

SB 439 S

FILED

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OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
Regular Session, 2004



**ENROLLED**

Committee Substitute for  
SENATE BILL NO. 439

(By Senator McKenzie, et al)



PASSED March 10, 2004

In Effect 90 days from Passage

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**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 439**

(SENATORS MCKENZIE AND BOWMAN, *original sponsors*)

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[Passed March 10, 2006; in effect ninety days from passage.]

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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.**

1 (a) Each operator of an underground facility in this  
2 state, except any privately owned public water utility  
3 regulated by the Public Service Commission, any state  
4 agency, any municipality or county, or any municipal or  
5 county agency, shall be a member of a one-call system for  
6 the area in which the underground facility is located.  
7 Privately owned public water utilities regulated by the  
8 Public Service Commission, state agencies, municipalities  
9 and counties and municipal and county agencies may be  
10 voluntary members of such a one-call system.

11 (b) Each member shall provide the following information  
12 to the one-call system on forms developed and provided  
13 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 number  
18 to which inquiries may be directed as to the locations of  
19 the operator's underground facilities.

20 (c) Each member shall revise in writing the information  
21 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  
26 of a notification by the one-call system from an excavator  
27 of 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  
31 horizontally from the outside walls of such facilities, and  
32 type of underground facilities at the site;

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; and

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

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

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

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

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 Saturdays,  
5 Sundays and federal or state legal holidays, nor more than  
6 ten work days prior to the beginning of such work, notify  
7 the one-call system of the intended excavation or demoli-  
8 tion 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 or  
14 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 con-  
19 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  
24 date or time of the intended work; and

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

27 (A) To perform all excavation or demolition work in such  
28 a manner as to avoid damage to underground facilities in  
29 the vicinity of the intended work site, including hand  
30 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 work  
39 site as to any emergency created or discovered at or near  
40 such work site;

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

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

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

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

64 (G) To provide such support for underground facilities in  
65 the location of the work site, including during backfilling  
66 operations, as may be reasonably necessary for the protec-  
67 tion of such facilities. Temporary support and backfill  
68 shall provide support for such facilities at least equivalent  
69 to the previously existing support.

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

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

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

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

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

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

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

104 (f) Nothing in this chapter may be construed to restrict  
105 or expand the rights, duties and liabilities provided in  
106 common law or by other provisions of this code of an  
107 operator who is not required to be a member of a one-call  
108 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.

*Clay White*  
.....  
Chairman Senate Committee

*Blaney*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Russell Palmer*  
.....  
Clerk of the Senate

*Bruce M. Bush*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*Robert K.*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *5<sup>th</sup>* .....  
Day of *April* ..... 2006.

*Paul Marshall*  
.....  
Governor



PRESENTED TO THE  
GOVERNOR

MAR 27 2006

Time 9:10am