

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

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

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

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

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

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

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

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

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

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

25 (2) The call system and its procedures shall be governed by
26 its board of directors and in accordance with its current articles
27 of incorporation and bylaws as of the effective date of this act,

1 with any future changes made in accordance with the nonprofit
2 corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, and the
3 call system's articles, bylaws, and board procedures. The call
4 system shall request input regarding its policies from all
5 interested persons, including facility owners and facility
6 operators, excavators, marking service providers, and governmental
7 agencies.

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

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

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

23 Sec. 5. (1) An excavator shall provide a dig notice to the
24 call system at least 72 hours, but not more than 14 calendar days,
25 before the start of any blasting or excavation. If the dig notice
26 is given during business hours, the 72-hour period shall be
27 measured from the time the dig notice is made to the call system.

1 If a dig notice is given before 7 a.m. on a business day, the 72-
2 hour period begins at 7 a.m. on that day. If a dig notice is given
3 on a nonbusiness day or after 5 p.m. on a business day, the 72-hour
4 period begins at 7 a.m. on the next business day. All hours of
5 nonbusiness days are excluded in counting the 72-hour period. If
6 there are multiple excavators on the same site, each excavator
7 shall provide its own dig notice.

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

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

10 (b) A description of the proposed area of blasting or
11 excavation, including the street address and a property
12 description.

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

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

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

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

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

23 (b) A ticket is valid for 3 years from the start date if the
24 proposed excavation is being performed on a farm and all of the
25 following occur:

26 (i) A dig notice is provided indicating that the proposed
27 excavation is being performed on a farm.

1 (ii) The excavator locates all marked facilities as provided in
2 this section.

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

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

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

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

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

25 (7) An excavator shall provide notification to the call system
26 if facility markings are destroyed or covered by excavation or
27 blasting activities or if a ticket expires before the commencement

1 of excavation. If a ticket expires before the commencement of
2 excavation, an excavator shall provide a new dig notice to the call
3 system, and comply with subsection (1).

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

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

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

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

13 (c) A positive response from a facility owner or facility
14 operator indicating the presence of a facility with no marks
15 visible.

16 (10) If an excavator contacts or damages a facility, the
17 excavator shall provide immediate notice to the facility owner or
18 facility operator.

19 (11) If an excavator damages a facility resulting in the
20 escape of any flammable, toxic, or corrosive gas or liquid, or
21 endangering life, health, or property, the excavator shall call 9-
22 1-1 and provide immediate notice to the facility owner or facility
23 operator. The excavator shall also take reasonable measures to
24 protect the excavator, those in immediate danger, the general
25 public, and the environment until the facility owner or facility
26 operator, or emergency first responders, have arrived and taken
27 control of the site.

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

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

15 (14) For purposes of this section, notice to the call system
16 constitutes notice to all facility owners or facility operators
17 regarding facilities located in the area of the proposed excavation
18 or blasting.

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

22 Sec. 6. (1) The call system shall receive dig notice
23 notification of proposed excavation and blasting activities and
24 promptly transmit a ticket to facility owners or facility operators
25 of facilities in the area of the proposed excavation or blasting.
26 The call system shall provide alternative means of access and
27 notification to the system. Except for shutdowns caused by acts of

1 nature, war, or terrorism, the call system shall be available 24
2 hours per day, 7 days per week.

3 (2) The call system shall publicize the availability and use
4 of the call system and educate the public, governmental agencies,
5 excavators, facility owners, and facility operators regarding the
6 practices and procedures of the call system and the requirements of
7 this act.

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

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

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

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

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

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

7 (b) Pink - temporary survey markings.

8 (c) Red - electric power lines, cables, conduit, and lighting
9 cables.

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

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

13 (f) Blue - potable water.

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

15 (h) Green - sewers and drain lines.

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

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

23 (5) If a facility owner or facility operator receives a
24 request under section 5(8) or (9), that facility owner or facility
25 operator shall provide additional assistance to an excavator within
26 3 hours of a request made by the excavator during business hours.
27 An excavator and a facility owner or facility operator may agree to

Senate Bill No. 1083 as amended November 29, 2012

1 an extension of the time for additional assistance. If a request
2 for additional assistance is made at a time when the additional
3 assistance cannot be provided during normal business hours or
4 assistance is required at a remote rural location, the response
5 time shall be no later than 3 hours after the start of the next
6 business day or a time based on mutual agreement.

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

10 (7) A facility owner or facility operator shall respond within
11 3 hours to an emergency notice, or before the start day and time
12 provided in an emergency notice if that start day and time is more
13 than 3 hours from the time of notice.

14 (8) New facilities built after the effective date of this act
15 shall be constructed in a manner that allows their detection when
16 in use. <<A facility owner or facility operator shall notify a
landowner in writing at least 10 business days before constructing
a new facility on the landowner's property.>>

17 (9) This section does not apply to the state transportation
18 department.

19 Sec. 8. This act does not limit the right of an excavator,
20 facility owner, or facility operator to seek legal relief and
21 recovery of actual damages incurred and equitable relief in a civil
22 action arising out of a violation of the requirements of this act,
23 or to enforce the provisions of this act, nor shall this act
24 determine the level of damages or injunctive relief in any such
25 civil action. This section does not affect or limit the
26 availability of any contractual or legal remedy that may be
27 available to an excavator, facility owner, or facility operator

Senate Bill No. 1083 as amended November 29, 2012

1 arising under any contract to which they may be a party.

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

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

<<(3) An owner of a farm who complies with this act is not
liable for any damages to a facility if the damage occurred in
the course of normal farming operations, except in those lands
within the public right-of-way, unless the owner intentionally
damaged the underground facility or acted with wanton disregard or
recklessness in damaging the facility. As used in this subsection,
"owner" includes a family member, employee, or tenant of the owner.>>

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

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

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

27 (b) Knowingly damages an underground facility and backfills

1 the excavation or otherwise acts to conceal the damage.

2 (c) Willfully removes or otherwise destroys stakes or other
3 physical markings used to mark the approximate location of
4 underground facilities unless that removal or destruction occurs
5 after the excavation or blasting is completed or as an expected
6 consequence of the excavation or blasting activity.

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

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

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

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

24 (d) The degree of culpability of the person charged and of the
25 complainant.

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

27 (3) A commission determination under subsection (2) shall not

1 be used against a party in any action or proceeding before any
2 court. A complaint filed under subsection (2) does not limit a
3 person's right to bring a civil action to recover damages that
4 person incurred arising out of a violation of the requirements of
5 this act.

6 (4) The commission shall develop forms with instructions and
7 may promulgate administrative rules for processing complaints under
8 this act, pursuant to the administrative procedures act of 1969,
9 1969 PA 306, MCL 24.201 to 24.328.

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

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

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

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

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

27 (i) A civil fine of not more than \$10,000.00. In determining

1 the amount of the fine, the commission shall consider the factors
2 in section 11(2).

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

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

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

12 (ii) If the violation of this act by the governmental agency
13 caused damage to the facilities of the facility owner or facility
14 operator, that the governmental agency pay to the owner or operator
15 the cost of repair of the facilities.

16 (4) A party to a complaint filed under this section or section
17 11 may file an appeal of a commission order issued under this
18 section or section 11 in the Ingham county circuit court.

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

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

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

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

1 Sec. 13. Excavators performing excavation on a farm shall
2 comply with this act beginning May 1, 2014.

3 Enacting section 1. 1974 PA 53, MCL 460.701 to 460.718, is
4 repealed.

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