

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

Senate Bill 426

By Senators Morris and Hamilton

[Reported February 10, 2026, from the Committee on
Energy, Industry, and Mining]

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 to preventing damage to underground facilities;
3 allowing the Underground Facilities Damage Prevention Board to obtain liens on real and
4 personal property for failure to pay assessed penalties; modifying the time period in which
5 operators must respond to one-call system notifications; and providing alternate venue
6 choice for certain administrative hearings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ONE-CALL SYSTEM.

§24C-1-2. Definitions.

1 As used in this article, the following words and phrases have the meanings ascribed to
2 them unless the context clearly requires a different meaning.

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

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

7 "Course of training" means instruction designed to teach compliance with this article that is
8 developed by or under the direction of the board.

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

13 "Demolish" or "demolition" means any operation by which a structure or mass of material is
14 wrecked, razed, rendered, moved, or removed by means of any tools, equipment, or discharge of
15 explosives which could damage underground facilities. ~~Provided, That~~ Demolish and demolition
16 do not include earth-disturbing activities authorized pursuant to the provisions of §22-3-1 *et seq.* or
17 §22A-2-1 *et seq.* of this code.

18 "Emergency" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (e) Appointments to the board ~~shall be~~ are made as follows:

- 20 (1) The President of Miss Utility of West Virginia or the president's designee;
21 (2) One representative of the excavation, utility, or site construction industry;
22 (3) One representative of the natural resource extraction industry;
23 (4) The Executive Director of the West Virginia Municipal League or its designee;

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

25 (6) One representative of the natural gas transmission or distribution or hazardous liquid
26 industry;

27 (7) One representative of the electric, cable, or communications industry;

28 (8) One representative of the privately owned water and/or wastewater services industry;

29 (9) One representative from the general public; and

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

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

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

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

40 ~~(h)-(i)~~ Members of the board ~~shall~~ serve without compensation and without reimbursement
41 for expenses. ~~Nothing contained in this section shall be construed to~~ This section does not prevent
42 any sponsoring organization ~~for~~ from compensating its representative on the board for salary,
43 expenses, or other compensation considered as a condition for their employment.

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

**§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 shall be a member of a one-call
2 system for the area in which the underground facility is located.

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

5 (1) The name of the member;

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

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

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

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

20 (1) Respond to ~~such~~ the notification by providing to the excavator:

21 (A) The approximate location, within two feet horizontally from the outside walls of ~~such~~ the
22 facilities; and

23 (B) The type of underground facilities at the site, using ~~(2)~~ Use the color code prescribed in
24 §24C-1-6 of this code when providing temporary marking of the approximate location of
25 underground facilities; ~~and~~ or

26 ~~(3)~~ (2) Notify the excavator that the operator did not leave a temporary marking of the
27 location of underground facilities because there are no lines in the area of the proposed
28 excavation or demolition.

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

34 (f) ~~Notwithstanding the provisions of §24C-1-3(e) of this code a member~~ An operator is not
35 barred from recovery ~~under §24C-1-3(e) of this code~~ pursuant to subsection (e) of this section for
36 failure to comply with ~~§24C-1-3(d)(1) of this code~~ subsection (d) of this section, but shall have his
37 or her right to recover, if any, determined by common law, if the operator responded to the one-call
38 notification in a timely manner, but was unable to accurately locate lines because ~~such~~ the lines
39 were nonmetallic and had no locating wire or other marker.

§24C-1-9. Civil enforcement.

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

4 (1) For a first violation, the violator shall complete a course of training ~~concerning~~
5 ~~compliance with this article~~ as determined by the 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 article~~ as determined by the board or pay a civil
8 penalty in an amount set by the board, not to exceed \$500 per incident, or both training and
9 payment;

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 board, not to exceed \$2,500 per incident; and

12 (4) ~~Notwithstanding this section~~ If any violation was the result of gross negligence or willful
13 or wanton misconduct as determined by the board, the board shall require the violator to complete

14 a course of training ~~concerning compliance with this article~~ as determined by the board and pay a
15 civil penalty not to exceed \$5,000 per incident.

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

19 (c) Any excavator who violates this article by failing to notify the one-call system of the
20 intended 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 article.

22 (d) ~~Nothing in this article shall~~ The provisions of this article do not limit any person's right to
23 pursue any additional civil remedy otherwise allowed by law.

24 (e)~~(1)~~ If the person to whom ~~the~~ a citation is issued under this section does not pay the
25 citation, ~~or submit to~~ complete training as ordered, or both, within 30 days, the board shall appoint
26 a hearing officer to conduct a hearing and issue an initial order pursuant to the State
27 Administrative Procedures Act.

28 (1) The hearing shall be held at the time and place set forth in the citation notice of hearing
29 in the county where excavation referenced in the citation occurred, or in Kanawha County, at the
30 board's discretion, unless otherwise agreed to by the person to whom the citation was issued.

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