

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 587
HOUSE BILL 1233

AN ACT TO ENACT THE OVERHEAD HIGH-VOLTAGE LINE SAFETY ACT AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 95 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 19A.

"Overhead High-Voltage Line Safety Act.

"§ 95-229.5. Purpose; scope.

The purpose of this Article is to promote the safety and protection of persons engaged in work in the vicinity of high-voltage overhead lines. This Article defines the conditions under which work may be carried on safely and provides for the precautionary safety arrangements to be taken when any person engages in work in proximity to overhead high-voltage lines.

"§ 95-229.6. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) 'Covered equipment' or 'covered items' means any mechanical equipment, hoisting equipment, antenna, or rigging; any part of which is capable of vertical, lateral, or swinging motion that could cause any portion of the equipment or item to come closer than 10 feet to a high-voltage line during erection, construction, operation, or maintenance; including, but not limited to, equipment such as cranes, derricks, power shovels, backhoes, dump trucks, drilling rigs, pile drivers, excavating equipment, hay-loaders, haystackers, combines, irrigation equipment, portable grain augers or elevators, and mechanical cotton pickers. These terms also include items such as handheld tools, ladders, scaffolds, antennas, and outriggers, houses or other structures in transport, and gutters, siding, and other construction materials, the motion or manipulation of which could cause them to come closer than 10 feet to a high-voltage line.
- (2) 'High-voltage line' means all aboveground electrical conductors of voltage in excess of 600 volts measured between conductor and ground.
- (3) 'Person' means natural person, firm, business association, company, partnership, corporation, or other legal entity.

- (4) 'Person responsible for the work to be done' means the person performing or controlling the job that necessitates the precautionary safety measures required by this Article.
- (5) 'Warning sign' means a weather-resistant sign of not less than five inches by seven inches with at least two panels: a signal panel and a message panel. The signal panel shall contain the signal word 'WARNING' in black lettering and a safety alert symbol consisting of a black triangle with an orange exclamation point, all on an orange background. The message panel shall contain the following words, either in black letters on a white background or white letters on a black background: 'UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN TEN FEET OF OVERHEAD HIGH-VOLTAGE LINES – Contact with power lines can result in death or serious burns.' A symbol or pictorial panel may also be added. Such warning sign language, lettering, style, colors, size, and format shall meet the requirements of the American National Standard ANSI Z535.4-1991, Product Safety Signs and Labels, or its successor or such equally effective standard as may be approved for use by the Commissioner of Labor. In the event of a conflict with regard to the appearance or content of the warning sign, the standard approved by the Commissioner of Labor shall take precedence over any description or standard set out in this subdivision.

"§ 95-229.7. Prohibited activities.

(a) Unless danger of contact with high-voltage lines has been guarded against as provided by G.S. 95-229.8, 95-229.9, and 95-229.10, the following actions are prohibited:

- (1) No person shall, individually or through an agent or employee, perform, or require any other person to perform, any work upon any land, building, highway, or other premises that will cause:
 - a. Such individual, agent, employee, or other person to be placed within six feet of any overhead high-voltage line; or any part of any tool or material used by the agent, employee, or other person to be brought within six feet of any overhead high-voltage line, or
 - b. Any part of any covered equipment or covered item used by the individual, agent, employee, or other person to be brought within 10 feet of any high-voltage line.
- (2) No person shall, individually or through an agent or employee or as an agent or employee, erect, construct, operate, maintain, transport, or store any covered equipment or covered item within 10 feet of any high-voltage line, or such greater clearance as may be required under the circumstances by OSHA, except as provided herein. This prohibition shall not apply, however, to covered equipment as defined herein when lawfully driven or transported on public streets and

highways in compliance with applicable height restrictions. The required clearance from high-voltage lines shall be not less than four feet when:

- a. Covered equipment as defined herein is lawfully driven or transported on public streets and highways in compliance with the height restriction applicable thereto,
 - b. Refuse collection equipment is operating, or
 - c. Agricultural equipment is operating.
- (3) No person shall, individually or through an agent or employee or as an agent or employee, operate or cause to be operated an airplane or helicopter within 20 feet of a high-voltage line, except that no clearance is specified for licensed aerial applicators that may incidentally pass within the 20-foot limitation during normal operation.
 - (4) No person shall, individually or through an agent or employee or as an agent or employee, store or cause to be stored any materials that are expected to be moved or handled by covered equipment or any covered item within 10 feet of a high-voltage line.
 - (5) No person shall, individually or through an agent or employee or as an agent or employee, provide or cause to be provided additional clearance by either (i) raising, moving, or displacing any overhead utility lines of any type or nature including high-voltage, low-voltage, telephone, cable television, fire alarm, or other lines or (ii) pulling or pushing any pole, guy, or other structural appurtenance.
 - (6) No person shall, individually or through an agent or employee or as an agent or employee, excavate or cause to be excavated any portion of any foundations of structures, including guy anchors or other structural appurtenances, which support any overhead utility lines of any type or nature, including high-voltage, low-voltage, telephone, cable television, fire alarm, or other lines.

(b) If the high-voltage line has been insulated or de-energized and grounded, in accordance with G.S. 95-229.10, the required clearances specified in subdivisions (1), (2), and (4) of subsection (a) of this section may be reduced to not less than two feet. Under no circumstances shall the line or its covering be contacted. If the line is temporarily raised or moved to accommodate the expected work, without also being insulated or de-energized and grounded, the required clearances from the line, specified in subsection (a) of this section, shall not be reduced.

"§ 95-229.8. Warning signs.

(a) No person shall, individually or through an agent or employee or as an agent or employee, operate any covered equipment in the proximity of a high-voltage line unless warning signs are posted and maintained as follows:

- (1) A sign shall be located within the equipment and readily visible and legible to the operator of such equipment when at the controls of such equipment; and

- (2) Signs shall be located on the outside of equipment so as to be readily visible and legible at 12 feet to other persons engaged in the work operations.

This subsection shall not apply to handheld tools and handheld equipment which by their size or configuration cannot accommodate the warning signs specified in G.S. 95-229.6(5).

(b) If the Commissioner of Labor determines that a successor, substitute, or additional sign standard may or shall be used in place of the requirements listed in G.S. 95-229.6, a period of not less than 18 months from such determination shall be allowed for any required replacement of signs.

"§ 95-229.9. Notification.

(a) When any person desires to carry on any work in closer proximity to any high-voltage line than permitted by G.S. 95-229.7(a), the person responsible for the work to be done shall notify the owner or operator of the high-voltage line prior to the time the work is to be commenced. Such notification shall occur at the earliest practical time; however, such notification shall occur not less than 48 hours, excluding Saturday, Sunday, and legal State and federal holidays, prior to the intended work. In emergency situations, including police, fire, and rescue emergencies, such notification shall occur as soon as possible under the circumstances. In cases where the person or business entity responsible for doing the work is doing so under contract or agreement with a government entity, and the government entity and the owner or operator of the lines have already made satisfactory mutual arrangements, further arrangements for that particular work are not required.

(b) Every notice served by any person on an owner or operator of a high-voltage line shall contain the following information:

- (1) The name, address, and telephone number of the individual serving such notice;
- (2) The location of the proposed work;
- (3) The name, address, and telephone number of the person responsible for the work;
- (4) The field telephone number of the site of such work, if one is available;
- (5) The type, duration, and extent of the proposed work;
- (6) The name of the person for whom the proposed work is being performed;
- (7) The time and date of the notice; and
- (8) The approximate date and time when the work is to begin.

(c) If the notification required by this Article is made by telephone, a record of the information in subsection (b) of this section shall be maintained by the owner or operator notified and the person giving the notice to document compliance with the requirements of this Article.

(d) Owners or operators of high-voltage lines may form and operate an association providing for mutual receipt of notification of activities close to high-

voltage lines in a specified area. In areas where an association is formed, the following shall occur:

- (1) Notification to the association shall be effected as set forth in this section.
- (2) Owners or operators of high-voltage lines in the area:
 - a. May become members of the association;
 - b. May participate in and receive the services furnished by the association; and
 - c. Shall pay their proportionate share of the cost for the services furnished.
- (3) The association whose members or participants have high-voltage lines within a county shall file a list containing the name, address, and telephone number of every member and participating owner or operator of high-voltage lines with the clerk of superior court.
- (4) If notification is made by telephone, an adequate record of the information required by subsection (b) of this section shall be maintained by the association to document compliance with the requirements of this Article.

"§ 95-229.10. Precautionary safety arrangements.

(a) Installation or performance of precautionary safety arrangements shall be performed by the owner or operator of high-voltage lines only after mutually satisfactory arrangements have been negotiated between the owner or the operator of the lines, or both, and the person responsible for the work to be done. The negotiations shall proceed promptly and in good faith with the goal of accommodating the requested work consistent with the owner's or operator's service needs and the intent to protect the public from the danger of contact with high-voltage lines as far as is reasonable and cost-effective. The person responsible for the work may perform the work only after satisfactory mutual arrangements, including coordination of work and construction schedules, have been made between the owner or operator of the high-voltage lines and the person responsible for the work. The owners or operators of high-voltage lines shall make the final determination as to which arrangements are most feasible and appropriate under the circumstances; provided, however, that the utility may determine that no arrangements can be made that would allow the proposed work to be carried out in a reasonably safe manner or at reasonable cost taking into account the cost to its customers, and the owner or operator of high-voltage lines may refuse to enter into an agreement on that basis.

(b) The precautionary safety measures shall be appropriate, reasonable, and cost-effective for the work of which the owner or operator of high-voltage lines has received notification. During mutual negotiations, the person responsible for the work may change the notification of intended work to include different or limited work so as to reduce the precautionary safety measures required to accommodate such work. The precautionary safety measures shall not violate the requirements of the current edition of the National Electrical Safety Code.

(c) The owner or operator of the high-voltage lines is not required to provide the precautionary safety arrangements until an agreement for payment has been made; except that, if the amount of payment is in dispute, the owner or operator shall commence with providing precautionary safety measures as if agreement had then been reached and the undisputed amount shall be paid according to the agreement reached as to that amount. If agreement for payment of the disputed amount has not been reached within 14 days from completion of precautionary safety measures, the owner or operator and the person or business entity responsible for doing the work may resolve the dispute by arbitration or other legal means.

(d) Unless otherwise agreed, the owner or operator of the high-voltage lines shall initiate the precautionary safety arrangements agreed upon within five working days after the agreement for payment has been reached as required in subsection (c) of this section, but no earlier than the agreed construction date coordinated between the parties. Once initiated, the owner or operator shall complete the work promptly and without interruption, consistent with the owner's or operator's service needs. Should the owner or operator of the high-voltage lines fail to provide the precautionary safety measures agreed upon in a timely manner, the owner or operator of the high-voltage lines shall be liable for costs or loss of production of the person or business entity requesting assistance to work in close proximity to high-voltage lines, except that no such liability shall exist during times of emergency, such as storm repair and the like.

(e) Precautionary safety arrangements may include:

- (1) Placement of temporary mechanical barriers separating and preventing contact between material, equipment, other objects, or persons and high-voltage lines;
- (2) Temporary de-energization and grounding;
- (3) Temporary relocation or raising of the high-voltage lines; or
- (4) Other such measures found to be appropriate in the judgment of the owner or operator of the high-voltage lines.

(f) The actual expense incurred by any owner or operator of high-voltage lines in taking precautionary measures as set out in subsections (a) through (e) of this section, including the wages of its workers involved in making safety arrangements, shall be paid by the person responsible for the work to be done, except if:

- (1) Any owner or operator of an overhead high-voltage line has located its facilities within a public highway or street right-of-way and the work is performed by or for the Department of Transportation or a city, county, or town, the actual expenses shall be the responsibility of the owner or operator of the overhead high-voltage lines, unless the owner or operator can provide evidence of prior rights or there is a prior written agreement specifying cost responsibility. However, if it is determined by the Department of Transportation or a city, county, or town that the temporary safety arrangements are for the sole convenience of its contractor, the actual expense shall be the responsibility of the contractor;

- (2) The owner or operator of the high-voltage lines has not installed the line in conformance with an applicable edition of the National Electrical Safety Code. In that case, the liability of the person responsible for the work shall be limited to the amount required to accommodate the work over and above the amount required to bring the installation into compliance with the National Electrical Safety Code; or
- (3) In the case of property used for residential purposes, such actual expenses shall be limited to those in excess of one thousand dollars (\$1,000).

"§ 95-229.11. Exemptions.

(a) This Article shall not apply to the construction, reconstruction, operation, and maintenance of overhead electrical or communication circuits or conductors and their supporting structures and associated equipment of the following systems, provided that such work on any of the following systems is performed by the employees of the owner or operator of the systems or independent contractors engaged on behalf of the owner or operator of the systems to perform the work, and the owner of the system has a valid joint-use contract or agreement with the owner of the high-voltage lines:

- (1) Rail transportation systems;
- (2) Electrical generating, transmission, or distribution systems;
- (3) Communications systems, including cable television; or
- (4) Any other publicly or privately owned system, including traffic signals.

(b) This Article also shall not apply to electrical or communications circuits or conductors on the premises of coal or other mines which are subject to the provisions of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. § 801, et seq.) and regulations adopted pursuant to that Act by the Mine Safety and Health Administration.

"§ 95-229.12. Application.

Nothing in this Article shall relieve any person from complying with any safety rule, regulation, or statute not imposed by this Article. A violation of this Article shall not constitute negligence or contributory negligence, nor give rise to any cause of action based upon injury to persons or property. An action may be brought by an owner or operator of a high-voltage line to recover the cost of precautionary safety arrangements or for damage to its facilities. Nothing contained in this Article shall be construed to alter, amend, restrict, or limit the liability of any person for violation of that person's duty under law; nor shall any person be relieved from liability as a result of violations of standards under existing law where such violations of existing standards of care are found to be a cause of damage to property, personal injury, or death.

"§ 95-229.13. Severability.

The provisions of this Article are severable. If any part of this Article is declared invalid or unconstitutional, such declaration shall not affect the remainder."

Sec. 2. This act becomes effective October 1, 1996.

In the General Assembly read three times and ratified this the 20th day of June, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives