

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 872
Committee Substitute Favorable 5/2/19

Short Title: Underground Utility Safety Act/Changes.

(Public)

Sponsors:

Referred to:

April 22, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE UNDERGROUND UTILITY SAFETY
3 AND DAMAGE PREVENTION ACT, INCLUDING AUTHORIZING THE
4 UNDERGROUND DAMAGE PREVENTION REVIEW BOARD TO APPROVE
5 TRAINING COURSES AND TO IMPOSE A FEE ON OPERATORS TO FUND THE
6 ACTIVITIES OF THE BOARD.

7 The General Assembly of North Carolina enacts:

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

9 "Article 8A.

10 "Underground Utility Safety and Damage Prevention Act.

11 ...

12 **"§ 87-117. Definitions.**

13 The following definitions apply in this Article:

14 ...

15 (18a) Parcel. – An extended area of land with fixed boundaries.

16 ...

17 **"87-121. Facility operator responsibilities.**

18 (a) An operator shall provide to the excavator the following:

19 (1) The horizontal location and description of all of the operator's facilities in the
20 area where the proposed excavation or demolition is to occur. The location
21 shall be marked by stakes, soluble paint, flags, or any combination thereof, as
22 appropriate, depending upon the conditions in the area of the proposed
23 excavation or demolition. The operator shall, when marking as provided under
24 this subdivision, use the APWA Uniform Color Code. If the diameter or width
25 of the facility is greater than four inches, the dimension of the facility shall be
26 indicated at least every 25-50 feet in the area of the proposed excavation or
27 demolition. An operator who operates multiple facilities in the area of the
28 proposed excavation or demolition shall locate each facility.

29 (1a) The operator's identity, marked as provided in subdivision (1) of this
30 subsection, in the area where the proposed excavation or demolition is to
31 occur. At a minimum, the operator's identity shall be marked at the beginning
32 point, at intervals of 200 linear feet, and at the end point of the proposed
33 excavation or demolition.

34 ...

35 **"§ 87-122. Excavator responsibilities.**

36 ...



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

3 ...
 4 (5) The location of the proposed excavation or ~~demolition, not to exceed~~
 5 ~~one-quarter mile in geographical length, or five adjoining addresses, not to~~
 6 ~~exceed one-quarter mile in geographical length.~~ demolition by one of the
 7 following:

- 8 a. A single parcel that may exceed 1/4 mile in linear length identified by
 9 a single address.
- 10 b. The lesser of five adjoining parcels identified by addresses, not to
 11 exceed 1/4 mile in linear length or an area not to exceed 1/4 mile in
 12 linear length.

13 ...
 14 (c) An excavator shall comply with the following:

15 ...
 16 (6) If an operator fails to respond to the positive response system, the excavator
 17 may proceed if there are no visible indications of a facility at the proposed
 18 excavation or demolition area, such as a pole, marker, pedestal, meter, or
 19 valve. However, if the excavator is aware of or observes indications of an
 20 unmarked facility at the proposed excavation or demolition area, the excavator
 21 shall not begin excavation or demolition until an additional ~~call~~ notice is made
 22 to the Notification Center detailing the facility and an arrangement is made
 23 for the facility to be marked by the operator within three hours from the time
 24 the additional ~~call~~ notice is received by the Notification Center.

25 ...
 26 (10) The excavator shall not use mechanized equipment within 24 inches of a
 27 facility that is ~~a gas, oil, petroleum, or an oil, petroleum products, or highly~~
 28 ~~volatile liquid pipeline system, a gas transmission line, or an electric~~
 29 ~~transmission line unless the facility operator has consented to the use in~~
 30 ~~writing and the operator's representative is on site during the use of the~~
 31 ~~mechanized equipment. For purposes of this subdivision, the term "oil,~~
 32 ~~petroleum products, or highly volatile liquid pipeline system" has the same~~
 33 ~~meaning as the term "pipeline system" in Title 49 C.F.R. § 195.2, the term~~
 34 ~~"gas, oil, petroleum transmission line" "gas transmission line" has the same~~
 35 ~~meaning as the term "transmission line" in Title 49 C.F.R. § 192.3, and the~~
 36 ~~term "electric transmission line" has the same meaning as the term~~
 37 ~~"transmission line" in G.S. 62-100(7).~~

38 ...
 39 **"§ 87-124. Exemptions.**

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

41 ...
 42 (6) An excavation or demolition performed when those responsible for routine
 43 maintenance of a right-of-way or any other governmental entity are
 44 conducting-performing, with labor on their permanent payroll, maintenance
 45 activities within the right-of-way. Maintenance activities shall include
 46 resurfacing, milling, emergency replacement of signs critical for maintaining
 47 safety, safety or the ~~reshaping~~ of shoulders and ditches to the original road
 48 profile. Maintenance activities do not include the initial installation of traffic
 49 signs, traffic control equipment, or ~~guardrails~~ guardrails, or drainage
 50 structures. The provisions of this subdivision do not apply when the
 51 excavation or demolition is performed by a contractor acting on behalf of a

1 person or entity responsible for routine maintenance of a right-of-way or on
2 behalf of any other governmental entity.

3 ...

4 (9) Pavement milling and pavement resurfacing.

5 **"§ 87-125. Notice in case of emergency excavation or demolition.**

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

12 ...

13 (c) Any person who falsely claims that an emergency exists requiring an excavation or
14 demolition shall have violated the provisions of this Article and shall be guilty of a Class 3
15 misdemeanor.

16 (d) Any person who falsely claims an emergency exists requiring an excavation or
17 demolition under G.S. 87-122 shall have violated the provisions of this Article.

18 ...

19 **"§ 87-129. Underground Damage Prevention Review Board; enforcement; civil penalties.**

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

23 ...

24 (12) A representative from a rural water ~~system;~~ system, who shall be
25 recommended by the North Carolina Rural Water Association;

26 ...

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

40 ...

41 **"§ 87-129A. Regulatory fee.**

42 (a) Fee Imposed. – In addition to any costs that may be apportioned to operators to
43 maintain the Notification Center pursuant to G.S. 87-120(b), the Board is authorized to impose a
44 fee on operators in order to provide sufficient moneys to fund the activities and operations of the
45 Board in reviewing reports of alleged violations of this Article. Such fee shall be based on the
46 jurisdictional revenues of an operator and shall be set at a rate that the total proceeds of all fees
47 collected shall not exceed two hundred thousand dollars (\$200,000) annually to fund the activities
48 and operations of the Board.

49 (b) Use of Proceeds. – A special fund in the office of State Treasurer, the Underground
50 Damage Prevention Review Board Fund, is created. The fees collected pursuant to this section
51 shall be deposited in the Underground Damage Prevention Review Board Fund. The Fund shall

1 be placed in an interest-bearing account, and any interest or other income derived from the Fund
2 shall be credited to the Fund. Moneys in the Fund shall only be spent pursuant to appropriation
3 by the General Assembly. The Underground Damage Prevention Review Board Fund shall be
4 subject to the provisions of the State Budget Act except that no unexpended surplus of the Fund
5 shall revert to the General Fund. All funds credited to the Underground Damage Prevention
6 Review Board Fund shall be used only to pay the expenses of the Board in reviewing reports of
7 alleged violations of this Article."

8 **SECTION 2.** This act becomes effective October 1, 2019, and applies to excavations
9 and demolitions occurring on or after that date.