WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

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ENROLLED

HOUSE BILL No. 4795

(By Delegate Browning & Staton)

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Passed March 9, 1996

In Effect 90 Days From Passage
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.

It is hereby declared to be the purpose and policy of the Legislature in enacting this article to enhance the safety of the citizens of this state and to provide increased protection to underground facilities from damage due to excavation or demolition by providing for the operation of a one-call system for use by operators of underground facilities and by persons engaged in excavation or demolition in the vicinity of underground facilities.

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

(b) "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 article three, chapter twenty-two of this code or article two, chapter twenty-two-a of this code.

(c) "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 continuity of service provided by or through an
underground facility.

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

(e) "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 limi-
tation, grading, trenching, digging, ditching, dredging,
drilling, auguring, tunnelling, 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 opera-
tions or related activities or the tilling of soil for agricul-
tural purposes or for domestic gardening. Further, for
purposes of this article, the terms "excavate" and "excava-
tion" do not include routine maintenance of paved public
roads or highways by employees of state, county or mu-
icipal entities or authorities which:

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

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

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

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

(h) "One-call system" means a communication system
that receives notification from excavators of intended
evacation work and prepares and transmits such notifica-
tion to operators of underground facilities in accordance
with this article.
(i) "Operator" means any person who owns or operates an underground facility used in the providing or transmission of any of the goods or services described in subsection (1) of this section.

(j) "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.

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

(l) "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 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.

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

(n) "Work site" means the location of excavation or demolition work as described by an excavator, operator, or person or persons performing the work.
§24C-1-3. Duties and responsibilities of operators of underground facilities; failure of operator to comply.

(a) Each operator of an underground facility in this state, except any privately owned public water utility regulated by the public service commission, any state agency, any municipality or county, or any municipal or county agency, shall be a member of a one-call system for the area in which the underground facility is located. Private-ly owned public water utilities regulated by the public service commission, state agencies, municipalities and counties and municipal and county agencies may be vol-untary members of such a one-call system.

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

(1) The name of the member;

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

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

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

(d) Within forty-eight 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 hori-zontally from the outside walls of such facilities, and type of underground facilities at the site; and

(2) Use the color code prescribed in section six of this article when providing temporary marking of the approxi-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
44 (f) Notwithstanding the provisions of subsection (e) of
45 this section, such a member is not barred from recovery
46 under subsection (e) for failure to comply with subdivi-
47 sion (1), subsection (d) of this section, but shall have his or
48 her right to recover, if any determined by common law, if
49 the operator responded to one-call notification in a timely
50 manner, but was unable to accurately locate lines because
51 such lines were nonmetallic and had no locating wire or
52 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
6 (1) A person who operates underground facilities;
7
8 (2) A private contractor;
9
10 (3) A state or local government agency; or
11
12 (4) A person who is otherwise eligible under state or
13 federal law to operate a one-call system
14
15 (b) A one-call system which complies with the require-
16 ments set forth in subsection (a) of this section shall be
17 certified by the public service commission for the area in
18 which it will conduct operations prior to commencing
19 such operations: Provided, That any one-call system in
20 operation prior to the first day of January, one thousand
21 nine hundred ninety-six, may not be required to be so
22 certified. The public service commission shall certify a
23 one-call system where the public interest so requires and
24 when such system complies with the provisions of this
25 article.
A one-call system operating under the provisions of this article shall:

1. Receive and record information from excavators about intended excavation or demolition activities;
2. Promptly transmit to its affected members the information received from excavators about intended excavation or demolition;
3. Maintain a record of each notice of intent to engage in excavation or demolition, provided pursuant to the requirements of section five of this article;
4. Upon receipt of notification of intended excavation or demolition from an excavator, inform the person making such notification of the names of all members having underground facilities in the vicinity of the intended work site; and
5. Assign a serial number for each notification received from an excavator and provide that serial number to both the excavator and affected members.

(d) The operator of a one-call system as defined in this article, a service facility above ground to receive calls, dispense information and otherwise comply with the provisions of this article.

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

(a) Except as provided in section seven of this article, any person who intends to perform excavation or demolition work shall:

1. Not less than forty-eight hours, excluding Saturdays, Sundays and legal federal or state holidays, nor more than ten work days prior to the beginning of such work, notify the one-call system of the intended excavation or demolition and provide the following information:
   1. Name of the individual making the notification;
   2. Company name;
   3. Telephone number;
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(D) Company address;

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

(F) Work to be performed;

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

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

(I) Starting date and time.

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

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

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

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

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

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

(E) To protect and preserve markers, stakes and other
designations identifying the location of underground
facilities at the work site; and

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

(b) If any underground facility is damaged by a person who has failed to comply with any provision of this section, that person is liable to the operator of the underground facility for the total cost to repair the damage in an amount equal to that as is normally computed by the operator:

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

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

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

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

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

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:

<table>
<thead>
<tr>
<th>Facility Type</th>
<th>Identifying Color or Equivalent</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Electrical power distribution and</td>
<td>Safety Red</td>
</tr>
<tr>
<td>transmission</td>
<td></td>
</tr>
<tr>
<td>(b) Municipal electric systems</td>
<td>Safety Red</td>
</tr>
<tr>
<td>(c) Gas distribution and transmission</td>
<td>High Visibility Safety Yellow</td>
</tr>
<tr>
<td>(d) Oil and petroleum transmission</td>
<td>High Visibility Safety Yellow</td>
</tr>
<tr>
<td>(e) Dangerous materials, product lines, steam lines</td>
<td>High Visibility Safety Yellow</td>
</tr>
<tr>
<td>(f) Telephone and telegraph systems</td>
<td>Safety Alert Orange</td>
</tr>
<tr>
<td>(g) Police and fire communications</td>
<td>Safety Alert Orange</td>
</tr>
<tr>
<td>(h) Cable television</td>
<td>Safety Alert Orange</td>
</tr>
<tr>
<td>(i) Water systems</td>
<td>Safety Precaution Blue</td>
</tr>
<tr>
<td>(j) Slurry systems</td>
<td>Safety Precaution Blue</td>
</tr>
<tr>
<td>(k) Sewer systems</td>
<td>Safety Green</td>
</tr>
<tr>
<td>(l) Proposed excavations</td>
<td>White</td>
</tr>
</tbody>
</table>

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

(a) Compliance with the notification requirements of section five of this article 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.

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

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

(b) Nothing in this article may be construed as imposing liability upon a state agency from which the agency is 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