

House Bill 1372 (AS PASSED HOUSE AND SENATE)

By: Representatives Smith of the 133rd, Parsons of the 44th, Burns of the 159th, and Frazier of the 126th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 25 of the Official Code of Georgia Annotated, relating to fire protection and
2 safety, so as to revise the provisions and short title of Chapter 9, the "Georgia Utility Facility
3 Protection Act"; to enhance the processes for locate requests and to require that 9-1-1 be
4 contacted if an excavator damages a gas or hazardous liquid pipeline; to change and provide
5 for certain definitions; to provide for certain procedures in extraordinary circumstances; to
6 provide limitations on the recovery of costs of damages; to establish a statute of limitations
7 on enforcement; to amend Code Section 46-3-34, relating to utilities protection center,
8 funding of activities, notice of work delay, and responsibility for completing safety
9 requirements, so as to correct a cross-reference; to provide for an effective date; to repeal
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 25 of the Official Code of Georgia Annotated, relating to fire protection and safety, is
14 amended by revising Chapter 9, relating to blasting or excavating near certain facilities, as
15 follows:

16

"CHAPTER 9

17 25-9-1.

18 This chapter shall be known and may be cited as the 'Georgia ~~Utility~~ Underground Facility
19 Protection Act.'

20 25-9-2.

21 The purpose of this chapter is to protect the public from physical harm, prevent injury to
22 persons and property, and prevent interruptions of ~~utility~~ service resulting from damage to
23 ~~utility~~ underground facilities and sewer laterals caused by blasting or excavating operations
24 by providing a method whereby the location of ~~utility~~ underground facilities and sewer
25 laterals will be made known to persons planning to engage in blasting or excavating
26 operations so that such persons may observe proper precautions with respect to such ~~utility~~
27 underground facilities and sewer laterals.

28 25-9-3.

29 As used in this chapter, the term:

30 (1) 'Abandoned ~~utility~~ underground facility' means a ~~utility~~ an underground facility taken
31 out of service by a facility owner or operator on or after January 1, 2001.

32 (2) 'Appropriate notice' means a notice period that:

33 (A) Is associated with an effective date;

34 (B) Begins at 7:00 A.M. on the first business day following receipt by the UPC of a
35 locate request submitted in compliance with Code Section 25-9-6; and

36 (C) Ends at 7:00 A.M. on the business day immediately following a period of time that
37 is not:

38 (i) Less than two business days; or

39 (ii) More than eight business days.

40 (3) 'Betterments' means any upgrading of the underground facility being repaired made
41 solely for the benefit of and at the election of the facility owner or operator and not
42 attributable to the damage.

43 ~~(2)~~(4) 'Blasting' means any operation by which the level or grade of land is changed or
44 by which earth, rock, buildings, structures, or other masses or materials are rended, torn,
45 demolished, moved, or removed by the detonation of dynamite or any other explosive
46 agent.

47 ~~(3)~~(5) 'Business days' means Monday through Friday, excluding the following holidays:
48 New Year's Day, Birthday of Dr. Martin Luther King, Jr., Memorial Day, Independence
49 Day, Labor Day, Thanksgiving Day and the following Friday, Christmas Eve, and
50 Christmas Day. Any such holiday that falls on a Saturday shall be observed on the
51 preceding Friday. Any such holiday that falls on a Sunday shall be observed on the
52 following Monday. If Christmas Eve falls on a Friday, it shall be observed on the
53 preceding Thursday. If Christmas Eve falls on a Sunday, it shall be observed on the
54 following Tuesday.

55 ~~(4)~~(6) 'Business hours' means the time from 7:00 A.M. to 4:30 P.M. local time on
56 business days.

57 ~~(5)~~(7) 'Commission' means the Public Service Commission.

58 ~~(6)~~(8) 'Corporation' means any corporation; municipal corporation; county; authority;
59 joint-stock company; partnership; association; business trust; cooperative; organized
60 group of persons, whether incorporated or not; or receiver or receivers or trustee or
61 trustees of any of the foregoing.

62 ~~(7)~~(9) 'Damage' means any impact or exposure that results in the need to repair a ~~utility~~
63 an underground facility or sewer lateral due to the weakening or the partial or complete
64 destruction of the facility or sewer lateral including, but not limited to, the protective
65 coating, lateral support, cathodic protection, or the housing for the line, device, sewer
66 lateral, or facility.

67 ~~(8)~~(10) 'Design locate request' means a communication to the ~~utilities protection center~~
 68 UPC in which a request for locating existing ~~utility~~ underground facilities for bidding,
 69 predesign, or advance planning purposes is made. ~~A design locate request shall not be~~
 70 ~~used for excavation purposes.~~

71 ~~(9)~~(11) 'Designate' means to stake or mark on the surface of the tract or parcel of land
 72 the location of a ~~utility~~ an underground facility or sewer lateral.

73 (12) 'Effective date' means the calendar day on which blasting or excavating is
 74 anticipated to begin as indicated by the excavator in the locate request.

75 ~~(10)~~(13) 'Emergency' means a sudden or unforeseen occurrence involving a clear and
 76 imminent danger to life, health, or property; the interruption of ~~utility~~ underground
 77 services; or repairs to transportation facilities that require immediate action.

78 (14) 'Emergency 9-1-1 call' means using the digits, address, internet protocol address,
 79 or other information to access or initiate contact with a public safety answering point.

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

83 ~~(12)~~(15)(A) 'Excavating' means any operation using mechanized equipment or
 84 explosives to move earth, rock, or other material below existing grade. Such term shall
 85 include, but shall not be ~~This includes but is not limited to,~~ augering, blasting, boring,
 86 digging, ditching, dredging, drilling, driving-in, grading, plowing-in, ripping, scraping,
 87 trenching, and tunneling.

88 (B) Such term 'Excavating' shall not include ~~pavement milling~~:

89 (i) Farming activities;

90 (ii) Milling or pavement repair that does not exceed the depth of the existing
 91 pavement or 12 inches, whichever is less. ~~The term shall not include routine road; or~~

92 (iii) Routine road maintenance or railroad maintenance activities carried out by road
 93 maintenance or railroad employees or contractors, provided that such activities;

94 (I) Occur ~~occur~~ entirely within the right of way of a public road, street, railroad, or
 95 highway of the state;

96 (II) Are ~~are~~ carried out with reasonable care so as to protect any utility underground
 97 facilities and sewer laterals placed in the right of way by permit; are carried out
 98 within the limits of any original excavation on the traveled way, shoulders, or
 99 drainage ditches of a public road, street, railroad, or highway, and do not exceed 18
 100 inches in depth below the grade existing prior to such activities; and, ~~if~~

101 (III) If involving the replacement of existing guard rails and sign posts, replace
 102 such guard rails and sign posts in their previous locations and at their previous
 103 depth. ~~'Excavating' shall not include farming activities.~~

104 ~~(13)~~(16) 'Excavator' means any person engaged in ~~excavating or blasting as defined in~~
 105 ~~this Code section~~ blasting or excavating.

106 ~~(14)~~(17) 'Extraordinary circumstances' means circumstances other than normal operating
 107 conditions which exist ~~and make~~ making it impractical or impossible for a facility owner
 108 or operator to comply with the provisions of this chapter. Such extraordinary
 109 circumstances may include, but shall not be limited to, hurricanes, tornadoes, floods, ice
 110 and snow, and other acts of God.

111 ~~(15)~~(18) 'Facility owner or operator' means any person or entity with the sole exception
 112 of a homeowner ~~who~~ that owns, operates, or controls the operation of a ~~utility~~ an
 113 underground facility.

114 ~~(16)~~(19) 'Farming activities' means the tilling of the fields related to agricultural
 115 activities but ~~does~~ shall not include other types of mechanized excavating on a farm.

116 ~~(17)~~(20) 'Horizontal directional drilling' or 'HDD' means a type of trenchless excavation
 117 that uses guidable boring equipment to excavate in an essentially horizontal plane without
 118 disturbing or with minimal disturbance to the ground surface.

119 ~~(18)~~(21) 'Large project' means an excavation that involves more work to locate ~~utility~~
 120 underground facilities than can reasonably be completed within the requirements of
 121 subsection (a) of Code Section 25-9-7.

122 ~~(19)~~(22) 'Local governing authority' means:

123 (A) A a county, municipality, or local authority created by or pursuant to a general,
 124 local, or special Act of the General Assembly, or by the Constitution of the State of
 125 Georgia. ~~The term also includes any; and~~

126 (B) Any local authority that is created or activated by an appropriate ordinance or
 127 resolution of the governing body of a county or municipality individually or jointly with
 128 other political subdivisions of this state.

129 ~~(20)~~(23) 'Locate request' means a communication between an excavator and the ~~utilities~~
 130 protection center UPC in which a request for designating ~~utility~~ underground facilities,
 131 sewer laterals, or both is processed.

132 ~~(21)~~(24) 'Locator' means a person ~~who~~ that is acting on behalf of facility owners and
 133 operators in designating the location of the ~~utility~~ underground facilities and sewer
 134 laterals of such owners and operators.

135 ~~(22)~~(25) 'Mechanized excavating equipment' means all equipment ~~which is~~ powered by
 136 any motor, engine, or hydraulic or pneumatic device ~~and~~ which is used for excavating.

137 ~~(23)~~(26) 'Milling' means the process of grinding asphaltic concrete.

138 ~~(24)~~(27) 'Minimally intrusive excavation methods' means methods of excavation that
 139 minimize the potential for damage to ~~utility~~ underground facilities and sewer laterals.
 140 Such term shall ~~Examples~~ include, but ~~are not~~ shall not be limited to, air
 141 entrainment/vacuum extraction systems and water jet/vacuum excavation systems
 142 operated by qualified personnel and careful hand tool usage and other methods as
 143 determined by the ~~Public Service Commission. The term does~~ commission. Such term
 144 shall not include the use of trenchless excavation.

145 (28) 'Notice period' means the period of time during which the designation of
146 underground facilities or sewer laterals, or both, is supposed to occur in accordance with
147 this chapter.

148 ~~(25)~~(29) 'Permanent marker' means a visible indication of the approximate location of
149 a utility an underground facility or sewer lateral that can reasonably be expected to
150 remain in position for the life of the facility. Such term shall include, but shall not be ~~The~~
151 ~~term includes, but is not~~ limited to, sewer cleanouts; water meter boxes; and etching,
152 cutting, or attaching medallions or other industry accepted surface markers to curbing,
153 pavement, or other similar visible fixed surfaces. ~~All permanent markers other than~~
154 ~~sewer cleanouts, water meter boxes, or any other visible component of a utility facility~~
155 ~~that establish the exact location of the facility must be placed accurately in accordance~~
156 ~~with Code Section 25-9-9 and be located within the public right of way. Sewer cleanouts,~~
157 ~~water meter boxes, or any other visible component of a utility facility that establishes the~~
158 ~~exact location of the facility must be located within ten feet of the public right of way to~~
159 ~~be considered a permanent marker.~~

160 ~~(26)~~(30) 'Person' means an individual, firm, joint venture, partnership, association, local
161 governing authority, state, or other governmental unit, authority, department, agency, or
162 a corporation and shall include any trustee, receiver, assignee, employee, agent, or
163 personal representative thereof.

164 ~~(27)~~(31) 'Positive response information system' or 'PRIS' means the automated
165 information system operated and maintained by the ~~utilities protection center~~ UPC at its
166 location that allows excavators, locators, facility owners or operators, and other affected
167 parties to determine the status of a locate request or a design locate request.

168 (32) 'Public safety answering point' shall have the same meaning as provided in Code
169 Section 46-5-122.

170 ~~(28)~~(33) 'Routine road maintenance' means work that is planned and performed on a
171 routine basis to maintain and preserve the condition of the public road system and

172 includes routine road surface scraping, mowing grass, animal removal, cleaning of inlets
173 and culverts, trash removal, striping and striping removal, and cutting of trees; however,
174 stump removal shall be considered excavation.

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

178 ~~(30)~~(34) 'Sewer lateral' means an individual customer service line which transports waste
179 water from one or more building units to a ~~utility owned~~ an underground sewer facility.

180 ~~(31)~~(35) 'Sewer system owner or operator' means the owner or operator of a sewer
181 system. Sewer systems shall be considered to extend to the connection to the customer's
182 facilities.

183 ~~(32)~~(36) 'Traffic control devices' means all electronic or electrically powered roadway
184 ~~or railroad~~ signs, sign structures, or signals of a local governing authority or the
185 Department of Transportation and all associated underground infrastructure on which the
186 public relies for informational, regulatory, or warning messages concerning the public ~~or~~
187 ~~railroad~~ rights of way.

188 ~~(33)~~(37) 'Traffic management system' means a network of traffic control devices,
189 monitoring sensors, and personnel of a local governing authority or the Department of
190 Transportation, with all associated communications and power services, including all
191 system control and management centers.

192 ~~(34)~~(38) 'Tolerance zone' means the width of the ~~utility~~ underground facility or sewer
193 lateral plus 18 inches on either side of the outside edge of the ~~utility~~ underground facility
194 or sewer lateral on a horizontal plane.

195 ~~(35)~~(39) 'Trenchless excavation' means a method of excavation that uses boring
196 equipment to excavate with minimal or no disturbance to the ground surface ~~and includes~~
197 ~~horizontal directional drilling~~. Such term shall include HDD.

198 (40) 'Underground facility' means an underground or submerged fiber, conductor, pipe,
199 or structure used or installed for use in providing traffic control, traffic management,
200 electric service, or communications service, or in carrying, providing, or gathering gas,
201 oil or oil products, sewage, waste water, storm drainage, or water or other liquids. All
202 underground facilities shall be considered to extend up to the connection to the customer's
203 facilities. Such term shall not include sewer laterals or publicly or privately owned
204 railroad facilities.

205 ~~(36)~~(41) 'Unlocatable facility' means an underground facility that cannot be marked with
206 reasonable accuracy using generally accepted techniques or equipment commonly used
207 to designate utility underground facilities and sewer laterals. Such term shall include, but
208 shall not be This term includes, but is not limited to, nonconductive utility underground
209 facilities and sewer laterals and nonmetallic underground facilities that have no trace
210 wires or records that indicate a specific location.

211 ~~(37)~~(42) 'Utilities protection center Protection Center' or 'UPC' means the corporation or
212 other organization formed by facility owners or operators to provide a joint notification
213 service for the purpose of receiving advance notification from persons planning to blast
214 or excavate and distributing such notifications to its affected facility owner or operator
215 members.

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

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

225 25-9-4.

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

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

232 (2) State the name, address, and telephone number of the person ~~who~~ that has submitted
233 the design locate request, as well as the name, address, and telephone number of any
234 other person authorized to review any records subject to inspection as provided in
235 paragraph (3) of subsection (b) of this Code section.

236 (b) Within ten ~~working~~ business days after a design locate request has been submitted to
237 the UPC for a proposed project, the facility owner or operator shall respond ~~by the method~~
238 ~~requested by~~ to the person calling in the design locate request under the guidelines listed
239 below:

240 (1) For single address requests, designate ~~Designate~~ or cause to be designated by a
241 locator in accordance with Code Sections 25-9-7 and 25-9-9 the location of all utility
242 underground facilities and sewer laterals within the area of the proposed excavation; or

243 (2) For multiple address requests:

244 (A) Provide ~~to~~ the person submitting the design locate request the best available
245 description of all utility underground facilities and sewer laterals in the area of proposed
246 excavation, which might include drawings of utility underground facilities and sewer
247 laterals already built in the area, or other facility records that are maintained by the
248 facility owner or operator; or

249 ~~(B)~~ (B) Allow the person submitting the design locate request or any other authorized
250 person to inspect or copy the drawings or other records for all utility underground
251 facilities and sewer laterals within the proposed area of excavation.

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

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

256 (e) A design locate request shall not be required as a condition for approving a utility
257 permit application.

258 25-9-5.

259 (a) Except as otherwise provided by subsection (b) of this Code section, all facility owners
260 or operators operating or maintaining ~~utility~~ underground facilities within the state shall
261 participate as members in and cooperate with the UPC. No duplicative center shall be
262 established. The activities of the UPC shall be funded by all facility owners or operators.

263 (b) Persons ~~who~~ that install water and sewer facilities or ~~who~~ that own such facilities until
264 those facilities are accepted by a local governing authority or other entity are not required
265 to participate as members of the UPC and shall not be considered facility owners or
266 operators. All such persons shall install and maintain permanent markers, ~~as defined in~~
267 ~~Code Section 25-9-3~~, identifying all water and sewer facilities at the time of the facility
268 installation. Notwithstanding the above, all owners or operators of water and sewer
269 facilities that provide service from such facilities ~~are~~ shall be considered facility owners
270 or operators and shall be members of the UPC.

271 (c) All permanent markers other than sewer cleanouts, water meter boxes, or any other
272 visible components of an underground facility that establish the exact location of the
273 underground facility shall be placed accurately in accordance with Code Section 25-9-9
274 and shall be located within the public right of way. Sewer cleanouts, water meter boxes,
275 or any other visible components of an underground facility that establish the exact location
276 of the underground facility shall be located within ten feet of the public right of way to be
277 considered a permanent marker.

278 ~~(c)~~(d) The UPC shall maintain a list of the name, address, and telephone number of the
279 office, department, or other source from or through which information respecting as to the
280 location of ~~utility~~ underground facilities of its participating facility owners or operators
281 may be obtained during business hours on business days.

282 25-9-6.

283 (a) No person shall commence, perform, or engage in blasting or in excavating with
284 mechanized excavating equipment on any tract or parcel of land in any county in this state
285 unless and until the person planning the blasting or excavating has ~~given 48 hours' notice~~
286 ~~by submitting~~ submitted a locate request to the UPC, ~~beginning the next business day after~~
287 ~~such notice is provided, excluding hours during days other than business days~~ that provides
288 appropriate notice. Any person performing excavation is responsible for being aware of
289 all information timely entered into the PRIS prior to the commencement of excavation. If,
290 prior to the expiration of the ~~48-hour waiting~~ appropriate notice period, all identified
291 facility owners or operators have responded to the locate request, and if all such facility
292 owners or operators have indicated that their facilities either are not in conflict or have been
293 marked, then the person planning to perform ~~excavation or blasting or excavating~~ shall be
294 authorized to commence work, subject to the other requirements of this Code section,
295 without waiting ~~the full 48 hours~~. ~~The 48 hours'~~ until the end of the notice period. No
296 appropriate notice shall ~~not~~ be required for excavating where minimally intrusive
297 excavation methods are used exclusively. Any locate request received by the UPC after
298 business hours shall be deemed to have been received by the UPC the next business day.
299 Such locate request shall:

300 (1) Describe the tract or parcel of land upon which the blasting or ~~excavation~~ excavating
301 is to take place with sufficient particularity, as defined by policies developed and
302 promulgated by the UPC, to enable the facility owner or operator to ascertain the precise
303 tract or parcel of land involved;

304 (2) State the name, address, and telephone number of the person ~~who~~ that will engage
305 in the blasting or excavating;

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

307 (4) ~~Define the time frame in which requested excavation may occur.~~ Specify an effective
308 date for the requested blasting or excavating and the duration of time in which such
309 blasting or excavating is expected to take place; and

310 (5) Provide appropriate notice.

311 (b) In the event the location upon which the blasting or excavating is to take place cannot
312 be described with sufficient particularity to enable the facility owner or operator to
313 ascertain the precise tract or parcel involved, the person proposing the blasting or
314 excavating shall mark the route or boundary of the site of the proposed blasting or
315 excavating by means of white ~~paint, white stakes, or white flags~~ if lining, as practical, or
316 schedule an on-site meeting with the locator or facility owner or operator and inform the
317 UPC, within a reasonable time, of the results of such meeting. The person marking a site
318 ~~with using~~ white lining shall comply with the rules and regulations of the Department of
319 Transportation as to the use of such markings so as not to obstruct signs, pavement
320 markings, pavement, or other safety devices.

321 (c) Except as otherwise provided in this subsection, ~~notice given pursuant to subsection (a)~~
322 ~~of this Code section shall expire 30 calendar days following the date of such notice, and~~
323 ~~no blasting or excavating undertaken pursuant to this notice~~ a locate request shall continue
324 ~~after such time has expired~~ take place more than 30 calendar days after the effective date.

325 In the event that the blasting or excavating ~~which that~~ is the subject of the ~~notice given a~~
326 locate request submitted pursuant to subsection (a) of this Code section will not be
327 completed within 30 calendar days following the effective date of such ~~notice~~, locate
328 request, an additional locate request with appropriate notice must be ~~given in accordance~~
329 ~~with subsection (a) of this Code section for the locate request to remain valid~~ submitted to

330 the UPC. Additional appropriate notices for an existing locate request shall not expand the
331 tract or parcel of land upon which the blasting or excavation is to take place.

332 (d) For emergencies, ~~notice no blasting or excavating shall expire at take place after~~ 7:00
333 A.M. ~~three on the third~~ business ~~days~~ day after the ~~notification~~ locate request is ~~made~~
334 submitted to the UPC.

335 (e) Except for those persons submitting design locate requests, no person, including
336 ~~facility owners or operators~~ any facility owner or operator, shall request marking of a site
337 through the UPC unless excavating is scheduled to commence. In addition, no person shall
338 make repeated requests for re-marking, unless the repeated request is required for
339 excavating to continue or due to circumstances not reasonably within the control of such
340 person. Any person ~~who~~ that willfully fails to comply with this subsection shall be liable
341 to the facility owner or operator for \$100.00 or for actual costs, whichever is greater, for
342 each repeated request for re-marking.

343 (f) If, subsequent to ~~giving the notice~~ submitting a locate request to the UPC required by
344 subsection (a) of this Code section, a person planning excavating determines that such
345 work will require blasting, then such person shall promptly so notify the UPC and shall
346 refrain from any blasting until the facility owner or operator responds within ~~24~~ 48 hours,
347 excluding hours during days other than business days, following receipt by the UPC of
348 such ~~notice~~ notification.

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

355 (1) Performed on the tract or parcel of land identified in the locate request;

356 (2) Performed by a person authorized by and having a contractual relationship with the
357 person planning the blasting or excavating;

358 (3) The type of blasting or excavating described in the locate request; and

359 (4) Carried out in accordance with all other requirements of this chapter.

360 (h) Facility owners or operators may bill an excavator for their costs ~~for~~ related to any
361 requests for re-marking other than for re-marks with no more than five individual addresses
362 on a single locate request. Such costs shall be documented actual costs and shall not
363 exceed \$100.00 per re-mark request.

364 25-9-7.

365 (a)(1) ~~Within 48 hours beginning the next business day following receipt by the UPC of~~
366 ~~the locate request filed in accordance with Code Section 25-9-6, excluding hours during~~
367 ~~days other than business days, Prior to 7:00 A.M. on the effective date, each facility~~
368 owner or operator shall determine whether or not utility underground facilities are located
369 on the tract or parcel of land upon which the blasting or excavating or blasting is to occur.
370 If utility underground facilities are determined to be present, the facility owner or
371 operator shall designate, through stakes, flags, permanent markers, or other marks on the
372 surface of the tract or parcel of land, the location of utility such underground facilities.
373 This subsection shall not apply to large projects.

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

380 (3) A facility owner or operator is not required to mark its own facilities ~~within 48 hours~~
381 pursuant to the time frame set out in paragraph (1) of this subsection if the facility owner

382 or operator or its agents are the only parties performing the excavation; however, such
383 facilities shall be designated prior to the actual start of excavation.

384 (b)(1) ~~Within 48 hours beginning the next business day following receipt by the UPC of~~
385 ~~the locate request filed~~ Prior to 7:00 A.M. on the effective date indicated in a locate
386 request submitted in accordance with Code Section 25-9-6, ~~excluding hours during days~~
387 ~~other than business days~~; each sewer system owner or operator shall determine whether
388 ~~or not~~ sewer laterals are located or likely to be located on the tract or parcel of land upon
389 which the ~~excavating or blasting or excavating~~ is to occur. If sewer laterals are
390 determined to be present or likely to be present, then the sewer system owner or operator
391 shall assist in designating sewer laterals up to the edge of the public right of way. Such
392 assistance shall not constitute ownership or operation of the sewer lateral by the sewer
393 system owner or operator. Good faith compliance with provisions of this subsection in
394 response to a locate request shall constitute full compliance with this chapter, and no
395 person shall be found liable to any party for damages or injuries as a result of performing
396 in compliance with the requirements of this subsection.

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

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

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

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

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

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

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

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

425 (c) Each facility owner or operator, either upon determining that no ~~utility~~ underground
426 facility or sewer lateral is present on the tract or parcel of land or upon completion of the
427 designation of the location of any ~~utility~~ underground facilities or sewer laterals on the tract
428 or parcel of land as required by subsection (a) or (b) of this Code section, shall provide ~~this~~
429 such information to the UPC in accordance with procedures developed by the UPC, which
430 may include the use of the PRIS. In no event shall such ~~notice~~ information be provided
431 later than midnight of the ~~second business day following receipt by the UPC of actual~~
432 ~~notice filed~~ business day prior to the effective date of the locate request submitted in
433 accordance with Code Section 25-9-6.

434 (d) In the event the facility owner or operator is unable to designate the location of the
435 utility underground facilities or sewer laterals due to extraordinary circumstances, ~~the~~ such
436 facility owner or operator shall notify the UPC and provide an estimated completion date
437 in accordance with procedures developed by the UPC, which may include the use of the
438 PRIS. The UPC shall also have the ability to declare extraordinary circumstances on behalf
439 of any or all operators if the UPC is unable to transmit locate requests as required by this
440 statute.

441 (e) If, at the end of the time period specified in subsections (a) and (b) of this Code section,
442 any facility owner or operator has not complied with the requirements of subsections (a),
443 (b), and (c) of this Code section, as applicable, the UPC shall issue a second request to each
444 such facility owner or operator. If the facility owner or operator does not respond to ~~this~~
445 additional such second request by 12:00 Noon of that business day, either by notifying the
446 UPC in accordance with procedures developed by the UPC that no utility underground
447 facilities or sewer laterals are present on the tract or parcel of land, or by designating the
448 location of such utility underground facilities or sewer laterals in accordance with the
449 provisions of subsections (a) and (b) of this Code section, as applicable, then the person
450 ~~providing notice that submitted the locate request~~ pursuant to Code Section 25-9-6 may
451 proceed with the ~~excavating or blasting or excavating~~, provided that there is no visible and
452 obvious evidence of the presence of an unmarked utility underground facility or sewer
453 lateral on the tract or parcel of land. Such person shall not be subject to any liability
454 resulting from damage to the utility underground facility or sewer lateral as a result of the
455 blasting or excavating, provided that such person complies with the requirements of Code
456 Section 25-9-8.

457 (f) If visible and obvious evidence of the presence of an unmarked utility underground
458 facility or sewer lateral does exist and the facility owner or operator either refuses to
459 comply with subsections (a) through (d) of this Code section, as applicable, or is not a
460 member of the UPC, then the excavator shall attempt to designate such facility or sewer

461 lateral prior to excavating. The facility owner or operator shall be strictly liable for the
462 actual costs associated with the excavator designating such utility underground facilities
463 and sewer laterals and any associated downtime. Such costs shall not exceed \$100.00 or
464 documented actual costs, whichever is greater, for each locate request.

465 (g) All utility underground facilities installed by facility owners or operators on or after
466 January 1, 2001, shall be installed in a manner which will make them locatable using a
467 generally accepted electronic locating method. All sewer laterals installed on or after
468 January 1, 2006, shall be installed in a manner which will make them locatable by facility
469 owners or operators using a generally accepted electronic locating method. In the event
470 that an unlocatable utility underground facility or unlocatable sewer lateral becomes
471 exposed when the facility owner or operator is present or in the case of sewer laterals when
472 the ~~sewer~~ utility underground sewer owner or operator is present on or after January 1,
473 2006, such utility underground facility or sewer lateral shall be made locatable through the
474 use of a permanent marker or an updating of permanent records.

475 (h) Facility owners or operators shall either maintain recorded information concerning the
476 location and other characteristics of abandoned utility underground facilities, maintain such
477 abandoned utility underground facilities in a locatable manner, or remove such abandoned
478 utility underground facilities. Facility owners or operators shall provide information on
479 abandoned utility underground facilities, when possible, in response to a locate request or
480 design locate request. When the presence of an abandoned utility underground facility
481 within an excavation site is known, the facility owner or operator should attempt to
482 designate the abandoned utility underground facility or provide information to the
483 excavator regarding such facilities. When located or exposed, all abandoned utility
484 underground facilities and sewer laterals shall be treated as live utility underground
485 facilities and sewer laterals.

486 (i) Notwithstanding any other provision of law to the contrary, a facility owner or operator
487 may use a locator to designate any or all utility underground facilities and sewer laterals.

488 The use of a locator shall not relieve the facility owner or operator of any responsibility
489 under this chapter. However, by contract a facility owner or operator may be indemnified
490 by a locator for any failure on the part of the locator to comply with the provisions of this
491 chapter.

492 (j) Large project rules shall be promulgated by the ~~Public Service Commission~~
493 commission. These rules shall include, but shall not be limited to, the establishment of
494 detailed processes. Such rules may also include changes in the time period allowed for a
495 facility owner or operator to comply with the provisions of this chapter and the time period
496 for which designations are valid.

497 (k)(1) Within ~~48 hours beginning the next business day following receipt by the UPC~~ the
498 notice period of the locate request ~~filed~~ submitted in accordance with Code Section
499 25-9-6, excluding hours during days other than business days, each facility owner or
500 operator shall determine whether or not unlocatable facilities other than sewer laterals are
501 present. In the event that such facilities are determined to be present, the facility owner
502 or operator shall exercise reasonable care in locating such facilities. The exercise of
503 reasonable care shall require, at a minimum, the use of the best available information to
504 designate the facilities and notification to the UPC of such attempted location. Placing
505 markers or otherwise leaving evidence of locations of facilities is deemed to be an
506 acceptable form of notification to the excavator or locator.

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

508 25-9-8.

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

512 (b) When ~~excavating or blasting~~ excavating is to take place within the tolerance zone,
513 the excavator shall exercise reasonable care for the protection of the utility underground

514 facility or sewer lateral, including permanent markers and paint placed to designate ~~utility~~
515 underground facilities. ~~Such~~ This protection shall include, but shall not be limited to, at
516 least one of the following based on geographical and climate conditions: hand digging, pot
517 holing, soft digging, vacuum excavation methods, pneumatic hand tools, or other technical
518 methods that may be developed. Other mechanical methods may be used with the approval
519 of the facility owner or operator.

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

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

533 (e) Any person engaged in blasting or in excavating with mechanized excavating
534 equipment ~~who~~ that strikes, damages, injures, or loosens any ~~utility~~ underground facility
535 or sewer lateral, regardless of as to whether the ~~utility~~ underground facility or sewer lateral
536 is marked, shall immediately cease such blasting or excavating and notify the UPC and the
537 appropriate facility owner or operator, if known. Upon receiving ~~notice~~ such notification
538 from the excavator or the UPC, the facility owner or operator shall send personnel to the
539 location as soon as possible to effect temporary or permanent repair of ~~the~~ such damage.
540 Until such time as the damage has been repaired, no person shall engage in ~~excavating or~~

541 blasting or excavating activities that may cause further damage to the utility underground
542 facility or sewer lateral except as provided in Code Section 25-9-12.

543 (f) The excavator shall make an emergency 9-1-1 call to alert emergency services upon
544 striking or damaging an underground facility that carries:

545 (1) Gas as defined in 49 C.F.R. Parts 192 and 193; or

546 (2) Hazardous liquid as defined in 49 C.F.R. Part 195.

547 25-9-9.

548 (a) For the purposes of this chapter, the location of utility underground facilities ~~which is~~
549 provided by a facility owner or operator in accordance with subsection (a) of Code Section
550 25-9-7 to any person ~~must~~ engaging in scheduled blasting and excavating shall be accurate
551 to within 18 inches, measured horizontally from the outer edge of either side of such utility
552 underground facilities. If any utility underground facility becomes damaged by an
553 excavator due to the furnishing of inaccurate information as to its location by the facility
554 owner or operator, ~~such the~~ excavator shall not be subject to any liability resulting from
555 damage to the utility underground facility as a result of the blasting or excavating, provided
556 that such person engaging in scheduled blasting or excavating complies with the
557 requirements of Code Section 25-9-8 and there is no visible and obvious evidence to the
558 excavator of the presence of a mismarked utility underground facility.

559 (b) Upon documented evidence that the person seeking information as to the location of
560 utility underground facilities has incurred losses or expenses due to inaccurate information,
561 lack of information, or unreasonable delays in supplying information by the facility owners
562 or operators, ~~the such~~ facility owners or operators shall be liable to ~~that~~ such person for any
563 such losses or expenses.

564 25-9-10.

565 This chapter does not affect and is not intended to affect any right, title, power, or interest
566 ~~which~~ that any facility owner or operator may have with relation to any utility underground
567 facility or to any easement, right of way, license, permit, or other interest in or with respect
568 to the land on which the utility underground facility is located.

569 25-9-10.1.

570 (a)(1) On and after July 1, 2023, the Department of Transportation shall participate in
571 and cooperate with the UPC for purposes of receiving locate requests in the Department
572 of Transportation's right of way for underground facilities following a process consistent
573 with Code Sections 25-9-6, 25-9-7, and 25-9-8 and subsection (a) of Code
574 Section 25-9-9.

575 (2) The Department of Transportation shall not be subject to the provisions of
576 subsection (b) of Code Section 25-9-9 or the enforcement provisions of subsections (h)
577 and (i) of Code Section 25-9-14.

578 (3) The Department of Transportation shall not participate in the funding of the UPC or
579 its activities.

580 (b) Nothing in this chapter shall be construed to deem the Department of Transportation
581 to be a utility owner or a utility provider.

582 25-9-11.

583 This chapter does not affect and is not intended to affect any rights, powers, interest, or
584 liability of the state or the Department of Transportation with respect to the state highway
585 system, the county road system, or the municipal street system, or of a county with respect
586 to the county road system or of a municipality with respect to the city street system, with
587 relation to any utility underground facility which is or may be installed within the limits

588 of any public road or street right of way, whether the installation is by written or verbal
589 permit, easement, or any form of agreement whatsoever.

590 25-9-11.1.

591 No local governing authority shall enforce any ordinance or resolution which imposes fines
592 for a violation of a local ordinance or resolution that establishes requirements for white
593 lining, marking of ~~utility~~ utility underground facilities, re-marking of ~~utility~~ utility underground
594 facilities, or otherwise locating ~~utility~~ utility underground facilities or sewer laterals for any locate
595 request or large project.

596 25-9-12.

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

608 25-9-13.

609 The appropriate notice requirements prescribed by Code Section 25-9-6 shall be required
610 of persons performing nonemergency excavations in an area where one or more facility
611 owners or operators has declared extraordinary circumstances in accordance with

612 subsection (d) of Code Section 25-9-7. When a situation of extraordinary circumstances
613 has been declared, the excavator shall be responsible for securing knowledge of the PRIS
614 status of all facility owners or operators in the area to be excavated, as not all facility
615 owners or operators may have declared extraordinary circumstances. Once the PRIS status
616 of all facility owners or operators is known, excavation may commence in accordance with
617 the requirements of subsection (e) of Code Section 25-9-7. If there is visible and obvious
618 evidence of the presence of an unmarked underground facility or sewer lateral of a facility
619 owner or operator that has declared extraordinary circumstances, the excavator shall
620 exercise reasonable care for the protection of such underground facilities and sewer laterals
621 when excavating.

622 ~~25-9-13.~~ 25-9-14.

623 (a) Any person ~~who~~ that violates the requirements of subsection (a), (f), or (g) of Code
624 Section 25-9-6 and ~~whose subsequent excavating or blasting when resultant blasting or~~
625 excavating damages utility underground facilities or sewer laterals such person shall be
626 strictly liable for:

627 (1) All costs incurred by the facility owner or operator in repairing or replacing its
628 damaged facilities, excluding betterments. An investigation of any damages shall be
629 initiated by the completion of the next business day following the repair of the reported
630 damage. All repair invoices shall be sent to the excavator within 90 days of completion
631 of the repair; and

632 (2) Any injury or damage to persons or property resulting from damaging the ~~utility~~
633 underground facilities and sewer laterals.

634 (b) Each local governing authority is authorized to require by ordinance any bonds on
635 ~~utility underground~~ contractors or on persons performing ~~excavation or blasting or~~
636 excavating within the any public right of way or any dedicated utility underground

637 easement as it may determine to assure compliance with subsection (a) of this Code
638 section.

639 (c) Any person ~~who~~ that violates the requirements of Code Section 25-9-6 and ~~whose~~
640 ~~subsequent excavating or blasting~~ when resultant blasting or excavating damages ~~utility~~
641 underground facilities or sewer laterals such person shall also indemnify the affected
642 facility owner or operator against all claims or costs incurred, if any, for personal injury,
643 property damage, or service interruptions resulting from damaging the ~~utility~~ underground
644 facilities and sewer laterals. Such obligation to indemnify shall not apply to any county,
645 city, town, or state agency except as permitted by law.

646 (d) In addition to the other provisions of this Code section, a professional licensing board
647 shall be authorized to suspend or revoke any professional or occupational license,
648 certificate, or registration issued to a person pursuant to Title 43 ~~whenever~~ in instances
649 when such person has repeatedly violated the requirements of Code Section 25-9-6 or
650 25-9-8.

651 (e) Subsections (a), (c), and (d) of this Code section shall not apply to any person ~~who~~
652 ~~shall commence, perform, or engage~~ that commences, performs, or engages in blasting or
653 in excavating with mechanized equipment on any tract or parcel of land in any county in
654 this state if the facility owner or operator to which appropriate notice was given ~~respecting~~
655 with respect to such blasting or excavating with mechanized equipment as prescribed in
656 subsection (a) of Code Section 25-9-6 has failed to comply with Code Section 25-9-7 or
657 has failed to become a member of the UPC as required by Code Section 25-9-5. A facility
658 owner or operator to which appropriate notice of blasting or excavating with mechanized
659 equipment as prescribed in subsection (a) of Code Section 25-9-6 was given shall be
660 prohibited from seeking claims for damages if no designation of underground facilities or
661 sewer laterals was performed prior to the damage being incurred and the person blasting
662 or excavating complied with the provisions in Code Section 25-9-8.

663 (f) The enforcement provisions of this Code section shall not apply to any person ~~who~~
664 ~~shall commence, perform, or engage~~ that commences, performs, or engages in blasting or
665 in excavating with mechanized equipment within the curb lines or edges of the pavement
666 of any public road and ~~who~~ that causes damage to ~~a utility~~ an underground facility located
667 within the roadway hard surface or the graded aggregate base therein if such person has
668 complied with the provisions of this chapter and there is no indication that ~~a utility~~ an
669 underground facility is in conflict with the proposed excavation.

670 (g) Any person engaged in excavating the concrete or asphalt of a road maintained by a
671 local governing authority for the purpose of road repair, full depth reclamation, potholing,
672 or general road repair that complies with Code Section 25-9-6 shall not be held liable for
673 damage claims if the underground facility or sewer facility falls within the depth of the
674 existing pavement and subbase materials or 12 inches below the road surface, whichever
675 is less.

676 ~~(g)~~(h) The commission shall enforce the provisions of this chapter. The commission may
677 promulgate any rules and regulations necessary to implement the commission's authority
678 to enforce this chapter. In order to provide local governing authorities adequate time for
679 initial budgeting and staffing, the starting date for enforcement of the requirement to locate
680 traffic control devices and traffic management systems shall be January 1, 2024.

681 (i) Enforcement actions brought under this chapter shall commence within three years
682 from the date that the probable violation was reported to the commission.

683 ~~(h)~~(j)(1) The Governor shall appoint an advisory committee ~~consisting of persons who~~
684 ~~are employees or officials of or who represent the interests of~~ as follows:

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

686 (B) One member to represent traffic control devices, traffic management systems,
687 water systems, or water and sewer systems owned or operated by local governing
688 authorities;

689 (C) One member to represent the ~~utilities protection center~~ UPC;

- 690 (D) One member to represent traffic control devices, traffic management systems,
691 water systems, or water and sewer systems owned or operated by counties;
- 692 (E) One member to represent traffic control devices, traffic management systems,
693 water systems, or water and sewer systems owned or operated by municipalities;
- 694 (F) One member to represent the nonmunicipal electric industry;
- 695 (G) Five members to represent excavators to include the following:
- 696 (i) One member to represent licensed utility ~~contractor~~ contractors;
- 697 (ii) One member to represent licensed general ~~contractor~~ contractors;
- 698 (iii) One member to represent licensed ~~plumber~~ plumbers;
- 699 (iv) One member to represent landscape ~~contractor~~ contractors; and
- 700 (v) One member to represent highway ~~contractor~~ contractors;
- 701 (H) One member to represent locators;
- 702 (I) One member to represent the nonmunicipal telecommunications industry;
- 703 (J) One member to represent the nonmunicipal natural gas industry;
- 704 (K) One member to represent municipal gas, electric, or telecommunications providers;
- 705 and
- 706 (L) The commission chairperson or such chairperson's designee.
- 707 The commission chairperson or his or her designee shall serve as chairperson of the
708 advisory committee and shall cast a vote only in the case of a tie. Persons appointed to
709 the advisory committee shall have expert knowledge of this chapter and specific
710 operations expertise with the subject matter encompassed by the provisions of this
711 chapter.
- 712 (2) The advisory committee shall establish rules of operation including an attendance
713 policy. In the event a committee member resigns or fails to meet the criteria of the
714 attendance policy, the advisory committee shall appoint an interim member to represent
715 the same stakeholder group until such time as the Governor appoints a replacement.

716 (3) The advisory committee shall assist the commission in the enforcement of this
717 chapter, make recommendations to the commission regarding rules and regulations, and
718 perform duties to be assigned by the commission including, but not limited to, the review
719 of reported violations of this chapter and the preparation of recommendations to the
720 commission as to the appropriate penalties to impose on persons violating the provisions
721 of this chapter.

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

726 ~~(j)~~(k)(1) Commission enforcement of this chapter shall follow the procedures described
727 in this subsection. Nothing in this subsection shall limit the authority of the commission
728 delegated from the federal government and authorized in other state law.

729 (2)(A) The commission is not authorized to impose civil penalties on any local
730 governing authority except as provided in this paragraph. The commission may
731 recommend training for local governing authorities in response to any probable or
732 proven violation. Civil penalties may be recommended for or imposed on any local
733 governing authority for refusal to comply with the requirements of Code Section 25-9-7
734 or for other violations of Code Section 25-9-7 that result in injury to people, damage
735 to property, or the interruption of ~~utility~~ underground facility service in the event that
736 investigators find that a local governing authority has demonstrated a pattern of willful
737 noncompliance. Civil penalties may be recommended or imposed ~~on or after January~~
738 ~~1, 2006~~, for violations of provisions of this chapter other than Code Section 25-9-7 in
739 the event that investigators find that the severity of an excavation violation warrants
740 civil penalties or that a local governing authority has demonstrated a pattern of willful
741 noncompliance. Any such civil penalty shall be recommended or imposed in
742 accordance with a tiered penalty structure designed for local governing authorities. In

743 the event that the investigators determine that a local governing authority has made a
744 good faith effort to comply with this chapter, the investigators shall not recommend a
745 civil penalty. For purposes of this subsection 'refusal to comply' means that a utility an
746 underground facility owner or operator does not respond in PRIS to a locate request,
747 does not respond to a direct telephone call to designate their facilities, or other such
748 direct refusal. Refusal to comply ~~does~~ shall not mean a case where the volume of
749 requests or some other mitigating circumstance prevents the utility underground facility
750 owner or operator from locating in accordance with Code Section 25-9-7.

751 (B) No later than January 1, 2006, the advisory committee shall recommend to the
752 commission for adoption a tiered penalty structure for local governing authorities. Such
753 structure shall take into account the size, annual budget, gross receipts, number of
754 utility underground facility connections and types of utilities within the territory of the
755 local governing authority. Such penalty structure shall also take into account the
756 number of locate requests received annually by the local governing authority, the
757 number of locate codes made annually to the local governing authority from the UPC,
758 the number of utility customers whose service may have been interrupted by violations
759 of this chapter, and the duration of such interruptions. Such penalty structure shall also
760 consider the cost of compliance. The penalty structure shall establish for each tier the
761 maximum penalty per violation and per 12 month period at a level to induce
762 compliance with this chapter. Such maximum penalty shall not exceed \$5,000.00 per
763 violation or \$50,000.00 per 12 month period for the highest tier.

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

769 (4) Any respondent may accept or disagree with the settlement recommended by the
770 investigators. If the respondent disagrees with the recommended settlement, the
771 respondent may dispute the settlement recommendation to the advisory committee. The
772 advisory committee shall then render a recommendation either supporting the
773 investigators' recommendation, rejecting the investigators' recommendation, or
774 substituting its own recommendation. With respect to an investigation of any probable
775 violation committed by a local governing authority, any recommendation by the advisory
776 committee shall be in accordance with the provisions of paragraph (2) of this subsection.
777 In its deliberations the advisory committee shall consider the gravity of the violation or
778 violations; the degree of the respondent's culpability; the respondent's history of prior
779 offenses; and such other mitigating factors as may be appropriate. If the advisory
780 committee determines that a respondent has made a good faith effort to comply with this
781 chapter, the committee shall not recommend civil penalties against the respondent. To
782 the extent that a respondent does not accept a settlement agreement or request to dispute
783 the recommendation of the investigators to the advisory committee, the respondent shall
784 be assigned to a hearing officer or administrative law judge.

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

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

796 a civil penalty greater than the civil penalty recommended by the advisory committee or
797 to impose any civil penalty if the advisory committee does not recommend a civil
798 penalty.

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

809 (j)(1) All civil penalties ordered by the commission and collected pursuant to this Code
810 section shall be deposited in the general fund of the state treasury."

811 **SECTION 2.**

812 Code Section 46-3-34, relating to utilities protection center, funding of activities, notice of
813 work delay, and responsibility for completing safety requirements, is amended by revising
814 subsection (a) as follows:

815 "(a) All utilities shall organize, participate as members in, and cooperate with the utilities
816 protection center. In lieu of organizing a new center, if the organization defined as the
817 ~~utilities protection center in paragraph (21) of Code Section 25-9-2~~ Utilities Protection
818 Center (UPC) in Code Section 25-9-3 undertakes to serve as the utilities protection center
819 referred to in this part, it may do so and no duplicative center shall thereafter be
820 established. The activities of the center relating to high-voltage lines shall be funded by
821 all utilities."

822 **SECTION 3.**

823 This Act shall become effective on September 1, 2022.

824 **SECTION 4.**

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