

By: Representative Montgomery (74th)

To: Public Utilities

HOUSE BILL NO. 775

1 AN ACT RELATING TO EXCAVATIONS NEAR UNDERGROUND UTILITY
 2 FACILITIES; TO AMEND SECTION 77-13-1, MISSISSIPPI CODE OF 1972, TO
 3 DESIGNATE CHAPTER 13, TITLE 77, MISSISSIPPI CODE OF 1972, THE
 4 "MISSISSIPPI UNDERGROUND UTILITY FACILITY PROTECTION ACT" AND TO
 5 STATE THE PURPOSE OF THE ACT; TO AMEND SECTION 77-13-3,
 6 MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS USED IN THE ACT;
 7 TO AMEND SECTION 77-13-5, MISSISSIPPI CODE OF 1972, TO REVISE THE
 8 NOTICE REQUIREMENTS REQUIRED OF EXCAVATORS BEFORE BEGINNING AN
 9 EXCAVATION; TO AMEND SECTION 77-13-7, MISSISSIPPI CODE OF 1972, TO
 10 REQUIRE EXCAVATORS TO CALL 911 WHEN AN UNDERGROUND PIPELINE OR
 11 FACILITY THAT CONTAINS HAZARDOUS MATERIALS IS DAMAGED; TO AMEND
 12 SECTION 77-13-9, MISSISSIPPI CODE OF 1972, TO REQUIRE UTILITY
 13 FACILITIES INSTALLED AFTER DECEMBER 31, 2002, TO BE LOCATABLE BY
 14 ELECTRONIC LOCATING METHODS; TO AMEND SECTIONS 77-13-11 AND
 15 77-13-13, MISSISSIPPI CODE 1972, IN CONFORMITY TO THE PROVISIONS
 16 OF THIS ACT; TO AMEND SECTION 77-13-15, MISSISSIPPI CODE OF 1972,
 17 TO REQUIRE NOTICE OF EXCAVATIONS THROUGHOUT THE STATE TO BE MADE
 18 TO MISSISSIPPI ONE CALL SYSTEM, INC.; TO AMEND SECTION 77-13-17,
 19 MISSISSIPPI CODE OF 1972, TO REQUIRE MISSISSIPPI ONE CALL SYSTEM,
 20 INC., TO DEVELOP A FEE SCHEDULE BASED UPON THE COST OF MAINTAINING
 21 MISSISSIPPI ONE CALL CENTER; TO AMEND SECTION 77-13-19,
 22 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS
 23 ACT; TO CREATE NEW SECTION 77-13-23, MISSISSIPPI CODE OF 1972, TO
 24 ESTABLISH PENALTIES FOR VIOLATIONS OF THIS ACT; AND FOR RELATED
 25 PURPOSES.

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

27 **SECTION 1.** Section 77-13-1, Mississippi Code of 1972, is
28 amended as follows:

29 77-13-1. (1) This chapter shall be known and may be cited
30 as the "Mississippi Underground Utility Facility Protection Act."

31 (2) The purpose of this chapter is to safeguard against
32 injury or loss of life due to excavation, blasting or demolition
33 and to protect underground facilities from costly damage and the
34 interruption of * * * utility or other services to the general
35 public and to avoid the delay of construction projects as a result
36 of damage or destruction of underground facilities.

37 **SECTION 2.** Section 77-13-3, Mississippi Code of 1972, is
38 amended follows:



39 77-13-3. The words defined in this section shall have the
40 following meanings when found in Sections 77-13-1 through
41 77-13-21:

42 (a) "Excavate or excavation" * * * means any operation
43 in which earth, rock or other material or mass of material * * *
44 below the surface of the ground is moved or otherwise displaced by
45 any means (including blasting, demolition and directional boring),
46 except: (i) the tilling of the soil less than twenty-four (24)
47 inches in depth for agricultural purposes; or (ii) an operation in
48 which earth, rock or other material or mass of material * * *
49 below the surface of the ground is moved or otherwise displaced to
50 a depth of less than twelve (12) inches on private property by the
51 property owner without the use of mechanical excavating equipment;
52 or (iii) an operation in which earth, rock or other material or
53 mass of material * * * below the surface of the ground is moved or
54 otherwise displaced without the use of mechanical excavating
55 equipment to a depth of less than twelve (12) inches on private
56 property by an excavator who is not the property owner, except
57 when such excavation is in a clearly marked underground facility
58 right of way. The term "excavate" * * * includes, but is
59 not * * * limited to, the operations of demolition, blasting,
60 grading, land leveling, trenching, digging, ditching, drilling,
61 directional drilling or boring, augering, tunneling, scraping,
62 cable or pipe plowing, driving, jacking, wrecking, razing, * * *
63 moving, demolishing or removing any structure or other material or
64 mass of material * * * below the surface of the ground.

65 (b) "Utility" * * * means any person who supplies,
66 distributes or transports, by means of underground utility lines
67 or underground facilities, any of the following materials or
68 services: gas; mixture of gases; petroleum; petroleum products or
69 hazardous, toxic, flammable or corrosive liquids; electricity;
70 telecommunications (including fiber optics); sewage; drainage;
71 water; steam; or other substances.



72 (c) "Underground utility lines" * * * means underground
73 or buried cable, conduit pipes and related facilities for
74 transportation and delivery of electricity, telecommunications
75 (including fiber optics and cable television lines (CATV)), water,
76 sewage, gas, mixtures of gases, petroleum, petroleum products or
77 hazardous, flammable, toxic or corrosive liquids.

78 (d) "Underground facility" * * * means any underground
79 utility lines and other items which are buried or placed below
80 ground or submerged for use in connection with underground utility
81 lines, * * * including, but not * * * limited to, pipes, sewers,
82 conduits, cables, valves, lines, wires, manholes, vaults,
83 attachments, and those portions of poles below the ground.

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

89 (f) "Damage" * * * means the * * * weakening of
90 structural or lateral support of underground utility lines and
91 underground facilities caused by excavation and resulting in
92 repair or customer outage, penetration or destruction of any
93 protective coating, housing or other protective devices of an
94 underground utility line or underground facility, and the partial
95 or complete severance of any underground utility line or
96 underground facility, but does not include any operator's
97 abandoned facility.

98 (g) "Operator" * * * means any person who owns or
99 operates a utility.

100 (h) "Working day" * * * means a twenty-four-hour period
101 commencing from the time of receipt by Mississippi One Call Center
102 on a business day.

103 (i) "Mechanical excavating equipment" * * * means all
104 equipment powered by any motor, engine, or hydraulic or pneumatic



105 device used for excavating and * * * includes, but is not * * *
106 limited to, trenchers, bulldozers, trackhoes, backhoes, power
107 shovels, scrapers, drag lines, clam shells, augers, drills, cable
108 and pipe plows and other plowing-in or pulling-in equipment.

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

111 (k) "Mark" * * * means the use of stakes, paint or
112 other clearly identifiable materials to show the field location of
113 underground facilities in accordance with the current color code
114 standard of the American Public Works Association, or the
115 uncovering or exposing of underground facilities so that the
116 excavator may readily see the location of same * * *.

117 (l) "Mississippi One Call Center" * * * means a service
118 operated by Mississippi One Call System, Inc., through which a
119 person can notify the operator(s) of underground facilities of
120 plans to excavate and request marking of facilities * * *.

121 (m) "Mississippi One Call System, Inc.," means a
122 nonprofit corporation organized under the laws of the State of
123 Mississippi which is owned and operated by its members.

124 (n) "Member operator * * *" means all utility owners
125 and operators within the State of Mississippi who are members of
126 Mississippi One Call System, Inc.

127 (o) "Abandoned facility" * * * means any underground
128 utility line or underground utility facilities no longer used in
129 the conduct of the owner/operator's business and * * * not
130 intended to be used in the future.

131 (p) "Emergency excavation" * * * means excavation at
132 times of emergency involving danger to life, health or property or
133 a customer service outage.

134 (q) "Approximate location" of underground utility lines
135 or underground facilities * * * means information about an
136 operator's underground utility lines or underground facilities
137 which is provided to a person by an operator and must be accurate



138 within eighteen (18) inches measured horizontally from the outside
139 edge of each side of such operator's facility, or a strip of land
140 eighteen (18) inches either side of the operator's field mark, or
141 the marked width of the facility or line plus eighteen (18) inches
142 on each side of the marked width of the facility or line.

143 (r) "Blasting" means any operation by which the level
144 or grade of land is changed or by which earth, rock, buildings,
145 structures or other masses or materials are rendered, torn,
146 demolished moved or removed by the detonation of dynamite or any
147 other explosive agent.

148 (s) "Business days" means Monday through Friday,
149 excluding the following holidays: New Year's Day; Birthday of Dr.
150 Martin Luther King, Jr.; Memorial Day; Independence Day; Labor
151 Day; Thanksgiving Day and the following Friday; Christmas Eve; and
152 Christmas Day. Any of these holidays which falls on a Saturday
153 will be observed on the preceding Friday and any that falls on a
154 Sunday shall be observed on the following Monday.

155 (t) "Business hours" means the period of time from 7:30
156 a.m. to 5:00 p.m. local prevailing time on business days.

157 (u) "By hand" means an excavation performed without
158 mechanical excavating equipment.

159 (v) "Demolition or demolished" means any operation by
160 which a structure or mass of material is wrecked, razed, moved or
161 removed by means of any mechanical excavating equipment or
162 discharge of explosives.

163 (w) "Emergency" means: a sudden or unforeseen
164 occurrence involving a clear and imminent danger to life, health
165 or property; the interruption of utility services; or repairs to
166 transportation facilities that require immediate action.

167 (x) "Facility owner or operator" means any person or
168 entity who owns, operates or controls the operation of a utility
169 for the purpose of commercial enterprise.



170 (y) "Locate request" means a written, telephonic or
171 electronic communication or notification request from an excavator
172 to Mississippi One Call Center in which a request for locating
173 underground utility lines or underground facilities complies with
174 the advance notice requirements of Section 77-13-5.

175 (z) "Willfully" or "willful" means an act done
176 intentionally, knowingly and purposely, without justifiable cause
177 or excuse, as distinguished from an act done carelessly,
178 thoughtlessly, heedlessly or inadvertently.

179 **SECTION 3.** Section 77-13-5, Mississippi Code of 1972, is
180 amended as follows:

181 77-13-5. (1) In addition to complying with all other
182 applicable regulations and requirements of federal, state, county
183 and municipal authorities, no person shall engage in excavation of
184 any kind, before meeting the notification requirements of this
185 chapter. Under this chapter, the excavator shall:

186 (a) Inform himself/herself of the presence and
187 designated location of any underground utility lines and
188 underground facilities in or near the area where excavation is to
189 be conducted;

190 (b) Plan and conduct the excavation to avoid or
191 minimize interference with or damage to underground utility lines
192 and underground facilities in or near the excavation area;
193 maintain a clearance between any underground utility line or
194 underground facility and the cutting edge or point of any
195 mechanical excavating equipment, taking into account the known
196 limit of control of such cutting edge or point, as may be
197 reasonably necessary to avoid damage to such facility; and provide
198 such support for underground utility lines or underground
199 facilities in and near the excavation area, including during any
200 backfilling operations, as may be reasonably necessary for the
201 protection of such facilities; and



202 (c) Except as provided in Section 77-13-11, provide a
203 locate request to Mississippi One Call Center not less than two
204 (2) and not more than ten (10) business days before the beginning
205 of the actual excavation.

206 The locate request required by this paragraph shall contain
207 the name, address and telephone number of the person filing the
208 locate request, the person responsible for the excavation, the
209 starting date, anticipated duration, type of excavation to be
210 conducted, the location of the proposed excavation and whether or
211 not explosives are to be used.

212 (2) The markings provided by member * * * operators shall
213 only be valid for a period of ten (10) business days from the
214 proposed starting date provided to * * * Mississippi One Call
215 Center. The person responsible for the excavation project shall
216 renew the notification with Mississippi One Call Center at least
217 two (2) business days prior to this expiration date and shall
218 continue to renew such notification in the same manner throughout
219 the duration of the excavation. Such renewal notice shall be
220 valid for a period of ten (10) business days from the date of the
221 expiration of the prior notification.

222 (3) No person may request marking of a site through the
223 Mississippi One Call Center unless excavating is scheduled to
224 commence or the request is for design purposes and the Mississippi
225 One Call Center is notified that the request is for design
226 purposes. No person may make repeated requests for remarking
227 unless the repeated request is required for excavating to continue
228 or due to circumstances not reasonably within the control of that
229 person.

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



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

241 (5) When a locate request is made in accordance with this
242 section, no person other than the person conducting the excavation
243 and submitting the locate request may conduct any excavation at
244 the site. There may be multiple locate requests for the same
245 excavation site by multiple excavators who plan to excavate at the
246 site. Each excavator must have a valid locate request number from
247 Mississippi One Call Center before that excavator may commence
248 excavation.

249 (6) The excavation or utility owner or operator shall mark
250 the route or boundary of the proposed excavation site by means of
251 white paint, white flags or white stakes before making the locate
252 request to Mississippi One Call Center.

253 **SECTION 4.** Section 77-13-7, Mississippi Code of 1972, is
254 amended as follows:

255 77-13-7. (1) Each person responsible for any excavation
256 that results in damage to an underground utility line or
257 underground facility, immediately upon discovery of such damage,
258 shall notify Mississippi One Call Center of such damaged line or
259 facility of the location of the damage and shall allow the
260 operator reasonable time to accomplish any necessary repairs
261 before completing the excavation in the immediate area of the
262 damage to such line or facility.

263 (2) Each person responsible for any excavation that results
264 in damage to an underground pipeline or underground facility
265 permitting the escape of any hazardous, flammable, toxic or
266 corrosive gas or liquid shall, immediately upon discovery of such
267 damage, first call 911 and then notify or call Mississippi One



268 Call Center and take all other actions as may reasonably be
269 necessary to protect persons and property and to minimize the
270 hazards, until arrival of the operator's personnel and police or
271 fire departments.

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

280 **SECTION 5.** Section 77-13-9, Mississippi Code of 1972, is
281 amended as follows:

282 77-13-9. (1) Every person owning or operating underground
283 utility lines or underground facilities shall, upon receiving a
284 locate request, in accordance with Section 77-13-5, make an
285 investigation, within two (2) business days from the time the
286 locate request is provided in accordance with this chapter
287 to * * * Mississippi One Call Center, to determine the
288 approximate location of its underground utility lines or
289 underground facilities in the area of the proposed excavation, and
290 shall either: (a) mark the approximate location of underground
291 utility lines and underground facilities in or near the area of
292 the excavation, so as to enable the person engaged in excavation
293 work to avoid the lines and facilities * * * during the excavation
294 work; or (b) advise in writing or by telephone or electronic means
295 that it has no underground utility lines or underground facilities
296 in the excavation area.

297 (2) In addition to markings, the operator may request to be
298 present at the site upon commencement of the excavation, so long
299 as the operator complies within two (2) business days of the
300 receipt by Mississippi One Call Center of the locate request.



301 (3) When an excavator, upon arriving at an excavation site,
 302 sees evidence of unmarked underground utility lines or underground
 303 facilities or encounters an unmarked underground utility line or
 304 underground facility on an excavation site after excavation has
 305 commenced where a locate request has been made in accordance with
 306 the provisions of this chapter, that excavator must immediately
 307 contact Mississippi One Call Center. All operators or owners, or
 308 both, thus notified must contact the excavator within four (4)
 309 hours and inform the excavator that there are no active
 310 underground utility lines or underground facilities at the
 311 excavation site or within the same period of four (4) hours,
 312 locate any known underground utility lines or underground
 313 facilities.

314 (4) When marking the approximate location of the facilities,
 315 the operator shall follow the color code designated and described
 316 in this subsection, unless otherwise provided for by specific
 317 administrative rule or regulation promulgated pursuant to this
 318 chapter, namely:

UTILITY OR TYPE OF FACILITY	GROUP IDENTIFYING COLOR
Electric	Safety Red
Petroleum Product/Hazardous/ Flammable/Corrosive/Toxic Materials, Product and Steam Lines, Gas or Gaseous Material	High Visibility Safety Yellow
Telecommunications (including fiber optic) and CATV	Safety Alert Orange
<u>Potable Water * * *</u>	
Slurry Lines	<u>Purple</u>
<u>Reclaimed Water, Irrigation and</u> Sewer and Drain Lines	Safety Green
Temporary Survey Markings	High Visibility Pink
Proposed Excavation	White

334 (5) All utility facilities installed by owners or operators
335 of utilities after December 31, 2002, must be installed in a
336 manner that will make the utility locatable or findable using a
337 generally accepted electronic locating method.

338 (6) Construction plans may not be put to bid before the
339 completion of an investigation designed to determine the existence
340 and approximate location of all underground utility lines or
341 underground facilities within the boundaries of the proposed
342 project which shall be shown on the plans.

343 **SECTION 6.** Section 77-13-11, Mississippi Code of 1972, is
344 amended as follows:

345 77-13-11. (1) The advance notice provisions of this chapter
346 shall not apply to any person making an excavation in times of
347 emergency involving danger to life, health or property or a
348 customer service outage. However, every person who * * * engages
349 in such emergency excavation shall take all necessary and
350 reasonable precautions to avoid or minimize interference with or
351 damage to existing underground utility lines and underground
352 facilities in and near the excavation area, and shall notify, as
353 promptly as reasonably possible, the operators of underground
354 utility lines or underground facilities in and near the emergency
355 excavation area specifically designating whether such excavation
356 is an emergency excavation as defined in Section 77-13-3. In the
357 event of damage to or dislocation of any underground utility lines
358 or underground facilities caused by any such emergency excavation
359 work, the person responsible for the excavation shall immediately
360 notify the operator of the damaged or dislocated underground
361 facilities of the damage or dislocation.

362 (2) An imminent danger to life, health, property or customer
363 service exists whenever there is a substantial likelihood that
364 injury, loss of life, health or customer services, or substantial
365 property loss could result before the person responsible for the



366 excavation or demolition can fully comply with the notification
367 and response procedures required in this chapter.

368 **SECTION 7.** Section 77-13-13, Mississippi Code of 1972, is
369 amended as follows:

370 77-13-13. The act of giving the locate request in accordance
371 with Section 77-13-5 shall relieve the notifying party of all
372 liability to a utility should such notice be ignored or the
373 information provided by the utility subsequent to the locate
374 request be materially inaccurate; * * * however, the act of giving
375 the locate request or obtaining information as required by this
376 chapter shall not relieve any person making excavations from doing
377 so in a careful and prudent manner, nor shall it relieve such
378 person from liability for any injury or damage proximately
379 resulting from that person's negligence.

380 **SECTION 8.** Section 77-13-15, Mississippi Code of 1972, is
381 amended as follows:

382 77-13-15. In the State of Mississippi, notification to the
383 members of Mississippi One Call System, Inc., must be made by
384 giving notice to Mississippi One Call Center in writing, by
385 telephone or electronically, as set forth in Section
386 77-13-5, * * * provided that the same information required by
387 Section 77-13-5 is furnished by the person or public agency
388 responsible for the excavation activities.

389 **SECTION 9.** Section 77-13-17, Mississippi Code of 1972, is
390 amended as follows:

391 77-13-17. (1) Any operator who fails to fully follow, abide
392 by or comply with this chapter shall be responsible for the
393 reasonable cost or expense the excavator * * * incurs as a direct
394 result of the failure of the operator to fully follow, abide by,
395 or comply with the provisions of this chapter.

396 (2) All operators or owners of underground utility lines or
397 underground facilities within this state shall * * * participate
398 in Mississippi One Call System, Inc., Mississippi One Call



399 System, Inc., through its board of directors, shall develop a
400 schedule of fees for its members. The fees must be based upon the
401 actual costs incurred to operate and maintain Mississippi One Call
402 Center.

403 (3) The person giving the locate request to Mississippi One
404 Call Center shall be furnished an individual reference file number
405 for each locate request and * * * shall be offered by Mississippi
406 One Call Center the names of the operators to whom the
407 notification will be transmitted.

408 (4) An adequate record of all notifications shall be
409 maintained by Mississippi One Call System, Inc., * * * in order to
410 document timely compliance with this chapter. These records shall
411 be retained for a period of not less than four (4) years and shall
412 be made available at a reasonable cost upon proper and adequate
413 advance request.

414 (5) The services of Mississippi One Call System, Inc.,
415 acting on behalf of all member operators, and owners, to receive
416 locate requests will be provided on business days, as defined in
417 Section 77-13-3, at least between the hours of 7:30 a.m. and 5:00
418 p.m. Mississippi One Call Systems, Inc., shall provide an
419 emergency locate service to receive emergency locate requests at
420 all times.

421 (6) Mississippi One Call Center * * * will voice-record all
422 notification telephone calls, including all emergency locate
423 requests.

424 (7) All member operators shall provide Mississippi One Call
425 System, Inc., the following information:

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

429 (b) The townships, ranges, sections and quarter
430 sections in each county in which the operator has underground



431 utility lines or underground facilities or for other reasons wish
432 to receive notification of proposed excavation.

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

436 (d) Emergency telephone numbers to be used if there is
437 an emergency and the utility owner/operator needs to be notified
438 of the emergency by either the 911 system or the Mississippi One
439 Call Center.

440 **SECTION 10.** Section 77-13-19, Mississippi Code of 1972, is
441 amended as follows:

442 77-13-19. In addition to any other rights and remedies which
443 a person may have, any person shall have the right to resort to
444 and apply for injunctive relief, both temporary and permanent, in
445 any court of competent jurisdiction to enforce compliance with the
446 provisions of this chapter and to restrain and prevent violations
447 and threatened violations of this chapter.

448 **SECTION 11.** The following shall be codified as Section
449 77-13-23, Mississippi Code of 1972:

450 77-13-23. (1) A person who willfully violates any provision
451 of this chapter is guilty of a misdemeanor and is subject to a
452 fine not to exceed Five Thousand Dollars (\$5,000.00) or a term of
453 imprisonment not to exceed forty-eight (48) hours, or both, for
454 each occurrence of a violation.

455 (2) A person who willfully violates the provisions of this
456 chapter may be issued a citation by any local or state law
457 enforcement officer or permitting agency inspector. The issuer of
458 the citation may require that the person cease working on the
459 excavation or may prohibit the person from starting a proposed
460 excavation until there is compliance with the provisions of this
461 chapter.

462 (3) The amount of penalties imposed under this section will
463 be dependent upon the degree of noncompliance, the amount of



464 injury or damage caused, the degree of threat to public safety,
465 the degree of public inconvenience caused as a result of the
466 violation, and the number of past violations. Mitigation of the
467 penalty may be allowed by "good faith" efforts of the violator to
468 have complied with the provisions of this chapter.

469 (4) (a) A person who willfully violates any provision of
470 this chapter may be required to appear before the appropriate
471 court where the violation has occurred. A person who fails to
472 appear or otherwise properly respond to a citation issued pursuant
473 to this section will be charged with failure to appear and upon
474 conviction, in addition to the penalties set forth in this
475 section, is punishable by an additional fine not to exceed Two
476 Hundred Fifty Dollars (\$250.00).

477 (b) The issuing officer shall indicate on the citation
478 the time, date and location of the scheduled hearing.

479 (c) A person charged with a violation of this chapter,
480 unless required to appear before the appropriate court, may pay
481 the penalty, in lieu of appearance, either by mail or in person,
482 within ten (10) business days after the date of receiving the
483 citation.

484 (d) A person who pays the penalty in lieu of appearance
485 is deemed to have admitted to committing the violation and to have
486 waived the right to a hearing on the issue of the violation. The
487 admission may be used as evidence in any other proceeding relating
488 to the violation of this chapter.

489 (5) After a hearing, the court shall make a determination as
490 to whether or not a willful violation has been committed. If the
491 commission of a willful violation is proven, the court may impose,
492 for each occurrence, a fine not to exceed Five Thousand Dollars
493 (\$5,00000) or a term of imprisonment not to exceed forty-eight
494 (48) hours, or both. In determining the amount of the fine, the
495 court may consider previous violations of this chapter. If a
496 person is found by the appropriate court to have committed the



497 violation, the person may appeal that finding to the circuit court
498 of the county where the violation occurred.

499 (6) Any person who knowingly and willfully moves or removes
500 or otherwise destroys the stakes, flags, paint or other physical
501 markings used to mark or locate an underground utility facility
502 commits the offense of malicious mischief as set forth in Section
503 97-17-67.

504 (7) This section does not affect any civil remedies for
505 personal injury or property damage or criminal sanctions except as
506 otherwise specifically provided for in this chapter.

507 **SECTION 12.** This act shall take effect and be in force from
508 and after July 1, 2002.

