

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 540

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 notification system and posted on the
16 notification system website.

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

19 (f) "Caution zone" means the area within 48 inches of either
20 side of the facility marks provided by a facility owner or facility
21 operator.

22 (g) "Commission" means the Michigan public service commission
23 created in section 1 of 1939 PA 3, MCL 460.1.

24 (h) "Damage" means any impact upon or exposure of an
25 underground facility requiring its repair or replacement due to
26 weakening, partial destruction, or complete destruction of the
27 facility, including, but not limited to, the protective coating,

1 lateral support, cathodic protection, or housing of the facility.

2 (i) "Design ticket" means a communication to the notification
3 system in which a request for information regarding underground
4 facilities for predesign, design, or advance planning purposes, but
5 not marking for excavation or blasting, is made under the
6 procedures described in section 6a.

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

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

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

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

1 the following:

2 (i) Any of the following activities performed in the course of
3 farming operations:

4 (A) Any farming operation performed in the public right-of-way
5 to a depth of not more than 12 inches below the existing surface
6 grade if the farming operation is not performed within 6 feet of
7 any aboveground structure that is part of a facility.

8 (B) Any farming operation performed outside a public right-of-
9 way and within 25 yards of an existing petroleum or natural gas
10 pipeline to a depth of not more than 18 inches below the existing
11 surface grade if the farming operation is not performed within 6
12 feet of any aboveground structure that is part of a facility.

13 (C) Any farming operation performed outside a public right-of-
14 way and not within 25 yards of an existing petroleum or natural gas
15 pipeline if the farming operation is not performed within 6 feet of
16 any aboveground structure that is part of a facility.

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

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

20 (iv) Any excavation performed within a landfill unit as defined
21 in R 299.4103 of the Michigan administrative code during its active
22 life as defined in R 299.4101 of the Michigan administrative code
23 or during its postclosure period as set forth in R 299.4101 to R
24 299.4922 of the Michigan administrative code.

25 (v) Any of the following activities if those activities are
26 conducted by railroad employees or railroad contractors and are
27 carried out with reasonable care to protect any installed

1 facilities placed in the railroad right-of-way by agreement with
2 the railroad:

3 (A) Any routine railroad maintenance activities performed in
4 the public right-of-way as follows:

5 (I) Within the track area, either to the bottom of the ballast
6 or to a depth of not more than 12 inches below the bottom of the
7 railroad tie, whichever is deeper, if the routine railroad
8 maintenance activity is not performed within 6 feet of any
9 aboveground structure that is part of a facility that is not owned
10 or operated by that railroad.

11 (II) Outside the track area, not more than 12 inches below the
12 ground surface, if the routine railroad maintenance activity is not
13 performed within 6 feet of any aboveground structure that is part
14 of a facility that is not owned or operated by that railroad.

15 (B) Any routine railroad maintenance activities performed to a
16 depth of not more than 18 inches below the flow line of a ditch or
17 the ground surface in the railroad right-of-way, excluding the
18 public right-of-way, if the routine railroad maintenance activity
19 is not performed within 6 feet of any aboveground structure that is
20 part of a facility that is not owned or operated by that railroad.

21 (vi) Routine maintenance or preventative maintenance as those
22 terms are defined in section 10c of 1951 PA 51, MCL 247.660c, to a
23 depth of not more than 12 inches below the roadway and any shoulder
24 of a street, county road, or highway.

25 (n) "Excavator" means any person performing excavation or
26 blasting.

27 (o) "Facility" or "underground facility" means an underground

1 or submerged conductor, pipe, or structure, including, but not
2 limited to, a conduit, duct, line, pipe, wire, or other device and
3 its appurtenances used to produce, store, transmit, or distribute a
4 utility service, including communications, data, cable television,
5 electricity, heat, natural or manufactured gas, oil, petroleum
6 products, steam, sewage, video, water, and other similar
7 substances, including environmental contaminants or hazardous
8 waste.

9 (p) "Facility operator" means a person that controls the
10 operation of a facility.

11 (q) "Facility owner" means a person that owns a facility.

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

14 (s) "Farming operations" means plowing, cultivating, planting,
15 harvesting, and similar operations routine to most farms and that
16 are performed on a farm. Farming operations do not include
17 installation of drainage tile, underground irrigation lines, or the
18 drilling of a well.

19 (t) "Governmental agency" means the state and its political
20 subdivisions, including counties, townships, cities, villages, or
21 any other governmental entity.

22 (u) "Mark", "marks", or "marking" means the temporary
23 identification on the surface grade of the location of a facility
24 in response to a ticket as described in section 7.

25 (v) "Notification system" means MISS DIG System, Inc., a
26 Michigan nonprofit corporation formed and operated by each facility
27 owner and facility operator to administer a 1-call system for the

1 location of facilities, or any successor to this corporation.

2 (w) "Person" means an individual, firm, joint venture,
3 partnership, corporation, association, governmental agency,
4 department or agency, utility cooperative, or joint stock
5 association, including any trustee, receiver, assignee, or personal
6 representative thereof.

7 (x) "Positive response" means the procedure administered by
8 the notification system to allow excavators to determine whether
9 all facility owners or facility operators contacted under a ticket
10 have responded in accordance with this act.

11 (y) "Public right-of-way" means the area on, below, or above a
12 public roadway, highway, street, alley, easement, or waterway.

13 (z) "Railroad" means that term as defined in section 109 of
14 the railroad code of 1993, 1993 PA 354, MCL 462.109.

15 (aa) "Safe zone" means an area 48 inches or more from either
16 side of the facility marks provided by a facility owner or facility
17 operator.

18 (bb) "Soft excavation" means a method and technique designed
19 to prevent contact damage to underground facilities, including, but
20 not limited to, hand-digging, cautious digging with nonmechanical
21 tools, vacuum excavation methods, or use of pneumatic hand tools.

22 (cc) "Start date" means the date that a proposed excavation or
23 blasting is expected to begin as indicated on a ticket.

24 (dd) "Ticket" means a communication from the notification
25 system to a facility owner or facility operator requesting the
26 marking of underground facilities, based on information provided by
27 an excavator in a dig notice.

1 (ee) "White lining" means marking by an excavator of the area
2 of a proposed excavation or blasting, with white paint or flags, or
3 both, before giving notice to the notification system.

4 Sec. 4. (1) Facility owners and facility operators shall
5 continue to operate and be members of MISS DIG Systems, Inc., a
6 Michigan nonprofit corporation, that shall have the duties and
7 undertake the responsibilities of the notification system under
8 this act on and after the effective date of this act. The
9 notification system responsibilities and duties do not include the
10 physical marking of facilities, which is the responsibility of a
11 facility owner or facility operator upon notification under this
12 act.

13 (2) The notification system and its procedures shall be
14 governed by its board of directors and in accordance with its
15 current articles of incorporation and bylaws as of the effective
16 date of this act, with any future changes made in accordance with
17 the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to
18 450.3192, and the notification system's articles, bylaws, and board
19 procedures. The notification system shall request input regarding
20 its policies from all interested persons, including facility owners
21 and facility operators, excavators, marking service providers, and
22 governmental agencies.

23 (3) Funding for the notification system operations shall be
24 established by the notification system, including through fees
25 based on a reasonable assessment of operating costs among facility
26 owners or facility operators. A facility owner or facility operator
27 shall not charge a fee to excavators for marking facilities under

1 this act.

2 (4) Facility owners and facility operators shall be members of
3 and participate in the notification system and pay the fees levied
4 by the notification system under this section. This obligation and
5 the requirements of this act for facility owners and facility
6 operators do not apply to persons owning or operating a facility
7 located on real property the person owns or occupies if the
8 facility is operated solely for the benefit of that person.

9 (5) Owners of real property on which there is a farm
10 operation, as that term is defined in section 2 of the Michigan
11 right to farm act, 1981 PA 93, MCL 286.472, may become a nonvoting
12 member of the notification system, known as a farm member, upon
13 providing the notification system with the information necessary to
14 send the farm member a ticket for purposes of notification under
15 section 6(1). A farm member is not subject to any fees levied under
16 subsection (3).

17 (6) The notification system is exempt from taxes collected
18 under the general property tax act, 1893 PA 206, MCL 211.1 to
19 211.155.

20 Sec. 5. (1) An excavator shall provide a dig notice to the
21 notification system at least 72 hours, but not more than 14
22 calendar days, before the start of any blasting or excavation. If
23 the dig notice is given during business hours, the 72-hour period
24 shall be measured from the time the dig notice is made to the
25 notification system. If a dig notice is given before 7 a.m. on a
26 business day, the 72-hour period begins at 7 a.m. on that day. If a
27 dig notice is given on a nonbusiness day or after 5 p.m. on a

1 business day, the 72-hour period begins at 7 a.m. on the next
2 business day. All hours of nonbusiness days are excluded in
3 counting the 72-hour period. If there are multiple excavators on
4 the same site, each excavator shall provide its own dig notice.

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

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

7 (b) A description of the proposed area of blasting or
8 excavation, including the street address and a property
9 description.

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

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

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

14 (3) A ticket is valid for 21 days from the start date of the
15 excavation or blasting on the ticket as identified by the
16 excavator, except that a ticket is valid for 180 days from the
17 start date if the dig notice indicates that the proposed excavation
18 or blasting will not be completed within 21 days from the start
19 date.

20 (4) An excavator shall comply with the notification system
21 procedures and all requirements of this act.

22 (5) Except as otherwise provided in this subsection, before
23 blasting or excavating in a caution zone, an excavator shall expose
24 all marked facilities in the caution zone by soft excavation. If
25 conditions make complete exposure of the facility impractical, an
26 excavator shall consult with the facility owner or facility
27 operator to reach agreement on how to protect the facility. For

1 excavations in a caution zone parallel to a facility, an excavator
2 shall use soft excavation at intervals as often as reasonably
3 necessary to establish the precise location of the facility. An
4 excavator may use power tools and power equipment in a caution zone
5 only after the facilities are exposed or the precise location of
6 the facilities is established.

7 (6) An excavator shall provide support or bracing of
8 facilities or excavation walls in an excavation or blasting area
9 that are reasonably necessary for protection of the facilities.

10 (7) An excavator shall provide notification to the
11 notification system if facility markings are destroyed or covered
12 by excavation or blasting activities or if a ticket expires before
13 the commencement of excavation. If a ticket expires before the
14 commencement of excavation, an excavator shall provide a new dig
15 notice to the notification system, and comply with subsection (1).

16 (8) An excavator shall provide notification to the
17 notification system requesting additional assistance if the
18 location of a marked facility within the approximate location
19 cannot be determined.

20 (9) An excavator shall provide immediate additional notice to
21 the notification system and stop excavation in the immediate
22 vicinity if the excavator has reason to suspect the presence of an
23 unmarked facility due to any 1 of the following:

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

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

26 (c) A positive response from a facility owner or facility
27 operator indicating the presence of a facility with no marks

1 visible.

2 (10) If an excavator contacts or damages a facility, the
3 excavator shall provide immediate notice to the facility owner or
4 facility operator.

5 (11) If an excavator damages a facility resulting in the
6 escape of any flammable, toxic, or corrosive gas or liquid, or
7 endangering life, health, or property, the excavator shall call 9-
8 1-1 and provide immediate notice to the facility owner or facility
9 operator. The excavator shall also take reasonable measures to
10 protect the excavator, those in immediate danger, the general
11 public, and the environment until the facility owner or facility
12 operator, or emergency first responders, have arrived and taken
13 control of the site.

14 (12) An excavator shall provide prompt emergency notice to the
15 notification system for any proposed excavation or blasting in an
16 emergency. In an emergency, blasting or excavation required to
17 address the conditions of the emergency may be performed as the
18 emergency conditions reasonably require, subject to the provisions
19 in this act for emergency notice and marking facilities in response
20 to an emergency notice.

21 (13) If the location of a proposed excavation or blasting
22 cannot be described in a manner sufficient to enable the facility
23 owner or facility operator to ascertain the precise tract or parcel
24 involved, an excavator shall provide white lining in advance of
25 submitting a ticket or additional assistance to the facility owner
26 or facility operator on reasonable request to identify the area of
27 the proposed excavation or blasting.

1 (14) For purposes of this section, notice to the notification
2 system constitutes notice to all facility owners or facility
3 operators regarding facilities located in the area of the proposed
4 excavation or blasting.

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

8 Sec. 6. (1) The notification system shall receive dig notice
9 notification of proposed excavation and blasting activities and
10 promptly transmit a ticket to facility owners or facility operators
11 of facilities in the area of the proposed excavation or blasting.
12 The notification system shall provide alternative means of access
13 and notification to the system. Except for shutdowns caused by acts
14 of nature, war, or terrorism, the notification system shall be
15 available 24 hours per day, 7 days per week.

16 (2) The notification system shall publicize the availability
17 and use of the notification system and educate the public,
18 governmental agencies, excavators, farm operators, facility owners,
19 and facility operators regarding the practices and procedures of
20 the notification system, the requirements of this act, and
21 practices to protect underground facilities from damage.

22 (3) The notification system shall administer a positive
23 response system to allow excavators to determine whether all of the
24 facility owners or facility operators in the area have responded to
25 a ticket and whether a particular facility owner or facility
26 operator does not have facilities in the area of a proposed
27 excavation or blasting.

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

7 (5) The notification system shall expedite the processing of
8 any emergency notice it receives under this act.

9 (6) The notification system shall receive design tickets under
10 the procedures described in section 6a and transmit them to
11 facility owners or facility operators.

12 Sec. 6a. (1) The notification system shall establish
13 reasonable procedures, including marking response times, for design
14 ticket notification to facility owners or facility operators of
15 requests for project design or planning services to determine the
16 type, size, and general location of facilities during the planning
17 and design stage of a construction or demolition project. Facility
18 owners or operators may charge the person requesting project design
19 or planning services separate fees for design or planning services.

20 (2) Procedures under this section do not affect or alter the
21 obligation of excavators to provide notice of blasting or
22 excavation under section 5.

23 (3) The response to a design ticket is to provide general
24 information regarding the location of underground facilities, not
25 to mark any facilities. However, if a facility owner or operator
26 does not have drawings or records that show the location of a
27 facility, the facility owner or operator shall mark that facility

1 under the procedures described in section 7. A design ticket or
2 information provided in response to a design ticket does not
3 satisfy the requirement under this act for excavation or blasting
4 notice to the notification system or marking the approximate
5 location of facilities for blasting or excavation.

6 Sec. 7. (1) A facility owner or facility operator shall
7 respond to a ticket by the start date and time for the excavation
8 or blasting under section 5(1) by marking its facilities in the
9 area of the proposed excavation or blasting in a manner that
10 permits the excavator to employ soft excavation to establish the
11 precise location of the facilities.

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

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

18 (b) Pink - temporary survey markings.

19 (c) Red - electric power lines, cables, conduit, and lighting
20 cables.

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

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

24 (f) Blue - potable water.

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

26 (h) Green - sewers and drain lines.

27 (3) A facility owner or facility operator shall provide

1 notification to the notification system using positive response.

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

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

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

21 (7) A facility owner or facility operator shall respond within
22 3 hours to an emergency notice, or before the start day and time
23 provided in an emergency notice if that start day and time is more
24 than 3 hours from the time of notice.

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

1 (9) This section does not apply to the state transportation
2 department or to the marking of a county or intercounty drain by a
3 county drain commissioner's office or drainage board.

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

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

21 (2) An excavator or a farmer engaged in farming operations
22 that complies with this act is not responsible for damages that
23 occur to a facility that is improperly marked, not marked, or
24 determined to be within the safe zone.

25 (3) An owner of a farm who complies with this act is not
26 liable for any damages to a facility if the damage occurred in the
27 course of farming operations, except in those lands within the

1 public right-of-way, unless the owner intentionally damaged the
2 underground facility or acted with wanton disregard or recklessness
3 in damaging the facility. As used in this subsection, "owner"
4 includes a family member, employee, or tenant of the owner.

5 Sec. 10. This act does not authorize, affect, or impair local
6 ordinances, charters, or other provisions of law requiring permits
7 to be obtained before excavating or tunneling in a public street or
8 highway or to construct or demolish buildings or other structures
9 on private property. A permit issued by a governmental agency does
10 not relieve a person from the responsibility of complying with this
11 act. The failure of any person who has been granted a permit to
12 comply with this act does not impose any liability upon the
13 governmental agency issuing the permit.

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

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

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

21 (c) Willfully removes or otherwise destroys stakes or other
22 physical markings used to mark the approximate location of
23 underground facilities unless that removal or destruction occurs
24 after the excavation or blasting is completed or as an expected
25 consequence of the excavation or blasting activity.

26 (2) Upon complaint filed with the commission or upon the
27 commission's own motion, following notice and hearing, a person,

1 other than a governmental agency, who violates any of the
2 provisions of this act may be ordered to pay a civil fine of not
3 more than \$5,000.00 for each violation. In addition to or as an
4 alternative to any fine, the commission may require the person to
5 obtain reasonable training to assure future compliance with this
6 act. Before filing a complaint under this subsection, a person
7 shall attempt to settle the dispute with the adverse party or
8 parties using any reasonable means of attempted resolution
9 acceptable to the involved parties. In determining the amount of
10 any fine, the commission shall consider all of the following:

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

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

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

16 (d) The degree of culpability of the person charged and of the
17 complainant.

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

19 (3) A commission determination under subsection (2) shall not
20 be used against a party in any action or proceeding before any
21 court. A complaint filed under subsection (2) does not limit a
22 person's right to bring a civil action to recover damages that
23 person incurred arising out of a violation of the requirements of
24 this act.

25 (4) The commission shall develop forms with instructions and
26 may promulgate administrative rules for processing complaints under
27 this act, pursuant to the administrative procedures act of 1969,

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1 1969 PA 306, MCL 24.201 to 24.328.

2 (5) Not later than October 1, 2014, the commission shall
3 establish requirements for reporting incidents involving damage to
4 underground facilities.

[(6) Beginning April 1, 2015, the commission shall maintain
information on damaged facilities reported under subsection (5),
including, but not limited to, any damage that occurs during excavation,
digging, or blasting that is excluded from the definition of excavation
under section 3(m). The commission shall make any information maintained
under this subsection publicly available on its website.]

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

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

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

14 (a) If the commission has not issued an order against the
15 governmental agency under this section within the preceding 12
16 months, a civil fine of not more than \$5,000.00. In determining the
17 amount of the fine, the commission shall consider the factors in
18 section 11(2).

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

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

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

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

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

7 (ii) If the violation of this act by the governmental agency
8 caused damage to the facilities of the facility owner or facility
9 operator, that the governmental agency pay to the owner or operator
10 the cost of repair of the facilities.

11 (4) A party to a complaint filed under this section or section
12 11 may file an appeal of a commission order issued under this
13 section or section 11 in the Ingham county circuit court.

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

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

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

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

23 Sec. 13. An individual engaged in a farming operation on a
24 farm shall comply with this act beginning May 1, 2014.

25 Enacting section 1. 1974 PA 53, MCL 460.701 to 460.718, is
26 repealed.

27 Enacting section 2. This act takes effect [\[April 1, 2014.\]](#)

Senate Bill No. 540 (H-1) as amended November 5, 2013

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2 Enacting section 3. This act does not take effect unless
3 Senate Bill No. 539 of the 97th Legislature is enacted into law.