

House Bill 1352 (COMMITTEE SUBSTITUTE)(AM)

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 establishment of a schedule of civil penalties for local
9 governing authorities; to provide for related matters; to repeal conflicting laws; and for other
10 purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

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

16 "25-9-3.

17 As used in this chapter, the term:

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

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

24 (3) 'Business days' means Monday through Friday, excluding the following holidays:
25 New Year's Day, Birthday of Dr. Martin Luther King, Jr., Memorial Day, Independence
26 Day, Labor Day, Thanksgiving Day and the following Friday, Christmas Eve, and

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

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

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

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

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

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

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

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

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

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

1 features ditches of a public road, street, or highway, and do not exceed 18 inches in depth
 2 below the grade existing prior to such activities; and, if involving the replacement of
 3 existing structures, replace such structures in their previous locations and at their previous
 4 depth. 'Excavating' shall not include pavement milling or pavement repair carried out by
 5 road maintenance employees or contractors, not to exceed the depth of the existing
 6 pavement or 12 inches, whichever is less.

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

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

14 (14) 'Facility owner or operator' means any person or entity, with the sole exception of
 15 homeowners, who owns, operates, or controls the operation of a utility facility, as defined
 16 in this Code section, ~~for the purpose of commercial enterprise.~~

17 (14.1) 'Local governing authority' means a county, municipality, or local authority
 18 created by or pursuant to general, local, or special Act of the General Assembly or by the
 19 Constitution of the State of Georgia. The term also includes such bodies which are
 20 created or activated by an appropriate ordinance or resolution of the governing body of
 21 a county or municipality individually or jointly with other political subdivisions of this
 22 state.

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

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

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

1 (16.5) 'Minimally intrusive excavation methods' means methods of excavation that
 2 minimize the potential for damage to utility facilities. Examples include, but are not
 3 limited to, air entrainment/vacuum extraction systems and water jet/vacuum excavation
 4 systems operated by qualified personnel and careful hand tool usage and other methods
 5 as determined by the Public Service Commission.

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

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

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

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

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

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

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

1 the utilities protection center, to enable the facility ~~owner or operator~~ owners or operators
 2 or locators to ascertain the precise tract or parcel of land involved;

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

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

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

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

16 SECTION 4.

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

20 "25-9-7.

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

1 requests for large excavating projects, the advisory committee provided for in subsection
 2 (f) of Code Section 25-9-13 shall be authorized to develop for Public Service Commission
 3 approval a process for locating large excavating projects, which process, if agreed to in
 4 writing by both the excavator and the facility owner or operator or locator, may replace the
 5 requirement to locate all facilities within 48 hours.

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

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

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

26 ~~(d)~~(e) If, at the end of the time period specified in subsection (a) of this Code section, any
 27 facility owner or operator or its locator has not complied with the requirements of
 28 subsections (a) and ~~(b)~~(c) of this Code section, the utilities protection center shall issue a
 29 second request to each such facility owner or operator. If the facility owner or operator or
 30 its locator does not respond to this additional request by 12:00 Noon of that business day,
 31 either by notifying the utilities protection center in accordance with procedures developed
 32 by the utilities protection center that no utility facilities are present on the tract or parcel
 33 of land, or by designating or causing to be designated the location of such utility facilities,
 34 then the person providing notice pursuant to Code Section 25-9-6 may proceed with the
 35 excavating or blasting, provided that there is no visible and obvious evidence of the
 36 presence of an unmarked utility facility on the tract or parcel of land. If visible and obvious
 37 evidence does exist and the facility owner or operator either refuses to locate its facilities

1 or is not a member of the utilities protection center, then the person must attempt to locate
 2 those visible and obvious facilities prior to excavating. Additionally, the facility owner or
 3 operator shall be liable for the actual locating costs associated with the excavator having
 4 to fulfill the facility owner or operator's duties under this chapter. Such person shall not be
 5 subject to any liability resulting from damage to the utility facility as a result of the blasting
 6 or excavating, provided that such person complies with the requirements of Code Section
 7 25-9-8.

8 ~~(e)~~(f) All utility facilities installed by facility owners or operators on or after January 1,
 9 2001, shall be installed in a manner which will make them locatable using a generally
 10 accepted electronic locating method by facility owners or operators.

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

20 SECTION 5.

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

23 "25-9-9.

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

33 (b) Upon documented evidence that the person seeking information as to the location of
 34 utility facilities has incurred losses or expenses due to inaccurate information, lack of
 35 information, or unreasonable delays in supplying information by the facility owners or

1 operators or locators, ~~the~~ such facility owners or operators shall be liable to that person for
 2 any such losses or expenses."

3 SECTION 6.

4 Said chapter is further amended by striking Code Section 25-9-12, relating to emergencies
 5 and extraordinary circumstances, and inserting in its place a new Code section to read as
 6 follows:

7 "25-9-12.

8 The notice requirements provided by Code Section 25-9-6 shall not be required of persons
 9 performing emergency excavations or excavation in extraordinary circumstances; provided,
 10 however, that any person who engages in an emergency excavation or excavation in
 11 extraordinary circumstances shall take all reasonable precautions to avoid or minimize
 12 damage to any existing utility facilities; provided, further, that any person who engages in
 13 an emergency excavation or excavation in extraordinary circumstances shall give notice
 14 of the emergency excavation as soon as practical to the utilities protection center. In giving
 15 such notice, such person must specifically identify the dangerous condition involved. If it
 16 is later determined by the commission that the excavation did not qualify as an emergency
 17 excavation, all liabilities and penalties will accrue as if no notice had been given. For
 18 emergencies notice shall expire within three business days beginning at 7:00 A.M. the day
 19 after the notification is made to the utilities protection center."

20 SECTION 7.

21 Said chapter is further amended by striking subsections (f) and (g) of Code Section 25-9-13,
 22 relating to penalties and enforcement, and inserting in their place new subsections (f) and (g)
 23 to read as follows:

24 "(f)(1) The commission shall create an advisory committee consisting of representatives
 25 of the following groups and agencies: facility owners or operators; utilities protection
 26 center; excavators; municipalities; counties; Georgia Department of Transportation;
 27 Governor's Office of Consumer Affairs; and ~~underground line~~ locators. The advisory
 28 committee shall consist of one representative from each of the above groups and
 29 agencies, with the exception of facility owners or operators and excavators, which groups
 30 shall each have two representatives on the advisory committee. The commission
 31 chairperson or such chairperson's representative shall also serve on the advisory
 32 committee. Persons appointed to the advisory committee shall have expertise with the
 33 subject matter encompassed by the provisions of this chapter.

34 (2) The advisory committee shall assist the commission in the enforcement of this
 35 chapter, and shall perform duties to be assigned by the commission including, but not

1 limited to, the review of reported violations of this chapter, and the preparation of
 2 recommendations to the commission as to the appropriate penalties to impose on persons
 3 violating the provisions of this chapter.

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

8 (g) The commission may, by judgment entered after a hearing on notice duly served on
 9 any person not less than 30 days before the date of the hearing, impose a civil penalty not
 10 exceeding \$10,000.00 for each violation, if it is proved that the person violated any of the
 11 provisions of this chapter, as a result of a failure to exercise reasonable care. Any
 12 proceeding or civil penalty undertaken pursuant to this Code section shall not prevent nor
 13 preempt the right of any party to obtain civil damages for personal injury or property
 14 damage in private causes of action. ~~Except as otherwise provided by law, this subsection~~
 15 ~~shall not authorize the commission to impose civil penalties on any county, city, town, or~~
 16 ~~state agency. The commission shall inform the counties, cities, towns, or state agencies of~~
 17 ~~reports of alleged violations involving the county, city, town, or state agency and, at the~~
 18 ~~request of the county, city, town, or state agency, suggest corrective action. Except as~~
 19 ~~otherwise provided by law, this subsection shall not authorize the commission to impose~~
 20 ~~civil penalties on any local governing authority or state agency prior to January 1, 2005.~~
 21 ~~By January 1, 2005, the commission shall establish by rule a schedule of civil penalties to~~
 22 ~~apply to local governing authorities. Such schedule of civil penalties shall be structured to~~
 23 ~~take into account the size of the county or municipality, the number of utility customers,~~
 24 ~~the gross receipts of the utility system, and the threat to its citizens due to the presence of~~
 25 ~~underground natural gas or electric utilities. The schedule of civil penalties for local~~
 26 ~~governing authorities shall also provide that training be permitted in lieu of fines for~~
 27 ~~first-time violators unless the violation is egregious as defined by the commission.~~ The fine
 28 provided for in this subsection shall not be imposed on a person engaged in farming
 29 activities on land such person owns or leases."

30 SECTION 8.

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