

The Senate Regulated Industries and Utilities Committee offered the following substitute to SB 274:

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 comprehensively provisions relating to utility  
3 facility protection; to add provisions regarding sewer laterals; to revise definitions; to revise  
4 provisions relating to design locate requests; to revise provisions relating to the utilities  
5 protection center; to provide for commencing excavation or blasting before the end of the  
6 waiting period in some circumstances; to revise provisions relating to costs of re-marking;  
7 to revise provisions relating to the responsibilities of excavators and facility owners or  
8 operators; to provide for responsibilities of sewer system owners or operators with regard to  
9 sewer laterals; to provide for immunity from liability in certain circumstances; to provide for  
10 attempted location of utility facilities and sewer laterals by excavators in certain  
11 circumstances; to provide for installation of sewer laterals in a manner to make them  
12 locatable; to provide for use of a locator; to provide for large projects; to provide for the  
13 standard of care for trenchless excavation; to revise provisions relating to emergency  
14 excavations; to authorize ordinances requiring bonds for excavators; to provide for  
15 calculation of damages in certain civil actions; to revise provisions relating to the advisory  
16 committee; to revise provisions relating to commission enforcement of the chapter; to restrict  
17 imposition of civil penalties on local governing authorities; to provide for recommendations  
18 regarding training in lieu of penalties, findings, and offers of settlement; to provide for civil  
19 penalties; to provide for related matters; to repeal conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

21 Chapter 9 of Title 25 of the Official Code of Georgia Annotated, the "Georgia Utility Facility  
22 Protection Act," is amended by striking Code Section 25-9-2, relating to the purpose of the  
23 chapter, and inserting in lieu thereof the following:  
24

1 "25-9-2.

2 The purpose of this chapter is to protect the public from physical harm, prevent injury to  
 3 persons and property, and prevent interruptions of utility service resulting from damage to  
 4 utility facilities and sewer laterals caused by blasting or excavating operations by providing  
 5 a method whereby the location of utility facilities and sewer laterals will be made known  
 6 to persons planning to engage in blasting or excavating operations so that such persons may  
 7 observe proper precautions with respect to such utility facilities and sewer laterals."

## 8 SECTION 2.

9 Said chapter is further amended by striking Code Section 25-9-3, relating to definitions  
 10 relative to utility facility protection, and inserting in lieu thereof the following:

11 "25-9-3.

12 As used in this chapter, the term:

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

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

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

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

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

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

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

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

5 (9) 'Designate' means to stake or mark on the surface of the tract or parcel of land the  
 6 location of a utility facility or sewer lateral.

7 ~~(9)~~(10) 'Emergency' means a sudden or unforeseen occurrence involving a clear and  
 8 imminent danger to life, health, or property; the interruption of utility services; or repairs  
 9 to transportation facilities that require immediate action.

10 ~~(10)~~(11) 'Emergency notice' means a communication to the utilities protection center to  
 11 alert the involved facility owners or operators of the need to excavate due to an  
 12 emergency that requires immediate excavation.

13 ~~(11)~~(12) 'Excavating' means any operation by which the level or grade of land is changed  
 14 or earth, rock, or other material below existing grade is moved and includes, without  
 15 limitation, grading, trenching, digging, ditching, augering, scraping, directional boring,  
 16 and pile driving. Such term, however, does not include routine road surface scraping  
 17 maintenance. 'Excavating' shall not ~~mean~~ include pavement milling or pavement repair  
 18 that does not exceed the depth of the existing pavement or 12 inches, whichever is less.

19 The term shall not include other routine roadway maintenance activities carried out by  
 20 ~~employees of the Georgia Department of Transportation acting within the scope of their~~  
 21 ~~employment~~ road maintenance employees or contractors, provided that such activities  
 22 occur entirely within the right of way of a public road, street, or highway of the state; are  
 23 carried out with reasonable care so as to protect any utility facilities and sewer laterals  
 24 placed in the right of way by permit; are carried out within the limits of any original  
 25 excavation on the traveled way, shoulders, or drainage ~~features~~ ditches of a public road,  
 26 street, or highway, and do not exceed 18 inches in depth below the grade existing prior  
 27 to such activities; and, if involving the replacement of existing structures, replace such  
 28 structures in their previous locations and at their previous depth. 'Excavating' shall not  
 29 include normal farming activities.

30 ~~(12)~~(13) 'Excavator' means any person engaged in excavating or blasting as defined in  
 31 this Code section.

32 ~~(13)~~(14) 'Extraordinary circumstances' means circumstances other than normal operating  
 33 conditions which exist and make it impractical or impossible for a facility owner or  
 34 operator to comply with the provisions of this chapter. Such extraordinary circumstances  
 35 may include, but shall not be limited to, hurricanes, tornadoes, floods, ice and snow, and  
 36 acts of God.

1 ~~(14)~~(15) 'Facility owner or operator' means any person or entity with the sole exception  
2 of a homeowner who owns, operates, or controls the operation of a utility facility, ~~as~~  
3 ~~defined in this Code section, for the purpose of commercial enterprise.~~

4 (16) 'Horizontal directional drilling' or 'HDD' means a type of trenchless excavation that  
5 uses guidable boring equipment to excavate in an essentially horizontal plane without  
6 disturbing or with minimal disturbance to the ground surface.

7 (17) 'Large project' means an excavation that involves more work to locate utility  
8 facilities than can reasonably be completed within the requirements of subsection (a) of  
9 Code Section 25-9-7.

10 (18) 'Local governing authority' means a county, municipality, or local authority created  
11 by or pursuant to general, local, or special Act of the General Assembly, or by the  
12 Constitution of the State of Georgia. The term also includes any local authority that is  
13 created or activated by an appropriate ordinance or resolution of the governing body of  
14 a county or municipality individually or jointly with other political subdivisions of this  
15 state.

16 ~~(15)~~(19) 'Locate request' means a communication between an excavator and the utilities  
17 protection center in which a request for locating utility facilities, sewer laterals, or both  
18 is processed.

19 (20) 'Locator' means a person who is acting on behalf of facility owners and operators  
20 in designating the location of the utility facilities and sewer laterals of such owners and  
21 operators.

22 ~~(16)~~(21) 'Mechanized excavating equipment' means all equipment which is powered by  
23 any motor, engine, or hydraulic or pneumatic device and which is used for excavating.

24 (22) 'Minimally intrusive excavation methods' means methods of excavation that  
25 minimize the potential for damage to utility facilities and sewer laterals. Examples  
26 include, but are not limited to, air entrainment/vacuum extraction systems and water  
27 jet/vacuum excavation systems operated by qualified personnel and careful hand tool  
28 usage and other methods as determined by the Public Service Commission. The term does  
29 not include the use of trenchless excavation.

30 (23) 'Permanent marker' means a visible indication of the approximate location of a  
31 utility facility or sewer lateral that can reasonably be expected to remain in position for  
32 the life of the facility. The term includes, but is not limited to, sewer cleanouts; water  
33 meter boxes; and etching, cutting, or attaching medallions or other industry accepted  
34 surface markers to curbing, pavement, or other similar visible fixed surfaces. All  
35 permanent markers other than sewer cleanouts, water meter boxes, or any other visible  
36 component of a utility facility that establish the exact location of the facility must be  
37 placed accurately in accordance with Code Section 25-9-9 and be located within the

1 public right of way. Sewer cleanouts, water meter boxes, or any other visible component  
 2 of a utility facility that establishes the exact location of the facility must be located within  
 3 ten feet of the public right of way to be considered a permanent marker.

4 ~~(17)~~(24) 'Person' means an individual, firm, joint venture, partnership, association,  
 5 municipality local governing authority, state, or other governmental unit, authority,  
 6 department, agency, or a corporation and shall include any trustee, receiver, assignee,  
 7 employee, agent, or personal representative thereof.

8 (25) 'Positive response information system' or 'PRIS' means the automated information  
 9 system operated and maintained by the utilities protection center at its location that  
 10 allows excavators, locators, facility owners or operators, and other affected parties to  
 11 determine the status of a locate request or design locate request.

12 ~~(18)~~(26) 'Service area' means a contiguous area or territory which encompasses the  
 13 distribution system or network of utility facilities by means of which a facility owner or  
 14 operator provides utility service.

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

19 (27) 'Sewer lateral' means an individual customer service line which transports waste  
 20 water from one or more building units to a utility owned sewer facility.

21 (28) 'Sewer system owner or operator' means the owner or operator of a sewer system.  
 22 Sewer systems shall be considered to extend to the connection to the customer's facilities.

23 (29) 'Traffic control devices' means all signs, sign structures, or signals and all associated  
 24 infrastructure on which the public relies for informational, regulatory, or warning  
 25 messages concerning the public rights of way.

26 (30) 'Traffic management system' means a network of traffic control devices, monitoring  
 27 sensors, and personnel, with all associated communications and power services, including  
 28 all system control and management centers.

29 ~~(20)~~(31) 'Tolerance zone' means the width of the utility facility or sewer lateral plus 24  
 30 inches on either side of the outside edge of the utility facility or sewer lateral on a  
 31 horizontal plane.

32 (32) 'Trenchless excavation' means a method of excavation that uses boring equipment  
 33 to excavate with minimal or no disturbance to the ground surface and includes horizontal  
 34 directional drilling.

35 (33) 'Unlocatable facility' means an underground facility that cannot be marked with  
 36 reasonable accuracy using generally accepted techniques or equipment commonly used  
 37 to designate utility facilities and sewer laterals. This term includes, but is not limited to,

1 nonconductive utility facilities and sewer laterals and nonmetallic underground facilities  
 2 that have no trace wires or records that indicate a specific location.

3 ~~(21)~~(33) 'Utilities protection center' or ~~'center'~~ 'UPC' means the corporation or other  
 4 organization formed by facility owners or operators to provide a joint ~~telephone number~~  
 5 notification service for the purpose of receiving advance notification from persons  
 6 planning to blast or excavate and distributing such notifications to its affected facility  
 7 owner or operator members.

8 ~~(22)~~(34) 'Utility facility' means an underground or submerged conductor, pipe, or  
 9 structure used or designed for use in providing electric or communications service; or ~~an~~  
 10 ~~underground or submerged pipe~~ used in carrying, providing, or gathering gas, oil or oil  
 11 products, sewage, waste water, storm drainage, or water or other liquids, ~~and~~  
 12 appurtenances thereto. This does not include utility facilities owned by a homeowner for  
 13 service at the homeowner's residence. All utility facilities shall be considered to extend  
 14 up to the connection to the customer's facilities. The term does not include traffic control  
 15 devices, traffic management systems, or sewer laterals."

### 16 SECTION 3.

17 Said chapter is further amended by striking Code Section 25-9-4, relating to design locate  
 18 requests and responses, and inserting in lieu thereof the following:

19 "25-9-4.

20 (a) Any person may submit a design locate request to the ~~utilities protection center~~ UPC.

21 Such design locate request shall:

22 (1) Describe the tract or parcel of land for which the design locate request has been  
 23 submitted with sufficient particularity, as defined by policies developed and promulgated  
 24 by the ~~utilities protection center~~ UPC, to enable the facility owner or operator to ascertain  
 25 the precise tract or parcel of land involved; and

26 (2) State the name, address, and telephone number of the person who has submitted the  
 27 design locate request, as well as the name, address, and telephone number of any other  
 28 person authorized to review any records subject to inspection as provided in paragraph  
 29 (3) of subsection (b) of this Code section.

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

33 (1) Designate or cause to be designated by a locator in accordance with Code Section  
 34 25-9-9 the location of all utility facilities and sewer laterals within the area of the  
 35 proposed excavation;

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

5 (3) Allow the person submitting the design locate request or any other authorized person  
 6 to inspect or copy the drawings or other records for all utility facilities and sewer laterals  
 7 within the proposed area of excavation.

8 (c) Upon responding using any of the methods provided in subsection (b) of this Code  
 9 section, the facility owner or operator shall provide the response to the UPC in accordance  
 10 with UPC procedures."

#### 11 SECTION 4.

12 Said chapter is further amended by striking Code Section 25-9-5, relating to cooperation with  
 13 the utilities protection center and the point of contact list, and inserting in lieu thereof the  
 14 following:

15 "25-9-5.

16 (a) ~~All~~ Except as otherwise provided by subsection (b) of this Code section, all facility  
 17 owners or operators operating or maintaining utility facilities within the state shall  
 18 participate as members in and cooperate with the ~~utilities protection center~~ UPC. No  
 19 duplicative center shall be established. The activities of the ~~center~~ UPC shall be funded by  
 20 all ~~utilities~~ facility owners or operators.

21 (b) Persons who install water and sewer facilities or who own such facilities temporarily  
 22 until those facilities are accepted by a local governing authority or other entity are not  
 23 required to participate as members of the UPC and shall not be considered facility owners  
 24 or operators. All such persons shall install and maintain permanent markers, as defined in  
 25 Code Section 25-9-3, identifying all water and sewer facilities at the time of the facility  
 26 installation. All owners or operators of water and sewer facilities that are not owned or  
 27 operated by a local governing authority are facility owners or operators and shall be  
 28 members of the UPC.

29 (c) The ~~utilities protection center~~ UPC shall maintain a list of the name, address, and  
 30 telephone number of the office, department, or other source from or through which  
 31 information respecting the location of utility facilities of its participating facility owners  
 32 or operators may be obtained during business hours on business days."

#### 33 SECTION 5.

34 Said chapter is further amended by striking Code Section 25-9-6, relating to prerequisites to  
 35 blasting or excavating and marking sites, and inserting in lieu thereof the following:

1 "25-9-6.

2 (a) No person shall commence, perform, or engage in blasting or in excavating with  
 3 mechanized excavating equipment on any tract or parcel of land in any county in this state  
 4 unless and until the person planning the blasting or excavating has given 48 hours' notice  
 5 by submitting a locate request to the ~~utilities protection center~~ UPC, beginning the next  
 6 business day after such notice is provided, excluding hours during days other than business  
 7 days. Any person performing excavation is responsible for being aware of all information  
 8 timely entered into the PRIS prior to the commencement of excavation. If, prior to the  
 9 expiration of the 48 hour waiting period, all identified facility owners or operators have  
 10 responded to the locate request, and if all have indicated that their facilities are either not  
 11 in conflict or have been marked, then the person planning to perform excavation or blasting  
 12 shall be authorized to commence work, subject to the other requirements of this Code  
 13 section, without waiting the full 48 hours. The 48 hours' notice shall not be required for  
 14 excavating where minimally intrusive excavation methods are used exclusively. Any locate  
 15 request received by the ~~utilities protection center~~ UPC after business hours shall be deemed  
 16 to have been received by the ~~utilities protection center~~ UPC the next business day. Such  
 17 locate request shall:

18 (1) Describe the tract or parcel of land upon which the blasting or excavation is to take  
 19 place with sufficient particularity, as defined by policies developed and promulgated by  
 20 the ~~utilities protection center~~ UPC, to enable the facility owner or operator to ascertain  
 21 the precise tract or parcel of land involved;

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

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

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

26 (b) In the event the location upon which the blasting or excavating is to take place cannot  
 27 be described with sufficient particularity to enable the facility owner or operator to  
 28 ascertain the precise tract or parcel involved, the person proposing the blasting or  
 29 excavating shall mark the route or boundary of the site of the proposed blasting or  
 30 excavating by means of white paint, white stakes, or white flags if practical, or schedule  
 31 an on-site meeting with the locator or facility owner or operator and inform the ~~utility~~  
 32 ~~protection center~~ UPC, within a reasonable time, of the results of such meeting.

33 (c) Except as otherwise provided in this subsection, notice given pursuant to subsection  
 34 (a) of this Code section shall expire 21 calendar days following the date of such notice, and  
 35 no blasting or excavating undertaken pursuant to this notice shall continue after such time  
 36 has expired. In the event that the blasting or excavating which is the subject of the notice  
 37 given pursuant to subsection (a) of this Code section will not be completed within 21

1 calendar days following the date of such notice, an additional notice must be given in  
 2 accordance with subsection (a) of this Code section for the locate request to remain valid.  
 3 (d) For emergencies, notice shall expire at 7:00 A.M. three business days after the  
 4 notification is made to the UPC.

5 ~~(d)~~(e) Except for those persons submitting design locate requests, no person, including  
 6 facility owners or operators, shall request marking of a site through the ~~utilities protection~~  
 7 ~~center~~ UPC unless excavating is scheduled to commence. In addition, no person shall make  
 8 repeated requests for re-marking, unless the repeated request is required for excavating to  
 9 continue or due to circumstances not reasonably within the control of such person. Any  
 10 person who willfully fails to comply with this subsection shall be ~~strictly~~ liable to the  
 11 facility owner or operator for ~~three times the cost of marking the utility facility, not to~~  
 12 ~~exceed \$1,000.00~~ \$100.00 or for the costs filed with and approved by the applicable elected  
 13 authority, whichever is greater, for each repeated request for re-marking. As used in this  
 14 Code section, the term 'elected authority' includes the Public Service Commission, local  
 15 government, or any other elected official or body with rate jurisdiction over facility owners  
 16 or operators.

17 ~~(e)~~(f) If, subsequent to giving the notice to the ~~utilities protection center~~ UPC required by  
 18 subsection (a) of this Code section, a person planning excavating determines that such  
 19 work will require blasting, then such person shall promptly so notify the ~~utilities protection~~  
 20 ~~center~~ UPC and shall refrain from any blasting until the facility owner or operator responds  
 21 within 24 hours, excluding hours during days other than business days, following receipt  
 22 by the ~~utilities protection center~~ UPC of such notice.

23 ~~(f)~~(g) When a locate request is made in accordance with subsection (a) of this Code  
 24 section, excavators other than the person planning the blasting or excavating may conduct  
 25 such activity, provided that the person planning the blasting or excavating shall remain  
 26 responsible for ensuring that any stakes or other markings placed in accordance with this  
 27 chapter remain in place and reasonably visible until such blasting or excavating is  
 28 completed; and provided, further, that such blasting or excavating is:

- 29 (1) Performed on the tract or parcel of land identified in the locate request;
- 30 (2) Performed by a person authorized by and having a contractual relationship with the  
 31 person planning the blasting or excavating;
- 32 (3) The type of blasting or excavating described in the locate request; and
- 33 (4) Carried out in accordance with all other requirements of this chapter.

34 (h) Facility owners or operators may bill an excavator their costs for any requests for  
 35 re-marking other than for re-marks with no more than five individual addresses on a single  
 36 locate request. Such costs shall be documented actual costs and shall not exceed \$100.00  
 37 per re-mark request."

**SECTION 6.**

Said chapter is further amended by striking Code Section 25-9-7, relating to determining whether utility facilities are present, information to be provided to the utilities protection center, noncompliance, future utility facilities, and abandoned utility facilities, and inserting in lieu thereof the following:

"25-9-7.

(a)(1) Within 48 hours beginning the next business day after the business day following receipt by the ~~utilities protection center~~ UPC of the locate request filed in accordance with Code Section 25-9-6, excluding hours during days other than business days, each facility owner or operator shall determine whether or not utility facilities are located on the tract or parcel of land upon which the excavating or blasting is to occur. If utility facilities are determined to be present, the facility owner or operator shall designate, through stakes, flags, permanent markers, or other marks on the surface of the tract or parcel of land, the location of utility facilities. ~~In the event of extraordinary circumstances, the facility owner or operator shall notify the utilities protection center as provided in subsection (c) of this Code section.~~ This subsection shall not apply to large projects.

(2) Designation ~~Such designation~~ of the location of utility facilities through staking or flagging, permanent markers, or other marking shall be in accordance with the American Public Works Association (APWA) color code in place at the time the location of the utility facility is designated. Additional marking requirements beyond color code, if any, shall be prescribed by rules and regulations promulgated by the Public Service Commission.

(3) A facility owner or operator is not required to mark its own facilities within 48 hours if the facility owner or operator or its agents are the only parties performing the excavation; however, such facilities shall be designated prior to the actual start of excavation.

(b)(1) Within 48 hours beginning the next business day after the business day following receipt by the UPC of the locate request filed in accordance with Code Section 25-9-6, excluding hours during days other than business days, each sewer system owner or operator shall determine whether or not sewer laterals are located or likely to be located on the tract or parcel of land upon which the excavating or blasting is to occur. If sewer laterals are determined to be present or likely to be present, then the sewer system owner or operator shall assist in designating sewer laterals up to the edge of the public right of way. Such assistance shall not constitute ownership or operation of the sewer lateral by the sewer system owner or operator. Good faith compliance with provisions of this subsection in response to a locate request shall constitute full compliance with this

1 chapter, and no person shall be found liable to any party for damages or injuries as a  
 2 result of performing in compliance with the requirements of this subsection.

3 (2) To assist in designating sewer laterals, the sewer system owner or operator shall  
 4 provide its best available information regarding the location of the sewer laterals to the  
 5 excavator. This information shall be conveyed to the excavator in a manner that may  
 6 include, but shall not be limited to, any one of the following methods:

7 (A) Marking the location of sewer laterals in accordance with subsection (a) of this  
 8 section, provided that:

9 (i) Any sewer lateral designated using the best available information shall constitute  
 10 a good faith attempt and shall be deemed to be in compliance with this subsection,  
 11 provided that such mark represents only the best available information of the sewer  
 12 system owner or operator and may not be accurate; and

13 (ii) If a sewer lateral is unlocatable, a triangular green mark shall be placed at the  
 14 sewer main pointing at the address in question to indicate the presence of an  
 15 unlocatable sewer lateral;

16 (B) Providing electronic copies of or delivering the records through overnight mail or  
 17 by other means to an agreed upon location within 48 hours beginning the next business  
 18 day after the business day following receipt by the UPC of the locate request filed in  
 19 accordance with Code Section 25-9-6, excluding hours during days other than business  
 20 days;

21 (C) Arranging to meet the excavator on site to provide the best available information  
 22 about the location of the sewer laterals; or

23 (D) Any other reasonable means of conveyance approved by the advisory committee,  
 24 provided that such means are equivalent to or exceed the provisions of subparagraph  
 25 (A), (B), or (C) of this paragraph.

26 ~~(b)~~(c) Each facility owner or operator, either upon determining that no utility facility or  
 27 sewer lateral is present on the tract or parcel of land or upon completion of the designation  
 28 of the location of any utility facilities or sewer laterals on the tract or parcel of land as  
 29 required by subsection (a) or (b) of this Code section, shall provide this information to the  
 30 ~~utilities protection center~~ UPC in accordance with procedures developed by the ~~utilities~~  
 31 ~~protection center~~ UPC, and which may include the use of the ~~Ticket Information Exchange~~  
 32 ~~System~~ PRIS. In no event shall such notice be provided later than midnight of the second  
 33 business day following receipt by the ~~utilities protection center~~ UPC of actual notice filed  
 34 in accordance with Code Section 25-9-6.

35 ~~(c)~~(d) In the event the facility owner or operator is unable to designate the location of the  
 36 utility facilities or sewer laterals due to extraordinary circumstances, the facility owner or  
 37 operator shall notify the ~~utilities protection center~~ UPC and provide an estimated

1 completion date in accordance with procedures developed by the ~~utilities protection center~~  
 2 UPC, which may include the use of the ~~Ticket Information Exchange System~~ PRIS.

3 ~~(d)~~(e) If, at the end of the time period specified in ~~subsection (a)~~ subsections (a) and (b)  
 4 of this Code section, any facility owner or operator has not complied with the requirements  
 5 of subsections (a), ~~and (b), and (c)~~ of this Code section, as applicable, the ~~utilities~~  
 6 ~~protection center~~ UPC shall issue a second request to each such facility owner or operator.  
 7 If the facility owner or operator does not respond to this additional request by 12:00 Noon  
 8 of that business day, either by notifying the ~~utilities protection center~~ UPC in accordance  
 9 with procedures developed by the ~~utilities protection center~~ UPC that no utility facilities  
 10 or sewer laterals are present on the tract or parcel of land, or by designating the location of  
 11 such utility facilities or sewer laterals in accordance with the provisions of subsections (a)  
 12 and (b) of this Code section, as applicable, then the person providing notice pursuant to  
 13 Code Section 25-9-6 may proceed with the excavating or blasting, provided that there is  
 14 no visible and obvious evidence of the presence of an unmarked utility facility or sewer  
 15 lateral on the tract or parcel of land. Such person shall not be subject to any liability  
 16 resulting from damage to the utility facility or sewer lateral as a result of the blasting or  
 17 excavating, provided that such person complies with the requirements of Code Section  
 18 25-9-8.

19 (f) If visible and obvious evidence of the presence of an unmarked utility facility or sewer  
 20 lateral does exist and the facility owner or operator either refuses to comply with  
 21 subsections (a) through (d) of this Code section, as applicable, or is not a member of the  
 22 UPC, then the excavator shall attempt to designate such facility or sewer lateral prior to  
 23 excavating. The facility owner or operator shall be liable for the actual costs associated  
 24 with the excavator designating such utility facilities and sewer laterals. Such costs shall not  
 25 exceed \$500.00 or documented actual costs, whichever is greater, for each locate request.

26 ~~(e)~~(g) All utility facilities installed by facility owners or operators on or after January 1,  
 27 2001, shall be installed in a manner which will make them locatable using a generally  
 28 accepted electronic locating method ~~by facility owners or operators~~. All sewer laterals  
 29 installed on or after January 1, 2006, shall be installed in a manner which will make them  
 30 locatable by facility owners or operators using a generally accepted electronic locating  
 31 method. In the event that an unlocatable utility facility or unlocatable sewer lateral  
 32 becomes exposed when the facility owner or operator is present or in the case of sewer  
 33 laterals when the sewer utility owner or operator is present on or after January 1, 2006,  
 34 such utility facility or sewer lateral shall be made locatable through the use of a permanent  
 35 marker or an updating of permanent records.

36 ~~(f)~~(h) Facility owners or operators shall either maintain ~~in a database~~ recorded information  
 37 concerning the location and other characteristics of abandoned utility facilities, maintain

1 such abandoned utility facilities in a locatable manner, or remove such abandoned utility  
 2 facilities. Facility owners or operators shall provide information on abandoned utility  
 3 facilities, when possible, in response to a locate request or design locate request. When the  
 4 presence of an abandoned facility within an excavation site is known, the facility owner or  
 5 operator should attempt to locate and mark the abandoned facility or provide information  
 6 to the excavator regarding such facilities. When located or exposed, all abandoned utility  
 7 facilities and sewer laterals shall be treated as live utility facilities and sewer laterals.

8 (i) Notwithstanding any other provision of law to the contrary, a facility owner or operator  
 9 may use a locator to designate any or all utility facilities and sewer laterals. The use of a  
 10 locator shall not relieve the facility owner or operator of any responsibility under this  
 11 chapter. However, by contract a facility owner or operator may be indemnified by a locator  
 12 for any failure on the part of the locator to comply with the provisions of this chapter.

13 (j) By January 1, 2006, the advisory committee shall propose to the Public Service  
 14 Commission rules and processes specific to the locating of large projects. These rules shall  
 15 include, but shall not be limited to, the establishment of detailed processes. Such rules may  
 16 also include changes in the time period allowed for a facility owner or operator to comply  
 17 with the provisions of this chapter and to the time period for which designations are valid.  
 18 The commission shall promulgate rules addressing this subsection no later than June 1,  
 19 2006.

20 (k)(1) Within 48 hours beginning the next business day after the business day following  
 21 receipt by the UPC of the locate request filed in accordance with Code Section 25-9-6,  
 22 excluding hours during days other than business days, each facility owner or operator  
 23 shall determine whether or not unlocatable facilities other than sewer laterals are present.  
 24 In the event that such facilities are determined to be present, the facility owner or operator  
 25 shall exercise reasonable care in locating such facilities. The exercise of reasonable care  
 26 shall require, at a minimum, the use of the best available information to designate the  
 27 facilities and notification to the UPC of such attempted location. Placing markers or  
 28 otherwise leaving evidence of locations of facilities is deemed to be an acceptable form  
 29 of notification to the excavator or locator.

30 (2) This subsection shall not apply to sewer laterals."

### 31 SECTION 7.

32 Said chapter is further amended by striking Code Section 25-9-8, relating to the obligations  
 33 of blasters and excavators with regard to utility facilities, and inserting in lieu thereof the  
 34 following:

1 "25-9-8.

2 (a) Persons engaged in blasting or in excavating with mechanized excavating equipment  
3 shall not strike, damage, injure, or loosen any utility facility or sewer lateral which has  
4 been staked, flagged, or marked in accordance with this chapter.

5 (b) When excavating or blasting is to take place within the tolerance zone, the excavator  
6 shall exercise such reasonable care as may be necessary for the protection of the utility  
7 facility or sewer lateral, including permanent markers and paint placed to designate utility  
8 facilities. This protection shall include, but may not be limited to, hand digging, pot holing,  
9 soft digging, vacuum excavation methods, pneumatic hand tools, other mechanical methods  
10 with the approval of the facility owner or operator, or other generally accepted methods.  
11 For parallel type excavations, the existing facility shall be exposed at intervals as often as  
12 necessary to avoid damages.

13 (c) When conducting trenchless excavation the excavator must exercise reasonable care,  
14 as described in subsection (b) of this Code section, and shall take additional care to attempt  
15 to prevent damage to utility facilities and sewer laterals. The recommendations of the HDD  
16 consortium applicable to the performance of trenchless excavation set out in the document  
17 'Horizontal Directional Drilling Good Practice Guidelines,' dated May, 2001, are adopted  
18 by reference as a part of this subsection to describe such additional care. The advisory  
19 committee shall adopt more stringent criteria as it deems necessary to define additional  
20 care.

21 (d) Any person engaged in blasting or in excavating with mechanized excavating  
22 equipment who strikes, damages, injures, or loosens any utility facility or sewer lateral,  
23 regardless of whether the utility facility or sewer lateral is marked, shall immediately cease  
24 such blasting or excavating and notify the ~~utilities protection center~~ UPC and the  
25 appropriate facility owner or operator, if known. Upon receiving notice from the excavator  
26 or the ~~utilities protection center~~ UPC, the facility owner or operator shall send personnel  
27 to the location as soon as possible to effect temporary or permanent repair of the ~~damages~~  
28 damage. Until such time as the damage has been repaired, no person shall engage in  
29 excavating or blasting activities that may cause further damage to the utility facility or  
30 sewer lateral except as provided in Code Section 25-9-12."

### 31 SECTION 8.

32 Said chapter is further amended by striking subsection (a) of Code Section 25-9-9, relating  
33 to the degree of accuracy required in location information for utility facilities, and the effect  
34 on liability of inaccurate information, and inserting in lieu thereof the following:

35 "(a) For the purposes of this chapter, ~~information concerning~~ the location of utility  
36 facilities which is provided by a facility owner or operator in accordance with subsection

1 (a) of Code Section 25-9-7 to any person must be accurate to within 24 inches measured  
 2 horizontally from the outer edge of either side of such utility facilities. If any utility facility  
 3 becomes damaged by an excavator due to the furnishing of inaccurate information as to its  
 4 location by the facility owner or operator, such excavator shall not be subject to any  
 5 liability resulting from damage to the utility facility as a result of the blasting or  
 6 excavating, provided that such person complies with the requirements of Code Section  
 7 25-9-8 and there is no visible and obvious evidence to the excavator of the presence of a  
 8 mismarked utility facility."

#### 9 **SECTION 9.**

10 Said chapter is further amended by striking Code Section 25-9-12, relating to notice  
 11 requirements for emergency evacuations, and inserting in lieu thereof the following:

12 "25-9-12.

13 The notice requirements provided by Code Section 25-9-6 shall not be required of persons  
 14 performing emergency excavations or excavation in extraordinary circumstances; provided,  
 15 however, that any person who engages in an emergency excavation or excavation in  
 16 extraordinary circumstances shall take all reasonable precautions to avoid or minimize  
 17 damage to any existing utility facilities and sewer laterals; provided, further, that any  
 18 person who engages in an emergency excavation or excavation in extraordinary  
 19 circumstances shall give notice of the emergency excavation as soon as practical to the  
 20 ~~utilities protection center~~ UPC. In giving such notice, such person must specifically  
 21 identify the dangerous condition involved. If it is later determined ~~by the commission~~ that  
 22 the excavation did not qualify as an emergency excavation, all liabilities and penalties will  
 23 accrue as if no notice had been given."

#### 24 **SECTION 10.**

25 Said chapter is further amended by striking Code Section 25-9-13, relating to penalties for  
 26 violations of the chapter, and inserting in lieu thereof the following:

27 "25-9-13.

28 (a) Any person who violates the requirements of Code Section 25-9-6 and whose  
 29 subsequent excavating or blasting damages utility facilities or sewer laterals shall be  
 30 strictly liable for:

- 31 (1) ~~Any cost~~ All costs incurred by the facility owner or operator in repairing or replacing  
 32 its damaged facilities; and
- 33 (2) Any injury or damage to persons or property resulting from damaging the utility  
 34 facilities and sewer laterals.

1 (b) Each local governing authority is authorized to require by ordinance any bonds on  
 2 persons performing excavation or blasting in its jurisdiction as it may determine to assure  
 3 compliance with subsection (a) of this Code section.

4 ~~(b)~~(c) Any such person who violates the requirements of Code Section 25-9-6 and whose  
 5 subsequent excavating or blasting damages utility facilities or sewer laterals shall also  
 6 indemnify the affected facility owner or operator against all claims or costs incurred, if any,  
 7 for personal injury, property damage, or service interruptions resulting from damaging the  
 8 utility facilities and sewer laterals. Such obligation to indemnify shall not apply to any  
 9 county, city, town, or state agency to the extent permitted by law. In any civil action by a  
 10 facility owner or operator to recover the costs of repairing or replacing facilities damaged  
 11 through violation of Code Section 25-9-6 or 25-9-8, those costs shall be calculated utilizing  
 12 generally accepted accounting principles.

13 ~~(c)~~(d) In addition to the other provisions of this Code section, a professional licensing  
 14 board shall be authorized to suspend or revoke any professional or occupational license,  
 15 certificate, or registration issued to a person pursuant to Title 43 whenever such person  
 16 violates the requirements of Code Section 25-9-6 or 25-9-8.

17 ~~(d)~~(e) Subsections (a), ~~(b)~~ (c), and ~~(c)~~ (d) of this Code section shall not apply to any person  
 18 who shall commence, perform, or engage in blasting or in excavating with mechanized  
 19 equipment on any tract or parcel of land in any county in this state if the facility owner or  
 20 operator to which notice was given respecting such blasting or excavating with mechanized  
 21 equipment as prescribed in subsection (a) of Code Section 25-9-6 has failed to comply with  
 22 Code Section 25-9-7 or has failed to become a member of the ~~utilities protection center~~  
 23 UPC as required by Code Section 25-9-5.

24 ~~(e)~~(f) The commission shall enforce the provisions of this chapter. The commission may  
 25 promulgate any rules and regulations necessary to implement the commission's authority  
 26 to enforce this chapter.

27 ~~(f)~~(g)(1) The commission shall create an advisory committee consisting of:  
 28 ~~representatives of the following groups and agencies: facility owners or operators;~~  
 29 ~~utilities protection center; excavators; municipalities; counties; Georgia Department of~~  
 30 ~~Transportation; Governor's Office of Consumer Affairs; and underground line locators.~~  
 31 ~~The advisory committee shall consist of one representative from each of the above groups~~  
 32 ~~and agencies, with the exception of facility owners or operators and excavators, which~~  
 33 ~~groups shall each have two representatives on the advisory committee. The commission~~  
 34 ~~chairperson or such chairperson's representative shall also serve on the advisory~~  
 35 ~~committee.~~

36 (A) One member appointed by the Georgia Department of Transportation;

37 (B) One member appointed by the Georgia Water Pollution Control Association;

1 (C) One member appointed by the utilities protection center;

2 (D) One member appointed by the Association County Commissioners of Georgia;

3 (E) One member appointed by the Georgia Municipal Association;

4 (F) One representative of the nonmunicipal electric industry appointed by the Georgia  
5 Utilities Coordinating Council;

6 (G) Three representatives of excavators appointed by the Georgia Utilities  
7 Coordinating Council;

8 (H) One representative of locators appointed by the Georgia Utilities Coordinating  
9 Council;

10 (I) One representative of the nonmunicipal telecommunications industry appointed by  
11 the Georgia Utilities Coordinating Council;

12 (J) One representative of the nonmunicipal natural gas industry appointed by the  
13 Georgia Utilities Coordinating Council;

14 (K) One representative of the municipal gas, electric, or telecommunications industry  
15 appointed by the Georgia Municipal Association; and

16 (L) The commission chairperson or such chairperson's designee.

17 The commission chairperson or his or her designee shall serve as chairperson of the  
18 advisory committee and shall cast a vote only in the case of a tie. Persons appointed to  
19 the advisory committee shall have expert knowledge of this chapter and specific  
20 operations expertise with the subject matter encompassed by the provisions of this  
21 chapter. All entities charged with making appointments shall make such appointments  
22 within 30 days of the effective date of this subsection. The advisory committee shall  
23 evaluate the qualifications of each appointee to determine if he or she possesses the  
24 requisite expertise. Members of the existing advisory committee shall make this  
25 evaluation until the new composition of the advisory committee has been established. The  
26 new advisory committee shall be established within 60 days of the effective date of this  
27 subsection.

28 (2) The advisory committee shall assist the commission in the enforcement of this  
29 chapter, make recommendations to the commission regarding rules and regulations, and  
30 shall perform duties to be assigned by the commission including, but not limited to, the  
31 review of reported violations of this chapter; and the preparation of recommendations to  
32 the commission as to the appropriate penalties to impose on persons violating the  
33 provisions of this chapter.

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

1 ~~(g)(h)(1) The commission may, by judgment entered after a hearing on notice duly~~  
 2 ~~served on any person not less than 30 days before the date of the hearing, impose a civil~~  
 3 ~~penalty not exceeding \$10,000.00 for each violation, if it is proved that the person~~  
 4 ~~violated any of the provisions of this chapter, as a result of a failure to exercise~~  
 5 ~~reasonable care. Any proceeding or civil penalty undertaken pursuant to this Code section~~  
 6 ~~shall not prevent nor preempt the right of any party to obtain civil damages for personal~~  
 7 ~~injury or property damage in private causes of action. Except as otherwise provided by~~  
 8 ~~law, this subsection shall not authorize the commission to impose civil penalties on any~~  
 9 ~~county, city, town, or state agency. The commission shall inform the counties, cities,~~  
 10 ~~towns, or state agencies of reports of alleged violations involving the county, city, town,~~  
 11 ~~or state agency and, at the request of the county, city, town, or state agency, suggest~~  
 12 ~~corrective action. The fine provided for in this subsection shall not be imposed on a~~  
 13 ~~person engaged in farming activities on land such person owns or leases. Commission~~  
 14 ~~enforcement of this chapter shall follow the procedures described in this subsection.~~  
 15 ~~Nothing in this subsection shall limit the authority of the commission delegated from the~~  
 16 ~~federal government and authorized in other state law.~~

17 (2)(A) The commission is not authorized to impose civil penalties on any local  
 18 governing authority except as provided in this paragraph. The commission may  
 19 recommend training for local governing authorities in response to any probable or  
 20 proven violation. On or after January 1, 2007, civil penalties may be recommended for  
 21 or imposed on any local governing authority in the event that the investigators find that  
 22 the severity of an excavation violation warrants civil penalties or that a local governing  
 23 authority has demonstrated a willful pattern of noncompliance. Any such civil penalty  
 24 shall be recommended or imposed in accordance with a tiered penalty structure  
 25 designed for local governing authorities. In the event that the investigators determine  
 26 that a local governing authority has made a good faith effort to comply with this  
 27 chapter, the investigators shall not recommend a civil penalty.

28 (B) No later than January 1, 2006, the advisory committee shall recommend to the  
 29 commission for adoption a tiered penalty structure for local governing authorities. Such  
 30 structure shall take into account the size, annual budget, gross receipts, number of  
 31 utility connections and types of utilities within the territory of the local governing  
 32 authority. The advisory committee shall establish for each tier the maximum penalty  
 33 per violation and per 12 month period at a level to induce compliance with this chapter.  
 34 Such maximum penalty shall not exceed \$5,000.00 per violation or \$50,000.00 per 12  
 35 month period for the highest tier.

36 (3) If commission investigators find that a probable violation has occurred, they may  
 37 recommend training in lieu of penalties to any person for any violation. The commission

1 shall provide suggestions for corrective action to any person requesting such assistance.  
2 Commission investigators shall make recommended findings or offers of settlement to  
3 the respondent.

4 (4) Any respondent may accept or disagree with the settlement recommended by the  
5 investigators. If the respondent disagrees with the recommended settlement, the  
6 respondent may dispute the settlement recommendation to the advisory committee. The  
7 advisory committee shall then render a recommendation either supporting the  
8 investigators' recommendation, rejecting the investigators' recommendation, or  
9 substituting its own recommendation. With respect to an investigation of any probable  
10 violation committed by a local governing authority, any recommendation by the advisory  
11 committee shall be in accordance with the provisions of paragraph (2) of this subsection.  
12 In its deliberations the advisory committee shall consider the gravity of the violation or  
13 violations; the degree of the respondent's culpability; the respondent's history of prior  
14 offenses; and such other mitigating factors as may be appropriate. If the advisory  
15 committee determines that a respondent has made a good faith effort to comply with this  
16 chapter, the committee shall not recommend civil penalties against the respondent.

17 (5) If any respondent disagrees with the recommendation of the advisory committee,  
18 after notice and hearing by a hearing officer or administrative law judge, such officer or  
19 judge shall make recommendations to the commission regarding enforcement, including  
20 civil penalties. Any such recommendations relating to a local governing authority shall  
21 comply with the provisions of paragraph (2) of this subsection. The acceptance of the  
22 recommendations by the respondent at any point will stop further action by the  
23 investigators in that case.

24 (6) The commission may, by judgment entered after a hearing on notice duly served on  
25 any person not less than 30 days before the date of the hearing, impose a civil penalty not  
26 exceeding \$10,000.00 for each violation, if it is proved that the person violated any of the  
27 provisions of this chapter as a result of a failure to exercise additional care in accordance  
28 with subsection (c) of Code Section 25-9-8 or reasonable care in accordance with other  
29 provisions of this chapter. Any such recommendations relating to a local governing  
30 authority shall comply with the provisions of paragraph (2) of this subsection. Any  
31 proceeding or civil penalty undertaken pursuant to this Code section shall neither prevent  
32 nor preempt the right of any party to obtain civil damages for personal injury or property  
33 damage in private causes of action except as otherwise provided in this chapter.

34 ~~(h)~~(i) All civil penalties ordered by the commission and collected pursuant to this Code  
35 section shall be deposited in the general fund of the state treasury."

**SECTION 11.**

- 1
- 2 All laws and parts of laws in conflict with this Act are repealed.