

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Enrolled

Senate Bill 631

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2018 MAR 27 A 10:08

FILED

BY SENATORS BLAIR, ARVON, BOLEY, BOSO, DRENNAN,

FACEMIRE, GAUNCH, MANN, MARONEY, PALUMBO,

PLYMALE, PREZIOSO, STOLLINGS, SYPOLT, TAKUBO, AND

UNGER

[Passed March 7, 2018; in effect 90 days from passage]

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AN ACT to amend and reenact §24C-1-2, §24C-1-3, §24C-1-6, and §24C-1-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated §24C-1-2a, §24C-1-2b, §24C-1-9, §24C-1-10, and §24C-1-11, all relating to the one-call system; adding and modifying definitions; creating Underground Damage Prevention Fund; creating Underground Facilities Damage Prevention Board; specifying authority, responsibilities, membership, and liability of board; requiring reports by board; authorizing actions by Public Service Commission; expanding required membership of one-call system; authorizing cost apportionment and collection from operators; modifying standard color code for temporary markings; exempting local or state government responding to emergency repair or replacement of traffic control device from notice requirements; requiring underground facilities be locatable; and providing for civil enforcement, including citations, orders, hearings, monetary civil penalties, and mandatory training.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. ONE-CALL SYSTEM.

§24C-1-2. Definitions.

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

“Board” or “Underground Facilities Damage Prevention Board” means the Underground Facilities Damage Prevention Board created in this article.

“Commission” or “Public Service Commission” means the Public Service Commission of West Virginia.

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

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

“Emergency” means:

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

(2) A condition that requires immediate correction to assure the safety of the general public and 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 by employees of state, county, or municipal entities or authorities which:

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

(2) Do not excavate to a depth greater than 12 inches measured from the top of the paved road surface.

36 “Excavator” means any person intending to engage or engaged in excavation or
37 demolition work.

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

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

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

44 “Operator” means any person who operates an underground facility.

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

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

50 “Underground facility” means any underground pipeline facility owned by a utility and
51 regulated by the Public Service Commission, which is used in the transportation or distribution of
52 gas, oil, or a hazardous liquid; any underground pipeline facility, owned by a company subject to
53 the jurisdiction of the federal energy regulatory commission, which is used in the gathering,
54 transportation, or distribution of gas, oil, or a hazardous liquid; any underground production or
55 gathering pipeline for gas, oil, or any hazardous substance with a nominal inside diameter in
56 excess of four inches and that is not otherwise subject to one-call reporting requirements under
57 federal or state law; any underground facility used as a water main, storm sewer, sanitary sewer,
58 or steam line; any underground facility used for electrical power transmission or distribution; any
59 underground cable, conductor, waveguide, glass fiber, or facility used to transport
60 telecommunications, optical, radio, telemetry, television, or other similar transmissions; and any
61 facility used in connection with any of the foregoing facilities on a bridge, a pole or other span, or

62 on the surface of the ground, any appurtenance, device, cathodic protection system, conduit,
63 protective casing, or housing used in connection with any of the foregoing facilities: *Provided*,
64 That “underground facility” does not include underground or surface coal mine operations.

65 “Workday” means any day except Saturday, Sunday, or a federal or state legal holiday.

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

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

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

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

7 (c) The board shall have the power and authority to investigate damage to underground
8 facilities caused by an excavator. The board may consult with the Public Service Commission as
9 needed regarding investigation of damages to underground facilities under its jurisdiction. The
10 commission shall collect from the board any expenses incurred during the consultation. The board
11 shall furnish to the commission at least annually electronic copies of all reports of investigations
12 and enforcement activities conducted by or on behalf of the board.

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

17 (1) The President of Miss Utility of West Virginia or the president’s designee;

18 (2) One representative of the excavation, utility, or site construction industry;

19 (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-1-2b. Underground Damage Prevention Fund.

- (a) There is hereby created an Underground Damage Prevention Fund to be administered and used by the Underground Damage Facilities Prevention Board for the purpose of carrying out

its duties under this article. All sources of funds collected by the board under this article, including, but not limited to, grants, assessments, and civil penalties collected pursuant to this article, shall be deposited into the fund. Any moneys remaining in the fund at the end of the fiscal year shall not revert to the General Fund, but shall remain in the fund for the exclusive use of the board. The expenditure of moneys in the fund shall be at the discretion of the board to carry out its duties under this article. Excess funds shall be used for purposes related to damage prevention, including, but not limited to, public awareness programs, training, and educational programs for excavators, operators, line locators, and persons to reduce the number and severity of violations of this article.

(b) The Public Service Commission or the board, or both, may apply for available grants, including those awarded by the United States Department of Transportation's Pipeline and Hazardous Materials and Safety Administration. The board shall comply with any restrictions placed on any grant received from a government agency. Grants may be used to fund the cost of services associated with this article or for the purposes stated in each grant.

(c) In the event that the annual cost of services associated with this article exceed the funds available in the fund, the annual operating costs shall be apportioned in a proportional manner and collected by the one-call system from the operators in an amount equal to the amount necessary to offset the cost of investigative and administrative services. Under no circumstances shall any operating costs or liabilities of the board be ultimately deducted or paid from Public Service Commission special revenue funds.

§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 notification by the one-call system from an excavator of a specific area where excavation or demolition will be performed, the operator of underground facilities shall:

(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;

(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

(3) 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-1-6. Standard color code for temporary markings.

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

(1) WHITE: Proposed excavation.

(2) PINK: Temporary survey markings.

(3) RED: Electric power lines, cables, conduit, and lighting cables.

(4) YELLOW: Gas, oil, steam, petroleum, or gaseous materials.

(5) ORANGE: Communication, alarm or signal lines, cables, or conduit.

(6) BLUE: Potable water.

(7) PURPLE: Reclaimed water, irrigation, or slurry lines.

(8) GREEN: Sewer or drain lines.

§24C-1-7. Exceptions during emergencies.

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

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

(c) Repair or replacement of an existing traffic control device at the existing location and existing depth shall be considered an emergency, and compliance with the notice requirements

of this section shall not be required of any local or state government responding to the emergency repair or replacement of a traffic control device.

§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, 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 pursuant to §29A-1-1 *et seq.* of this code.

§24C-1-10. Scope of authority.

Nothing in this article shall restrict or expand the jurisdiction of the Public Service Commission.

§24C-1-11. Underground utilities to be locatable.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

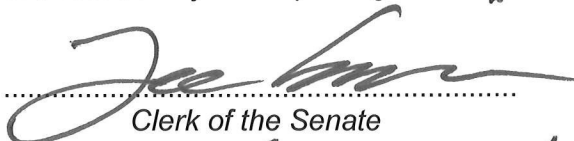

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Member—Chairman, Senate Committee


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Chairman, House Committee


FILED
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Originated in the Senate.

In effect 90 days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker of the House of Delegates

The within is approved this the 27th
Day of March 2018.


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Governor

PRESENTED TO THE GOVERNOR

MAR 20 2018

Time 3:03 pm