

By: Senator(s) Carter

To: Energy

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2102

1 AN ACT TO AMEND SECTION 77-13-3, MISSISSIPPI CODE OF 1972, TO
2 DEFINE IMPENDING EMERGENCY EXCAVATION; TO AMEND SECTION 77-13-5,
3 MISSISSIPPI CODE OF 1972, TO ESTABLISH ADVANCE NOTICE REQUIREMENTS
4 FOR IMPENDING EMERGENCY EXCAVATIONS; TO BRING FORWARD SECTION
5 77-13-7 FOR PURPOSES OF POSSIBLE AMENDMENT; TO AMEND SECTION
6 77-13-9, MISSISSIPPI CODE OF 1972, TO REQUIRE PREMARKING FOR
7 EMERGENCY EXCAVATIONS; TO AMEND SECTION 77-13-11, MISSISSIPPI CODE
8 OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

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

12 77-13-3. The words defined in this section shall have the
13 following meanings when found in this chapter:

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

18 (b) "Approximate location of underground utility lines
19 or underground facilities" means information about an operator's
20 underground utility lines or underground facilities which is
21 provided to a person by an operator and must be accurate within



22 eighteen (18) inches measured horizontally from the outside edge
23 of each side of such operator's facility, or a strip of land
24 eighteen (18) inches either side of the operator's field mark, or
25 the marked width of the facility or line plus eighteen (18) inches
26 on each side of the marked width of the facility or line.

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

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

30 (e) "Commission" means the Mississippi Public Service
31 Commission.

32 (f) "Damage" means the substantial weakening of
33 structural or lateral support of underground utility lines and
34 underground facilities, penetration or destruction of any
35 protective coating, housing or other protective devices of an
36 underground utility line or underground facility, and the partial
37 or complete severance of any underground utility line or
38 underground facility, but does not include any operator's
39 abandoned facility.

40 (g) "Design Information Request" means a notification
41 made to Mississippi 811, Inc., by a person providing professional
42 services and making a request in preparation for bidding,
43 preconstruction engineering, or other advance planning efforts
44 that do not involve excavation. A design information services
45 request may not be used for excavation purposes.



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

49 (i) "Excavate or excavation" means any operation in
50 which earth, rock or other material or mass of material on or
51 below the ground is moved or otherwise displaced by any means,
52 except: (i) the tilling of the soil less than twenty-four (24)
53 inches in depth for agricultural purposes; or (ii) an operation in
54 which earth, rock or other material or mass of material on or
55 below the ground is moved or otherwise displaced to a depth of
56 less than twelve (12) inches on private property by the property
57 owner without the use of mechanical excavating equipment; or (iii)
58 an operation in which earth, rock or other material or mass of
59 material on or below the ground is moved or otherwise displaced
60 without the use of mechanical excavating equipment to a depth of
61 less than twelve (12) inches on private property by an excavator
62 who is not the property owner, except when such excavation is in a
63 clearly marked underground facility right-of-way; or (iv) routine
64 railroad maintenance activities conducted within the track
65 structure, drainage ditches, or within the railroad right-of-way a
66 distance not to exceed thirty (30) feet from the outside rail of
67 the outermost track or tracks, provided this work is performed by
68 railroad employees or railroad contractors and is carried out with
69 reasonable care so as to protect any underground facilities
70 properly installed in the railroad right-of-way by agreement with



71 the railroad; or (v) routine activities of a cemetery, provided
72 that for any cemetery that begins or expands after July 1, 2015,
73 such activities occur only after initial notice is provided to
74 Mississippi 811, Inc., and all affected operators have advised
75 that there are no underground facilities within the boundaries of
76 the subject cemetery; or (vi) routine maintenance activities
77 carried out by or for those responsible for publicly maintained
78 roadways and rights-of-way, provided that the activities occur
79 entirely within the public right-of-way and do not penetrate the
80 earth to a depth of more than twelve (12) inches and are carried
81 out with reasonable care so as to protect any underground
82 facilities placed in the right-of-way. Routine maintenance
83 activities shall be more specifically described in the rules and
84 regulations adopted by the board; or (vii) the driving of wooden
85 stakes by use of hand tools which do not penetrate the earth to a
86 depth of not more than six (6) inches. The term "excavate" shall
87 include, but not be limited to, the operations of demolition,
88 blasting, grading, land leveling, trenching, digging, ditching,
89 drilling, augering, tunneling, scraping, cable or pipe plowing,
90 driving, jacking, wrecking, razing, rending, moving or removing
91 any structure or other material or mass of material on or below
92 the ground.

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



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

104 (l) "Mechanical excavating equipment" means all
105 equipment powered by any motor, engine, or hydraulic or pneumatic
106 device used for excavating and shall include, but not be limited
107 to, trenchers, bulldozers, backhoes, power shovels, scrapers,
108 draglines, clam shells, augers, drills, cable and pipe plows and
109 other plowing-in or pulling-in equipment.

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

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



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

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

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

129 (r) "Positive response information system" or "PRIS"
130 means an automated information system operated and maintained by
131 Mississippi 811, Inc., that allows excavators, locators, facility
132 owners or operators, and other affected parties to enter and/or
133 determine the status of a locate request.

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

140 (t) "Underground utility lines" means underground or
141 buried cable, conduit pipes and related facilities for
142 transportation and delivery of electricity, telecommunications
143 (including fiber optics), water, sewage, gas, mixtures of gases,



144 petroleum, petroleum products or hazardous, flammable, toxic or
145 corrosive liquids.

146 (u) "Utility" means any person who supplies,
147 distributes or transports by means of underground utility lines or
148 underground facilities any of the following materials or services:
149 gas, mixture of gases, petroleum, petroleum products or hazardous,
150 toxic, flammable or corrosive liquids, electricity,
151 telecommunications (including fiber optics), sewage, drainage,
152 water, steam or other substances.

153 (v) "Working day" means a twenty-four-hour period
154 commencing from the time the locate request is processed or
155 entered into the system by Mississippi 811, Inc., in accordance
156 with this chapter, excluding Saturdays, Sundays and legal
157 holidays.

158 (w) "Impending emergency" means circumstances
159 potentially dangerous to life, health, property or the loss of
160 customer services, which would likely develop into an emergency,
161 as defined in Section 77-13-11, if excavation is not initiated
162 sooner than permitted under the standard notification
163 requirements.

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

166 77-13-5. (1) In addition to complying with all other
167 applicable regulations and requirements of federal, state, county
168 and municipal authorities, no person shall engage in excavation of



169 any kind, before meeting the notification requirements of this
170 chapter. Under this chapter the excavator shall:

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

174 (b) Plan and conduct the excavation to avoid or
175 minimize interference with or damage to underground utility lines
176 and underground facilities in or near the excavation area;
177 maintain a clearance between any underground utility line or
178 underground facility and the cutting edge or point of any
179 mechanical excavating equipment, taking into account the known
180 limit of control of such cutting edge or point, as may be
181 reasonably necessary to avoid damage to such facility; and provide
182 such support for underground utility lines or underground
183 facilities in and near the excavation area, including during any
184 backfilling operations, as may be reasonably necessary for the
185 protection of such facilities.

186 (c) Except as provided in Section 77-13-11, before
187 beginning any excavation, other than an impending emergency
188 excavation, as defined in Section 77-13-3(w), provide not less
189 than * * * three (3) and not more than ten (10) working days'
190 advance written, electronic or telephonic notice of the
191 commencement, extent, location and duration of the excavation work
192 to Mississippi 811, Inc., so that Mississippi 811, Inc.,



193 operator(s) may locate and mark the location of underground
194 utility lines and underground facilities in the excavation area.

195 The written, electronic or telephonic notice required by this
196 paragraph (c) shall contain the name, address and telephone number
197 of the person filing the notice of intent, the person responsible
198 for the excavation, the starting date, anticipated duration, type
199 of excavation to be conducted, the location of the proposed
200 excavation and whether or not explosives are to be used.

201 (d) For excavations required due to an impending
202 emergency, provide advance written, electronic or telephonic
203 notice of the commencement, extent, location and duration of the
204 excavation work to Mississippi 811, Inc. For notices provided
205 between 8:00 p.m. and 11:59 a.m., the excavation shall commence no
206 less than twelve (12) hours from the time notice is provided. For
207 notices provided between 12:00 p.m. and 7:59 p.m., the excavation
208 shall commence no sooner than 8:00 a.m. on the next calendar day,
209 to provide sufficient time for Mississippi 811, Inc., operators to
210 locate and mark the location of underground facilities in the
211 excavation area. In addition to the notice required by paragraph
212 (c) of this subsection, the excavator shall also provide contact
213 information for a person readily available to discuss the
214 impending emergency excavation with operators.

215 (e) Prior to providing the advance notice to
216 Mississippi 811, Inc., as required by paragraph (c) of this
217 subsection, the excavator shall pre-mark the approximate boundary



218 of the proposed excavation area with white paint, flags or stakes.
219 Where an excavator pre-marks the proposed excavation area with a
220 single stake or other single point indicator, that excavator
221 represents that the proposed excavation area does not exceed fifty
222 (50) feet in any direction from the pre-mark. In the event that
223 the location of the proposed excavation provided in the notice
224 includes sufficient details to enable the operator to locate same
225 with reasonable certainty, pre-marking shall not be required.

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

238 (3) Compliance with the notice requirements of this section
239 shall not be required of: (a) persons plowing less than
240 twenty-four (24) inches in depth for agricultural purposes; (b)
241 persons who are moving or otherwise displacing, by hand, earth,
242 rock or other material or mass of material on or below the ground



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

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

258 **SECTION 3.** Section 77-13-7, Mississippi Code of 1972, is
259 brought forward as follows:

260 77-13-7. (1) Each person responsible for any excavation
261 that results in damage to an underground utility line or
262 underground facility, immediately upon discovery of such damage,
263 shall notify Mississippi 811, Inc., and notify all operators of
264 such damaged line or facility of the location of the damage and
265 shall allow the operator reasonable time to accomplish any
266 necessary repairs before completing the excavation in the
267 immediate area of the damage to such line or facility.



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

277 (3) Except where the excavator has fully complied with the
278 provisions of Section 77-13-5 and subsections (1) and (2) of this
279 section, each person responsible for excavation that results in
280 damage to an underground line or underground facility, except the
281 property owner, unless the property owner is the excavator, shall
282 be responsible for any and all costs and expenses incurred by the
283 operator in restoring, correcting, repairing or replacing the
284 damaged line or facility.

285 **SECTION 4.** Section 77-13-9, Mississippi Code of 1972, is
286 amended as follows:

287 77-13-9. (1) Every person owning or operating underground
288 utility lines or underground facilities shall, upon receiving
289 advance notice of the commencement of excavation, in accordance
290 with Section 77-13-5(1)(c), make an investigation, and shall
291 report through the use of the PRIS the status of the work
292 performed, within * * * three (3) working days from the time



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

314 (2) In lieu of such marking, the operator may request to be
315 present at the site upon commencement of the excavation, so long
316 as the operator complies within * * * three (3) working days of
317 the receipt of the notice.



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

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

| 332 UTILITY OR TYPE OF FACILITY | GROUP IDENTIFYING COLOR |
|---|----------------------------------|
| 333 Electric | Safety Red |
| 334 Petroleum Product/Hazardous/ 335 Flammable/Corrosive/Toxic 336 Materials, Product and Steam 337 Lines, Gas or Gaseous Material | High Visibility Safety Yellow |
| 339 Telecommunications (including fiber 340 optics) and CATV | Safety Alert Orange |
| 341 Potable Water | Safety Precaution Blue |
| 342 Reclaimed Water, Irrigation, | |



| | | |
|-----|---------------------------|----------------------|
| 343 | Slurry Lines | Purple |
| 344 | Sewer and Drain Lines | Safety Green |
| 345 | Temporary Survey Markings | High Visibility Pink |
| 346 | Proposed Excavation | White |

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

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

360 (7) Upon receiving a design information request, the utility
361 owner or operator shall within seven (7) working days from the
362 time notice is provided in accordance with this chapter to
363 Mississippi 811, Inc., respond by one (1) of the following
364 methods: (a) marking the approximate location of its underground
365 utility lines and underground facilities in the area in accordance
366 with subsection (1) of this section; (b) providing to the person
367 making the design information request the best available



368 description of its underground utility lines and underground
369 facilities in the area which may include drawings or other records
370 maintained by the utility owner or operator; or (c) allowing the
371 person making the design information request or any other
372 authorized person to inspect or copy the drawings or other records
373 for all underground utility lines and utility facilities in the
374 area.

375 (8) Every person owning or operating an underground utility
376 line or underground facility shall, upon receiving advance notice
377 of the commencement of impending emergency excavation in
378 accordance with Section 77-13-5(1)(d), make an investigation into
379 and report through the use of the PRIS the status of the work
380 performed, prior to the noticed time of excavation provided in
381 accordance with this chapter, to Mississippi 811, Inc., to
382 determine the approximate location of the underground utility line
383 or underground facility in the area of the proposed excavation,
384 and shall either:

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



391 (b) Advise through the PRIS that there are no
392 underground utility lines or underground facilities in the
393 excavation area.

394 **SECTION 5.** Section 77-13-11, Mississippi Code of 1972, is
395 amended as follows:

396 77-13-11. (1) The advance notice provisions of this chapter
397 shall not apply to any person making an emergency excavation at
398 times of emergency involving an imminent danger to life, health or
399 property or a customer service outage. However, every person who
400 shall engage in such emergency excavation shall take all necessary
401 and reasonable precautions to avoid or minimize interference with
402 or damage to existing underground utility lines and underground
403 facilities in and near the excavation area, and shall notify
404 Mississippi 811, Inc., of the specifically designated emergency
405 excavation as promptly as reasonably possible * * * so that
406 operators may locate and mark the location of underground utility
407 lines and underground facilities in the specifically designated
408 emergency excavation area. In the event of damage to or
409 dislocation of any underground utility lines or underground
410 facilities caused by any such emergency excavation work, the
411 person responsible for the excavation shall immediately notify the
412 operator of the damaged or dislocated underground facilities of
413 the damage or dislocation.

414 (2) An imminent danger to life, health, property or customer
415 service exists whenever there is a substantial likelihood that



416 injury, loss of life, health or customer services, or substantial
417 property loss could result before the person responsible for the
418 excavation or demolition can fully comply with the notification
419 and response procedures required in Sections 77-13-7 and 77-13-17.

420 (3) Any misrepresentation of an emergency excavation as
421 defined in Section 77-13-3(h) or of an impending emergency as
422 defined in Section 77-13-3(w) shall constitute a violation of this
423 chapter.

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

