

By: Representative Ford

To: Public Utilities

HOUSE BILL NO. 545

1 AN ACT TO REENACT SECTIONS 77-13-1 THROUGH 77-13-15,
2 MISSISSIPPI CODE OF 1972, WHICH RELATE TO THE REGULATION OF
3 EXCAVATIONS NEAR UNDERGROUND UTILITY FACILITIES; TO BRING FORWARD
4 SECTIONS 77-13-17 AND 77-13-19, MISSISSIPPI CODE OF 1972, WHICH
5 PRESCRIBE THE RESPONSIBILITIES OF UTILITY OPERATORS IN RELATION
6 TO EXCAVATIONS AND AUTHORIZE INJUNCTIVE RELIEF FOR VIOLATIONS OF
7 THE EXCAVATION REGULATIONS; TO AMEND SECTION 77-13-21, MISSISSIPPI
8 CODE OF 1972, TO EXTEND THE REPEALER ON THE REGULATIONS RELATING
9 TO SUCH EXCAVATIONS; AND FOR RELATED PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 SECTION 1. Section 77-13-1, Mississippi Code of 1972, is
12 reenacted as follows:

13 77-13-1. It is the intent of the Legislature to protect
14 underground utility facilities and other underground facilities
15 from destruction or damage, in order to prevent death of or injury
16 to persons, property damage to public and private property, and
17 loss or interruption of essential utility services to the general
18 public.

19 SECTION 2. Section 77-13-3, Mississippi Code of 1972, is
20 reenacted as follows:

21 77-13-3. The words defined in this section shall have the
22 following meanings when found in Sections 77-13-1 through
23 77-13-17:

24 (a) "Excavate or excavation" shall mean any operation
25 in which earth, rock or other material or mass of material on or
26 below the ground is moved or otherwise displaced by any means,
27 except: (i) the tilling of the soil less than twenty-four (24)
28 inches in depth for agricultural purposes; or (ii) an operation in
29 which earth, rock or other material or mass of material on or

30 below the ground is moved or otherwise displaced to a depth of
31 less than twelve (12) inches on private property by the property
32 owner without the use of mechanical excavating equipment; or (iii)
33 an operation in which earth, rock or other material or mass of
34 material on or below the ground is moved or otherwise displaced
35 without the use of mechanical excavating equipment to a depth of
36 less than twelve (12) inches on private property by an excavator
37 who is not the property owner, except when such excavation is in a
38 clearly marked underground facility right of way. The term
39 "excavate" shall include, but not be limited to, the operations of
40 demolition, blasting, grading, land leveling, trenching, digging,
41 ditching, drilling, augering, tunneling, scraping, cable or pipe
42 plowing, driving, jacking, wrecking, razing, rending, moving or
43 removing any structure or other material or mass of material on or
44 below the ground.

45 (b) "Utility" shall mean any person who supplies,
46 distributes or transports by means of underground utility lines or
47 underground facilities any of the following materials or services:
48 gas, mixture of gases, petroleum, petroleum products or
49 hazardous, toxic, flammable or corrosive liquids, electricity,
50 telecommunications (including fiber optics), sewage, drainage,
51 water, steam or other substances.

52 (c) "Underground utility lines" shall mean underground
53 or buried cable, conduit pipes and related facilities for
54 transportation and delivery of electricity, telecommunications
55 (including fiber optics), water, sewage, gas, mixtures of gases,
56 petroleum, petroleum products or hazardous, flammable, toxic or
57 corrosive liquids.

58 (d) "Underground facility" shall mean any underground
59 utility lines and other items which shall be buried or placed
60 below ground or submerged for use in connection with underground
61 utility lines and including but not be limited to pipes, sewers,
62 conduits, cables, valves, lines, wires, manholes, vaults,
63 attachments, and those portions of poles below the ground.

64 (e) "Person" shall mean any individual, firm,
65 partnership, association, trustee, receiver, assignee,
66 corporation, utility, joint venture, municipality, state

67 governmental unit, subdivision or instrumentality of the state, or
68 any legal representative thereof.

69 (f) "Damage" shall mean the substantial weakening of
70 structural or lateral support of underground utility lines and
71 underground facilities, penetration or destruction of any
72 protective coating, housing or other protective devices of an
73 underground utility line or underground facility, and the partial
74 or complete severance of any underground utility line or
75 underground facility, but does not include any operator's
76 abandoned facility.

77 (g) "Operator" shall mean any individual who owns or
78 operates a utility.

79 (h) "Working day" shall mean a twenty-four-hour period
80 commencing from the time of receipt by Mississippi One-Call
81 System, Inc., or the nonmember operator of the notification in
82 accordance with this act, excluding Saturdays, Sundays and legal
83 holidays.

84 (i) "Mechanical excavating equipment" shall mean all
85 equipment powered by any motor, engine, or hydraulic or pneumatic
86 device used for excavating and shall include but not be limited to
87 trenchers, bulldozers, backhoes, power shovels, scrapers, drag
88 lines, clam shells, augers, drills, cable and pipe plows and other
89 plowing-in or pulling-in equipment.

90 (j) "Excavator" shall mean any person who engages
91 directly in excavation.

92 (k) "Mark" shall mean the use of stakes, paint, or
93 other clearly identifiable materials to show the field location of
94 underground facilities in accordance with the current color code
95 standard of the American Public Works Association, or the
96 uncovering or exposing of underground facilities so that the
97 excavator may readily see the location of same, or the pointing
98 out to the excavator of certain aboveground facilities such as,
99 but not limited to, manhole covers, valve boxes and pipe and cable

100 risers, which indicate the location of underground facilities.

101 (1) "One-call association" shall mean a service through
102 which a person can notify the operator(s) of underground
103 facilities of plans to excavate and request marking of facilities,
104 hereinafter referred to as Mississippi One-Call System, Inc.

105 (m) "Nonmember operator" shall mean any operator who
106 elects not to join Mississippi One-Call System, Inc.

107 (n) "Member operator" shall mean any operator who is a
108 member of Mississippi One-Call System, Inc.

109 (o) "Abandoned facility" shall mean any underground
110 utility line or underground utility facilities no longer used in
111 the conduct of the owner/operator's business and are not intended
112 to be used in the future.

113 (p) "Emergency excavation" shall mean excavation at
114 times of emergency involving danger to life, health or property or
115 a customer service outage.

116 (q) "Approximate location" of underground utility lines
117 or underground facilities shall mean information about an
118 operator's underground utility lines or underground facilities
119 which is provided to a person by an operator and must be accurate
120 within eighteen (18) inches measured horizontally from the outside
121 edge of each side of such operator's facility, or a strip of land
122 eighteen (18) inches either side of the operator's field mark, or
123 the marked width of the facility or line plus eighteen (18) inches
124 on each side of the marked width of the facility or line.

125 SECTION 3. Section 77-13-5, Mississippi Code of 1972, is
126 reenacted as follows:

127 77-13-5. (1) In addition to complying with all other
128 applicable regulations and requirements of federal, state, county
129 and municipal authorities, no person shall engage in excavation of
130 any kind, before meeting the notification requirements of this
131 act. Under this act the excavator shall:

132 (a) Inform himself/herself of the presence and location

133 of any underground utility lines and underground facilities in or
134 near the area where excavation is to be conducted;

135 (b) Plan and conduct the excavation to avoid or
136 minimize interference with or damage to underground utility lines
137 and underground facilities in or near the excavation area;
138 maintain a clearance between any underground utility line or
139 underground facility and the cutting edge or point of any
140 mechanical excavating equipment, taking into account the known
141 limit of control of such cutting edge or point, as may be
142 reasonably necessary to avoid damage to such facility; and provide
143 such support for underground utility lines or underground
144 facilities in and near the excavation area, including during any
145 backfilling operations, as may be reasonably necessary for the
146 protection of such facilities.

147 (c) Except as provided in Section 77-13-11, provide not
148 less than two (2) and not more than ten (10) working days' advance
149 written, electronic or telephonic notice of the commencement,
150 extent, location and duration of the excavation work to
151 Mississippi One-Call System, Inc., and any nonmember operator(s)
152 of any underground utility lines or underground facilities in and
153 near the excavation area, so that Mississippi One-Call System,
154 Inc., member operator(s) and any nonmember operator(s) may locate
155 and mark the location of underground utility lines and underground
156 facilities in the excavation area.

157 The written, electronic or telephonic notice required by this
158 subparagraph (c) shall contain the name, address and telephone
159 number of the person filing the notice of intent, the person
160 responsible for the excavation, the starting date, anticipated
161 duration, type of excavation to be conducted, the location of the
162 proposed excavation and whether or not explosives are to be used.

163 (2) The markings provided by member and nonmember operators
164 shall only be valid for a period of ten (10) working days from the
165 proposed starting date provided to the nonmember operator(s) or

166 Mississippi One-Call System, Inc. The person responsible for the
167 excavation project shall renew the notification with Mississippi
168 One-Call and any nonmember operator(s) at least two (2) days prior
169 to this expiration date and shall continue to renew such
170 notification in the same manner throughout the duration of the
171 excavation. Such renewal notice shall be valid for a period of
172 ten (10) working days from the date of the expiration of the prior
173 notification.

174 (3) Compliance with the notice requirements of this section
175 shall not be required of: (a) persons plowing less than
176 twenty-four (24) inches in depth for agricultural purposes; (b)
177 persons who are moving or otherwise displacing, by hand, earth,
178 rock or other material or mass of material on or below the ground
179 at a depth of less than twelve (12) inches on property they own;
180 and (c) persons, other than the property owner, who are moving or
181 otherwise displacing, by hand, earth, rock or other material or
182 mass of material on or below the ground at a depth of less than
183 twelve (12) inches, except when such excavation is in a clearly
184 marked underground facility right of way.

185 SECTION 4. Section 77-13-7, Mississippi Code of 1972, is
186 reenacted as follows:

187 77-13-7. (1) Each person responsible for any excavation
188 that results in damage to an underground utility line or
189 underground facility, immediately upon discovery of such damage,
190 shall notify Mississippi One-Call System, Inc., or notify all
191 operators of such damaged line or facility of the location of the
192 damage and shall allow the operator reasonable time to accomplish
193 any necessary repairs before completing the excavation in the
194 immediate area of the damage to such line or facility.

195 (2) Each person responsible for any excavation that results
196 in damage to an underground pipeline or underground facility
197 permitting the escape of any hazardous, flammable, toxic or
198 corrosive gas or liquid shall, immediately upon discovery of such

199 damage, notify Mississippi One-Call System, Inc., and the operator
200 and take other action as may reasonably be necessary to protect
201 persons and property and to minimize the hazards, until arrival of
202 the operator's personnel and police or fire departments.

203 (3) Except where the excavator has fully complied with the
204 provisions of Section 77-13-5 and subsections (1) and (2) of this
205 section, each person responsible for excavation that results in
206 damage to an underground line or underground facility, except the
207 property owner, unless the property owner is the excavator, shall
208 be responsible for any and all costs and expenses incurred by the
209 operator in restoring, correcting, repairing or replacing the
210 damaged line or facility.

211 SECTION 5. Section 77-13-9, Mississippi Code of 1972, is
212 reenacted as follows:

213 77-13-9. (1) Every person owning or operating underground
214 utility lines or underground facilities shall, upon receiving
215 advance notice of the commencement of excavation, in accordance
216 with Section 77-13-7, make an investigation, within two (2)
217 working days from the time notice is provided in accordance with
218 this act to the nonmember operator(s) or Mississippi One-Call
219 System, Inc., to determine the approximate location of its
220 underground utility lines or underground facilities in the area of
221 the proposed excavation, and shall either: (a) mark the
222 approximate location of underground utility lines and underground
223 facilities in or near the area of the excavation, so as to enable
224 the person engaged in excavation work to locate the lines and
225 facilities in advance of and during the excavation work; or (b)
226 advise in writing or by telephone or electronic means that it has
227 no underground utility lines or underground facilities in the
228 excavation area.

229 (2) In lieu of such marking, the operator may request to be
230 present at the site upon commencement of the excavation, so long
231 as the operator complies within two (2) working days of the

232 receipt of the notice.

233 (3) When an excavator, upon arriving at an excavation site,
234 sees evidence of unmarked underground utility lines or underground
235 facilities or encounters an unmarked underground utility line or
236 underground facility on an excavation site after excavation has
237 commenced where notice of intent has been made in accordance with
238 the provisions of this act, that excavator must immediately
239 contact Mississippi One-Call System, Inc., and the nonmember
240 operator(s). All operator(s) thus notified must contact the
241 excavator within four (4) hours and inform the excavator of any of
242 their known underground facilities, active or abandoned, at the
243 site of the excavation.

244 (4) When marking the approximate location of the facilities,
245 the operator shall follow the color code designated and described
246 herein, unless otherwise provided for by specific administrative
247 rule or regulation promulgated pursuant to this act, namely:

248 UTILITY OR TYPE OF FACILITY	GROUP IDENTIFYING COLOR
249 Electric	Safety Red
250 Petroleum Product/Hazardous/ 251 Flammable/Corrosive/Toxic 252 Materials, Product and Steam 253 Lines, Gas or Gaseous Material	High Visibility Safety Yellow
254 Telecommunications 255 (including fiber optic) and CATV	Safety Alert Orange
256 Water and Irrigation	Safety Precaution Blue
257 Slurry Lines	Safety Precaution Blue
258 Sewer and Drain Lines	Safety Green
259 Temporary Survey Markings	High Visibility Pink
260 Proposed Excavation	White

261 SECTION 6. Section 77-13-11, Mississippi Code of 1972, is
262 reenacted as follows:

263 77-13-11. (1) The advance notice provisions of this chapter
264 shall not apply to any person making an excavation at times of

265 emergency involving danger to life, health or property or a
266 customer service outage. However, every person who shall engage
267 in such emergency excavation shall take all necessary and
268 reasonable precautions to avoid or minimize interference with or
269 damage to existing underground utility lines and underground
270 facilities in and near the excavation area, and shall notify as
271 promptly as reasonably possible the operators of underground
272 utility lines or underground facilities in and near the emergency
273 excavation area specifically designating whether such excavation
274 is an emergency excavation as defined herein. In the event of
275 damage to or dislocation of any underground utility lines or
276 underground facilities caused by any such emergency excavation
277 work, the person responsible for the excavation shall immediately
278 notify the operator of the damaged or dislocated underground
279 facilities of the damage or dislocation.

280 (2) An imminent danger to life, health, property or customer
281 service exists whenever there is a substantial likelihood that
282 injury, loss of life, health or customer services, or substantial
283 property loss could result before the person responsible for the
284 excavation or demolition can fully comply with the notification
285 and response procedures required in Sections 77-13-7 and 77-13-17.

286 SECTION 7. Section 77-13-13, Mississippi Code of 1972, is
287 reenacted as follows:

288 77-13-13. The act of giving notice in accordance with
289 Section 77-13-5 shall relieve the notifying party of all liability
290 to a utility should such notice be ignored or the information
291 provided by the utility subsequent to said notice be materially
292 inaccurate; provided, however, the act of giving advance notice
293 and/or obtaining information as required by this act shall not
294 relieve any person making excavations from doing so in a careful
295 and prudent manner, nor shall it relieve such person from
296 liability for any injury or damage proximately resulting from
297 his/her negligence.

298 SECTION 8. Section 77-13-15, Mississippi Code of 1972, is
299 reenacted as follows:

300 77-13-15. In any area where a Mississippi One-Call System,
301 Inc., is operative, notification to all members of Mississippi
302 One-Call System, Inc., may be effected by giving notice to
303 Mississippi One-Call System, Inc., in writing as set forth in
304 Section 77-13-5, or by telephone, provided that the same
305 information required by Section 77-13-5 is furnished by the person
306 or public agency responsible for the excavation activities.

307 SECTION 9. Section 77-13-17, Mississippi Code of 1972, is
308 brought forward as follows:

309 77-13-17. (1) Any operator who fails to follow, abide by or
310 comply with this chapter shall be responsible for the cost or
311 expense the excavator shall incur as a direct result of the
312 failure of the operator to follow, abide by, or comply with the
313 provisions of this chapter.

314 (2) Operators who have underground utility lines or
315 underground facilities within this state shall either (a)
316 participate in Mississippi One-Call System, Inc., or (b) provide
317 an in-house program which meets the operational requirements of
318 receiving those excavation notifications mandated by this act.

319 (3) Nonmember operators of underground pipeline facilities
320 must notify the public and known excavators of the availability
321 and use of its in-house notification program.

322 (4) The person giving notice of the intent to excavate to
323 Mississippi One-Call System, Inc., or to a nonmember operator
324 shall be furnished an individual reference file number for each
325 notification and, upon request, shall be furnished the names of
326 the operators to whom the notification will be transmitted.

327 (5) An adequate record of all notifications shall be
328 maintained by Mississippi One-Call System, Inc., and nonmember
329 operators in order to document timely compliance with this act.
330 These records shall be retained for a period of not less than four

331 (4) years and shall be made available at a reasonable cost upon
332 proper and adequate advance request.

333 (6) The services of Mississippi One-Call System, Inc.,
334 acting on behalf of member operators will be provided on working
335 days as defined in Section 77-13-3(h) at least between the hours
336 of 7:30 a.m. and 5:00 p.m. A nonmember operator will supply the
337 same services during its normal business hours.

338 (7) Mississippi One-Call System, Inc., and nonmember
339 operators will voice-record the notification telephone calls and
340 after-hours calls will at least reach a voice recording which
341 explains emergency notification procedures.

342 (8) All member operators shall provide Mississippi One-Call
343 System, Inc., the following information:

344 (a) A list of counties, cities and towns in which the
345 operator has underground utility lines or underground facilities
346 in each county.

347 (b) The townships, ranges, sections and quarter
348 sections in each county in which the operator has underground
349 utility lines or underground facilities or for other reasons wish
350 to receive notification of proposed excavation.

351 (c) An update on an annual basis of each operator's
352 underground utility lines or underground facilities for the State
353 of Mississippi.

354 SECTION 10. Section 77-13-19, Mississippi Code of 1972, is
355 brought forward as follows:

356 77-13-19. In addition to any other rights and remedies which
357 a person may have, any person shall have the right to resort to
358 and apply for injunctive relief, both temporary and permanent, in
359 any court of competent jurisdiction to enforce compliance with the
360 provisions of this statute and to restrain and prevent violations
361 and threatened violations thereof.

362 SECTION 11. Section 77-13-21, Mississippi Code of 1972, is
363 amended as follows:

364 77-13-21. Sections 77-13-1 through 77-13-21, Mississippi
365 Code of 1972, shall stand repealed from and after July 1, 2000.

366 SECTION 12. This act shall take effect and be in force from
367 and after July 1, 1999.