



# Underground Safety and Utility Damage Prevention "A Shared Responsibility"

NC Unified Underground Safety and Damage Prevention Coalition

October 4, 2005

(**Updated April 4, 2006 for CGA Best Practices Version 3.0 References Only**)

Dear North Carolina Damage Prevention Stakeholder:

Accompanying this letter, you will find proposed draft amendments to the NC Underground Utility Damage Prevention Act of 1985 developed by the North Carolina Unified Underground Safety and Damage Prevention Coalition (Coalition) and a copy of the Common Ground Alliance's (CGA) Best Practices Version 3.0.

The Coalition is a diverse group of underground utility safety and damage prevention stakeholders who have a vested interest in improving North Carolina's underground utility safety and damage prevention legislation. The Coalition met monthly from August 2002 thru August 2005 to review our current law, and thru the consensus process develop meaningful proposed amendments. Our processes and procedures have been modeled after the USDOT's Common Ground Study and all stakeholders were invited to participate. Our guide for developing these amendments was the CGA Best Practices.

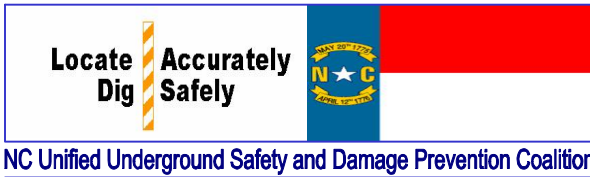
The Coalition stakeholders agreed that the attached document does not meet all the expectations of each respective stakeholder group, but constitutes a compromise all stakeholders can agree with. Therefore, at its August meeting the Coalition unanimously approved distributing the proposed draft amendments for consideration by North Carolina's underground utility safety and damage prevention community.

North Carolina's underground utility safety and damage prevention law is outdated, and in need of major revisions. Our antiquated law lags behind the rest of the nation in the most basic practices and guidelines necessary to ensure the safety of our workforce, the public and vital facilities. Without comprehensive amendments to bring our law up-to-date and give it clarity, the safety of North Carolina's workforce, our call-before-you-dig program, and utility infrastructure integrity are compromised.

We thank the following companies, entities and organizations who invested their valuable time and resources to participate in the process:

- Piedmont Natural Gas**
- (Special thanks go to PNG for providing our meeting space)*
- Colonial Pipeline Company**
- NC League of Municipalities**
- NC Department of Labor**
- Carolinas AGC**
- PSNC Energy, a SCANA Company**
- MCI**
- BellSouth**
- Qwest**





Underground Safety and Utility Damage Prevention  
"A Shared Responsibility"

**FINAL PROPOSED DRAFT**  
**With Updated CGA Best Practices Version 3.0**  
**References 04/04/06**

Proposed Amendments to  
The North Carolina Underground Damage Prevention Act of 1985

Developed by the  
**North Carolina Unified Underground Safety  
& Damage Prevention Coalition**

For consideration by the North Carolina  
Underground Utility Safety and Damage Prevention Community

*August 2002 - August 2005*

Article 8.

Underground Utility Safety and Damage Prevention.

§ 87-100. Short title.

This Article shall be known as the "Underground Utility Safety and Damage Prevention Act". (1985, c. 785, s. 1.)

§ 87-101. Definitions.

As used in this Article:

*(1) "Abandoned Facilities" – Underground or submerged line or facility no longer in use. When information on abandon facilities is available, they shall be located and treated as live facilities unless the owner/operator agrees to their destruction.*

**Reference:**

- CGA Best Practices 3.0, Appendix A, Definitions and Glossary, page 73
- CGA Best Practices 3.0, Locating and Marking Best Practices 4-11, page. 34

1 ~~(1)~~ "Association" means an association, sponsored by utility owners,  
2 that will provide for receipt of notification of excavation  
3 operations in a defined geographical area, and that will maintain  
4 the records of the notifications. (See Notification Center)  
5

6 (2) "Damage" includes but is not limited to the substantial  
7 weakening of structural or lateral support of an underground  
8 utility, penetration or destruction of protective coating, housing,  
9 or other protective device of an underground utility, and the  
10 partial or complete severance of an underground utility.

11 **Reference:**

- 12 • Connecticut One Call law, Section 16-345-1 (g)

13  
14 (3) "Design locate request" means a communication to the  
15 notification center in which a request for locating existing  
16 utility facilities for bidding, predesign, or advance planning  
17 purposes is made. A design locate request may not be used  
18 for excavation purposes.

19 **Reference:**

- 20 • CGA Best Practices 3.0, One Call Center Best Practices 3-15, page 25
- 21 • Existing operating practices from various states' one-call centers.
- 22 • TSB Safety Study (NTSB/SS-97/01; PB97-917003).

23  
24 (4) "Emergency" means a sudden or unforeseen occurrence  
25 involving a clear and imminent danger to life, health, or  
26 property; the interruption of essential utility services; or the  
27 blockage of transportation facilities that require immediate  
28 action.

29 **Reference:**

- 30 • CGA Best Practices 3.0, Appendix A, Definitions and Glossary, page 73

31  
32 (35) "Excavate" or "excavation" means an operation for the purpose  
33 of the movement or removal of earth, rock, or other materials in  
34 or on the ground by use of equipment operated by means of  
35 mechanical power and/or an operation by which a structure or  
36 mass of material is wrecked, razed, moved, or removed by means  
37 of any tools, equipment, or discharge of explosives. This term  
38 includes road construction but does not include road maintenance  
39 activities within rights-of-way of a highway, including those  
40 maintenance activities defined by the rules and regulations of the  
41 North Carolina Department of Transportation.  
42

1           (6) “Facility owner/operator” means any person, utility,  
2           municipality, authority, political subdivision or other person  
3           or entity who owns, operates or controls the operation of an  
4           underground line/facility.

5 **Reference:**

- 6 • CGA Best Practices 3.0, Appendix A, Definitions and Glossary, page 74

7  
8           (47) "Highway" has the meaning set out in G.S. 20-4.01 as the same  
9           shall be amended from time to time.

10  
11           (58) “Location of Underground facilities” (Tolerance Zone)  
12           means the space in which a facility is located and in which  
13           due care is to be taken. On the effective date of this act, the  
14           location of underground facilities shall extend 24” each side  
15           of the indicated location of the facility or 24” each side of  
16           the indicated outside edge of the facility. Twenty four  
17           months after the effective date of this act, the location of  
18           underground facilities shall extend 18” each side of the  
19           indicated location of the facility or 18” each side of the  
20           indicated outside edge of the facility.

21  
22           For the purpose of excavation once a facility is located as  
23           set forth in 87-104 (2) the tolerance zone extends from either  
24           side of the outside edge of the visually identified facility.

25 **Reference:**

- 26 • CGA Best Practices 3.0, Appendix A, Definitions and Glossary, page 76
- 27 • CGA Best Practices 3.0, Excavation Best Practices 5-19, page 44
- 28 • Existing state laws, including New Mexico, Pennsylvania, South Dakota  
29           and others.
- 30 • Telecommunications Industry Association and Electronic Industry  
31           Association (TIA/EIA), “Standard for Physical Location and Protection  
32           of Below-Ground Fiber Optic Cable Plant”  
33           (ANSI/TIA/EIA-590-A-1996).
- 34 • American Public Works Association (APWA), “Guidelines for Uniform  
35           Temporary Marking of Underground Facilities.”

36  
37  
38           ~~“Location of underground utilities” means a strip of land not~~  
39           ~~wider than the width of the underground utility plus two and~~  
40           ~~one half (2 1/2) feet on either side of the underground utility.~~

1 (9) "Member" means a facility owner/operator that is a  
2 member of the non-profit notification center as set forth in  
3 87-108.

4 **Reference:**

- 5 • Existing operating practices from various states' one-call centers and  
6 laws.

7  
8 (10) "Notification Center" means non-profit notification center,  
9 sponsored by facility owner/operators or units of local  
10 government (cities, towns and counties), that will provide  
11 for the receipt of notification of excavation operations  
12 within the state of North Carolina and will maintain a  
13 database, provided by its members that includes the  
14 geographic areas in which its members will receive  
15 transmissions of notices of proposed excavation to its  
16 members. There shall be no more than one alternate  
17 Notification Center in the state of North Carolina  
18 established to serve those units of local government that  
19 elect not to belong to the Notification Center.

20  
21 ~~(611)~~ "Person" means a corporation, individual, copartnership,  
22 company, association, or any combination of individuals or  
23 organizations doing business as a unit, any subdivision or  
24 instrumentality of the State, and includes any officer, agent,  
25 trustee, receiver, assignee, lessee, or personal representative of  
26 any of the above entities.

27  
28 ~~(712)~~ "Person financially responsible" means that person who  
29 ultimately receives the benefits of any completed excavation  
30 activities, including a person owning or leasing real property or  
31 holding an easement or interest in an easement.

32  
33 ~~(813)~~ "Public spaces" means any area owned by the State or any of its  
34 political subdivisions or dedicated for public use.

35  
36 ~~(914)~~ "Road construction" means the actual building of a new highway;  
37 or the paving, grading, widening, relocation, reconstruction, or  
38 other major improvement of a substantial portion of an existing  
39 highway.

40  
41 ~~(4015)~~ "Road maintenance" means preservation, including repairs and  
42 resurfacing of a highway, not amounting to road construction.

1 | (~~41~~16) "Street" has the meaning set out in G.S. 20-4.01 as the same shall  
2 | be amended from time to time.

3 |  
4 | (~~42~~17) "Underground ~~utility~~ facility" means any underground line,  
5 | system or facility used for producing, storing, conveying,  
6 | transmitting, or distributing communication or  
7 | telecommunication, electricity, gas, petroleum and petroleum  
8 | products, coal slurry, hazardous liquids, water under pressure,  
9 | steam, or sanitary sewage, but not including traffic signal control  
10 | cables and vehicle detection cables of the North Carolina  
11 | Department of Transportation.

12 |  
13 | ~~(13) "Utility owner" means any person who owns or operates an~~  
14 | ~~underground utility.~~

15 |  
16 | (~~44~~18) "Work day" means every day except Saturday, Sunday, national  
17 | legal holidays and State legal holidays. (1985, c. 785, s. 1.)

18 |  
19 | **§ 87-102. Notice required prior to excavation.**

20 |  
21 | (a) Except as provided in G.S. 87-106, before commencing any excavations  
22 | in highways, public spaces or in private easements of a ~~utility owner~~ facility  
23 | owner/operator, a person planning to excavate shall notify ~~each utility owner~~  
24 | ~~having underground utilities located in the proposed area to be excavated~~ the  
25 | notification center, either orally or in writing, not less than ~~two~~ three (3) nor  
26 | more than ten (10) working days prior to starting, of his intent to excavate.

27 |  
28 | *(b) The written or oral notice required in subsection (a) should*  
29 | *contain information that determines the location that may include:*

30 |  
31 | *(1) the city, county and state where the work is to be performed;*

32 | *(2) the street name and address where the work is to be*  
33 | *performed;*

34 | *(3) the nearest cross street where the work is to be performed;*

35 | *(4) a sub-division name if applicable;*

36 | *(5) the length and direction of the excavation;*

37 | *(6) a railroad milepost number(s) if on the railroad right-of-*  
38 | *way;*

39 | *(7) the name, address, and telephone number of the person*  
40 | *filing the notice;*

41 | *(8) the name, address and telephone number of the person*  
42 | *doing the excavating;*

- 1                    (9) the anticipated starting date of the excavation;  
2                    (10) the anticipated duration of the excavation;  
3                    (11) the type of excavation to be conducted;  
4                    (12) the location of the proposed excavation;  
5                    (13) whether or not explosives will be used; and  
6                    (14) whether or not boring, drilling, tunneling, sawing,  
7                    ramming or punching will take place.

8 **Reference:**

- 9                    • CGA Best Practices 3.0, One Call Center Best Practices 3-16, page 25  
10                    • “Model One-Call for The 20th and 21st Century,” AT&T.  
11                    • Existing operating practices from various states’ one-call centers.  
12                    • 49CFR Part 198.

- 13  
14  
15 ~~(b) The written or oral notice required in subsection (a) shall contain:~~  
16                    ~~(1) The name, address, and telephone number of the person filing the~~  
17                    ~~notice;~~  
18                    ~~(2) The name, address, and telephone number of the person doing~~  
19                    ~~the excavating;~~  
20                    ~~(3) The anticipated starting date of the excavation;~~  
21                    ~~(4) The anticipated duration of the excavation;~~  
22                    ~~(5) The type of excavation to be conducted;~~  
23                    ~~(6) The location of the proposed excavation; and~~  
24                    ~~(7) Whether or not explosives will be used.~~

- 25  
26 ~~(c)~~ (e) If the notice required by this section is made by telephone, an  
27                    adequate record shall be made of the notification by the ~~utility~~  
28                    ~~owners or the utility association~~ notification center and the person  
29                    making the notification, to document compliance with this section.  
30                    (1985, c. 785, s. 1.)

- 31  
32 (d) A notice shall be valid for fifteen (15) working days from the time  
33 of notification. Three (3) working days before the end of the 15  
34 working day period, or at any time when the underground utility  
35 locations markings on the ground become illegible or destroyed  
36 the excavator shall request a re-marking of the underground  
37 facilities.

38 **Reference:**

- 39                    • CGA Best Practices 3.0, Excavation Best Practices 5-23, page 45  
40                    • Existing state laws that specify 10 working days include Kansas, Ohio,  
41                    Wisconsin, Pennsylvania, and Texas. Existing state laws that specify 15  
42                    working days include Virginia and Tennessee.  
43

1 (e) A facility owner/operator may reject an excavation locate request  
2 based on homeland security pending additional information  
3 confirming the legitimacy of the request. The owner/operator must  
4 notify the person making the request of the denial and request  
5 additional information within the time frame set forth in Section  
6 87-107.

7 **Reference:**

- 8 • CGA Best Practices 3.0, Homeland Security and the Best Practices,  
9 page 13

10  
11  
12 **§ 87-103. Effect of permit on liability.**

13  
14 A permit authorizing excavation operations and issued pursuant to law or  
15 ordinance shall not relieve a person of the responsibility of complying with this  
16 Article. (1985, c. 785, s. 1.)

17  
18 **§ 87-104. Requirements of person doing excavation.**

19  
20 (a) Except as provided in G.S. 87-106, no person may excavate in a  
21 highway, a public space, or a private easement of a ~~utility owner~~facility  
22 owner/operator without first having given the notice required in G.S. 87-102 to  
23 the ~~utility owners~~notification center.

24  
25 (b) In addition to the notification requirements, each person excavating  
26 shall:

- 27 (1) Plan the excavation to avoid damage and to minimize interference  
28 with ~~underground utilities~~underground facilities in and near the  
29 construction area, to the best of his abilities. When an  
30 excavation site cannot be described in information  
31 provided under subparagraph 87-102 to enable the  
32 member to ascertain the excavation site, and if the  
33 excavator and member have not mutually agreed  
34 otherwise, the excavator shall premark the proposed  
35 area of the excavation before a member is required to  
36 identify the horizontal route of its underground facilities  
37 in the proximity of any excavation. However, premarking  
38 is not required for any excavation that is over 500 feet in  
39 length and is not required where the premarking could  
40 reasonably interfere with traffic or pedestrian control.

1 **Reference:**

- 2 • **CGA Best Practices 3.0, Excavation Best Practices 5-2, page 39**  
3 • **Existing state laws, including California, Missouri, New Jersey and**  
4 **others.**

5  
6 *(2) Excavations within the Tolerance Zone*

7  
8 *Powered or mechanized equipment, (except non-invasive*  
9 *equipment specifically designed or intended to protect*  
10 *the integrity of the underground facility) shall not be*  
11 *used within the marked tolerance zone of existing*  
12 *underground facilities until the precise location of the*  
13 *underground facilities has been visually identified by the*  
14 *excavator and reasonable precautions are taken to avoid*  
15 *any substantial weakening of the facilities*  
16 *structural/lateral support and/or penetration or*  
17 *destruction of the facilities or their protective coatings.*  
18 *Mechanical means may be used, as necessary, for initial*  
19 *penetration and removal of pavement or other materials*  
20 *requiring use of mechanical means of excavation and*  
21 *then only to the depth of such pavement or other*  
22 *materials.*

23 -  
24 *For parallel type excavations within the tolerance zone,*  
25 *the existing facility shall be visually identified at*  
26 *intervals not to exceed 50 feet along the line of*  
27 *excavation to avoid damages. The excavator shall*  
28 *exercise due care at all times to protect underground*  
29 *utility lines when exposing these facilities.*

30 **Reference:**

- 31 • **CGA Best Practices 3.0, Excavation Best Practices 5-20, page 44**  
32 • **Existing state laws, including Arizona, New Hampshire, Pennsylvania**  
33 **and others.**

34 **FINAL**

35  
36 (23) Maintain a clearance between an underground utility and the  
37 cutting edge or point of any mechanized equipment, taking into  
38 account the known limit of control of that cutting edge or point,  
39 as is reasonably required to avoid damage; and

40  
41 (34) Provide support for the ~~underground~~ utilities ~~underground~~  
42 facilities in or near the construction area, including backfill, as

1 may be reasonably required by the ~~utility~~facility  
2 owner/operator for the protection of the ~~underground~~  
3 ~~utilities~~underground facilities. (1985, c. 785, s. 1.)  
4

5 *(5) An excavator who has knowledge of the existence of an*  
6 *underground facility of a facility owner/operator in the area*  
7 *is responsible for contacting the notification center if a*  
8 *facility is not marked. This responsibility shall not prohibit*  
9 *the excavator from calling the facility owner/operator*  
10 *emergency contact.*

11 Reference:

- 12 • CGA Best Practices 3.0, Excavation Best Practices 5-10, page 41
- 13 • Existing practice by excavators, including Pauley Construction  
14 and W.F. Wilson & Sons, Inc.
- 15

16  
17 **§ 87-105.—Requirements of the person financially responsible for the**  
18 **excavation.**  
19

20 The person financially responsible shall provide to the person responsible for  
21 doing the excavating, the names of all underground ~~utility owners~~facility  
22 owner/operators in the area of the proposed excavation. The names of the ~~utility~~  
23 ~~owners~~facility owner/operators may be obtained from the County Register of  
24 Deeds or the Building Inspection Department of the political subdivision in which  
25 the excavating is taken place, if there is one. (1985, c. 785, s. 1.)  
26

27 **§ 87-106. Exceptions.**  
28

29 The following excavations are exempted from the notification requirements of  
30 this Article:  
31

- 32 (1) Tilling of soil for agricultural purposes;
- 33
- 34 (2) Excavation by a facility owner/operator~~utility owner~~, by the  
35 State or its subdivisions or agencies, or by anyone contracting  
36 with any of these entities to perform the excavation, on or within  
37 an easement, right-of-way, or property owned or controlled by  
38 any of these entities, where:
  - 39
  - 40 a. Only the facilities of the facility owner/operator~~utility~~  
41 ~~owner~~ doing the excavating are permitted; or

1  
2 b. All persons having an interest in the excavation and the  
3 ~~underground utilities~~underground facilities that may be  
4 damaged during the excavation have agreed in writing to  
5 provide the equivalent of the notification required by this  
6 Article among themselves; or

7  
8 ~~(3) The replacement of a pole as long as the replacement pole is~~  
9 ~~within three feet of the original pole and within the line of~~  
10 ~~existing poles. This exception shall not apply to poles at highway~~  
11 ~~intersections or at the crossings of highways and permanently~~  
12 ~~marked transmission underground utilities.~~

13  
14 (43) In the case of an emergency involving a sudden or  
15 unforeseen occurrence involving the interruption of  
16 essential utility services; or the blockage of transportation  
17 facilities that requires immediate action, excavations  
18 immediately required to repair or maintain the needed service

19  
20 may be made, without using explosives, if notice is given to the ~~utility~~  
21 ~~owner or association~~notification center as soon as is reasonably  
22 possible; except that the prohibition against the use of explosives  
23 shall not apply to the North Carolina Department of  
24 Transportation. Any person misrepresenting a locate request  
25 as an emergency shall be subject to penalties set out in this  
26 Act as may be amended. Performance of emergency excavation  
27 shall not relieve ~~the excavator~~any person of liability for  
28 damages. (1985, c. 785, s. 1.)

29 **Reference:**

- 30 • CGA Best Practices 3.0, Excavation Best Practices 5-26, page 46
- 31 • Existing state laws, including Colorado, Nevada, West Virginia
- 32 and others. (Number of participating states or one-calls = 49.)

33  
34  
35 **§ 87-107. Duties of the ~~utility owners~~facility owner/operators.**

36 Every person owning and/or operating underground facilities must be a  
37 member of the Notification Center. A unit of local government that  
38 owns/operates underground facilities may elect not to be a member of the  
39 Notification Center if it agrees to receive notice of the intent to excavate  
40 within its jurisdiction thru an alternate notification center that meets the  
41 requirements of this statute.

1 Each ~~utility~~Facility owner/operator, or his designated representative  
2 including an association, notified by the notification center of an intent to  
3 excavate shall, before the proposed start of excavating (unless another period is  
4 agreed to by the person conducting the excavation and the facility  
5 owner/operator~~utility owner~~ or their representatives), provide the following  
6 information to the person excavating to the extent such information is reflected by  
7 records in the possession of and reasonably available to the facility  
8 owner/operator~~utility owner~~:

- 9 (1) The individual location and description of ~~all~~each of the  
10 ~~underground utilities~~underground facilities which may be damaged  
11 as a result of the excavation. Multiple facilities in the same  
12 trench will be located individually.

13 **Reference:**

- 14 • CGA Best Practices 3.0, Locating and Marking Best Practices 4-10, page  
15 34

- 16  
17 (2) The location and description of all utility markers indicating the  
18 location of the ~~underground utilities~~underground facilities; and

- 19  
20 (3) Any other information that would assist in locating and avoiding  
21 damage to the ~~underground utilities~~underground facilities,  
22 including providing temporary markings when necessary  
23 indicating the location of the underground utility in locations  
24 where permanent utility markers do not exist. (1985, c. 785, s. 1.)

- 25  
26 (4) Each facility owner/operator, either upon determining that  
27 no utility facility is present on the tract or parcel of land or  
28 upon completion of the designation of the location of any  
29 utility facilities on the tract or parcel of land as required by  
30 87-107 (1), (2), (3), shall provide this information to the  
31 notification center and be made readily available to the  
32 excavator in accordance with systems and procedures used  
33 and developed by the notification center.

34 **Reference:**

- 35 • CGA Best Practices 3.0, Locating and Marking Best Practices 4-9, page  
36 34  
37 • CGA Best Practices 3.0, Excavation Best Practices 5-8, page 40  
38 • Existing state laws, including California, Maryland, Nevada and others.  
39 • Existing operating procedure for various one-call centers. (Number of  
40 participating states or one-calls: 31.)

- 41  
42 (5) Locators shall be trained in applicable locating industry  
43 standards and practices no less stringent than the National



1 **Reference:**

- 2 • CGA Best Practices 3.0, One Call Center Best Practices 3-7, page 23
- 3 • One Call Systems International (OCSI) Voluntary Recognition Program.
- 4 • Existing operating practices from various states' one-call centers.
- 5 • 49CFR Part 198.
- 6 • NTSB Safety Study (NTSB/SS-97/01; PB97-917003).
- 7

8 *(c) The Notification Center shall provide statewide operations*

9 *coverage and a single, nationally accessible toll-free*

10 *telephone number to receive and record the information*

11 *provided by excavators and to respond to information*

12 *requests from excavators.*

13 **Reference:**

- 14 • CGA Best Practices 3.0, One Call Center Best Practices 3-5, page 22
- 15 • One Call Systems International (OCSI) Voluntary Recognition Program.
- 16 • Existing operating practices from various states' one-call centers.
- 17 • 49CFR Part 198.
- 18 • NTSB Safety Study (NTSB/SS-97/01; PB97-917003).
- 19

20 **PROPOSED**

21 *(d) The Notification Center shall operate 24 hours per day,*

22 *seven (7) days per week, for the purpose of receiving,*

23 *processing, and transmitting emergency notifications.*

24 **Reference:**

- 25 • CGA Best Practices 3.0, One Call Center Best Practices 3-6, page 22
- 26 • Existing operating practices from various states' one-call centers.
- 27 • One-Call Systems International Directory.
- 28 • NTSB Safety Study (NTSB/SS-97/01; PB97-917003).
- 29

30 ~~Recording requirements for associations.~~

31 ~~An association shall record with the Register of Deeds of each county in which~~

32 ~~participating utility owners own or operate underground utilities, a notarized~~

33 ~~document providing the telephone number and address of the association, a~~

34 ~~description of the geographical area served by the association, and a list of the~~

35 ~~names and addresses of the utility owners receiving these services from the~~

36 ~~association. (1985, c. 785, s. 1.)~~

37

38 **§ 87-110. Recording requirements for facility owner/operator ~~utility~~**

39 **~~owners.~~**

40

41 (a) Each facility owner/operator ~~utility~~ ~~owner~~ having ~~underground~~

42 ~~utilities~~ underground facilities in North Carolina shall record a notarized

1 | document containing the name of the ~~facility owner/operator~~utility owner and  
2 | the title, address, and telephone number of its representatives designated to receive  
3 | the written or oral notice of intent to excavate, with the Register of Deeds of each  
4 | county in which the ~~facility owner/operator~~utility owner owns or operates  
5 | underground facilities. This document shall be executed by an officer of the  
6 | ~~facility owner/operator~~utility owner or in the case of a governmental entity, the  
7 | authorized official.

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

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

21 |  
22 | (d) Upon receipt of the documents recorded pursuant to subsections (a), (b),  
23 | or (c) of this section, the Register of Deeds shall place the documents in the  
24 | Grantor's Index under the heading "Underground ~~Utilities~~Facilities". The  
25 | registration fee imposed by Chapter 161 of the General Statutes shall apply to  
26 | these documents. (1985, c. 785, s. 1.)

27 |  
28 | **§ 87-111. Recorded information filed with inspection departments.**

29 |  
30 | A copy of any document or modification or change in the information in that  
31 | document recorded pursuant to G.S. 87-109 or G.S. 87-110 shall be filed with any  
32 | county or municipal inspection department having jurisdiction over any area  
33 | where the ~~underground utilities~~underground facilities are located. Such  
34 | inspection departments shall maintain these filings in alphabetical order in an  
35 | accessible form. (1985, c. 785, s. 1.)

36 |  
37 | **§ 87-112. Color-coding.**

38 |  
39 | When the location of an underground ~~utility~~facility is marked with stakes or  
40 | by other physical means, pursuant to this Article, the ~~facility~~  
41 | ~~owner/operator~~utility owner shall use colored markers following the American  
42 | Public Works Association Uniform Color Code for Utilities. (1985, c. 785, s. 1.)

1  
2 | **§ 87-113. Notification required when damage done.**  
3

4 (a) The person doing an excavation that results in any known damage to an  
5 underground ~~utility facility~~ shall, immediately after the discovery of the damage,  
6 notify the ~~facility owner/operator~~~~utility owner~~ of the location and nature of the  
7 damage and shall allow the ~~facility owner/operator~~~~utility owner~~ reasonable time  
8 to repair the damage before completing the excavation in the immediate area of  
9 the damaged underground utility.

10  
11 (b) *If the damage (emergency) results in the escape of any flammable,*  
12 *toxic, or corrosive gas or liquid or endangers life, health, or property, the*  
13 *excavator responsible immediately notifies 911 and the facility*  
14 *owner/operator if known. The excavator takes reasonable measures to*  
15 *protect themselves and those in immediate danger, general public, property,*  
16 *and the environment until the facility owner/operator or emergency*  
17 *responders have arrived and completed their assessment*~~The person~~  
18 ~~responsible for conducting any excavation that results in damage to an~~  
19 ~~underground utility where the damage may endanger life, health, or property shall,~~  
20 ~~immediately after the discovery of the damage, take action to protect the public~~  
21 ~~and property, notify the utility owner, notify the police or fire departments, and~~  
22 ~~take any other actions to minimize the hazards until the arrival of the utility~~  
23 ~~owner's personnel, the police, or the fire department.~~ The excavator shall delay  
24 any backfilling in the immediate area of the damaged underground ~~utility facility~~  
25 until authorized by the ~~facility owner/operator~~~~utility owner~~ unless it is necessary  
26 to prevent injury or property damage to others. Repair of any damage shall be  
27 performed by the ~~facility owner/operator~~~~utility owner~~ or by qualified personnel  
28 authorized by the ~~facility owner/operator~~~~utility owner~~. (1985, c. 785, s. 1.)  
29

30 **Reference:**

- 31 • CGA Best Practices 3.0, Excavation Best Practices 5-25, page 46  
32 • Existing state laws, including Kansas, Ohio, Oregon and Minnesota  
33

34  
35  
36 **§ 87-114. Homeowners.**  
37

38 This Article does not require ~~utility facility~~ notification before a property  
39 owner digs in any area on his own property with nonmechanized equipment nor  
40 prior to tilling the soil for agricultural, gardening or landscaping purposes.  
41 Mechanized equipment may be used, without ~~utility facility~~ notification, in any  
42 area on the owner's property with the exception of recorded underground ~~utility~~

1 | facility easements which describes the location of the easement with specificity.  
2 | (1985, c. 785, s. 1.)  
3 | icity. (1985, c. 785, s. 1.)

4 | **87-115. Design Locate Request.**

5 | Any person may submit a design locate request to the notification center.  
6 | Such design locate request shall:

7 | a) Describe the tract or parcel of land for which the design locate request  
8 | has been submitted with sufficient particularity, as defined by policies  
9 | developed and promulgated by the notification center, to enable the  
10 | facility owner/operator to ascertain the precise tract or parcel of land  
11 | involved; and

12 | **FINAL**  
13 | b) State the name, address, and telephone number of the person who has  
14 | submitted the design locate request, as well as the name, address, and  
15 | telephone number of any other person authorized to review any records  
16 | subject to inspection.  
17 | **DRAFT**

18 | (c) Within ten working days after a design locate request has been submitted  
19 | to the notification center for a proposed project, the facility  
20 | owner/operator shall respond by one of the following methods:

- 21 |
- 22 | (1) Designate in accordance with 87-107 the location of all  
23 | facilities within the area of the proposed excavation or;
- 24 | (2) Provide to the person submitting the design locate request the  
25 | best available description of all facilities in the area of  
26 | proposed excavation, which might include drawings of facilities  
27 | already built in the area, or other facility records that are  
28 | maintained by the facility owner/operator; or
- 29 | (3) At an acceptable location, allow the person submitting the  
30 | design locate request or any other authorized person to inspect  
31 | or copy the drawings or other records for all facilities within  
32 | the proposed area of excavation.
- 33 | (4) A facility owner/operator may reject a design/survey locate  
34 | request based on homeland security pending additional  
35 | information confirming the legitimacy of the request. The  
36 | owner/operator must notify the person making the request of

1 *the denial and request additional information within the time*  
2 *frame set forth in 87-115 (c).*

3 **Reference:**

- 4 • CGA Best Practices 3.0, One Call Center Best Practices 3-15, page 25
- 5 • Best Practices 3.0, Planning and Design Best Practices 2-2, page 15 & 2-
- 6 3, page 16
- 7 • Existing operating practices from various states' one-call centers.
- 8 • NTSB Safety Study (NTSB/SS-97/01; PB97-917003).

9  
10 **87-116. North Carolina Underground Utility Safety and Damage**  
11 **Prevention Board.**

12  
13 *a) The North Carolina Underground Utility Safety and Damage*  
14 *Prevention Board is hereby created by the North Carolina State*  
15 *Legislature. The Board shall assist in the enforcement of this chapter,*  
16 *and shall perform duties including, but not limited to, the review of*  
17 *reported violations of this Act, and determining appropriate penalties*  
18 *to impose on persons violating the provisions of this chapter. Such*  
19 *steps shall include education of and the enforcement of this Act.*

20  
21 *1. The Board shall consist of 13 members appointed by the NC*  
22 *Legislature. Board Members shall serve 4 year staggered*  
23 *terms, and shall be compensated reasonable expense as*  
24 *determined by the Board. Business Members shall be*  
25 *representatives of companies licensed to do business in the*  
26 *state of North Carolina. The make up of the Board shall consist*  
27 *of:*

28  
29 1 NC Department of Transportation Representative

30 1 NC Department of Labor Representative

31 1 Facility Contract Locator Representative

32 1 Notification Center Representative

33 1 Electric Utility Company Representative

34 1 Telecommunications Company Representative

35 1 Natural Gas Utility Representative

36 1 Hazardous Liquid Pipeline Company Representative

37 1 Municipal Representative (Recommended by the League of  
38 Municipalities)

39 1 Licensed Highway Contractor Representative Who Does Not  
40 Own or Operate Facilities

1 1 Licensed Public Utility Contractor Representative Who Does  
2 Not Own or Operate Facilities

3 1 Licensed Building Contractor Representative Who Does Not  
4 Own or Operate Facilities

5 1 Other Excavator Representative Who Does Not Own or  
6 Operate Facilities

7  
8 2. The Board shall, by consensus of the full Board, adopt  
9 guidelines for penalties and other methods of enforcement for  
10 violations of the various articles of this chapter (87-100 et  
11 seq.). The penalties and enforcement, within the above  
12 established guidelines, shall be subject to a 2/3 majority of the  
13 quorum present at the hearing during which the violation is  
14 confirmed.

15  
16 3. The Board shall meet quarterly, in NC and shall publish  
17 records of business conducted, measures taken, and progress  
18 made in reducing underground damage.

19  
20 4. A quorum of the Board shall be at least 51% of the membership  
21 of the Board

22  
23 5. The members of the Board shall be immune, individually and  
24 jointly, from civil liability for any act or omission done or made  
25 in the performance of their duties while serving as members of  
26 such Board, but only in the absence of willful misconduct.

27  
28 b) Failure to comply with this chapter (87-100 et. seq.) may be reported  
29 to the Board. A complaint shall be by written notice of alleged  
30 violation.

31  
32 1. Any person reporting an alleged violation subject to penalties  
33 may file a complaint to the Board in the following manner:

34  
35 a) Submit a “cost to file” deposit, as determined by the  
36 Board, along with details of the alleged violation on the  
37 required complaint form.

38

- 1                    b) A complaint must be filed within 90 calendar days from  
2                    the date of an alleged violation, or discovery an alleged  
3                    violation.
- 4
- 5                    c) The Board will provide a copy of the complaint to the  
6                    alleged violator within ten (10) calendar days of receipt  
7                    of the complaint by registered mail. The alleged violator  
8                    has 30 calendar days to respond to the complaint.
- 9
- 10                   d) At a scheduled meeting the Board shall determine if a  
11                   violation has occurred, and render a decision of the  
12                   alleged violation. Either party to the complaint may  
13                   request a hearing before the Board.
- 14
- 15                   e) The non-prevailing party will be required to reimburse  
16                   or relinquish the cost to file and pay the appropriate  
17                   fine/penalty levied by the Board. The cost to file will be  
18                   retained for expenses of the Board. Penalties collected  
19                   shall be remitted to the State Education Fund

20 **Reference:**

- 21                   • CGA Best Practices 3.0, Compliance Best Practices 7-5 (A & B), page 58  
22                   • State laws and regulations including Arizona, Massachusetts,  
23                   Minnesota, New Hampshire and Virginia

24

25 c) Penalties

26

27                   1) Any person who violates the requirements of the Act as  
28                   determined by the Board shall:

- 29
- 30                   a) On the first offense, receive a written warning  
31                   notification and at the discretion of the board be required  
32                   to complete a damage prevention education program  
33                   provided by any qualified organization or entity  
34                   approved by the Board.
- 35
- 36                   b) On the second offense within the 12-month period,  
37                   initiated by paragraph (a) above, be subject to a penalty  
38                   for a maximum of \$1000 and at the discretion of the  
39                   Board be required to repeat the damage prevention  
40                   education program provided by any qualified  
41                   organization or entity approved by the Board.

1  
2 c) On subsequent offenses within the same 12-month period,  
3 be subject to a penalty for a maximum of \$2500 per  
4 violation and referral to the industry appropriate  
5 licensing board, commission and/or governing entity.  
6

7 d) Failure to comply with decisions of the Board shall result  
8 in the Board's option to pursue compliance thru other  
9 available and appropriate remedies.

10 **Reference:**

- 11 • CGA Best Practices 3.0, Compliance Best Practices 7-3, page 55
- 12 • State laws and regulations including Arizona, Massachusetts,
- 13 Minnesota, New Hampshire, New York and Virginia

14  
15  
16 **87-117. Fraudulent or false actions.**

17  
18 Fraudulent or false actions by any party involved to alter, circumvent,  
19 or cover up a failure on their part to comply with the requirements of  
20 this Chapter (87-100 et seq.) shall be a violation of this act and subject  
21 to a fine or other disciplinary action as determined by this board.  
22

23 **87-118. Legal action.**

24  
25 Nothing herein precludes a person from taking any action otherwise  
26 available to it in law or equity.  
27

28 **87-119. Liability for attorney's fee.**

29  
30 The prevailing party in an action brought to impose liability under any  
31 section of this article shall be entitled to recover a reasonable attorney's  
32 fee.

33 **Reference:**

- 34 • Existing North Carolina statutes including 44A-35, Lien & Bond law.

35

FINAL  
PROPOSED  
DRAFT