

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENGROSSED

House Bill 2736

By Delegates Linville, Hillenbrand, Parsons, Hite,

Bridges, Hornby, Kyle, and Eldridge

[Introduced February 21, 2025; referred to the

Committee on Energy and Public Works]

1 A BILL to amend and reenact §24C-1-2, §24C-1-2a, §24C-1-3, and §24C-1-9 of the Code of West
2 Virginia, 1931, as amended, relating generally to Underground Facilities Damage
3 prevention.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ONE-CALL SYSTEM.

§24C-1-2. Definitions.

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

2 "Board" or "Underground Facilities Damage Prevention Board" means the Underground
3 Facilities Damage Prevention Board created in this article.

4 "Commission" or "Public Service Commission" means the Public Service Commission of
5 West Virginia.

6 "Damage" means any impact or contact with or weakening of the support for, or the partial
7 or complete destruction of, an underground facility, its appurtenances, protective casing, coating,
8 or housing, which, according to the operation practices of the operator or state or federal
9 regulation, requires repair or replacement.

10 "Demolish" or "demolition" means any operation by which a structure or mass of material is
11 wrecked, razed, rendered, moved, or removed by means of any tools, equipment or discharge of
12 explosives which could damage underground facilities: *Provided*, That "demolish", and
13 "demolition" do not include earth-disturbing activities authorized pursuant to the provisions of §22-
14 3-1 *et seq.* or §22A-2-1 *et seq.* of this code.

15 "Emergency" means:

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

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

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

"Excavate" or "excavation" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosives, and includes, without limitation, boring, backfilling, grading, trenching, trenchless technology, digging, ditching, dredging, drilling, auguring, tunneling, moleing, scraping, cable or pipe plowing and driving, wrecking, razing, rendering, moving, or removing any structure or mass of material, but does not include underground or surface mining operations or related activities or the tilling of soil for agricultural purposes or for domestic gardening. Further, for purposes of this article, the terms "excavate", and "excavation" do not include routine maintenance of paved public roads or highways, where all work is confined to the traveled portion of the paved public way and does not exceed a depth greater than 12 inches measured from the top of the paved road surface.

"Excavator" means any person intending to engage or engaged in excavation or demolition work.

"Fund" or "Underground Damage Prevention Fund" means the fund created in §24C-1-2b of this code.

"Member" means a member of the one-call system as authorized by this article.

"One-call system" means a communication system that receives notification from excavators of intended excavation work and prepares and transmits such notification to operators of underground facilities in accordance with this article.

"Operator" means any person who operates an underground facility.

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

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

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

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

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

§24C-1-2a. Underground Facilities Damage Prevention Board.

(a) There is hereby created an Underground Facilities Damage Prevention Board for the purpose of enforcing this article.

(b) It is the intent of the Legislature that the board and its enforcement activities shall not be funded by appropriations from the state budget. All civil penalties imposed and collected by the board shall not revert to the General Fund but shall be retained for the exclusive use of the board pursuant to this article.

(c) The board shall have the power and authority to investigate damage to underground facilities caused by an excavator, make findings, assess penalties and require training in accordance with §24C-1-9, and to obtain liens on the real and personal property of those persons who have failed to pay penalties assessed by the board. The board may consult with the Public Service Commission as needed regarding investigation of damages to underground facilities under its jurisdiction. The commission shall collect from the board any expenses incurred during the consultation. The board shall furnish to the commission at least annually electronic copies of all reports of investigations and enforcement activities conducted by or on behalf of the board.

(d) The board shall be composed of 10 voting members who shall be appointed by the Governor to serve four-year terms in accordance with West Virginia law. The board shall be empowered to establish one or more subcommittees in performing its tasks. Appointments to the board shall be made as follows:

- (1) The President of Miss Utility of West Virginia or the president's designee;
- (2) One representative of the excavation, utility, or site construction industry;
- (3) One representative of the natural resource extraction industry;
- (4) The Executive Director of the West Virginia Municipal League or its designee;
- (5) The Executive Director of the West Virginia Rural Water Association or its designee;
- (6) One representative of the natural gas transmission or distribution or hazardous liquid industry;
- (7) One representative of the electric, cable, or communications industry;
- (8) One representative of the privately owned water and/or wastewater services industry;
- (9) One representative from the general public; and

(10) The Chairman of the Public Service Commission or the chairman's designee.

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

(f) Six members of the board shall constitute a quorum, and a majority vote of those present and voting at any one meeting shall be necessary to transact business.

(g) In the absence of willful misconduct, the members of the board shall be immune, individually and jointly, from civil liability for any act or omission done or made in the performance of their duties while serving as members of the board.

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

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

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

(a) Each operator of an underground facility in this state shall be a member of a one-call system for the area in which the underground facility is located.

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

(1) The name of the member;

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

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

(c) Each member shall revise in writing the information required by §24C-1-3(b) of this code as soon as reasonably practicable, but not to exceed 180 days, after any change.

~~(d) Within 48 hours, excluding Saturdays, Sundays, and legal federal or state holidays, after receipt of a~~ After the one-call system receives notification by the one-call system from an excavator of a specific area where excavation or demolition will be performed, the one-call system shall notify the operator operators of underground facilities who shall do the following within 48 hours, excluding Saturdays, Sundays, and legal federal or state holidays (such 48 hour period beginning at 12:00 a.m. of the day following receipt of the notification by the one call system):

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

~~(2) Use~~ The color code prescribed in §24C-1-6 of this code when providing temporary marking of the approximate location of underground facilities; ~~and~~ or

~~(3) (2)~~ Notify the excavator that the operator did not leave a temporary marking of the location of underground facilities because there are no lines in the area of the proposed excavation or demolition.

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

(f) Notwithstanding the provisions of §24C-1-3(e) of this code, a member is not barred from recovery under §24C-1-3(e) of this code for failure to comply with §24C-1-3(d)(1) of this code, but shall have his or her right to recover, if any, determined by common law, if the operator responded

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

§24C-1-9. Civil enforcement.

(a) Any person who violates this article by failure to notify the one-call system, or who violates the rules proposed or promulgated under this article, shall be subject to civil penalty as follows:

(1) For a first violation, the violator shall complete a course of training concerning compliance with this article as determined by the board;

(2) For a second violation occurring within a five-year period, the violator shall complete a course of training concerning compliance with this article as determined by the board or pay a civil penalty in an amount set by the board, not to exceed \$500 per incident, or both;

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

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

(b) Any person who is required to complete a course of training under this section shall be responsible for the cost of the training. As used in this section, "course of training" means training developed by or under the direction of the board.

(c) Any excavator who violates this article by failing to notify the one-call system of the intended excavation or demolition may be required to cease work on any excavation, or not start a proposed excavation, until the excavator complies with this article.

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

(e)(1) If the person to whom the citation is issued under this section does not pay the citation or submit to training as ordered or both, within 30 days, the board shall appoint a hearing officer to conduct a hearing and issue an initial order pursuant to the State Administrative Procedures Act. The hearing shall be held at the time and place set forth in the citation notice of hearing in the county where excavation referenced in the citation occurred, or in Kanawha County, at the board's discretion, unless otherwise agreed to by the person to whom the citation was issued.

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