

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

H

D

HOUSE BILL 872  
PROPOSED COMMITTEE SUBSTITUTE H872-CSRIf-7 [v.3]  
05/01/2019 04:16:27 PM

Short Title: Underground Utility Safety Act/Changes.

(Public)

Sponsors:

Referred to:

April 22, 2019

A BILL TO BE ENTITLED  
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:

...

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

...

**"§ 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~~ written 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 and shall be guilty of a Class 3 misdemeanor.

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

...

**"§ 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:

...

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

...

(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.

....

**"§ 87-129A. Regulatory fee.**

(a) Fee Imposed. – In addition to any costs that may be apportioned to operators to maintain the Notification Center pursuant to G.S. 87-120(b), the Board is authorized to impose a 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. Such fee shall be based on the jurisdictional revenues of an operator, and shall be set at a rate that the total proceeds of all fees collected shall not exceed two hundred thousand dollar (\$200,000) annually to fund the activities and operations of the Board.

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