

By: Senator(s) Minor

To: Public Utilities

SENATE BILL NO. 2168
(As Passed the Senate)

1 AN ACT TO REENACT SECTIONS 77-13-1, 77-13-3, 77-13-5,
2 77-13-7, 77-13-9, 77-13-11, 77-13-13, 77-13-15, 77-13-17 AND
3 77-13-19, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE
4 REGULATION OF EXCAVATIONS NEAR UNDERGROUND UTILITY FACILITIES; TO
5 REPEAL SECTION 77-13-21, MISSISSIPPI CODE OF 1972, TO REMOVE THE
6 REPEALER ON THE PROVISIONS OF LAW WHICH REGULATE EXCAVATIONS NEAR
7 UNDERGROUND UTILITY FACILITIES; AND FOR RELATED PURPOSES.

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

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

11 77-13-1. It is the intent of the Legislature to protect
12 underground utility facilities and other underground facilities
13 from destruction or damage, in order to prevent death of or injury
14 to persons, property damage to public and private property, and
15 loss or interruption of essential utility services to the general
16 public.

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

19 77-13-3. The words defined in this section shall have the
20 following meanings when found in Sections 77-13-1 through
21 77-13-17:

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

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

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

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

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

62 (e) "Person" shall mean any individual, firm,
63 partnership, association, trustee, receiver, assignee,
64 corporation, utility, joint venture, municipality, state
65 governmental unit, subdivision or instrumentality of the state, or

66 any legal representative thereof.

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

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

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

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

88 (j) "Excavator" shall mean any person who engages
89 directly in excavation.

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

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

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

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

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

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

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

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

125 77-13-5. (1) In addition to complying with all other
126 applicable regulations and requirements of federal, state, county
127 and municipal authorities, no person shall engage in excavation of
128 any kind, before meeting the notification requirements of this
129 act. Under this chapter the excavator shall:

130 (a) Inform himself/herself of the presence and location
131 of any underground utility lines and underground facilities in or

132 near the area where excavation is to be conducted;

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

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

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

161 (2) The markings provided by member and nonmember operators
162 shall only be valid for a period of ten (10) working days from the
163 proposed starting date provided to the nonmember operator(s) or
164 Mississippi One-Call System, Inc. The person responsible for the

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

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

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

185 77-13-7. (1) Each person responsible for any excavation
186 that results in damage to an underground utility line or
187 underground facility, immediately upon discovery of such damage,
188 shall notify Mississippi One-Call System, Inc., or notify all
189 operators of such damaged line or facility of the location of the
190 damage and shall allow the operator reasonable time to accomplish
191 any necessary repairs before completing the excavation in the
192 immediate area of the damage to such line or facility.

193 (2) Each person responsible for any excavation that results
194 in damage to an underground pipeline or underground facility
195 permitting the escape of any hazardous, flammable, toxic or
196 corrosive gas or liquid shall, immediately upon discovery of such
197 damage, notify Mississippi One-Call System, Inc., and the operator

198 and take other action as may reasonably be necessary to protect
199 persons and property and to minimize the hazards, until arrival of
200 the operator's personnel and police or fire departments.

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

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

211 77-13-9. (1) Every person owning or operating underground
212 utility lines or underground facilities shall, upon receiving
213 advance notice of the commencement of excavation, in accordance
214 with Section 77-13-7, make an investigation, within two (2)
215 working days from the time notice is provided in accordance with
216 this act to the nonmember operator(s) or Mississippi One-Call
217 System, Inc., to determine the approximate location of its
218 underground utility lines or underground facilities in the area of
219 the proposed excavation, and shall either: (a) mark the
220 approximate location of underground utility lines and underground
221 facilities in or near the area of the excavation, so as to enable
222 the person engaged in excavation work to locate the lines and
223 facilities in advance of and during the excavation work; or (b)
224 advise in writing or by telephone or electronic means that it has
225 no underground utility lines or underground facilities in the
226 excavation area.

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

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

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

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

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

262 77-13-11. (1) The advance notice provisions of this chapter
263 shall not apply to any person making an excavation at times of

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

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

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

287 77-13-13. The act of giving notice in accordance with
288 Section 77-13-5 shall relieve the notifying party of all liability
289 to a utility should such notice be ignored or the information
290 provided by the utility subsequent to said notice be materially
291 inaccurate; provided, however, the act of giving advance notice
292 and/or obtaining information as required by this act shall not
293 relieve any person making excavations from doing so in a careful
294 and prudent manner, nor shall it relieve such person from
295 liability for any injury or damage proximately resulting from
296 his/her negligence.

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

299 77-13-15. In any area where a Mississippi One-Call System,
300 Inc., is operative, notification to all members of Mississippi
301 One-Call System, Inc., may be effected by giving notice to
302 Mississippi One-Call System, Inc., in writing as set forth in
303 Section 77-13-5, or by telephone, provided that the same
304 information required by Section 77-13-5 is furnished by the person
305 or public agency responsible for the excavation activities.

306 SECTION 9. Section 77-13-17, Mississippi Code of 1972, is
307 reenacted as follows:

308 77-13-17. (1) Any operator who fails to follow, abide by or
309 comply with this chapter shall be responsible for the cost or
310 expense the excavator shall incur as a direct result of the
311 failure of the operator to follow, abide by, or comply with the
312 provisions of this chapter.

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

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

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

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

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

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

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

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

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

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

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

353 SECTION 10. Section 77-13-19, Mississippi Code of 1972, is
354 reenacted as follows:

355 77-13-19. In addition to any other rights and remedies which
356 a person may have, any person shall have the right to resort to
357 and apply for injunctive relief, both temporary and permanent, in
358 any court of competent jurisdiction to enforce compliance with the
359 provisions of this statute and to restrain and prevent violations
360 and threatened violations thereof.

361 SECTION 11. Section 77-13-21, Mississippi Code of 1972,
362 which repeals Sections 77-13-1 through 77-13-19, Mississippi Code

363 of 1972, the provisions of law that regulate excavations near
364 underground utility facilities, is hereby repealed.

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