

O.C.G.A. § 25-9-13

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*** Current through the 2017 Regular Session of the General Assembly. ***

TITLE 25. FIRE PROTECTION AND SAFETY
CHAPTER 9. BLASTING OR EXCAVATING NEAR UTILITY FACILITIES

O.C.G.A. TITLE 25 Chapter 9 (2017)

§ 25-9-1. Short title

This chapter shall be known and may be cited as the "Georgia Utility Facility Protection Act."

§ 25-9-2. Purpose of chapter

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

§ 25-9-3. Definitions

As used in this chapter, the term:

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

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

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

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

(5) "Commission" means the Public Service Commission.

(6) "Corporation" means any corporation; municipal corporation; county; authority; joint-

stock company; partnership; association; business trust; cooperative; organized group of persons, whether incorporated or not; or receiver or receivers or trustee or trustees of any of the foregoing.

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

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

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

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

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

(12) "Excavating" means any operation using mechanized equipment or explosives to move earth, rock, or other material below existing grade. This includes but is not limited to augering, blasting, boring, digging, ditching, dredging, drilling, driving-in, grading, plowing-in, ripping, scraping, trenching, and tunneling. "Excavating" shall not include pavement milling or pavement repair that does not exceed the depth of the existing pavement or 12 inches, whichever is less. The term shall not include routine road or railroad maintenance activities carried out by road maintenance or railroad employees or contractors, provided that such activities occur entirely within the right of way of a public road, street, railroad, or highway of the state; are carried out with reasonable care so as to protect any utility facilities and sewer laterals placed in the right of way by permit; are carried out within the limits of any original excavation on the traveled way, shoulders, or drainage ditches of a public road, street, railroad, or highway, and do not exceed 18 inches in depth below the grade existing prior to such activities; and, if involving the replacement of existing guard rails and sign posts, replace such guard rails and sign posts in their previous locations and at their previous depth. "Excavating" shall not include farming activities.

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

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

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

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

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

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

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

(20) "Locate request" means a communication between an excavator and the utilities protection center in which a request for designating utility facilities, sewer laterals, or both is processed.

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

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

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

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

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

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

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

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

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

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

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

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

(33) "Traffic management system" means a network of traffic control devices, monitoring sensors, and personnel, with all associated communications and power services, including all system control and management centers.

(34) "Tolerance zone" means the width of the utility facility or sewer lateral plus 18 inches on either side of the outside edge of the utility facility or sewer lateral on a horizontal plane.

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

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

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

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

management systems, or sewer laterals.

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

§ 25-9-4. Design locate request and response

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

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

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

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

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

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

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

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

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

§ 25-9-5. Cooperation with UPC; permanent markers for water and sewer facilities; point of contact list

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

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

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

§ 25-9-6. Prerequisites to blasting or excavating; marking of sites

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

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

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

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

(4) Define the time frame in which requested excavation may occur.

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

rules and regulations of the Department of Transportation as to the use of such markings so as not to obstruct signs, pavement markings, pavement, or other safety devices.

(c) Except as otherwise provided in this subsection, notice given pursuant to subsection (a) of this Code section shall expire 30 calendar days following the date of such notice, and no blasting or excavating undertaken pursuant to this notice shall continue after such time has expired. In the event that the blasting or excavating which is the subject of the notice given pursuant to subsection (a) of this Code section will not be completed within 30 calendar days following the date of such notice, an additional notice must be given in accordance with subsection (a) of this Code section for the locate request to remain valid. Additional notices for an existing request shall not expand the tract or parcel of land upon which the blasting or excavation is to take place.

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

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

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

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

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

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

§ 25-9-7. Determining whether utility facilities are present; information to UPC; noncompliance; future utility facilities; abandoned utility facilities

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

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

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

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

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

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

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

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

(B) Providing electronic copies of or delivering the records through facsimile or by other

means to an agreed upon location within 48 hours beginning the next business day following receipt by the UPC of the locate request filed in accordance with Code Section 25-9-6, excluding hours during days other than business days; provided, however, that for local governing authorities that receive fewer than 50 locate requests annually, the local governing authority may designate the agreed upon location and communicate such designation to the excavator;

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

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

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

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

(d) In the event the facility owner or operator is unable to designate the location of the utility facilities or sewer laterals due to extraordinary circumstances, the facility owner or operator shall notify the UPC and provide an estimated completion date in accordance with procedures developed by the UPC, which may include the use of the PRIS.

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

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

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

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

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

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

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

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

§ 25-9-8. Treatment of gas pipes and other underground utility facilities by blasters and excavators

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

(b) When excavating or blasting is to take place within the tolerance zone, the excavator shall exercise reasonable care for the protection of the utility facility or sewer lateral, including permanent markers and paint placed to designate utility facilities. This protection shall include, but not be limited to, at least one of the following based on geographical and climate conditions: hand digging, pot holing, soft digging, vacuum excavation methods, pneumatic hand tools, or other technical methods that may be developed. Other mechanical methods may be used with the approval of the facility owner or operator.

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

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

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

§ 25-9-9. Degree of accuracy required in utility facility location information; effect of inaccurate information on liability of blaster or excavator; liability of facility owners for losses resulting from lack of accurate information

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

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

§ 25-9-10. Effect of chapter upon rights, titles, powers, or interests of facility owners or operators

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

§ 25-9-11. Effect of chapter upon rights, powers, etc., of state, counties, or municipalities concerning facilities located on public road or street rights of way

This chapter does not affect and is not intended to affect any rights, powers, interest, or liability of the state or the Department of Transportation with respect to the state highway system, the county road system, or the municipal street system, or of a county with respect to the county road system or of a municipality with respect to the city street system, with relation to any utility facility which is or may be installed within the limits of any public road or street right of way, whether the installation is by written or verbal permit, easement, or any form of agreement whatsoever.

§ 25-9-11.1. Local governing authorities prohibited from enforcing ordinances or resolutions imposing fines for violations of certain marking or location requirements

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

§ 25-9-12. Notice requirements for emergency excavations

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

§ 25-9-13. Penalties for violations of chapter; bonds; enforcement; advisory committee; dispose of settlement recommendations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(G) Five members to represent excavators to include the following:

(i) One licensed utility contractor;

(ii) One licensed general contractor;

(iii) One licensed plumber;

(iv) One landscape contractor; and

(v) One highway contractor;

(H) One member to represent locators;

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

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

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

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

The commission chairperson or his or her designee shall serve as chairperson of the advisory committee and shall cast a vote only in the case of a tie. Persons appointed to the advisory committee shall have expert knowledge of this chapter and specific operations expertise with the subject matter encompassed by the provisions of this chapter.

(2) The advisory committee shall establish rules of operation including an attendance policy. In the event a committee member resigns or fails to meet the criteria of the attendance policy, the advisory committee shall appoint an interim member to represent the same stakeholder group until such time as the Governor appoints a replacement.

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

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

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

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

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

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

(4) Any respondent may accept or disagree with the settlement recommended by the investigators. If the respondent disagrees with the recommended settlement, the respondent may dispute the settlement recommendation to the advisory committee. The advisory committee shall then render a recommendation either supporting the investigators' recommendation, rejecting the investigators' recommendation, or substituting its own recommendation. With respect to an investigation of any probable violation committed by a local governing authority, any recommendation by the advisory committee shall be in accordance with the provisions of paragraph (2) of this subsection. In its deliberations the

advisory committee shall consider the gravity of the violation or violations; the degree of the respondent's culpability; the respondent's history of prior offenses; and such other mitigating factors as may be appropriate. If the advisory committee determines that a respondent has made a good faith effort to comply with this chapter, the committee shall not recommend civil penalties against the respondent. To the extent that a respondent does not accept a settlement agreement or request to dispute the recommendation of the investigators to the advisory committee, the respondent shall be assigned to a hearing officer or administrative law judge.

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

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

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

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

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