

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

Introduced

### Senate Bill 583

FISCAL  
NOTE

BY SENATOR BOSO

[Introduced February 16, 2018; Referred  
to the Committee on Transportation and Infrastructure; and  
then to the Committee on Finance]

1 A BILL to amend and reenact §24C-1-2, §24C-1-3, §24C-1-5, §24C-1-6, §24C-1-7, and §24C-1-  
 2 8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding  
 3 thereto four new sections, designated §24C-1-9, §24C-1-10, §24C-1-11, and §24C-1-12,  
 4 all relating to bringing West Virginia in compliance with pipeline safety regulations.

*Be it enacted by the Legislature of West Virginia:*

## **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 provisions of  
 9 §22-3-1 *et seq.* or §22-3-1 *et seq.* of this code.

10 (c) "Emergency" means:

11 (1) A condition constituting a clear and present danger to life, health or property by reason  
 12 of escaping toxic, corrosive or explosive product, oil or oil-gas or natural gas hydrocarbon product,  
 13 exposed wires or other breaks or defects in an underground facility; or

14 (2) A condition that requires immediate correction to assure ~~continuity of service provided~~  
 15 ~~by or through an underground facility~~ the safety of the general public and operator personnel.

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

18 (e) "Excavate" or "excavation" means any operation in which earth, rock or other material  
 19 in the ground is moved, removed or otherwise displaced by means of any tools, equipment or

20 explosives, and includes, without limitation, grading, trenching, digging, ditching, dredging,  
21 drilling, auguring, tunneling, moleing, scraping, cable or pipe plowing and driving, wrecking,  
22 razing, rendering, moving or removing any structure or mass of material, but does not include  
23 underground or surface mining operations or related activities or the tilling of soil for agricultural  
24 purposes or for domestic gardening. Further, for purposes of this article, the terms “excavate” and  
25 “excavation” do not include routine maintenance of paved public roads or highways by employees  
26 of state, county or municipal entities or authorities which:

27 (1) Perform all work within the confines of the traveled portion of the paved public way;

28 and

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

31 (f) “Excavator” means any person intending to engage or engaged in excavation or  
32 demolition work.

33 (g) “Member” means a member of a one-call system as authorized by this article.

34 (h) “One-call system” means a communication system that receives notification from  
35 excavators of intended excavation work and prepares and transmits such notification to operators  
36 of underground facilities in accordance with this article.

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

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

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

45 (l) “Underground facility” means any underground pipeline facility, owned by a utility and

46 regulated by the Public Service Commission, which is used in the transportation or distribution of  
 47 gas, oil or a hazardous liquid; any underground pipeline facility, owned by a company subject to  
 48 the jurisdiction of the federal energy regulatory commission, which is used in the gathering,  
 49 transportation or distribution of gas, oil or a hazardous liquid; any underground production or  
 50 gathering pipeline for gas, oil, or any hazardous substance with a nominal inside diameter in  
 51 excess of four inches and that is not otherwise subject to one-call reporting requirements under  
 52 federal or state law; any underground facility used as a water main, storm sewer, sanitary sewer  
 53 or steam line; any underground facility used for electrical power transmission or distribution; any  
 54 underground cable, conductor, waveguide, glass fiber or facility used to transport  
 55 telecommunications, optical, radio, telemetry, television, or other similar transmissions; and any  
 56 facility used in connection with any of the foregoing facilities on a bridge, a pole or other span, or  
 57 on the surface of the ground, any appurtenance, device, cathodic protection system, conduit,  
 58 protective casing or housing used in connection with any of the foregoing facilities: *Provided*, That  
 59 “underground facility” does not include underground or surface coal mine operations.

60 (m) “Workday” means any day except Saturday, Sunday or a federal or state legal holiday.

61 (n) “Work site” means the location of excavation or demolition work as described by an  
 62 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~~

7 (b) Each member shall provide the following information to the one-call system on forms

8 developed and provided for that purpose by the one-call system:

9 (1) The name of the member;

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

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

14 (c) Each member shall revise in writing the information required by subsection (b) of this  
15 section as soon as reasonably practicable, but not to exceed 180 days, after any change.

16 (d) Within 48 hours, excluding Saturdays, Sundays and legal federal or state holidays,  
17 after receipt of a notification by the one-call system from an excavator of a specific area where  
18 excavation or demolition will be performed, the operator of underground facilities shall:

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

22 (2) Use the color code prescribed in §24C-1-7 of this code when providing temporary  
23 marking of the approximate location of underground facilities; or

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

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

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

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

**~~§24C-1-5. Duties and responsibilities of excavators; failure of excavator to comply; civil penalties~~ Underground Facilities Damage Prevention Board.**

1 ~~(a) Except as provided in section seven of this article, any person who intends to perform~~  
2 ~~excavation or demolition work shall:~~

3 ~~(1) Not less than forty-eight hours, excluding Saturdays, Sundays and federal or state~~  
4 ~~legal holidays, nor more than ten work days prior to the beginning of such work, notify the one-~~  
5 ~~call system of the intended excavation or demolition and provide the following information:~~

6 ~~(A) Name of the individual making the notification;~~

7 ~~(B) Company name;~~

8 ~~(C) Telephone number;~~

9 ~~(D) Company address;~~

10 ~~(E) Work site location; including county, nearest city or town, street location, nearest cross~~  
11 ~~street and landmarks or other location information;~~

12 ~~(F) Work to be performed;~~

13 ~~(G) Whether or not use of explosives is planned;~~

14 ~~(H) Name and telephone number of individual to contact; and~~

15 ~~(I) Starting date and time;~~

16 ~~(2) Notify the one-call system not less than twenty-four hours, excluding Saturdays,~~  
17 ~~Sundays and federal or state legal holidays, in advance of any change in the starting date or time~~  
18 ~~of the intended work; and~~

19 ~~(3) Instruct each equipment operator involved in the intended work:~~

20 ~~(A) To perform all excavation or demolition work in such a manner as to avoid damage to~~  
21 ~~underground facilities in the vicinity of the intended work site, including hand digging, when~~  
22 ~~necessary;~~

23 ~~(B) To report immediately any break or leak in underground facilities, or any dent, gouge,~~  
24 ~~groove or other damage to such facilities, made or discovered in the course of the excavation or~~  
25 ~~demolition and to allow the operator a reasonable time to accomplish necessary repairs before~~  
26 ~~continuing the excavation or demolition in the immediate area of such facilities;~~

27 ~~(C) To immediately alert the public at or near the work site as to any emergency created~~  
28 ~~or discovered at or near such work site;~~

29 ~~(D) (i) To report immediately to the appropriate medical, law enforcement and fire~~  
30 ~~prevention authorities any break or leak in underground facilities, or any dent, gouge, groove or~~  
31 ~~other damage to such facilities, made or in the course of the excavation or demolition which~~  
32 ~~creates an "emergency" as defined in subdivision (1), subsection (c), section two of this article.~~  
33 ~~For purposes of this subdivision, an excavator calling the "911" emergency telephone number~~  
34 ~~satisfies this requirement; or~~

35 ~~(ii) To notify the one-call system, within twenty-four hours, of any break or leak in~~  
36 ~~underground facilities, or any dent, gouge, groove or other damage to such facilities, made or in~~  
37 ~~the course of the excavation or demolition which does not create an "emergency" as defined in~~  
38 ~~subdivision (1), subsection (c), section two of this article.~~

39 ~~(E) To maintain a clearance between each underground facility and the cutting edge or~~  
40 ~~point of any powered equipment, taking into account the known limit of control of such cutting~~  
41 ~~edge or point, as may be reasonably necessary for the protection of such facility;~~

42 ~~(F) To protect and preserve markers, stakes and other designations identifying the location~~  
43 ~~of underground facilities at the work site; and~~

44 ~~(G) To provide such support for underground facilities in the location of the work site,~~  
45 ~~including during backfilling operations, as may be reasonably necessary for the protection of such~~  
46 ~~facilities. Temporary support and backfill shall provide support for such facilities at least equivalent~~

47 ~~to the previously existing support.~~

48 ~~(b) If any underground facility is damaged by a person who has failed to comply with any~~  
49 ~~provision of this section, that person is liable to the operator of the underground facility for the~~  
50 ~~total cost to repair the damage in an amount equal to that as is normally computed by the operator,~~  
51 ~~provided that the operator:~~

52 ~~(1) Is a member of the one-call system covering the area in which the damage to the~~  
53 ~~facility takes place; and~~

54 ~~(2) Upon receiving the proper notice in accordance with this article, has complied with the~~  
55 ~~provisions of section three of this article: *Provided*, That a member is not barred from recovering~~  
56 ~~costs solely for his or her own failure to comply with subdivision (1), subsection (d) of said section,~~  
57 ~~but shall have his or her right to recover, if any, determined by common law, if the conditions of~~  
58 ~~subsection (f) of said section are met.~~

59 ~~The liability of such person for such damage is not limited by reason of this article.~~

60 ~~(c) If any excavation or demolition causes damage to any underground facilities owned by~~  
61 ~~an operator who is not required to be a member of a one-call system and who is not a member of~~  
62 ~~such a system at the time of damage, the liability of the person causing damage shall be~~  
63 ~~determined solely by applicable principles of common law.~~

64 ~~(d) If any excavation or demolition causes damage to any other person or property, the~~  
65 ~~liability of the person causing damage shall be determined solely by applicable principles of~~  
66 ~~common law.~~

67 ~~(e) Any person who fails to notify the one-call system prior to performing any excavation~~  
68 ~~or demolition, or fails to follow the reporting provisions of this section, or who violates any other~~  
69 ~~provision of this section, shall be guilty of a misdemeanor and, upon conviction thereof, shall be~~  
70 ~~fined not more than \$5,000.~~



71 ~~(f) Nothing in this chapter may be construed to restrict or expand the rights, duties and~~  
72 ~~liabilities provided in common law or by other provisions of this code of an operator who is not~~  
73 ~~required to be a member of a one-call system and who is not a member of such a system.~~

74 There is created an Underground Facilities Damage Prevention Board for the purpose of  
75 enforcing this chapter.

76 (a) It is the intent of the Legislature that the board and its enforcement activities shall be  
77 funded by appropriations from the state budget and that all civil penalties collected pursuant to  
78 this chapter.

79 (b) The West Virginia Public Service Commission will provide administrative, investigation  
80 and legal support for the board as deemed necessary and approved by the board. The West  
81 Virginia Public Service Commission shall charge to the board direct expenses associated with the  
82 administration, investigative and legal duties requested by the board.

83 (c) The board shall be composed of nine (9) voting members who shall be appointed by  
84 the Governor to serve four-year terms in accordance with the West Virginia law. The board shall  
85 be empowered to establish one or more subcommittees in performing its tasks. Appointments to  
86 the board shall be made as follows:

87 (1) The president of Miss Utility of West Virginia, or the president's designee;

88 (2) One (1) representative of the excavation, utility and/or site construction industry;

89 (3) One (1) representative of the natural resource extraction industry;

90 (4) The Executive Director of the West Virginia Municipal League, or its designee;

91 (5) The Executive Director of the West Virginia Rural Water Association, or its designee;

92 (6) One (1) representative of the natural gas transmission and/or distribution and/or gas  
93 liquid industry;

94 (7) One (1) representative of the electric, cable and/or communications industry;

95 (8) One (1) representative of the privately owned-water and/or wastewater services  
96 industry;

97 (9) One (1) representative from the general public

98 (10) One (1) representative of the Public Services Commission shall serve as an ex officio,  
99 nonvoting member.

100 (d) The board shall meet not less than twice (2) per year, with a date and time to be set  
101 by its chairman upon at least five (5) days' notice provided by United States mail, electronic mail  
102 or personal delivery to every board member. The board may hold meetings and vote by telephone,  
103 video connection, computer and/or other electronic means.

104 (e) Five (5) members of the board shall constitute a quorum and a majority vote of those  
105 present and voting at any meeting shall be necessary to transact business.

106 (f) The members of the board shall be immune, individually and jointly, from civil liability  
107 for any act or omission done or made in the performance of their duties while serving as members  
108 of the board, but only in the absence of willful misconduct.

109 (g) UNDERGROUND DAMAGE PREVENTION FUND

110 (1) There is created an Underground Damage Prevention Fund to be administered and  
111 used by the board for the purpose of carrying out its duties under this chapter. All sources of funds  
112 collected by the board under this chapter, including, but not limited to, grants assessments and  
113 civil penalties collected pursuant to this chapter shall be deposited into the Underground Damage  
114 Prevention Fund. Any monies remaining in the Underground Damage Prevention Fun at the end  
115 of the fiscal year shall not be revert to the General Fund, but shall remain in the Underground  
116 Damage Prevention fund for the exclusive use of the board. The expenditure of monies in the  
117 Underground Damage Prevention Fund shall be at the discretion of the board to carry out its  
118 duties under this chapter. Excess funds shall be used for purposes related to buried piping

119 damage prevention, including, but not limited to, public awareness programs, training and  
120 educational programs for excavators, operators, line locators and the persons to reduce the  
121 number and severity of violations of this chapter.

122 (2) The West Virginia Public Service Commission, with assistance from the board, shall  
123 apply for all grants, including those awarded by the United States Department of Transportation's  
124 Pipeline and Hazardous Materials and Safety Administration, which may be used to fund the cost  
125 of services associated with this chapter, and any such grants shall be used to pay for such service.

126 (3) In the event that the annual cost of services associated with this chapter exceed the  
127 funds available in the Underground Damage Prevention Fund, the annual operating costs shall  
128 be apportioned in a proportional manner and collected by the one-call system from the operators  
129 in an amount equal to the amount necessary to offset the cost of investigative and administrative  
130 services.

131 (h) Members of the board shall serve without compensation and without reimbursement  
132 for expenses. Nothing contained in this section shall be construed to prevent any sponsoring  
133 organization for compensating their representative on the board for salary, expenses or other  
134 compensation considered as a condition for their employment.

135 (i) Every two years, the board shall elect a chair from among its members and other  
136 officers as the board deems necessary.

**§24C-1-6. Standard color code for temporary markings Duties and Responsibilities of Excavators.**

1 ~~Temporary marking provided by operators and excavators to indicate the approximate~~  
2 ~~location of underground facilities and work site boundaries shall utilize the following color code:~~

3 Facility Type \_\_\_\_\_ Identifying Color or Equivalent

4 (a) ~~Electrical power distribution~~ \_\_\_\_\_ ~~Safety Red~~

- 5           and transmission
- 6           ~~(b) Municipal electric systems~~ ~~—————~~ ~~Safety Red~~
- 7           ~~(c) Gas distribution and transmission~~ ~~—————~~ ~~High Visibility Safety Yellow~~
- 8           ~~(d) Oil and petroleum transmission~~ ~~—————~~ ~~High Visibility Safety Yellow~~
- 9           ~~(e) Dangerous materials product~~ ~~—————~~ ~~High Visibility Safety Yellow~~
- 10          ~~lines, steam lines~~
- 11          ~~(f) Telephone and telegraph~~ ~~—————~~ ~~Safety Alert Orange~~
- 12          ~~(g) Police and fire systems~~ ~~—————~~ ~~Safety Alert Orange~~
- 13          ~~-communications~~
- 14          ~~(h) Cable television~~ ~~—————~~ ~~Safety Alert Orange~~
- 15          ~~(i) Water systems~~ ~~—————~~ ~~Safety Precaution Blue~~
- 16          ~~(j) Slurry systems~~ ~~—————~~ ~~Safety Precaution Blue~~
- 17          ~~(k) Sewer systems~~ ~~—————~~ ~~Safety Green~~
- 18          ~~(l) Proposed excavations~~ ~~—————~~ ~~White~~

19          (a) Except as provided in §24C-1-8 of this code, any person who intends to perform  
 20 excavation or demolition work shall:

21           (1) Not less than 48 hours, excluding Saturdays, Sundays and federal or state legal  
 22 holidays, nor more than 10 work days prior to the beginning of the work, notify the one-call system  
 23 of the intended excavation or demolition and provide the following information:

24           (A) Name of the individual making the notification;

25           (B) Company name;

26           (C) Telephone number;

27           (D) Company address;

28           (E) Work site location; including county, nearest city or town, street location, nearest cross  
 29 street and landmarks or other location information;

30           (F) Work to be performed;

- 31 (G) Whether or not use of explosives is planned;
- 32 (H) Name and telephone number of individual to contact; and
- 33 (I) Starting date and time;
- 34 (2) Notify the one-call system not less than 24 hours, excluding Saturdays, Sundays and  
35 federal or state legal holidays, in advance of any change in the starting date or time of the intended  
36 work; and
- 37 (3) Instruct each equipment operator involved in the intended work:
- 38 (A) To perform all excavation or demolition work in such a manner as to avoid damage to  
39 underground facilities in the vicinity of the intended work site, including hand digging, when  
40 necessary;
- 41 (B) To report immediately any break or leak in underground facilities, or any dent, gouge,  
42 groove or other damage to such facilities, made or discovered in the course of the excavation or  
43 demolition and to allow the operator a reasonable time to accomplish necessary repairs before  
44 continuing the excavation or demolition in the immediate area of such facilities;
- 45 (C) To immediately alert the public at or near the work site as to any emergency created  
46 or discovered at or near the work site;
- 47 (D) (i) To report immediately to the appropriate medical, law-enforcement and fire  
48 prevention authorities any break or leak in underground facilities, or any dent, gouge, groove or  
49 other damage to such facilities, made or in the course of the excavation or demolition which  
50 creates an "emergency" as defined in §24C-1-2(c)(1) of this code. For purposes of this subdivision,  
51 an excavator calling the "911" emergency telephone number satisfies this requirement; or
- 52 (ii) To notify the one-call system, within 24 hours, of any break or leak in underground  
53 facilities, or any dent, gouge, groove or other damage to such facilities, made or in the course of  
54 the excavation or demolition which does not create an "emergency" as defined in §24C-1-2(c)(1)  
55 of this code.
- 56 (E) To maintain a clearance between each underground facility and the cutting edge or

57 point of any powered equipment, taking into account the known limit of control of the cutting edge  
58 or point, as may be reasonably necessary for the protection of the facility;

59 (F) To protect and preserve markers, stakes and other designations identifying the location  
60 of underground facilities at the work site; and

61 (G) To provide such support for underground facilities in the location of the work site,  
62 including during backfilling operations, as may be reasonably necessary for the protection of the  
63 facilities. Temporary support and backfill shall provide support for the facilities at least equivalent  
64 to the previously existing support.

65 (b) If any underground facility is damaged by a person who has failed to comply with any  
66 provision of this section, that person is liable to the operator of the underground facility for the  
67 total cost to repair the damage in an amount equal to that as is normally computed by the operator,  
68 provided that the operator:

69 (1) Is a member of the one-call system covering the area in which the damage to the  
70 facility takes place; and

71 (2) Upon receiving the proper notice in accordance with this article, has complied with the  
72 provisions of §24C-1-3 of this code: *Provided*, That a member is not barred from recovering costs  
73 solely for his or her own failure to comply with §24C-1-3(d)(1) of said code, but shall have his or  
74 her right to recover, if any, determined by common law, if the conditions of subsection (f) of the  
75 section are met.

76 (3) The liability of the person for the damage is not limited by reason of this article.

77 (c) If any excavation or demolition causes damage to any underground facilities owned by  
78 an operator who is not required to be a member of a one-call system and who is not a member of  
79 such a system at the time of damage, the liability of the person causing damage shall be  
80 determined solely by applicable principles of common law.

81 (d) If any excavation or demolition causes damage to any other person or property, the  
82 liability of the person causing damage shall be determined solely by applicable principles of

83 common law.

84 (e) Any person who fails to notify the one-call system prior to performing any excavation  
85 or demolition, or fails to follow the reporting provisions of this section, or who violates any other  
86 provision of this section, shall be guilty of a misdemeanor and, upon conviction thereof, shall be  
87 fined not more than \$5,000.

88 (f) Nothing in this chapter may be construed to restrict or expand the rights, duties and  
89 liabilities provided in common law or by other provisions of this code of an operator who is not  
90 required to be a member of a one-call system and who is not a member of such a system.

**§24C-1-7. Exceptions during emergencies Standard color code for temporary markings.**

1 ~~(a) Compliance with the notification requirements of section five of this article is not~~  
2 ~~required of any person engaging in excavation or demolition in the event of an emergency:~~  
3 ~~Provided, That the person gives oral notification of the emergency work as soon as reasonably~~  
4 ~~practicable to the one-call system.~~

5 ~~(b) During any emergency, excavation or demolition may begin immediately: Provided,~~  
6 ~~That reasonable precautions are taken to protect underground facilities: Provided, however, That~~  
7 ~~such precautions may not serve to relieve the excavator from liability for damage to underground~~  
8 ~~facilities. The one-call system shall accept all emergency notifications and shall provide~~  
9 ~~immediate notice to the affected members and indicate the emergency nature of the notice.~~

1 Temporary marking provided by operators and excavators to indicate the approximate  
2 location of underground facilities and work site boundaries shall utilize the following color code:

3 Facility Type Identifying Color or Equivalent

4 (a) WHITE - Proposed Excavation

5 (b) PINK - Temporary Survey Markings

6 (c) RED - Electric Power Lines, Cables, Conduit, and Lighting Cables

7 (d) YELLOW - Gas, Oil, Steam, Petroleum, or Gaseous Materials

8 (e) ORANGE - Communication, Alarm or Signal Lines, Cables, or Conduit

9 (f) BLUE - Potable Water

10 (g) PURPLE - Reclaimed Water, Irrigation, and Slurry Lines

11 (h) GREEN – Sewers and Drain Lines

**§24C-1-8. Construction; sovereign immunity Exceptions during emergencies.**

1 ~~(a) This article shall be liberally construed so as to effectuate the public policy set forth in~~  
2 ~~section one of this article.~~

3 ~~(b) Nothing in this article may be construed as imposing liability upon a state agency from~~  
4 ~~which the agency is otherwise immune~~

5 (a) Compliance with the notification requirements of §24C-1-6 of this code is not required  
6 of any person engaging in excavation or demolition in the event of an emergency: *Provided, That*  
7 the person gives oral notification of the emergency work as soon as reasonably practicable to the  
8 one-call system.

9 (b) During any emergency, excavation or demolition may begin immediately: *Provided,*  
10 That reasonable precautions are taken to protect underground facilities: *Provided, however, That*  
11 such precautions may not serve to relieve the excavator from liability for damage to underground  
12 facilities. The one-call system shall accept all emergency notifications and shall provide  
13 immediate notice to the affected members and indicate the emergency nature of the notice.

14 (c) Repair or replacement of an existing traffic control device at the existing location and  
15 existing depth shall be considered an emergency, and compliance with the notice requirements  
16 of this section shall not be required of any local or state government responding to the emergency  
17 repair or replacement of a traffic control device.

**§24C-1-9. Construction; sovereign immunity.**

1 (a) This article shall be liberally construed to effectuate the public policy set forth in §24C-  
2 1-1 of this code.

3 (b) Nothing in this article may be construed as imposing liability upon a state agency from  
4 which the agency is otherwise immune.



**§24C-1-10. Civil Enforcement.**

1           (a) Any person who violates this chapter by failure to notify the One Call System, or the  
2 rules promulgated by this chapter, shall be subject to civil penalty as follows:

3           (1) For a first violation, the violator shall complete a course of training concerning  
4 compliance with this chapter as determined by the Underground Facilities Damage Prevention  
5 Board:

6           (2) For a second violation occurring within a five-year period, the violator shall complete a  
7 course of training concerning compliance with this chapter as determined by the Underground  
8 Facilities Damage Prevention Board and or pay a civil penalty in an amount set by the  
9 Underground Facilities Damage Prevention Board, not to exceed \$500 per incident, or both; and

10           (3) For a third or subsequent violation occurring within a five-year period, the violator shall  
11 pay a civil penalty in an amount set by the executive committee, not to exceed \$2,500 per incident;  
12 and

13           (4) Notwithstanding this section, if any violation was the result of gross negligence or willful  
14 or wanton misconduct as determined by the board, the board shall require the violator to complete  
15 a course of training concerning compliance with this chapter as determined by the Underground  
16 Facilities Damage Prevention Board and pay a civil penalty not to exceed \$5,000 per incident.

17           (b) Any person who is required to complete a course of training under this section shall be  
18 responsible for the cost of the training.

19           (c) Any excavator who violates by failure to notify the One Call System of the intended  
20 excavation or demolition may be required to cease work on any excavation, or not start a  
21 proposed excavation, until the excavator complies with this chapter.

22           (d) Nothing in this chapter shall limit any person's right to pursue any additional civil  
23 remedy otherwise allowed by law.

24           (e) (1) If the person to whom the citation is issued under this section does not pay the  
25 citation or submit to ordered training or both, within 30 days, the Underground Facilities Damage

26 Prevention Board shall appoint a hearing officer to conduct a hearing and issue an initial Order  
 27 pursuant to the State Administrative Procedures Act. The hearing shall be held at the time and  
 28 place set forth in the citation notice of hearing in the county where excavation referenced in the  
 29 citation occurred, unless otherwise agreed to by the person to whom the citation was issued.

30 (2) A person aggrieved by the final Order may, within 30 days, file a petition for judicial  
 31 review pursuant to §29A-1-1 et seq. of this code.

**§24C-1-11. Scope of Authority.**

1 Nothing in this chapter shall expand the jurisdiction of the Pipeline Safety Division or the  
 2 Public Service Commission in any way.

**§24C-1-12. Locatable all underground utilities.**

1 All underground facilities owned by an operator that are installed on or after July 1, 2018  
 2 shall be installed in a manner that will make those underground facilities locatable using a  
 3 generally accepted locating method.

NOTE: The purpose of this bill is to bring state law into compliance with federal pipeline safety regulations.

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