

By: Representatives Beckett, Dixon

To: Public Utilities

HOUSE BILL NO. 1215

1 AN ACT TO AMEND SECTION 77-13-3, MISSISSIPPI CODE OF 1972, TO
 2 EXEMPT CERTAIN ACTIVITY BY GOVERNMENT ENTITIES IN THEIR
 3 RIGHTS-OF-WAY FROM THE LAWS REGULATING THE EXCAVATION OF
 4 UNDERGROUND UTILITY LINES; TO CREATE SECTION 77-13-27, MISSISSIPPI
 5 CODE OF 1972, TO CREATE THE UNDERGROUND PIPELINE FACILITIES
 6 ADVISORY COMMITTEE AND TO PROVIDE FOR ITS MEMBERS; TO CREATE
 7 SECTION 77-13-29, MISSISSIPPI CODE OF 1972, TO CREATE THE
 8 UNDERGROUND FACILITIES DAMAGE PREVENTION BOARD; TO CREATE SECTION
 9 77-13-31, MISSISSIPPI CODE OF 1972, TO PRESCRIBE THE POWERS OF THE
 10 BOARD; TO CREATE SECTION 77-13-33, MISSISSIPPI CODE OF 1972, TO
 11 PROVIDE FOR INVESTIGATIONS OF COMPLAINTS OF VIOLATIONS OF THE
 12 CHAPTER; TO CREATE SECTION 77-13-35 TO CREATE THE UNDERGROUND
 13 DAMAGE PREVENTION FUND WHEREIN ALL CIVIL PENALTIES SHALL BE
 14 DEPOSITED; TO CREATE SECTION 73-13-37, MISSISSIPPI CODE OF 1972,
 15 TO PROVIDE THE SCOPE OF AUTHORITY; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 77-13-3, Mississippi Code of 1972, is
 18 amended as follows:

19 77-13-3. The words defined in this section shall have the
 20 following meanings when found in this chapter:

21 (a) "Excavate or excavation" shall mean any operation
 22 in which earth, rock or other material or mass of material on or
 23 below the ground is moved or otherwise displaced by any means,
 24 except: (i) the tilling of the soil less than twenty-four (24)



25 inches in depth for agricultural purposes; or (ii) an operation in
26 which earth, rock or other material or mass of material on or
27 below the ground is moved or otherwise displaced to a depth of
28 less than twelve (12) inches on private property by the property
29 owner without the use of mechanical excavating equipment; or (iii)
30 an operation in which earth, rock or other material or mass of
31 material on or below the ground is moved or otherwise displaced
32 without the use of mechanical excavating equipment to a depth of
33 less than twelve (12) inches on private property by an excavator
34 who is not the property owner, except when such excavation is in a
35 clearly marked underground facility right-of-way; or (iv) routine
36 railroad maintenance activities conducted within the track
37 structure, drainage ditches, or within the railroad right-of-way a
38 distance not to exceed thirty (30) feet from the outside rail of
39 the outermost track or tracks, provided this work is performed by
40 railroad employees or railroad contractors and is carried out with
41 reasonable care so as to protect any underground facilities
42 properly installed in the railroad right-of-way by agreement with
43 the railroad; or (v) routine activities of a cemetery, provided
44 that for any cemetery that begins or expands after July 1, 2015,
45 such activities occur only after initial notice is provided to
46 Mississippi 811, Inc., and all affected operators have advised
47 that there are no underground facilities within the boundaries of
48 the subject cemetery, or (vi) any activity by a government entity
49 in its right-of-way which does not penetrate the earth to a depth



50 of more than twelve (12) inches and is carried out with reasonable
51 care so as to protect any underground facilities placed in the
52 right-of-way. The term "excavate" shall include, but not be
53 limited to, the operations of demolition, blasting, grading, land
54 leveling, trenching, digging, ditching, drilling, augering,
55 tunneling, scraping, cable or pipe plowing, driving, jacking,
56 wrecking, razing, rending, moving or removing any structure or
57 other material or mass of material on or below the ground.

58 (b) "Utility" shall mean any person who supplies,
59 distributes or transports by means of underground utility lines or
60 underground facilities any of the following materials or services:
61 gas, mixture of gases, petroleum, petroleum products or hazardous,
62 toxic, flammable or corrosive liquids, electricity,
63 telecommunications (including fiber optics), sewage, drainage,
64 water, steam or other substances.

65 (c) "Underground utility lines" shall mean underground
66 or buried cable, conduit pipes and related facilities for
67 transportation and delivery of electricity, telecommunications
68 (including fiber optics), water, sewage, gas, mixtures of gases,
69 petroleum, petroleum products or hazardous, flammable, toxic or
70 corrosive liquids.

71 (d) "Underground facility" shall mean any underground
72 utility lines and other items which shall be buried or placed
73 below ground or submerged for use in connection with underground
74 utility lines and including, but not be limited to, pipes, sewers,



75 conduits, cables, valves, lines, wires, manholes, vaults,
76 attachments and those portions of poles below the ground.

77 (e) "Person" shall mean any individual, firm,
78 partnership, association, trustee, receiver, assignee,
79 corporation, entity, limited liability company, utility, joint
80 venture, municipality, state governmental unit, subdivision or
81 instrumentality of the state, or any legal representative thereof.

82 (f) "Damage" shall mean the substantial weakening of
83 structural or lateral support of underground utility lines and
84 underground facilities, penetration or destruction of any
85 protective coating, housing or other protective devices of an
86 underground utility line or underground facility, and the partial
87 or complete severance of any underground utility line or
88 underground facility, but does not include any operator's
89 abandoned facility.

90 (g) "Operator" shall mean any person who owns or
91 operates a utility. However, the term "operator" shall not
92 include any railroad or the Mississippi Department of
93 Transportation.

94 (h) "Working day" shall mean a twenty-four-hour period
95 commencing from the time the locate request is processed or
96 entered into the system by Mississippi 811, Inc., in accordance
97 with this chapter, excluding Saturdays, Sundays and legal
98 holidays.



99 (i) "Mechanical excavating equipment" shall mean all
100 equipment powered by any motor, engine, or hydraulic or pneumatic
101 device used for excavating and shall include, but not be limited
102 to, trenchers, bulldozers, backhoes, power shovels, scrapers,
103 draglines, clam shells, augers, drills, cable and pipe plows and
104 other plowing-in or pulling-in equipment.

105 (j) "Excavator" shall mean any person who engages
106 directly in excavation.

107 (k) "Mark" shall mean the use of stakes, paint or other
108 clearly identifiable materials to show the field location of
109 underground facilities in accordance with the current color code
110 standard of the American Public Works Association, or the
111 uncovering or exposing of underground facilities so that the
112 excavator may readily see the location of same, or the pointing
113 out to the excavator of certain aboveground facilities such as,
114 but not limited to, manhole covers, valve boxes and pipe and cable
115 risers, which indicate the location of underground facilities.

116 (l) "Mississippi One-Call System, Inc." shall mean
117 "Mississippi 811, Inc." Whenever the term "Mississippi One-Call
118 System, Inc." appears in this chapter, the term shall mean
119 "Mississippi 811, Inc."

120 (m) "Mississippi 811, Inc." shall mean a nonprofit
121 corporation organized under the laws of the State of Mississippi
122 that provides a service through which a person shall notify the



123 operator(s) of underground facilities of plans to excavate and
124 request marking of facilities.

125 (n) "Abandoned facility" shall mean any underground
126 utility line or underground utility facilities no longer used in
127 the conduct of the owner/operator's business and are not intended
128 to be used in the future.

129 (o) "Emergency excavation" shall mean excavation at
130 times of emergency involving danger to life, health or property or
131 a customer service outage.

132 (p) "Approximate location" of underground utility lines
133 or underground facilities shall mean information about an
134 operator's underground utility lines or underground facilities
135 which is provided to a person by an operator and must be accurate
136 within eighteen (18) inches measured horizontally from the outside
137 edge of each side of such operator's facility, or a strip of land
138 eighteen (18) inches either side of the operator's field mark, or
139 the marked width of the facility or line plus eighteen (18) inches
140 on each side of the marked width of the facility or line.

141 (q) "Positive response information system" or "PRIS"
142 means an automated information system operated and maintained by
143 Mississippi 811, Inc., that allows excavators, locators, facility
144 owners or operators, and other affected parties to enter and/or
145 determine the status of a locate request.

146 (r) "Calendar day" shall mean a twenty-four-hour
147 period.



148 (s) "Board" shall mean the Underground Facilities
149 Damage Prevention Board, created by Section 77-13-29.

150 (t) "Pipeline Safety Division" shall mean the Pipeline
151 Safety Division of the Public Service Commission.

152 **SECTION 2.** The following shall be codified as Section
153 77-13-27, Mississippi Code of 1972:

154 77-13-27. Enforcement of damage prevention. (1) Any person
155 who violates this chapter, or the rules promulgated under this
156 chapter, shall be subject to a civil penalty as follows:

157 (a) For a first violation, the violator shall complete
158 a course of training concerning compliance with this chapter as
159 determined by the executive committee;

160 (b) For a second or subsequent violation, the violator
161 shall complete a course of training concerning compliance with
162 this chapter as determined by the executive committee or pay a
163 civil penalty in an amount set by the executive committee, not to
164 exceed Two Thousand Five Hundred Dollars (\$2,500.00) per incident,
165 or both; and

166 (c) Notwithstanding this subsection and subsection (2)
167 of this section, if any violation was the result of gross
168 negligence or willful or wanton misconduct as determined by the
169 executive committee, the executive committee shall require the
170 violator to complete a course of training concerning compliance
171 with this chapter as determined by the executive committee and pay



172 a civil penalty in an amount set by the executive committee, not
173 to exceed Five Thousand Dollars (\$5,000.00) per incident.

174 (2) Any person who is required to complete a course of
175 training under subsection (1)(a) of this section shall be
176 responsible for paying for the cost of the training.

177 (3) Any excavator who violates this chapter may be issued a
178 notice of violation by the inspector, and the inspector may
179 require any excavator to cease work on any excavation, or not
180 start a proposed excavation, until the excavator complies with
181 this chapter.

182 (4) Enforcement provided by this section shall begin after
183 the board promulgates rules to carry out its responsibilities
184 under this chapter.

185 **SECTION 3.** The following shall be codified as Section
186 77-13-29, Mississippi Code of 1972:

187 77-13-29. **Underground Facilities Damage Prevention Board.**

188 (1) There is created within the Pipeline Safety Division, an
189 Underground Facilities Damage Prevention Board for the purpose of
190 enforcing this chapter.

191 (2) It is the intent of the Legislature that the board and
192 its enforcement activities not be funded by appropriations from
193 the state budget.

194 (3) The Pipeline Safety Division will provide administrative
195 and investigative support for the board, both subject to
196 concurrence by the board. The Pipeline Safety Division shall



197 charge the expenses associated with the administration and
198 investigative duties of the board back to the board, subject to
199 concurrence by the board.

200 (4) The board shall be composed of twenty-two (22) members
201 and all board appointments shall be made by July 31, 2016. The
202 Governor shall make the appointments specified in paragraphs (a)
203 through (c) of this subsection (4); the Lieutenant Governor shall
204 make the appointments specified in paragraphs (d) through (i) of
205 this subsection (4), and the Speaker of the House shall make the
206 appointments specified in paragraphs (j) through (o) of this
207 subsection (4). The board shall consist of one (1) representative
208 of each of the following interested parties, with each member
209 having expertise with the subject matter encompassed by the
210 provisions of this chapter:

211 (a) Mississippi 811, Inc.;

212 (b) Four (4) representatives of the telecommunications
213 industry, including one (1) representative each of an Incumbent
214 Local Exchange Carrier (ILEC), a Competitive Local Exchange
215 Carrier (CLEC), an Interexchange Carrier (IEC) and a Data
216 Provider;

217 (c) Excavation contractors;

218 (d) Electric power industry investor-owned utilities;

219 (e) Electric Power Associations of Mississippi;

220 (f) Railroad industry;

221 (g) Mississippi Department of Transportation;



- 222 (h) Cable television industry;
- 223 (i) Mississippi rural water;
- 224 (j) Insurance industry;
- 225 (k) The Mississippi Public Service Commission Pipeline
- 226 Safety Division;
- 227 (l) Utility locators;
- 228 (m) Natural gas distribution;
- 229 (n) Liquid transmission;
- 230 (o) Natural gas transmission;
- 231 (p) Mississippi design engineers, appointed by the
- 232 Executive Director of the Mississippi Society of Professional
- 233 Engineers;
- 234 (q) Mississippi surveyors appointed by the Executive
- 235 Director of the Mississippi Association of Professional Surveyors,
- 236 Inc.;
- 237 (r) Mississippi county government appointee, who is
- 238 appointed by the Executive Director of the Mississippi Supervisors
- 239 Association; and
- 240 (s) Mississippi municipality appointee, appointed by
- 241 the Executive Director of the Mississippi Municipal League.
- 242 (5) The initial term of the representatives provided in
- 243 subsection (4) (a) through (e) of this section shall end December
- 244 31, 2017; the initial term of the representatives provided in
- 245 subsection (4) (f) through (k) of this section shall end December
- 246 31, 2019; and the initial term of the representatives provided in



247 subsection (4) (1) through (s) of this section shall end December
248 31, 2021. Upon the expiration of the initial term of any member
249 of the board, his or her successor shall be appointed for a term
250 of five (5) years.

251 (6) The Governor shall appoint the initial chairman of the
252 board, and the initial board shall elect other officers as the
253 board deems necessary. The board shall meet and elect a chairman
254 and other officers every two (2) years thereafter. The staff of
255 Mississippi 811 shall serve as staff support for the board.

256 (7) The board shall meet no less than twice each year, with
257 a date and time to be set by its chairman upon at least five (5)
258 business days' notice provided by United States mail, electronic
259 mail or personal delivery to every board member.

260 (8) Twelve (12) members of the board shall constitute a
261 quorum and a majority vote of those present and voting at any
262 meeting shall be necessary to transact business.

263 (9) The members of the board shall be immune, individually
264 and jointly, from civil liability for any act or omission done or
265 made in the performance of their duties while serving as members
266 of the board, but only in the absence of willful misconduct.

267 (10) The members of the board shall serve without
268 compensation.

269 (11) The board shall elect an executive committee, which
270 shall be responsible for levying civil penalties and taking action



271 as described in Section 77-13-27. The executive committee shall
272 be composed of the following members of the board:

273 (a) One (1) member from subsection (4)(c) of this
274 section;

275 (b) One (1) member from a state agency or local
276 government; and

277 (c) One (1) member from a utility as defined by Section
278 77-13-3(b).

279 (12) A member serving on the executive committee shall be
280 limited to two (2) consecutive one-year terms.

281 (13) The board and the executive committee may hold meetings
282 and vote by telephone, television, or other electronic means.

283 **SECTION 4.** The following shall be codified as Section
284 77-13-31, Mississippi Code of 1972:

285 77-13-31. **Powers of the board.** (1) The board has the power
286 and authority to:

287 (a) Promulgate rules to carry out its responsibilities
288 under this chapter no later than December 31, 2016.

289 (b) Make and enter into contracts.

290 (2) The board shall:

291 (a) Through its executive committee, initiate
292 investigations and conduct hearings as required by this section;

293 (b) Manage the Underground Damage Prevention Fund
294 created by Section 73-13-33;



295 (c) Assess its annual operating cost to operators in an
296 amount equal to the amount necessary to offset the cost of
297 investigative and administrative services performed by the
298 Pipeline Safety Division at the direction of the board. The
299 annual operating costs shall be apportioned in a proportional
300 manner and collected by Mississippi 811 from the operators; and

301 (d) Subject to the availability of funding in the
302 Underground Damage Prevention Fund created by Section 73-13-35,
303 contract with appropriate entities or agencies to conduct training
304 and public awareness for damage prevention.

305 **SECTION 5.** The following shall be codified as Section
306 77-13-33, Mississippi Code of 1972:

307 77-13-33. (1) Upon receipt of a complaint of a violation of
308 this chapter, the executive committee shall initiate an
309 investigation of the complaint by requesting that the Pipeline
310 Safety Division designate an employee of the authority who will
311 investigate the complaint at the executive committee's direction.

312 (2) Any investigator acting at the direction of the
313 executive committee may issue citations for violations of this
314 chapter. Any citation may include a recommendation for the
315 penalty to be assessed under Section 77-13-27.

316 (3) If the person to whom the citation is issued under
317 subsection (2) of this section does not pay the citation or submit
318 to ordered training, or both, within thirty (30) days, then the
319 executive committee shall appoint a hearing officer to conduct a



320 hearing and issue an initial order. The hearing shall be held at
321 the time and place set forth in the citation notice of hearing.
322 The hearing shall be conducted in the county where the excavation
323 referenced in the citation occurred, unless otherwise agreed to by
324 the person to whom the citation was issued. In the event the
325 excavation occurred in more than one (1) county, then the hearing
326 shall be conducted in the county where the greatest amount of
327 excavation referenced in the citation occurred.

328 (4) An appeal of the initial order shall be heard by the
329 executive committee.

330 (5) A person aggrieved by the final order may, within sixty
331 (60) days, seek judicial review in the Chancery Court of Hinds
332 County, Mississippi.

333 (6) Evidence of findings of fact, civil penalties, or any of
334 the actions or proceedings pursuant to this chapter shall not be
335 admissible in any other civil causes of action. This chapter
336 shall not limit any person's right to pursue any additional civil
337 remedy otherwise allowed by law.

338 (7) Nothing in this chapter shall grant the executive
339 committee or the board jurisdiction over damage to utilities
340 located above the ground.

341 **SECTION 6.** The following shall be codified as Section
342 73-13-35, Mississippi Code of 1972:

343 73-13-35. **Underground Damage Prevention Fund.** There is
344 created an Underground Damage Prevention Fund within the Pipeline



345 Safety Division. All civil penalties collected pursuant to this
346 chapter shall be deposited into the Underground Damage Prevention
347 Fund. Any monies remaining in the underground damage prevention
348 fund at the end of the fiscal year shall not revert to the general
349 fund, but shall remain in the underground damage prevention fund
350 for the exclusive use of the board. The expenditure of monies in
351 the underground damage prevention fund shall be at the discretion
352 of the board to carry out its duties under this chapter. Excess
353 funds shall be used to support public awareness programs, training
354 and education programs for excavators, operators, line locators,
355 and other persons to reduce the number and severity of violations
356 of this chapter.

357 **SECTION 7.** The following shall be codified as Section
358 73-13-37, Mississippi Code of 1972:

359 73-13-37. **Scope of authority.** The administrative and
360 investigative support provided by the Pipeline Safety Division to
361 the board in an advisory capacity only, and nothing in this
362 chapter shall expand the jurisdiction of the Pipeline Safety
363 Division or the commission in any way.

364 **SECTION 8.** This act shall take effect and be in force from
365 and after July 1, 2016.

