

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 785
SENATE BILL 168

AN ACT TO PROMOTE THE SAFE PLACEMENT OF SUBSURFACE
INSTALLATIONS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Chapter 87 of the General Statutes is amended by adding a new Article to read:

"Article 3.

"Underground Damage Prevention.

"§ 87-100. **Short title.**—This Article shall be known as the 'Underground Damage Prevention Act'.

"§ 87-101. **Definitions.**—As used in this Article:

(1) 'Association' means an association, sponsored by utility owners, that will provide for receipt of notification of excavation operations in a defined geographical area, and that will maintain the records of the notifications.

(2) 'Damage' includes the substantial weakening of structural or lateral support of an underground utility, penetration or destruction of protective coating, housing, or other protective device of an underground utility, and the partial or complete severance of an underground utility.

(3) 'Excavate' or 'excavation' means an operation for the purpose of the movement or removal of earth, rock, or other materials in or on the ground by use of equipment operated by means of mechanical power and/or an operation by which a structure or mass of material is wrecked, razed, moved, or removed by means of any tools, equipment, or discharge of explosives. This term includes road construction but does not include road maintenance activities within rights-of-way of a highway, including those maintenance activities defined by the rules and regulations of the North Carolina Department of Transportation.

(4) 'Highway' has the meaning set out in G.S. 20-4.01 as the same shall be amended from time to time.

(5) 'Location of underground utilities' means a strip of land not wider than the width of the underground utility plus two and one-half (2 1/2) feet on either side of the underground utility.

(6) 'Person' means a corporation, individual, copartnership, company, association, or any combination of individuals or organizations doing business as a unit, any subdivision or instrumentality of the State, and includes any officer, agent, trustee, receiver, assignee, lessee, or personal representative of any of the above entities.

(7) 'Person financially responsible' means that person who ultimately receives the benefits of any completed excavation activities, including a person owning or leasing real property or holding an easement or interest in an easement.

(8) 'Public spaces' means any area owned by the State or any of its political subdivisions or dedicated for public use.

(9) 'Road construction' means the actual building of a new highway; or the paving, grading, widening, relocation, reconstruction, or other major improvement of a substantial portion of an existing highway.

(10) 'Road maintenance' means preservation, including repairs and resurfacing of a highway, not amounting to road construction.

(11) 'Street' has the meaning set out in G.S. 20-4.01 as the same shall be amended from time to time.

(12) 'Underground utility' means any underground line, system or facility used for producing, storing, conveying, transmitting, or distributing communication or telecommunication, electricity, gas, petroleum and petroleum products, coal slurry, hazardous liquids, water under pressure, steam, or sanitary sewage, but not including traffic signal control cables and vehicle detection cables of the North Carolina Department of Transportation.

(13) 'Utility owner' means any person who owns or operates an underground utility.

(14) 'Work day' means every day except Saturday, Sunday, national legal holidays and State legal holidays.

"§ 87-102. Notice required prior to excavation.—(a) Except as provided in G.S. 87-106, before commencing any excavations in highways, public spaces or in private easements of a utility owner, a person planning to excavate shall notify each utility owner having underground utilities located in the proposed area to be excavated, either orally or in writing, not less than two nor more than 10 working days prior to starting, of his intent to excavate.

(b) The written or oral notice required in subsection (a) shall contain:

- (1) the name, address, and telephone number of the person filing the notice;
- (2) the name, address, and telephone number of the person doing the excavating;
- (3) the anticipated starting date of the excavation;
- (4) the anticipated duration of the excavation;
- (5) the type of excavation to be conducted;
- (6) the location of the proposed excavation; and
- (7) whether or not explosives will be used.

(c) If the notice required by this section is made by telephone, an adequate record shall be made of the notification by the utility owners or the utility association and the person making the notification, to document compliance with this section.

"§ 87-103. Effect of permit on liability.—A permit authorizing excavation operations and issued pursuant to law or ordinance shall not relieve a person of the responsibility of complying with this Article.

"§ 87-104. Requirements of person doing excavation.—(a) Except as provided in G.S. 87-106, no person may excavate in a highway, a public space, or a private easement of a utility owner without first having given the notice required in G.S. 87-102 to the utility owners.

- (b) In addition to the notification requirements, each person excavating shall:
- (1) Plan the excavation to avoid damage and to minimize interference with underground utilities in and near the construction area, to the best of his abilities;
 - (2) Maintain a clearance between an underground utility and the cutting edge or point of any mechanized equipment, taking into account the known limit of control of that cutting edge or point, as is reasonably required to avoid damage; and
 - (3) Provide support for the underground utilities in or near the construction area, including backfill, as may be reasonably required by the utility owner for the protection of the underground utilities.

"§ 87-105. Requirements of the person financially responsible for the excavation.—The person financially responsible shall provide to the person responsible for doing the excavating, the names of all underground utility owners in the area of the proposed excavation. The names of the utility owners may be obtained from the County Register of Deeds or the Building Inspection Department of the political subdivision in which the excavating is taken place, if there is one.

"§ 87-106. Exceptions.—The following excavations are exempted from the notification requirements of this Article:

- (a) Tilling of soil for agricultural purposes;
- (b) Excavation by a utility owner, by the State or its subdivisions or agencies, or by anyone contracting with any of these entities to perform the excavation, on or within an easement, right-of-way, or property owned or controlled by any of these entities, where:
 - (1) Only the facilities of the utility owner doing the excavating are permitted; or
 - (2) All persons having an interest in the excavation and the underground utilities that may be damaged during the excavation have agreed in writing to provide the equivalent of the notification required by this Article among themselves; or
- (c) The replacement of a pole as long as the replacement pole is within three feet of the original pole and within the line of existing poles. This exception shall not apply to poles at highway intersections or at the crossings of highways and permanently marked transmission underground utilities.
- (d) In the case of an emergency involving danger to life, health, or property requiring immediate correction, or in order to continue the operation of a major industrial plant, or in order to assure the continuity of utility services, excavations immediately required to repair or maintain the needed service may be made, without using explosives, if notice is given to the utility owner or association as soon as is reasonably possible; except that the prohibition against the use of explosives shall not

apply to the North Carolina Department of Transportation. Performance of emergency excavation shall not relieve the excavator of liability for damages.

"§ 87-107. Duties of the utility owners.—Each utility owner, or his designated representative including an association, notified of an intent to excavate shall, before the proposed start of excavating (unless another period is agreed to by the person conducting the excavation and the utility owner or their representatives), provide the following information to the person excavating to the extent such information is reflected by records in the possession of and reasonably available to the utility owner:

(1) The location and description of all of the underground utilities which may be damaged as a result of the excavation;

(2) The location and description of all utility markers indicating the location of the underground utilities; and

(3) Any other information that would assist in locating and avoiding damage to the underground utilities, including providing temporary markings when necessary indicating the location of the underground utility in locations where permanent utility markers do not exist.

"§ 87-108. Absence of utility location.—Should any utility owner who has been given notice pursuant to G.S. 87-102 fail to respond to that notice as provided in G.S. 87-107, or fail to properly locate the underground utility, then 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 utility owner for damages to that utility owner's facilities if the person doing the excavating shall exercise due care to protect existing underground utilities when there is evidence of the existence of those underground utilities near the proposed excavation site.

"§ 87-109. Recording requirements for associations.—An association shall record with the Register of Deeds of each county in which participating utility owners own or operate underground utilities, a notarized document providing the telephone number and address of the association, a description of the geographical area served by the association, and a list of the names and addresses of the utility owners receiving these services from the association.

"§ 87-110. Recording requirements for utility owners.—(a) Each utility owner having underground utilities in North Carolina shall record a notarized document containing the name of the utility owner and the title, address, and telephone number of its representatives designated to receive the written or oral notice of intent to excavate, with the Register of Deeds of each county in which the utility owner owns or operates underground facilities. This document shall be executed by an officer of the utility owner or in the case of a governmental entity, the authorized official.

(b) Any change or modification of the information recorded by a utility owner, pursuant to subsection (a) of this section, shall be made by recording the corrected information with the Register of Deeds of each county to which the change or modification applies, in the manner required by subsection (a) of this section within five days of the change made to the utilities.

(c) For purposes of the recordings required by subsections (a) and (b) of this section, recordings by an association pursuant to G.S. 87-109 shall satisfy the recording requirements for each utility owner who is a member of the association while that utility owner remains a member of the association.

(d) Upon receipt of the documents recorded pursuant to subsections (a), (b), or (c) of this section, the Register of Deeds shall place the documents in the Grantor's Index under the heading 'Underground Utilities'. The registration fee imposed by Chapter 161 of the General Statutes shall apply to these documents.

"§ 87-111. Recorded information filed with inspection departments.—A copy of any document or modification or change in the information in that document recorded pursuant to G.S. 87-109 or G.S. 87-110 shall be filed with any county or municipal inspection department having jurisdiction over any area where the underground utilities are located. Such inspection departments shall maintain these filings in alphabetical order in an accessible form.

"§ 87-112. Color-coding.—When the location of an underground utility is marked with stakes or by other physical means, pursuant to this Article, the utility owner shall use colored markers following the American Public Works Association Uniform Color Code for Utilities.

"§ 87-113. Notification required when damage done.—(a) The person doing an excavation that results in any known damage to an underground utility shall, immediately after the discovery of the damage, notify the utility owner of the location and nature of the damage and shall allow the utility owner reasonable time to repair the damage before completing the excavation in the immediate area of the damaged underground utility.

(b) The person responsible for conducting any excavation that results in damage to an underground utility where the damage may endanger life, health, or property shall, immediately after the discovery of the damage, take action to protect the public and property, notify the utility owner, notify the police or fire departments, and take any other actions to minimize the hazards until the arrival of the utility owner's personnel, the police, or the fire department. The excavator shall delay any backfilling in the immediate area of the damaged underground utility until authorized by the utility owner unless it is necessary to prevent injury or property damage to others. Repair of any damage shall be performed by the utility owner or by qualified personnel authorized by the utility owner.

"§ 87-114. Homeowners.—This act does not require utility notification before a property owner digs in any area on his own property with non-mechanized equipment nor prior to tilling the soil for agricultural, gardening or landscaping purposes. Mechanized equipment may be used, without utility notification, in any area on the owner's property with the exception of recorded underground utility easements which describes the location of the easement with specificity."

Sec. 2. This act shall become effective January 1, 1986.

In the General Assembly read three times and ratified, this the 18th day of July, 1985.