

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SESSION LAW 2019-189
HOUSE BILL 872

AN ACT TO MAKE VARIOUS CHANGES TO THE UNDERGROUND UTILITY SAFETY AND DAMAGE PREVENTION ACT, INCLUDING AUTHORIZING THE UNDERGROUND DAMAGE PREVENTION REVIEW BOARD TO APPROVE TRAINING COURSES AND TO IMPOSE A FEE ON OPERATORS TO FUND THE ACTIVITIES OF THE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8A of Chapter 87 of the General Statutes reads as rewritten:

"Article 8A.

"Underground Utility Safety and Damage Prevention Act.

...

"§ 87-117. Definitions.

The following definitions apply in this Article:

...

(1a) Board. – The Underground Damage Prevention Review Board.

...

(18a) Parcel. – An extended area of land with fixed boundaries.

...

"§ 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 shall also receive, maintain, and provide general administration of reports of alleged violations of this Article and responses.~~ 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.

...

(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) ~~Maintain a record of reports of alleged violations of this Article received under subsection (e) of this section for at least four years, including responses to such reports.~~



- (3) Receive and transmit notices as provided in subsection (d) of this section.
- (4) Develop and update, as needed, a business continuation plan.
- ~~(5) Notify those persons against whom reports of alleged violations of this Article have been made and receive and maintain information submitted from such persons in defense against the allegations.~~
- (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.

...

~~(e) The Notification Center shall receive reports of alleged violations of this Article. The Notification Center 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 Notification Center shall maintain 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.~~

"§ 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 ~~25-50~~ 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.

...

"§ 87-122. Excavator responsibilities.

...

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

...
(5) The location of the proposed excavation or ~~demolition, not to exceed one-quarter mile in geographical length, or five adjoining addresses, not to exceed one-quarter mile in geographical length.~~ 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.

...
(c) An excavator shall comply with the following:

...
(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 ~~call~~ 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 ~~call~~ notice is received by the Notification Center.

...
(10) The excavator shall not use mechanized equipment within 24 inches of a facility that is ~~a gas, oil, petroleum, or 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, oil, petroleum transmission line" "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).

...
"§ 87-124. Exemptions.

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

...
(6) An excavation or demolition performed when those responsible for routine maintenance of a right-of-way or any other governmental entity are conducting performing, with labor on their permanent payroll, maintenance activities within the right-of-way. Maintenance activities shall include resurfacing, milling, emergency replacement of signs critical for maintaining safety, safety or the reshaping of shoulders and ditches to the original road profile. Maintenance activities do not include the initial installation of traffic signs, traffic control equipment, or guardrails-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.

...

(9) Pavement milling and pavement resurfacing.

"§ 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 ~~oral~~ 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.

...

(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 guilty of punishable as a Class 3 misdemeanor-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.

...

"§ 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 of the proposed excavation-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 proposed area of excavation-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.

...

"§ 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:

...

(8) A representative ~~recommended by~~ of a municipality, appointed on the recommendation of the League of Municipalities;

...

(12) A representative from a rural water ~~system;~~ system, appointed on the recommendation of the North Carolina Rural Water Association;

...

- (15) A representative from a cable ~~company~~ company, appointed on the recommendation of the North Carolina Cable Telecommunications Association.

...

(b) ~~The Notification Center shall transmit all reports of alleged violations of this Article to the Board, including any information received by the Notification Center regarding the report.~~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.

...

(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.

"§ 87-129A. 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)."

SECTION 2. In order to implement staggered terms for members of the Underground Damage Prevention Review Board appointed under G.S. 87-129, the terms of all members of the Board serving on August 1, 2019, shall expire as follows:

- (1) Appointments made pursuant to subdivisions (a)(4), (a)(9), (a)(10), and (a)(13) shall expire January 1, 2020.
- (2) Appointments made pursuant to subdivisions (a)(1), (a)(3), (a)(5), (a)(7), (a)(11), and (a)(15) shall expire January 1, 2022.
- (3) Appointments made pursuant to subdivisions (a)(2), (a)(6), (a)(8), (a)(12), and (a)(14) shall expire January 1, 2023.

SECTION 3. This act becomes effective October 1, 2019, and applies to excavations and demolitions occurring on or after that date.

In the General Assembly read three times and ratified this the 24th day of July, 2019.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 12:28 p.m. this 1st day of August, 2019