

HOUSE BILL No. 5026

September 27, 2017, Introduced by Rep. Maturen and referred to the Committee on Transportation and Infrastructure.

A bill to amend 2013 PA 174, entitled "MISS DIG underground facility damage prevention and safety act," by amending sections 3, 4, and 7 (MCL 460.723, 460.724, and 460.727).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. As used in this act:

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

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

1 (c) "Blasting" means changing the level or grade of land or
2 rendering, tearing, demolishing, moving, or removing earth, rock,
3 buildings, structures, or other masses or materials by seismic
4 blasting or the detonation of dynamite or any other explosive
5 agent.

6 (d) "Business day" means Monday through Friday, excluding
7 holidays observed by the notification system and posted on the
8 notification system website.

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

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

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

16 (h) "Damage" means any impact upon or exposure of an
17 underground facility requiring its repair or replacement due to
18 weakening, partial destruction, or complete destruction of the
19 facility, including, but not limited to, the protective coating,
20 lateral support, cathodic protection, or housing of the facility.

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

26 (j) "Dig notice" means a communication to the notification
27 system by an excavator providing notice of intended excavation or

1 blasting activity as required by this act.

2 (k) "Emergency" means a sudden or unforeseen occurrence,
3 including a government-declared emergency, involving a clear and
4 imminent danger to life, health, or property, or imminent danger to
5 the environment, that requires immediate correction in order to
6 restore or to prevent the interruption of essential governmental
7 services, utility services, or the blockage of public
8 transportation and that requires immediate excavation or blasting.

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

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

21 (i) Any of the following activities performed in the course of
22 farming operations:

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

27 (B) Any farming operation performed outside a public right-of-

1 way and within 25 yards of an existing petroleum or natural gas
2 pipeline to a depth of not more than 18 inches below the existing
3 surface grade if the farming operation is not performed within 6
4 feet of any aboveground structure that is part of a facility.

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

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

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

12 (iv) Any excavation performed within a landfill unit as **THAT**
13 **TERM IS** defined in R 299.4103 of the Michigan ~~administrative code~~
14 **ADMINISTRATIVE CODE** during its active life as **THAT TERM IS** defined
15 in R 299.4101 of the Michigan ~~administrative code~~ **ADMINISTRATIVE**
16 **CODE** or during its postclosure period as set forth in R 299.4101 to
17 R 299.4922 of the Michigan ~~administrative code~~ **ADMINISTRATIVE CODE.**

18 (v) Any of the following activities if those activities are
19 conducted by railroad employees or railroad contractors and are
20 carried out with reasonable care to protect any installed
21 facilities placed in the railroad right-of-way by agreement with
22 the railroad:

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

25 (I) Within the track area, either to the bottom of the ballast
26 or to a depth of not more than 12 inches below the bottom of the
27 railroad tie, whichever is deeper, if the routine railroad

1 maintenance activity is not performed within 6 feet of any
2 aboveground structure that is part of a facility that is not owned
3 or operated by that railroad.

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

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

14 (vi) Routine maintenance or ~~preventative~~ **PREVENTIVE**
15 maintenance as those terms are defined in section 10c of 1951 PA
16 51, MCL 247.660c, to a depth of not more than 12 inches below the
17 roadway and any shoulder of a street, county road, or highway.

18 (n) "Excavator" means any person performing excavation or
19 blasting.

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

1 waste.

2 (p) "Facility operator" means a person that controls the
3 operation of a facility. **FACILITY OPERATOR DOES NOT INCLUDE THE**
4 **STATE TRANSPORTATION DEPARTMENT, A COUNTY ROAD COMMISSION AS THAT**
5 **TERM IS DEFINED IN SECTION 10C OF 1951 PA 51, MCL 247.660C, OR A**
6 **COUNTY DRAIN COMMISSIONER'S OFFICE OR DRAINAGE BOARD.**

7 (q) "Facility owner" means a person that owns a facility.
8 **FACILITY OWNER DOES NOT INCLUDE THE STATE TRANSPORTATION**
9 **DEPARTMENT, A COUNTY ROAD COMMISSION AS THAT TERM IS DEFINED IN**
10 **SECTION 10C OF 1951 PA 51, MCL 247.660C, OR A COUNTY DRAIN**
11 **COMMISSIONER'S OFFICE OR DRAINAGE BOARD.**

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~~**HAS** the duties and
7 ~~undertake~~**UNDERTAKES** the responsibilities of the notification
8 system under this act on and after ~~the effective date of this act.~~
9 **APRIL 1, 2014**. The notification system responsibilities and duties
10 do not include the physical marking of facilities, which is the
11 responsibility of a facility owner or facility operator upon
12 notification under this act.

13 (2) The notification system and its procedures ~~shall be~~**ARE**
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,~~**APRIL 1, 2014**, with any future changes made in
17 accordance with the nonprofit corporation act, 1982 PA 162, MCL
18 450.2101 to 450.3192, and the notification system's articles,
19 bylaws, and board procedures. The notification system shall request
20 input regarding its policies from all interested persons, including
21 facility owners and facility operators, excavators, marking service
22 providers, and governmental agencies.

23 (3) Funding for the notification system operations ~~shall~~**MUST**
24 be 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. 7. (1) A facility owner or facility operator shall
21 respond to a ticket by the start date and time for the excavation
22 or blasting under section 5(1) by marking its facilities in the
23 area of the proposed excavation or blasting in a manner that
24 permits the excavator to employ soft excavation to establish the
25 precise location of the facilities.

26 (2) A facility owner or facility operator shall mark the
27 location of each facility with paint, stakes, flags, or other

1 customary methods using the uniform color code of the American
2 ~~national standards institute~~ **NATIONAL STANDARDS INSTITUTE** as
3 follows:

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

6 (b) Pink - temporary survey markings.

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

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

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

12 (f) Blue - potable water.

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

14 (h) Green - sewers and drain lines.

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

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

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

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

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

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

13 (8) New facilities built after ~~the effective date of this act~~
14 ~~shall~~ **APRIL 1, 2014 MUST** be constructed in a manner that allows
15 their detection when in use.

16 (9) This section does not apply to the state transportation
17 department, **TO A COUNTY ROAD COMMISSION AS THAT TERM IS DEFINED IN**
18 **SECTION 10C OF 1951 PA 51, MCL 247.660C**, or to the marking of a
19 county or intercounty drain by a county drain commissioner's office
20 or drainage board.