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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

HOUSE BILL No. 4795

(By Delegate Browning & Stator)



Passed March 9, 1996

In Effect 90 Days From Passage

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OFFICE OF THE CLERK
LEGISLATIVE DEPARTMENT

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4795
(BY DELEGATES BROWNING AND STATON)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter twenty-four-c, relating to underground facilities damage prevention; authorization of a one-call system to enhance citizen safety and protect underground facilities from damage due to excavation or demolition; definitions; excepting activities authorized under code sections relating to surface coal mining and reclamation and underground mining from application of article; duties and responsibilities of operators of underground facilities; same, failure to comply; exempting privately owned water utilities and state and local government from mandatory membership in one-call system; authorizing voluntary membership in one-call system by those entities otherwise excepted from mandatory membership; recovery of costs associated with damage of underground facilities; certification of one-call systems by public service commission; same, qualifications therefor; responsibilities of one-call systems; duties and responsibilities of excavators; same, failure to comply; same, liability for costs for damage to underground facilities; standard color code for temporary markings; exceptions to article during emergencies; same, requirements imposed upon excavators and one-call systems; article to be construed liberally; and no additional liability imposed by article where state or local agency is otherwise immune.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new chapter, designated chapter twenty-four-c, to read as follows:

**CHAPTER 24C. UNDERGROUND FACILITIES
DAMAGE PREVENTION.**

ARTICLE 1. ONE-CALL SYSTEM.

§24C-1-1. Purpose.

1 It is hereby declared to be the purpose and policy of
2 the Legislature in enacting this article to enhance the safe-
3 ty of the citizens of this state and to provide increased
4 protection to underground facilities from damage due to
5 excavation or demolition by providing for the operation
6 of a one-call system for use by operators of underground
7 facilities and by persons engaged in excavation or demoli-
8 tion in the vicinity of underground facilities.

§24C-1-2. Definitions.

1 As used in this chapter, unless the context clearly re-
2 quires a different meaning:

3 (a) "Damage" means any impact or contact with or
4 weakening of the support for an underground facility, its
5 appurtenances, protective casing, coating or housing,
6 which, according to the operation practices of the operator
7 or state or federal regulation, requires repair.

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

17 (c) "Emergency" means:

18 (1) A condition constituting a clear and present dan-
19 ger to life, health or property by reason of escaping toxic,

20 corrosive or explosive product, oil or oil-gas or natural gas
21 hydrocarbon product, exposed wires or other breaks or
22 defects in an underground facility; or

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

26 (d) "Equipment operator" means any individual in
27 physical control of powered equipment or explosives
28 when being used to perform excavation work or demoli-
29 tion work.

30 (e) "Excavate" or "excavation" means any operation in
31 which earth, rock or other material in the ground is
32 moved, removed or otherwise displaced by means of any
33 tools, equipment or explosives, and includes, without limi-
34 tation, grading, trenching, digging, ditching, dredging,
35 drilling, auguring, tunnelling, moleing, scraping, cable or
36 pipe plowing and driving, wrecking, razing, rendering,
37 moving or removing any structure or mass of material, but
38 does not include underground or surface mining opera-
39 tions or related activities or the tilling of soil for agricul-
40 tural purposes or for domestic gardening. Further, for
41 purposes of this article, the terms "excavate" and "excava-
42 tion" do not include routine maintenance of paved public
43 roads or highways by employees of state, county or mu-
44 nicipal entities or authorities which:

45 (1) Perform all work within the confines of the trav-
46 eled portion of the paved public way; and

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

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

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

53 (h) "One-call system" means a communication system
54 that receives notification from excavators of intended
55 excavation work and prepares and transmits such notifica-
56 tion to operators of underground facilities in accordance
57 with this article.

58 (i) "Operator" means any person who owns or operates
59 an underground facility used in the providing or transmis-
60 sion of any of the goods or services described in subsec-
61 tion (1) of this section.

62 (j) "Person" means any individual, firm, joint venture,
63 partnership, corporation, association, state agency, county,
64 municipality, cooperative association or joint stock associ-
65 ation, and any trustee, receiver, assignee, agency or per-
66 sonal representative thereof.

67 (k) "Powered equipment" means any equipment ener-
68 gized by an engine, motor or hydraulic, pneumatic or
69 electrical device and used in excavation or demolition
70 work.

71 (l) "Underground facility" means any underground
72 pipeline facility, owned by a utility and regulated by the
73 public service commission, which is used in the transporta-
74 tion or distribution of gas, oil or a hazardous liquid; any
75 underground pipeline facility, owned by a company sub-
76 ject to the jurisdiction of the Federal Energy Regulatory
77 Commission, which is used in the gathering, transportation
78 or distribution of gas, oil or a hazardous liquid; any un-
79 derground facility used as a water main, storm sewer, sani-
80 tary sewer or steam line; any underground facility used
81 for electrical power transmission or distribution; any un-
82 derground cable, conductor, waveguide, glass fiber or
83 facility used to transport telecommunications, optical,
84 radio, telemetry, television, or other similar transmissions;
85 and any facility used in connection with any of the fore-
86 going facilities on a bridge, a pole or other span, or on the
87 surface of the ground, any appurtenance, device, cathodic
88 protection system, conduit, protective casing or housing
89 used in connection with any of the foregoing facilities:
90 *Provided*, That "underground facility" does not include
91 underground or surface coal mine operations.

92 (m) "Workday" means any day except Saturday, Sun-
93 day or a federal or state legal holiday.

94 (n) "Work site" means the location of excavation or
95 demolition work as described by an excavator, operator, or
96 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
2 state, except any privately owned public water utility regu-
3 lated by the public service commission, any state agency,
4 any municipality or county, or any municipal or county
5 agency, shall be a member of a one-call system for the
6 area in which the underground facility is located. Private-
7 ly owned public water utilities regulated by the public
8 service commission, state agencies, municipalities and
9 counties and municipal and county agencies may be vol-
10 untary members of such a one-call system.

11 (b) Each member shall provide the following informa-
12 tion to the one-call system on forms developed and pro-
13 vided for that purpose by the one-call system:

14 (1) The name of the member;

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

17 (3) The member's office address and telephone num-
18 ber to which inquiries may be directed as to the locations
19 of the operator's underground facilities.

20 (c) Each member shall revise in writing the informa-
21 tion required by subsection (b) of this section as soon as
22 reasonably practicable, but not to exceed one hundred
23 eighty days, after any change.

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

29 (1) Respond to such notification by providing to the
30 excavator the approximate location, within two feet hori-
31 zontally from the outside walls of such facilities, and type
32 of underground facilities at the site; and

33 (2) Use the color code prescribed in section six of this
34 article when providing temporary marking of the approxi-
35 mate location of underground facilities.

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

43 (f) Notwithstanding the provisions of subsection (e) of
44 this section, such a member is not barred from recovery
45 under subsection (e) for failure to comply with subdivi-
46 sion (1), subsection (d) of this section, but shall have his or
47 her right to recover, if any determined by common law, if
48 the operator responded to one-call notification in a timely
49 manner, but was unable to accurately locate lines because
50 such lines were nonmetallic and had no locating wire or
51 other marker.

**§24C-1-4. Qualifications for certification and responsibilities
of a one-call system.**

1 (a) In order to qualify for certification as a one-call
2 system under the provisions of this article, a one-call sys-
3 tem shall be operated on a not-for-profit basis but may be
4 operated by any one or more of the following:

5 (1) A person who operates underground facilities;

6 (2) A private contractor;

7 (3) A state or local government agency; or

8 (4) A person who is otherwise eligible under state or
9 federal law to operate a one-call system

10 (b) A one-call system which complies with the require-
11 ments set forth in subsection (a) of this section shall be
12 certified by the public service commission for the area in
13 which it will conduct operations prior to commencing
14 such operations: *Provided*, That any one-call system in
15 operation prior to the first day of January, one thousand
16 nine hundred ninety-six, may not be required to be so
17 certified. The public service commission shall certify a
18 one-call system where the public interest so requires and
19 when such system complies with the provisions of this
20 article.

21 (c) A one-call system operating under the provisions
22 of this article shall:

23 (1) Receive and record information from excavators
24 about intended excavation or demolition activities;

25 (2) Promptly transmit to its affected members the
26 information received from excavators about intended
27 excavation or demolition;

28 (3) Maintain a record of each notice of intent to en-
29 gage in excavation or demolition, provided pursuant to the
30 requirements of section five of this article;

31 (4) Upon receipt of notification of intended excava-
32 tion or demolition from an excavator, inform the person
33 making such notification of the names of all members
34 having underground facilities in the vicinity of the intend-
35 ed work site; and

36 (5) Assign a serial number for each notification re-
37 ceived from an excavator and provide that serial number
38 to both the excavator and affected members.

39 (d) The operator of a one-call system as defined here-
40 in shall establish, within two years of the effective date of
41 this article, a service facility above ground to receive calls,
42 dispense information and otherwise comply with the pro-
43 visions of this article.

**§24C-1-5. Duties and responsibilities of excavators; failure of
excavator to comply.**

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

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

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

10 (B) Company name;

11 (C) Telephone number;

12 (D) Company address;

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

16 (F) Work to be performed;

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

18 (H) Name and telephone number of individual to
19 contact; and

20 (I) Starting date and time.

21 (2) Notify the one-call system not less than
22 twenty-four hours, excluding Saturdays, Sundays and
23 federal or state holidays, in advance of any change in the
24 starting date or time of the intended work; and

25 (3) Instruct each such equipment operator involved in
26 the intended work:

27 (A) To perform all excavation or demolition work in
28 such a manner as to avoid damage to underground facili-
29 ties in the vicinity of the intended work site, including
30 hand digging, when necessary;

31 (B) To report immediately any break or leak in under-
32 ground facilities, or any dent, gouge, groove or other
33 damage to such facilities, made or discovered in the course
34 of the excavation or demolition, and to allow the operator
35 a reasonable time to accomplish necessary repairs before
36 continuing the excavation or demolition in the immediate
37 area of such facilities;

38 (C) To immediately alert the public at or near the
39 work site as to any emergency created or discovered at or
40 near such work site;

41 (D) To maintain a clearance between each under-
42 ground facility and the cutting edge or point of any pow-
43 ered equipment, taking into account the known limit of
44 control of such cutting edge or point, as may be reason-
45 ably necessary for the protection of such facility;

46 (E) To protect and preserve markers, stakes and other
47 designations identifying the location of underground

48 facilities at the work site; and

49 (F) To provide such support for underground facilities
50 in the location of the work site, including during
51 backfilling operations, as may be reasonably necessary for
52 the protection of such facilities. Temporary support and
53 backfill shall provide support for such facilities at least
54 equivalent to the previously existing support.

55 (b) If any underground facility is damaged by a per-
56 son who has failed to comply with any provision of this
57 section, that person is liable to the operator of the under-
58 ground facility for the total cost to repair the damage in
59 an amount equal to that as is normally computed by the
60 operator, provided that the operator:

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

63 (2) Upon receiving the proper notice in accordance
64 with this article, has complied with the provisions of sec-
65 tion three of this article: *Provided*, That a member is not
66 barred from recovering costs solely for its own failure to
67 comply with subdivision (1), subsection (d) of said section
68 three, but shall have his or her right to recover, if any,
69 determined by common law, if the conditions of subsec-
70 tion (f) of said section three are met.

71 The liability of such person for such damage is not
72 limited by reason of this article.

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

80 (d) Nothing in this chapter may be construed to re-
81 strict or expand the rights, duties and liabilities provided in
82 common law or by other provisions of this code of an
83 operator who is not required to be a member of a one-call
84 system and who is not a member of such a system.

§24C-1-6. Standard color code for temporary markings.

1 Temporary marking provided by operators and exca-
2 vators to indicate the approximate location of under-
3 ground facilities and work site boundaries shall utilize the
4 following color code:

5	Facility Type	Identifying Color or Equivalent
6	(a) Electrical power	Safety Red
7	distribution and	
8	transmission	
9	(b) Municipal electric	Safety Red
10	systems	
11	(c) Gas distribution and	High Visibility Safety Yellow
12	transmission	
13	(d) Oil and petroleum	High Visibility Safety Yellow
14	transmission	
15	(e) Dangerous materials,	High Visibility Safety Yellow
16	product lines, steam	
17	lines	
18	(f) Telephone and	Safety Alert Orange
19	telegraph systems	
20	(g) Police and fire	Safety Alert Orange
21	communications	
22	(h) Cable television	Safety Alert Orange
23	(i) Water systems	Safety Precaution Blue
24	(j) Slurry systems	Safety Precaution Blue
25	(k) Sewer systems	Safety Green
26	(l) Proposed excavations	White

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

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

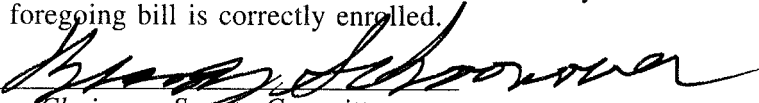
7 (b) During any emergency, excavation or demolition
8 may begin immediately: *Provided*, That reasonable pre-
9 cautions are taken to protect underground facilities: *Pro-*
10 *vided, however*, That such precautions may not serve to
11 relieve the excavator from liability for damage to under-
12 ground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

§24C-1-8. Construction; sovereign immunity.

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

4 (b) Nothing in this article may be construed as impos-
5 ing liability upon a state agency from which the agency is
6 otherwise immune.

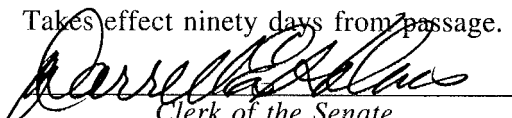
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

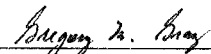

Chairman Senate Committee

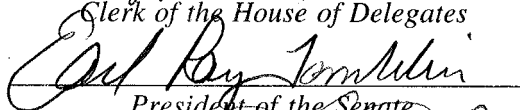

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

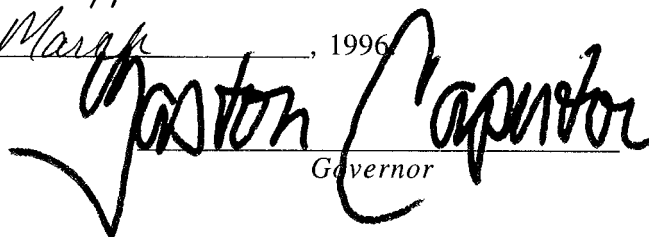

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 28th
day of March, 1996


Governor

PRESENTED TO THE

GOVERNOR

Date

3/27/96

Time

3:00 pm