WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED
Committee Substitute For
SENATE BILL NO. 439

(By Senator McKenzie, et al)

PASSED March 10, 2006

In Effect 90 days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 439
(SenateS McKenzie and Bowman, original sponsors)
[Passed March 10, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §24C-1-3 and §24C-1-5 of the
Code of West Virginia, 1931, as amended, all relating
to duties of operators of an underground facility; strengthening
the one-call system requirements for persons excavating or
performing demolition work in the vicinity of underground
facilities by increasing the number of emergency response
agencies to be notified in the event of resulting damage;
defining emergencies; and providing criminal penalties for
violating certain duties and responsibilities imposed in said
article.

Be it enacted by the Legislature of West Virginia:

That §24C-1-3 and §24C-1-5 of the Code of West Virginia,
1931, as amended, be amended and reenacted, all to read as
follows:

ARTICLE 1. ONE-CALL SYSTEM.
§24C-1-3. 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. Privately owned public water utilities regulated by the Public Service Commission, state agencies, municipalities and counties and municipal and county agencies may be voluntary members of such a one-call system.

(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 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 horizontally from the outside walls of such facilities, and type of underground facilities at the site;
(2) Use the color code prescribed in section six of this article 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 subsection (e) of this section, a member is not barred from recovery under said subsection for failure to comply with subdivision (1), subsection (d) of this section, 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-1-5. Duties and responsibilities of excavators; failure of excavator to comply; civil penalties.

(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 federal or state legal 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:

(A) Name of the individual making the notification;
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10  (B) Company name;
11  (C) Telephone number;
12  (D) Company address;
13  (E) Work site location; including county, nearest city or
town, street location, nearest cross street and landmarks
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 con-
tact; and
20  (I) Starting date and time;
21  (2) Notify the one-call system not less than twenty-four
22  hours, excluding Saturdays, Sundays and federal or state
23  legal holidays, in advance of any change in the starting
date or time of the intended work; and
25  (3) Instruct each equipment operator involved in the
intended work:

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

31  (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;

38  (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)(i) To report immediately to the appropriate medical, law-enforcement and fire prevention authorities any break or leak in underground facilities, or any dent, gouge, groove or other damage to such facilities, made or in the course of the excavation or demolition which creates an "emergency" as defined in subdivision (1), subsection (c), section two of this article. For purposes of this subdivision, an excavator calling the "911" emergency telephone number satisfies this requirement; or

(ii) To notify the one-call system, within twenty-four hours, of any break or leak in underground facilities, or any dent, gouge, groove or other damage to such facilities, made or in the course of the excavation or demolition which does not create an "emergency" as defined in subdivision (1), subsection (c), section two of this article.

(E) To maintain a clearance between each underground facility and the cutting edge or point of any powered equipment, taking into account the known limit of control of such cutting edge or point, as may be reasonably necessary for the protection of such facility;

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

(G) 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, provided that 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 his or her own failure to comply with subdivision (1), subsection (d) of said section, but shall have his or her right to recover, if any, determined by common law, if the conditions of subsection (f) of said section 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 damage shall be determined solely by applicable principles of common law.

(d) If any excavation or demolition causes damage to any other person or property, the liability of the person causing damage shall be determined solely by applicable principles of common law.

(e) Any person who fails to notify the one-call system prior to performing any excavation or demolition, or fails to follow the reporting provisions of this section, or who violates any other provision of this section, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five thousand dollars.

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within... applied... this the... Day of... April... 2006.

Governor
PRESENTED TO THE GOVERNOR

MAR 27 2006

Time 9:10AM