

Senate Bill 274

By: Senator Seabaugh of the 28th

AS PASSED

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; to provide for findings and offers of settlement; to
 19 provide for civil penalties; to provide for related matters; to repeal conflicting laws; and for
 20 other purposes.

21 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

22 **SECTION 1.**

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

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 or railroad employees or contractors, provided that such
 22 activities occur entirely within the right of way of a public road, street, railroad, or
 23 highway of the state; are carried out with reasonable care so as to protect any utility
 24 facilities and sewer laterals placed in the right of way by permit; are carried out within
 25 the limits of any original excavation on the traveled way, shoulders, or drainage ~~features~~
 26 ditches of a public road, street, railroad, or highway, and do not exceed 18 inches in depth
 27 below the grade existing prior to such activities; and, if involving the replacement of
 28 existing structures, replace such structures in their previous locations and at their previous
 29 depth. 'Excavating' shall not 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 roadway or railroad signs, sign structures, or
 24 signals and all associated infrastructure on which the public relies for informational,
 25 regulatory, or warning messages concerning the public or railroad 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 installed 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 until those
 22 facilities are accepted by a local governing authority or other entity are not required to
 23 participate as members of the UPC and shall not be considered facility owners or operators.

24 All such persons shall install and maintain permanent markers, as defined in Code Section
 25 25-9-3, identifying all water and sewer facilities at the time of the facility installation.
 26 Notwithstanding the above, all owners or operators of water and sewer facilities that
 27 provide service from such facilities are considered facility owners or operators and shall
 28 be 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 actual costs, whichever is greater, for each repeated
13 request for re-marking.

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

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

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

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

SECTION 6.

1
2 Said chapter is further amended by striking Code Section 25-9-7, relating to determining
3 whether utility facilities are present, information to be provided to the utilities protection
4 center, noncompliance, future utility facilities, and abandoned utility facilities, and inserting
5 in lieu thereof the following:

6 "25-9-7.

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

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

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

28 (b)(1) Within 48 hours beginning the next business day after the business day following
29 receipt by the UPC of the locate request filed in accordance with Code Section 25-9-6,
30 excluding hours during days other than business days, each sewer system owner or
31 operator shall determine whether or not sewer laterals are located or likely to be located
32 on the tract or parcel of land upon which the excavating or blasting is to occur. If sewer
33 laterals are determined to be present or likely to be present, then the sewer system owner
34 or operator shall assist in designating sewer laterals up to the edge of the public right of
35 way. Such assistance shall not constitute ownership or operation of the sewer lateral by
36 the sewer system owner or operator. Good faith compliance with provisions of this
37 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 facsimile or by
 17 other means to an agreed upon location within 48 hours beginning the next business day
 18 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; provided, however, that for local governing authorities that receive fewer than 50
 21 locate requests annually, the local governing authority may designate the agreed upon
 22 location and communicate such designation to the excavator;

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

25 (D) Providing the records through other processes and to other locations approved by
 26 documented agreement between the excavator and the facility owner or operator; or

27 (E) Any other reasonable means of conveyance approved by the commission after
 28 receiving recommendations from the advisory committee, provided that such means are
 29 equivalent to or exceed the provisions of subparagraph (A), (B), or (C) of this
 30 paragraph.

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

1 business day following receipt by the ~~utilities protection center~~ UPC of actual notice filed
2 in accordance with Code Section 25-9-6.

3 ~~(c)~~(d) In the event the facility owner or operator is unable to designate the location of the
4 utility facilities or sewer laterals due to extraordinary circumstances, the facility owner or
5 operator shall notify the ~~utilities protection center~~ UPC and provide an estimated
6 completion date in accordance with procedures developed by the ~~utilities protection center~~
7 UPC, which may include the use of the ~~Ticket Information Exchange System~~ PRIS.

8 ~~(d)~~(e) If, at the end of the time period specified in ~~subsection (a)~~ subsections (a) and (b)
9 of this Code section, any facility owner or operator has not complied with the requirements
10 of subsections (a), and (b), and (c) of this Code section, as applicable, the ~~utilities~~
11 ~~protection center~~ UPC shall issue a second request to each such facility owner or operator.
12 If the facility owner or operator does not respond to this additional request by 12:00 Noon
13 of that business day, either by notifying the ~~utilities protection center~~ UPC in accordance
14 with procedures developed by the ~~utilities protection center~~ UPC that no utility facilities
15 or sewer laterals are present on the tract or parcel of land, or by designating the location of
16 such utility facilities or sewer laterals in accordance with the provisions of subsections (a)
17 and (b) of this Code section, as applicable, then the person providing notice pursuant to
18 Code Section 25-9-6 may proceed with the excavating or blasting, provided that there is
19 no visible and obvious evidence of the presence of an unmarked utility facility or sewer
20 lateral on the tract or parcel of land. Such person shall not be subject to any liability
21 resulting from damage to the utility facility or sewer lateral as a result of the blasting or
22 excavating, provided that such person complies with the requirements of Code Section
23 25-9-8.

24 (f) If visible and obvious evidence of the presence of an unmarked utility facility or sewer
25 lateral does exist and the facility owner or operator either refuses to comply with
26 subsections (a) through (d) of this Code section, as applicable, or is not a member of the
27 UPC, then the excavator shall attempt to designate such facility or sewer lateral prior to
28 excavating. The facility owner or operator shall be liable for the actual costs associated
29 with the excavator designating such utility facilities and sewer laterals. Such costs shall not
30 exceed \$100.00 or documented actual costs, whichever is greater, for each locate request.

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

1 laterals when the sewer utility owner or operator is present on or after January 1, 2006,
2 such utility facility or sewer lateral shall be made locatable through the use of a permanent
3 marker or an updating of permanent records.

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

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

18 (j) By January 1, 2006, the advisory committee shall propose to the Public Service
19 Commission rules and processes specific to the locating of large projects. These rules shall
20 include, but shall not be limited to, the establishment of detailed processes. Such rules may
21 also include changes in the time period allowed for a facility owner or operator to comply
22 with the provisions of this chapter and to the time period for which designations are valid.
23 The commission shall promulgate rules addressing this subsection no later than June 1,
24 2006.

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

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

SECTION 7.

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

"25-9-8.

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

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

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

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

SECTION 8.

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

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

SECTION 9.

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

"25-9-12.

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

SECTION 10.

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

1 "25-9-13.

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

5 (1) ~~Any cost~~ All costs incurred by the facility owner or operator in repairing or replacing
6 its damaged facilities; and

7 (2) Any injury or damage to persons or property resulting from damaging the utility
8 facilities and sewer laterals.

9 (b) Each local governing authority is authorized to require by ordinance any bonds on
10 utility contractors or on persons performing excavation or blasting within the public right
11 of way or any dedicated utility easement as it may determine to assure compliance with
12 subsection (a) of this Code section.

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

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

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

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

36 ~~(f)(g)(1) The commission shall create an advisory committee~~ The Governor shall appoint
37 an advisory committee consisting of persons who are employees or officials of or who

1 ~~represent the interests of: representatives of the following groups and agencies: facility~~
 2 ~~owners or operators; utilities protection center; excavators; municipalities; counties;~~
 3 ~~Georgia Department of Transportation; Governor's Office of Consumer Affairs; and~~
 4 ~~underground line locators. The advisory committee shall consist of one representative~~
 5 ~~from each of the above groups and agencies, with the exception of facility owners or~~
 6 ~~operators and excavators, which groups shall each have two representatives on the~~
 7 ~~advisory committee. The commission chairperson or such chairperson's representative~~
 8 ~~shall also serve on the advisory committee.~~

9 (A) One member to represent the Georgia Department of Transportation;

10 (B) One member to represent water systems or water and sewer systems owned or
 11 operated by local governing authorities;

12 (C) One member to represent the utilities protection center;

13 (D) One member to represent water systems or water and sewer systems owned or
 14 operated by counties;

15 (E) One member to represent water systems or water and sewer systems owned or
 16 operated by municipalities;

17 (F) One member to represent the nonmunicipal electric industry;

18 (G) Three members to represent excavators;

19 (H) One member to represent locators;

20 (I) One member to represent the nonmunicipal telecommunications industry;

21 (J) One member to represent the nonmunicipal natural gas industry;

22 (K) One member to represent municipal gas, electric, or telecommunications providers;
 23 and

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

25 The commission chairperson or his or her designee shall serve as chairperson of the
 26 advisory committee and shall cast a vote only in the case of a tie. Persons appointed to
 27 the advisory committee shall have expert knowledge of this chapter and specific
 28 operations expertise with the subject matter encompassed by the provisions of this
 29 chapter. The new advisory committee shall be established within 60 days of the effective
 30 date of this subsection.

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

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

21 (2)(A) The commission is not authorized to impose civil penalties on any local
 22 governing authority except as provided in this paragraph. The commission may
 23 recommend training for local governing authorities in response to any probable or
 24 proven violation. On or after January 1, 2007, civil penalties may be recommended for
 25 or imposed on any local governing authority for refusal to comply with the
 26 requirements of Code Section 25-9-7 or for other violations of Code Section 25-9-7 that
 27 result in injury to people, damage to property, or the interruption of utility service in the
 28 event that investigators find that a local governing authority has demonstrated a pattern
 29 of willful noncompliance. Civil penalties may be recommended or imposed on or after
 30 January 1, 2006, for violations of provisions of this chapter other than Code Section
 31 25-9-7 in the event that investigators find that the severity of an excavation violation
 32 warrants civil penalties or that a local governing authority has demonstrated a pattern
 33 of willful noncompliance. Any such civil penalty shall be recommended or imposed in
 34 accordance with a tiered penalty structure designed for local governing authorities. In
 35 the event that the investigators determine that a local governing authority has made a
 36 good faith effort to comply with this chapter, the investigators shall not recommend a
 37 civil penalty. For purposes of this subsection 'refusal to comply' means that a utility

1 facility owner or operator does not respond in PRIS to a locate request, does not
2 respond to a direct telephone call to locate their facilities, or other such direct refusal.
3 Refusal to comply does not mean a case where the volume of requests or some other
4 mitigating circumstance prevents the utility owner or operator from locating in
5 accordance with Code Section 25-9-7.

6 (B) No later than January 1, 2006, the advisory committee shall recommend to the
7 commission for adoption a tiered penalty structure for local governing authorities. Such
8 structure shall take into account the size, annual budget, gross receipts, number of
9 utility connections and types of utilities within the territory of the local governing
10 authority. Such penalty structure shall also take into account the number of locate
11 tickets received annually by the local governing authority, the number of locate codes
12 made annually to the local governing authority from the UPC, the number of utility
13 customers whose service may have been interrupted by violations of this chapter, and
14 the duration of such interruptions. Such penalty structure shall also consider the cost of
15 compliance. The penalty structure shall establish for each tier the maximum penalty per
16 violation and per 12 month period at a level to induce compliance with this chapter.
17 Such maximum penalty shall not exceed \$5,000.00 per violation or \$50,000.00 per 12
18 month period for the highest tier.

19 (3) If commission investigators find that a probable violation has occurred, they may
20 recommend training in lieu of penalties to any person for any violation. The commission
21 shall provide suggestions for corrective action to any person requesting such assistance.
22 Commission investigators shall make recommended findings or offers of settlement to
23 the respondent.

24 (4) Any respondent may accept or disagree with the settlement recommended by the
25 investigators. If the respondent disagrees with the recommended settlement, the
26 respondent may dispute the settlement recommendation to the advisory committee. The
27 advisory committee shall then render a recommendation either supporting the
28 investigators' recommendation, rejecting the investigators' recommendation, or
29 substituting its own recommendation. With respect to an investigation of any probable
30 violation committed by a local governing authority, any recommendation by the advisory
31 committee shall be in accordance with the provisions of paragraph (2) of this subsection.
32 In its deliberations the advisory committee shall consider the gravity of the violation or
33 violations; the degree of the respondent's culpability; the respondent's history of prior
34 offenses; and such other mitigating factors as may be appropriate. If the advisory
35 committee determines that a respondent has made a good faith effort to comply with this
36 chapter, the committee shall not recommend civil penalties against the respondent.

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

8 (6) When the respondent agrees with the advisory committee recommendation, the
 9 investigators shall present such agreement to the commission. The commission is then
 10 authorized to adopt the recommendation of the advisory committee regarding a civil
 11 penalty, or to reject such a recommendation. The commission is not authorized to impose
 12 a civil penalty greater than the civil penalty recommended by the advisory committee or
 13 to impose any civil penalty if the advisory committee does not recommend a civil
 14 penalty.

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

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

27 SECTION 11.

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