



SENATE BILL 328: Underground Safety Revisions.

2025-2026 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	April 30, 2025
Introduced by:	Sens. Lazzara, Sawrey, Jones	Prepared by:	Michael Johnston*
Analysis of:	First Edition		Staff Attorney

OVERVIEW: *Senate Bill 328 would do all of the following with regard to marking of underground utilities:*

- *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 oil and gas pipelines.*
- *Amend exemptions from requirements for notice before commencing an excavation or demolition operation.*
- *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 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 of Senate Bill 328 would define the term "soft dig technologies."

Section 2 would specify that when a facility operator marks facilities, where practical, the painted surface marks must be long enough to distinguish them from dots. 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 electronically:

- For a facility, within three 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.
- For an emergency request, the operator must make initial contact with the excavator within three hours.

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- For a request of an unmarked facility because the operator has failed to respond to the positive response system, the operator must arrange for the facility to be marked within three hours of the time the Notification Center receives the additional notice.

Section 3 would do all of the following:

- 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.
- 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.
- Extend the time before notice expires from 15 days to 28 days.
- Limit the area of locate of the proposed excavation or demolition 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 where the excavation or demolition has been completed and accepted by the authorities having jurisdiction.
- 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.

Section 4 would amend exemptions from the requirements for notice before commencing any excavation or demolition operation as follows:

- Under current law, excavations or demolitions involving the tilling of soil for agricultural or gardening purposes are exempt. This section would limit that exemption to situations where the excavation or demolition encroaches on any operator's right-of-way, easement, or permitted use and is less than 12 inches in depth.
- Under current law, excavations by an operator or surveyor with nonmechanized equipment for certain purposes or underground probing to determine the extent of gas or water migration are exempt. This section would extend the exemption to an operator or surveyor's contractor.
- 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. This section would extend the exemption to all excavations or demolitions performed for the purpose of maintenance activities within the right-of-way regardless of who performs the maintenance.

Section 5 would specify that the venue for claims adjudication for actual and consequential damages occurring in North Carolina is the court system of the county in which the damages occurred.

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Under current law, if an operator has been given notice and fails to respond or properly locate the facility, the excavator is free to proceed. Neither the excavator nor the person financially responsible for the excavation are liable to the operator for damages to the operator's facilities if the person doing the excavating exercises due care to protect existing facilities where there is evidence that those facilities exist near the proposed excavation area.

Section 6 would limit the liability of the excavator and the person financially responsible for the excavation as long as the excavator has exercised due care in preparing for or conducting the excavation. This section would create a presumption, rebuttable by clear and convincing evidence, that the excavator has exercised due care if the Notification Center has notified the operator and the operator has failed to respond, the excavator has complied with all responsibilities imposed by statute, and the excavator did not have actual knowledge of the existence of a facility within the area of the excavation.

The Underground Damage Prevention Review Board (Board), consisting of 15 members appointed by the Governor, reviews reports of alleged violations of the Act.

Section 7 would make the following changes to the processes of the Board:

- Require the Governor to fill vacancies within 60 days after the vacancy, to the extent practicable.
- Specify that a quorum is a majority of the seated members of the Board, rather than eight members, and allow members to attend meetings via conference call or other electronic means.
- Require the Board to establish an internal attendance policy. If a member resigns or fails to meet the criteria of the attendance policy, the Board could replace an interim member from the same stakeholder group until the Governor appoints a replacement for the remainder of the unexpired term.

Section 7 would also increase the time limit for the Board to notify persons against whom reports have been filed from 10 days to 15 days. This section would also require the Board to notify violators of the Act within 30 days of the Board's determination and the recommended action or penalty. A person deemed to be in violation could request an informal conference before the Board. The person may be represented by an attorney or other person, 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 must notify the Commission, and the Commission must issue an order imposing the penalty within 30 days.

The Commission would be directed to report to the Board annually on the compliance of persons on whom fines or penalties have been imposed. If the penalty is not paid within 90 days of the Commission's order imposing the penalty, then the Attorney General must bring an action to recover the penalty upon request of the Commission.

EFFECTIVE DATE: This act would become effective October 1, 2025.

** Chris Saunders, Staff Attorney with the Legislative Analysis Division, substantially contributed to this summary.*