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PROPOSED SENATE COMMITTEE SUBSTITUTE H476-PCS30603-TPf-59

Short Title: Rewrite Underground Damage Prevention Act.

(Public)

Sponsors:

Referred to:

April 1, 2013

1 A BILL TO BE ENTITLED
2 AN ACT REWRITING THE LAWS REGULATING UNDERGROUND UTILITY DAMAGE
3 PREVENTION.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 8 of Chapter 87 of the General Statutes is repealed.

6 SECTION 2. Chapter 87 of the General Statutes is amended by adding the
7 following new Article to read:

8 "Article 8A.

9 "Underground Utility Safety and Damage Prevention Act.

10 "§ 87-115. Short title.

11 This Article may be cited as the "Underground Utility Safety and Damage Prevention Act."

12 "§ 87-116. Declaration of policy and purpose.

13 The General Assembly of North Carolina hereby declares as a matter of public policy that it
14 is necessary to protect the citizens and workforce of this State from the dangers inherent in
15 excavating or demolishing in areas where underground lines, systems, or infrastructure are
16 buried beneath the surface of the ground, and it is necessary to protect from costly damage
17 underground facilities used for producing, storing, conveying, transmitting, or distributing
18 communication, electricity, gas, petroleum, petroleum products, hazardous liquids, water,
19 steam, or sewage. In order to carry out this public policy and to satisfy these compelling
20 interests, the General Assembly has enacted the provisions of this Article providing for a
21 systematic, orderly, and uniform process to identify existing facilities in advance of any
22 excavation or demolition in this State and to implement safe digging practices.

23 "§ 87-117. Definitions.

24 The following definitions apply in this Article:

- 25 (1) APWA. – The American Public Works Association or its successors.
26 (2) Business continuation plan. – A plan that includes actions to be taken in an
27 effort to provide uninterrupted service during catastrophic events.
28 (3) Contract locator. – A person hired by an operator to identify and mark
29 facilities.
30 (4) Damage. – The substantial weakening of structural or lateral support of a
31 facility; penetration or destruction of protective coating, housing, or other



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- 1 protective device of a facility; or the partial or complete severance of a
2 facility.
- 3 (5) Demolish or demolition. – Any operation by which a structure or mass of
4 material is wrecked, razed, rendered, moved, or removed by any means,
5 including the use of any tools, equipment, or discharge of explosives.
- 6 (6) Designer. – Any architect, engineer, or other person who prepares or issues a
7 drawing or blueprint for a construction or other project that requires
8 excavation or demolition work.
- 9 (7) Design notice. – A communication to the Notification Center in which a
10 request for identifying existing facilities for advance planning purposes is
11 made. A design notice may not be used for excavation purposes.
- 12 (8) Emergency. – An event involving a clear and imminent danger to life,
13 health, or property, the interruption of essential utility services, or the
14 blockage of transportation facilities, including highways, railways,
15 waterways, or airways that require immediate action.
- 16 (9) Excavate or excavation. – An operation for the purpose of the movement or
17 removal of earth, rock, or other materials in or on the ground by use of
18 manual or mechanized equipment or by discharge of explosives, including,
19 but not limited to, auguring, backfilling, boring, digging, ditching, drilling,
20 directional drilling, driving, grading, horizontal directional drilling, well
21 drilling, plowing-in, pounding, pulling-in, ripping, scraping, trenching, and
22 tunneling.
- 23 (10) Excavator. – A person engaged in excavation or demolition.
- 24 (11) Extraordinary circumstances. – Circumstances that make it impossible for
25 the operator to comply with the provisions of this Article, including
26 hurricanes, tornadoes, floods, ice, snow, and acts of God.
- 27 (12) Facility. – Any underground line, underground system, or underground
28 infrastructure used for producing, storing, conveying, transmitting,
29 identifying, locating, or distributing communication, electricity, gas,
30 petroleum, petroleum products, hazardous liquids, water, steam, or sewage.
31 Provided there is no encroachment on any operator's right-of-way, easement,
32 or permitted use, for the purposes of this Article, the following shall not be
33 considered an underground facility: (i) swimming pools and irrigation
34 systems; (ii) petroleum storage systems under Part 2A of Article 21A of
35 Chapter 143 of the General Statutes; (iii) septic tanks under Article 11 of
36 Chapter 130A of the General Statutes; and (iv) liquefied petroleum gas
37 systems under Article 5 of Chapter 119 of the General Statutes, unless the
38 system is subject to Title 49 C.F.R. § 192 or § 195.
- 39 (13) Locator. – An individual who identifies and marks facilities for operators
40 who has been trained and whose training has been documented.
- 41 (14) Mechanized equipment. – Equipment operated by means of mechanical
42 power, including, but not limited to, trenchers, bulldozers, power shovels,
43 augers, backhoes, scrapers, drills, horizontal directional drills, cable and pipe
44 plows, and other equipment used for plowing-in or pulling-in cable or pipe.
- 45 (15) Nonmechanized equipment. – Hand tools.
- 46 (16) Notice. – Oral, written, or electronic communication to the Notification
47 Center from any person planning to excavate or demolish in the State that
48 informs an operator of the person's intent to excavate or demolish.
- 49 (17) Notification Center. – A North Carolina member-owned not-for-profit
50 corporation sponsored by operators that will provide a system through which

1 a person can notify operators of proposed excavations and demolitions and
2 submit reports of alleged violations of this Article.

3 (18) Operator. – Any person, public utility, communications or cable service
4 provider, municipality, electrical utility, or electric or telephone cooperative
5 that owns or operates a facility in this State.

6 (19) Person. – Any individual, owner, corporation, partnership, association, or
7 any other entity organized under the laws of any state, any political
8 subdivision of a state, or any other instrumentality of a state, or any
9 authorized representative thereof.

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

13 (21) Subaqueous. – A facility that is under a body of water, including rivers,
14 streams, lakes, waterways, swamps, and bogs.

15 (22) Tolerance zone. – If the diameter of the facility is known, the distance of
16 one-half of the known diameter plus 24 inches on either side of the
17 designated center line or, if the diameter of the facility is not marked, 24
18 inches on either side of the outside edge of the mark indicating a facility or,
19 for subaqueous facilities, a clearance of 15 feet on either side of the
20 indicated facility.

21 (23) Working day. – Every day, except Saturday, Sunday, or State legal holidays.

22 **"§ 87-118. Reserve to the State the power to regulate.**

23 The provisions in this Article supersede and preempt any ordinance adopted by a city or
24 county that purports to do any of the following:

25 (1) Require operators to obtain permits from a city or county in order to identify
26 facilities.

27 (2) Require premarking or marking of facilities.

28 (3) Specify the types of paint or other marking devices that are used to identify
29 facilities.

30 (4) Require removal of unexpired marks. The removal of expired marks shall be
31 the responsibility of the city or county.

32 **"§ 87-119. Costs associated with compliance; effect of permit.**

33 Any costs or expenses associated with an excavator's compliance with the requirements of
34 this Article shall not be charged to any operator. Any costs or expenses associated with an
35 operator's compliance with the requirements of this Article shall not be charged to any
36 excavator. The Notification Center may not impose any charge on any person giving notice to
37 the Notification Center. This section shall not affect costs related to the operation of the
38 Notification Center apportioned to an operator pursuant to G.S. 87-120(b). This section shall
39 not excuse an operator or excavator from liability for any damage or injury for which the
40 operator or excavator would be responsible under applicable law.

41 **"§ 87-120. Notification Center; responsibilities.**

42 (a) The operators in the State shall maintain a Notification Center for the sole purpose
43 of providing the services required by this Article. The Notification Center shall maintain
44 information concerning receipt of notification of proposed excavation and demolition activities
45 as provided in this Article and shall maintain information received from operators concerning
46 the location of the operators' facilities and the operators' positive responses to marking of the
47 facilities. The Notification Center shall also receive, maintain, and provide general
48 administration of reports of alleged violations of this Article and responses. The Notification
49 Center is not responsible in any way for identifying or marking facilities for operators. The
50 Notification Center is not responsible in any way for resolving reports of alleged violations of
51 this Article. All operators in the State shall join the Notification Center as provided in

1 subsection (b) of this section, and they shall use the services of the Notification Center to
2 perform the acts required by the provisions of this Article. There shall be only one Notification
3 Center for the State of North Carolina. The Notification Center is not an agency of the State or
4 any of the State's political subdivisions and is not subject to the provisions of Chapter 132 or
5 Chapter 133 of the General Statutes.

6 (b) Operators who are members of the Notification Center by whatever name that is in
7 existence on October 1, 2013, must remain members. Operators with more than 50,000
8 customers or 1,000 miles of facilities who are not members on October 1, 2013, must join no
9 later than October 1, 2014. Operators with more than 25,000 customers or 500 miles of
10 facilities who are not members on October 1, 2013, must join no later than October 1, 2015. All
11 operators that do not meet one of the criteria provided in this subsection must join no later than
12 October 1, 2016. Each engineering division of the Department of Transportation established
13 pursuant to G.S. 136-14.1 must join no later than October 1, 2016. The board of directors of the
14 Notification Center shall develop a reasonable method of apportioning the costs of operating
15 the Notification Center among the member operators. Prior to adopting a method of
16 determining such cost allocation, the board of directors shall publish the proposed method of
17 cost allocation to the member operators, and the proposed method of cost allocation shall be
18 approved by the member operators.

19 (c) The Notification Center shall have the following duties and responsibilities:

- 20 (1) Maintain a record of the notices received under subsection (d) of this section
21 for at least four years.
- 22 (2) Maintain a record of reports of alleged violations of this Article received
23 under subsection (e) of this section for at least four years, including
24 responses to such reports.
- 25 (3) Receive and transmit notices as provided in subsection (d) of this section.
- 26 (4) Develop and update, as needed, a business continuation plan.
- 27 (5) Notify those persons against whom reports of alleged violations of this
28 Article have been made and receive and maintain information submitted
29 from such persons in defense against the allegations.
- 30 (6) Provide a positive response system.
- 31 (7) Establish and operate a damage prevention training program for members of
32 the Notification Center. No person may recover damages in any manner or
33 form from the Notification Center arising out of or related to the manner in
34 which the Notification Center conducts a damage prevention training
35 program or receives, transmits, or otherwise administers a report of an
36 alleged violation of this Article.

37 (d) The Notification Center shall receive notice from any person intending to excavate
38 or demolish in the State and shall, at a minimum, transmit the following information to the
39 appropriate operator:

- 40 (1) The name, address, and telephone number of the person providing the notice
41 and, if different, the person responsible for the proposed excavation or
42 demolition.
- 43 (2) The starting date of the proposed excavation or demolition.
- 44 (3) The anticipated duration of the proposed excavation or demolition.
- 45 (4) The type of proposed excavation or demolition operation to be conducted.
- 46 (5) The location of the proposed excavation or demolition.
- 47 (6) Whether or not explosives are to be used in the proposed excavation or
48 demolition.

49 (e) The Notification Center shall receive reports of alleged violations of this Article.
50 The Notification Center shall contact persons against whom reports have been filed to inform

1 them of the alleged violation within 10 days of the filing of the report. The Notification Center
2 shall maintain the following information regarding reports of alleged violations:

- 3 (1) The name, address, and telephone number of the person making the report;
- 4 (2) The nature of the report, including the statute that is alleged to have been
5 violated;
- 6 (3) Information provided by the person making the report, including
7 correspondence, both written and electronic, pictures, and videos; and
- 8 (4) Information provided by the person against whom the report has been filed,
9 including correspondence, both written and electronic, pictures, and videos.

10 **§ 87-121. Facility operator responsibilities.**

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

- 12 (1) The horizontal location and description of all of the operator's facilities in
13 the area where the proposed excavation or demolition is to occur. The
14 location shall be marked by stakes, soluble paint, flags, or any combination
15 thereof, as appropriate, depending upon the conditions in the area of the
16 proposed excavation or demolition. The operator shall, when marking as
17 provided under this subdivision, use the APWA Uniform Color Code. If the
18 diameter or width of the facility is greater than four inches, the dimension of
19 the facility shall be indicated at least every 25 feet in the area of the
20 proposed excavation or demolition. An operator who operates multiple
21 facilities in the area of the proposed excavation or demolition shall locate
22 each facility.
- 23 (2) Any other information that would assist the excavator in identifying and
24 thereby avoiding damage to the marked facilities.

25 (b) Unless otherwise provided in a written agreement between the operator and the
26 excavator, the operator shall provide to the excavator the information required by subsection (a)
27 of this section within the times provided below:

- 28 (1) For a facility, within three full working days after the day notice of the
29 proposed excavation or demolition was provided to the Notification Center.
- 30 (2) For a subaqueous facility, within 10 full working days after the day notice of
31 the proposed excavation or demolition was provided to the Notification
32 Center.
- 33 (3) If the operator declares an extraordinary circumstance, the times provided in
34 this subsection shall not apply.

35 (c) The operator shall provide a positive response to the Notification Center before the
36 expiration of the time provided in subsection (b) of this section. The response shall indicate
37 whether and to what extent the operator is able to provide the information required by
38 subsection (a) of this section to respond to the notice from the excavator.

39 (d) If the operator determines that provisions for marking subaqueous facilities are
40 required, the operator will provide a positive response to the Notification Center not more than
41 three full working days after notice has been provided by the excavator.

42 (e) If extraordinary circumstances prevent the operator from marking the location of the
43 facilities within the time specified in subsection (b) of this section, the operator shall either
44 notify the excavator directly or notify the excavator through the Notification Center. When
45 providing the notification under this subsection, the operator shall state the date and time when
46 the location will be marked.

47 (f) An operator shall prepare or cause to be prepared installation records of all facilities
48 installed on or after the date this Article becomes effective in a public street, alley, or
49 right-of-way dedicated to public use, excluding service drops and services lines. The operator
50 shall maintain these records in the operator's possession while the facility is in service.

1 (g) All facilities installed by or on behalf of operators on or after the date this Article
2 becomes effective shall be electronically locatable using a locating method that is generally
3 accepted by operators in the particular industry or trade in which the operator is engaged.

4 (h) A locator shall notify the operator if the locator becomes aware of an error or
5 omission in the records or documentation showing the location of the operator's facilities. The
6 operator must update its records to correct any error or omission.

7 (i) An operator may reject an excavation or demolition notice due to homeland security
8 considerations based upon federal statutes or federal regulations until the operator can confirm
9 the legitimacy of the notice. The operator shall notify the person making the notice of the
10 denial and may request additional information through the positive response system.

11 (j) Gravity fed sanitary sewers installed prior to the date this Article becomes effective
12 and all storm water facilities shall be exempt from the location requirements provided in
13 subsection (a) of this section. Neither the excavator nor the person financially responsible for
14 the excavation will be liable for any damage to an unmarked gravity fed sanitary sewer line or
15 unmarked storm water facility if the person doing the excavation exercises due care to protect
16 existing facilities when there is evidence of the existence of those facilities near the proposed
17 excavation area.

18 (k) An operator who does not become a member of the Notification Center as required
19 by G.S. 87-120(b) may not recover for damages to a facility caused by an excavator who has
20 complied with the provisions of this Article and has exercised reasonable care in the
21 performance of the excavation or demolition.

22 **"§ 87-122. Excavator responsibilities.**

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

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

- 38 (1) The name, address, and telephone number of the person providing the notice.
- 39 (2) The anticipated starting date of the proposed excavation or demolition.
- 40 (3) The anticipated duration of the proposed excavation or demolition.
- 41 (4) The type of proposed excavation or demolition operation to be conducted.
- 42 (5) The location of the proposed excavation or demolition, not to exceed
43 one-quarter mile in geographical length, or five adjoining addresses, not to
44 exceed one-quarter mile in geographical length.
- 45 (6) Whether or not explosives are to be used in the proposed excavation or
46 demolition.

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

- 48 (1) When the excavation area cannot be clearly and adequately identified within
49 the area described in the notice, the excavator shall designate the route,
50 specific area to be excavated, or both by premarking the area before the

- 1 operator performs a locate. Premarking shall be made with soluble white
2 paint, white flags, or white stakes.
- 3 (2) Confirm through the Notification Center's positive response system prior to
4 excavation or demolition that all operators have responded and that all
5 facilities that may be affected by the proposed excavation or demolition have
6 been marked.
- 7 (3) Plan the excavation or demolition to avoid damage to or minimize
8 interference with facilities in or near the construction area.
- 9 (4) Begin excavation or demolition prior to the specified waiting period only if
10 the excavator has confirmed that all operators have responded with an
11 appropriate positive response.
- 12 (5) If the operator declares extraordinary circumstances, the excavator shall not
13 excavate or demolish until after the time and date that the operator has
14 provided in the operator's response.
- 15 (6) If an operator fails to respond to the positive response system, the excavator
16 may proceed if there are no visible indications of a facility at the proposed
17 excavation or demolition area, such as a pole, marker, pedestal, meter, or
18 valve. However, if the excavator is aware of or observes indications of an
19 unmarked facility at the proposed excavation or demolition area, the
20 excavator shall not begin excavation or demolition until an additional call is
21 made to the Notification Center detailing the facility and an arrangement is
22 made for the facility to be marked by the operator within three hours from
23 the time the additional call is received by the Notification Center.
- 24 (7) Beginning on the date provided in the excavator's notice to the Notification
25 Center, the excavator shall preserve the staking, marking, or other
26 designation until they are no longer required. When a mark is no longer
27 visible or is destroyed, but the excavation or demolition continues in the
28 vicinity of the facility, the excavator shall request a re-mark from the
29 Notification Center to ensure the protection of the facility.
- 30 (8) When demolition of a building is proposed, the excavator shall give the
31 operator a reasonable time in which to remove or protect the operator's
32 facilities before demolition commences.
- 33 (9) An excavator shall not perform any excavation or demolition within the
34 tolerance zone unless the excavator complies with all of the following
35 conditions:
- 36 a. The excavator shall not use mechanized equipment, except
37 noninvasive equipment specifically designed or intended to protect
38 the integrity of the facility, within the marked tolerance zone of an
39 existing facility until:
- 40 1. The excavator has visually identified the precise location of
41 the facility or has visually confirmed that no facility is present
42 up to the depth of excavation;
- 43 2. The excavator has taken reasonable precautions to avoid any
44 substantial weakening of the facility's structural or lateral
45 support, or both, or penetration or destruction of the facilities
46 or their protective coatings; and
- 47 3. The excavator may use mechanical means, as necessary, for
48 the initial penetration and removal of pavement or other
49 materials requiring use of mechanical means of excavation
50 but only to the depth of the pavement or other materials. For
51 parallel type excavations within the tolerance zone, the

1 existing facility shall be visually identified at intervals not to
2 exceed 50 feet along the line of excavation to avoid damages.
3 The excavator shall exercise due care at all times to protect
4 the facilities when exposing these facilities.

5 b. The excavator shall maintain clearance between a facility and the
6 cutting edge or point of any mechanized equipment, taking into
7 account the known limit of control of the cutting edge or point, as
8 may be reasonably necessary to avoid damage to the facility.

9 c. The excavator shall provide support for facilities in and near the
10 excavation or demolition area, including backfill operations, as may
11 be reasonably required by the operator for the protection of the
12 facilities.

13 (10) The excavator shall not use mechanized equipment within 24 inches of a
14 facility that is a gas, oil, petroleum, or electric transmission line unless the
15 facility operator has consented to the use in writing and the operator's
16 representative is on site during the use of the mechanized equipment. For
17 purposes of this subdivision, the term "gas, oil, petroleum transmission line"
18 has the same meaning as the term "transmission line" in Title 49 C.F.R.
19 § 192.3, and the term "electric transmission line" has the same meaning as
20 the term "transmission line" in G.S. 62-100(7).

21 **§ 87-123. Training.**

22 (a) Every person who is an excavator, locator, or operator under this Article by virtue of
23 engaging in these activities in the course of a business or trade has a duty to provide education
24 and training to employees and to document such education and training. The training shall
25 include sufficient information, guidance, and supervision such that employees can competently
26 and safely operate the equipment used in the course of the business or trade and complete
27 assigned tasks in a competent and safe manner while minimizing the potential for damage.

28 (b) When an excavator, locator, or operator under this Article retains an independent
29 contractor to perform activities regulated by this Article, the duty set forth in subsection (a) of
30 this section shall not apply to the excavator, locator, or operator. Independent contractors shall
31 provide training to their employees in accordance with this section.

32 (c) Excavation shall be conducted in accordance with OSHA Standard 1926 and under
33 the direction of a competent person, as defined therein.

34 (d) Locators shall be properly trained. Locator training shall be documented.

35 **§ 87-124. Exemptions.**

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

38 (1) An excavation or demolition performed by the owner of a single-family
39 residential property on his or her own land that does not encroach on any
40 operator's right-of-way, easement, or permitted use.

41 (2) An excavation or demolition performed by the owner of a single-family
42 residential property on his or her own land that encroaches on any operator's
43 right-of-way, easement, or permitted use that is performed with
44 nonmechanized equipment.

45 (3) An excavation or demolition that involves the tilling of soil for agricultural
46 or gardening purposes.

47 (4) An excavation or demolition for agricultural purposes, as defined in
48 G.S. 106-581.1, performed on property that does not encroach on any
49 operator's right-of-way, easement, or permitted use.

50 (5) An excavation by an operator or surveyor with nonmechanized equipment
51 for the following purposes:

- 1 a. Locating for a valid notification request or for the minor repair,
2 connection, or routine maintenance of an existing facility or survey
3 pin.
4 b. Probing underground to determine the extent of gas or water
5 migration.

6 (6) An excavation or demolition performed when the Department of
7 Transportation, a local government, special purpose district, or public
8 service district is conducting maintenance activities within its designated
9 right-of-way. Maintenance activities shall include resurfacing, milling,
10 emergency replacement of signs critical for maintaining safety, or the
11 reshaping of shoulders and ditches to the original road profile. Maintenance
12 activities do not include the initial installation of traffic signs, traffic control
13 equipment, or guardrails.

14 (7) An excavation or demolition performed by a railroad entirely on land which
15 the railroad owns or operates or, in the event of an emergency, on adjacent
16 land. No provision in this Article shall apply to any railroad which owns,
17 operates, or permits facilities under land which the railroad owns or
18 operates.

19 (8) An excavation of a grave space, as defined in G.S. 65-48(10), the installation
20 of a monument or memorial at a grave space, or an excavation related to the
21 placement of a temporary structure or tent by a cemetery regulated under
22 Chapter 65 of the General Statutes that does not encroach on any operator's
23 right-of-way, easement, or permitted use.

24 **"§ 87-125. Notice in case of emergency excavation or demolition.**

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

31 (b) The declaration of an emergency excavation or demolition shall not relieve any
32 party of liability for causing damage to an operator's facilities even if those facilities are
33 unmarked.

34 (c) Any person who falsely claims that an emergency exists requiring an excavation or
35 demolition shall be guilty of a Class 3 misdemeanor.

36 **"§ 87-126. Notification required when damage is done.**

37 (a) The excavator performing an excavation or demolition that results in any damage to
38 a facility shall immediately upon discovery of the damage notify the Notification Center and
39 the facility operator, if known, of the location and nature of the damage. The excavator shall
40 allow the operator reasonable time to accomplish necessary repairs before completing the
41 excavation or demolition in the immediate area of the facility. The excavator shall delay any
42 backfilling in the immediate area of the damaged facility until authorized by the operator. The
43 operator or qualified personnel authorized by the operator shall repair any damage to the
44 facility.

45 (b) An excavator who is responsible for an excavation or demolition where any damage
46 to a facility results in the discharge of electricity or escape of any flammable, toxic, or
47 corrosive gas or liquid, or that endangers life, health, or property shall immediately notify
48 emergency responders, including 911 services, the Notification Center, and the facility
49 operator. The excavator shall take reasonable measures to protect himself or herself, other
50 persons in immediate danger, members of the general public, property, and the environment
51 until the operator or emergency responders arrive and complete an assessment of the situation.

"§ 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 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 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.

"§ 87-128. 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 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.

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

(a) The Notification Center shall establish an 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 the following members:

(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 recommended by 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;

(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.

1 **(b)** The Notification Center shall transmit all reports of alleged violations of this Article
2 to the Board, including any information received by the Notification Center regarding the
3 report. The Board shall meet at least quarterly to review all reports filed pursuant to
4 G.S. 87-120(e). The Board shall act as an arbitrator between the parties to the report. If, after
5 reviewing the report and any accompanying information, the Board determines that a violation
6 of this Article has occurred, the Board shall notify the violating party in writing of its
7 determination and the recommended penalty. The violating party may request a hearing before
8 the Board, after which the Board may reverse or uphold its original finding. If the Board
9 recommends a penalty, the Board shall notify the Utilities Commission of the recommended
10 penalty, and the Utilities Commission shall issue an order imposing the penalty.

11 **(c)** A party determined by the Board under subsection (b) of this section to have
12 violated this Article may initiate an arbitration proceeding before the Utilities Commission. If
13 the violating party elects to initiate an arbitration proceeding, the violating party shall pay a
14 filing fee of two hundred fifty dollars (\$250.00) to the Utilities Commission, and the Utilities
15 Commission shall open a docket regarding the report. The Utilities Commission shall direct the
16 parties enter into an arbitration process. The parties shall be responsible for selecting and
17 contracting with the arbitrator. Upon completion of the arbitration process, the Utilities
18 Commission shall issue an order encompassing the outcome of the binding arbitration process,
19 including a determination of fault, a penalty, and assessing the costs of arbitration to the
20 non-prevailing party. Any party may appeal an order issued by the Utilities Commission
21 pursuant to this section to the superior court division of the General Court of Justice in the
22 county where the alleged violation of this Article occurred or in Wake County, for trial de
23 novo. The authority granted to the Utilities Commission within this section is limited to this
24 section and does not grant the Utilities Commission any authority that they are not otherwise
25 granted under Chapter 62 of the General Statutes.

26 **(d)** Any person who violates any provision of this Article shall be subject to a penalty
27 as set forth in this subsection. The provisions of this Article do not affect any civil remedies for
28 personal injury or property damage otherwise available to any person, except as otherwise
29 specifically provided for in this Article. The penalty provisions of this Article are cumulative to
30 and not in conflict with provisions of law with respect to civil remedies for personal injury or
31 property damage. The clear proceeds of any civil penalty assessed under this section shall be
32 used as provided in Section 7(a) of Article IX of the North Carolina Constitution. The penalties
33 for a violation of this Article shall be as follows:

34 **(1)** If the violation was the result of negligence, the penalty shall be a
35 requirement of training, a requirement of education, or both.

36 **(2)** If the violation was the result of gross negligence, the penalty shall be a civil
37 penalty of one thousand dollars (\$1,000), a requirement of training, a
38 requirement of education, or a combination of the three.

39 **(3)** If the violation was the result of willful or wanton negligence or intentional
40 conduct, the penalty shall be a civil penalty of two thousand five hundred
41 dollars (\$2,500), a requirement of training, and a requirement of education.

42 **"§ 87-130. Severability.**

43 If any provision of this Article or the application thereof to any person or circumstance is
44 held invalid, such invalidity shall not affect other provisions or applications, and to this end the
45 provisions of this Article are severable."

46 **SECTION 3.** This act becomes effective October 1, 2014, and applies to all
47 activities regulated by the provisions of Article 8A of Chapter 87 of the General Statutes, as
48 enacted by this act, that occur on or after that date.