

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S

4

SENATE BILL 987
Second Edition Engrossed 5/5/93
Judiciary II Committee Substitute Adopted 5/10/93
Fourth Edition Engrossed 5/12/93

Short Title: High-Voltage Line Safety Act.

(Public)

Sponsors:

Referred to:

April 28, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE OVERHEAD HIGH-VOLTAGE LINE SAFETY ACT.
3 The General Assembly of North Carolina enacts:

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

6 **"ARTICLE 19A.**
7 **"OVERHEAD HIGH-VOLTAGE LINE SAFETY ACT.**

8 **"§ 95-229.5. Purpose; scope.**

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

14 **"§ 95-229.6. Definitions.**

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

- 16 (1) 'Covered equipment or items' means any mechanical equipment,
17 hoisting equipment, antenna, boat mast, or rigging; any part of which
18 is capable of vertical, lateral, or swinging motion that could cause any
19 portion of the equipment or item to come closer than 10 feet to an
20 overhead high-voltage line during erection, construction, operation, or
21 maintenance; including, but not limited to, equipment such as cranes,

derricks, power shovels, backhoes, dump trucks, drilling rigs, pile drivers, excavating equipment, hay-loaders, hay stackers, combines, irrigation equipment, portable grain augers or elevators, and mechanical cotton pickers and items such as ladders, scaffolds, antennas, boat masts and outriggers, houses or other structures in transport, and gutters, siding, and other construction materials.

(2) 'Overhead high-voltage line' means all aboveground bare or insulated electrical conductors of voltage in excess of 600 volts measured between conductor and the ground, except those conductors that are (i) de-energized and grounded or (ii) enclosed in suitable mechanical protection in accordance with the requirements of the National Electrical Safety Code or the National Electrical Code.

(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 or activity 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.

"§ 95-229.7. Duty and responsibility regarding use of equipment.

It shall be the duty and responsibility of (i) employers of persons using any covered equipment or items for the benefit of the employers or others and (ii) individuals using any covered equipment or items for the benefit of themselves or others to acquaint themselves and their employees or agents who will be using the equipment or items or will be engaged in the work operations or other activities with the provisions of this Article and the rules adopted pursuant to it.

"§ 95-229.8. Prohibited activities.

(a) Unless danger of contact with overhead high-voltage lines has been effectively guarded against by a combination of notice, work, or activity control

1 methods, and complementary precautionary safety measures, all in accordance with
2 G.S. 95-229.9, 95-229.10, and 95-229.11, the following actions are prohibited:

- 3 (1) No person shall, individually or through an agent or employee,
4 perform, or require any other person to perform, any work or activity
5 upon any land, building, highway, or other premises that will cause:
6 a. Any part of such individual, agent, employee, or other person to
7 be placed within 10 feet of any overhead high-voltage line, or
8 b. Any part of any tool or material used by the individual, agent,
9 employee, or other person to be brought within 10 feet of any
10 overhead high-voltage line.
- 11 (2) No person shall, individually or through an agent or employee or as an
12 agent or employee, erect, construct, operate, maintain, transport, or
13 store any covered equipment or item within 10 feet of any overhead
14 high-voltage line, except as herein allowed. The required clearance
15 from high-voltage lines shall be not less than four feet when:
16 a. Boats are sailing on high water,
17 b. Covered equipment as defined herein is lawfully driven or
18 transported on public streets and highways in compliance with
19 the height restriction applicable thereon, or
20 c. Refuse collection equipment is operating.
- 21 (3) No person shall, individually or through an agent or employee or as an
22 agent or employee, operate or cause to be operated an airplane or
23 helicopter within 20 feet of an overhead high-voltage line, except that
24 no clearance is specified for licensed aerial applicators that may
25 incidentally pass within the 20-foot limitation during normal operation.
- 26 (4) No person shall, individually or through an agent or employee or as an
27 agent or employee, store or cause to be stored any materials that are
28 expected to be moved or handled by covered equipment or any item
29 within 10 feet of an overhead high-voltage line.
- 30 (5) No person shall individually or through an agent or employee or as an
31 agent or employee, provide, or cause to be provided, additional
32 clearance by either (i) raising, moving, or displacing any overhead
33 utility lines of any type or nature including high-voltage, low-voltage,
34 telephone, cable television, fire alarm, or other lines or (ii) pulling or
35 pushing any pole, guy, or other structural appurtenance.
- 36 (6) No person shall, individually or through an agent or employee or as an
37 agent or employee, excavate or cause to be excavated any portion of
38 any foundations of structures, including guy anchors or other structural
39 appurtenances, which support any overhead utility lines of any type or
40 nature, including high-voltage, low-voltage, telephone, cable
41 television, fire alarm, or other lines.

42 (b) If the line has been covered with temporary insulating sleeves or devices, in
43 accordance with G.S. 95-229.10, the required clearance may be reduced from 10 feet to
44 four feet. If the line has been de-energized and grounded, in accordance with G.S. 95-

1 229.10, the required clearance may be reduced from 10 feet to not less than two feet.
2 Under no circumstances shall the line or its covering be contacted. If the lines are
3 temporarily raised or moved to accommodate the expected work of other activity,
4 without also being insulated or de-energized and grounded, the required 10-foot
5 clearance from the line shall not be reduced.

6 **"§ 95-229.9. Warning signs.**

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

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

13 (2) Signs shall be located on the outside of equipment in such numbers
14 and locations as to be readily visible and legible at 12 feet to other
15 persons engaged in the work operations.

16 (b) Each day's failure to post or maintain signs required by this section shall be
17 considered a separate offense.

18 (c) If the Commissioner of Labor determines that a successor, substitute, or
19 additional sign standard may or shall be used in place of the requirements listed in G.S.
20 95-229.6, a period of not less than 18 months from such determination shall be allowed
21 for any required replacement of signs.

22 **"§ 95-229.10. Notification.**

23 (a) When any person desires to carry on any work or activity in closer proximity
24 to any overhead high-voltage line than permitted by this Chapter, the person responsible
25 for the work or activity to be done shall notify the owner or operator of the high-voltage
26 line prior to the time the work or activity is to be commenced. Such notification shall
27 occur at least 72 hours in advance of the work or activity, excluding Saturday, Sunday,
28 and legal State and federal holidays, except in emergency situations, including police,
29 fire, and rescue emergencies, in which case such notification shall occur as soon as
30 possible under the circumstances. In cases where the person or business entity
31 responsible for doing the work is doing so under contract or agreement with a
32 government entity, and the government entity and the owner or operator of the lines
33 have already made satisfactory mutual arrangements, further arrangements for that
34 particular activity are not required.

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

37 (1) The name of the individual serving such notice;

38 (2) The location of the proposed work or activity;

39 (3) The name, address, and telephone number of the person responsible
40 for the work or activity;

41 (4) The field telephone number of the site of such work or activity, if one
42 is available;

43 (5) The type and extent of the proposed work or activity;

1 (6) The name of the person for whom the proposed work or activity is
2 being performed;

3 (7) The time and date of the notice; and

4 (8) The approximate date and time when the work or activity is to begin.

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

9 (d) To facilitate the notification required by this Chapter, every owner or operator
10 of overhead high-voltage lines that does not participate in an association for mutual
11 receipt of notification of activities close to high-voltage overhead lines shall file with
12 the clerk of superior court in each county in which its lines are located the address and
13 telephone numbers of the person or office, in the State, to whom all notifications
14 concerning proposed work in that county should be directed. Such information shall be
15 maintained by the clerk in his office in a manner to be determined at his discretion.

16 (e) Owners or operators of high-voltage lines may form and operate an
17 association providing for mutual receipt of notification of activities close to high-
18 voltage overhead lines in a specified area. In areas where an association is formed, the
19 following shall occur:

20 (1) Notification to the association shall be effected as set forth in this
21 section.

22 (2) Owners or operators of high-voltage overhead lines in the area:

23 a. May become members of the association;

24 b. May participate in and receive the services furnished by the
25 association; and

26 c. Shall pay their proportionate share of the cost for the services
27 furnished.

28 (3) The association whose members or participants have high-voltage
29 overhead lines within a county shall file a list containing the name,
30 address, and telephone number of every member and participating
31 public utility with the clerk of superior court.

32 (4) If notification is made by telephone, an adequate record shall be
33 maintained by the association to document compliance with the
34 requirements of this Chapter.

35 **§ 95-229.11. Precautionary safety arrangements.**

36 (a) Installation or performance of precautionary safety arrangements shall be
37 performed by the owner or operator of high-voltage lines only after mutually
38 satisfactory arrangements have been negotiated between the owner or the operator of the
39 lines (or both) and the person responsible for the work or activities to be done. The
40 negotiations shall proceed promptly and in good faith with the goal of accommodating
41 the requested work or activity consistent with the owner's or operator's service needs
42 and the intent to protect the public from the danger of contact with overhead high-
43 voltage lines as far as is reasonable and cost-effective. The person responsible for the
44 work or activity may perform the work only after satisfactory mutual arrangements,

1 including coordination of work and construction schedules, have been made between
2 the electric utility operating lines and the person responsible for the work or activity.
3 The owners or operators of high-voltage lines shall make the final determination as to
4 which arrangements are most feasible and appropriate under the circumstances;
5 provided, however, that the utility may determine that no arrangements can be made
6 that would allow the proposed activity to be carried out in a reasonably safe manner or
7 at reasonable cost taking into account the cost to its customers, and the owner or
8 operator of high-voltage lines may refuse to enter into an agreement on that basis.

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

17 (c) The owner or operator of the lines is not required to provide the precautionary
18 safety arrangements until an agreement for payment has been made; except that, if there
19 is a dispute over the amount to be charged by the owner or operator of the lines for
20 providing the arrangements, the owner or operator shall commence with providing
21 precautionary safety measures as if agreement had then been reached. If agreement for
22 payment has not been reached within 14 days from completion of precautionary safety
23 measures, the owner or operator and the person or business entity responsible for doing
24 the work shall resolve the dispute by arbitration or other legal means.

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

35 (e) Precautionary safety arrangements may include:

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

43 (f) The actual expense incurred by any owner or operator of overhead high-
44 voltage lines in taking precautionary measures as set out in subsections (a) through (d)

1 of this section, including the wages of its workers involved in making safety
2 arrangements, shall be paid by the person responsible for the work or activity to be
3 done, except if:

4 (1) Prior arrangements for payment have been made between a
5 government entity for whom the work is to be done and the owner or
6 operator of the line; or

7 (2) The owner or operator of the line has not installed the line in
8 conformance with an applicable edition of the National Electrical
9 Safety Code or the National Electrical Code. In this latter case, the
10 liability of the person responsible for the work or activity shall be
11 limited to the amount required to accommodate the work or activity
12 over and above the amount required to bring the installation into
13 compliance with the National Electrical Safety Code.

14 **"§ 95-229.12. Enforcement of Chapter.**

15 (a) The provisions of this Article shall be considered as safety and health
16 standards of the State. Any person who is found to cause, permit, or allow work or
17 other activity in violation of any provision of this Article shall be guilty of a
18 misdemeanor and, upon such finding or conviction, shall be punished by a fine not
19 exceeding one thousand dollars (\$1,000) or imprisonment not exceeding 12 months or
20 both; provided, however, this subsection shall not apply to any person engaged in
21 agricultural activities or any person engaged in activities on residential property of
22 which they are the owner or lessee which is encumbered by a high voltage line utility
23 easement.

24 (b) The provisions of this Article shall be enforced as to employers by the
25 Commissioner of Labor. In the case of a violation of this Article over which the
26 Commissioner of Labor does not have enforcement powers, enforcement shall fall under
27 the jurisdiction of the General Court of Justice in the county in which the violation
28 occurred.

29 **"§ 95-229.13. Indemnification.**

30 A responsible party is strictly liable to the owner or operator of the high-voltage line
31 and third parties, if any, for all damages to facilities, injuries to persons, and all costs,
32 expenses, and liabilities incurred by the owner and/or operator of the lines and third
33 parties, if any, as a result of any contact if:

34 (1) The responsible party causes, permits, or allows any work or activity
35 in violation of any provision of this Article or an agent or the
36 employee of a responsible party performs work which furthers the
37 work or activity of a responsible party and which is in violation of any
38 provision of this Article; and

39 (2) As a result, a physical or electrical contact with a high-voltage
40 overhead line occurs.

41 **"§ 95-229.14. Exemptions.**

42 (a) This Article shall not apply to the construction, reconstruction, operation, and
43 maintenance of overhead electrical or communication circuits or conductors and their
44 supporting structures and associated equipment of the following systems, provided that

1 such work on any of the following systems is performed by the employees of the owner
2 or operator of the systems or independent contractors engaged on behalf of the owner or
3 operator of the systems to perform the work, and the owner of the system has a valid
4 joint-use contract or agreement with the owner of the high-voltage line:

- 5 (1) Rail transportation systems,
- 6 (2) Electrical generating, transmission, or distribution systems,
- 7 (3) Communication systems, including cable television, or
- 8 (4) Any other publicly or privately owned system.

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

13 c - This Article shall not apply to the owner of the fee title over which any such over
14 head high-voltage line right of way exists nor to such owner's lessee, renter, employee,
15 agent or invitee.

16 **"§ 95-229.15. Application.**

17 The provision of this Article shall not be construed either to abrogate or diminish
18 any rights, duties, defenses, or remedies existing under law or to create or expand any
19 rights, duties, defenses, or remedies existing under law; further, to the extent this Article
20 places additional responsibilities on persons owning property subject to a high voltage
21 line utility easement resulting in a significant diminution in the value of said property,
22 the owner of said property may seek redress for such significant diminution in value as
23 provided under existing law, except that the following is expressly allowed under this
24 Article:

- 25 (1) An action may be brought to enforce the requirements of this Article,
26 as provided for herein.
- 27 (2) An action may be brought by an owner or operator of an overhead
28 high-voltage power line to recover the cost of precautionary safety
29 arrangements or for damage to its facilities as provided for herein.

30 **"§ 95-229.16. Severability.**

31 The provisions of this act are severable. If any part of the act is declared invalid or
32 unconstitutional, such declaration shall not affect any part of what remains."

33 Sec. 2. This act becomes effective January 1, 1994.