Old Business #15

COUNTY AGENDA REQUEST

Department:	Board of Commissioners	Presenter(s):	Chairman Steve Brown
Meeting Date:	Thursday, June 26, 2014	Type of Request:	Old Business

Wording for the Agenda:

Consideration of Chairman Steve Brown's recommendation to amend Ordinance 2014-02 by revising White Lining standards to those reflected in Georgia Senate Bill 117 to include reducing the "Tolerance Zone" from 24 inches to 18 inches and other minor modifications. This item was tabled at the June 12, 2014 Board of Commissioners meeting.

Background/History/Details:

White Lining is a practice that has been widely used in the United States where the National Transportation Board concluded that pre-marking is a practice that helps prevent excavation damage. The procedure involves an excavator using white paint to indicate the route or area that is going to be excavated, such that the locator knows exactly how much marking is required and when. While lining reduces confusion about what utilities need to be marked or not marked. On January 23, 2014, the Board of Commissioners adopted Ordinance 2014-12, amending the Fayette County Code of Ordinances, Chapter 19, by adding White Lining. Ordinance 2014-02 (Section A, pgs. 2-178) established a White Lining "Tolerance Zone" of 24 inches.

Recently, the Georgia General Assembly passed Senate Bill 117 (Section B, pgs 18-36) related to blasting or excavating near utility facilities and it will become effective throughout the state on July 1, 2014. Senate Bill 17 redefined the "Tolerance Zone" related to White Lining from 24 inches to 18 inches.

Section C (pgs. 37-39) provides the proposed changes to the White Lining Ordinance.

What action are you seeking from the Board of Commissioners?

Approval of Chairman Steve Brown's recommendation to amend Ordinance 2014-02 by revising White Lining standards to those reflected in Georgia Senate Bill 117 to include reducing the "Tolerance Zone" from 24 inches to 18 inches and other minor modifications. This item was tabled at the June 12, 2014 Board of Commissioners meeting.

If this item requires funding, please describe:

Not Applicable.

Has this request been considered within the past two years?	Yes	If so, when?	Thursday, June 12, 2014
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

Approved by Finance	Not Applicable	Reviewed by Legal	
Approved by Purchasing	Not Applicable	County Clerk's Approval	Yes
Administrator's Approval			

Staff Notes:

COUNTY OF FAYETTE

STATE OF GEORGIA

ORDINANCE

NO. 2014-02

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF FAYETTE COUNTY, GEORGIA; TO PROVIDE FOR UNDERGROUND MARKING STANDARDS; TO PROVIDE FOR THE PUBLIC HEALTH, SAFETY AND WELFARE; AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF FAYETTE COUNTY, AND IT IS HEREBY ENACTED PURSUANT TO THE AUTHORITY THEREOF, THAT THE CODE OF ORDINANCES OF FAYETTE COUNTY BE AMENDED BY PROVIDING FOR UNDERGROUND MARKING STANDARDS AS FOLLOWS:

Section 1. By deleting Article IV of Chapter 19 in its entirety and by enacting in lieu thereof a new Article IV in Chapter 19 to read as follows:

ARTICLE IV.

FAYETTE COUNTY UNDERGROUND MARKING STANDARDS

Section 2. By adding a section to Article IV pertaining to definitions to be numbered and to read as follows:

Sec. 19-71. Definitions

The following words are to be understood consistent with the definitions contained herein as applicable to this Article.

(a) "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.

(b) "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 Article. Such extraordinary circumstances may include, but shall not be limited to, hurricanes, tornadoes, floods, ice and snow, and acts of God.

Section 3. By adding a section to Article IV pertaining to White Lining to be numbered and to read as follows:

Sec. 19-72. White Lining

(a) Background. White lining is a practice that has been widely used in the United States where the National Transportation Board concluded that pre-marking is a practice that helps prevent excavation damage. The procedure simply involves an excavator using white paint to indicate the route or area that is going to be excavated, such that the locator then knows exactly how much marking is required and where. White lining reduces confusion about what utilities need to be marked or not marked.

(b) Purpose. The purpose of white lining is to allow everyone involved with the dig site to know the exact location of the proposed excavation. White lining the excavation site is an excellent way to assist the utilities or utility locators in marking lines in the work area right

the first time and in less time. This technique eliminates speculation by the locator about where the excavation will take place and will often enable the utility or its agent to locate faster and more accurately. In short, pre-marking the area and the extent of the intended excavation can reduce delays and the time it takes to perform the locate.

(c) Examples; timing. Examples of areas to be white lined are smaller (involving only a portion of a particular address) or linear excavations such as telecommunication drops and lines, service lines (such as for water, gas, electricity and sewer), utility pits, cuts and repairs, curb repairs, bore holes, directional boring pathways, pole and signage placements, etc. Such examples are merely explanatory of the type of excavation where white lining is appropriate and are not meant to be exclusive. White lining shall be completed prior to contacting GA811 to obtain a locate request ticket number. Electronic/virtual white lining is not an acceptable or recognized method.

(d) Exceptions to White Lining. Exceptions are allowed as follows:

(1) Unless one or more utility facilities are damaged 5 times or more collectively by a contractor making the locate request within a 90-day contract period, white lining will not be required for any large project so designated in accordance with GPSC Rule 515-9-4-.13 (a copy of GPSC Rule 515-9-4-.13 currently in effect is attached as Exhibit "A" and by this reference is incorporated herein). A large project ticket holder whose past prohibits it from being exempt, as stated above, will be subject to no more than a two day shutdown period and shall be required to white line the remainder of the project to meet the Large Project Marking Facility Locating Agreement Schedule that the ticket holder and utility originally agreed upon;

(2) Homeowners/occupants involved in excavation or land disturbance that is confined to a single address or parcel. Homeowners/occupants shall not submit locate requests for excavation or land disturbance that will be performed by a business, a contractor, or a utility. Businesses, contractors, and utilities are not exempt from white lining;

(3) "Emergencies" and "extraordinary circumstances" as such terms are defined herein, are statutory exceptions to the requirement for obtaining a locate ticket prior to commencing mechanized excavation and, hence, also exceptions to the requirement for white lining under this section. However, if a particular emergency notification is later determined not to have been an emergency or an extraordinary circumstance, then the excavator's failure to procure a locate ticket before excavating will be treated as a violation of this section. Also, pre-excavation emergency locate ticket requests (that is, a request for a locate ticket on an expedited basis sooner than the prescribed time limit) will not be an exception to white lining as required in this section;

(4) Residential telecommunication service drop lines that can be delineated by the route of the existing line on the ground for single residential address/parcel requests only; and

(5) Termite baiting systems.

(e) White Lining Symbols as Directions to Locator. White lining proposed dig sites that will follow a single path or trench shall be marked using white lines and/or arrows and shall be located for twenty (20) feet on either side of the white line and for twenty (20) feet outward beyond the designated "START" and "END" of such linear white line. Therefore, it is important to identify the starting and ending points.

START END

(f) Identification of White Lining Excavator. In order to enable the locating utility or its locators to quickly identify the requested locate at the job site and expedite the locating process, such excavator when white lining shall identify himself or itself by labeling the white line area with the excavator's name or the applicable locate ticket number or both.

Section 4. By adding a section to Article IV pertaining to marking of facilities by or for utilities to be numbered and to read as follows:

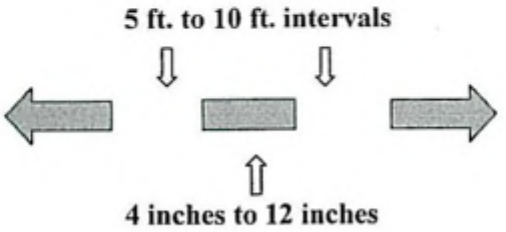
Sec. 19-73. Facility Marking by or for Utilities

(a) Utility Markings. Facility owners or their locate contractors shall indicate utility facilities by placing their UPC alpha code, along with the type material (if known) that the facility consists of, at the beginning and end of locates. Also, arrows should be placed at the ends of markings to indicate that the underground facility continues. In accomplishing the locate task, the line locator shall use industry-approved and generally accepted methods of locating. The tolerance zone shall be 24" measured horizontally from the outer edge of either side of such marked utility facilities.

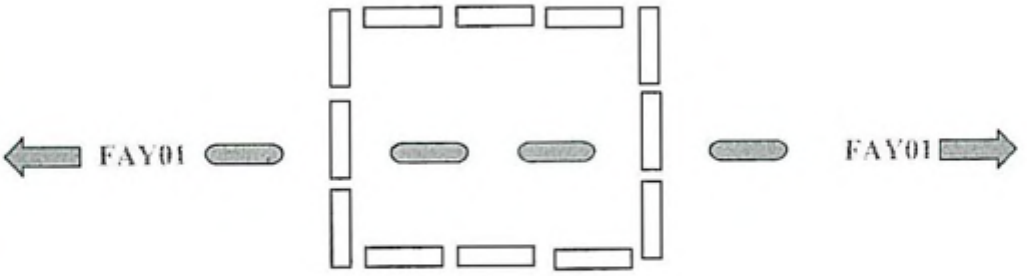
(1) To avoid confusion on long runs, the marks shall be frequent enough to identify the owner.

(2) The marks shall indicate the approximate center-line of the underground lines. For example, the middle of the cable, line or pipe shall be at the center of the dashed marks.

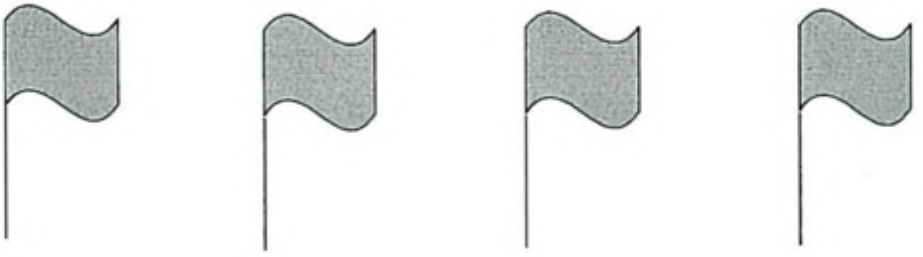
(3) Location marks shall be 4 to 12 inches in length and at intervals of 5 to 10 feet.



(4) The line locator (person marking the lines) shall extend marks outside the proposed work area by 20 to 30 feet if those facilities extend outside the proposed excavation area.

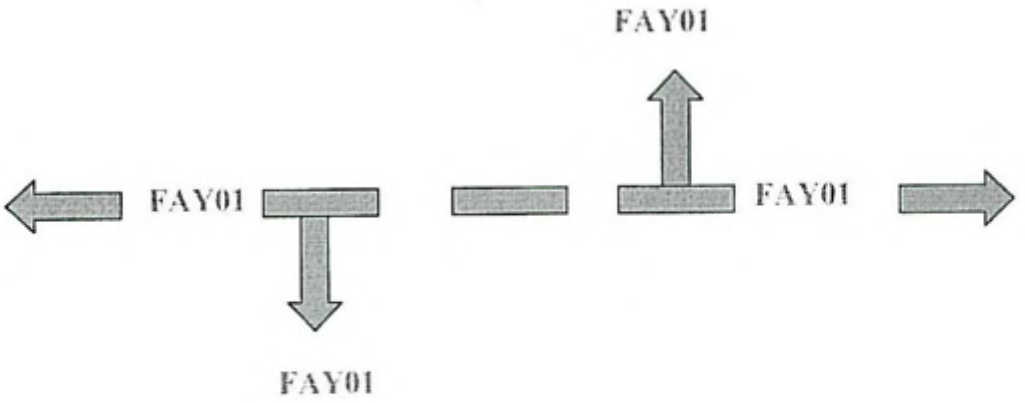


(5) In areas such as flower beds, rock gardens, etc., flags or stakes may be an alternative to paint. The decision to use flags, paint, or stakes shall be based on the terrain and job conditions. For instance, flags or stakes in wet areas, offsets in dirt construction zones that have a high volume of traffic crossing their line location marks.

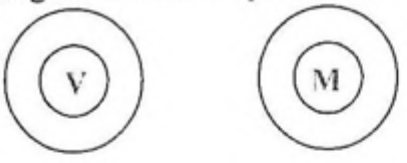


(6) Dead ends, stub-outs, termination points, etc., shall be marked as follows:

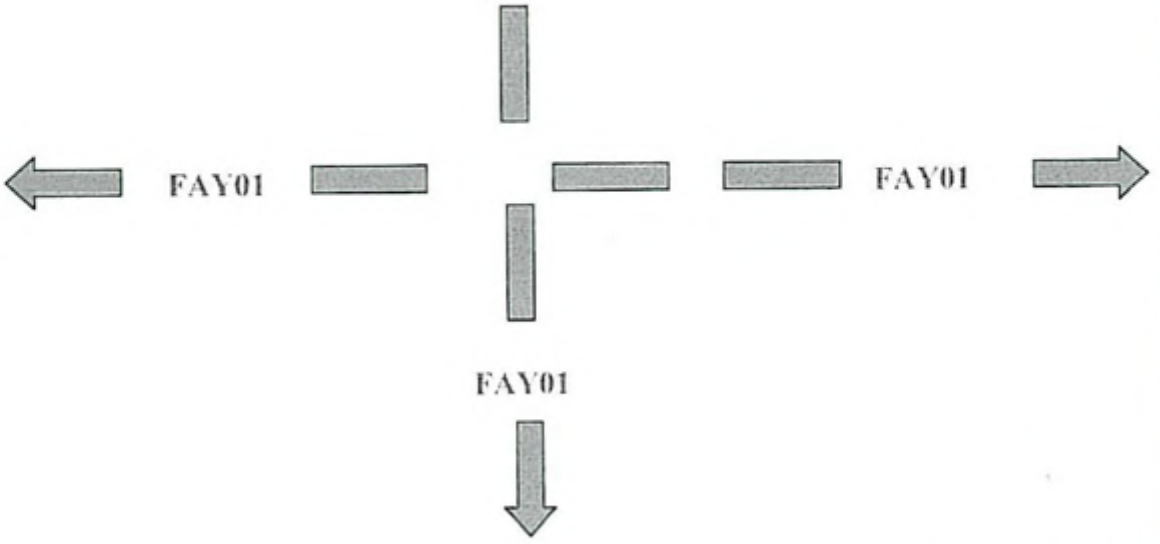
(7) Lines that have connections (e.g., T's or Y's) or changes in directions shall be clearly indicated. Marks indicating lines or connections shall clearly show the intersection and path of the line or connection. Marks that show changes in direction shall be placed closer together for more clarity and accuracy.



(8) Manholes and valves shall be identified by using a circle and letters if they are not visible (dirt covering valve boxes or pavement covering manhole cover).



(9) Facilities that cross but do not intersect shall be marked as described to indicate such installation manner.

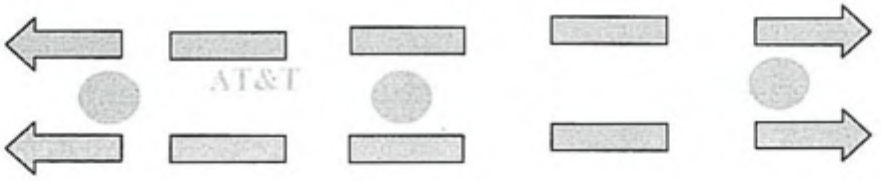


(10) Unlocateable sewer laterals shall be marked by placing a green triangle on the sewer main and, if the location of the tap for such unlocateable sewer lateral is known, by placing a green "T" or "Y" or other appropriate symbol at the tap pointing generally toward the address served by such unlocateable sewer lateral.

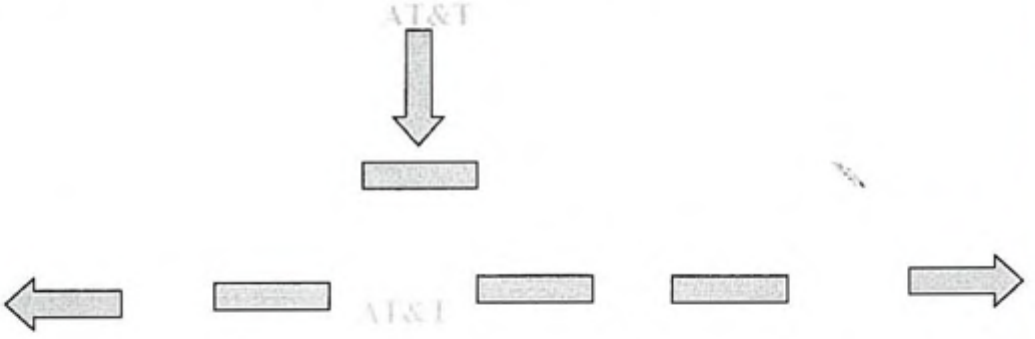
(11) When facilities share the same trench, they shall be heavily identified and separated enough so that they can be readily identified. This would apply to lines that share the same color code. For example, cable television and telephone lines:

(12) If the facility to be marked has a diameter greater than 12", the size of the facility shall be indicated if known. If the size is not known, then the mark shall indicate greater than 12 inches.

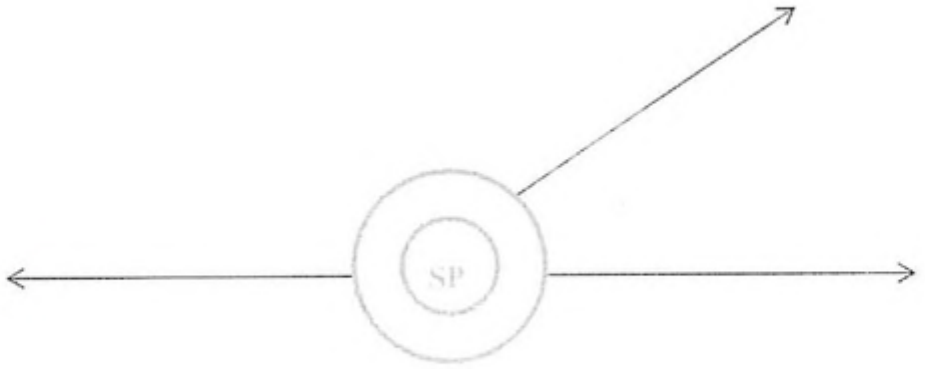
(13) Duct structures shall be marked by using a dot with parallel boundary on each side of the dot.



(14) In areas where there is a strong likelihood that any or all marker types showing line location would be destroyed, offsets shall be placed on a permanent surface. However, offsets should be used only in conjunction with marks placed above a facility. Offset spacing should be every third or fourth mark. For example, the following mark would indicate the line is 16 feet from the end of the arrow.



(15) In areas where cables are spliced, the facilities should be located individually as far as possible on both sides of the splice. When the signal is distorted due to the near proximity to the splice a circle with "SP" should indicate the area of distortion or "splice pit".



Section 5. This ordinance shall become effective immediately upon its adoption by the Board of Commissioners of Fayette County.

Section 6. All other ordinances or parts of ordinances which are in conflict with this ordinance are hereby repealed.

Section 7. In the event any section, subsection, sentence, clause or phrase of this ordinance shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect other sections, subsections, sentences, clauses or phrases of this ordinance, which shall remain in full force and effect as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not a part thereof. The Board of Commissioners hereby declares that it would have passed the remaining parts of this ordinance if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

SO ENACTED this 23rd day of January, 2014.

BOARD OF COMMISSIONERS
OF FAYETTE COUNTY

(SEAL)

By: _____
STEVE BROWN, Chairman

_____
Floyd Jones, County Clerk

Approved as to form:

_____
County Attorney

515-9-4-.13 Procedures for Large Projects.

(1) Purpose and Scope:

(a) The purpose of this rule is to set forth procedures that provide for the waiver in writing, of the 48 hour notice and the 21 calendar day expiration for any projects that cannot be located pursuant to O.C.G.A. § 25-9-7. This Rule is necessary in order to allow proper planning and scheduling of the locating of utility facilities within the geographical area of a designated "Large Project." Because most large projects require multiple re-stakes, it has proven difficult and cumbersome for facility owner/operators to respond to locate requests within the 48 hour notice time frame normally required by the Georgia Utility Facility Protection Act ("GUFPA"). Excavators on such large projects lasting for months and even years have similarly found it cumbersome and oppressive to have a locate ticket expire after 21 calendar days and have to reapply for renewal or refreshing of such locate ticket repeatedly over the life of a large project.

(b) This Rule allows for parameters to be set for all parties involved in a large project so that such parties may enjoy more flexibility and less rigidity in reporting without any loss or sacrifice in the record-keeping, locating of utility facilities, prevention of damage to such facilities, and public safety protections which GUFPA was designed and intended to implement.

(c) Unless hereinafter specifically excepted, all other provisions of O.C.G.A. § 25-9-1 *et seq.*, shall apply to large projects.

(2) Procedures:

(a) Upon an excavator's contacting the Utilities Protection Center (UPC) to procure a locate ticket and upon the UPC's concluding that the proposed excavation qualifies as a large project ticket under Commission Utility Rule 515-9-4-.02(j) (through the process of handling such request(s) for one or more locates), the UPC shall provide instructions for excavator(s) that the involved excavation project shall be treated as a large project under Commission rules and that the excavator has a duty to submit to the UPC a Large Project Planning Meeting Notification.

(b) Upon the UPCs concluding that a particular locate request or requests qualify as a Large Project as defined by Commission Rule 515-9-4-.02(j), a mandatory Large Project Planning Meeting Notification shall be issued by the excavator, no less than 10 business days prior to beginning excavation or blasting activities, to the UPC, for immediate forwarding to all facility owner/operators having facilities in the area. Such notification shall include the excavator's suggested date, time, location, and contact person for the proposed meeting. The date of the mandatory meeting shall be a minimum of 48 hours after the notification is submitted to the UPC, starting at 7:00 a.m. the next business day and excluding non-business days. This mandatory large project meeting notification requirement shall not apply to re-activated large projects that have continued in full force and effect, and without deactivation. Notwithstanding the above, nothing in this rule shall prevent the excavator and the utility facility owner/operators from choosing to meet otherwise.

EXHIBIT "A"

(c) After receiving the Large Project request, the UPC shall notify all affected facility owners or operators of the mandatory Large Project Planning Meeting. The mandatory Large Project Planning Meeting shall be scheduled no less than 5 business days prior to beginning excavation or blasting activities. Each facility owner/operator shall provide an automated response to the UPC indicating agreement to the date and time of the mandatory Large Project Planning Meeting within 2 business days of such notice, through the use of the Positive Response Information System (PRIS).

(d) All provisions of this "Large Project" rule shall apply to the utility facility owner/operator and all locates shall be conducted pursuant to these rules and the negotiated marking agreement arising here from.

(e) No later than two business days following the mandatory Large Project Planning Meeting, whichever comes first, the UPC shall update the status of the ticket from a "Large Project Planning Meeting Notification" to a "Large Project Excavation Notification." At that point, the "Large Project Excavation Notification" will become an active ticket and will be transmitted by the UPC to all affected utility facility owner/operators.

(f) During the life of the large project ticket, all requests for locates and notices of marking performed that deviate from the marking agreement shall be documented through the UPC. Once all excavation activities have been completed by a particular excavator, such excavator will notify the UPC to close or de-activate the notification.

(g) Unless renewed beforehand by the excavator, all Large Project Excavation Notifications will be automatically closed/de-activated once ninety (90) days have elapsed from the date of activation. The excavator may re-new the notification as necessary so long as excavation on the project continues. The notification will be automatically closed/deactivated ninety (90) days following the most recent renewal.

(3) The excavator and facility owner(s)/operator(s) or LOCATOR(S)/UTILITY(S) shall enter into a negotiated written agreement setting out the schedule for marking the project (see attached example form) at the Large Project planning meeting. Steps shall be taken to work together, including the Large Project Planning Meeting, so that a negotiated marking plan may be agreed upon allowing the facility owner(s)/operator(s) to locate the utility facilities at a time reasonably in advance of the actual start of excavation or blasting for each phase of the work. A working relationship shall be established between the excavator and the facility owner/operator representatives to reduce confusion at the work site. Emergency phone numbers and contact people shall be identified for notification of problems, delays or changes in the marking plan. In addition to the Large Project Planning Meeting, the excavator shall conduct periodic utility coordination meetings to enhance the communication and progress of the planned schedule and markings. IF FOR ANY REASON A FACILITY OWNER/OPERATOR CANNOT ATTEND SUCH MEETING, THE FACILITY OWNER/OPERATOR'S REPRESENTATIVE MAY CONTACT THE EXCAVATOR AND MAKE OTHER ARRANGEMENTS IF THE EXCAVATOR IS AGREEABLE, OR HAVE THE LINES MARKED WITHIN THE 48 HOURS REQUIRED BY LAW (O.C.G.A. § 25-9-1 *ET SEQ.*).

(4) The terms and conditions of such negotiated marking agreement must be in writing, and executed by the excavator and the facility owner/operator or locate representative (i.e. contract LOCATOR/UTILITY for the facility owner/operator) before excavation commences. If the LOCATOR/UTILITY is going to execute the negotiated marking agreement on behalf of the facility owner/operator, the facility owner/operator shall have on file with the UPC, written documentation of such grant of authority from the facility owner/operator to the LOCATOR/UTILITY. Such negotiated marking agreement and compliance with the terms thereof, shall constitute an exemption from the requirements of subsections O.C.G.A. §§ 25-9-7(a)(1), (b)(1), (c), (e) and (k)(1) and subsections O.C.G.A. §§ 25-9-6(c), (e) and (h). The excavator and facility owner/operator shall each retain a copy of the executed marking agreement.

(5) If the facility owner/operator fails to respond to the excavator's terms of the negotiated marking agreement or the facility owner/operator notifies the excavator that the facilities cannot be marked within the time frame delineated within the negotiated marking agreement and a mutually agreeable date for marking cannot be reached, the excavator may attempt to locate the facilities in accordance with subsection O.C.G.A. § 25-9-7(f), then proceed with excavation or blasting provided reasonable care is exercised. At the option of the excavator and as an alternative to the excavator's attempting to locate the facilities at issue, such facilities shall revert back to the locate time-frame mandated by O.C.G.A. § 25-9-7.

(6) Failure of any party to abide by the terms of the negotiated marking agreement shall be a violation of the Commission's Large Project Rule delineated herein. Any such violation shall be grounds for and may result in sanctions including but not limited to civil and/or criminal penalties being imposed upon the violating party in accordance with Georgia Law. Moreover, where an excavator fails to abide by the terms of the negotiated marking agreement and causes damage to a utility facility as a result, the excavator may be subject to penalties delineated in O.C.G.A. § 25-9-13(7).

(7) Good Faith Negotiation Required. The failure of any party to negotiate in good faith shall constitute a violation of the Commission's Large Project Rules and may result in the imposition of penalties under O.C.G.A. §§ 25-9-13 and/or 46-2-91 as well as any other penalties that may be imposed pursuant to Georgia Law or the Commission's Rules. The failure of any party to negotiate in good faith shall also result in all locates being performed in accordance with the procedures and timelines set forth in O.C.G.A. § 25-9-1 *et. seq*. with the cost for all such locates to be paid for by the party having negotiated in bad faith.

(8) Any person holding an active large project ticket may allow any dually authorized subcontractors to work under such large project ticket provided the provisions of O.C.G.A. § 25-9-6(g) are met. For purposes of this rule, any contractual agreement entered into pursuant to O.C.G.A. § 25-9-6(g) shall be in writing.

(9) Nothing in this Rule exempts any facility owner/operator, excavator, LOCATOR/UTILITY or any other person from the duty he or she would otherwise have under GUFPA or the Commission's Utility Rules to report damages to buried utility facilities.

EXHIBIT "A"

SAMPLE **SAMPLE**

Large Project – Sample Utility Facility Locating Agreement

THIS AGREEMENT, made this_____ (month/date/year), by and between_____, hereinafter called the EXCAVATOR, and _____, hereinafter called the LOCATOR/UTILITY: Due to the construction of this large project, it will become necessary to make certain arrangements for the locating of the utility facilities in accordance with the Georgia Public Service Commission's Rule 515-9-4.

This Agreement is for the sole purpose of each party working together to minimize or eliminate any damages to utility facilities as well as allow the EXCAVATOR to pursue the work more expeditiously.

In consideration of the premises and the mutual covenants of the parties hereinafter set forth, it is agreed:

1. The LOCATOR/UTILITY shall provide the EXCAVATOR with correct contact information, including but not limited to, business address, business phone numbers, business facsimile numbers and any available pager or cellular numbers for all available locate technicians/representatives and their supervisors for this project at the time of executing this Agreement.

2. Attached and made part of this agreement is the negotiated marking plan, which is prepared by the EXCAVATOR. Any modifications or changes to the negotiated marking plan shall be reviewed and agreed to by both parties.

3. It is specifically understood that the EXCAVATOR will notify the LOCATOR/UTILITY by telephone, electronic mail or other means as provided by the LOCATOR/UTILITY prior to commencing any excavation activities to ensure the specific work sites have been marked.

4. If EXCAVATOR needs to move to a project work site involving excavation that has not been marked by the LOCATOR/UTILITY or the LOCATOR/UTILITY has not confirmed the accuracy of the existing marks at such site, the EXCAVATOR shall make contact with the LOCATOR/UTILITY and allow time to respond.

5. The LOCATOR/UTILITY shall be available within 24 hours and shall respond within such time frame in order for the work site to be marked or confirm the accuracy of the existing marks.

6. If for any reason, the negotiated marking agreement is terminated, the Large Project Procedures under the Georgia Public Service Commission's Rule 515-9-4 are hereby waived and the provisions of the Official Code of Georgia, Annotated Section 25-9-1 *et. seq.* shall continue in full force and effect.

LOCATOR/UTILITY Name (print):_____

LOCATOR/UTILITY Signature:_____

EXHIBIT "A"

EXCAVATOR Name (print):_____

EXCAVATOR Signature:_____

Date:_____

(insert date on page one of the agreement)

SAMPLE **SAMPLE**

Authority O.C.G.A. Secs. 25-9-3, 25-9-6, 25-9-7, 25-9-13. **History.** Original Rule entitled "Procedures for Large Projects" adopted. F. May 19, 2006; eff. June 8, 2006. **Amended:** F. Dec. 21, 2006; eff. Jan. 10, 2007. **Repealed:** New Rule of same title adopted. F. Feb. 10, 2009; eff. Mar. 2, 2009.

EXHIBIT "A"

Senate Bill 117

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

AS PASSED

A BILL TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"25-9-3.

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 ~~may~~ 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 ~~by which the level or grade of land is changed or~~ using mechanized equipment or explosives to move earth, rock, or other material below existing grade. This ~~is moved and includes, without limitation, grading, trenching, digging, ditching, augering, scraping, directional boring, and pile driving. Such term, however, does not include routine road surface scraping maintenance~~ 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 ~~other~~ routine ~~roadway~~ 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 ~~structures~~ guard rails and sign posts, replace such ~~structures~~ guard rails and sign posts in their previous locations and at their previous depth. 'Excavating' shall not include ~~normal~~ 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.

~~(17)~~(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.

~~(18)~~(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.

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

~~(20)~~(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.

~~(21)~~(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.

~~(22)~~(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.

~~(23)~~(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.

~~(24~~(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.

~~(25)~~(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.

~~(26)~~(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.

~~(27)~~(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.

~~(28)~~(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.

~~(29)~~(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.

~~(30)~~(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.

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

~~(32)~~(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.

~~(33)~~(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.

~~(34)~~(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.

~~(35)~~(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.″

SECTION 2.

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

″25-9-4.

(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 ~~one of the following methods~~ 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 ~~Section~~ 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.″

SECTION 3.

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

"25-9-6.

(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 are either 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) ~~Designate the date upon which the blasting or excavating will commence~~ 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 to 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 21 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 21 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.″

SECTION 4.

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

″25-9-7.

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

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 ~~after the business day~~ following receipt by the UPC of the locate request filed in accordance with Code Section 25-9-6, excluding hours during days other than business days; 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 <u>strictly</u> liable for the actual costs associated with the excavator designating such utility facilities and sewer laterals <u>and any associated downtime</u>. 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 ~~locate and mark~~ 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) ~~By January 1, 2006, the advisory committee shall propose to the Public Service Commission rules and processes specific to the locating of large projects. 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 to the time period for which designations are valid. The commission shall promulgate rules addressing this subsection no later than June 1, 2006~~ 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 ~~after the business day~~ following receipt by the UPC of the locate request filed in accordance with Code Section 25-9-6, excluding hours during days other than business days, each 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.″

SECTION 5.

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

"25-9-8.

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

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

(c) 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.

~~(c)~~(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.

~~(d)~~(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.″

SECTION 6.

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

″25-9-9.

(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 ~~24~~ 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.″

SECTION 7.

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

″25-9-13.

(a) Any person who violates the requirements of subsections (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 ~~to the extent~~ except as permitted by law. ~~In any civil action by a facility owner or operator to recover the costs of repairing or replacing facilities damaged through violation of Code Section 25-9-6 or 25-9-8, those costs shall be calculated utilizing generally accepted accounting principles.~~

(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 ~~violates~~ 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.

~~(f)~~(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.

~~(g)(1)~~(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 ~~Georgia~~ 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) ~~Three~~ 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. ~~The new advisory committee shall be established within 60 days of July 1, 2005.~~

(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.

~~(3)~~(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.

~~(h)(1)~~(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. ~~On or after January 1, 2007, civil~~ 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 ~~locate~~ 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 ~~tickets~~ 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. <u>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.</u>

(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 ~~(c)~~ (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.

~~(i)~~(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."

SECTION 8.

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

PROPOSED CHANGES TO WHITE LINING ORDINANCE

1. Adding a subsection (c) to Section 28-230 Definitions to read as follows:

   (c) "Potholing" means digging on locate marks to verify utility location utilizing recognized soft digging methods (hand tools, vacuum excavation).

2. Adding a new paragraph (6) to subsection (d) in Section 28-231 White Lining to read as follows:

   (6) Local, State and Federal Governmental Agencies.

3. Adding information to paragraph (3) in subsection (a) of Section 28-232 Facility Marking by or for Utilities to read as follows [New information shown as double underlined]:

   (3) Location marks shall be 4 to 12 inches in length and at intervals of 5 to 10 feet. <u>If the facility to be marked has a greater diameter than 12 inches the size of the facility shall be indicated if known. If size is not known, then the mark shall be greater than 12 inches.</u>

   [In addition to additional language added to paragraph (3), additional graphic representations have been inserted below the language. Originally, the graphic representation consisted only of the left arrow the middle dash and the right arrow (the first three symbols with vertical indicator arrows. The graphics to the right of this are new.]

4. Adding a new Section 28-233 Facility Protection/Damage Prevention Requirements for Contractors/Excavators/Utilities to read as follows:

(a) All Contractors/Excavators/Utilities shall utilize potholing methods to determine facility locations prior to excavating with mechanized equipment.

(b) Any person involved in an excavation with mechanized equipment found digging or performing land disturbing activities within the "Tolerance Zone" of a facility without evidence of "Potholing" will be found to be in violation of this ordinance.

(c) The tolerance zone shall be 18" measured horizontally from the outer edge of either side of such marked utility facilities.

(d) White Lining is a mandatory practice except as stated in Section 28-231 (d) (1), (2), (3), (4), (5) and (6).

(e) Large Projects within Fayette County shall utilize the marking agreement form provided by Fayette County. Large Project Marking Agreements shall clearly state a defined date for marking and construction completion for each section. Revisions to the marking agreement shall be submitted to GA811 and each Utility Owner affected by the Large Project.

5. By adding a new Section 28-234 Stop Work Orders to read as follows:

Upon notice from any government official, work shall immediately cease. Such notice shall be given to the person doing the work. The notice shall state the conditions under which work is authorized to resume. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to rectify the violation, shall be subject to penalties as prescribed by law.

6. By adding a new Section 28-235 Penalties to read as follows:

Any person who violates a provision of this ordinance shall be subject to penalties as prescribed by law. Each day that a violation continues after due notice has been served shall be deemed a separate offense. Multiple offenses can result in revocation of the privilege to work within right of ways.