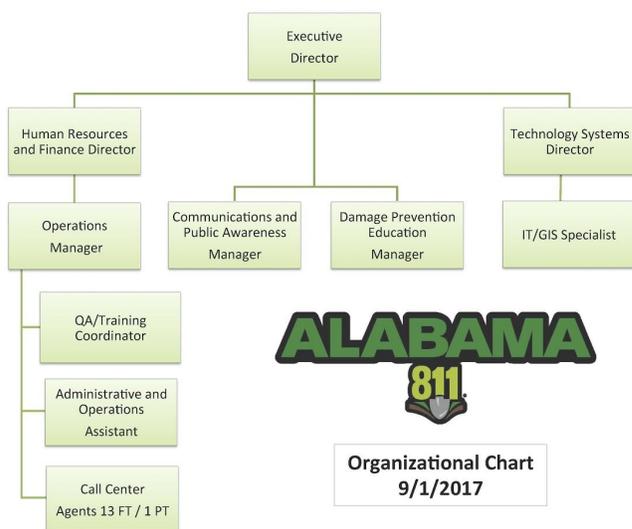
The one call center is governed by a board of directors. The current board structure allows for no less than three (3) and no more than ten (10) board members. There are currently five (5) members on the Alabama 811 Board. Board members seats are filled by the following breakdown:

- 1 seat per principal member (currently three principal members; Alabama Power, AT&T and Spire - formerly Alagasco) appointed by the principal members.
- 2 seats for the general members. One seat is elected annually to serve a two (2) year term. These board members are nominated by the general members, reviewed and selected by a nominations committee made up of the general members and recommended to the Board of Directors at the annual meeting.

There is also an option for an Advisory Board in the by-laws. The Advisory Board is structured to have one representative from each stakeholder group of the General Members, one member elected by the Associate Members, and one member from the Alabama Public Service Commission - Office of Pipeline Safety. This Advisory Board has been seated twice but is currently inactive due to lack of participation.

There are various benefits to both the facility owner and the excavator regarding membership in a single one call center. For the excavator, being able to make a single point of contact to request location marks at proposed excavation sites reduces their burden from having to contact several facility owners separately and running the risk of being unaware of an existing utility at the jobsite and not notifying them prior to excavation.

For the facility owner the benefits of participating in a single one call center is the increase in the safety and protection of their facilities by allowing the excavator to be able to make a single point of contact to have underground lines located and not risk their not receiving direct notice due to the excavator being unaware their facilities were in the area. The other benefits are economical. By participating in a one call center, member facility owners can benefit from cooperative efforts in cost savings resources for such programs as call center operations, education and promotion, ticket management system and improved technology for damage prevention efforts (i.e. webportal for locate request search for claims, reports, etc.). New Alabama 811 members have also reported seeing a reduction in damages after joining the one call center due to excavators previously not having to call the facility owner directly.



The one call center is operated as a non-profit, 501C(6), membership organization. There is a single office location and a staff of approximately 25 employees. The majority of these employees are the call center operational agents who take and process the locate requests.

Alabama 811 has established operational standard and guidelines regarding quality of service, efficient operations and business continuity. There are monitored performance standards for the call center staff and overall operations. These standards are monitored monthly

and reported to the Board of Directors as well as operations reports available on a monthly and an annual basis for all members. There are defined training programs and quality assurance measures for locate requests both for Alabama 811 staff and those utilizing remote ticket entry

programs. Alabama 811 also has developed business continuity programs to minimize potential downtime due to technology or physical limitations.

Alabama 811 conducts public outreach to various stakeholder groups including facility owners, professional excavators and the general public. These outreach efforts include such efforts as industry tradeshow, presentations, safety meetings, educational materials, media events, targeted media campaigns, and children's programs. Alabama 811 uses industry tradeshow, targeted mailings and direct interaction to reach out to non-member facility owners to educate them on the one call process and the benefits of membership. Information is also posted and made available on the Alabama 811 website. Alabama 811 oversees a cooperative effort between its natural gas and pipeline members called Alabama Pipeline Awareness Cooperative Training (APACT), which is funded completely by the natural gas and pipeline companies who participate in this education and awareness cooperative. There are approximately eighteen (18) meetings held **annually** across the state which provide safety training to first responders, excavators and

public officials in the area. Alabama 811 also works with other associations to build relationships with their employees and members and support beneficial educational activities. All trade shows, association meetings, potential member contacts, public awareness activities, media activities and Alabama 811 supported publications are

Alabama 811			
Public and Membership Outreach			
	2015	2016	thru July 2017
Public Outreach, Presentations and Association Meetings	83	85	40
Articles, Publications, Advertising and Broadcast Media	471	478	509
Alabama 811 Direct Publications	5	6	2

tracked and reported to the Board on a monthly basis and are included in the Annual Operations Report available for download on the Alabama 811 website.

c. State and Federal Reviews and Recommendations

In terms of single one call center membership, Alabama is one of three (3) states that does not have some form of defined membership requirements. Several states have global membership requirements while others have defined membership requirements with designated exemptions. The Common Ground Alliance (CGA) Best Practices encourage membership of all underground facilities in a single state one call center as a proven initiative for minimizing the risk of damage to underground facilities. The only form of mandatory membership in Alabama is that the Federal Pipeline Safety Act mandated that all natural gas and pipeline companies are required to participate in a qualified one call center.

In 2013, Alabama's Governor received a letter from the Pipeline Hazardous Materials Safety Administration (PHMSA) under the federal Department of Transportation, (DOT) stating that Alabama's law included wording related to excavation exemptions for state and municipal entities from notifying the one call center prior to excavation activities. Due to this exemption, Alabama's pipeline safety programs would no longer be eligible for the One Call and State Damage Prevention grants it had been awarded in the past. Wording was drafted and proposed through the work of the Alabama Damage Prevention Alliance (ADPA) and various stakeholders groups to change state statute wording to allow for the receipt of those continued grant funds.

Beginning January 1, 2016, under a new federal rule, PHMSA met with each state to determine if their current enforcement would be deemed effective or if PHMSA would be required to oversee enforcement for natural gas or pipeline incidents. Relative to enforcement, Alabama's enforcement program was deemed as inadequate. There were initially twenty-eight (28) states that were deemed as inadequate in having an effective enforcement program. Two states are currently under reconsideration of their determination. Alabama is one of those twenty-eight (28) states deemed to have an inadequate enforcement program. As a result of this determination, the State of Alabama may be subject to reduced federal monies earmarked for state damage prevention grants and other grant funding programs. Alabama normally receives approximately \$500-\$600k for its pipeline safety program from federal funding. PHMSA has several grants it awards the states such as the base grant for pipelines safety, one call grants and damage prevention grants. The base grant is the largest part of the funding provided. The amounts of the one call and damage prevention grants vary based on the reason requesting the funds and the fund availability. The base grant is the grant designated to be reduced after five (5) years if adequate enforcement is not in place. PHMSA will review the state programs annually to determine the amount of funding. With inadequate enforcement in Alabama, a portion of these grants will be restricted for a designated time and then possibly completely withheld. In addition, once PHMSA determines a state does not have an adequate enforcement program, PHMSA has the authority to step in immediately when enforcement is needed as a result of a violation or damage to a natural gas or pipeline facility. Any PHMSA fines would fall within the federal limits, which are currently between \$200k and \$2 million per incident. These fines would be levied on either the natural gas or pipeline operator for non-compliance and/or the excavator who damaged the natural gas or pipeline facility.

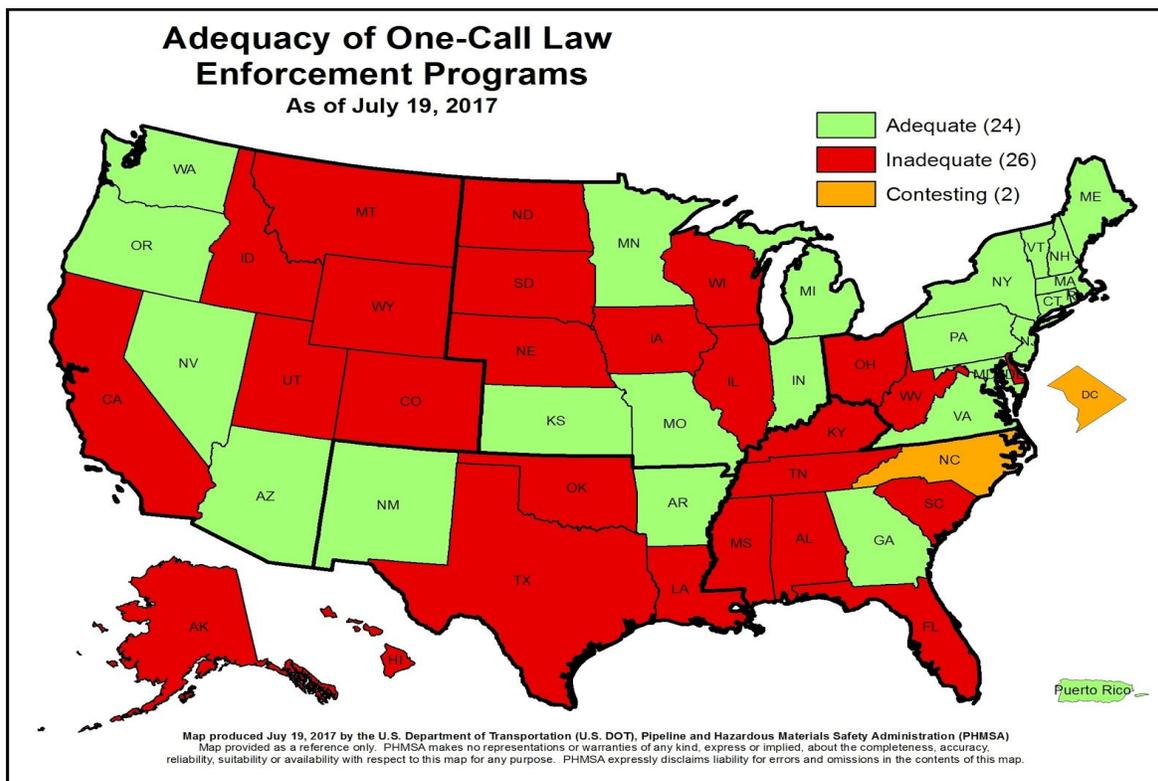
To be eligible for the federal grants Alabama's damage prevention program and enforcement would have to be deemed effective at an annual review. Any enforcement would have to comply with the guidelines outlined in the PHMSA rule and that enforceable portions of the law should be fair and balanced. PHMSA encourages data collection on excavation and facility damages, limited excavation and membership exemptions and an effective form of enforcement to qualify as having a truly effective damage prevention program. PHMSA wants to see states that currently do not have adequate programs are taking steps to ensure forward progress. PHMSA is looking for civil penalties. The key interest for PHMSA is not to levy fines but rather to change behavior to ensure a safer working environment and protection of the underground infrastructure. The enforcement models established with advisory board, and often in

conjunction with a public service commission entity, appear to have the best results. Data analysis conducted by PHMSA shows that those states that enforce through the District Attorney or Attorney General typically have fewer reported violations because the action taken is usually more limited in scope. Those states using the advisory board panel tend to have individuals seated on them that understand the damage prevention process and related enforcement.

PHMSA is looking for damage reports for actual damages or near misses for a facility and resulting enforcement actions. Many states currently are requiring that damages and near misses be reported to the state, the 811 center or other entities.

PHMSA is looking for some form of fair and balanced enforcement operational in the state to help reduce damages. Two elements PHMSA is requiring, as a minimum, to demonstrate effective enforcement:

1. Is there designated enforcement authority?
2. Is there a designated enforcement body?



The key recommendations noted from the PHMSA meeting with Alabama officials included:

- Program must be fair for both excavators and facility operators;
- Violations do not have to immediately result in a fine and can include initial warning letters and/or training;
- Program guidelines must include communication to affected stakeholders on the existence of the program, how to access it and how it works;

- Program structure must include written processes and procedures to document the program;
- Transparency in showing statistical data on claims filed, actions taken, penalties levied, etc.

IV. Issues and Ideas Considered by the Study Commission

a. How the Study Commission Approached the Study

The AOCSC conducted regular meetings and conference calls for the purpose of discussing the issues noted in Senate Joint Resolution 76. The meetings included formal presentations and invited guests to educate the group on one call membership, enforcement and other issues as needed. The meetings were generally informal and consisted of open discussion of the issues. Meeting minutes were recorded, reviewed and approved by the AOCSC to document the content and **decisions** made in the meeting. The information from the meetings, including presentations, minutes, and other reference materials were stored in a password protected website for use by the members.

As the final report draft was being developed in August 2017, an anonymous survey was conducted of the AOCSC members to obtain a general understanding of the position of the AOCSC members as related to the original intent of the SJR 76. There were twenty-one of the twenty-eight AOCSC members who responded to the survey which equates to seventy-five percent response rate. The results indicates that the majority of the AOCSC membership (95%) agrees that there is a need for a single one call center with a slight majority (60%) feeling that membership requirements should include no exemptions for underground facility owners. The remaining respondents (40%) felt there should be membership requirements but include define and limited exemptions. The majority (90%) of those surveyed indicated that the current enforcement requirements in state statute are not adequate with 95% responding that they support the draft enforcement program proposal developed by the AOCSC. Regarding whether any potential legislative changes should include membership only, enforcement only or a combination of the two, the survey results showed that 90% felt a combination including membership requirements and improved enforcement provisions was the preference. The complete survey results are noted in Appendix L.

AOCSC Survey Question	AOCSC Survey Responses
Question 1: Is the concept of a single one call center an expedient and valid option for Alabama?	Answer: Yes - 20 No - 0 Abstain - 1
Question 2: If you answered Yes on question 1 and support the concept of a single one call	Answer: Single one call membership with no underground facility owner exemptions - 12

center, which option is the best in your opinion?	Single one call membership with limited and defined facility owner exemptions - 8
Question 3: Are the current enforcement requirements in the underground damage prevention law adequate?	Answer: Yes - 1 No - 19 Abstain - 1
Question 4: Do you support the draft concept of the enforcement as developed in the Study Commission meetings?	Answer: Yes - 20 No - 1 Abstain - 0
Question 5: What is your preferred option for any possible changes to the current underground damage prevention law?	Answer: Enforcement Only - 2, Membership Only - 0 Combination of enforcement and membership - 19 None of the above - 0
Question 6: Are there other options or ideas related to the underground damage prevention law that needs to be considered to improve safety to the workers and citizens of Alabama?	Answers: 6 responders Various responses

The original deadline issued for the final report in the SJR 76 was by the end of 2015. However, due to the mass of information there was to review and discuss, the AOCSC submitted and updated the required state officials and requesting additional time to continue the work of the AOCSC. A copy of the letter submitted can be found in Appendix H.

The findings and information included in this final report are compiled primarily from the meeting minutes, including the presentations and other reference material provided in the meetings.

b. Membership Review

The AOCSC reviewed the current membership options within Alabama's law, the current membership levels within Alabama 811, the estimation of current non-members, what factors

might influence a facility owner to join or not to join the operating one call center and what actions are being taken by Alabama 811 regarding membership recruitment.

In July, 2015 data was gathered by the NAPSRS (National Association of Pipeline Safety Representatives) through a survey of the state regulators. This survey included four (4) questions:

- 1) Single One Call System for entire state?
- 2) If Multiple, do they work without overlapping?
- 3) Mandatory membership for all utilities?
- 4) Any exemptions?

The main trend noticed in the data collected is that few states are exactly the same and each state has established programs based on their own needs and programs. (Appendix L)

The only industry that is federally mandated to participate in a one call center is the natural gas and pipeline industry who are required to participate in a qualified one call program. Nationally, other underground facility owners participate based on a voluntary basis or due to requirements in the individual state laws. Alabama's law requires a facility owner to participate in the state one call program or have an in-house program that meets designated requirements. The concern from the excavators' perspective is that there is no entity verifying non-members are complying with the requirements of the law and there are times when the ability to identify if there are facilities present on an excavation site, beyond those marked through notification with the one call members, are limited prior to excavation activities. Examples were also provided where facilities were damaged because the facility owner was not a member of Alabama 811 and there were no physical indications of existing facilities beyond those marked through compliance of notification through the one call center. Therefore, there was no way for the excavator to know other facilities existed at the site until it was discovered during excavation and there was no indication of any other facility to contact.

Some of the questions raised regarding membership were in regards to the current membership requirements, board structure and cost of the acting one call center, Alabama 811. The current program was reviewed with both a formal presentation and meeting discussions. An analysis was conducted of state membership requirements and presented to the AOCSC to identify the number of states with no exemptions or limited exemptions and the basis for those exemptions (Appendix L). There was concern stated by some AOCSC members regarding mandating membership in a separate organization. It was noted that one call membership is required at some level through statute in almost all of the fifty (50) states and the majority of these are also incorporated as nonprofit membership organizations. Only three (3) states do not have some form of membership requirements. Other AOCSC members stated that the basis for requiring single one call membership is related to public safety, excavator safety and the protection of the underground utility facilities from excavation damage. Most one call centers are operated as nonprofit entities, governed by its members and a board of directors elected from the membership and the costs to operate the program are shared between the members.

The AOCSC reviewed the operations of Alabama 811 as compared to other states membership requirements regarding board structure, incorporation status, membership recruiting and other criteria. For those objecting to a membership requirement in a single one call center, they noted the following points:

- **State run entity needed?** Requirement to join a privately administered program not established as a state /public entity
- **Future costs?** Cost prohibitive and escalating minimum membership fees for entities with an existing statutorily compliant in-house program or very minimal locate requests.
- **Governance of board?** Board structure lacking a designated seat on the board for each type of stakeholder member of the one call center – specifically municipalities
- **Oversight?** No defined oversight entity for the one call operation
- **Opt Out Availability?** Inability to withdraw from the program for those with a statutorily in-house compliant program or when not satisfied with the level of service provided by the one call center.
- **Overall impact?** Having an additional mandate on their industry

Those in favor of more defined requirements for a single one call center noted the following points relative to the above items:

- **State run entity needed?** The One Call Center is established by state statute and is required by statute to be a non-profit corporation, public corporation or a governmental entity. Therefore the current one call center is established under the state mandated requirements and complies with state law. It could be potentially non beneficial to underground facility owners who fund the operation to be subject to state funding requirements and may not allow the member utilities to direct the operation of the one call program and associated costs to the best financial interest of the members funding the operations. Only two states have State operated one call systems.
- **Future costs?** It was noted that there were no guarantees on the future operations of the one call center but since the center's operations and costs were directed and approved by a board which is made up of its members facility owners. Historically it is evident that decisions have been made in the best interest of all the members to ensure effective operations and economical costs. Currently over 80% of the membership pay less than \$5,000 per year to participate in the one call center and approximately 42% of the members pay the minimum rate of \$420 per year. The minimum rate was originally \$360 per year for the first ten years of incorporated operations and was increased to \$420 approximately thirteen years ago. However, an introductory or discounted fee level less than the current minimum was discussed as a possible solution that could be beneficial to address the concerns noted.
- **Governance of board?** The current board structure is open for review from the current one call board but any changes should be considered as to what enables the one call center to function both effectively and efficiently for both the underground facility owners and excavating community. The one call center operates under a board of directors made up of its members and board nominations from its general members are

opened annually for their participation on the board as well as an advisory board option to include all stakeholder groups to be represented. Monthly operations reports are submitted from the one call center staff to the Board of Directors and the membership for review. The one call center board is open to providing routine reports and annual financial reviews/audits to the Alabama Public Service Commission as part of their Certification of Necessity and Convenience. The Board of Directors of Alabama 811 provided the AOCSC with a resolution that was passed in regards to their position regarding membership and enforcement provisions and their stance on working to resolve existing conflicts and concerns and their willingness to work through these concerns to ensure a quality damage prevention program in the state (Appendix K).

- **Oversight?** The Alabama Public Service Commission has oversight of any certified one call center under the provision of granting a Certificate of Necessity and Convenience. Any complaints regarding the one call center can be filed with the The Alabama Public Service Commission, which has the authority to revoke the certificate of operation.
- **Opt Out Ability?** There was discussion about establishing membership requirements with a sunset clause in regards to when the membership requirements would no longer be required that would allow those who would desire to no longer participate in the one call program the opportunity to cancel their membership. It should be noted that there is no current oversight to ensure those entities who chose to not participate in the one call center are operating statutorily compliant in-house programs.
- **Overall Impact?** The potential for a mandate is consistent with requirements in other states and would promote public safety.

There was also discussion if, instead of legislating membership, that membership could be driven through enforcement provisions to encourage non members to participate or through other provisions of state statute. Several options were discussed on how this could be done such as:

- the inability to utilize the enforcement program for facility owners who were not members of the one call center to report excavators for violations of the one call statute; or
- the inability to charge for damages if the facility owner chose not to be a member of the one call center; or
- requirement to report to a designated entity for verification of their damage prevention program, such as the Public Service Commission.

The opinion expressed by some of those not in favor of the single one call membership requirement was that their industries did not want to be mandated to participate and felt that membership was best left as voluntary.

Those members of the AOCSC who supported a single one call center concept agreed to consider various options including items such as a sunset clause as noted above, increased accountability to the Alabama Public Service Commission and modifications to the Alabama 811 board structure as noted above.

It was suggested that from discussions held by the AOCSC, there were three potential options relative to membership requirements in a single one call center that could be considered:

Remain with current structure with an option to have an in-house program

1. Single one-call center to include all underground facility owners with no exemptions
2. Single one-call center with designated limited exemptions

There was also a discussion if a specific recommendation or all of the options should be included in the report. It was agreed that the AOCSC should be able to provide enough background and information about each of these options and what the impacts of these could be if this was the stance taken and still develop a recommendation.

c. Enforcement Review

The enforcement procedure as generally practiced under the current requirements of Alabama's Damage Prevention Law include the following basic process:

- A written complaint with adequate investigative evidence is filed with the District Attorney or Attorney General
- The District Attorney or the Attorney General determines whether to pursue the complaint further
- If determined to be a valid violation then the complaint can be pursued through the legal system.

It has often been said that Alabama's Damage Prevention legislation lacks "teeth" in the law in regards to enforcement due to no real enforcement actions having taken place since the law was passed in 1994 and the inability to take immediate action to change behavior. There has been no real deterrent that can be used to encourage compliance with the existing law and to follow the damage prevention guidelines. In addition, the federal government is looking for something more robust and immediate to be deemed an effective form of damage prevention.

The AOCSC conducted an analysis and developed a matrix of other state enforcement programs (Appendix L). Information was gathered from states which had recently developed and enacted enforcement programs to determine the challenges and successes they had experienced. Other states that had long standing enforcement programs were also reviewed. One of the major points of discussion within the AOCSC was ensuring whichever type of enforcement is developed must be equally weighted to both the facility owner and the excavator. In the review of the various programs the following options were discussed and evaluated by the AOCSC:

- Whether violation reporting should be based on actual damage reports or complaint reports;
- If enforcement should be conducted by an existing agency, such as the Attorney General's office, department within the Alabama Public Service Commission or local law enforcement;
- If enforcement should be conducted by a new established stakeholder review board and who should be included on that board; or

- If a new alternative, not currently operational in other states, may be more conducive to the needs of Alabama

One concern expressed from the professional excavator stakeholders, who represent the entities most likely to be impacted by any type of enforcement program penalties, is that under the current damage prevention program with the voluntary nature of membership in the one call center, an excavator may be unable to identify which facilities are in the area to know who to contact. This uncertainty is removed, or greatly reduced, if there are defined membership requirements and lessens the potential for the excavator to be held responsible for not notifying a facility owner when he is unaware that the facility was existent at the excavation site.

A subcommittee was established to review the various enforcement options and present an enforcement process proposal. This committee provided several options to the AOCSC for review. These options were reviewed, updated and refined to develop the final enforcement process proposal. (Appendix I)

d. Other Issues Regarding Damage Prevention Program Initiatives

Due to the complexity of the enforcement and membership issues, the AOCSC did not extensively review other issues that should be considered to ensure an effective damage prevention program. However, some general areas that were discussed that could improve the damage prevention program included:

- **Positive Response** - requiring utilities to initiate a response to the one call center or the excavator after utilities have been marked or there is no indication of utilities at an excavation site.
- **White-lining at Excavation Sites** - used in some states to outline the limits of a proposed excavation site to communicate to the facility owner the exact area of expected excavation activities.
- **Ticket Life Extension** - extend the time that a locate request is valid for excavation activities before having to update the information with the one call center or facility owner if excavation activities are not complete.
- **Damage Reporting** - require reporting of damage to underground facilities to the facility company or to the one call center to enable the ability to gather data on damage statistics and root cause analysis to facilitate improved damage prevention requirements and awareness programs.

The Alabama Damage Prevention Alliance (ADPA) also conducted a membership survey during the time period that the AOCSC was considering its options. The ADPA supplied the top initiatives from that survey to the AOCSC. These ideas are included below in order of priority to address per the ADPA survey:

1. Positive Response
2. White-lining at Excavation Sites
3. Ticket Life Extension

4. Job Size / Scope Limitations
5. Damage Reporting
6. Designated Start Time for Two Working Day Notice
7. Project Ticket
8. Extraordinary Circumstance Declaration
9. Emergency Response Time Frame

V. Conclusions

a. Membership Conclusions

In the course of its meetings, the AOCSC had extensive and productive discussions regarding the many aspects of one-call membership including:

- explaining the benefits to the utilities and excavators of having single one call center membership
- understanding and evaluating in-house program accountability
- defining specific opposition to single one call membership from some members of the commission who do have many volunteer members of Alabama 811 and others with in-house programs, but did not want to be mandated to join Alabama 811 through legislation
- having potential incentives to promote one call membership without membership requirements
- looking at other potential options that could be implemented to help improve the reduction of damages to underground facilities and protection to the excavators working around those facilities.
- conducting a detailed review of the Alabama 811 membership outreach, governance and legislative oversight.

While there was not unanimous agreement among the entire group, based on the discussions at the meetings and the anonymous member survey previously referenced, the AOCSC showed there is significant support for amending the law to require some form of required membership in a single one call system. Specific changes should consider how to best enhance the safety and protection of the public, utility owners and excavators. In addition, the ongoing need to protect underground utility facilities from damages and the consequences of such damages should also be addressed going forward.

b. Enforcement Conclusions

The AOCSC concluded that the existing enforcement provisions in the one call legislation need to be enhanced. The AOCSC sought to create a process that would enhance enforcement without undue legal complications for the public, the underground facility owners and the construction industry. The AOCSC discussed whether enforcement should be driven only by reported damages or through a complaint process. The agreement was that a complaint process would be more productive as it would address those who may violate portions of the law but not be involved in an actual damage. Another concern related to damage reporting, was the potential

for insufficient data if the excavator or facility owner had an agreement not to report on each other or if there is the concern that a fine will automatically be levied. It was suggested that the enforcement could be established for damages to be required to be reported but allow for them to be noted as resolved by agreement between the parties, which would not result in any action from the enforcement authority. These violations could then be accounted for as part of the damage reporting to capture data but would not have enforcement action levied against them. This will hopefully encourage people to report all damages to allow for better data for analysis.

It was agreed that the enforcement body would strictly be responsible for levying fines related to violations of the state statute and not be involved in determining any damage repair costs. There should be no blurred lines between violation penalties and economic loss to the damaged entity.

It was agreed that the purpose of the enforcement was to change behavior to prevent future damages to facilities and not to focus on punishment for an entity due to the resulting damage. In a damage only reporting process, there are other violations of the law that could be overlooked such as a repeat offender who does not notify the facility owners but has not damaged a facility to require reporting or a facility owner who does not mark or is consistently delinquent in marking facilities.

The following items were generally agreed to:

- Prefer to be complaint driven process;
- Prefer to have complaints go to an established stakeholder enforcement body to address violations of the act;
- Someone in state government could be the initial point of contact to direct the complaints to the review board;
- Any fines levied could go back to cover the cost of education courses;
- Would need to define who attends the required training and any non-attendance would be a violation of the enforcement order;
- Potentially establish a progression of fines based on the level of the violation and/or the number of repeat offenses;
- Process could be set up to allow some resolution in the field between the two parties involved.

General Recommendations for Enforcement process include:

- Development of web interface for reporting of violations.
- Web report would include option to report for information purposes only or proceed with the violation to the enforcement process.
- Potentially have email link on report process that would automatically send a copy of the reported violation to the entity being reported.
- Develop list of terms that will need to be included in definitions.
- Ensure terms used in enforcement draft agree with terms in the current damage prevention legislation.
- General agreement that training should be related to the entire damage prevention legislation. Discussion that training modules could potentially be developed through local universities.
- Property damage or downtime can be included in the determination of the penalty assessed or in determining the level of potential willful and wanton behavior. However, a

possible action that may result in large property damage does not need to automatically be interpreted as willful and wanton.

- Procedure to address a situation where a large number of violations reported could be the result of the amount of work and exposure that one company may be involved in. The example was given of the contract locators or a utility who serves a large majority of the state. It is noted that this is not a **required** violation reporting system so the intent is that the reporting would be for related to consistent and purposeful violations of the law. The Authority Executive Committee should be educated to take these type of situations under consideration.
- A defined dollar amount for violations should be maintained to allow for some potential guidelines.
- Designated composition of the Authority Board should reflect affected stakeholders and governmental representatives.
- The rulemaking process should be able to address real work situations regarding the workload, locate requests volume variances and other factors that may impact the response to locate requests.

A draft enforcement process, with a defined fine structure, was developed and agreed to by the AOCSC as outlined below and is attached, along with flowcharts of both the process and the penalty structure, in Appendix I and Appendix J respectively.

ALABAMA DAMAGE PREVENTION ENFORCEMENT PROCESS RECOMMENDATION

AUTHORITY BOARD STRUCTURE

1. *Establishment of an Underground Damage Prevention Authority (Authority) to review reports of alleged violations of the Alabama Underground Damage Prevention Law.*
2. *The Authority and its enforcement activities are not intended to be funded by appropriations from the State budget.*
3. *The Authority will utilize the services of the Alabama Public Service Commission (PSC) to provide administrative support and the PSC may charge the expenses associated with its administrative duties back to the Authority, subject to the concurrence of the Authority Board. The PSC involvement is in an administrative capacity only and does not expand the jurisdiction of the PSC.*
4. *The Authority will 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:*
 - a. *Alabama Attorney General's office*
 - b. *Alabama PSC - gas pipeline safety*
 - c. *Alabama Department of Transportation*
 - d. *Alabama County Engineer*
 - e. *Cable Television Industry*
 - f. *Electric Utility Industry*
 - g. *Municipal Utility Operator Industry*
 - h. *Natural Gas Distribution Industry*
 - i. *One Call Notification Center*
 - j. *Professional Excavator Industry*

- k. *Professional Road Builder Industry*
 - l. *Professional Land Surveyor Industry*
 - m. *Telecommunications Industry*
 - n. *Transmission Pipeline Industry*
 - o. *Utility Facility Locating Industry*
 - p. *Water Utility Industry*
 - q. *Wastewater Industry*
5. *The Governor shall appoint the representatives selected with the exception of the representatives from the Alabama Attorney General's Office, The Alabama PSC – gas pipeline safety and the Alabama Department of Transportation. The head of their respective agencies will appoint those persons.*
 6. *The initial Authority Board appointments will be appointed with staggering terms. After the initial appointment, each stakeholder representative will serve a three (3) year term. No one will be appointed for more than two (2) full consecutive terms with the exception of the Alabama Attorney General's Office, the Alabama PSC – gas pipeline safety, the Alabama Department of Transportation and the One Call Notification Center.*
 7. *The Authority Board will elect an Executive Committee made up of five (5) representatives of the Authority Board. The Executive Committee will be responsible for reviewing the complaints filed, levying civil penalties and taking approved upon actions based on the penalty provisions.*
 8. *No Authority Board member can participate in any enforcement action decision pertaining to the entity they represent.*
 9. *The Authority shall also be composed of a fifteen (15) member pool of retired supernumerary judges appointed by the Alabama Bar Association or the Administrative Office of Courts.*
 10. *The designated judge panel seated to hear a case will consist of three (3) of the members of the judge pool.*
 11. *The designated judge panel will be compensated consistent with the requirements of supernumerary, retired or special judge appointments as required by law.*

RIGHTS AND POWERS OF THE AUTHORITY BOARD

1. *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.*
2. *The Board has the power and authority to:*
 - a. *Promulgate rules to conduct the affairs of the Authority;*
 - b. *Make and enter into contracts;*
 - c. *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;*
 - d. *Supply subject matter expertise for the Judge Panel as requested;*

- e. *Oversee the development of or contract for the development and administration of the designated training program;*
 - f. *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 the state or federal laws.*
3. *The members of the Board shall be immune, individually and jointly, from civil liability for any act or omission done or made in the performance of their duties while serving as members of the board, but only in absence of willful misconduct.*
 4. *The members of the board shall serve without compensation.*
 5. *Nothing in the enforcement program shall grant the Authority jurisdiction over damage to utilities located above the ground under the current law.*

ENFORCEMENT PROCESS

1. *Any person who violates the Alabama Underground Damage Prevention statute may be reported to the Authority for the alleged violation.*
2. *The Board shall develop and implement a process for the receipt of a complaint of a violation. The complaint must be made no later than thirty (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.*
3. *Upon receipt of a complaint of a violation, the PSC Administrator, operating on behalf of the Authority, shall submit the complaint and submitted documentation to the Executive Committee for review and recommendation of appropriate penalty to be assessed. Notice shall be given 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, their rights to file a written response within fourteen (14) days and their right to appeal from an adverse decision. The PSC Administrator, operating on behalf of the Authority, will notify the reported violator of any penalty assessed.*
4. *Once the reported violator is notified of the designated penalty as described in the penalty provisions, the violator may pay the penalty to the Underground Damage Prevention Fund or dispute the penalty and request a hearing before the designated Judge Panel.*
5. *The request for a hearing before the Judge Panel must be done so within thirty (30) days of the issuance of notification of the violation.*
6. *The Judge Panel will meet no more than quarterly, based on need. The hearings will be held in Montgomery, Alabama 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 Judge Panel, and the proceedings and hearing before the Judge Panel shall be tried as a new complaint. The complainant must attend the hearing.*
7. *The Judge Panel has the authority to:*
 - a. *issue subpoenas to compel the attendance of the the complainant and the alleged violator and any other witnesses;*
 - b. *issue subpoenas to require the production of documents and other evidence;*
 - c. *repeal the initial penalty provisions cited for the alleged violation;*
 - d. *uphold the initial penalty provisions cited for the alleged violation;*
 - e. *issue a new penalty provision related to the alleged violation;*

- f. issue an order stating the outcome of the hearing including any assigned penalty.*
- 8. The reported violator requesting the hearing before the Judge Panel shall initially assume the responsibility of the cost of convening the Judge Panel according to the defined costs associated with supernumerary judges. However, after the final order from the Judge Panel is issued, costs of the hearing will be assessed to the non-prevailing party.*
 - 9. A person aggrieved by the final order may, within thirty (30) days from the date of the final order, seek judicial review in the Circuit Court in Montgomery County by filing a notice of appeal with the Circuit Court Clerk of Montgomery County.*
 - 10. All complaints filed 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.*
 - 11. The Alabama Open Meetings Act shall apply to all meetings and judicial hearings required pursuant to this act, except for those meetings of the Authority in which the initial determination of violation and recommended fine is discussed and determined.*
 - 12. The Authority may bring an action against any person or entity to collect any fines, penalties or other monies owed to the Authority.*
 - 13. The Authority shall be governed by the Alabama Administrative Procedures Act.*

CIVIL PENALTIES FOR ENFORCEMENT PROCESS

- 1. The amount of levied penalties shall be dependent 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 the Alabama statute.*
- 2. Any person who violates the Alabama Underground Damage Prevention law, or the rules promulgated by that law, shall be subject to a civil penalty as follows:*
 - a. For a first violation, the violator shall complete a course of training concerning compliance with the appropriate state statute as determined by the Authority Board or pay a civil penalty set by the Executive Committee in an amount not to exceed \$500.00 per incident, or both;*
 - b. For a second or subsequent violation within a rolling twelve (12) month period, the violator shall complete a course of training concerning compliance with the appropriate state statute as determined by the Authority Board or pay a civil penalty set by the Executive Committee in an amount not to exceed \$1,000.00 per incident, or both;*
 - c. For a third or subsequent violation within a rolling twelve (12) month period, the violator shall complete a course of training concerning compliance with the appropriate state statute as determined by the Authority Board and pay a civil penalty in an amount set by the Executive Committee, not to exceed \$3,000.00 per incident; and*

- d. *If any violation was the result of gross negligence or willful noncompliance as determined by the Executive Committee, the violator shall be required to complete a course of training concerning compliance with the appropriate state statute as determined by the Authority Board and pay a civil penalty in an amount set by the Executive Committee not to exceed \$10,000.00 per incident.*
3. *Any person who is required to complete a course of training shall be responsible for paying for the cost of the training. For those instances in which training is ordered, the Executive Committee may require that at least one (1) manager or supervisor for the violating company attend any such training.*
 4. *These penalty provisions 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.*
 5. *All penalties recovered in such actions 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 as required by law. Excess funds shall be used to support public awareness programs, training and education of excavators, operators, line locators and other persons to reduce the number and severity of violations of the law.*
 6. *The actions of the Authority does not affect any civil remedies for personal injury or property damage or criminal sanctions except as otherwise specifically provided for in the state statute.*
 7. *Evidence of findings of fact, civil penalties or any of the actions or proceedings under the enforcement program shall not be admissible in any other civil causes of action related to the excavation or damage for which the penalty or fine was issued. The enforcement process shall not limit the Attorney General or any District Attorney or any person's right to pursue any additional civil remedy otherwise allowed by law.*
 8. *No civil penalty may be imposed against an excavator or operator who violates any of the provisions of the law 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.*
 9. *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.*

POTENTIAL COSTS ASSOCIATED WITH ENFORCEMENT PROCESS:

Initial – Potential initial start up costs could include:

- Process for submitting violation claim – webpage form and domain host - \$1,000
- Development, if needed, of database/software to determine if entity being reported has violated the law multiple times based on potential fee/penalty structure - \$2,500
- Costs charged back to the Authority for expenses incurred by the PSC administrative functions - unknown
- Educational materials - \$1,000
- Potential costs for Judge Panel retention - \$100/per day for 3 members of Judge Panel = \$1,200/year

- Related travel cost - \$1,200/year

PROS/CONS:

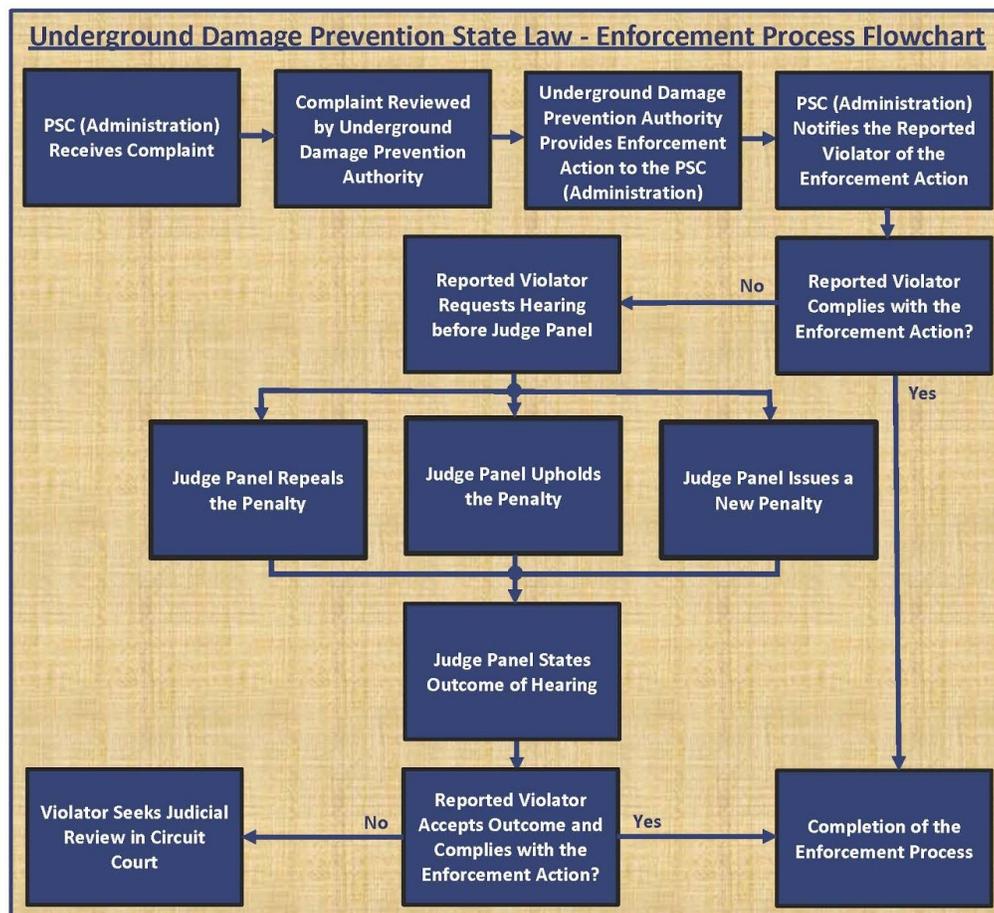
Pros

- Provides an educated industry review of the complaint and associated documentation
- Cost effective because only cost incurred for the Judge Panel are for the days they are used to hear complaints appealed to the Judge Panel
- Ensures program allows equal access to all relative stakeholders

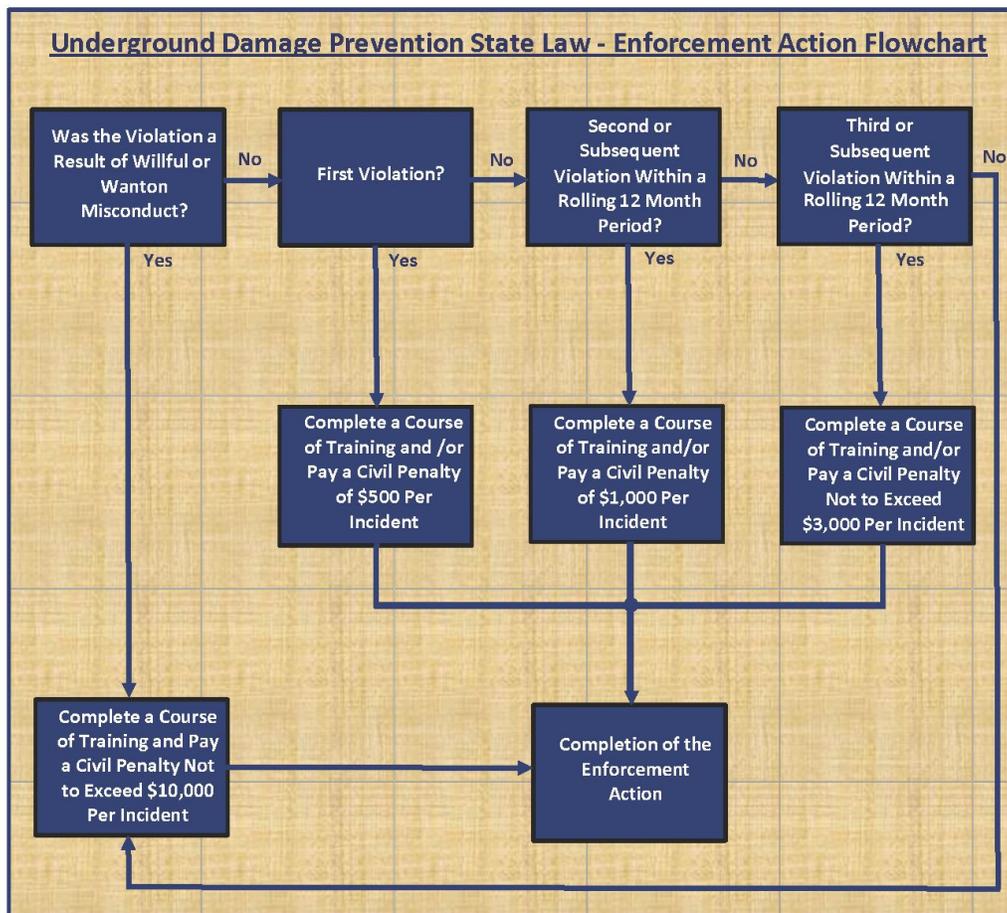
STEPS FOR IMPLEMENTATION:

- Establishing approval to use Judge Panel through the appropriate agency
- Establishing educational sessions for Judge Pool
- Develop program to educate on program and process to various stakeholders
- Identify and establish procedures for administrative functions
- Establishing forms/website for complaint filing
- Develop database/software required to research multiple infractions by reported entities if penalty structure defines higher level of penalty for repeat offenders.

This flowchart illustrates the enforcement process as outlined in the recommended program developed by the AOCSC.



The following flowchart outlines the enforcement actions recommended in the draft enforcement program:



c. Other Damage Prevention Program Initiative Conclusions

Due to the amount of time required to discuss the enforcement and membership issues, there was limited time to develop firm recommendations for other damage prevention programs. However, there are some areas that there seemed to be agreement that those areas, if implemented, could help improve the damage prevention program in Alabama. Some of these could be included in legislative initiatives, one call center practices or general education recommendation. They key areas that seem to consistently be recommended included:

- Positive Response
- White-lining
- Ticket Life Extension
- Defined Project Ticket

VI. Appendix