

# SENATE BILL No. 1083

April 19, 2012, Introduced by Senators NOFS, PAPPAGEORGE, SCHUITMAKER, PROOS,  
WALKER, COLBECK and JANSEN and referred to the Committee on Energy and Technology.

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; 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  
2 "underground facility damage prevention and safety act".

3           Sec. 3. As used in this act:

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

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

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

11 (d) "Business day" means Monday through Friday, excluding  
12 holidays observed by the call system and posted on the call system  
13 website.

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

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

20 (g) "Caution zone" means the area within 60 inches of either  
21 side of the approximate location marks provided by a facility owner  
22 or facility operator.

23 (h) "Commission" means the Michigan public service commission  
24 created by section 1 of 1939 PA 3, MCL 460.1.

25 (i) "Damage" means any impact upon or exposure of an  
26 underground facility requiring its repair or replacement due to  
27 weakening, partial destruction, or complete destruction of the

1 facility, including, but not limited to, the protective coating,  
2 lateral support, cathodic protection, or housing of the facility.

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

6 (k) "Emergency" means a sudden or unforeseen occurrence, or  
7 government-declared emergency, involving a clear and imminent  
8 danger to an individual's life or health, the environment, or  
9 property, or the interruption of essential utility services or  
10 blockage of public transportation that requires immediate  
11 excavation or blasting.

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

15 (m) "Excavation" means, other than surface maintenance,  
16 moving, removing, or otherwise displacing earth, rock, or other  
17 material below existing surface grade with power tools or power  
18 equipment, including, but not limited to, grading, trenching,  
19 digging, drilling, boring, augering, tunneling, scraping, cable or  
20 pipe plowing, and pile driving; and wrecking, razing, rending,  
21 moving, or removing a structure or mass of materials.

22 (n) "Excavator" means any person performing excavation or  
23 blasting.

24 (o) "Facility" or "underground facility" means an underground  
25 or submerged conductor, pipe, or structure, including, but not  
26 limited to, a conduit, duct, line, pipe, wire, or other device and  
27 its appurtenances used to produce, store, transmit, or distribute a

1 utility service, including communications, data, cable television,  
2 electricity, heat, natural or manufactured gas, oil, petroleum  
3 products, steam, sewage, video, water, and other similar  
4 substances, including environmental contaminants or hazardous  
5 waste.

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

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

9 (r) "Governmental body" means the state and its political  
10 subdivisions, including counties, townships, cities, villages, or  
11 any other governmental entity.

12 (s) "Mark", "marks", or "marking" means the temporary  
13 identification on the surface grade of the approximate location of  
14 a facility in response to a ticket as described in section 7(2).

15 (t) "Person" means an individual, firm, joint venture,  
16 partnership, corporation, association, governmental body,  
17 department or agency, utility cooperative, or joint stock  
18 association, including any trustee, receiver, assignee, or personal  
19 representative thereof.

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

24 (v) "Safe zone" means an area 60 inches or more from either  
25 side of the approximate location marks provided by a facility owner  
26 or facility operator.

27 (w) "Soft excavation" means a method and technique designed to

1 prevent contact damage to underground facilities, including, but  
2 not limited to, hand-digging, cautious digging with nonmechanical  
3 tools, vacuum excavation methods, or use of pneumatic hand tools.

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

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

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

16 (aa) "White lining" means the voluntary marking by an  
17 excavator, not required by this act, of the area of a proposed  
18 excavation or blasting, with white paint or flags, or both, before  
19 giving notice to the call system.

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

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

11           (3) Funding for the call system operations shall be  
12 established by the call system, including through fees based on a  
13 reasonable assessment of operating costs among facility owners and  
14 facility operators.

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

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

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

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

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

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

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

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

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

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

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

24 (5) Except as otherwise provided in this subsection, before  
25 blasting or excavating in a caution zone, an excavator shall expose  
26 all marked facilities in the caution zone by soft excavation. If  
27 conditions make complete exposure of the facility impractical, an

1 excavator shall consult with the facility owner or facility  
2 operator to reach agreement on how to protect the facility. For  
3 excavations in a caution zone parallel to a facility, an excavator  
4 shall use soft excavation at intervals as often as reasonably  
5 necessary to establish the precise location of the facility. An  
6 excavator may use power tools and power equipment in a caution zone  
7 only after the facilities are exposed or the precise location of  
8 the facilities are established.

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

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

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

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

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

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

27 (c) A positive response from a facility owner or facility



1 operator indicating the presence of a facility with no marks  
2 visible.

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

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

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

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

1 the proposed excavation or blasting.

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

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

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

17 (2) The call system shall publicize the availability and use  
18 of the call system and educate the public, governmental bodies,  
19 excavators, facility owners, and facility operators regarding the  
20 practices and procedures of the call system and the requirements of  
21 this act.

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

27 (4) The call system shall maintain adequate records of its

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

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

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

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

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

20 (b) Pink - temporary survey markings.

21 (c) Red - electric power lines, cables, conduit, and lighting  
22 cables.

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

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

26 (f) Blue - potable water.

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

1 (h) Green - sewers and drain lines.

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

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

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

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

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

26 (8) A facility owner or facility operator shall be a member of  
27 and participate in the call system, including the positive response

1 system, and pay any applicable fees. A facility owner or facility  
2 operator shall not charge a fee to excavators for locating and  
3 marking facilities under this section.

4 (9) New facilities built after the effective date of this act  
5 shall be constructed in a manner that allows their detection when  
6 in use.

7 (10) A facility owner or facility operator shall comply with  
8 the call system procedures and all requirements of this act.

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

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

26 Sec. 10. (1) A person who engages in the following conduct is  
27 guilty of a misdemeanor punishable by imprisonment for not more

1 than 1 year or a fine of not more than \$5,000.00, or both:

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

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

6 (c) Willfully removes or otherwise destroys stakes or other  
7 physical markings used to mark the approximate location of  
8 underground facilities unless that removal or destruction occurs as  
9 an expected consequence of the excavation or blasting activity.

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

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

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

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

27 (d) The degree of culpability of the person charged.

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

2 (3) The commission may develop forms with instructions and  
3 promulgate administrative rules for processing complaints under  
4 this act, pursuant to the administrative procedures act of 1969,  
5 1969 PA 306, MCL 24.201 to 24.328.

6 Enacting section 1. 1974 PA 53, MCL 460.701 to 460.718, is  
7 repealed.

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