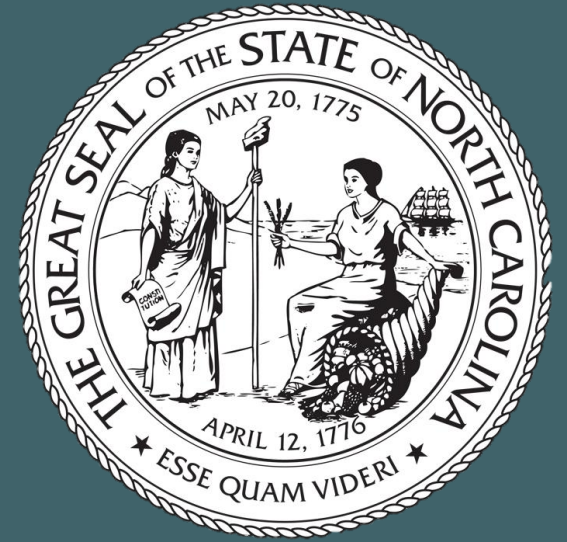


Date: 7/31/2025

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HOUSE BILL 247: Underground Utility Safety and Damage Prevention Act Revisions.



OVERVIEW:

House Bill 247 would do all of the following with regard to marking of underground utilities:



- Specify that nonmechanized equipment includes soft dig technologies.
- Clarify the standards of painted surface marks for operators marking underground facilities and adjust response times for requests for marking of a facility.
- Shorten the notice period for projects not involving subaqueous facilities, extend notice validity, limit the area for facility location requests, and clarify excavation practices near pipelines.
- Amend exemptions from requirements for notice before commencing an excavation.
- Clarify that the venue for all actions arising from actual and consequential damages occurring in this State is the county where the damages occurred.
- Create a rebuttable presumption that an excavator has exercised due care in certain circumstances.
- Make changes to the Underground Damage Prevention Review Board (Board) concerning vacancies and quorum and allow an informal conference process to request that the Board reverse or modify its determinations concerning violations of the Act.

CURRENT LAW AND BILL ANALYSIS:



Section 1 – (87-117) Definitions

- **87-117 (15)** – Nonmechanized equipment – Hand tools and **soft dig technologies**.
- **87-117 (20a)**“Soft dig technologies“- An excavation method that uses air or water pressure to break up soil and remove it with vacuum extraction.
- **87-117 (22)** – Tolerance zone – If the diameter of the facility is known, the **horizontal** distance of one-half of the known diameter plus 24 inches on either side



Section 2 – (87-121) Facility operator responsibilities

- **87-121 (a)(1)** Specifies when a facility operator marks facilities, **where practical, the painted surface marks must be long enough to distinguish them from dots.**
- **87-121 (b)** This section would also modify an operator's duties when information is requested by an excavator as follows, unless otherwise provided in a written agreement between the operator and the excavator, **including an electronically transmitted written agreement**



Section 2 – (87-121) Facility operator responsibilities



- **87-121 (b)(1)**For a facility, the operator must provide the information within three full working days **prior to the work start date provided by the excavator.** Under current law, the operator must provide the information within three working days after the day that the excavator provided notice of the proposed excavation or demolition to the Notification Center.
- **87-121 (b)(4)** For an emergency request, an **initial contact with the excavator shall be made within 3 hours.**
- **87-121 (b) (5)**For a request of an **unmarked facility** because the operator has failed to respond to the positive response system or excavator sees evidence of a facility, **the operator shall arrange for the facility to be marked within three hours from the time the additional notice is received by the Notification Center.**

Section 3 – (87-122)

Excavator responsibilities

- **87-122 (a)** Require that notice for any excavation or demolition not involving a subaqueous facility must be given **not less than three full working days before the proposed commencement date of the excavation or demolition.** Under current law, notice must be provided between three to twelve full working days before the proposed commencement date.
- **87-122 (a)** Require that notice for any excavation or demolition in the vicinity of a subaqueous facility be given **no less than 10 to 20 full working days** before the proposed commencement date of the excavation or demolition. Under current law, notice must be provided **within 10 to 20 full working days** before the proposed commencement date.



Section 3 – (87-122) Excavator responsibilities



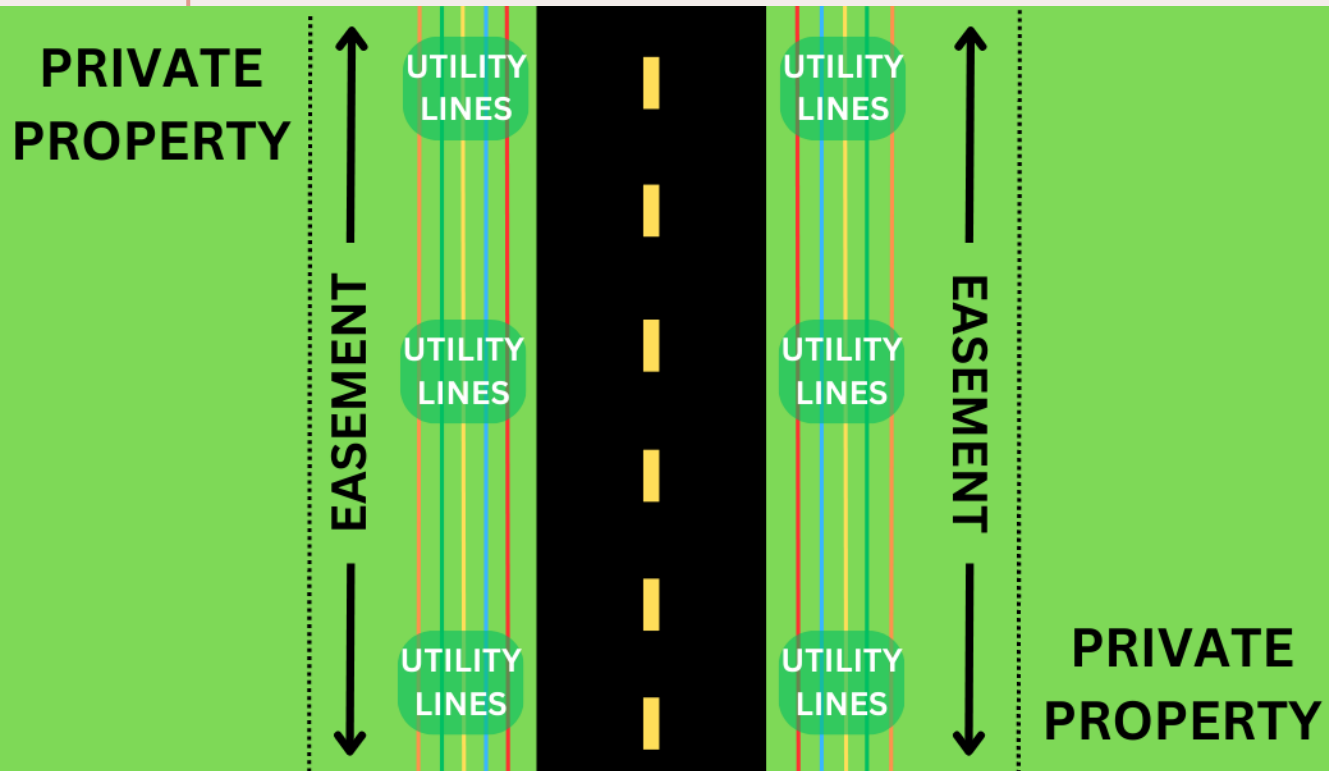
- **87-122 (a)** Extend the time before notice expires from 15 working days to **28 calendar days**.
- **87-122 (b)(5)** The area of locate of the proposed excavation which is limited to an area that the excavator reasonably believes may be completed within 28 calendar days from the work start date and does not include any areas completed and accepted by the authorities having jurisdiction.
- **87-122 (c)(10)** Clarify requirements regarding the use of nonmechanized equipment within a **24-inch circumference around** an oil or gas pipeline. The section would specify that safe excavation practices, including, but not limited to, hand digging or potholing, must be used within the tolerance zone of a pipeline.
- **87-122 (c)(10)** Within the tolerance zone of a pipeline system, the excavator shall use safe excavation practices, including, but not limited to hand digging or potholing.

Section 4- (87-124) Exemptions

- **87-124 (3)** An excavation or demolition that involves the tilling of soil for agricultural or gardening purposes that **encroaches on any operator's right-of-way, easement, or permitted use and is less than 12 inches in depth.**
- **87-124 (5)** An excavation by an operator, surveyor, **or their contractor** with nonmechanized equipment for locating for the minor repair, connection or routine maintenance of an existing facility or survey pin. Also, probing underground to determine the extent of gas or water migration are exempt.



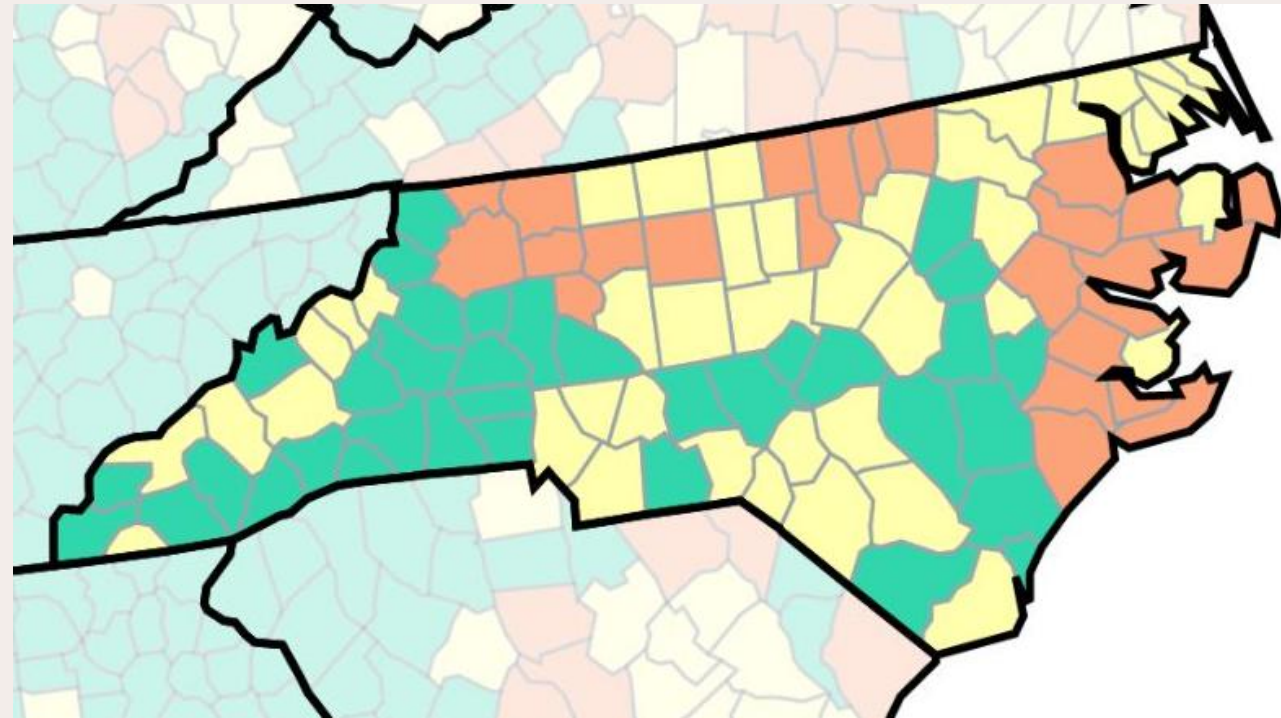
Section 4- (87-124) Exemptions



- **87-124 (6)** Under current law, excavations or demolitions performed when a person responsible for routine maintenance of a right-of-way or any other governmental entity performs maintenance activities within the right-of-way using labor on their permanent payroll. An excavation or demolition performed **for the purpose of maintenance activities within the right-of-way.**
- **87-124 (6)** The provisions of this subdivision do not apply when the excavation or demolition is performed by a contractor acting on behalf of a person or entity responsible for routine maintenance of a **right-of-way.**

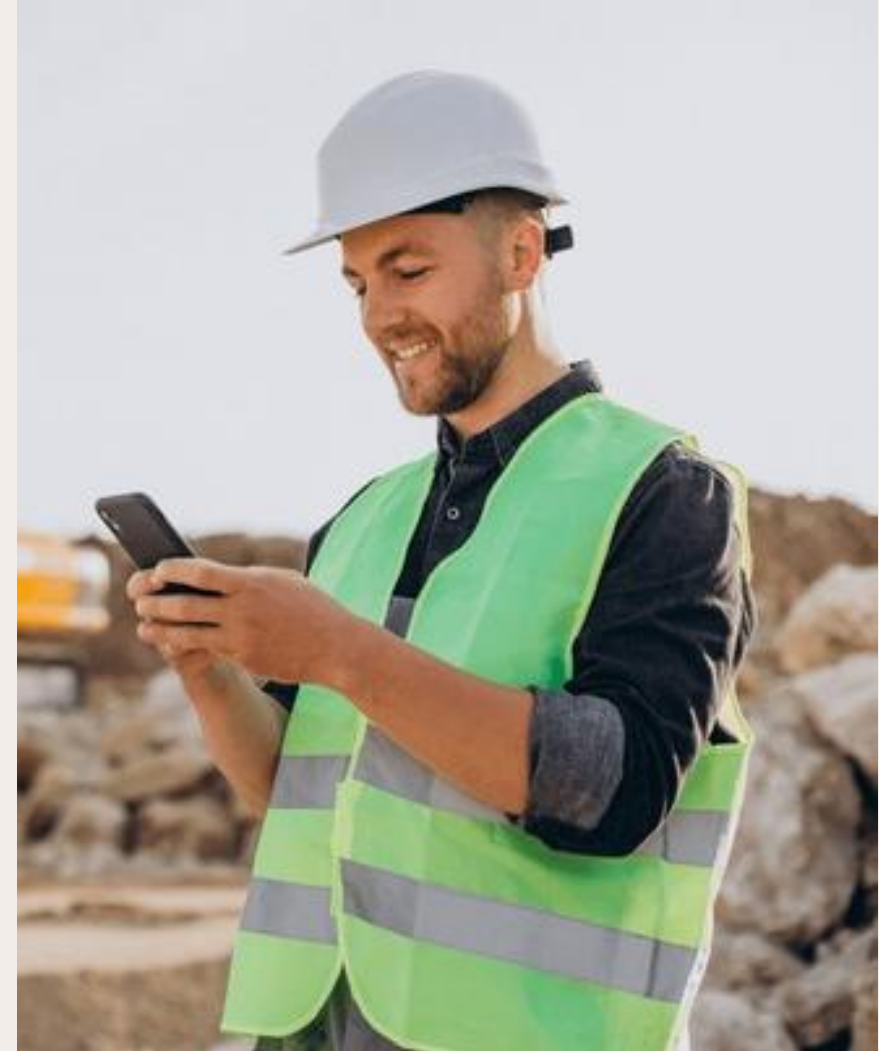
Section 5- (87-126) Notification required when damage is done

- **87-126 (c) The venue for claims adjudication for actual and consequential damages occurring in North Carolina shall be held within North Carolina court system in the county of the occurrence.**



Section 6 – (87-128) Absence of facility location

- **87-128** If an operator fails to respond to a notice or fails to properly locate the facility, the person excavating is free to proceed with **excavation and 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, **so long as the excavator has exercised due care in preparing for or conducting the excavation. For the purposes of this section, the excavator shall be entitled to a presumption, rebuttable by clear and convincing evidence, that it has exercised due care in preparing and conducting the excavation, the operator fails to respond to that notice or fails to properly locate the facility, the excavator has complied with the requirements and the excavator did not have actual knowledge of the existence of a facility located within the area of the excavation to be performed.**



Section 7 – (87-129)

Underground Damage Prevention Review Board; enforcement; civil penalties



- **87-129 (a1) Requires the Governor to fill vacancies within 60 days after the vacancy, to the extent practicable.**
- **87-129 (a4) A quorum is met when a majority of the seated members of the Board, rather than eight members, and allows members to attend meetings via conference call or other electronic means.**

Section 7 – (87-129)

Underground Damage Prevention Review Board; enforcement; civil penalties

- **87-129 (a7) The Board shall establish an internal attendance policy. In the event a Board member resigns or fails to meet the criteria of the attendance policy, the Board may appoint an interim member to represent the same stakeholder group until such time the Governor appoints a replacement for the remainder of the unexpired term.**
- **87-129 (a8) On request of the Board, the Utilities Commission shall appoint a nonvoting ex officio member as an administrative representative to provide counsel and coordinate efforts of the board.**



Section 7 - (87-129)

Underground Damage Prevention Review Board; enforcement; civil penalties

- **87-129 (b)** The Board shall receive reports of alleged violations and shall contact persons against whom reports have been filed from 10 days to **15 working days**.
- **87-129 (b1)** The Board shall notify within **30 days** each person who is determined to have violated the Article in writing of the Board's determination and the Board's recommended action or penalty.



Section 7 - (87-129)

Underground Damage Prevention Review Board; enforcement; civil penalties

- **87-129 (b2) A person deemed to be in violation could request an informal conference before the Board within 30 days of the determination. Such a person must attend the informal conference in person. The person may be represented by an attorney or other person and present evidence and make arguments in favor of the person's position. Following the informal conference, the Board may reverse, modify, or uphold its original findings. If the Board recommends a penalty, the Board shall notify the Utilities Commission, and the Commission must issue an order imposing the penalty within 30 days.**





Section 7 - (87-129)

Underground Damage Prevention Review Board; enforcement; civil penalties



- **87-129 (d1) The Utilities Commission shall annually report to the Board compliance of persons on whom fines or penalties have been imposed.**
- **87-129 (d2) If the penalty is not paid to the Utilities Commission within 90 days of issuance, the Attorney General, at the request of the Utilities Commission, shall bring an action in the name of the State of NC in the Superior Court for Wake County to recover the penalty.**

Policy / Procedure	Present Law Until Sept 30 TH , 2025	New Law, Effective Oct 1 ST , 2025	Reference
Notice Prior To Start Excavation/Demolition For Markings			
Underground Facilities	Within 3 to 12 full working days.	No less than 3 full working days.	87-122 (a)
SubAqueous Facilities	Within 10 to 20 full working days.	No less than 10 to 20 full working days.	
Facilities Locate By Date			
Underground Facilities	Within 3 full working days after the date the notice was given.	Within 3 full working days prior to the work start date .	87-121 (b)(1) (2)
SubAqueous Facilities	Within 10 full working days after the date the notice was given.	No change to current law.	
Notification Expiration (Life of a ticket)	15 full working days after the date the notice was given.	28 Calendar days after the work start date .	87-122 (a)
Area of Excavation	Amended to add additional language	Area of locate should be an area in which the excavator reasonably believes will be completed within a 28-day timeframe from the work start date. No change to statute subsets 87-122 (5) (a)(b).	87-122 (b)(5)
Use of Non-Mechanized Equipment	Shall not use mechanized within 24 inches of specific facilities unless operator has consented to use and operator is on site.	Shall use non-mechanized equipment within a 24-inch circumference around specific facilities unless operator has consented to use and is on site in addition to use of safe excavation practices around pipeline system within the tolerance zone.	87-122 (c)(10)
Definitions	Non-mechanized equipment was hand tools.	Amended non-mechanized equipment to include hand tools and soft dig technologies. Added Soft Dig Technology description. Added Horizontal Distance.	87-117 (15) (20a)(22)
Facility Markings	Remains the same with an added statement.	Painted surface marks should be of adequate length to distinguish from dots.	87-121 (a) (1)
Emergency Request Response by operator	Not addressed	Facility operator shall make initial contact with the excavator within 3 hours	87-121 (b)(4)
Unmarked Facility Response by operator	Not addressed	Facility operator shall arrange for the facility to be marked within 3 hours from the time the additional notice is received by notification center.	87-121 (b)(5)
Exemptions	Excavation or Demolition that involves the tilling of soils for agriculture or gardening purposes	Added to include if encroaching on operators right of way easement, or permitted use and excavation is less than 12 inches in depth	87-124 (3)
	No change, only an addition.	Added “their contractor” in addition to operator and surveyor excavating with non-mechanized equipment for stated purposes.	87-124(5)

Policy / Procedure	Present Law Until Sept 30 TH , 2025	New Law, Effective Oct 1 ST , 2025	Reference
Exemptions	Excavation and Demo activities performed for routine maintenance of a r/o/w, or any other governmental entity with labor on their payroll	Verbiage changes to read an excavation or demo performed for the purpose of maintenance activities within the right of way.	87-124 (6)
Claims Adjudication	<i>Not addressed.</i>	Venue for claims adjudication for damages in NC shall be held in the NC county in which the occurrence happened.	87-126 (c)
Absence of a Facility Location	<i>Re-write of the section and addition</i>	Excavator has exercised due care, excavator is entitled to presumption, rebuttal by clear and convincing evidence that due care was exercised when excavator gave proper notice, operator did not respond or failed to properly locate, excavator abided by all excavator duties and knowledge of facility existence was not known.	87-128
Underground Damage Prevention Review Board	Same, but with additions to new law.	<ol style="list-style-type: none"> Governor shall fill vacancies within 60 days of seat being vacated Quorum met with majority of seat members are present, either by being present in person, phone, or other electronic means Establish an internal attendance policy by the board, with the board appointing an interim member until appointed by Governor. On request of the board, Utilities Commission shall appoint a nonvoting ex officio member as an admin rep to provide counsel and coordinate efforts of the board Board must contact and inform persons who reports have been filed within 15 working days Board must notify those deemed to have violated the law within 30 days Informal conference may be requested by the deemed violator: Must request within 30 days of the board's determination Deemed violator may request arbitration of board decision before the Utilities Commission within 30 days of the board's decision following the informal conference Utilities Commission shall report to the board compliance of persons on whom fines or penalties have been imposed Penalties not paid within 90 days to Utilities Commission; the Attorney General shall bring action to Superior Court for Wake County for recovery. 	87-129 (a1) (a4) (a7) (a8) (b) (b1) (b2) (c) (d1) (d2)

*All NC811 Policies and Procedures will be updated to reflect and abide by new law

EFFECTIVE DATE: This act
becomes effective October 1, 2025.

