

House Bill 1352

By: Representatives Wix of the 33rd, Post 1, Rogers of the 20th, and Lucas of the 105th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 9 of Title 25 of the Official Code of Georgia Annotated, the "Georgia
2 Utility Facility Protection Act," so as to revise procedures for the protection of utility
3 facilities from damage from excavating and blasting; to define and redefine terms; to change
4 provisions relating to utility owners' and operators' responsibilities with respect to locating
5 and marking of facilities; to authorize persons to act as locators on behalf of utility owners
6 and operators; to change provisions relating to responsibilities of persons engaged in
7 excavating or blasting; to eliminate provisions making certain governmental units exempt
8 from civil penalties; to provide for related matters; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Chapter 9 of Title 25 of the Official Code of Georgia Annotated, the "Georgia Utility Facility
13 Protection Act," is amended by striking Code Section 25-9-3, relating to definitions of terms
14 used in said chapter, and inserting in its place a new Code section to read as follows:

15 "25-9-3.

16 As used in this chapter, the term:

17 (1) 'Abandoned utility facility' means a utility facility taken out of service by a facility
18 owner or operator on or after January 1, 2001.

19 (2) 'Blasting' means any operation by which the level or grade of land is changed or by
20 which earth, rock, buildings, structures, or other masses or materials are rended, torn,
21 demolished, moved, or removed by the detonation of dynamite or any other explosive
22 agent.

23 (3) 'Business days' means Monday through Friday, excluding the following holidays:
24 New Year's Day, Birthday of Dr. Martin Luther King, Jr., Memorial Day, Independence
25 Day, Labor Day, Thanksgiving Day and the following Friday, Christmas Eve, and
26 Christmas Day. Any such holiday that falls on a Saturday shall be observed on the

1 preceding Friday. Any such holiday that falls on a Sunday shall be observed on the
2 following Monday.

3 (4) 'Business hours' means the time from 7:00 A.M. to 4:30 P.M. local time on business
4 days.

5 (5) 'Commission' means the Public Service Commission.

6 (6) 'Corporation' means any corporation; municipal corporation; county; authority;
7 joint-stock company; partnership; association; business trust; cooperative; organized
8 group of persons, whether incorporated or not; or receiver or receivers or trustee or
9 trustees of any of the foregoing.

10 (7) 'Damage' means any impact or exposure that results in the need to repair a utility
11 facility due to the weakening or the partial or complete destruction of the facility
12 including, but not limited to, the protective coating, lateral support, cathodic protection,
13 or the housing for the line, device, or facility.

14 (8) 'Design locate request' means a communication to the utilities protection center in
15 which a request for locating existing utility facilities for bidding, predesign, or advance
16 planning purposes is made. A design locate request may not be used for excavation
17 purposes.

18 (8.5) 'Designate' means to use an electromagnetic, magnetic, or other method to interpret
19 the presence of a subsurface utility and to stake or mark, on the surface of the tract or
20 parcel of land, the location of the utility facility.

21 (9) 'Emergency' means a sudden or unforeseen occurrence involving a clear and
22 imminent danger to life, health, or property; the interruption of utility services; or repairs
23 to transportation facilities that require immediate action.

24 (10) 'Emergency notice' means a communication to the utilities protection center to alert
25 the involved facility owners or operators of the need to excavate due to an emergency that
26 requires immediate excavation.

27 (11) 'Excavating' means any operation by which the level or grade of land is changed or
28 earth, rock, or other material below existing grade is moved and includes, without
29 limitation, grading, trenching, digging, ditching, augering, scraping, directional boring,
30 and pile driving. Such term, however, does not include routine road surface scraping
31 maintenance. 'Excavating' shall not mean routine roadway maintenance activities ~~carried~~
32 ~~out by employees of the Georgia Department of Transportation acting within the scope~~
33 ~~of their employment~~, provided that such activities occur entirely within the right of way
34 of a public road, street, or highway of the state; are carried out with reasonable care so
35 as to protect any utility facilities placed in the right of way by permit; are carried out
36 within the limits of any original excavation on the traveled way, shoulders, or drainage
37 ~~features~~ ditches of a public road, street, or highway, and do not exceed 18 inches in depth

1 below the grade existing prior to such activities; and, if involving the replacement of
 2 existing structures, replace such structures in their previous locations and at their previous
 3 depth. 'Excavating' shall not include pavement milling or pavement repair carried out by
 4 road maintenance employees or contractors, not to exceed the depth of the existing
 5 pavement or 12 inches, whichever is less.

6 (12) 'Excavator' means any person engaged in excavating or blasting as defined in this
 7 Code section.

8 (13) 'Extraordinary circumstances' means circumstances other than normal operating
 9 conditions which exist and make it impractical or impossible for a facility owner or
 10 operator to comply with the provisions of this chapter. Such extraordinary circumstances
 11 may include, but shall not be limited to, hurricanes, tornadoes, floods, ice and snow, and
 12 acts of God.

13 (14) 'Facility owner or operator' means any person or entity, with the sole exception of
 14 homeowners, who owns, operates, generates revenue from, or controls the operation of
 15 a utility facility, as defined in this Code section, for the purpose of commercial enterprise.
 16 For the purposes of this definition, for newly installed facilities, the facility owner or
 17 operator is deemed to be the ultimate owner of the facilities, not the person installing the
 18 facilities.

19 (15) 'Locate request' means a communication between an excavator and the utilities
 20 protection center in which a request for locating utility facilities is processed.

21 (15.5) 'Locator' means a person who is acting on behalf of facility owners and operators
 22 by marking the location of the utility facilities of such owners and operators. A person
 23 acting as a locator must meet qualifications promulgated by Public Service Commission
 24 rules. The use of a locator who is acting on behalf of owners and operators does not
 25 eliminate the responsibilities of owners and operators to comply with the provisions of
 26 this chapter. Furthermore, when agents, as described under subsection (b) of Code
 27 Section 25-9-7, of facility owners or operators are the only parties performing the
 28 excavation, it shall be the facility owner's or operator's responsibility to comply with the
 29 provisions of this chapter. In this particular case, the requirement is to locate the facilities
 30 prior to the actual start of excavation when facility owners or operators are not required
 31 to mark their own facilities within 48 hours.

32 (16) 'Mechanized excavating equipment' means all equipment which is powered by any
 33 motor, engine, or hydraulic or pneumatic device and which is used for excavating.

34 (16.5) 'Minimally intrusive excavation methods' means methods of excavation that
 35 minimize the potential for damage to utility facilities. Examples include, but are not
 36 limited to, air entrainment/vacuum extraction systems and water jet/vacuum excavation

1 systems operated by qualified personnel and careful hand tool usage and other methods
 2 as determined by the Public Service Commission.

3 (17) 'Person' means an individual, firm, joint venture, partnership, association,
 4 municipality, state, or other governmental unit, authority, department, agency, or a
 5 corporation and shall include any trustee, receiver, assignee, employee, agent, or personal
 6 representative thereof.

7 (17.5) 'Positive response information system' means the automated information system
 8 to be installed and operated by the utilities protection center that will allow the excavator
 9 to determine locate ticket status from information provided by the facility owner or
 10 operator.

11 (18) 'Service area' means a contiguous area or territory which encompasses the
 12 distribution system or network of utility facilities by means of which a facility owner or
 13 operator provides utility service.

14 ~~(19) 'Ticket Information Exchange System' means the automated information system to~~
 15 ~~be installed and operated by the utilities protection center that will allow the excavator~~
 16 ~~to determine locate ticket status from information provided by the facility owner or~~
 17 ~~operator. Reserved.~~

18 (20) 'Tolerance zone' means the width of the utility facility plus 24 inches on either side
 19 of the outside edge of the utility facility on a horizontal plane.

20 (21) 'Utilities protection center' or 'center' means the corporation or other organization
 21 formed by facility owners or operators to provide a joint telephone number notification
 22 service for the purpose of receiving advance notification from persons planning to blast
 23 or excavate and distributing such notifications to its affected facility owner or operator
 24 members.

25 (22) 'Utility facility' means an underground or submerged conductor, pipe, or structure
 26 used in providing electric or communications service, or an underground or submerged
 27 pipe used in carrying, providing, or gathering gas, oil or oil products, sewage, waste
 28 water, storm drainage, water or other liquids, and appurtenances thereto. ~~This does not~~
 29 ~~include utility facilities owned by a homeowner for service at the homeowner's residence.~~
 30 All utility facilities shall be considered to extend up to the connection to the customer's
 31 facilities or the edge of the public right of way, whichever is farther. 'Utility facility' does
 32 not include traffic control devices or traffic management systems."

33 SECTION 2.

34 Said chapter is further amended by striking subsection (b) of Code Section 25-9-4, relating
 35 to design locate requests, and inserting in its place new subsections (b) and (c) to read as
 36 follows:

1 "(b) Within ten working days after a design locate request has been submitted to the
 2 utilities protection center for a proposed project, the facility owner or operator shall
 3 respond by one of the following methods:

4 (1) Designate or cause to be designated by a locator in accordance with Code Section
 5 25-9-9 the location of all utility facilities within the area of the proposed excavation;

6 (2) Provide to the person submitting the design locate request the best available
 7 description of all utility facilities in the area of proposed excavation, which might include
 8 drawings of utility facilities already built in the area, or other facility records that are
 9 maintained by the facility owner or operator; or

10 (3) Allow the person submitting the design locate request or any other authorized person
 11 to inspect or copy the drawings or other records for all utility facilities within the
 12 proposed area of excavation.

13 (c) Upon responding using any of the methods provided in subsection (b) of this Code
 14 section, the facility owner or operator shall provide the response to the utilities protection
 15 center in accordance with procedures developed by the center, which may include the use
 16 of the positive response information system."

17 SECTION 3.

18 Said chapter is further amended by striking subsections (a) and (c) of Code Section 25-9-6,
 19 relating to prerequisites to blasting or excavating and marking of sites, and inserting in their
 20 respective places new subsections (a) and (c) to read as follows:

21 "(a) No person shall commence, perform, or engage in blasting or in excavating with
 22 mechanized excavating equipment on any tract or parcel of land in any county in this state
 23 unless and until the person planning the blasting or excavating has given 48 hours' notice
 24 by submitting a locate request to the utilities protection center, beginning the next business
 25 day after such notice is provided, excluding hours during days other than business days.

26 Such notice shall not be required for excavating where minimally intrusive excavation
 27 methods are used exclusively. Any locate request received by the utilities protection center
 28 after business hours shall be deemed to have been received by the utilities protection center
 29 the next business day. Such locate request shall:

30 (1) Describe the tract or parcel of land upon which the blasting or excavation is to take
 31 place with sufficient particularity, as defined by policies developed and promulgated by
 32 the utilities protection center, to enable the facility ~~owner or operator~~ owners or operators
 33 or locators to ascertain the precise tract or parcel of land involved;

34 (2) State the name, address, and telephone number of the person who will engage in the
 35 blasting or excavating;

36 (3) Describe the type of blasting or excavating to be engaged in by the person; and

1 (4) Designate the date upon which the blasting or excavating will commence."

2 "(c) Except as otherwise provided in this subsection, notice given pursuant to subsection
3 (a) of this Code section shall expire 21 calendar days following the date of such notice, and
4 no blasting or excavating undertaken pursuant to this notice shall continue after such time
5 has expired. In the event that the blasting or excavating which is the subject of the notice
6 given pursuant to subsection (a) of this Code section will not be completed within 21
7 calendar days following the date of such notice, an additional notice must be given in
8 accordance with subsection (a) of this Code section for the locate request to remain valid.
9 For emergencies, notice shall expire within three business days beginning at 7:00 A.M. the
10 day after the notification is made to the utilities protection center."

11 SECTION 4.

12 Said chapter is further amended by striking Code Section 25-9-7, relating to requirements
13 imposed on utilities facility owners and operators, and inserting in its place a new Code
14 section to read as follows:

15 "25-9-7.

16 (a) Within 48 hours beginning the next business day after the business day following
17 receipt by the utilities protection center of the locate request filed in accordance with Code
18 Section 25-9-6, excluding hours during days other than business days, each facility owner
19 or operator shall determine whether or not utility facilities are located on the tract or parcel
20 of land upon which the excavating or blasting is to occur. If utility facilities are determined
21 to be present, the facility owner or operator or locator shall designate, through stakes or
22 other marks on the surface of the tract or parcel of land, the location of utility facilities. ~~In~~
23 ~~the event of extraordinary circumstances, the facility owner or operator shall notify the~~
24 ~~utilities protection center as provided in subsection (c) of this Code section.~~ Such
25 designation of the location of utility facilities through staking or marking shall be in
26 accordance with the American Public Works Association (APWA) color code in place at
27 the time the location of the utility facility is designated. Additional marking requirements,
28 if any, beyond color code and requirements prescribed by rules of the Public Service
29 Commission will be in accordance with the policies of the utilities protection center. In the
30 event of extraordinary circumstances, the facility owner or operator shall notify the utilities
31 protection center as provided in subsection (c) of this Code section. In the case of locate
32 requests for large excavating projects, the advisory committee provided for in subsection
33 (f) of Code Section 25-9-13 shall be authorized to develop for Public Service Commission
34 approval a process for locating large excavating projects, which process, if agreed to in
35 writing by both the excavator and the facility owner or operator or locator, may replace the
36 requirement to locate all facilities within 48 hours.

1 (b) A facility owner or operator is not required to mark its own facilities within 48 hours
2 if the facility owner or operator or its agents are the only parties performing the excavation.
3 In this particular case, the requirement is to locate the facilities prior to the actual start of
4 excavation.

5 ~~(b)~~(c) Each facility owner or operator, either upon determining that no utility facility is
6 present on the tract or parcel of land or upon completion of the designation of the location
7 of any utility facilities on the tract or parcel of land as required by subsection (a) of this
8 Code section, shall provide this information to the utilities protection center in accordance
9 with procedures developed by the utilities protection center, and which may include the use
10 of the ~~Ticket Information Exchange System~~ positive response information system. The
11 facility owner or operator or its designated locator may provide such notice. In no event
12 shall such notice be provided later than midnight of the second business day following
13 receipt by the utilities protection center of actual notice filed in accordance with Code
14 Section 25-9-6. This notice is required for normal requests but not for emergency requests.

15 ~~(c)~~(d) In the event the facility owner or operator or locator is unable to designate the
16 location of the utility facilities due to extraordinary circumstances, the facility owner or
17 operator or locator shall notify the utilities protection center and provide an estimated
18 completion date in accordance with procedures developed by the utilities protection center,
19 which may include the use of the ~~Ticket Information Exchange System~~ positive response
20 information system.

21 ~~(d)~~(e) If, at the end of the time period specified in subsection (a) of this Code section, any
22 facility owner or operator or its locator has not complied with the requirements of
23 subsections (a) and ~~(b)~~(c) of this Code section, the utilities protection center shall issue a
24 second request to each such facility owner or operator. If the facility owner or operator or
25 its locator does not respond to this additional request by 12:00 Noon of that business day,
26 either by notifying the utilities protection center in accordance with procedures developed
27 by the utilities protection center that no utility facilities are present on the tract or parcel
28 of land, or by designating or causing to be designated the location of such utility facilities,
29 then the person providing notice pursuant to Code Section 25-9-6 may proceed with the
30 excavating or blasting, provided that there is no visible and obvious evidence of the
31 presence of an unmarked utility facility on the tract or parcel of land. If visible and obvious
32 evidence does exist and the facility owner or operator either refuses to locate its facilities
33 or is not a member of the utilities protection center, then the person must attempt to locate
34 those visible and obvious facilities prior to excavating. Additionally, the facility owner or
35 operator shall be liable for the actual locating costs associated with the excavator having
36 to fulfill the facility owner or operator's duties under this chapter. Such person shall not be
37 subject to any liability resulting from damage to the utility facility as a result of the blasting

1 or excavating, provided that such person complies with the requirements of Code Section
2 25-9-8.

3 ~~(e)~~(f) All utility facilities installed by facility owners or operators on or after January 1,
4 2001, shall be installed in a manner which will make them locatable using a generally
5 accepted electronic locating method by facility owners or operators.

6 ~~(f)~~(g) Facility owners or operators shall either maintain in a data base information
7 concerning the location and other characteristics of abandoned utility facilities, maintain
8 such abandoned utility facilities in a locatable manner, or remove such abandoned utility
9 facilities. Facility owners or operators shall provide information on abandoned utility
10 facilities, when possible, in response to a locate request or design locate request. When the
11 presence of an abandoned facility within an excavation site is known, the facility owner or
12 operator should attempt to locate and mark the abandoned facility or provide information
13 to the excavator regarding such facilities. When located or exposed, all abandoned utility
14 facilities shall be treated as live utility facilities."

15 **SECTION 5.**

16 Said chapter is further amended by striking Code Section 25-9-9, relating to damages and
17 liabilities, and inserting in its place a new Code section to read as follows:

18 "25-9-9.

19 (a) For the purposes of this chapter, information concerning the location of utility facilities
20 which is provided by a facility owner or operator or locator to any person must be accurate
21 to within 24 inches measured horizontally from the outer edge of either side of such utility
22 facilities. If any utility facility becomes damaged by an excavator due to the furnishing of
23 inaccurate information as to its location by the facility owner or operator or locator, such
24 excavator shall not be subject to any liability resulting from damage to the utility facility
25 as a result of the blasting or excavating, provided that such person complies with the
26 requirements of Code Section 25-9-8 and there is no visible and obvious evidence to the
27 excavator of the presence of a mismarked utility facility.

28 (b) Upon documented evidence that the person seeking information as to the location of
29 utility facilities has incurred losses or expenses due to inaccurate information, lack of
30 information, or unreasonable delays in supplying information by the facility owners or
31 operators or locators, ~~the~~ such facility owners or operators shall be liable to that person for
32 any such losses or expenses."

1 (3) The members of the advisory committee shall be immune, individually and jointly,
2 from civil liability for any act or omission done or made in the performance of their
3 duties while serving as members of such advisory committee, but only in the absence of
4 willful misconduct.

5 (g) The commission may, by judgment entered after a hearing on notice duly served on
6 any person not less than 30 days before the date of the hearing, impose a civil penalty not
7 exceeding \$10,000.00 for each violation, if it is proved that the person violated any of the
8 provisions of this chapter, as a result of a failure to exercise reasonable care. Any
9 proceeding or civil penalty undertaken pursuant to this Code section shall not prevent nor
10 preempt the right of any party to obtain civil damages for personal injury or property
11 damage in private causes of action. ~~Except as otherwise provided by law, this subsection~~
12 ~~shall not authorize the commission to impose civil penalties on any county, city, town, or~~
13 ~~state agency. The commission shall inform the counties, cities, towns, or state agencies of~~
14 ~~reports of alleged violations involving the county, city, town, or state agency and, at the~~
15 ~~request of the county, city, town, or state agency, suggest corrective action. The fine~~
16 provided for in this subsection shall not be imposed on a person engaged in farming
17 activities on land such person owns or leases."

18 **SECTION 8.**

19 All laws and parts of laws in conflict with this Act are repealed.