

H. B. 3010

(By Delegates Fleischauer, Moye, Skinner, Manchin, Pethtel, Ferro
Lynch, Cooper and Butler)

[Introduced February 24, 2015; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §24C-1-2 and §24C-1-3 of the Code of West Virginia, 1931, as amended, all relating to the one-call system; modifying definitions; excluding 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; and allowing an owner/operator of an underground 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:

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

ARTICLE 1. ONE-CALL SYSTEM.

§24C-1-2. Definitions.

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

(a) "Damage" means any impact or contact with or weakening of the support for an underground facility, its appurtenances, protective casing, coating or housing, which, according to

1 the operation practices of the operator or state or federal regulation, requires repair.

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

7 (c) "Emergency" means:

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

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

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

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

1 ~~or municipal entities or authorities which~~ such as:

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

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

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

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

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

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

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

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

19 (l) (1) "Underground facility" means any underground pipeline facility, owned by a utility
20 and regulated by the Public Service Commission, which is used in the transportation or distribution
21 of gas, oil or a hazardous liquid; any underground pipeline facility ~~owned by a company subject to~~
22 ~~the jurisdiction of the federal energy regulatory commission, which is used in the gathering,~~

1 ~~transportation or distribution of gas, oil or a hazardous liquid; that is regulated and defined in~~
 2 ~~regulations promulgated after January 1, 2006, by the United States Department of Transportation~~
 3 ~~pursuant to the Pipeline Safety Act of 1992 (Public Law 102-508, 49 U.S.C. § 60101 et seq.), if the~~
 4 ~~regulated gathering line is subject to the damage prevention program requirements of 49 CFR~~
 5 ~~§ 192.614; any underground facility used as a water main, storm sewer, sanitary sewer or steam line;~~
 6 any underground facility used for electrical power transmission or distribution; any underground
 7 cable, conductor, waveguide, glass fiber or facility used to transport telecommunications, optical,
 8 radio, telemetry, television, or other similar transmissions; and any facility used in connection with
 9 any of the foregoing facilities on a bridge, a pole or other span, or on the surface of the ground, any
 10 appurtenance, device, cathodic protection system, conduit, protective casing or housing used in
 11 connection with any of the foregoing facilities. ~~Provided, That~~

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

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

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

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

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

19 **§24C-1-3. Duties and responsibilities of operators of underground facilities; failure of**
 20 **operator to comply.**

21 (a) Each operator of an underground facility in this state ~~except any privately owned public~~
 22 ~~water utility regulated by the Public Service Commission, any state agency, any municipality or~~

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

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

10 (1) The name of the member;

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

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

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

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

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

1 facilities at the site; and

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

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

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

11 (f) Notwithstanding the provisions of subsection (e) of this section, a member is not barred
12 from recovery under said subsection for failure to comply with subdivision (1), subsection (d) of this
13 section, but shall have his or her right to recover, if any, determined by common law, if the operator
14 responded to one-call notification in a timely manner, but was unable to accurately locate lines
15 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.

