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SENATE BILL DRS35142-NJ-22

Short Title: Underground Safety Revisions. (Public)

Sponsors: Senators Lazzara, Sawrey, and Jones (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO UPDATE THE UNDERGROUND UTILITY SAFETY AND DAMAGE
PREVENTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-117 reads as rewritten:

"§ 87-117. Definitions.

The following definitions apply in this Article:

...

(20) Positive response. – An automated information system that allows excavators, locators, operators, and other interested parties to determine the status of a locate request.

(20a) Soft dig technologies. – An excavation method that uses air or water pressure to break up soil and remove it with vacuum extraction.

(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 horizontal 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.

...."

SECTION 2. G.S. 87-121 reads as rewritten:

"§ 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. Where practical, painted surface marks should be of adequate length to distinguish from dots. 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



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1 facilities in the area of the proposed excavation or demolition shall locate each
2 facility.

3 ...

4 (b) Unless otherwise provided in a written agreement between the operator and the
5 excavator, including an electronically transmitted written agreement, the operator shall provide
6 to the excavator the information required by subsection (a) of this section within the times
7 provided below:

8 (1) For a facility, within three full working days ~~after the day notice of the~~
9 ~~proposed excavation or demolition was provided to the Notification~~
10 ~~Center, prior to the work start date provided by the excavator.~~

11 (2) For a subaqueous facility, within 10 full working days after the day notice of
12 the proposed excavation or demolition was provided to the Notification
13 Center.

14 (3) If the operator declares an extraordinary circumstance, the times provided in
15 this subsection shall not apply.

16 (4) For an emergency request, an initial contact with the excavator shall be made
17 within three hours.

18 (5) For a request of an unmarked facility required by G.S. 87-122(c)(6), the
19 operator shall arrange for the facility to be marked within three hours from the
20 time the additional notice is received by the Notification Center.

21"

22 **SECTION 3.** G.S. 87-122 reads as rewritten:

23 **"§ 87-122. Excavator responsibilities.**

24 (a) Before commencing any excavation or demolition operation, the person responsible
25 for the excavation or demolition shall provide or cause to be provided notice to the Notification
26 Center of his or her intent to excavate or demolish. Notice for any excavation or demolition that
27 does not involve a subaqueous facility must be given ~~within three to 12 full~~ no less than three
28 full working days before the proposed commencement date of the excavation or demolition.
29 Notice for any excavation or demolition in the vicinity of a subaqueous facility must be given
30 ~~within no less than 10 to 20 full working days~~ before the proposed commencement date of the
31 excavation or demolition. Notice given pursuant to this subsection shall expire ~~15 full working~~
32 28 calendar days after the ~~date notice was given.~~ work start date. No excavation or demolition
33 may continue after this ~~15-day~~ 28-day period unless the person responsible for the excavation or
34 demolition provides a subsequent notice which shall be provided in the same manner as the
35 original notice required by this subsection. When demolition of a building is proposed, the
36 operator shall be given a reasonable time in which to remove or protect the operator's facilities
37 before the demolition commences.

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

40 (1) The name, address, and telephone number of the person providing the notice.

41 (2) The anticipated starting date of the proposed excavation or demolition.

42 (3) The anticipated duration of the proposed excavation or demolition.

43 (4) The type of proposed excavation or demolition operation to be conducted.

44 (5) ~~The location of the proposed excavation or demolition by one of the~~
45 ~~following:~~ The area of locate of the proposed excavation which is limited to
46 an area the excavator reasonably believes may be completed within 28
47 calendar days from the work start date and does not include any areas
48 completed and accepted by the authorities having jurisdiction. The area of
49 locate is also limited to one of the following:

50 a. A single parcel that may exceed 1/4 mile in linear length identified by
51 a single address.

- 1 b. The lesser of five adjoining parcels identified by addresses, not to
2 exceed 1/4 mile in linear length or an area not to exceed 1/4 mile in
3 linear length.
- 4 (6) Whether or not explosives are to be used in the proposed excavation or
5 demolition.
- 6 (c) An excavator shall comply with the following:
- 7 ...
- 8 (10) The excavator shall ~~not use mechanized~~ use nonmechanized equipment within
9 ~~24 inches of a 24-inch circumference around~~ a facility that is an oil, petroleum
10 products, or highly volatile liquid pipeline system, a gas transmission line, or
11 an electric transmission line unless the facility operator has consented to the
12 use in writing and the operator's representative is on site during the use of the
13 mechanized equipment. Within the tolerance zone of a pipeline system, the
14 excavator shall use safe excavation practices, including, but not limited to,
15 hand digging or potholing. For purposes of this subdivision, the term "oil,
16 petroleum products, or highly volatile liquid pipeline system" has the same
17 meaning as the term "pipeline system" in Title 49 C.F.R. § 195.2, the term
18 "gas transmission line" has the same meaning as the term "transmission line"
19 in Title 49 C.F.R. § 192.3, and the term "electric transmission line" has the
20 same meaning as the term "transmission line" in G.S. 62-100(7)."

21 **SECTION 4.** G.S. 87-124 reads as rewritten:

22 **"§ 87-124. Exemptions.**

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

- 24 (1) An excavation or demolition performed by the owner of a single-family
25 residential property on his or her own land that does not encroach on any
26 operator's right-of-way, easement, or permitted use.
- 27 (2) An excavation or demolition performed by the owner of a single-family
28 residential property on his or her own land that encroaches on any operator's
29 right-of-way, easement, or permitted use that is performed with
30 nonmechanized equipment.
- 31 (3) An excavation or demolition that involves the tilling of soil for agricultural or
32 gardening ~~purposes~~ purposes that encroaches on any operator's right-of-way,
33 easement, or permitted use and is less than 12 inches in depth.
- 34 (4) An excavation or demolition for agricultural purposes, as defined in
35 G.S. 106-581.1, performed on property that does not encroach on any
36 operator's right-of-way, easement, or permitted use.
- 37 (5) An excavation by an ~~operator or surveyor~~ operator, surveyor, or their
38 contractor with nonmechanized equipment for the following purposes:
- 39 a. Locating for a valid notification request or for the minor repair,
40 connection, or routine maintenance of an existing facility or survey
41 pin.
- 42 b. Probing underground to determine the extent of gas or water
43 migration.
- 44 (6) An excavation or demolition performed ~~when those responsible for routine~~
45 ~~maintenance of a right-of-way or any other governmental entity are~~
46 ~~performing, with labor on their permanent payroll, for the purpose of~~
47 maintenance activities within the right-of-way. Maintenance activities shall
48 include emergency replacement of signs critical for maintaining safety or
49 reshaping of shoulders and ditches to the original road profile. Maintenance
50 activities do not include the initial installation of traffic signs, traffic control
51 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, right-of-way.~~

...."

SECTION 5. G.S. 87-126 is amended by adding a new subsection to read:

"(c) The venue for claims adjudication for actual and consequential damages occurring in North Carolina shall be held within the North Carolina court system in the county of the occurrence."

SECTION 6. G.S. 87-128 reads as rewritten:

"§ 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 excavation and~~ 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 so long as the excavator has exercised due care in preparing for or conducting the excavation. For the purposes of this section, the excavator shall be entitled to a presumption, rebuttable by clear and convincing evidence, that it has exercised due care in preparing for or conducting the excavation where (i) the Notification Center gives the operator the notice required in G.S. 87-120(d), (ii) the operator fails to respond to that notice as provided in G.S. 87-121 or fails to properly locate the facility, (iii) the excavator has complied with the requirements of G.S. 87-122(c), and (iv) the excavator did not have actual knowledge of the existence of a facility located within the area of the excavation to be performed.~~

SECTION 7. G.S. 87-129 reads as rewritten:

"§ 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. To the extent practicable, the Governor shall fill any vacancy in the Board within 60 days after the vacancy.

(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.~~ A quorum is met when the majority of seated members are present. Board members may appear at meetings by simultaneous communication via conference telephone or other electronic means.

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

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

(a7) The Board shall establish an internal attendance policy. In the event a Board member resigns or fails to meet the criteria of the attendance policy, the Board may appoint an interim member to represent the same stakeholder group until such time as the Governor appoints a replacement for the unexpired term.

(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~~ 15 working 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 within 30 days 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.

(b2) A person determined to be in violation of this Article may request an informal conference before the Board by notifying the Board in writing within 30 days of the Board's determination. Such a person must attend the informal conference in person. They may be represented by an attorney or other person and may present evidence and make arguments in favor of their position. Following the informal conference, the Board may reverse, modify, 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 within 30 days of notification by the Board.

(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

1 before the Utilities Commission within 30 days of the Board's determination. If the violating
2 party elects to initiate an arbitration proceeding, the violating party shall pay a filing fee of two
3 hundred fifty dollars (\$250.00) to the Utilities Commission, and the Utilities Commission shall
4 open a docket regarding the report. The Utilities Commission shall direct the parties enter into
5 an arbitration process. The parties shall be responsible for selecting and contracting with the
6 arbitrator. Upon completion of the arbitration process, the Utilities Commission shall issue an
7 order encompassing the outcome of the binding arbitration process, including a determination of
8 fault, a penalty, and assessing the costs of arbitration to the non-prevailing party.

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

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

23 (d1) The Utilities Commission shall annually report to the Board compliance of persons
24 on whom fines or penalties have been imposed under this Article.

25 (d2) If the amount of the penalty is not paid to the Utilities Commission within 90 days of
26 the Utilities Commission issuing the order, the Attorney General, at the request of the Utilities
27 Commission, shall bring an action in the name of the State of North Carolina in the Superior
28 Court for Wake County to recover the penalty. The action shall not commence until after the time
29 has expired for an appeal from the findings, conclusions, and order of the Utilities Commission.

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

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

35 (g) On request of the Board, the Attorney General's office shall assign a legal
36 representative to provide legal counsel to the Board."

37 **SECTION 8.** This act becomes effective October 1, 2025.