

By: Senator(s) Carter

To: Energy

SENATE BILL NO. 2102
(As Sent to Governor)

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 AMEND SECTION 77-13-7, MISSISSIPPI CODE OF 1972, TO
38 PROVIDE THAT IF AN OPERATOR BRINGS A LAWSUIT TO ENFORCE THE
39 PROVISIONS OF THIS SECTION, THE PREVAILING PARTY SHALL BE AWARDED
40 LEGAL COSTS, EXPENSES AND FEES; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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



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

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

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

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

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



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



112 not penetrate the earth to a depth of more than twelve (12) inches
113 and are carried out with reasonable care so as to protect any
114 underground facilities placed in the right-of-way. Routine
115 maintenance activities shall be more specifically described in the
116 rules and regulations adopted by the board; or (vii) the driving
117 of wooden stakes by use of hand tools which do not penetrate the
118 earth to a depth of not more than six (6) inches. The term
119 "excavate" shall include, but not be limited to, the operations of
120 demolition, blasting, grading, land leveling, trenching, digging,
121 ditching, drilling, augering, tunneling, scraping, cable or pipe
122 plowing, driving, jacking, wrecking, razing, rending, moving or
123 removing any structure or other material or mass of material on or
124 below the ground.

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

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



136 (1) "Mechanical excavating equipment" means all
137 equipment powered by any motor, engine, or hydraulic or pneumatic
138 device used for excavating and shall include, but not be limited
139 to, trenchers, bulldozers, backhoes, power shovels, scrapers,
140 draglines, clam shells, augers, drills, cable and pipe plows and
141 other plowing-in or pulling-in equipment.

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

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

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

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

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



161 (r) "Positive Response Information System" or "PRIS"
162 means an automated information system operated and maintained by
163 Mississippi 811, Incorporated, that allows excavators, locators,
164 facility owners or operators, and other affected parties to enter
165 and/or determine the status of a locate request.

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

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

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



185 (v) "Working day" means a twenty-four-hour period
186 commencing from the time the locate request is processed or
187 entered into the system by Mississippi 811, Incorporated, in
188 accordance with this chapter, excluding Saturdays, Sundays and
189 legal holidays.

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

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

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

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

205 (b) Plan and conduct the excavation to avoid or
206 minimize interference with or damage to underground utility lines
207 and underground facilities in or near the excavation area;
208 maintain a clearance between any underground utility line or
209 underground facility and the cutting edge or point of any



210 mechanical excavating equipment, taking into account the known
211 limit of control of such cutting edge or point, as may be
212 reasonably necessary to avoid damage to such facility; and provide
213 such support for underground utility lines or underground
214 facilities in and near the excavation area, including during any
215 backfilling operations, as may be reasonably necessary for the
216 protection of such facilities.

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

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

232 (d) Provide advance written, electronic or telephonic
233 notice of the commencement, extent, location and duration of the
234 excavation work to Mississippi 811, Incorporated, for excavations



235 required due to an impending emergency, that includes an
236 excavation start time that is not less than twelve (12) hours from
237 the time of notices provided between 8:00 p.m. and 11:59 a.m., and
238 not sooner than 8:00 a.m., on the next calendar day for notices
239 provided between 12:00 p.m. and 7:59 p.m., so that Mississippi
240 811, Incorporated, operators may locate and mark the location of
241 underground utility lines and underground facilities in the
242 excavation area.

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

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



259 locate request is processed or entered into the system by
260 Mississippi 811, Incorporated.

261 (3) Compliance with the notice requirements of this section
262 shall not be required of: (a) persons plowing less than
263 twenty-four (24) inches in depth for agricultural purposes; (b)
264 persons who are moving or otherwise displacing, by hand, earth,
265 rock or other material or mass of material on or below the ground
266 at a depth of less than twelve (12) inches on property they own;
267 and (c) persons, other than the property owner, who are moving or
268 otherwise displacing, by hand, earth, rock or other material or
269 mass of material on or below the ground at a depth of less than
270 twelve (12) inches, except when such excavation is in a clearly
271 marked underground facility right-of-way.

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

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



284 77-13-9. (1) Every person owning or operating underground
285 utility lines or underground facilities shall, upon receiving
286 advance notice of the commencement of excavation, in accordance
287 with Section 77-13-5, make an investigation, and shall report
288 through the use of the PRIS the status of the work performed,
289 within * * * three (3) working days from the time notice is
290 provided in accordance with this chapter to Mississippi 811,
291 Incorporated, to determine the approximate location of its
292 underground utility lines or underground facilities in the area of
293 the proposed excavation, and shall either: (a) mark the
294 approximate location of underground utility lines and underground
295 facilities in or near the area of the excavation, so as to enable
296 the person engaged in excavation work to locate the lines and
297 facilities in advance of and during the excavation work and notify
298 the excavator through the PRIS that the facilities have been
299 marked; (b) advise through the PRIS that it has no underground
300 utility lines or underground facilities in the excavation area; or
301 (c) advise through the PRIS that it can locate its underground
302 utility lines or underground facilities in the excavation area
303 only by excavation. If an operator can locate its underground
304 utility lines or underground facilities in the excavation area
305 only by excavation and has given proper notice of such, that
306 operator shall be allowed a reasonable amount of additional time,
307 not to exceed four (4) working days from the day the original
308 notice was provided in accordance with this chapter, to mark the



309 approximate location of the underground utility lines or
310 underground facilities.

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

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

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

329 UTILITY OR TYPE OF FACILITY	GROUP IDENTIFYING COLOR
330 Electric	Safety Red
331 Petroleum Product/Hazardous/ 332 Flammable/Corrosive/Toxic 333 Materials, Product and Steam	



334	Lines, Gas or Gaseous Material	High Visibility Safety
335		Yellow
336	Telecommunications (including fiber	
337	optics) and CATV	Safety Alert Orange
338	Potable Water	Safety Precaution Blue
339	Reclaimed Water, Irrigation,	
340	Slurry Lines	Purple
341	Sewer and Drain Lines	Safety Green
342	Temporary Survey Markings	High Visibility Pink
343	Proposed Excavation	White

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

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

357 (7) Upon receiving a design information request, the utility
358 owner or operator shall within seven (7) working days from the



359 time notice is provided in accordance with this chapter to
360 Mississippi 811, Incorporated, respond by one (1) of the following
361 methods: (a) marking the approximate location of its underground
362 utility lines and underground facilities in the area in accordance
363 with subsection (1) of this section; (b) providing to the person
364 making the design information request the best available
365 description of its underground utility lines and underground
366 facilities in the area which may include drawings or other records
367 maintained by the utility owner or operator; or (c) allowing the
368 person making the design information request or any other
369 authorized person to inspect or copy the drawings or other records
370 for all underground utility lines and utility facilities in the
371 area.

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

381 (a) Mark the approximate location of underground
382 utility lines and underground facilities in or near the area of
383 the excavation, so as to enable the person engaged in excavation



384 work to locate the lines and facilities in advance of and during
385 the excavation work, and notify the excavator through the PRIS
386 that the facilities have been marked; or

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

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

391 77-13-11. (1) The advance notice provisions of this chapter
392 shall not apply to any person making an emergency excavation at
393 times of emergency involving an imminent danger to life, health or
394 property or a customer service outage. However, every person who
395 shall engage in such emergency excavation shall take all necessary
396 and reasonable precautions to avoid or minimize interference with
397 or damage to existing underground utility lines and underground
398 facilities in and near the excavation area, and shall notify
399 Mississippi 811, Incorporated, of the specifically designated
400 emergency excavation as promptly as reasonably possible * * * so
401 that operators may locate and mark the location of underground
402 utility lines and underground facilities in the specifically
403 designated emergency excavation area. In the event of damage to
404 or dislocation of any underground utility lines or underground
405 facilities caused by any such emergency excavation work, the
406 person responsible for the excavation shall immediately notify the
407 operator of the damaged or dislocated underground facilities of
408 the damage or dislocation.



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

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

418 **SECTION 5.** Section 77-13-7, Mississippi Code of 1972, is
419 amended as follows:

420 77-13-7. (1) Each person responsible for any excavation
421 that results in damage to an underground utility line or
422 underground facility, immediately upon discovery of such damage,
423 shall notify Mississippi 811, Inc., and notify all operators of
424 such damaged line or facility of the location of the damage and
425 shall allow the operator reasonable time to accomplish any
426 necessary repairs before completing the excavation in the
427 immediate area of the damage to such line or facility.

428 (2) Each person responsible for any excavation that results
429 in damage to an underground pipeline or underground facility
430 permitting the escape of any hazardous, flammable, toxic or
431 corrosive gas or liquid shall, immediately upon discovery of such
432 damage, call 911 and then notify Mississippi 811, Inc., and the
433 operator and take other action as may reasonably be necessary to



434 protect persons and property and to minimize the hazards, until
435 arrival of the operator's personnel and the police or fire
436 departments.

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

445 (4) In the event that an operator brings a lawsuit to
446 enforce compliance with this section, then the prevailing party in
447 any such lawsuit shall be awarded its legal costs, expenses, and
448 fees, including reasonable attorney's fees, incurred in connection
449 with such lawsuit. If more than one (1) party is found to be
450 responsible, the costs, expenses, and fees, including reasonable
451 attorney's fees, shall be equitably apportioned among the
452 responsible parties.

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

