

## Article 8A.

### Underground Utility Safety and Damage Prevention Act.

#### **§ 87-115. Short title.**

This Article may be cited as the "Underground Utility Safety and Damage Prevention Act." (2013-407, s. 2.)

#### **§ 87-116. Declaration of policy and purpose.**

The General Assembly of North Carolina hereby declares as a matter of public policy that it is necessary to protect the citizens and workforce of this State from the dangers inherent in excavating or demolishing in areas where underground lines, systems, or infrastructure are buried beneath the surface of the ground, and it is necessary to protect from costly damage underground facilities used for producing, storing, conveying, transmitting, or distributing communication, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam, or sewage. In order to carry out this public policy and to satisfy these compelling interests, the General Assembly has enacted the provisions of this Article providing for a systematic, orderly, and uniform process to identify existing facilities in advance of any excavation or demolition in this State and to implement safe digging practices. (2013-407, s. 2.)

#### **§ 87-117. Definitions.**

The following definitions apply in this Article:

- (1) APWA. – The American Public Works Association or its successors.
- (1a) Board. – The Underground Damage Prevention Review Board.
- (2) Business continuation plan. – A plan that includes actions to be taken in an effort to provide uninterrupted service during catastrophic events.
- (3) Contract locator. – A person hired by an operator to identify and mark facilities.
- (4) Damage. – The substantial weakening of structural or lateral support of a facility; penetration or destruction of protective coating, housing, or other protective device of a facility; or the partial or complete severance of a facility.
- (5) Demolish or demolition. – Any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by any means, including the use of any tools, equipment, or discharge of explosives.
- (6) Design notice. – A communication to the Notification Center in which a request for identifying existing facilities for advance planning purposes is made. A design notice may not be used for excavation purposes.
- (7) Designer. – Any architect, engineer, or other person who prepares or issues a drawing or blueprint for a construction or other project that requires excavation or demolition work.
- (8) Emergency. – An event involving a clear and imminent danger to life, health, or property, the interruption of essential utility services, or the blockage of transportation facilities, including highways, railways, waterways, or airways that require immediate action.
- (9) Excavate or excavation. – An operation for the purpose of the movement or removal of earth, rock, or other materials in or on the ground by use of manual or mechanized equipment or by discharge of explosives, including, but not limited to, auguring, backfilling, boring, digging, ditching, drilling, directional

- drilling, driving, grading, horizontal directional drilling, well drilling, plowing-in, pounding, pulling-in, ripping, scraping, trenching, and tunneling.
- (10) Excavator. – A person engaged in excavation or demolition.
  - (11) Extraordinary circumstances. – Circumstances that make it impossible for the operator to comply with the provisions of this Article, including hurricanes, tornadoes, floods, ice, snow, and acts of God.
  - (12) Facility. – Any underground line, underground system, or underground infrastructure used for producing, storing, conveying, transmitting, identifying, locating, or distributing communication, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam, or sewage. Provided there is no encroachment on any operator's right-of-way, easement, or permitted use, for the purposes of this Article, the following shall not be considered an underground facility: (i) swimming pools and irrigation systems; (ii) petroleum storage systems under Part 2A of Article 21A of Chapter 143 of the General Statutes; (iii) septic tanks under Article 11 of Chapter 130A of the General Statutes; and (iv) liquefied petroleum gas systems under Article 5 of Chapter 119 of the General Statutes, unless the system is subject to Title 49 C.F.R. § 192 or § 195.
  - (13) Locator. – An individual who identifies and marks facilities for operators who has been trained and whose training has been documented.
  - (14) Mechanized equipment. – Equipment operated by means of mechanical power, including, but not limited to, trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, horizontal directional drills, cable and pipe plows, and other equipment used for plowing-in or pulling-in cable or pipe.
  - (15) Nonmechanized equipment. – Hand tools.
  - (16) Notice. – Oral, written, or electronic communication to the Notification Center from any person planning to excavate or demolish in the State that informs an operator of the person's intent to excavate or demolish.
  - (17) Notification Center. – A North Carolina member-owned not-for-profit corporation sponsored by operators that will provide a system through which a person can notify operators of proposed excavations and demolitions and submit reports of alleged violations of this Article.
  - (18) Operator. – Any person, public utility, communications or cable service provider, municipality, electrical utility, or electric or telephone cooperative that owns or operates a facility in this State.
  - (18a) Parcel. – An extended area of land with fixed boundaries.
  - (19) Person. – Any individual, owner, corporation, partnership, association, or any other entity organized under the laws of any state, any political subdivision of a state, or any other instrumentality of a state, or any authorized representative thereof.
  - (20) Positive response. – An automated information system that allows excavators, locators, operators, and other interested parties to determine the status of a locate request.
  - (21) Subaqueous. – A facility that is under a body of water, including rivers, streams, lakes, waterways, swamps, and bogs.

- (22) Tolerance zone. – If the diameter of the facility is known, the distance of one-half of the known diameter plus 24 inches on either side of the designated center line or, if the diameter of the facility is not marked, 24 inches on either side of the outside edge of the mark indicating a facility or, for subaqueous facilities, a clearance of 15 feet on either side of the indicated facility.
- (23) Working day. – Every day, except Saturday, Sunday, or State legal holidays. (2013-407, s. 2; 2019-189, s. 1.)

**§ 87-118. Reserve to the State the power to regulate.**

The provisions in this Article supersede and preempt any ordinance adopted by a city or county that purports to do any of the following:

- (1) Require operators to obtain permits from a city or county in order to identify facilities.
- (2) Require premarking or marking of facilities.
- (3) Specify the types of paint or other marking devices that are used to identify facilities.
- (4) Require removal of unexpired marks. The removal of expired marks shall be the responsibility of the city or county. (2013-407, s. 2.)

**§ 87-119. Costs associated with compliance; effect of permit.**

Any costs or expenses associated with an excavator's compliance with the requirements of this Article shall not be charged to any operator. Any costs or expenses associated with an operator's compliance with the requirements of this Article shall not be charged to any excavator. The Notification Center may not impose any charge on any person giving notice to the Notification Center. This section shall not affect costs related to the operation of the Notification Center apportioned to an operator pursuant to G.S. 87-120(b). This section shall not excuse an operator or excavator from liability for any damage or injury for which the operator or excavator would be responsible under applicable law. (2013-407, s. 2.)

**§ 87-120. Notification Center; responsibilities.**

(a) The operators in the State shall maintain a Notification Center for the sole purpose of providing the services required by this Article. The Notification Center shall maintain information concerning receipt of notification of proposed excavation and demolition activities as provided in this Article and shall maintain information received from operators concerning the location of the operators' facilities and the operators' positive responses to marking of the facilities. The Notification Center is not responsible in any way for identifying or marking facilities for operators. The Notification Center is not responsible in any way for resolving reports of alleged violations of this Article. All operators in the State shall join the Notification Center as provided in subsection (b) of this section, and they shall use the services of the Notification Center to perform the acts required by the provisions of this Article. There shall be only one Notification Center for the State of North Carolina. The Notification Center is not an agency of the State or any of the State's political subdivisions and is not subject to the provisions of Chapter 132 or Chapter 133 of the General Statutes.

(b) Operators who are members of the Notification Center by whatever name that is in existence on October 1, 2013, must remain members. Operators with more than 50,000 customers or 1,000 miles of facilities who are not members on October 1, 2013, must join no later than

October 1, 2014. Operators with more than 25,000 customers or 500 miles of facilities who are not members on October 1, 2013, must join no later than October 1, 2015. All operators that do not meet one of the criteria provided in this subsection must join no later than October 1, 2016. Each engineering division of the Department of Transportation established pursuant to G.S. 136-14.1 must join no later than October 1, 2016. The board of directors of the Notification Center shall develop a reasonable method of apportioning the costs of operating the Notification Center among the member operators. Prior to adopting a method of determining such cost allocation, the board of directors shall publish the proposed method of cost allocation to the member operators, and the proposed method of cost allocation shall be approved by the member operators.

(c) The Notification Center shall have the following duties and responsibilities:

- (1) Maintain a record of the notices received under subsection (d) of this section for at least four years.
- (2) Repealed by Session Laws 2019-189, s. 1, effective October 1, 2019, and applicable to excavations and demolitions occurring on or after that date.
- (3) Receive and transmit notices as provided in subsection (d) of this section.
- (4) Develop and update, as needed, a business continuation plan.
- (5) Repealed by Session Laws 2019-189, s. 1, effective October 1, 2019, and applicable to excavations and demolitions occurring on or after that date.
- (6) Provide a positive response system.
- (7) Establish and operate a damage prevention training program for members of the Notification Center. No person may recover damages in any manner or form from the Notification Center arising out of or related to the manner in which the Notification Center conducts a damage prevention training program or receives, transmits, or otherwise administers a report of an alleged violation of this Article.
- (8) Provide aggregate data as requested by the Board to assess the operational fee authorized under G.S. 87-129A.
- (9) Provide information related to the Notification Center's receipt and transmission of notices reasonably requested by the Board in its consideration of reports of alleged violations of this Article.

(d) The Notification Center shall receive notice from any person intending to excavate or demolish in the State and shall, at a minimum, transmit the following information to the appropriate operator:

- (1) The name, address, and telephone number of the person providing the notice and, if different, the person responsible for the proposed excavation or demolition.
- (2) The starting date of the proposed excavation or demolition.
- (3) The anticipated duration of the proposed excavation or demolition.
- (4) The type of proposed excavation or demolition operation to be conducted.
- (5) The location of the proposed excavation or demolition.
- (6) Whether or not explosives are to be used in the proposed excavation or demolition.

(e) Repealed by Session Laws 2019-189, s. 1, effective October 1, 2019, and applicable to excavations and demolitions occurring on or after that date. (2013-407, s. 2; 2019-189, s. 1.)

#### **§ 87-121. Facility operator responsibilities.**

- (a) An operator shall provide to the excavator the following:
  - (1) The horizontal location and description of all of the operator's facilities in the area where the proposed excavation or demolition is to occur. The location shall be marked by stakes, soluble paint, flags, or any combination thereof, as appropriate, depending upon the conditions in the area of the proposed excavation or demolition. The operator shall, when marking as provided under this subdivision, use the APWA Uniform Color Code. If the diameter or width of the facility is greater than four inches, the dimension of the facility shall be indicated at least every 50 feet in the area of the proposed excavation or demolition. An operator who operates multiple facilities in the area of the proposed excavation or demolition shall locate each facility.
  - (1a) The operator's identity, marked as provided in subdivision (1) of this subsection, in the area where the proposed excavation or demolition is to occur. At a minimum, the operator's identity shall be marked at the beginning point, at intervals of 200 linear feet, and at the end point of the proposed excavation or demolition.
  - (2) Any other information that would assist the excavator in identifying and thereby avoiding damage to the marked facilities.
- (b) Unless otherwise provided in a written agreement between the operator and the excavator, the operator shall provide to the excavator the information required by subsection (a) of this section within the times provided below:
  - (1) For a facility, within three full working days after the day notice of the proposed excavation or demolition was provided to the Notification Center.
  - (2) For a subaqueous facility, within 10 full working days after the day notice of the proposed excavation or demolition was provided to the Notification Center.
  - (3) If the operator declares an extraordinary circumstance, the times provided in this subsection shall not apply.
- (c) The operator shall provide a positive response to the Notification Center before the expiration of the time provided in subsection (b) of this section. The response shall indicate whether and to what extent the operator is able to provide the information required by subsection (a) of this section to respond to the notice from the excavator.
- (d) If the operator determines that provisions for marking subaqueous facilities are required, the operator will provide a positive response to the Notification Center not more than three full working days after notice has been provided by the excavator.
- (e) If extraordinary circumstances prevent the operator from marking the location of the facilities within the time specified in subsection (b) of this section, the operator shall either notify the excavator directly or notify the excavator through the Notification Center. When providing the notification under this subsection, the operator shall state the date and time when the location will be marked.
- (f) An operator shall prepare or cause to be prepared installation records of all facilities installed on or after the date this Article becomes effective in a public street, alley, or right-of-way dedicated to public use, excluding service drops and services lines. The operator shall maintain these records in the operator's possession while the facility is in service.
- (g) All facilities installed by or on behalf of operators on or after the date this Article becomes effective shall be electronically locatable using a locating method that is generally accepted by operators in the particular industry or trade in which the operator is engaged.

(h) A locator shall notify the operator if the locator becomes aware of an error or omission in the records or documentation showing the location of the operator's facilities. The operator must update its records to correct any error or omission.

(i) An operator may reject an excavation or demolition notice due to homeland security considerations based upon federal statutes or federal regulations until the operator can confirm the legitimacy of the notice. The operator shall notify the person making the notice of the denial and may request additional information through the positive response system.

(j) Gravity fed sanitary sewers installed prior to the date this Article becomes effective and all storm water facilities shall be exempt from the location requirements provided in subsection (a) of this section. Neither the excavator nor the person financially responsible for the excavation will be liable for any damage to an unmarked gravity fed sanitary sewer line or unmarked storm water facility if the person doing the excavation exercises due care to protect existing facilities when there is evidence of the existence of those facilities near the proposed excavation area.

(k) An operator who does not become a member of the Notification Center as required by G.S. 87-120(b) may not recover for damages to a facility caused by an excavator who has complied with the provisions of this Article and has exercised reasonable care in the performance of the excavation or demolition. (2013-407, s. 2; 2019-189, s. 1.)

#### **§ 87-122. Excavator responsibilities.**

(a) Before commencing any excavation or demolition operation, the person responsible for the excavation or demolition shall provide or cause to be provided notice to the Notification Center of his or her intent to excavate or demolish. Notice for any excavation or demolition that does not involve a subaqueous facility must be given within three to 12 full working days before the proposed commencement date of the excavation or demolition. Notice for any excavation or demolition in the vicinity of a subaqueous facility must be given within 10 to 20 full working days before the proposed commencement date of the excavation or demolition. Notice given pursuant to this subsection shall expire 15 full working days after the date notice was given. No excavation or demolition may continue after this 15-day period unless the person responsible for the excavation or demolition provides a subsequent notice which shall be provided in the same manner as the original notice required by this subsection. When demolition of a building is proposed, the operator shall be given a reasonable time in which to remove or protect the operator's facilities before the demolition commences.

(b) The notice required by subsection (a) of this section shall, at a minimum, contain all of the following:

- (1) The name, address, and telephone number of the person providing the notice.
- (2) The anticipated starting date of the proposed excavation or demolition.
- (3) The anticipated duration of the proposed excavation or demolition.
- (4) The type of proposed excavation or demolition operation to be conducted.
- (5) The location of the proposed excavation or demolition by one of the following:
  - a. A single parcel that may exceed 1/4 mile in linear length identified by a single address.
  - b. The lesser of five adjoining parcels identified by addresses, not to exceed 1/4 mile in linear length or an area not to exceed 1/4 mile in linear length.
- (6) Whether or not explosives are to be used in the proposed excavation or demolition.

- (c) An excavator shall comply with the following:
- (1) When the excavation area cannot be clearly and adequately identified within the area described in the notice, the excavator shall designate the route, specific area to be excavated, or both by premarking the area before the operator performs a locate. Premarking shall be made with soluble white paint, white flags, or white stakes.
  - (2) Confirm through the Notification Center's positive response system prior to excavation or demolition that all operators have responded and that all facilities that may be affected by the proposed excavation or demolition have been marked.
  - (3) Plan the excavation or demolition to avoid damage to or minimize interference with facilities in or near the construction area.
  - (4) Begin excavation or demolition prior to the specified waiting period only if the excavator has confirmed that all operators have responded with an appropriate positive response.
  - (5) If the operator declares extraordinary circumstances, the excavator shall not excavate or demolish until after the time and date that the operator has provided in the operator's response.
  - (6) If an operator fails to respond to the positive response system, the excavator may proceed if there are no visible indications of a facility at the proposed excavation or demolition area, such as a pole, marker, pedestal, meter, or valve. However, if the excavator is aware of or observes indications of an unmarked facility at the proposed excavation or demolition area, the excavator shall not begin excavation or demolition until an additional notice is made to the Notification Center detailing the facility and an arrangement is made for the facility to be marked by the operator within three hours from the time the additional notice is received by the Notification Center.
  - (7) Beginning on the date provided in the excavator's notice to the Notification Center, the excavator shall preserve the staking, marking, or other designation until they are no longer required. When a mark is no longer visible or is destroyed, but the excavation or demolition continues in the vicinity of the facility, the excavator shall request a re-mark from the Notification Center to ensure the protection of the facility.
  - (8) When demolition of a building is proposed, the excavator shall give the operator a reasonable time in which to remove or protect the operator's facilities before demolition commences.
  - (9) An excavator shall not perform any excavation or demolition within the tolerance zone unless the excavator complies with all of the following conditions:
    - a. The excavator shall not use mechanized equipment, except noninvasive equipment specifically designed or intended to protect the integrity of the facility, within the marked tolerance zone of an existing facility until:
      1. The excavator has visually identified the precise location of the facility or has visually confirmed that no facility is present up to the depth of excavation;

2. The excavator has taken reasonable precautions to avoid any substantial weakening of the facility's structural or lateral support, or both, or penetration or destruction of the facilities or their protective coatings; and
  3. The excavator may use mechanical means, as necessary, for the initial penetration and removal of pavement or other materials requiring use of mechanical means of excavation but only to the depth of the pavement or other materials. For parallel type excavations within the tolerance zone, the existing facility shall be visually identified at intervals not to exceed 50 feet along the line of excavation to avoid damages. The excavator shall exercise due care at all times to protect the facilities when exposing these facilities.
- b. The excavator shall maintain clearance between a facility and the cutting edge or point of any mechanized equipment, taking into account the known limit of control of the cutting edge or point, as may be reasonably necessary to avoid damage to the facility.
  - c. The excavator shall provide support for facilities in and near the excavation or demolition area, including backfill operations, as may be reasonably required by the operator for the protection of the facilities.
- (10) The excavator shall not use mechanized equipment within 24 inches of a facility that is an oil, petroleum products, or highly volatile liquid pipeline system, a gas transmission line, or an electric transmission line unless the facility operator has consented to the use in writing and the operator's representative is on site during the use of the mechanized equipment. For purposes of this subdivision, the term "oil, petroleum products, or highly volatile liquid pipeline system" has the same meaning as the term "pipeline system" in Title 49 C.F.R. § 195.2, the term "gas transmission line" has the same meaning as the term "transmission line" in Title 49 C.F.R. § 192.3, and the term "electric transmission line" has the same meaning as the term "transmission line" in G.S. 62-100(7). (2013-407, s. 2; 2019-189, s. 1.)

**§ 87-123. Training.**

(a) Every person who is an excavator, locator, or operator under this Article by virtue of engaging in these activities in the course of a business or trade has a duty to provide education and training to employees and to document such education and training. The training shall include sufficient information, guidance, and supervision such that employees can competently and safely operate the equipment used in the course of the business or trade and complete assigned tasks in a competent and safe manner while minimizing the potential for damage.

(b) When an excavator, locator, or operator under this Article retains an independent contractor to perform activities regulated by this Article, the duty set forth in subsection (a) of this section shall not apply to the excavator, locator, or operator. Independent contractors shall provide training to their employees in accordance with this section.

(c) Excavation shall be conducted in accordance with OSHA Standard 1926 and under the direction of a competent person, as defined therein.



- (d) Locators shall be properly trained. Locator training shall be documented. (2013-407, s. 2.)

**§ 87-124. Exemptions.**

The notice requirements in G.S. 87-122(a) and G.S. 87-122(b) do not apply to the following:

- (1) An excavation or demolition performed by the owner of a single-family residential property on his or her own land that does not encroach on any operator's right-of-way, easement, or permitted use.
- (2) An excavation or demolition performed by the owner of a single-family residential property on his or her own land that encroaches on any operator's right-of-way, easement, or permitted use that is performed with nonmechanized equipment.
- (3) An excavation or demolition that involves the tilling of soil for agricultural or gardening purposes.
- (4) An excavation or demolition for agricultural purposes, as defined in G.S. 106-581.1, performed on property that does not encroach on any operator's right-of-way, easement, or permitted use.
- (5) An excavation by an operator or surveyor with nonmechanized equipment for the following purposes:
  - a. Locating for a valid notification request or for the minor repair, connection, or routine maintenance of an existing facility or survey pin.
  - b. Probing underground to determine the extent of gas or water migration.
- (6) An excavation or demolition performed when those responsible for routine maintenance of a right-of-way or any other governmental entity are performing, with labor on their permanent payroll, maintenance activities within the right-of-way. Maintenance activities shall include emergency replacement of signs critical for maintaining safety or reshaping of shoulders and ditches to the original road profile. Maintenance activities do not include the initial installation of traffic signs, traffic control equipment, guardrails, or drainage structures. The provisions of this subdivision do not apply when the excavation or demolition is performed by a contractor acting on behalf of a person or entity responsible for routine maintenance of a right-of-way or on behalf of any other governmental entity.
- (7) An excavation or demolition performed by a railroad entirely on land which the railroad owns or operates or, in the event of an emergency, on adjacent land. No provision in this Article shall apply to any railroad which owns, operates, or permits facilities under land which the railroad owns or operates.
- (8) An excavation of a grave space, as defined in G.S. 65-48(10), the installation of a monument or memorial at a grave space, or an excavation related to the placement of a temporary structure or tent by a cemetery regulated under Chapter 65 of the General Statutes that does not encroach on any operator's right-of-way, easement, or permitted use.
- (9) Pavement milling and pavement resurfacing. (2013-407, s. 2; 2017-57, s. 34.40(a); 2019-189, s. 1.)

**§ 87-125. Notice in case of emergency excavation or demolition.**

(a) An excavator performing an emergency excavation or demolition is not required to give notice to the Notification Center as provided in G.S. 87-122. However, the excavator shall, as soon as practicable, give notice to the Notification Center which shall include a description of the circumstances justifying the emergency. The excavator may request emergency assistance from each affected operator in locating and providing immediate protection to the facilities in the affected area.

(b) The declaration of an emergency excavation or demolition shall not relieve any party of liability for causing damage to an operator's facilities even if those facilities are unmarked.

(c) Any person who falsely claims that an emergency exists requiring an excavation or demolition shall have violated the provisions of this Article, which shall be punishable as a Class 3 misdemeanor and may subject the violator to the imposition of penalties or other action to be taken by the Board pursuant to G.S. 87-129. (2013-407, s. 2; 2019-189, s. 1.)

#### **§ 87-126. Notification required when damage is done.**

(a) The excavator performing an excavation or demolition that results in any damage to a facility shall immediately upon discovery of the damage notify the Notification Center and the facility operator, if known, of the location and nature of the damage. The excavator shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of the facility. The excavator shall delay any backfilling in the immediate area of the damaged facility until authorized by the operator. The operator or qualified personnel authorized by the operator shall repair any damage to the facility.

(b) An excavator who is responsible for an excavation or demolition where any damage to a facility results in the discharge of electricity or escape of any flammable, toxic, or corrosive gas or liquid, or that endangers life, health, or property shall immediately notify emergency responders, including 911 services, the Notification Center, and the facility operator. The excavator shall take reasonable measures to protect himself or herself, other persons in immediate danger, members of the general public, property, and the environment until the operator or emergency responders arrive and complete an assessment of the situation. (2013-407, s. 2.)

#### **§ 87-127. Design notices.**

(a) A designer may submit a design notice to the Notification Center. The design notice shall describe the tract or parcel of land for which the design notice has been submitted with sufficient particularity, as defined by policies and procedures adopted by the Notification Center, to allow the operator to ascertain the precise tract or parcel of land involved.

(b) Within 10 working days, not including the day the notice was given, after a design notice for a proposed project has been submitted to the Notification Center, the operator shall respond in one of the following manners:

- (1) By designating the location of all facilities owned by the operator within the area designated by the design notice as provided in G.S. 87-121(a).
- (2) By providing to the person submitting the design notice the best available description of all facilities in the area designated by the design notice, which may include drawings marked with a scale, dimensions, and reference points for underground utilities already built in the area or other facility records that are maintained by the operator.

- (3) Allowing the person submitting the design notice or any other authorized person to inspect the drawings or other records for all facilities within the area designated by the design notice at a location that is acceptable to the operator.

(c) An operator may reject a design notice based upon homeland security considerations pending the operator obtaining additional information confirming the legitimacy of the notice. The operator shall notify the person making the request through a design notice of the denial and may request additional information through the positive response system. (2013-407, s. 2; 2019-189, s. 1.)

**§ 87-128. Absence of facility location.**

If an operator who has been given notice as provided in G.S. 87-120(d) by the Notification Center fails to respond to that notice as provided in G.S. 87-121 or fails to properly locate the facility, the person excavating is free to proceed with the excavation. Neither the excavator nor the person financially responsible for the excavation will be liable to the nonresponding or improperly responding operator for damages to the operator's facilities if the person doing the excavating exercises due care to protect existing facilities when there is evidence of the existence of those facilities near the proposed excavation area. (2013-407, s. 2.)

**§ 87-129. Underground Damage Prevention Review Board; enforcement; civil penalties.**

(a) There is hereby established the Underground Damage Prevention Review Board to review reports of alleged violations of this Article. The members of the Board shall be appointed by the Governor. The Board shall consist of 15 members as follows:

- (1) A representative from the North Carolina Department of Transportation;
- (2) A representative from a facility contract locator;
- (3) A representative from the Notification Center;
- (4) A representative from an electric public utility;
- (5) A representative from the telecommunications industry;
- (6) A representative from a natural gas utility;
- (7) A representative from a hazardous liquid transmission pipeline company;
- (8) A representative of a municipality, appointed on the recommendation of the League of Municipalities;
- (9) A highway contractor licensed under G.S. 87-10(b)(2) who does not own or operate facilities;
- (10) A public utilities contractor licensed under G.S. 87-10(b)(3) who does not own or operate facilities;
- (11) A surveyor licensed under Chapter 89C of the General Statutes;
- (12) A representative from a rural water system, appointed on the recommendation of the North Carolina Rural Water Association;
- (13) A representative from an investor-owned water system;
- (14) A representative from an electric membership corporation; and
- (15) A representative from a cable company, appointed on the recommendation of the North Carolina Cable Telecommunications Association.

(a1) Each member of the Board shall be appointed for a term of four years. Members of the Board may serve no more than two consecutive terms. Vacancies in appointments made by the Governor occurring prior to the expiration of a term shall be filled by appointment for the unexpired term.

(a2) No member of the Board may serve on a case where there would be a conflict of interest.

(a3) The Governor may remove any member at any time for cause.

(a4) Eight members of the Board shall constitute a quorum.

(a5) The Governor shall designate one member of the Board as chair.

(a6) The Board may adopt rules to implement this Article.

(b) The Board shall receive reports of alleged violations of this Article. The Board shall contact persons against whom reports have been filed to inform them of the alleged violation within 10 days of the filing of the report. The Board shall maintain all of the following information regarding reports of alleged violations:

(1) The name, address, and telephone number of the person making the report;

(2) The nature of the report, including the statute that is alleged to have been violated;

(3) Information provided by the person making the report, including correspondence, both written and electronic, pictures, and videos; and

(4) Information provided by the person against whom the report has been filed, including correspondence, both written and electronic, pictures, and videos.

(b1) The Board shall review all reports of alleged violations of this Article and accompanying information. If the Board determines that a person has violated any provision of this Article, the Board shall determine the appropriate action or penalty to impose for each such violation. Actions and penalties may include training, education, and a civil penalty not to exceed two thousand five hundred dollars (\$2,500). The Board shall approve training courses and the sponsors of those training courses under this subsection. Any fees for training courses approved by the Board shall be paid by the person determined to have violated this Article. The Board shall notify each person who is determined to have violated this Article in writing of the Board's determination and the Board's recommended action or penalty. A person determined to be in violation of this Article may request a hearing before the Board, after which the Board may reverse or uphold its original finding. If the Board recommends a penalty, the Board shall notify the Utilities Commission of the recommended penalty, and the Utilities Commission shall issue an order imposing the penalty.

(c) A person determined by the Board under subsection (b1) of this section to have violated this Article may appeal the Board's determination by initiating an arbitration proceeding before the Utilities Commission within 30 days of the Board's determination. If the violating party elects to initiate an arbitration proceeding, the violating party shall pay a filing fee of two hundred fifty dollars (\$250.00) to the Utilities Commission, and the Utilities Commission shall open a docket regarding the report. The Utilities Commission shall direct the parties enter into an arbitration process. The parties shall be responsible for selecting and contracting with the arbitrator. Upon completion of the arbitration process, the Utilities Commission shall issue an order encompassing the outcome of the binding arbitration process, including a determination of fault, a penalty, and assessing the costs of arbitration to the non-prevailing party.

(c1) A person may timely appeal an order issued by the Utilities Commission pursuant to this section to the superior court division of the General Court of Justice in the county where the alleged violation of this Article occurred or in Wake County, for trial de novo within 30 days of entry of the Utilities Commission's order. The authority granted to the Utilities Commission within this section is limited to this section and does not grant the Utilities Commission any authority that they are not otherwise granted under Chapter 62 of the General Statutes.

(d) The provisions of this Article do not affect any civil remedies for personal injury or property damage otherwise available to any person, except as otherwise specifically provided for in this Article. The penalty provisions of this Article are cumulative to and not in conflict with provisions of law with respect to civil remedies for personal injury or property damage. The clear proceeds of any civil penalty assessed under this section shall be used as provided in Section 7(a) of Article IX of the North Carolina Constitution. In any arbitration proceeding before the Utilities Commission, any actions and penalties assessed against any person for violation of this Article shall include the actions and penalties set out in subsection (b1) of this section.

(e) The Board is authorized to employ contractors or other personnel as it may deem necessary to carry out the provisions of this Article.

(f) The Board shall maintain a record of reports of alleged violations of this Article received under subsection (b) of this section for at least four years, including responses to such reports.

(g) On request of the Board, the Attorney General's office shall assign a legal representative to provide legal counsel to the Board. (2013-407, s. 2; 2015-286, s. 3.12; 2019-189, s. 1.)

#### **§ 87-129.1. Fee to defray operating costs.**

The Board is authorized to impose an annual fee on operators in order to provide sufficient moneys to fund the activities and operations of the Board in reviewing reports of alleged violations of this Article. The fee shall be based on volume of notifications provided by the Notification Center to an operator as compared to the total volume of notifications to all operators in the preceding fiscal year and shall be set at a rate determined by the Board such that the total proceeds of all fees collected shall not exceed two hundred thousand dollars (\$200,000) annually to fund the activities and operations of the Board. The Board may exclude de minimis contributors from any fee assessment under this subsection. Failure to pay the assessed fee within 30 days of when the fee is due is a violation of this Article, and the Board may seek the imposition of a penalty for the nonpayment under the procedures set forth in G.S. 87-129(b1). (2019-189, s. 1.)

#### **§ 87-130. Severability.**

If any provision of this Article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Article are severable. (2013-407, s. 2.)