

1 **Senate Bill No. 324**

2 (By Senators Kessler (Mr. President) and M. Hall,

3 By Request of the Executive)

4 _____

5 [Introduced January 10, 2014; referred to the Committee on

6 Energy, Industry and Mining; and then to the Committee on the

7 Judiciary.]

8 _____

9

10

11 A BILL to amend and reenact §24C-1-2 and §24C-1-3 of the Code of

12 West Virginia, 1931, as amended, all relating to the one-call

13 system; revising definition of "underground facility"; and

14 requiring that all operators of an underground facility in

15 this state participate in a one-call system for the area in

16 which the underground facility is located.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §24C-1-2 and §24C-1-3 of the Code of West Virginia, 1931,

19 as amended, be amended and reenacted, all to read as follows:

20 **ARTICLE 1. ONE-CALL SYSTEM.**

21 **§24C-1-2. Definitions.**

22 As used in this chapter, unless the context clearly requires

1 a different meaning:

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

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

15 (c) "Emergency" means:

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

21 (2) A condition that requires immediate correction to assure
22 continuity of service provided by or through an underground

1 facility.

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

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

18 (1) Perform all work within the confines of the traveled
19 portion of the paved public way; and

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

22 (f) "Excavator" means any person intending to engage or

1 engaged in excavation or demolition work.

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

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

8 (I) "Operator" means any person who owns or operates an
9 underground facility used in the providing or transmission of any
10 of the goods or services described in ~~subsection~~ subdivision (l) of
11 this section.

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

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

20 (l) "Underground facility" means any underground pipeline
21 facility, owned by a utility and regulated by the Public Service
22 Commission, which is used in the transportation or distribution of

1 gas, oil or a hazardous liquid; any underground pipeline facility,
2 ~~owned by a company subject to the jurisdiction of the federal~~
3 ~~energy regulatory commission, which is~~ used in the gathering,
4 transportation or distribution of gas, oil or a hazardous liquid;
5 any underground facility used as a water main, storm sewer,
6 sanitary sewer or steam line; any underground facility used for
7 electrical power transmission or distribution; any underground
8 cable, conductor, waveguide, glass fiber or facility used to
9 transport telecommunications, optical, radio, telemetry,
10 television, or other similar transmissions; and any facility used
11 in connection with any of the foregoing facilities on a bridge, a
12 pole or other span, or on the surface of the ground, any
13 appurtenance, device, cathodic protection system, conduit,
14 protective casing or housing used in connection with any of the
15 foregoing facilities: *Provided*, That "underground facility" does
16 not include underground or surface coal mine operations.

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

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

22 **§24C-1-3. Duties and responsibilities of operators of underground**

1 **facilities; failure of operator to comply.**

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

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

14 (1) The name of the member;

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

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

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

1 change.

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

7 (1) Respond to ~~such~~ the notification by providing to the
8 excavator the approximate location, within two feet horizontally
9 from the outside walls of ~~such~~ the facilities, and type of
10 underground facilities at the site; and

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

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

18 (e) Failure of an operator who is required to be a member to
19 comply with the provisions of this article ~~may~~ does not prevent the
20 excavator from proceeding but ~~shall~~ does bar the operator from
21 recovery of any costs associated with damage to its underground
22 facilities resulting from ~~such~~ the failure, except for damage

1 caused by the willful or intentional act of the excavator.

2 (f) Notwithstanding the provisions of subsection (e) of this
3 section, a member is not barred from recovery under ~~said~~ that
4 subsection for failure to comply with subdivision (1), subsection
5 (d) of this section, but shall have his or her right to recover, if
6 any, determined by common law, if the operator responded to
7 one-call notification in a timely manner, but was unable to
8 accurately locate lines because ~~such~~ the lines were nonmetallic and
9 had no locating wire or other marker.

NOTE: The purpose of this bill is to require all operators of the underground facilities in this state to participate in the one-call system for the area in which the underground facility is located.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.