

By: Representative Bounds

To: Public Utilities

HOUSE BILL NO. 1226

1 AN ACT TO AMEND SECTION 77-13-3, MISSISSIPPI CODE OF 1972, TO
2 DEFINE THE TERM "IMPENDING EMERGENCY"; TO AMEND SECTION 77-13-5,
3 MISSISSIPPI CODE OF 1972, TO EXTEND THE PRE-EXCAVATION ADVANCE
4 NOTIFICATION PERIOD FROM TWO WORKING DAYS TO THREE WORKING DAYS;
5 TO REQUIRE EXCAVATORS TO PROVIDE ADVANCE NOTICE OF THE
6 COMMENCEMENT, EXTENT, LOCATION AND DURATION OF THE EXCAVATION WORK
7 TO MISSISSIPPI 811, INCORPORATED FOR EXCAVATIONS REQUIRED DUE TO
8 AN IMPENDING EMERGENCY, THAT INCLUDES AN EXCAVATION START TIME AT
9 LEAST TWELVE HOURS PRIOR TO EXCAVATION; TO REQUIRE EXCAVATORS TO
10 PROVIDE CONTACT INFORMATION FOR A PERSON READILY AVAILABLE TO
11 DISCUSS THE IMPENDING EMERGENCY EXCAVATION WITH OPERATORS; TO
12 INCREASE THE DAYS THAT THE PERSON RESPONSIBLE FOR THE EXCAVATION
13 PROJECT IS REQUIRED TO RENEW NOTIFICATION WITH MISSISSIPPI 811,
14 INCORPORATED, FROM AT LEAST TWO DAYS AND NOT MORE THAN THREE DAYS,
15 TO AT LEAST THREE DAYS AND NOT MORE THAN FOUR DAYS PRIOR TO THE
16 NOTIFICATION EXPIRATION DATE; TO AMEND SECTION 77-13-9,
17 MISSISSIPPI CODE OF 1972, TO INCREASE THE DAYS FROM TWO DAYS TO
18 THREE DAYS THAT A PERSON OWNING OR OPERATING UNDERGROUND UTILITY
19 LINES OR UNDERGROUND FACILITIES SHALL MAKE AN INVESTIGATION AND
20 REPORT THROUGH THE USE OF THE PRIS THE STATUS OF THE WORK
21 PERFORMED FROM THE TIME NOTICE IS PROVIDED TO MISSISSIPPI 811; TO
22 DECREASE THE HOURS FROM FOUR HOURS TO TWO HOURS THAT OPERATORS
23 MUST CONTACT THE EXCAVATOR TO INFORM HIM OR HER OF ANY KNOWN
24 UNDERGROUND FACILITIES AT THE SITE OF THE EXCAVATION; TO REQUIRE
25 THAT A PERSON OWNING OR OPERATING UNDERGROUND UTILITY LINES OR
26 UNDERGROUND FACILITIES SHALL, UPON RECEIVING ADVANCE NOTICE OF THE
27 COMMENCEMENT OF IMPENDING EMERGENCY EXCAVATION MAKE AN
28 INVESTIGATION AND REPORT THROUGH PRIS THE STATUS OF THE WORK
29 PERFORMED, PRIOR TO THE NOTICED TIME OF EXCAVATION PROVIDED TO
30 MISSISSIPPI 811, INCORPORATED, AND EITHER MARK THE APPROXIMATE
31 LOCATION OF UNDERGROUND UTILITY LINES AND UNDERGROUND FACILITIES
32 IN OR NEAR THE AREA OF THE EXCAVATION, OR ADVISE THROUGH PRIS THAT
33 IT HAS NO UNDERGROUND UTILITY LINES OR UNDERGROUND FACILITIES IN
34 THE EXCAVATION AREA; TO AMEND SECTION 77-13-11, MISSISSIPPI CODE



35 OF 1972, TO PROVIDE THAT ANY MISREPRESENTATION OF AN EMERGENCY
36 EXCAVATION OR OF AN IMPENDING EMERGENCY CONSTITUTES A VIOLATION OF
37 THIS ACT; TO BRING FORWARD SECTION 77-13-7, MISSISSIPPI CODE OF
38 1972, WHICH RELATES TO DAMAGE TO UNDERGROUND UTILITY LINES, FOR
39 PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

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

43 77-13-3. The words defined in this section shall have the
44 following meanings when found in this chapter:

45 (a) "Abandoned facility" means any underground utility
46 line or underground utility facilities no longer used in the
47 conduct of the owner/operator's business and are not intended to
48 be used in the future.

49 (b) "Approximate location of underground utility lines
50 or underground facilities" means information about an operator's
51 underground utility lines or underground facilities which is
52 provided to a person by an operator and must be accurate within
53 eighteen (18) inches measured horizontally from the outside edge
54 of each side of such operator's facility, or a strip of land
55 eighteen (18) inches either side of the operator's field mark, or
56 the marked width of the facility or line plus eighteen (18) inches
57 on each side of the marked width of the facility or line.

58 (c) "Board" means the Underground Facilities Damage
59 Prevention Board, created by Section 77-13-29.

60 (d) "Calendar day" means a twenty-four-hour period.

61 (e) "Commission" means the Mississippi Public Service
62 Commission.



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

71 (g) "Design Information Request" means a notification
72 made to Mississippi 811, Incorporated, by a person providing
73 professional services and making a request in preparation for
74 bidding, preconstruction engineering, or other advance planning
75 efforts that do not involve excavation. A design information
76 services request may not be used for excavation purposes.

77 (h) "Emergency excavation" means excavation at times of
78 emergency involving imminent danger to life, health or property or
79 a customer service outage.

80 (i) "Excavate or excavation" means any operation in
81 which earth, rock or other material or mass of material on or
82 below the ground is moved or otherwise displaced by any means,
83 except: (i) the tilling of the soil less than twenty-four (24)
84 inches in depth for agricultural purposes; or (ii) an operation in
85 which earth, rock or other material or mass of material on or
86 below the ground is moved or otherwise displaced to a depth of
87 less than twelve (12) inches on private property by the property



owner without the use of mechanical excavating equipment; or (iii) an operation in which earth, rock or other material or mass of material on or below the ground is moved or otherwise displaced without the use of mechanical excavating equipment to a depth of less than twelve (12) inches on private property by an excavator who is not the property owner, except when such excavation is in a clearly marked underground facility right-of-way; or (iv) routine railroad maintenance activities conducted within the track structure, drainage ditches, or within the railroad right-of-way a distance not to exceed thirty (30) feet from the outside rail of the outermost track or tracks, provided this work is performed by railroad employees or railroad contractors and is carried out with reasonable care so as to protect any underground facilities properly installed in the railroad right-of-way by agreement with the railroad; or (v) routine activities of a cemetery, provided that for any cemetery that begins or expands after July 1, 2015, such activities occur only after initial notice is provided to Mississippi 811, Incorporated, and all affected operators have advised that there are no underground facilities within the boundaries of the subject cemetery; or (vi) routine maintenance activities carried out by or for those responsible for publicly maintained roadways and rights-of-way, provided that the activities occur entirely within the public right-of-way and do not penetrate the earth to a depth of more than twelve (12) inches and are carried out with reasonable care so as to protect any



underground facilities placed in the right-of-way. Routine maintenance activities shall be more specifically described in the rules and regulations adopted by the board; or (vii) the driving of wooden stakes by use of hand tools which do not penetrate the earth to a depth of not more than six (6) inches. The term "excavate" shall include, but not be limited to, the operations of demolition, blasting, grading, land leveling, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, jacking, wrecking, razing, rending, moving or removing any structure or other material or mass of material on or below the ground.

(j) "Excavator" means any person who engages directly in excavation.

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

(l) "Mechanical excavating equipment" means all equipment powered by any motor, engine, or hydraulic or pneumatic device used for excavating and shall include, but not be limited



to, trenchers, bulldozers, backhoes, power shovels, scrapers, draglines, clam shells, augers, drills, cable and pipe plows and other plowing-in or pulling-in equipment.

(m) "Mississippi 811, Incorporated" means a nonprofit corporation organized under the laws of the State of Mississippi that provides a service through which a person shall notify the operator(s) of underground facilities of plans to excavate and request marking of facilities.

(n) "Mississippi One-Call System, Incorporated" means "Mississippi 811, Incorporated" Whenever the term "Mississippi One-Call System, Incorporated" appears in this chapter, the term shall mean "Mississippi 811, Incorporated"

(o) "Operator" means any person who owns or operates a utility. However, the term "operator" shall not include any railroad or the Mississippi Department of Transportation.

(p) "Person" means any individual, firm, partnership, association, trustee, receiver, assignee, corporation, entity, limited liability company, utility, joint venture, municipality, state governmental unit, subdivision or instrumentality of the state, or any legal representative thereof.

(q) "Pipeline Safety Division" means the Pipeline Safety Division of the Public Service Commission.

(r) "Positive Response Information System" or "PRIS" means an automated information system operated and maintained by Mississippi 811, Incorporated, that allows excavators, locators,



163 facility owners or operators, and other affected parties to enter
164 and/or determine the status of a locate request.

165 (s) "Underground facility" means any underground
166 utility lines and other items which shall be buried or placed
167 below ground or submerged for use in connection with underground
168 utility lines and including, but not be limited to, pipes, sewers,
169 conduits, cables, valves, lines, wires, manholes, vaults,
170 attachments and those portions of poles below the ground.

171 (t) "Underground utility lines" means underground or
172 buried cable, conduit pipes and related facilities for
173 transportation and delivery of electricity, telecommunications
174 (including fiber optics), water, sewage, gas, mixtures of gases,
175 petroleum, petroleum products or hazardous, flammable, toxic or
176 corrosive liquids.

177 (u) "Utility" means any person who supplies,
178 distributes or transports by means of underground utility lines or
179 underground facilities any of the following materials or services:
180 gas, mixture of gases, petroleum, petroleum products or hazardous,
181 toxic, flammable or corrosive liquids, electricity,
182 telecommunications (including fiber optics), sewage, drainage,
183 water, steam or other substances.

184 (v) "Working day" means a twenty-four-hour period
185 commencing from the time the locate request is processed or
186 entered into the system by Mississippi 811, Incorporated, in



187 accordance with this chapter, excluding Saturdays, Sundays and
188 legal holidays.

189 (w) "Impending Emergency" means circumstances potentially
190 dangerous to life, health, property, or loss of customer services,
191 which would likely develop into an emergency, as defined in
192 Section 77-13-11, if excavation is not initiated sooner than the
193 normal notification requirements allow.

194 **SECTION 2.** Section 77-13-5, Mississippi Code of 1972, is
195 amended as follows:

196 77-13-5. (1) In addition to complying with all other
197 applicable regulations and requirements of federal, state, county
198 and municipal authorities, no person shall engage in excavation of
199 any kind, before meeting the notification requirements of this
200 chapter. Under this chapter the excavator shall:

201 (a) Inform himself/herself of the presence and location
202 of any underground utility lines and underground facilities in or
203 near the area where excavation is to be conducted;

204 (b) Plan and conduct the excavation to avoid or
205 minimize interference with or damage to underground utility lines
206 and underground facilities in or near the excavation area;
207 maintain a clearance between any underground utility line or
208 underground facility and the cutting edge or point of any
209 mechanical excavating equipment, taking into account the known
210 limit of control of such cutting edge or point, as may be
211 reasonably necessary to avoid damage to such facility; and provide



212 such support for underground utility lines or underground
213 facilities in and near the excavation area, including during any
214 backfilling operations, as may be reasonably necessary for the
215 protection of such facilities.

216 (c) Except as provided in Section 77-13-11, before
217 beginning any excavation, other than an impending emergency as
218 defined in Section 77-13-3, provide not less than * * * three (3)
219 and not more than ten (10) working days' advance written,
220 electronic or telephonic notice of the commencement, extent,
221 location and duration of the excavation work to Mississippi 811,
222 Incorporated, so that Mississippi 811, Incorporated, operator(s)
223 may locate and mark the location of underground utility lines and
224 underground facilities in the excavation area.

225 The written, electronic or telephonic notice required by this
226 paragraph (c) shall contain the name, address and telephone number
227 of the person filing the notice of intent, the person responsible
228 for the excavation, the starting date, anticipated duration, type
229 of excavation to be conducted, the location of the proposed
230 excavation and whether or not explosives are to be used.

231 (d) Provide advance written, electronic or telephonic
232 notice of the commencement, extent, location and duration of the
233 excavation work to Mississippi 811, Incorporated, for excavations
234 required due to an impending emergency, that includes an
235 excavation start time that is not less than twelve (12) hours from
236 the time of notices provided between 8:00 p.m. and 11:59 a.m., and



not sooner than 8:00 a.m., on the next calendar day for notices provided between 12:00 p.m. and 7:59 p.m., so that Mississippi 811, Incorporated, operators may locate and mark the location of underground utility lines and underground facilities in the excavation area.

In addition to the written, electronic or telephonic notice information required in subsection (1)(c), the excavator shall also provide contact information for a person readily available to discuss the impending emergency excavation with operators.

(2) The markings provided by operators and the locate request number shall only be valid for a period of fourteen (14) calendar days from the date and time the locate request ticket is processed or entered into the system by Mississippi 811, Incorporated. The person responsible for the excavation project shall renew the notification with Mississippi 811, Incorporated, at least * * * three (3) and not more than * * * four (4) working days prior to this expiration date and shall continue to renew such notification in the same manner throughout the duration of the excavation. Such renewal notice shall be valid for a period of fourteen (14) calendar days from the date and time the renewal locate request is processed or entered into the system by Mississippi 811, Incorporated.

(3) Compliance with the notice requirements of this section shall not be required of: (a) persons plowing less than twenty-four (24) inches in depth for agricultural purposes; (b)



persons who are moving or otherwise displacing, by hand, earth, rock or other material or mass of material on or below the ground at a depth of less than twelve (12) inches on property they own; and (c) persons, other than the property owner, who are moving or otherwise displacing, by hand, earth, rock or other material or mass of material on or below the ground at a depth of less than twelve (12) inches, except when such excavation is in a clearly marked underground facility right-of-way.

(4) A person may make a written, electronic or telephonic design information request to Mississippi 811, Incorporated, so that owners and operators of utilities may locate underground utility lines and underground facilities in the design information area. The design information request shall contain the name, address, and telephone number of the person making the request, the type of project planned, and a description of the area to be located with sufficient particularity to enable the utility owner or operator to ascertain the precise tract or parcel of land involved.

SECTION 3. Section 77-13-9, Mississippi Code of 1972, is amended as follows:

77-13-9. (1) Every person owning or operating underground utility lines or underground facilities shall, upon receiving advance notice of the commencement of excavation, in accordance with Section 77-13-5, make an investigation, and shall report through the use of the PRIS the status of the work performed,



287 within * * * three (3) working days from the time notice is
288 provided in accordance with this chapter to Mississippi 811,
289 Incorporated, to determine the approximate location of its
290 underground utility lines or underground facilities in the area of
291 the proposed excavation, and shall either: (a) mark the
292 approximate location of underground utility lines and underground
293 facilities in or near the area of the excavation, so as to enable
294 the person engaged in excavation work to locate the lines and
295 facilities in advance of and during the excavation work and notify
296 the excavator through the PRIS that the facilities have been
297 marked; (b) advise through the PRIS that it has no underground
298 utility lines or underground facilities in the excavation area; or
299 (c) advise through the PRIS that it can locate its underground
300 utility lines or underground facilities in the excavation area
301 only by excavation. If an operator can locate its underground
302 utility lines or underground facilities in the excavation area
303 only by excavation and has given proper notice of such, that
304 operator shall be allowed a reasonable amount of additional time,
305 not to exceed four (4) working days from the day the original
306 notice was provided in accordance with this chapter, to mark the
307 approximate location of the underground utility lines or
308 underground facilities.

309 (2) In lieu of such marking, the operator may request to be
310 present at the site upon commencement of the excavation, so long



311 as the operator complies within two (2) working days of the
312 receipt of the notice.

313 (3) When an excavator, upon arriving at an excavation site,
314 sees evidence of unmarked underground utility lines or underground
315 facilities or encounters an unmarked underground utility line or
316 underground facility on an excavation site after excavation has
317 commenced where notice of intent has been made in accordance with
318 the provisions of this chapter, that excavator must immediately
319 contact Mississippi 811, Incorporated. All operator(s) thus
320 notified must contact the excavator within * * * two (2) hours and
321 inform the excavator of any of their known underground facilities,
322 active or abandoned, at the site of the excavation.

323 (4) When marking the approximate location of the facilities,
324 the operator shall follow the color code designated and described
325 herein, unless otherwise provided for by specific administrative
326 rule or regulation promulgated pursuant to this chapter, namely:

327 UTILITY OR TYPE OF FACILITY	GROUP IDENTIFYING COLOR
328 Electric	Safety Red
329 Petroleum Product/Hazardous/ 330 Flammable/Corrosive/Toxic 331 Materials, Product and Steam 332 Lines, Gas or Gaseous Material	High Visibility Safety Yellow
334 Telecommunications (including fiber 335 optics) and CATV	Safety Alert Orange



336	Potable Water	Safety Precaution Blue
337	Reclaimed Water, Irrigation,	
338	Slurry Lines	Purple
339	Sewer and Drain Lines	Safety Green
340	Temporary Survey Markings	High Visibility Pink
341	Proposed Excavation	White

342 (5) All utility facilities installed by owners or operators
343 of utilities on or after January 1, 2010, shall be installed in
344 such manner that the utility facility may be located by using a
345 generally accepted electronic locating method.

346 (6) Except for emergency excavations, if, before the
347 expiration of the * * * three (3) working days' waiting period,
348 all identified facility owners or operators have responded to the
349 locate request and all have indicated that their facilities are
350 either not in conflict or have been marked as indicated through
351 the use of the PRIS, then the person planning to perform
352 excavation or blasting shall be authorized to commence work,
353 subject to the other requirements of this section, without waiting
354 the full * * * three (3) working days.

355 (7) Upon receiving a design information request, the utility
356 owner or operator shall within seven (7) working days from the
357 time notice is provided in accordance with this chapter to
358 Mississippi 811, Incorporated, respond by one (1) of the following
359 methods: (a) marking the approximate location of its underground
360 utility lines and underground facilities in the area in accordance



with subsection (1) of this section; (b) providing to the person making the design information request the best available description of its underground utility lines and underground facilities in the area which may include drawings or other records maintained by the utility owner or operator; or (c) allowing the person making the design information request or any other authorized person to inspect or copy the drawings or other records for all underground utility lines and utility facilities in the area.

(8) Every person owning or operating underground utility lines or underground facilities shall, upon receiving advance notice of the commencement of impending emergency excavation, make an investigation, and report through the use of the PRIS the status of the work performed, prior to the noticed time of excavation provided to Mississippi 811, Incorporated, to determine the approximate location of its underground utility lines or underground facilities in the area of the proposed excavation, and shall either:

(a) Mark the approximate location of underground utility lines and underground facilities in or near the area of the excavation, so as to enable the person engaged in excavation work to locate the lines and facilities in advance of and during the excavation work, and notify the excavator through the PRIS that the facilities have been marked; or



(b) Advise through the PRIS that it has no underground utility lines or underground facilities in the excavation area.

SECTION 4. Section 77-13-11, Mississippi Code of 1972, is amended as follows:

77-13-11. (1) The advance notice provisions of this chapter shall not apply to any person making an emergency excavation at times of emergency involving an imminent danger to life, health or property or a customer service outage. However, every person who shall engage in such emergency excavation shall take all necessary and reasonable precautions to avoid or minimize interference with or damage to existing underground utility lines and underground facilities in and near the excavation area, and shall notify Mississippi 811, Incorporated, of the specifically designated emergency excavation as promptly as reasonably possible * * * so that operators may locate and mark the location of underground utility lines and underground facilities in the specifically designated emergency excavation area. In the event of damage to or dislocation of any underground utility lines or underground facilities caused by any such emergency excavation work, the person responsible for the excavation shall immediately notify the operator of the damaged or dislocated underground facilities of the damage or dislocation.

(2) An imminent danger to life, health, property or customer service exists whenever there is a substantial likelihood that injury, loss of life, health or customer services, or substantial



property loss could result before the person responsible for the excavation or demolition can fully comply with the notification and response procedures required in Sections 77-13-7 and 77-13-17.

(3) Any misrepresentation of either an emergency excavation or an impending emergency as defined in Section 77-13-3, shall constitute a violation of this act.

SECTION 5. Section 77-13-7, Mississippi Code of 1972, is brought forward as follows:

77-13-7. (1) Each person responsible for any excavation that results in damage to an underground utility line or underground facility, immediately upon discovery of such damage, shall notify Mississippi 811, Inc., and notify all operators of such damaged line or facility of the location of the damage and shall allow the operator reasonable time to accomplish any necessary repairs before completing the excavation in the immediate area of the damage to such line or facility.

(2) Each person responsible for any excavation that results in damage to an underground pipeline or underground facility permitting the escape of any hazardous, flammable, toxic or corrosive gas or liquid shall, immediately upon discovery of such damage, call 911 and then notify Mississippi 811, Inc., and the operator and take other action as may reasonably be necessary to protect persons and property and to minimize the hazards, until arrival of the operator's personnel and the police or fire departments.



435 (3) Except where the excavator has fully complied with the
436 provisions of Section 77-13-5 and subsections (1) and (2) of this
437 section, each person responsible for excavation that results in
438 damage to an underground line or underground facility, except the
439 property owner, unless the property owner is the excavator, shall
440 be responsible for any and all costs and expenses incurred by the
441 operator in restoring, correcting, repairing or replacing the
442 damaged line or facility.

443 **SECTION 6.** This act shall take effect and be in force from
444 and after July 1, 2023.

