

3/17/14 10:06 AM

Chapter No. 354

14/SS02/R356CS

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SENATE BILL NO. 2148

Originated in Senate

Fig Welch

Secretary

SENATE BILL NO. 2148

AN ACT TO AMEND SECTION 77-13-3, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITION OF THE TERM "EXCAVATE OR EXCAVATION" TO EXCLUDE ROUTINE RAILROAD MAINTENANCE ACTIVITIES AS USED IN THE LAW WHICH REGULATES EXCAVATIONS NEAR UNDERGROUND UTILITY FACILITIES; TO CREATE NEW SECTION 77-13-25, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT NOTHING IN THE CHAPTER SHALL MODIFY OR ABROGATE ANY CONTRACTUAL PROVISION ENTERED INTO BETWEEN ANY RAILROAD AND ANY OTHER PARTY OWNING OR OPERATING AN UNDERGROUND FACILITY OR UNDERGROUND UTILITY LINES WITHIN THE RAILROAD'S RIGHT-OF-WAY; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 77-13-3, Mississippi Code of 1972, is amended as follows:

77-13-3. The words defined in this section shall have the following meanings when found in this chapter:

(a) "Excavate or excavation" shall mean any operation in which earth, rock or other material or mass of material on or below the ground is moved or otherwise displaced by any means, except: (i) the tilling of the soil less than twenty-four (24) inches in depth for agricultural purposes; or (ii) an operation in which earth, rock or other material or mass of material on or

below the ground is moved or otherwise displaced to a depth of less than twelve (12) inches on private property by the property owner without the use of mechanical excavating equipment; or (iii) an operation in which earth, rock or other material or mass of material on or below the ground is moved or otherwise displaced without the use of mechanical excavating equipment to a depth of less than twelve (12) inches on private property by an excavator who is not the property owner, except when such excavation is in a clearly marked underground facility right-of-way; or (iv) routine railroad maintenance activities conducted within the track structure, drainage ditches, or within the railroad right-of-way a distance not to exceed thirty (30) feet from the outside rail of the outermost track or tracks, provided this work is performed by railroad employees or railroad contractors and is carried out with reasonable care so as to protect any underground facilities properly installed in the railroad right-of-way by agreement with the railroad. The term "excavate" shall include, but not be limited to, the operations of demolition, blasting, grading, land leveling, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, jacking, wrecking, razing, rending, moving or removing any structure or other material or mass of material on or below the ground.

(b) "Utility" shall mean any person who supplies, distributes or transports by means of underground utility lines or underground facilities any of the following materials or services:

gas, mixture of gases, petroleum, petroleum products or hazardous, toxic, flammable or corrosive liquids, electricity, telecommunications (including fiber optics), sewage, drainage, water, steam or other substances.

(c) "Underground utility lines" shall mean underground or buried cable, conduit pipes and related facilities for transportation and delivery of electricity, telecommunications (including fiber optics), water, sewage, gas, mixtures of gases, petroleum, petroleum products or hazardous, flammable, toxic or corrosive liquids.

(d) "Underground facility" shall mean any underground utility lines and other items which shall be buried or placed below ground or submerged for use in connection with underground utility lines and including, but not be limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, vaults, attachments and those portions of poles below the ground.

(e) "Person" shall mean any individual, firm, partnership, association, trustee, receiver, assignee, corporation, entity, limited liability company, utility, joint venture, municipality, state governmental unit, subdivision or instrumentality of the state, or any legal representative thereof.

(f) "Damage" shall mean the substantial weakening of structural or lateral support of underground utility lines and underground facilities, penetration or destruction of any protective coating, housing or other protective devices of an

underground utility line or underground facility, and the partial or complete severance of any underground utility line or underground facility, but does not include any operator's abandoned facility.

(g) "Operator" shall mean any person who owns or operates a utility. However, the term "operator" shall not include any railroad or the Mississippi Department of Transportation.

(h) "Working day" shall mean a twenty-four-hour period commencing from the time of receipt by Mississippi 811, Inc., of the notification in accordance with this chapter, excluding Saturdays, Sundays and legal holidays.

(i) "Mechanical excavating equipment" shall mean all equipment powered by any motor, engine, or hydraulic or pneumatic device used for excavating and shall include, but not be limited to, trenchers, bulldozers, backhoes, power shovels, scrapers, draglines, clam shells, augers, drills, cable and pipe plows and other plowing-in or pulling-in equipment.

(j) "Excavator" shall mean any person who engages directly in excavation.

(k) "Mark" shall mean the use of stakes, paint or other clearly identifiable materials to show the field location of underground facilities in accordance with the current color code standard of the American Public Works Association, or the uncovering or exposing of underground facilities so that the

excavator may readily see the location of same, or the pointing out to the excavator of certain aboveground facilities such as, but not limited to, manhole covers, valve boxes and pipe and cable risers, which indicate the location of underground facilities.

(l) "Mississippi One-Call System, Inc.," shall mean "Mississippi 811, Inc." Whenever the term "Mississippi One-Call System, Inc.," appears in this chapter, the term shall mean "Mississippi 811, Inc."

(m) "Mississippi 811, Inc.," shall mean a nonprofit corporation organized under the laws of the State of Mississippi that provides a service through which a person can notify the operator(s) of underground facilities of plans to excavate and request marking of facilities.

(n) "Abandoned facility" shall mean any underground utility line or underground utility facilities no longer used in the conduct of the owner/operator's business and are not intended to be used in the future.

(o) "Emergency excavation" shall mean excavation at times of emergency involving danger to life, health or property or a customer service outage.

(p) "Approximate location" of underground utility lines or underground facilities shall mean information about an operator's underground utility lines or underground facilities which is provided to a person by an operator and must be accurate within eighteen (18) inches measured horizontally from the outside

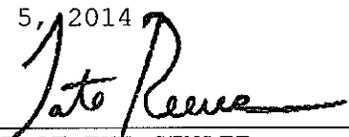
edge of each side of such operator's facility, or a strip of land eighteen (18) inches either side of the operator's field mark, or the marked width of the facility or line plus eighteen (18) inches on each side of the marked width of the facility or line.

(q) "Positive response information system" or "PRIS" means an automated information system operated and maintained by Mississippi 811, Inc., that allows excavators, locators, facility owners or operators, and other affected parties to enter and/or determine the status of a locate request.

SECTION 2. The following shall be codified as Section 77-13-21, Mississippi Code of 1972:

77-13-25. Nothing in this chapter shall modify or abrogate any contractual provision entered into between any railroad and any other party owning or operating an underground facility or underground utility lines within the railroad's right-of-way.

SECTION 3. This act shall take effect and be in force from and after July 1, 2014.

PASSED BY THE SENATE
February 5, 2014


PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 6, 2014


SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR


GOVERNOR
3/17/2014 10:06 am