

Senate Bill 117

By: Senators Jeffares of the 17th, Tippins of the 37th, Murphy of the 27th, Mullis of the 53rd, Gooch of the 51st and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 9 of Title 25 of the Official Code of Georgia Annotated, relating to
 2 blasting or excavating near utility facilities, so as to revise and add definitions; to provide for
 3 responses by facility owners and operators regarding design locate requests; to clarify the
 4 effect of a design locate request; to require that the time frame for the requested excavation
 5 be defined in a locate request; to provide that white lining shall not obstruct certain signage
 6 and markings; to limit the expansion of tracts for blasting or excavation; to revise the time
 7 frame for acting on locate requests; to provide for strict liability for certain costs by facility
 8 owners and operators under certain circumstances; to provide for the promulgation of certain
 9 rules by the Public Service Commission; to provide for the use of reasonable care by
 10 excavators to protect utilities in tolerance zones; to provide for direction with regard to
 11 certain enforcement actions; to change the composition of the advisory committee and
 12 provide for an attendance policy at its meetings; to provide for related matters; to repeal
 13 conflicting laws; and for other purposes.

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

15 **SECTION 1.**

16 Chapter 9 of Title 25 of the Official Code of Georgia Annotated, relating to blasting or
 17 excavating near utility facilities, is amended by revising Code Section 25-9-3, relating to
 18 definitions, as follows:

19 "25-9-3.

20 As used in this chapter, the term:

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

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

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

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

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

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

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

44 (8) 'Design locate request' means a communication to the utilities protection center in
 45 which a request for locating existing utility facilities for bidding, predesign, or advance
 46 planning purposes is made. A design locate request ~~may~~ shall not be used for excavation
 47 purposes.

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

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

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

56 (12) 'Excavating' means any operation ~~by which the level or grade of land is changed or~~
 57 using mechanized equipment or explosives to move earth, rock, or other material below
 58 existing grade. ~~This is moved and includes, without limitation, grading, trenching,~~
 59 ~~digging, ditching, augering, scraping, directional boring, and pile driving. Such term,~~
 60 ~~however, does not include routine road surface scraping maintenance~~ includes but is not
 61 limited to augering, blasting, boring, digging, ditching, dredging, drilling, driving-in,
 62 grading, plowing-in, ripping, scraping, trenching, and tunneling. 'Excavating' shall not
 63 include pavement milling or pavement repair that does not exceed the depth of the

64 existing pavement or 12 inches, whichever is less. The term shall not include ~~other~~
 65 routine ~~roadway~~ road or railroad maintenance activities carried out by road maintenance
 66 or railroad employees or contractors, provided that such activities occur entirely within
 67 the right of way of a public road, street, railroad, or highway of the state; are carried out
 68 with reasonable care so as to protect any utility facilities and sewer laterals placed in the
 69 right of way by permit; are carried out within the limits of any original excavation on the
 70 traveled way, shoulders, or drainage ditches of a public road, street, railroad, or highway,
 71 and do not exceed 18 inches in depth below the grade existing prior to such activities;
 72 and, if involving the replacement of existing ~~structures~~ guard rails and sign posts, replace
 73 such ~~structures~~ guard rails and sign posts in their previous locations and at their previous
 74 depth. 'Excavating' shall not include ~~normal~~ farming activities.

75 (13) 'Excavator' means any person engaged in excavating or blasting as defined in this
 76 Code section.

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

82 (15) 'Facility owner or operator' means any person or entity with the sole exception of
 83 a homeowner who owns, operates, or controls the operation of a utility facility.

84 (16) 'Farming activities' means the tilling of the fields related to agricultural activities but
 85 does not include other types of mechanized excavating on a farm.

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

89 ~~(17)~~(18) 'Large project' means an excavation that involves more work to locate utility
 90 facilities than can reasonably be completed within the requirements of subsection (a) of
 91 Code Section 25-9-7.

92 ~~(18)~~(19) 'Local governing authority' means a county, municipality, or local authority
 93 created by or pursuant to general, local, or special Act of the General Assembly, or by the
 94 Constitution of the State of Georgia. The term also includes any local authority that is
 95 created or activated by an appropriate ordinance or resolution of the governing body of
 96 a county or municipality individually or jointly with other political subdivisions of this
 97 state.

98 ~~(19)~~(20) 'Locate request' means a communication between an excavator and the utilities
 99 protection center in which a request for ~~locating~~ designating utility facilities, sewer
 100 laterals, or both is processed.

101 ~~(20)~~(21) 'Locator' means a person who is acting on behalf of facility owners and
 102 operators in designating the location of the utility facilities and sewer laterals of such
 103 owners and operators.

104 ~~(21)~~(22) 'Mechanized excavating equipment' means all equipment which is powered by
 105 any motor, engine, or hydraulic or pneumatic device and which is used for excavating.

106 (23) 'Milling' means the process of grinding asphaltic concrete.

107 ~~(22)~~(24) 'Minimally intrusive excavation methods' means methods of excavation that
 108 minimize the potential for damage to utility facilities and sewer laterals. Examples
 109 include, but are not limited to, air entrainment/vacuum extraction systems and water
 110 jet/vacuum excavation systems operated by qualified personnel and careful hand tool
 111 usage and other methods as determined by the Public Service Commission. The term
 112 does not include the use of trenchless excavation.

113 ~~(23)~~(25) 'Permanent marker' means a visible indication of the approximate location of
 114 a utility facility or sewer lateral that can reasonably be expected to remain in position for
 115 the life of the facility. The term includes, but is not limited to, sewer cleanouts; water
 116 meter boxes; and etching, cutting, or attaching medallions or other industry accepted
 117 surface markers to curbing, pavement, or other similar visible fixed surfaces. All
 118 permanent markers other than sewer cleanouts, water meter boxes, or any other visible
 119 component of a utility facility that establish the exact location of the facility must be
 120 placed accurately in accordance with Code Section 25-9-9 and be located within the
 121 public right of way. Sewer cleanouts, water meter boxes, or any other visible component
 122 of a utility facility that establishes the exact location of the facility must be located within
 123 ten feet of the public right of way to be considered a permanent marker.

124 ~~(24)~~(26) 'Person' means an individual, firm, joint venture, partnership, association, local
 125 governing authority, state, or other governmental unit, authority, department, agency, or
 126 a corporation and shall include any trustee, receiver, assignee, employee, agent, or
 127 personal representative thereof.

128 ~~(25)~~(27) 'Positive response information system' or 'PRIS' means the automated
 129 information system operated and maintained by the utilities protection center at its
 130 location that allows excavators, locators, facility owners or operators, and other affected
 131 parties to determine the status of a locate request or design locate request.

132 (28) 'Routine road maintenance' means work that is planned and performed on a routine
 133 basis to maintain and preserve the condition of the public road system and includes
 134 routine road surface scraping, mowing grass, animal removal, cleaning of inlets and
 135 culverts, trash removal, striping and striping removal, and cutting of trees; however,
 136 stump removal shall be considered excavation.

137 ~~(26)~~(29) 'Service area' means a contiguous area or territory which encompasses the
 138 distribution system or network of utility facilities by means of which a facility owner or
 139 operator provides utility service.

140 ~~(27)~~(30) 'Sewer lateral' means an individual customer service line which transports waste
 141 water from one or more building units to a utility owned sewer facility.

142 ~~(28)~~(31) 'Sewer system owner or operator' means the owner or operator of a sewer
 143 system. Sewer systems shall be considered to extend to the connection to the customer's
 144 facilities.

145 ~~(29)~~(32) 'Traffic control devices' means all roadway or railroad signs, sign structures, or
 146 signals and all associated infrastructure on which the public relies for informational,
 147 regulatory, or warning messages concerning the public or railroad rights of way.

148 ~~(30)~~(33) 'Traffic management system' means a network of traffic control devices,
 149 monitoring sensors, and personnel, with all associated communications and power
 150 services, including all system control and management centers.

151 ~~(31)~~(34) 'Tolerance zone' means the width of the utility facility or sewer lateral plus ~~24~~
 152 18 inches on either side of the outside edge of the utility facility or sewer lateral on a
 153 horizontal plane.

154 ~~(32)~~(35) 'Trenchless excavation' means a method of excavation that uses boring
 155 equipment to excavate with minimal or no disturbance to the ground surface and includes
 156 horizontal directional drilling.

157 ~~(33)~~(36) 'Unlocatable facility' means an underground facility that cannot be marked with
 158 reasonable accuracy using generally accepted techniques or equipment commonly used
 159 to designate utility facilities and sewer laterals. This term includes, but is not limited to,
 160 nonconductive utility facilities and sewer laterals and nonmetallic underground facilities
 161 that have no trace wires or records that indicate a specific location.

162 ~~(34)~~(37) 'Utilities protection center' or 'UPC' means the corporation or other organization
 163 formed by facility owners or operators to provide a joint notification service for the
 164 purpose of receiving advance notification from persons planning to blast or excavate and
 165 distributing such notifications to its affected facility owner or operator members.

166 ~~(35)~~(38) 'Utility facility' means an underground or submerged conductor, pipe, or
 167 structure used or installed for use in providing electric or communications service or in
 168 carrying, providing, or gathering gas, oil or oil products, sewage, waste water, storm
 169 drainage, or water or other liquids. All utility facilities shall be considered to extend up
 170 to the connection to the customer's facilities. The term does not include traffic control
 171 devices, traffic management systems, or sewer laterals.

172 (39) 'White lining' means marking the route of the excavation either electronically or
 173 with white paint, flags, stakes, or a combination of such methods to outline the dig site
 174 prior to notifying the UPC and before the locator arrives on the job."

175 **SECTION 2.**

176 Said chapter is further amended by revising Code Section 25-9-4, relating to design locate
 177 request and response, as follows:

178 "25-9-4.

179 (a) Any person may submit a design locate request to the UPC. Such design locate request
 180 shall:

181 (1) Describe the tract or parcel of land for which the design locate request has been
 182 submitted with sufficient particularity, as defined by policies developed and promulgated
 183 by the UPC, to enable the facility owner or operator to ascertain the precise tract or parcel
 184 of land involved; and

185 (2) State the name, address, and telephone number of the person who has submitted the
 186 design locate request, as well as the name, address, and telephone number of any other
 187 person authorized to review any records subject to inspection as provided in paragraph

188 (3) of subsection (b) of this Code section.

189 (b) Within ten working days after a design locate request has been submitted to the UPC
 190 for a proposed project, the facility owner or operator shall respond by ~~one of the following~~
 191 methods the method requested by the person calling in the design locate request:

192 (1) Designate or cause to be designated by a locator in accordance with Code ~~Section~~
 193 Sections 25-9-7 and 25-9-9 the location of all utility facilities and sewer laterals within
 194 the area of the proposed excavation;

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

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

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

205 (d) A design locate request shall not be used for excavation purposes."

206

SECTION 3.

207 Said chapter is further amended by revising Code Section 25-9-6, relating to prerequisites
 208 to blasting or excavating and marking of sites, as follows:

209 "25-9-6.

210 (a) No person shall commence, perform, or engage in blasting or in excavating with
 211 mechanized excavating equipment on any tract or parcel of land in any county in this state
 212 unless and until the person planning the blasting or excavating has given 48 hours' notice
 213 by submitting a locate request to the UPC, beginning the next business day after such
 214 notice is provided, excluding hours during days other than business days. Any person
 215 performing excavation is responsible for being aware of all information timely entered into
 216 the PRIS prior to the commencement of excavation. If, prior to the expiration of the 48
 217 hour waiting period, all identified facility owners or operators have responded to the locate
 218 request, and if all have indicated that their facilities are either not in conflict or have been
 219 marked, then the person planning to perform excavation or blasting shall be authorized to
 220 commence work, subject to the other requirements of this Code section, without waiting
 221 the full 48 hours. The 48 hours' notice shall not be required for excavating where minimally
 222 intrusive excavation methods are used exclusively. Any locate request received by the UPC
 223 after business hours shall be deemed to have been received by the UPC the next business
 224 day. Such locate request shall:

225 (1) Describe the tract or parcel of land upon which the blasting or excavation is to take
 226 place with sufficient particularity, as defined by policies developed and promulgated by
 227 the UPC, to enable the facility owner or operator to ascertain the precise tract or parcel
 228 of land involved;

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

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

232 (4) ~~Designate the date upon which the blasting or excavating will commence~~ Define the
 233 time frame in which requested excavation may occur.

234 (b) In the event the location upon which the blasting or excavating is to take place cannot
 235 be described with sufficient particularity to enable the facility owner or operator to
 236 ascertain the precise tract or parcel involved, the person proposing the blasting or
 237 excavating shall mark the route or boundary of the site of the proposed blasting or
 238 excavating by means of white paint, white stakes, or white flags if practical, or schedule
 239 an on-site meeting with the locator or facility owner or operator and inform the UPC,
 240 within a reasonable time, of the results of such meeting. The person marking a site with
 241 white lining shall comply with the rules and regulations of the Department of

242 Transportation as to the use of such markings so as to not to obstruct signs, pavement
243 markings, pavement, or other safety devices.

244 (c) Except as otherwise provided in this subsection, notice given pursuant to subsection
245 (a) of this Code section shall expire 21 calendar days following the date of such notice, and
246 no blasting or excavating undertaken pursuant to this notice shall continue after such time
247 has expired. In the event that the blasting or excavating which is the subject of the notice
248 given pursuant to subsection (a) of this Code section will not be completed within 21
249 calendar days following the date of such notice, an additional notice must be given in
250 accordance with subsection (a) of this Code section for the locate request to remain valid.

251 Additional notices for an existing request shall not expand the tract or parcel of land upon
252 which the blasting or excavation is to take place.

253 (d) For emergencies, notice shall expire at 7:00 A.M. three business days after the
254 notification is made to the UPC.

255 (e) Except for those persons submitting design locate requests, no person, including
256 facility owners or operators, shall request marking of a site through the UPC unless
257 excavating is scheduled to commence. In addition, no person shall make repeated requests
258 for re-marking, unless the repeated request is required for excavating to continue or due to
259 circumstances not reasonably within the control of such person. Any person who willfully
260 fails to comply with this subsection shall be liable to the facility owner or operator
261 for \$100.00 or for actual costs, whichever is greater, for each repeated request for
262 re-marking.

263 (f) If, subsequent to giving the notice to the UPC required by subsection (a) of this Code
264 section, a person planning excavating determines that such work will require blasting, then
265 such person shall promptly so notify the UPC and shall refrain from any blasting until the
266 facility owner or operator responds within 24 hours, excluding hours during days other than
267 business days, following receipt by the UPC of such notice.

268 (g) When a locate request is made in accordance with subsection (a) of this Code section,
269 excavators other than the person planning the blasting or excavating may conduct such
270 activity, provided that the person planning the blasting or excavating shall remain
271 responsible for ensuring that any stakes or other markings placed in accordance with this
272 chapter remain in place and reasonably visible until such blasting or excavating is
273 completed; and provided, further, that such blasting or excavating is:

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

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

283 **SECTION 4.**

284 Said chapter is further amended by revising Code Section 25-9-7, relating to determining
 285 whether utility facilities are present, information to UPC, noncompliance, future utility
 286 facilities, and abandoned utility facilities, as follows:

287 "25-9-7.

288 (a)(1) Within 48 hours beginning the next business day ~~after the business day~~ following
 289 receipt by the UPC of the locate request filed in accordance with Code Section 25-9-6,
 290 excluding hours during days other than business days, each facility owner or operator
 291 shall determine whether or not utility facilities are located on the tract or parcel of land
 292 upon which the excavating or blasting is to occur. If utility facilities are determined to
 293 be present, the facility owner or operator shall designate, through stakes, flags, permanent
 294 markers, or other marks on the surface of the tract or parcel of land, the location of utility
 295 facilities. This subsection shall not apply to large projects.

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

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

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

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

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

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

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

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

330 (B) Providing electronic copies of or delivering the records through facsimile or by
 331 other means to an agreed upon location within 48 hours beginning the next business day
 332 ~~after the business day~~ following receipt by the UPC of the locate request filed in
 333 accordance with Code Section 25-9-6, excluding hours during days other than business
 334 days; provided, however, that for local governing authorities that receive fewer than 50
 335 locate requests annually, the local governing authority may designate the agreed upon
 336 location and communicate such designation to the excavator;

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

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

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

345 (c) Each facility owner or operator, either upon determining that no utility facility or sewer
 346 lateral is present on the tract or parcel of land or upon completion of the designation of the
 347 location of any utility facilities or sewer laterals on the tract or parcel of land as required
 348 by subsection (a) or (b) of this Code section, shall provide this information to the UPC in
 349 accordance with procedures developed by the UPC, which may include the use of the
 350 PRIS. In no event shall such notice be provided later than midnight of the second business

351 day following receipt by the UPC of actual notice filed in accordance with Code Section 25-9-6.
352 (d) In the event the facility owner or operator is unable to designate the location of the
353 utility facilities or sewer laterals due to extraordinary circumstances, the facility owner or
354 operator shall notify the UPC and provide an estimated completion date in accordance with
355 procedures developed by the UPC, which may include the use of the PRIS.

356 (e) If, at the end of the time period specified in subsections (a) and (b) of this Code
357 section, any facility owner or operator has not complied with the requirements of
358 subsections (a), (b), and (c) of this Code section, as applicable, the UPC shall issue a
359 second request to each such facility owner or operator. If the facility owner or operator
360 does not respond to this additional request by 12:00 Noon of that business day, either by
361 notifying the UPC in accordance with procedures developed by the UPC that no utility
362 facilities or sewer laterals are present on the tract or parcel of land, or by designating the
363 location of such utility facilities or sewer laterals in accordance with the provisions of
364 subsections (a) and (b) of this Code section, as applicable, then the person providing notice
365 pursuant to Code Section 25-9-6 may proceed with the excavating or blasting, provided
366 that there is no visible and obvious evidence of the presence of an unmarked utility facility
367 or sewer lateral on the tract or parcel of land. Such person shall not be subject to any
368 liability resulting from damage to the utility facility or sewer lateral as a result of the
369 blasting or excavating, provided that such person complies with the requirements of Code
370 Section 25-9-8.

371 (f) If visible and obvious evidence of the presence of an unmarked utility facility or sewer
372 lateral does exist and the facility owner or operator either refuses to comply with
373 subsections (a) through (d) of this Code section, as applicable, or is not a member of the
374 UPC, then the excavator shall attempt to designate such facility or sewer lateral prior to
375 excavating. The facility owner or operator shall be strictly liable for the actual costs
376 associated with the excavator designating such utility facilities and sewer laterals and any
377 associated downtime. Such costs shall not exceed \$100.00 or documented actual costs,
378 whichever is greater, for each locate request.

379 (g) All utility facilities installed by facility owners or operators on or after January 1, 2001,
380 shall be installed in a manner which will make them locatable using a generally accepted
381 electronic locating method. All sewer laterals installed on or after January 1, 2006, shall
382 be installed in a manner which will make them locatable by facility owners or operators
383 using a generally accepted electronic locating method. In the event that an unlocatable
384 utility facility or unlocatable sewer lateral becomes exposed when the facility owner or
385 operator is present or in the case of sewer laterals when the sewer utility owner or operator
386 is present on or after January 1, 2006, such utility facility or sewer lateral shall be made
387 locatable through the use of a permanent marker or an updating of permanent records.

388 (h) Facility owners or operators shall either maintain recorded information concerning the
 389 location and other characteristics of abandoned utility facilities, maintain such abandoned
 390 utility facilities in a locatable manner, or remove such abandoned utility facilities. Facility
 391 owners or operators shall provide information on abandoned utility facilities, when
 392 possible, in response to a locate request or design locate request. When the presence of an
 393 abandoned facility within an excavation site is known, the facility owner or operator should
 394 attempt to ~~locate and mark~~ designate the abandoned facility or provide information to the
 395 excavator regarding such facilities. When located or exposed, all abandoned utility
 396 facilities and sewer laterals shall be treated as live utility facilities and sewer laterals.

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

402 (j) ~~By January 1, 2006, the advisory committee shall propose to the Public Service~~
 403 ~~Commission rules and processes specific to the locating of large projects. These rules shall~~
 404 ~~include, but shall not be limited to, the establishment of detailed processes. Such rules may~~
 405 ~~also include changes in the time period allowed for a facility owner or operator to comply~~
 406 ~~with the provisions of this chapter and to the time period for which designations are valid.~~
 407 ~~The commission shall promulgate rules addressing this subsection no later than June 1,~~
 408 ~~2006~~ Large project rules shall be promulgated by the Public Service Commission. These
 409 rules shall include, but shall not be limited to, the establishment of detailed processes.
 410 Such rules may also include changes in the time period allowed for a facility owner or
 411 operator to comply with the provisions of this chapter and the time period for which
 412 designations are valid.

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

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

424

SECTION 5.

425 Said chapter is further amended by revising Code Section 25-9-8, relating to treatment of gas
426 pipes and other underground utility facilities by blasters and excavators, as follows:

427 "25-9-8.

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

431 (b) When excavating or blasting is to take place within the tolerance zone, the excavator
432 shall exercise ~~such~~ reasonable care ~~as may be necessary~~ for the protection of the utility
433 facility or sewer lateral, including permanent markers and paint placed to designate utility
434 facilities. This protection shall include, but ~~may~~ not be limited to, at least one of the
435 following based on geographical and climate conditions: hand digging, pot holing, soft
436 digging, vacuum excavation methods, pneumatic hand tools, or other technical methods
437 that may be developed. Other mechanical methods may be used with the approval of the
438 facility owner or operator, ~~or other generally accepted methods.~~ ~~For parallel type~~
439 ~~excavations, the existing facility shall be exposed at intervals as often as necessary to avoid~~
440 ~~damages.~~

441 (c) If the precise location of the underground facilities cannot be determined by the
442 excavator, the facility owner or operator thereof shall be notified by the excavator so that
443 the operator and the excavator shall work together to determine the precise location of the
444 underground facilities prior to continuing the excavation.

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

454 ~~(d)~~(e) Any person engaged in blasting or in excavating with mechanized excavating
455 equipment who strikes, damages, injures, or loosens any utility facility or sewer lateral,
456 regardless of whether the utility facility or sewer lateral is marked, shall immediately cease
457 such blasting or excavating and notify the UPC and the appropriate facility owner or
458 operator, if known. Upon receiving notice from the excavator or the UPC, the facility
459 owner or operator shall send personnel to the location as soon as possible to effect
460 temporary or permanent repair of the damage. Until such time as the damage has been

461 repaired, no person shall engage in excavating or blasting activities that may cause further
 462 damage to the utility facility or sewer lateral except as provided in Code Section 25-9-12."

463 **SECTION 6.**

464 Said chapter is further amended by revising Code Section 25-9-9, relating to degree of
 465 accuracy required in utility facility location information, effect of inaccurate information on
 466 liability of blaster or excavator, and liability of facility owners for losses resulting from lack
 467 of accurate information, as follows:

468 "25-9-9.

469 (a) For the purposes of this chapter, the location of utility facilities which is provided by
 470 a facility owner or operator in accordance with subsection (a) of Code Section 25-9-7 to
 471 any person must be accurate to within ~~24~~ 18 inches measured horizontally from the outer
 472 edge of either side of such utility facilities. If any utility facility becomes damaged by an
 473 excavator due to the furnishing of inaccurate information as to its location by the facility
 474 owner or operator, such excavator shall not be subject to any liability resulting from
 475 damage to the utility facility as a result of the blasting or excavating, provided that such
 476 person complies with the requirements of Code Section 25-9-8 and there is no visible and
 477 obvious evidence to the excavator of the presence of a mismarked utility facility.

478 (b) Upon documented evidence that the person seeking information as to the location of
 479 utility facilities has incurred losses or expenses due to inaccurate information, lack of
 480 information, or unreasonable delays in supplying information by the facility owners or
 481 operators, the facility owners or operators shall be liable to that person for any such losses
 482 or expenses."

483 **SECTION 7.**

484 Said chapter is further amended by revising Code Section 25-9-13, relating to penalties for
 485 violations of chapter, bonds, enforcement, advisory committee, and dispose of settlement
 486 recommendations, as follows:

487 "25-9-13.

488 (a) Any person who violates the requirements of subsections (a), (f), or (g) of Code
 489 Section 25-9-6 and whose subsequent excavating or blasting damages utility facilities or
 490 sewer laterals shall be strictly liable for:

- 491 (1) All costs incurred by the facility owner or operator in repairing or replacing its
 492 damaged facilities; and
 493 (2) Any injury or damage to persons or property resulting from damaging the utility
 494 facilities and sewer laterals.

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

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

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

512 (e) Subsections (a), (c), and (d) of this Code section shall not apply to any person who
 513 shall commence, perform, or engage in blasting or in excavating with mechanized
 514 equipment on any tract or parcel of land in any county in this state if the facility owner or
 515 operator to which notice was given respecting such blasting or excavating with mechanized
 516 equipment as prescribed in subsection (a) of Code Section 25-9-6 has failed to comply with
 517 Code Section 25-9-7 or has failed to become a member of the UPC as required by Code
 518 Section 25-9-5.

519 (f) The enforcement provisions of this Code section shall not apply to any person who
 520 shall commence, perform, or engage in blasting or in excavating with mechanized
 521 equipment within the curb lines or edges of the pavement of any public road and who
 522 causes damage to a utility facility located within the roadway hard surface or the graded
 523 aggregate base therein if such person has complied with the provisions of this chapter and
 524 there is no indication that a utility facility is in conflict with the proposed excavation.

525 ~~(f)(g)~~ (g) The commission shall enforce the provisions of this chapter. The commission may
 526 promulgate any rules and regulations necessary to implement the commission's authority
 527 to enforce this chapter.

528 ~~(g)(f)(h)(1)~~ (h)(1) The Governor shall appoint an advisory committee consisting of persons
 529 who are employees or officials of or who represent the interests of:

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

- 531 (B) One member to represent water systems or water and sewer systems owned or
 532 operated by local governing authorities;
- 533 (C) One member to represent the utilities protection center;
- 534 (D) One member to represent water systems or water and sewer systems owned or
 535 operated by counties;
- 536 (E) One member to represent water systems or water and sewer systems owned or
 537 operated by municipalities;
- 538 (F) One member to represent the nonmunicipal electric industry;
- 539 (G) ~~Three~~ Five members to represent excavators to include the following:
- 540 (i) One licensed utility contractor;
- 541 (ii) One licensed general contractor;
- 542 (iii) One licensed plumber;
- 543 (iv) One landscape contractor; and
- 544 (v) One highway contractor;
- 545 (H) One member to represent locators;
- 546 (I) One member to represent the nonmunicipal telecommunications industry;
- 547 (J) One member to represent the nonmunicipal natural gas industry;
- 548 (K) One member to represent municipal gas, electric, or telecommunications providers;
 549 and
- 550 (L) The commission chairperson or such chairperson's designee.
- 551 The commission chairperson or his or her designee shall serve as chairperson of the
 552 advisory committee and shall cast a vote only in the case of a tie. Persons appointed to
 553 the advisory committee shall have expert knowledge of this chapter and specific
 554 operations expertise with the subject matter encompassed by the provisions of this
 555 chapter. ~~The new advisory committee shall be established within 60 days of July 1,~~
 556 ~~2005.~~
- 557 (2) The advisory committee shall establish rules of operation including an attendance
 558 policy. In the event a committee member resigns or fails to meet the criteria of the
 559 attendance policy, the advisory committee shall appoint an interim member to represent
 560 the same stakeholder group until such time as the Governor appoints a replacement.
- 561 (3) The advisory committee shall assist the commission in the enforcement of this
 562 chapter, make recommendations to the commission regarding rules and regulations, and
 563 perform duties to be assigned by the commission including, but not limited to, the review
 564 of reported violations of this chapter and the preparation of recommendations to the
 565 commission as to the appropriate penalties to impose on persons violating the provisions
 566 of this chapter.

567 ~~(3)~~(4) The members of the advisory committee shall be immune, individually and jointly,
 568 from civil liability for any act or omission done or made in the performance of their
 569 duties while serving as members of such advisory committee, but only in the absence of
 570 willful misconduct.

571 ~~(h)(1)(i)(1)~~ Commission enforcement of this chapter shall follow the procedures
 572 described in this subsection. Nothing in this subsection shall limit the authority of the
 573 commission delegated from the federal government and authorized in other state law.

574 (2)(A) The commission is not authorized to impose civil penalties on any local
 575 governing authority except as provided in this paragraph. The commission may
 576 recommend training for local governing authorities in response to any probable or
 577 proven violation. ~~On or after January 1, 2007, civil~~ Civil penalties may be
 578 recommended for or imposed on any local governing authority for refusal to comply
 579 with the requirements of Code Section 25-9-7 or for other violations of Code
 580 Section 25-9-7 that result in injury to people, damage to property, or the interruption
 581 of utility service in the event that investigators find that a local governing authority has
 582 demonstrated a pattern of willful noncompliance. Civil penalties may be recommended
 583 or imposed on or after January 1, 2006, for violations of provisions of this chapter other
 584 than Code Section 25-9-7 in the event that investigators find that the severity of an
 585 excavation violation warrants civil penalties or that a local governing authority has
 586 demonstrated a pattern of willful noncompliance. Any such civil penalty shall be
 587 recommended or imposed in accordance with a tiered penalty structure designed for
 588 local governing authorities. In the event that the investigators determine that a local
 589 governing authority has made a good faith effort to comply with this chapter, the
 590 investigators shall not recommend a civil penalty. For purposes of this subsection
 591 'refusal to comply' means that a utility facility owner or operator does not respond in
 592 PRIS to a locate request, does not respond to a direct telephone call to ~~locate~~ designate
 593 their facilities, or other such direct refusal. Refusal to comply does not mean a case
 594 where the volume of requests or some other mitigating circumstance prevents the utility
 595 owner or operator from locating in accordance with Code Section 25-9-7.

596 (B) No later than January 1, 2006, the advisory committee shall recommend to the
 597 commission for adoption a tiered penalty structure for local governing authorities. Such
 598 structure shall take into account the size, annual budget, gross receipts, number of
 599 utility connections and types of utilities within the territory of the local governing
 600 authority. Such penalty structure shall also take into account the number of locate
 601 ~~tickets~~ requests received annually by the local governing authority, the number of locate
 602 codes made annually to the local governing authority from the UPC, the number of
 603 utility customers whose service may have been interrupted by violations of this chapter,

604 and the duration of such interruptions. Such penalty structure shall also consider the
605 cost of compliance. The penalty structure shall establish for each tier the maximum
606 penalty per violation and per 12 month period at a level to induce compliance with this
607 chapter. Such maximum penalty shall not exceed \$5,000.00 per violation or \$50,000.00
608 per 12 month period for the highest tier.

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

614 (4) Any respondent may accept or disagree with the settlement recommended by the
615 investigators. If the respondent disagrees with the recommended settlement, the
616 respondent may dispute the settlement recommendation to the advisory committee. The
617 advisory committee shall then render a recommendation either supporting the
618 investigators' recommendation, rejecting the investigators' recommendation, or
619 substituting its own recommendation. With respect to an investigation of any probable
620 violation committed by a local governing authority, any recommendation by the advisory
621 committee shall be in accordance with the provisions of paragraph (2) of this subsection.
622 In its deliberations the advisory committee shall consider the gravity of the violation or
623 violations; the degree of the respondent's culpability; the respondent's history of prior
624 offenses; and such other mitigating factors as may be appropriate. If the advisory
625 committee determines that a respondent has made a good faith effort to comply with this
626 chapter, the committee shall not recommend civil penalties against the respondent. To
627 the extent that a respondent does not accept a settlement agreement or request to dispute
628 the recommendation of the investigators to the advisory committee, the respondent shall
629 be assigned to a hearing officer or administrative law judge.

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

637 (6) When the respondent agrees with the advisory committee recommendation, the
638 investigators shall present such agreement to the commission. The commission is then
639 authorized to adopt the recommendation of the advisory committee regarding a civil
640 penalty, or to reject such a recommendation. The commission is not authorized to impose

641 a civil penalty greater than the civil penalty recommended by the advisory committee or
642 to impose any civil penalty if the advisory committee does not recommend a civil
643 penalty.

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

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

656 **SECTION 8.**

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