

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 3010

2015 Carryover

(BY DELEGATES FLEISCHAUER, SKINNER, MANCHIN,
FERRO LYNCH, COOPER AND BUTLER)

[Introduced January 13, 2016; referred to the
Committee on the Judiciary.]

1 A BILL to amend and reenact §24C-1-2 and §24C-1-3 of the Code of West Virginia, 1931, as
 2 amended, all relating to the one-call system; modifying definitions; excluding
 3 nonproducing gas or oil wells that were established prior to 1990 and their associated
 4 production or gathering lines for which records do not exist indicating its location from the
 5 definition of underground facility; and allowing an owner/operator of an underground
 6 facility that is not required to be a member to become a member of the one-call system.

Be it enacted by the Legislature of West Virginia:

1 That §24C-1-2 and §24C-1-3 of the Code of West Virginia, 1931, as amended, be
 2 amended and reenacted, all to read as follows:

ARTICLE 1. ONE-CALL SYSTEM.

§24C-1-2. Definitions.

1 As used in this chapter, unless the context clearly requires a different meaning:

2 (a) "Damage" means any impact or contact with or weakening of the support for an
 3 underground facility, its appurtenances, protective casing, coating or housing, which, according
 4 to the operation practices of the operator or state or federal regulation, requires repair.

5 (b) "Demolish" or "demolition" means any operation by which a structure or mass of
 6 material is wrecked, razed, rendered, moved, or removed by means of any tools, equipment or
 7 discharge of explosives which could damage underground facilities: *Provided, That "demolish"*
 8 *and "demolition" do not include earth-disturbing activities authorized pursuant to the*
 9 *provisions of article three, chapter twenty-two of this code or article two, chapter twenty-two-a of*
 10 *this code.*

11 (c) "Emergency" means:

12 (1) A condition constituting a clear and present danger to life, health or property by reason

13 of escaping toxic, corrosive or explosive product, oil or oil-gas or natural gas hydrocarbon product,
14 exposed wires or other breaks or defects in an underground facility; or

15 (2) A condition that requires immediate correction to assure continuity of service provided
16 by or through an underground facility.

17 (d) "Equipment operator" means any individual in physical control of powered equipment
18 or explosives when being used to perform excavation work or demolition work.

19 (e) "Excavate" or "excavation" means any operation in which earth, rock or other material
20 in the ground is moved, removed or otherwise displaced by means of any tools, equipment or
21 explosives, and includes, without limitation, grading, trenching, digging, ditching, dredging,
22 drilling, auguring, tunnelling, moleing, scraping, cable or pipe plowing and driving, wrecking,
23 razing, rendering, moving or removing any structure or mass of material, but does not include
24 underground or surface mining operations or related activities or the tilling of soil for agricultural
25 purposes or for domestic gardening. Further, for purposes of this article, the terms "excavate"
26 and "excavation" do not include routine maintenance of paved public roads or highways by
27 ~~employees of state, county or municipal entities or authorities which~~ such as:

28 (1) ~~Perform all~~ Work performed within the confines of the traveled portion of the paved
29 public way; and

30 (2) ~~Do not excavate~~ Excavation to a depth greater than twelve inches measured from the
31 top of the paved road surface.

32 (f) "Excavator" means any person intending to engage or engaged in excavation or
33 demolition work.

34 (g) "Member" means a member of a one-call system as authorized by this article.

35 (h) "One-call system" means a communication system that receives notification from
36 excavators of intended excavation work and prepares and transmits such notification to operators

37 of underground facilities in accordance with this article.

38 (i) "Operator" means any person who owns or operates an underground facility used in
39 the providing or transmission of any of the goods or services described in subsection (1) of this
40 section.

41 (j) "Person" means any individual, firm, joint venture, partnership, corporation, association,
42 state agency, county, municipality, cooperative association or joint stock association, and any
43 trustee, receiver, assignee, agency or personal representative thereof.

44 (k) "Powered equipment" means any equipment energized by an engine, motor or
45 hydraulic, pneumatic or electrical device and used in excavation or demolition work.

46 (l) (1) "Underground facility" means any underground pipeline facility, owned by a utility
47 and regulated by the Public Service Commission, which is used in the transportation or distribution
48 of gas, oil or a hazardous liquid; any underground pipeline facility ~~owned by a company subject~~
49 ~~to the jurisdiction of the federal energy regulatory commission, which is used in the gathering,~~
50 ~~transportation or distribution of gas, oil or a hazardous liquid; that is regulated and defined in~~
51 regulations promulgated after January 1, 2006, by the United States Department of Transportation
52 pursuant to the Pipeline Safety Act of 1992 (Public Law 102-508, 49 U.S.C. § 60101 et seq.), if
53 the regulated gathering line is subject to the damage prevention program requirements of 49 CFR
54 § 192.614; any underground facility used as a water main, storm sewer, sanitary sewer or steam
55 line; any underground facility used for electrical power transmission or distribution; any
56 underground cable, conductor, waveguide, glass fiber or facility used to transport
57 telecommunications, optical, radio, telemetry, television, or other similar transmissions; and any
58 facility used in connection with any of the foregoing facilities on a bridge, a pole or other span, or
59 on the surface of the ground, any appurtenance, device, cathodic protection system, conduit,
60 protective casing or housing used in connection with any of the foregoing facilities. *Provided,*

61 That

62 (2) "Underground facility" does not include:

63 (A) Underground or surface coal mine operations; and

64 (B) A nonproducing gas or oil well that was established prior to 1990 and its associated
65 production or gathering lines for which records do not exist indicating its location.

66 (m) "Workday" means any day except Saturday, Sunday or a federal or state legal holiday.

67 (n) "Work site" means the location of excavation or demolition work as described by an
68 excavator, operator, or person or persons performing the work.

§24C-1-3. Duties and responsibilities of operators of underground facilities; failure of operator to comply.

1 (a) Each operator of an underground facility in this state ~~except any privately owned public~~
2 ~~water utility regulated by the Public Service Commission, any state agency, any municipality or~~
3 ~~county, or any municipal or county agency~~ shall be a member of a one-call system for the area in
4 which the underground facility is located. ~~Privately owned public water utilities regulated by the~~
5 ~~Public Service Commission, state agencies, municipalities and counties and municipal and county~~
6 ~~agencies may be voluntary members of such a one-call system.~~ Any owner/operator of an
7 underground facility that is not required under this article, or other state or federal law, to be a
8 member of the one-call system, may elect to become a member under rules to be determined by
9 the one-call system.

10 (b) Each member shall provide the following information to the one-call system on forms
11 developed and provided for that purpose by the one-call system:

12 (1) The name of the member;

13 (2) The geographic location of the member's underground facilities as prescribed by the
14 one-call system; and

15 (3) The member's office address and telephone number to which inquiries may be directed
16 as to the locations of the operator's underground facilities.

17 (c) Each member shall revise in writing the information required by subsection (b) of this
18 section as soon as reasonably practicable, but not to exceed one hundred eighty days, after any
19 change.

20 (d) Within forty-eight hours, excluding Saturdays, Sundays and legal federal or state
21 holidays, after receipt of a notification by the one-call system from an excavator of a specific area
22 where excavation or demolition will be performed, the operator of underground facilities shall:

23 (1) Respond to such notification by providing to the excavator the approximate location,
24 within two feet horizontally from the outside walls of such facilities, and type of underground
25 facilities at the site; and

26 (2) Use the color code prescribed in section six of this article when providing temporary
27 marking of the approximate location of underground facilities; or

28 (3) Notify the excavator that the operator did not leave a temporary marking of the location
29 of underground facilities because there are no lines in the area of the proposed excavation or
30 demolition.

31 (e) Failure of an operator who is required to be a member to comply with the provisions of
32 this article may not prevent the excavator from proceeding but shall bar the operator from recovery
33 of any costs associated with damage to its underground facilities resulting from such failure,
34 except for damage caused by the willful or intentional act of the excavator.

35 (f) Notwithstanding the provisions of subsection (e) of this section, a member is not barred
36 from recovery under said subsection for failure to comply with subdivision (1), subsection (d) of
37 this section, but shall have his or her right to recover, if any, determined by common law, if the

38 operator responded to one-call notification in a timely manner, but was unable to accurately locate
39 lines because such lines were nonmetallic and had no locating wire or other marker.

NOTE: The purpose of this bill is to modify definitions related to the one-call system. It excludes nonproducing gas or oil wells that were established prior to 1990 and their associated production or gathering lines for which records do not exist indicating its location from the definition of underground facility. It also allows an owner/operator of an underground facility that is not required to be a member to voluntarily become a member of the one-call system.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.