

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 748

Short Title: Underground Damage Prevention Act/Changes. (Public)

Sponsors: Representative Millis.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Environment, if favorable, Energy and Public Utilities

April 13, 2017

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

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

5 "**§ 87-117. Definitions.**

6 The following definitions apply in this Article:

7 ...

8 (1a) Board. – Underground Damage Prevention Review Board.

9"

10 **SECTION 2.** G.S. 87-120 reads as rewritten:

11 "**§ 87-120. Notification Center; responsibilities.**

12 (a) The operators in the State shall maintain a Notification Center for the sole purpose
13 of providing the services required by this Article. The Notification Center shall maintain
14 information concerning receipt of notification of proposed excavation and demolition activities
15 as provided in this Article and shall maintain information received from operators concerning
16 the location of the operators' facilities and the operators' positive responses to marking of the
17 facilities. ~~The Notification Center shall also receive, maintain, and provide general~~
18 ~~administration of reports of alleged violations of this Article and responses.~~ The Notification
19 Center is not responsible in any way for identifying or marking facilities for operators. The
20 Notification Center is not responsible in any way for resolving reports of alleged violations of
21 this Article. All operators in the State shall join the Notification Center as provided in
22 subsection (b) of this section, and they shall use the services of the Notification Center to
23 perform the acts required by the provisions of this Article. There shall be only one Notification
24 Center for the State of North Carolina. The Notification Center is not an agency of the State or
25 any of the State's political subdivisions and is not subject to the provisions of Chapter 132 or
26 Chapter 133 of the General Statutes.

27 ...

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

- 29 (1) Maintain a record of the notices received under subsection (d) of this section
30 for at least four years.
31 (2) ~~Maintain a record of reports of alleged violations of this Article received~~
32 ~~under subsection (e) of this section for at least four years, including~~
33 ~~responses to such reports.~~
34 (3) Receive and transmit notices as provided in subsection (d) of this section.
35 (4) Develop and update, as needed, a business continuation plan.



- ~~(5) Notify those persons against whom reports of alleged violations of this Article have been made and receive and maintain information submitted from such persons in defense against the allegations.~~
- (6) Provide a positive response system.
- (7) Establish and operate a damage prevention training program for members of the Notification Center. No person may recover damages in any manner or form from the Notification Center arising out of or related to the manner in which the Notification Center conducts a damage prevention training program or receives, transmits, or otherwise administers a report of an alleged violation of this Article program.

...
 (e) ~~The Notification Center shall receive reports of alleged violations of this Article. The Notification Center shall contact persons against whom reports have been filed to inform them of the alleged violation within 10 days of the filing of the report. The Notification Center shall maintain 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."~~

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

"§ 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 addresses, whichever is less.

...."
SECTION 4. G.S. 87-125 reads as rewritten:

"§ 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~~ 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.

...."
SECTION 5. G.S. 87-129 reads as rewritten:

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

...
 (a7) The Board shall receive reports of alleged violations of this Article and shall maintain a record of those reports for at least four years, including responses to the reports. The Board shall contact persons against whom reports have been filed to inform them of the alleged violation within 10 days of the filing of the report. The Board shall maintain the following information regarding reports of alleged violations:

- (1) The name, address, and telephone number of the person making the report.

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

7 ~~(b) The Notification Center shall transmit all reports of alleged violations of this Article~~
8 ~~to the Board, including any information received by the Notification Center regarding the~~
9 ~~report.~~

10 ...

11 (c) A person determined by the Board under subsection (b1) of this section to have
12 violated this Article may appeal the Board's determination by initiating an arbitration
13 proceeding before the Utilities Commission within 30 days of the ~~Board's~~
14 ~~determination.~~issuance of the Utilities Commission's order. If the violating party elects to
15 initiate an arbitration proceeding, the violating party shall pay a filing fee of two hundred fifty
16 dollars (\$250.00) to the Utilities Commission, and the Utilities Commission shall open a docket
17 regarding the report. The Utilities Commission shall direct the parties enter into an arbitration
18 process. The parties shall be responsible for selecting and contracting with the arbitrator. Upon
19 completion of the arbitration process, the Utilities Commission shall issue an order
20 encompassing the outcome of the binding arbitration process, including a determination of
21 fault, a penalty, and assessing the costs of arbitration to the non-prevailing party.

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

29 (c2) An action for the recovery of any penalty under this section shall be instituted in
30 Wake County and shall be instituted in the name of the State of North Carolina on the relation
31 of the Utilities Commission against the person incurring the penalty. The action may be
32 instituted and prosecuted by the Attorney General, the district attorney of the Wake County
33 Superior Court, or the injured person. The procedure in actions under this subsection, the right
34 of appeal, and the rules regulating appeals shall be the same as provided by law in other civil
35 actions.

36 ...

37 (e) The Board shall establish and implement a public awareness program to inform the
38 public of the purpose and function of the Board."

39 **SECTION 6.** This act is effective when it becomes law.