

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

3

HOUSE BILL 1032*
Committee Substitute Favorable 4/27/99
Committee Substitute Reported Without Prejudice 4/29/99

Short Title: Underground Utility Damage Amend.

(Public)

Sponsors:

Referred to:

April 14, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE UNDERGROUND DAMAGE PREVENTION ACT.
3 The General Assembly of North Carolina enacts:

4 Section 1. Article 8 of Chapter 87 of the General Statutes reads as rewritten:

5 **"ARTICLE 8.**

6 **"UNDERGROUND DAMAGE PREVENTION.**

7 **"§ 87-100. Short title.**

8 This Article shall be known as the "Underground Damage Prevention Act".

9 **"§ 87-101. Definitions.**

10 As used in this Article:

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

15 (2) "Damage" includes the substantial weakening of structural or lateral
16 support of an underground utility, penetration or destruction of
17 protective coating, housing, or other protective device of an

- 1 underground utility, and the partial or complete severance of an
2 underground utility.
- 3 (2a) "Emergency" means a sudden or unexpected occurrence involving an
4 imminent danger, demanding immediate action to prevent or mitigate
5 loss of, or damage to, life, health, property, or essential service.
- 6 (3) "Excavate" or "excavation" means an operation for the purpose of the
7 movement or removal of earth, rock, or other materials in or on the
8 ground by use of equipment operated by means of mechanical power
9 and/or an operation by which a structure or mass of material is wrecked,
10 razed, moved, or removed by means of any tools, equipment, or
11 discharge of explosives. This term includes road construction but does
12 not include road maintenance activities within rights-of-way of a
13 highway, including those maintenance activities defined by the rules
14 and regulations of the North Carolina Department of Transportation.
- 15 (4) "Highway" has the meaning set out in G.S. 20-4.01 as the same shall be
16 amended from time to time.
- 17 (4a) "Inclement weather" means an act of God that creates a weather
18 condition that prevents the placement of temporary markings as required
19 by G.S. 87-102.
- 20 (5) "Location of underground utilities" means a strip of land not wider than
21 the width of the underground utility plus two and one-half (2 1/2) feet
22 on either side of the underground utility.
- 23 (5a) "Member" means a utility owner who is a member of the notification
24 center established in G.S. 87-101.1.
- 25 (5b) "Notification center" means the notification center established in G.S.
26 87-101.1.
- 27 (6) "Person" means a corporation, individual, copartnership, company,
28 association, or any combination of individuals or organizations doing
29 business as a unit, any subdivision or instrumentality of the State, and
30 includes any officer, agent, trustee, receiver, assignee, lessee, or
31 personal representative of any of the above entities.
- 32 (7) "Person financially responsible" means that person who ultimately
33 receives the benefits of any completed excavation activities, including a
34 person owning or leasing real property or holding an easement or
35 interest in an easement.
- 36 (8) "Public spaces" means any area owned by the State or any of its political
37 subdivisions or dedicated for public use.
- 38 (9) "Road construction" means the actual building of a new highway; or the
39 paving, grading, widening, relocation, reconstruction, or other major
40 improvement of a substantial portion of an existing highway.
- 41 (10) "Road maintenance" means preservation, including repairs and
42 resurfacing of a highway, not amounting to road construction.

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

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

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

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

14 **"§ 87-101.1. Establishment of notification center.**

15 (a) Utility owners shall establish a single notification center to provide for the
16 receipt of notification of excavation operations throughout the State and to maintain a
17 database, provided by its members, that includes the geographic areas in which its
18 members desire transmissions of notices of proposed excavations, and which has the
19 capability to transmit notices of proposed excavations to its members by teletype,
20 telecop, electronic mail, facsimile, or telephone.

21 (b) The notification center shall be operated as a nonprofit corporation, and except
22 as provided in G.S. 87-107(a), each utility owner shall be a member of that corporation
23 by using and participating in the notification system. The membership of the corporation
24 shall elect a board of directors, through which the notification center shall perform its
25 duties.

26 (c) In order to fund the operation of the notification system, the notification center,
27 through its board of directors, may assess each member an amount reflecting the cost of
28 that member's participation in the system.

29 (d) The board of directors of the notification center shall provide the Governor, the
30 President Pro Tempore of the Senate, and the Speaker of the House of Representatives
31 with an annual progress report on the operation of the notification system provided for in
32 this Article by March 1 of each year.

33 **"§ 87-102. Notice required prior to excavation.**

34 (a) Except as provided in G.S. 87-106, before commencing any excavations in
35 highways, public spaces or in private easements of a utility owner, a person planning to
36 excavate shall notify ~~each utility owner having underground utilities located in the proposed~~
37 ~~area to be excavated,~~ the notification center or a unit of local government that has elected
38 not to be a member pursuant to the provisions of G.S. 87-107(a) either orally or in
39 writing, not less than two nor more than 10 working days prior to starting, of his intent to
40 excavate.

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

42 (1) The name, address, and telephone number of the person filing the
43 notice;

- 1 (2) The name, address, and telephone number of the person doing the
- 2 excavating;
- 3 (3) The anticipated starting date of the excavation;
- 4 (4) The anticipated duration of the excavation;
- 5 (5) The type of excavation to be conducted;
- 6 (6) The location of the proposed excavation; ~~and~~
- 7 (7) Whether or not explosives will be ~~used.~~ used; and
- 8 (8) Whether or not boring, drilling, tunneling, ramming, or punching will
- 9 take place.

10 (c) If the notice required by this section is made by telephone, an adequate record
11 shall be made ~~of the notification by the utility owners or the utility association and the person~~
12 ~~making the notification,~~ by the notification center or the unit of local government to
13 document compliance with this section.

14 (d) At any time when the underground utility location markings on the ground
15 become illegible or are destroyed, the excavator shall request a remarking of the
16 underground utility locations. The utility owner shall remark the locations as soon as
17 possible after such a request, but in any event the remarking shall be completed within 48
18 hours after the request to remark is received, barring inclement weather.

19 **"§ 87-103. Effect of permit on liability.**

20 A permit authorizing excavation operations and issued pursuant to law or ordinance
21 shall not relieve a person of the responsibility of complying with this Article.

22 **"§ 87-104. Requirements of person doing excavation.**

23 (a) Except as provided in G.S. 87-106, no person may excavate in a highway, a
24 public space, or a private easement of a utility owner without first having given the notice
25 required in ~~G.S. 87-102 to the utility owners.~~ G.S. 87-102.

26 (b) In addition to the notification requirements, each person excavating shall:

- 27 (1) Plan the excavation to avoid damage and to minimize interference with
- 28 underground utilities in and near the construction area, to the best of his
- 29 ~~abilities;~~ abilities.
- 30 (2) Maintain a clearance between an underground utility and the cutting
- 31 edge or point of any mechanized equipment, taking into account the
- 32 known limit of control of that cutting edge or point, as is reasonably
- 33 required to avoid ~~damage; and~~ damage.
- 34 (3) Provide support for the underground utilities in or near the construction
- 35 area, including backfill, as may be reasonably required by the utility
- 36 owner for the protection of the underground utilities.

37 **~~"§ 87 the excavation.~~**

38 ~~The person financially responsible shall provide to the person responsible for doing~~
39 ~~the excavating, the names of all underground utility owners in the area of the proposed~~
40 ~~excavation. The names of the utility owners may be obtained from the County Register of~~
41 ~~Deeds or the Building Inspection Department of the political subdivision in which the~~
42 ~~excavating is taken place, if there is one.~~

43 **"§ 87-105.1. Requirements of notification center.**

1 (a) The notification center or a unit of local government that has elected not to be
2 a member pursuant to the provisions of G.S. 87-107(a) shall, upon receiving notice of the
3 intent to excavate, notify all utility owners whose underground lines are located in the
4 area of the proposed excavation. The notification center or the unit of local government
5 shall also indicate the names of those utilities being notified to the person intending to
6 excavate.

7 (b) If the notification required by this act is made by telephone, a voice recording
8 of the notification shall be maintained by the notification center to document compliance
9 with the notification requirement and those records shall be maintained for at least 48
10 months.

11 (c) The notification center shall provide statewide operations coverage and a
12 single, nationally accessible toll-free telephone number to receive and record the
13 information provided by excavators and to respond to information requests from
14 excavators. A unit of local government that has elected not to be a member pursuant to
15 the provisions of G.S. 87-107(a) shall provide operations coverage and a single,
16 nationally accessible toll-free telephone number to receive and record the information
17 provided by excavators and to respond to information requests from excavators.

18 **"§ 87-106. Exceptions. Exemptions.**

19 The following excavations are exempted from the notification requirements of this
20 Article:

- 21 (1) Tilling of soil for agricultural purposes;
- 22 (2) Excavation by a utility owner, ~~by the State or its subdivisions or~~
23 ~~agencies, or by anyone contracting with any of these entities to perform~~
24 ~~the excavation, owner or road maintenance activities by the Department~~
25 ~~of Transportation described in G.S. 87-101(3) on or within an easement,~~
26 ~~right-of-way, or property owned or controlled by any of these entities,~~
27 ~~where:~~
28 a. ~~Only the facilities of the utility owner doing the excavating are~~
29 ~~permitted; or~~
30 b. ~~All persons having an interest in the excavation and the~~
31 ~~underground utilities that may be damaged during the excavation~~
32 ~~have agreed in writing to provide the equivalent of the~~
33 ~~notification required by this Article among themselves; or~~
34 where only the facilities of the utility owner doing the excavating are
35 permitted;
- 36 (3) The replacement of a pole as long as the replacement pole is within
37 three feet of the original pole and within the line of existing poles. This
38 exception shall not apply to poles at highway intersections or at the
39 crossings of highways and permanently marked transmission
40 underground ~~utilities.~~ utilities; and
- 41 (4) In the case of an ~~emergency~~ emergency, ~~involving danger to life, health,~~
42 ~~or property requiring immediate correction, or in order to continue the~~
43 ~~operation of a major industrial plant, or in order to assure the continuity~~

1 of utility services, excavations immediately required to repair or
2 maintain the needed service may be made, without using explosives, if
3 notice is given to the utility owner or association notification center as
4 soon as is reasonably possible; except that the prohibition against the
5 use of explosives shall not apply to the North Carolina Department of
6 Transportation. Performance of emergency excavation shall not relieve
7 the excavator of person financially responsible from liability for
8 damages.

9 **"§ 87-107. Duties of the utility owners.**

10 (a) Every utility owner having underground utility lines, including units of local
11 government, shall be a member of the notification center. A unit of local government
12 may elect not to be a member of the notification center if it agrees to receive notice of the
13 intent to excavate and agrees to notify utility owners within its jurisdiction.

14 (b) Each utility owner, or his designated ~~representative including an association,~~
15 representative, notified of an intent to excavate shall, before the proposed start of
16 excavating (unless another period is agreed to by the person conducting the excavation
17 and the utility owner or their representatives), provide the following information to the
18 person excavating to the extent such information is reflected by records in the possession
19 of and reasonably available to the utility owner:

- 20 (1) The location ~~and description~~ of all of the underground utilities which
21 may be damaged as a result of the excavation; and
22 ~~(2) The location and description of all utility markers indicating the location~~
23 ~~of the underground utilities; and~~
24 (3) Any other information that would assist in locating and avoiding
25 damage to the underground utilities, including providing temporary
26 markings when necessary indicating the location of the underground
27 utility in locations where permanent utility markers do not exist.

28 **"§ 87-108. Absence of utility location.**

29 Should any utility owner who has been given notice pursuant to G.S. 87-102 fail to
30 respond to that notice as provided in G.S. 87-107, or fail to properly locate the
31 underground utility, then the person excavating is free to proceed with the excavation.
32 Neither the excavator nor the person financially responsible for the excavation will be
33 liable to the nonresponding or improperly responding utility owner for damages to that
34 utility owner's facilities if the person doing the excavating shall exercise due care to
35 protect existing underground utilities when there is evidence of the existence of those
36 underground utilities near the proposed excavation site.

37 **"§ 87-109. Recording requirements for ~~associations.~~ the notification center.**

38 ~~An association.~~ The notification center shall record with the Register of Deeds of each
39 county in which participating utility owners own or operate underground utilities, a
40 notarized document providing the telephone number and address of the ~~association,~~
41 notification center, a description of the geographical area served by the ~~association,~~
42 notification center, and a list of the names and addresses of the utility owners receiving
43 these services from the ~~association.~~ notification center.

1 **"§ 87-110. Recording requirements for utility owners.**

2 (a) Each utility owner having underground utilities in North Carolina shall record
3 a notarized document containing the name of the utility owner and the title, address, and
4 telephone number of its representatives designated to receive the written or oral notice of
5 intent to excavate, with the Register of Deeds of each county in which the utility owner
6 owns or operates underground facilities. This document shall be executed by an officer of
7 the utility owner or in the case of a governmental entity, the authorized official.

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

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

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

22 ~~"§ 87 departments.~~

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

28 **"§ 87-112. Color-coding.**

29 When the location of an underground utility is marked with ~~stakes~~ stakes, flags, or
30 paint, or by other physical means, pursuant to this Article, the utility owner shall use
31 temporary colored markers ~~markers~~ markings following the American Public Works Association
32 Uniform Color Code for Utilities.

33 **"§ 87-113. Notification required when damage done.**

34 (a) The person doing an excavation that results in any known damage to an
35 underground utility shall, immediately after the discovery of the damage, notify the utility
36 owner of the location and nature of the damage and shall allow the utility owner
37 reasonable time to repair the damage before completing the excavation in the immediate
38 area of the damaged underground utility.

39 (b) The person responsible for conducting any excavation that results in damage to
40 an underground utility where the damage may endanger life, health, or property shall,
41 immediately after the discovery of the damage, take action to protect the public and
42 property, notify the utility owner, notify the police or fire departments, and take any other
43 actions to minimize the hazards until the arrival of the utility owner's personnel, the

1 police, or the fire department. The excavator shall delay any backfilling in the immediate
2 area of the damaged underground utility until authorized by the utility owner unless it is
3 necessary to prevent injury or property damage to others. Repair of any damage shall be
4 performed by the utility owner or by qualified personnel authorized by the utility owner.

5 **"§ 87-114. Homeowners.**

6 This Article does not require utility notification before a property owner digs in any
7 area on his own property with nonmechanized equipment nor prior to tilling the soil for
8 agricultural, gardening or landscaping purposes. Mechanized equipment may be used,
9 without utility notification, in any area on the owner's property with the exception of
10 recorded underground utility easements which describes the location of the easement
11 with specificity.

12 **"§ 87-115. Requests for survey locates and design locates.**

13 The information required for requests for facility locates in conjunction with survey or
14 design activities shall be the same as specified in G.S. 87-102. The utility owners
15 receiving requests for survey locate or design locate work shall respond to the request
16 within 10 working days.

17 **"§ 87-116. Civil penalties.**

18 (a) A person who violates the provisions of G.S. 87-102(a), 87-104(b), or 87-
19 107(a) is subject to a civil penalty as follows:

- 20 (1) Upon the first violation by that person, two hundred fifty dollars
21 (\$250.00);
22 (2) Upon the second violation occurring within the same 12-month period
23 as the first violation, five hundred dollars (\$500.00); and
24 (3) Upon the third violation occurring within the same 12-month period as
25 the first violation, one thousand dollars (\$1,000).

26 (b) An action under this section may be initiated by any person making a
27 complaint in writing, verifying by oath and having reason to believe that a violation has
28 occurred.

29 (c) Prosecution of violations shall be brought by the district attorney for the
30 prosecutorial district in which the violation arose or in the county in which the defendant
31 resides or in which the defendant's principal place of business is located.

32 (d) All civil penalties recovered under this section shall be remitted to the Civil
33 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

34 (e) The civil penalties provided for in this section do not apply to the State of
35 North Carolina or to units of local government."

36 Section 2. This act becomes effective July 1, 2000.