

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 476
Committee Substitute Favorable 5/2/13

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5 **SECTION 1.** Article 8 of Chapter 87 of the General Statutes is repealed.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 successor
26 organization or entity.
27 (2) Business continuation plan. – A plan that includes actions to be taken in an
28 effort to provide uninterrupted service during catastrophic events.
29 (3) Contract Locator. – A person hired by an operator to identify and mark
30 facilities.
31 (4) Damage. – The substantial weakening of structural or lateral support of a
32 facility; penetration or destruction of protective coating, housing, or other
33 protective device of a facility; or the partial or complete severance of a
34 facility.



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

- 1 (18) Operator. – Any person, public utility, communications or cable service
2 provider, municipality, electrical utility, or electric or telephone cooperative
3 that owns or operates a facility in this State.
- 4 (19) Person. – Any individual, owner, corporation, partnership, association, or
5 any other entity organized under the laws of any state, any political
6 subdivision of a state, or any other instrumentality of a state, or any
7 authorized representative thereof.
- 8 (20) Positive response. – An automated information system that allows
9 excavators, locators, operators, and other interested parties to determine the
10 status of a locate request.
- 11 (21) Subaqueous. – A facility that is under a body of water, including rivers,
12 streams, lakes, waterways, swamps, and bogs.
- 13 (22) Tolerance zone. – If the diameter of the facility is known, the distance of
14 one-half of the known diameter plus 24 inches on either side of the
15 designated center line or, if the diameter of the facility is not marked, 24
16 inches on either side of the outside edge of the mark indicating a facility, or
17 for subaqueous facilities, a clearance of 15 feet on either side of the
18 indicated facility.
- 19 (23) Working day. – Every day, except Saturday, Sunday, or State legal holidays.

20 **"§ 87-118. Reserve to the State the power to regulate.**

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

- 23 (1) Require operators to obtain permits from a city or county in order to identify
24 facilities.
- 25 (2) Require pre-marking or marking of facilities.
- 26 (3) Specify the types of paint or other marking devices that are used to identify
27 facilities.
- 28 (4) Require removal of unexpired marks. The removal of expired marks shall be
29 the responsibility of the city or county.

30 **"§ 87-119. Costs associated with compliance; effect of permit.**

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

39 **"§ 87-120. Notification Center; responsibilities.**

40 (a) The operators in the State shall maintain a Notification Center for the sole purpose
41 of providing the services required by this Article. The Notification Center shall maintain
42 information concerning receipt of notification of proposed excavation and demolition activities
43 as provided in this Article and shall maintain information received from operators concerning
44 the location of the operators' facilities and the operators' positive responses to marking of the
45 facilities. The Notification Center is not responsible in any way for identifying or marking
46 facilities for operators. All operators in the State shall join the Notification Center as provided
47 in subsection (b) of this section, and they shall use the services of the Notification Center to
48 perform the acts required by the provisions of this Article. There shall be only one Notification
49 Center for the State of North Carolina. The Notification Center is not an agency of the State or
50 any of the State's political subdivisions and is not subject to the provisions of Chapter 132 or
51 Chapter 133 of the General Statutes.

1 **(b)** Operators who are members of the Notification Center by whatever name that is in
2 existence on October 1, 2013, must remain members. Operators with more than 50,000
3 customers or 1,000 miles of facilities who are not members on October 1, 2013, must join no
4 later than October 1, 2014. Operators with more than 25,000 customers or 500 miles of
5 facilities who are not members on October 1, 2013, must join no later than October 1, 2015. All
6 operators that do not meet one of the criteria provided in this subsection must join no later than
7 October 1, 2016. Each engineering division of the Department of Transportation established
8 pursuant to G.S. 136-14.1 must join no later than October 1, 2016. The board of directors of the
9 Notification Center shall provide for a reasonable method of apportioning the costs of operating
10 the Notification Center among the member operators.

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

- 12 **(1)** Maintain a record of the notices received under subsection (d) of this section
13 for at least four years.
- 14 **(2)** Receive and transmit notices as provided in subsection (d) of this section.
- 15 **(3)** Develop and update, as needed, a business continuation plan.
- 16 **(4)** Provide a positive response system.
- 17 **(5)** Establish and operate a damage prevention training program for members of
18 the Notification Center. No person may recover damages in any manner or
19 form from the Notification Center arising out of or related to the manner in
20 which the Notification Center conducts a damage prevention training
21 program.

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

- 25 **(1)** The name, address, and telephone number of the person providing the notice
26 and, if different, the person responsible for the proposed excavation or
27 demolition.
- 28 **(2)** The starting date of the proposed excavation or demolition.
- 29 **(3)** The anticipated duration of the proposed excavation or demolition.
- 30 **(4)** The type of proposed excavation or demolition operation to be conducted.
- 31 **(5)** The location of the proposed excavation or demolition.
- 32 **(6)** Whether or not explosives are to be used in the proposed excavation or
33 demolition.

34 **"§ 87-121. Facility operator responsibilities.**

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

- 36 **(1)** The horizontal location and description of all of the operator's facilities in
37 the area where the proposed excavation or demolition is to occur. The
38 location shall be marked by stakes, soluble paint, flags, or any combination
39 thereof, as appropriate, depending upon the conditions in the area of the
40 proposed excavation or demolition. The operator shall, when marking as
41 provided under this subdivision, use the APWA Uniform Color Code. If the
42 diameter or width of the facility is greater than four inches, the dimension of
43 the facility shall be indicated at least every 25 feet in the area of the
44 proposed excavation or demolition. An operator who operates multiple
45 facilities in the area of the proposed excavation or demolition shall locate
46 each facility.
- 47 **(2)** Any other information that would assist the excavator in identifying and
48 thereby avoiding damage to the marked facilities.

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

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

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

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

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

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

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

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

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

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

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

45 **§ 87-122. Excavator responsibilities.**

46 (a) Before commencing any excavation or demolition operation, the person responsible
47 for the excavation or demolition shall provide or cause to be provided notice to the Notification
48 Center of his or her intent to excavate or demolish. Notice for any excavation or demolition that
49 does not involve a subaqueous facility must be given within three to 12 full working days
50 before the proposed commencement date of the excavation or demolition. Notice for any
51 excavation or demolition in the vicinity of a subaqueous facility must be given within 10 to 20

1 full working days before the proposed commencement date of the excavation or demolition.
2 Notice given pursuant to this subsection shall expire 15 full working days after the date notice
3 was given. No excavation or demolition may continue after this 15-day period unless the
4 person responsible for the excavation or demolition provides a subsequent notice which shall
5 be provided in the same manner as the original notice required by this subsection. When
6 demolition of a building is proposed, the operator shall be given a reasonable time in which to
7 remove or protect the operator's facilities before the demolition commences.

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

- 10 (1) The name, address, and telephone number of the person providing the notice.
- 11 (2) The anticipated starting date of the proposed excavation or demolition.
- 12 (3) The anticipated duration of the proposed excavation or demolition.
- 13 (4) The type of proposed excavation or demolition operation to be conducted.
- 14 (5) The location of the proposed excavation or demolition, not to exceed
15 one-quarter mile in geographical length, or five adjoining addresses, not to
16 exceed one-quarter mile in geographical length.
- 17 (6) Whether or not explosives are to be used in the proposed excavation or
18 demolition.

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

- 20 (1) When the excavation area cannot be clearly and adequately identified within
21 the area described in the notice, the excavator shall designate the route,
22 specific area to be excavated, or both by pre-marking the area before the
23 operator performs a locate. Pre-marking shall be made with soluble white
24 paint, white flags, or white stakes.
- 25 (2) Confirm through the Notification Center's positive response system prior to
26 excavation or demolition that all operators have responded and that all
27 facilities that may be affected by the proposed excavation or demolition have
28 been marked.
- 29 (3) Plan the excavation or demolition to avoid damage to or minimize
30 interference with facilities in or near the construction area.
- 31 (4) Begin excavation or demolition prior to the specified waiting period only if
32 the excavator has confirmed that all operators have responded with an
33 appropriate positive response.
- 34 (5) If the operator declares extraordinary circumstances, the excavator shall not
35 excavate or demolish until after the time and date that the operator has
36 provided in the operator's response.
- 37 (6) If an operator fails to respond to the positive response system, the excavator
38 may proceed if there are no visible indications of a facility at the proposed
39 excavation or demolition area, such as a pole, marker, pedestal, meter, or
40 valve. However, if the excavator is aware of or observes indications of an
41 unmarked facility at the proposed excavation or demolition area, the
42 excavator shall not begin excavation or demolition until an additional call is
43 made to the Notification Center detailing the facility and an arrangement is
44 made for the facility to be marked by the operator within three hours from
45 the time the additional call is received by the Notification Center.
- 46 (7) Beginning on the date provided in the excavator's notice to the Notification
47 Center, the excavator shall preserve the staking, marking, or other
48 designation until they are no longer required. When a mark is no longer
49 visible or is destroyed, but the excavation or demolition continues in the
50 vicinity of the facility, the excavator shall request a re-mark from the
51 Notification Center to ensure the protection of the facility.

- 1 (8) When demolition of a building is proposed, the excavator shall give the
2 operator a reasonable time in which to remove or protect the operator's
3 facilities before demolition commences.
- 4 (9) An excavator shall not perform any excavation or demolition within the
5 tolerance zone unless the excavator complies with all of the following
6 conditions:
- 7 a. The excavator shall not use mechanized equipment, except
8 noninvasive equipment specifically designed or intended to protect
9 the integrity of the facility, within the marked tolerance zone of an
10 existing facility until:
- 11 1. The excavator has visually identified the precise location of
12 the facility or has visually confirmed that no facility is present
13 up to the depth of excavation; and
- 14 2. The excavator has taken reasonable precautions to avoid any
15 substantial weakening of the facility's structural or lateral
16 support, or both, or penetration or destruction of the facilities
17 or their protective coatings; and
- 18 3. The excavator may use mechanical means, as necessary, for
19 the initial penetration and removal of pavement or other
20 materials requiring use of mechanical means of excavation
21 but only to the depth of the pavement or other materials. For
22 parallel type excavations within the tolerance zone, the
23 existing facility shall be visually identified at intervals not to
24 exceed 50 feet along the line of excavation to avoid damages.
25 The excavator shall exercise due care at all times to protect
26 the facilities when exposing these facilities.
- 27 b. The excavator shall maintain clearance between a facility and the
28 cutting edge or point of any mechanized equipment, taking into
29 account the known limit of control of the cutting edge or point, as
30 may be reasonably necessary to avoid damage to the facility.
- 31 c. The excavator shall provide support for facilities in and near the
32 excavation or demolition area, including backfill operations, as may
33 be reasonably required by the operator for the protection of the
34 facilities.
- 35 (10) The excavator shall not use mechanized equipment within 24 inches of a
36 facility that is a gas, oil, petroleum, or electric transmission line unless the
37 facility operator has consented to the use in writing and the operator's
38 representative is on site during the use of the mechanized equipment. For
39 purposes of this subdivision, the term "gas, oil, petroleum transmission line"
40 has the same meaning as the term "transmission line" in Title 49 C.F.R. §
41 192.3, and the term "electric transmission line" has the same meaning as the
42 term "transmission line" in G.S. 62-100(7).

43 **§ 87-123. Exemptions.**

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

- 46 (1) An excavation or demolition performed by the owner of a single-family
47 residential property on his or her own land that meets all of the following
48 requirements:
- 49 a. Does not encroach on any operator's right-of-way, easement, or
50 permitted use.
- 51 b. Is performed with nonmechanized equipment.

- 1 c. Is less than 10 inches in depth.
- 2 (2) An excavation or demolition that involves the tilling or plowing of soil less
3 than 12 inches in depth for agricultural purposes.
- 4 (3) An excavation with nonmechanized equipment by an operator for the
5 following purposes:
- 6 a. Locating for a valid notification request or for the minor repair,
7 connection, or routine maintenance of an existing facility.
- 8 b. Probing underground to determine the extent of gas or water
9 migration.
- 10 (4) When the Department of Transportation, a local government, special
11 purpose district, or public service district is conducting maintenance
12 activities within its designated right-of-way. Maintenance activities shall
13 include resurfacing, milling, emergency replacement of signs critical for
14 maintaining safety, or the reshaping of shoulders and ditches to the original
15 road profile. Maintenance activities do not include the initial installation of
16 traffic signs, traffic control equipment, or guardrails.

17 **"§ 87-124. Notice in case of emergency excavation or demolition.**

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

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

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

29 **"§ 87-125. Notification required when damage is done.**

30 (a) The excavator performing an excavation or demolition that results in any damage to
31 a facility shall immediately upon discovery of the damage notify the Notification Center and
32 the facility operator, if known, of the location and nature of the damage. The excavator shall
33 allow the operator reasonable time to accomplish necessary repairs before completing the
34 excavation or demolition in the immediate area of the facility. The excavator shall delay any
35 backfilling in the immediate area of the damaged facility until authorized by the operator. The
36 operator or qualified personnel authorized by the operator shall repair any damage to the
37 facility.

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

45 **"§ 87-126. Design notices.**

46 (a) A designer may submit a design notice to the Notification Center. The design notice
47 shall describe the tract or parcel of land for which the design notice has been submitted with
48 sufficient particularity, as defined by policies and procedures adopted by the Notification
49 Center, to allow the operator to ascertain the precise tract or parcel of land involved.

1 **(b)** Within 15 working days, not including the day the notice was given, after a design
2 notice for a proposed project has been submitted to the Notification Center, the operator shall
3 respond in one of the following manners:

4 **(1)** By designating the location of all facilities owned by the operator within the
5 area of the proposed excavation as provided in G.S. 87-121(a).

6 **(2)** By providing to the person submitting the design notice the best available
7 description of all facilities in the area of the proposed excavation, which may
8 include drawings of facilities already built in the area or other facility
9 records that are maintained by the operator.

10 **(3)** Allowing the person submitting the design notice or any other authorized
11 person to inspect the drawings or other records for all facilities within the
12 proposed area of excavation at a location that is acceptable to the operator.

13 **(c)** An operator may reject a design notice based upon homeland security
14 considerations pending the operator obtaining additional information confirming the legitimacy
15 of the notice. The operator shall notify the person making the request through a design notice of
16 the denial and may request additional information through the positive response system.

17 **"§ 87-127. Absence of facility location.**

18 If an operator who has been given notice as provided in G.S. 87-120(d) by the Notification
19 Center fails to respond to that notice as provided in G.S. 87-121 or fails to properly locate the
20 facility, the person excavating is free to proceed with the excavation. Neither the excavator nor
21 the person financially responsible for the excavation will be liable to the nonresponding or
22 improperly responding operator for damages to the operator's facilities if the person doing the
23 excavating exercises due care to protect existing facilities when there is evidence of the
24 existence of those facilities near the proposed excavation area.

25 **"§ 87-128. Investigations; enforcement; civil penalties.**

26 **(a)** The Commissioner of Insurance through the Office of the State Fire Marshall shall
27 investigate violations of this Article.

28 **(b)** The Office of the State Fire Marshall shall submit a report detailing a violation of
29 this Article by any contract locator, excavator, locator, operator, or other person to the North
30 Carolina Utilities Commission. The Utilities Commission shall hold a hearing to determine the
31 severity of the violation and to assess a civil penalty under subsection (c) of this section.

32 **(c)** Any person who violates any provision of this Article shall be subject to a civil
33 penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation. The
34 provisions of this Article do not affect any civil remedies for personal injury or property
35 damage otherwise available to any person, except as otherwise specifically provided for in this
36 Article. The penalty provisions of this Article are cumulative to and not in conflict with
37 provisions of law with respect to civil remedies for personal injury or property damage. The
38 clear proceeds of any civil penalty assessed under this section shall be used as provided in
39 Section 7(a) of Article IX of the North Carolina Constitution.

40 **"§ 87-129. Funding.**

41 **(a)** The Office of the State Fire Marshall is authorized to receive funds from the United
42 States Department of Transportation for the regulation of facilities.

43 **(b)** Operators shall pay a fee to the Office of the State Fire Marshall to fund
44 investigations of violations of this Article. The fee shall be set by the Office of the State Fire
45 Marshall and shall be based on the number of miles of facilities the operator owns, operates, or
46 maintains in the State. The fee shall not exceed more than one dollar (\$1.00) per mile of
47 facility.

48 **"§ 87-130. Severability.**

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

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