

1 **H. B. 4152**

2
3 (By Mr. Speaker, (Mr. Miley) and Delegate Armstead)

4 [By Request of the Executive]

5 [Introduced January 14, 2014; referred to the
6 Committee on Energy then the Judiciary.]

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10 A BILL to amend and reenact §24C-1-2 and §24C-1-3 of the Code of
11 West Virginia, 1931, as amended, all relating to the one-call
12 system; revising definition of "underground facility"; and
13 requiring that all operators of an underground facility in
14 this state participate in a one-call system for the area in
15 which the underground facility is located.

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

17 That §24C-1-2 and §24C-1-3 of the Code of West Virginia, 1931,
18 as amended, be amended and reenacted, all to read as follows:

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

20 **§24C-1-2. Definitions.**

21 As used in this chapter, unless the context clearly requires
22 a different meaning:

23 (a) "Damage" means any impact or contact with or weakening of
24 the support for an underground facility, its appurtenances,

1 protective casing, coating or housing, which, according to the
2 operation practices of the operator or state or federal regulation,
3 requires repair.

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

12 (c) "Emergency" means:

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

18 (2) A condition that requires immediate correction to assure
19 continuity of service provided by or through an underground
20 facility.

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

24 (e) "Excavate" or "excavation" means any operation in which

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

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

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

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

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

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

1 (i) "Operator" means any person who owns or operates an
2 underground facility used in the providing or transmission of any
3 of the goods or services described in ~~subsection~~ subdivision (l) of
4 this section.

5 (j) "Person" means any individual, firm, joint venture,
6 partnership, corporation, association, state agency, county,
7 municipality, cooperative association or joint stock association,
8 and any trustee, receiver, assignee, agency or personal
9 representative thereof.

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

13 (l) "Underground facility" means any underground pipeline
14 facility, owned by a utility and regulated by the Public Service
15 Commission, which is used in the transportation or distribution of
16 gas, oil or a hazardous liquid; any underground pipeline facility,
17 ~~owned by a company subject to the jurisdiction of the federal~~
18 ~~energy regulatory commission, which is~~ used in the gathering,
19 transportation or distribution of gas, oil or a hazardous liquid;
20 any underground facility used as a water main, storm sewer,
21 sanitary sewer or steam line; any underground facility used for
22 electrical power transmission or distribution; any underground
23 cable, conductor, waveguide, glass fiber or facility used to
24 transport telecommunications, optical, radio, telemetry,

1 television, or other similar transmissions; and any facility used
2 in connection with any of the foregoing facilities on a bridge, a
3 pole or other span, or on the surface of the ground, any
4 appurtenance, device, cathodic protection system, conduit,
5 protective casing or housing used in connection with any of the
6 foregoing facilities: *Provided*, That "underground facility" does
7 not include underground or surface coal mine operations.

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

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

13 **§24C-1-3. Duties and responsibilities of operators of underground**
14 **facilities; failure of operator to comply.**

15 (a) Each operator of an underground facility in this state
16 ~~except any privately owned public water utility regulated by the~~
17 ~~Public Service Commission, any state agency, any municipality or~~
18 ~~county, or any municipal or county agency, shall is required to be~~ be
19 a member of a one-call system for the area in which the underground
20 facility is located. Privately owned public water utilities
21 regulated by the Public Service Commission, state agencies,
22 municipalities and counties and municipal and county agencies may
23 be voluntary members of ~~such~~ a one-call system.

24 (b) Each member shall provide the following information to the

1 one-call system on forms developed and provided for that purpose by
2 the one-call system:

3 (1) The name of the member;

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

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

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

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

18 (1) Respond to ~~such~~ the notification by providing to the
19 excavator the approximate location, within two feet horizontally
20 from the outside walls of ~~such~~ the facilities, and type of
21 underground facilities at the site; and

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

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

5 (e) Failure of an operator who is required to be a member to
6 comply with the provisions of this article ~~may~~ does not prevent the
7 excavator from proceeding but ~~shall~~ does bar the operator from
8 recovery of any costs associated with damage to its underground
9 facilities resulting from ~~such~~ the failure, except for damage
10 caused by the willful or intentional act of the excavator.

11 (f) Notwithstanding the provisions of subsection (e) of this
12 section, a member is not barred from recovery under ~~said~~ that
13 subsection for failure to comply with subdivision (1), subsection
14 (d) of this section, but shall have his or her right to recover, if
15 any, determined by common law, if the operator responded to
16 one-call notification in a timely manner, but was unable to
17 accurately locate lines because ~~such~~ the lines were nonmetallic and
18 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.