

By: Representatives Beckett, Dixon

To: Public Utilities

HOUSE BILL NO. 1215  
(As Passed the House)

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

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

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

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

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



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



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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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





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

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

211 (a) Mississippi 811, Inc.;

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

217 (c) Excavation contractors;

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

219 (e) Electric Power Associations of Mississippi;

220 (f) Railroad industry;

221 (g) Mississippi Department of Transportation;



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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

289 (b) Make and enter into contracts.

290 (2) The board shall:

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

364 **SECTION 8.** This act shall take effect and be in force from  
365 and after July 1, 2016, and shall stand repealed from and after  
366 June 30, 2016.

