

**SUBSTITUTE FOR
SENATE BILL NO. 1083**

A bill to enhance public safety, protect the environment, and prevent the disruption of vital public services by reducing the incidences of damage to underground facilities caused by excavation or blasting activity by providing notices to facility owners and facility operators before excavation or blasting; to provide for certain notices to affected parties when underground facilities are damaged; to provide for the powers and duties of certain state governmental officers and entities; to allow the promulgation of rules; to prescribe penalties; to allow the imposition of a fee; to provide for immunity for certain individuals; to allow claims for damages against certain governmental entities in certain circumstances; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "MISS

1 DIG underground facility damage prevention and safety act".

2 Sec. 3. As used in this act:

3 (a) "Additional assistance" means a response by a facility
4 owner or facility operator to a request made by an excavator during
5 business hours, for help in locating a facility.

6 (b) "Approximate location" means a strip of land at least 36
7 inches wide, but not wider than the width of the marked facility
8 plus 18 inches on either side of the facility marks.

9 (c) "Blasting" means changing the level or grade of land or
10 rendering, tearing, demolishing, moving, or removing earth, rock,
11 buildings, structures, or other masses or materials by seismic
12 blasting or the detonation of dynamite or any other explosive
13 agent.

14 (d) "Business day" means Monday through Friday, excluding
15 holidays observed by the call system and posted on the call system
16 website.

17 (e) "Business hours" means from 7 a.m. to 5 p.m., eastern
18 standard time, on business days.

19 (f) "Call system" means MISS DIG System, Inc., a Michigan
20 nonprofit corporation formed and operated by each facility owner
21 and facility operator to administer a 1-call notification system,
22 or any successor to this corporation.

23 (g) "Caution zone" means the area within 48 inches of either
24 side of the approximate location marks provided by a facility owner
25 or facility operator.

26 (h) "Commission" means the Michigan public service commission
27 created in section 1 of 1939 PA 3, MCL 460.1.

1 (i) "Damage" means any impact upon or exposure of an
2 underground facility requiring its repair or replacement due to
3 weakening, partial destruction, or complete destruction of the
4 facility, including, but not limited to, the protective coating,
5 lateral support, cathodic protection, or housing of the facility.

6 (j) "Dig notice" means a communication to the call system by
7 an excavator providing notice of intended excavation or blasting
8 activity as required by this act.

9 (k) "Emergency" means a sudden or unforeseen occurrence,
10 including a government-declared emergency, involving a clear and
11 imminent danger to life, health, or property, or imminent danger to
12 the environment, that requires immediate correction in order to
13 restore or to prevent the interruption of essential governmental
14 services, utility services, or the blockage of public
15 transportation and that requires immediate excavation or blasting.

16 (l) "Emergency notice" means a communication to the call system
17 to alert the facility owners or facility operators of the urgent
18 need for marking the location of a facility due to an emergency.

19 (m) "Excavation" means, other than surface maintenance,
20 moving, removing, or otherwise displacing earth, rock, or other
21 material below existing surface grade with power tools or power
22 equipment, including, but not limited to, grading, trenching,
23 digging, drilling, boring, augering, tunneling, scraping, cable or
24 pipe plowing, and pile driving; and wrecking, razing, rending,
25 moving, or removing a structure or mass of materials. Excavation
26 does not include any of the following:

27 (i) Any excavation performed in the course of normal farming

1 operations except for the following:

2 (A) Any excavation performed in a public right-of-way
3 occurring more than 12 inches below the existing surface grade.

4 (B) Any excavation performed outside a public right-of-way
5 occurring more than 18 inches below the existing surface grade.

6 (ii) Replacing a fence post, sign post, or guardrail in its
7 existing location.

8 (iii) Any excavation performed at a grave site in a cemetery.

9 (iv) Any excavation performed at solid waste disposal site that
10 has planned for underground facilities.

11 (n) "Excavator" means any person performing excavation or
12 blasting.

13 (o) "Facility" or "underground facility" means an underground
14 or submerged conductor, pipe, or structure, including, but not
15 limited to, a conduit, duct, line, pipe, wire, or other device and
16 its appurtenances used to produce, store, transmit, or distribute a
17 utility service, including communications, data, cable television,
18 electricity, heat, natural or manufactured gas, oil, petroleum
19 products, steam, sewage, video, water, and other similar
20 substances, including environmental contaminants or hazardous
21 waste.

22 (p) "Facility operator" means a person who controls the
23 operation of a facility.

24 (q) "Facility owner" means a person who owns a facility.

25 (r) "Farm" means that term as defined in section 2 of the
26 Michigan right to farm act, 1981 PA 93, MCL 286.472.

27 (s) "Governmental agency" means the state and its political

1 subdivisions, including counties, townships, cities, villages, or
2 any other governmental entity.

3 (t) "Mark", "marks", or "marking" means the temporary
4 identification on the surface grade of the location of a facility
5 in response to a ticket as described in section 7(2).

6 (u) "Normal farming operations" means plowing, cultivating,
7 planting, harvesting, and similar operations routine to most farms.
8 Normal farming operations do not include chisel plowing, sub-
9 soiling, or ripping more than 18 inches in depth, drain tile
10 excavating, terracing, well drilling or driving, or any other
11 similar operations.

12 (v) "Person" means an individual, firm, joint venture,
13 partnership, corporation, association, governmental agency,
14 department or agency, utility cooperative, or joint stock
15 association, including any trustee, receiver, assignee, or personal
16 representative thereof.

17 (w) "Positive response" means the procedure administered by
18 the call system to allow excavators to determine whether all
19 facility owners or facility operators contacted under a ticket have
20 responded in accordance with this act.

21 (x) "Public right-of-way" means the area on, below, or above a
22 public roadway, highway, street, alley, easement, or waterway.
23 Public right-of-way does not include a federal, state, or private
24 right-of-way.

25 (y) "Safe zone" means an area 48 inches or more from either
26 side of the approximate location marks provided by a facility owner
27 or facility operator.

1 (z) "Soft excavation" means a method and technique designed to
2 prevent contact damage to underground facilities, including, but
3 not limited to, hand-digging, cautious digging with nonmechanical
4 tools, vacuum excavation methods, or use of pneumatic hand tools.

5 (aa) "Start date" means the date that a proposed excavation or
6 blasting is expected to begin as indicated on a ticket.

7 (bb) "Surface maintenance" means the repairing or patching of
8 road potholes and cracks, reshaping a road surface, graveling and
9 repositioning loose stone, railroad rail and tie replacement, road
10 milling and resurfacing that does not extend below the original
11 road base, and reshaping and repair of the railroad grade. Surface
12 maintenance does not include any work below the depth of the
13 existing road surface material or 12 inches, whichever is less.

14 (cc) "Ticket" means a communication from the call system to a
15 facility owner or facility operator requesting the marking of
16 underground facilities, based on information provided by an
17 excavator in a dig notice.

18 (dd) "White lining" means marking by an excavator of the area
19 of a proposed excavation or blasting, with white paint or flags, or
20 both, before giving notice to the call system.

21 Sec. 4. (1) Facility owners and facility operators shall
22 continue to operate and be members of MISS DIG Systems, Inc., a
23 Michigan nonprofit corporation, that shall have the duties and
24 undertake the responsibilities of the call system under this act on
25 and after the effective date of this act. The call system
26 responsibilities and duties do not include the physical marking of
27 facilities, which is the responsibility of a facility owner or

1 facility operator upon notification under this act.

2 (2) The call system and its procedures shall be governed by
3 its board of directors and in accordance with its current articles
4 of incorporation and bylaws as of the effective date of this act,
5 with any future changes made in accordance with the nonprofit
6 corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, and the
7 call system's articles, bylaws, and board procedures. The call
8 system shall request input regarding its policies from all
9 interested persons, including facility owners and facility
10 operators, excavators, marking service providers, and governmental
11 agencies.

12 (3) Funding for the call system operations shall be
13 established by the call system, including through fees based on a
14 reasonable assessment of operating costs among facility owners or
15 facility operators. A facility owner or facility operator shall not
16 charge a fee to excavators for locating and marking facilities
17 under this act.

18 (4) Facility owners and facility operators shall be members of
19 and participate in the call system and pay the fees levied by the
20 call system under this section. This obligation and the
21 requirements of this act for facility owners and facility operators
22 do not apply to persons owning or operating a facility located on
23 real property the person owns or occupies if the facility is
24 operated solely for the benefit of that person.

25 (5) The call system is exempt from taxes collected under the
26 general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

27 Sec. 5. (1) An excavator shall provide a dig notice to the

1 call system at least 72 hours, but not more than 14 calendar days,
2 before the start of any blasting or excavation. If the dig notice
3 is given during business hours, the 72-hour period shall be
4 measured from the time the dig notice is made to the call system.
5 If a dig notice is given before 7 a.m. on a business day, the 72-
6 hour period begins at 7 a.m. on that day. If a dig notice is given
7 on a nonbusiness day or after 5 p.m. on a business day, the 72-hour
8 period begins at 7 a.m. on the next business day. All hours of
9 nonbusiness days are excluded in counting the 72-hour period. If
10 there are multiple excavators on the same site, each excavator
11 shall provide its own dig notice.

12 (2) A dig notice shall contain at least all of the following:

13 (a) The name, address, and telephone number of the excavator.

14 (b) A description of the proposed area of blasting or
15 excavation, including the street address and a property
16 description.

17 (c) The specific type of work to be performed.

18 (d) The start date and time of blasting or excavation.

19 (e) Whether the proposed blasting or excavation will be
20 completed within 21 days after the start date.

21 (3) A ticket is valid for 21 days from the start date of the
22 excavation or blasting on the ticket as identified by the
23 excavator, except for the following:

24 (a) A ticket is valid for 180 days from the start date if the
25 dig notice indicates that the proposed excavation or blasting will
26 not be completed within 21 days from the start date.

27 (b) A ticket is valid for 3 years from the start date if the

1 proposed excavation is being performed in the course of normal
2 farming operations and all of the following occur:

3 (i) A dig notice is provided indicating that the proposed
4 excavation is being performed in the course of normal farming
5 operations.

6 (ii) The excavator locates all marked facilities as provided in
7 this section.

8 (iii) The excavator creates a map of all facilities located on
9 that farm, including the depth of those facilities as determined at
10 soft excavation intervals under subsection (5).

11 (iv) The owner of the farm maintains the map and provides a
12 copy of the map to any person performing excavation on that farm.

13 (4) An excavator shall comply with the call system procedures
14 and all requirements of this act.

15 (5) Except as otherwise provided in this subsection, before
16 blasting or excavating in a caution zone, an excavator shall expose
17 all marked facilities in the caution zone by soft excavation. If
18 conditions make complete exposure of the facility impractical, an
19 excavator shall consult with the facility owner or facility
20 operator to reach agreement on how to protect the facility. For
21 excavations in a caution zone parallel to a facility, an excavator
22 shall use soft excavation at intervals as often as reasonably
23 necessary to establish the precise location of the facility. An
24 excavator may use power tools and power equipment in a caution zone
25 only after the facilities are exposed or the precise location of
26 the facilities is established.

27 (6) An excavator shall provide support or bracing of

1 facilities or excavation walls in an excavation or blasting area
2 that are reasonably necessary for protection of the facilities.

3 (7) An excavator shall provide notification to the call system
4 if facility markings are destroyed or covered by excavation or
5 blasting activities or if a ticket expires before the commencement
6 of excavation. If a ticket expires before the commencement of
7 excavation, an excavator shall provide a new dig notice to the call
8 system, and comply with subsection (1).

9 (8) An excavator shall provide notification to the call system
10 requesting additional assistance if the location of a marked
11 facility within the approximate location cannot be determined.

12 (9) An excavator shall provide immediate additional notice to
13 the call system and stop excavation in the immediate vicinity if
14 the excavator has reason to suspect the presence of an unmarked
15 facility due to any 1 of the following:

16 (a) Visible evidence of a facility with no marks visible.

17 (b) Lack of a positive response to a ticket.

18 (c) A positive response from a facility owner or facility
19 operator indicating the presence of a facility with no marks
20 visible.

21 (10) If an excavator contacts or damages a facility, the
22 excavator shall provide immediate notice to the facility owner or
23 facility operator.

24 (11) If an excavator damages a facility resulting in the
25 escape of any flammable, toxic, or corrosive gas or liquid, or
26 endangering life, health, or property, the excavator shall call 9-
27 1-1 and provide immediate notice to the facility owner or facility

1 operator. The excavator shall also take reasonable measures to
2 protect the excavator, those in immediate danger, the general
3 public, and the environment until the facility owner or facility
4 operator, or emergency first responders, have arrived and taken
5 control of the site.

6 (12) An excavator shall provide prompt emergency notice to the
7 call system for any proposed excavation or blasting in an
8 emergency. In an emergency, blasting or excavation required to
9 address the conditions of the emergency may be performed as the
10 emergency conditions reasonably require, subject to the provisions
11 in this act for emergency notice and marking facilities in response
12 to an emergency notice.

13 (13) If the location of a proposed excavation or blasting
14 cannot be described in a manner sufficient to enable the facility
15 owner or facility operator to ascertain the precise tract or parcel
16 involved, an excavator shall provide white lining in advance of
17 submitting a ticket or additional assistance to the facility owner
18 or facility operator on reasonable request to identify the area of
19 the proposed excavation or blasting.

20 (14) For purposes of this section, notice to the call system
21 constitutes notice to all facility owners or facility operators
22 regarding facilities located in the area of the proposed excavation
23 or blasting.

24 (15) Except as otherwise provided in this act, an excavator
25 may conduct excavation in a safe zone using power equipment without
26 establishing the precise location of any facilities.

27 Sec. 6. (1) The call system shall receive dig notice

1 notification of proposed excavation and blasting activities and
2 promptly transmit a ticket to facility owners or facility operators
3 of facilities in the area of the proposed excavation or blasting.
4 The call system shall provide alternative means of access and
5 notification to the system. Except for shutdowns caused by acts of
6 nature, war, or terrorism, the call system shall be available 24
7 hours per day, 7 days per week.

8 (2) The call system shall publicize the availability and use
9 of the call system and educate the public, governmental agencies,
10 excavators, facility owners, and facility operators regarding the
11 practices and procedures of the call system and the requirements of
12 this act.

13 (3) The call system shall administer a positive response
14 system to allow excavators to determine whether all of the facility
15 owners or facility operators in the area have responded to a ticket
16 and whether a particular facility owner or facility operator does
17 not have facilities in the area of a proposed excavation or
18 blasting.

19 (4) The call system shall maintain adequate records of its
20 notification activity for a period of 6 years after the date of the
21 notice, including voice recordings of calls. The call system shall
22 provide copies of those records to any interested person upon
23 written request and payment of a reasonable charge for reproduction
24 and handling as determined by the call system.

25 (5) The call system shall expedite the processing of any
26 emergency notice it receives under this act.

27 Sec. 7. (1) A facility owner or facility operator shall

1 respond to a ticket by the start date and time for the excavation
2 or blasting under section 5(1) by marking its facilities in the
3 area of the proposed excavation or blasting in a manner that
4 permits the excavator to employ soft excavation to establish the
5 precise location of the facilities.

6 (2) A facility owner or facility operator shall mark the
7 location of each facility with paint, stakes, flags, or other
8 customary methods using the uniform color code of the American
9 national standards institute as follows:

10 (a) White - used by excavators to mark a proposed excavation
11 or blasting area.

12 (b) Pink - temporary survey markings.

13 (c) Red - electric power lines, cables, conduit, and lighting
14 cables.

15 (d) Yellow - gas, oil, steam, petroleum, or gaseous materials.

16 (e) Orange - communication, cable television, alarm or signal
17 lines, cables, or conduit.

18 (f) Blue - potable water.

19 (g) Purple - reclaimed water, irrigation, and slurry lines.

20 (h) Green - sewers and drain lines.

21 (3) A facility owner or facility operator shall provide
22 notification to the call system using positive response.

23 (4) Upon receiving a notification during business hours from
24 an excavator through the call system of previous marks being
25 covered or destroyed, a facility owner or facility operator shall
26 mark the location of a facility within 24 hours, excluding all
27 hours on nonbusiness days.

1 (5) If a facility owner or facility operator receives a
2 request under section 5(8) or (9), that facility owner or facility
3 operator shall provide additional assistance to an excavator within
4 3 hours of a request made by the excavator during business hours.
5 An excavator and a facility owner or facility operator may agree to
6 an extension of the time for additional assistance. If a request
7 for additional assistance is made at a time when the additional
8 assistance cannot be provided during normal business hours or
9 assistance is required at a remote rural location, the response
10 time shall be no later than 3 hours after the start of the next
11 business day or a time based on mutual agreement.

12 (6) If a facility owner or facility operator receives notice
13 that a facility has been damaged, that facility owner or facility
14 operator shall promptly dispatch personnel to the area.

15 (7) A facility owner or facility operator shall respond within
16 3 hours to an emergency notice, or before the start day and time
17 provided in an emergency notice if that start day and time is more
18 than 3 hours from the time of notice.

19 (8) New facilities built after the effective date of this act
20 shall be constructed in a manner that allows their detection when
21 in use.

22 (9) A facility owner or facility operator shall comply with
23 the call system procedures and all requirements of this act.

24 (10) This section does not apply to the state transportation
25 department.

26 Sec. 8. This act does not limit the right of an excavator,
27 facility owner, or facility operator to seek legal relief and

1 recovery of actual damages incurred and equitable relief in a civil
2 action arising out of a violation of the requirements of this act,
3 or to enforce the provisions of this act, nor shall this act
4 determine the level of damages or injunctive relief in any such
5 civil action. This section does not affect or limit the
6 availability of any contractual or legal remedy that may be
7 available to an excavator, facility owner, or facility operator
8 arising under any contract to which they may be a party.

9 Sec. 9. (1) The call system and its officers, agents, or
10 employees are not liable for any damages, including damages for
11 injuries or death to persons or damage to property, caused by its
12 acts or omissions in carrying out the provisions of this act. The
13 call system is not responsible for assuring performance by a
14 facility owner or facility operator of its obligation to
15 participate in the call system under section 4(4).

16 (2) Notwithstanding any other provision of this act, an
17 excavator that complies with this act is not responsible for
18 damages that occur to a facility that is improperly marked, not
19 marked, or determined to be within the safe zone.

20 Sec. 10. This act does not authorize, affect, or impair local
21 ordinances, charters, or other provisions of law requiring permits
22 to be obtained before excavating or tunneling in a public street or
23 highway or to construct or demolish buildings or other structures
24 on private property. A permit issued by a governmental agency does
25 not relieve a person from the responsibility of complying with this
26 act. The failure of any person who has been granted a permit to
27 comply with this act does not impose any liability upon the

1 governmental agency issuing the permit.

2 Sec. 11. (1) A person who engages in any of the following
3 conduct is guilty of a misdemeanor punishable by imprisonment for
4 not more than 1 year or a fine of not more than \$5,000.00, or both:

5 (a) Knowingly damages an underground facility and fails to
6 promptly notify the facility owner or facility operator.

7 (b) Knowingly damages an underground facility and backfills
8 the excavation or otherwise acts to conceal the damage.

9 (c) Willfully removes or otherwise destroys stakes or other
10 physical markings used to mark the approximate location of
11 underground facilities unless that removal or destruction occurs
12 after the excavation or blasting is completed or as an expected
13 consequence of the excavation or blasting activity.

14 (2) Upon complaint filed with the commission or upon the
15 commission's own motion, following notice and hearing, a person,
16 other than a governmental agency, who violates any of the
17 provisions of this act may be ordered to pay a civil fine of not
18 more than \$5,000.00 for each violation. In addition to or as an
19 alternative to any fine, the commission may require the person to
20 obtain reasonable training to assure future compliance with this
21 act. Before filing a complaint under this subsection, a person
22 shall attempt to settle the dispute with the adverse party or
23 parties using any reasonable means of attempted resolution
24 acceptable to the involved parties. In determining the amount of
25 any fine, the commission shall consider all of the following:

26 (a) The ability of the person charged to pay or continue in
27 business.

1 (b) The nature, circumstances, and gravity of the violation.

2 (c) Good-faith efforts by the person charged to comply with
3 this act.

4 (d) The degree of culpability of the person charged and of the
5 complainant.

6 (e) The history of prior violations of the person charged.

7 (3) A commission determination under subsection (2) shall not
8 be used against a party in any action or proceeding before any
9 court. A complaint filed under subsection (2) does not limit a
10 person's right to bring a civil action to recover damages that
11 person incurred arising out of a violation of the requirements of
12 this act.

13 (4) The commission shall develop forms with instructions and
14 may promulgate administrative rules for processing complaints under
15 this act, pursuant to the administrative procedures act of 1969,
16 1969 PA 306, MCL 24.201 to 24.328.

17 Sec. 12. (1) Except as provided in this section, this act does
18 not affect the liability of a governmental agency for damages for
19 tort or the application of 1964 PA 170, MCL 691.1401 to 691.1419.

20 (2) A facility owner or a facility operator may file a
21 complaint with the commission seeking a civil fine and, if
22 applicable, damages from a governmental agency under this section
23 for any violation of this act.

24 (3) After notice and a hearing on a complaint under subsection
25 (2), the commission may order the following, as applicable:

26 (a) If the commission has not issued an order against the
27 governmental agency under this section within the preceding 12

1 months, a civil fine of not more than \$5,000.00. In determining the
2 amount of the fine, the commission shall consider the factors in
3 section 11(2).

4 (b) If the commission has issued an order under subdivision
5 (a) against the governmental agency within the preceding 12 months,
6 both of the following:

7 (i) A civil fine of not more than \$10,000.00. In determining
8 the amount of the fine, the commission shall consider the factors
9 in section 11(2).

10 (ii) That the governmental agency provide at its expense
11 underground facility safety training to all its personnel involved
12 in underground utility work or excavating.

13 (c) If the commission has issued an order under subdivision
14 (b) against the governmental agency within the preceding 12 months,
15 both of the following:

16 (i) A civil fine of not more than \$15,000.00. In determining
17 the amount of the fine, the commission shall consider the factors
18 in section 11(2).

19 (ii) If the violation of this act by the governmental agency
20 caused damage to the facilities of the facility owner or facility
21 operator, that the governmental agency pay to the owner or operator
22 the cost of repair of the facilities.

23 (4) A party to a complaint filed under this section or section
24 11 may file an appeal of a commission order issued under this
25 section or section 11 in the Ingham county circuit court.

26 (5) This section does not apply if the violation of this act
27 was a result of action taken in response to an emergency.

1 (6) A finding by the commission under this section is not
2 admissible in any other proceeding or action.

3 (7) A civil fine ordered under this act shall be paid to the
4 commission and used for underground facilities safety education and
5 training.

6 (8) Each day upon which a violation described in this act
7 occurs is a separate offense.

8 Sec. 13. Excavators performing excavation in the course of
9 normal farming operations shall comply with this act beginning May
10 1, 2014.

11 Enacting section 1. 1974 PA 53, MCL 460.701 to 460.718, is
12 repealed.

13 Enacting section 2. This act does not take effect unless
14 Senate Bill No. 1084 of the 96th Legislature is enacted into law.