

SHORT TITLE: Oklahoma Historical Societies; requiring public utilities to file certain notice under certain conditions with the Oklahoma Historical Society before using certain easements; codification; effective date.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 805

By: Gustafson of the Senate

and

_____ of the House

AS INTRODUCED

An Act relating to the preservation of historic properties; defining terms; requiring public utility companies to file certain notice under certain circumstances and specify certain details; requiring public utilities to publish certain notice of intent in certain locations and specify certain date; requiring Oklahoma Historical Society to make certain determinations and use certain considerations thereto; requiring the Oklahoma Historical Society to consider certain public comment within certain time limit; requiring the Oklahoma Historical Society to reduce its findings to writing and providing procedure thereto; requiring the Oklahoma Historical Society to determine actions to minimize an adverse effect; providing for conclusion of proceedings and allowing utilities to acquire and use easement; providing for appeal and procedures thereto; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 362 of Title 53, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Public utility" means all transmission companies, all gas, electric, heat, light and power companies, and all persons, firms, corporations, receivers or trustees authorized to exercise the right of eminent domain or having a franchise to use or occupy any right-of-way, street, alley or public highway, whether along, over or under the same, in a manner not permitted by the general public, and all persons, firms, corporations, receivers and trustees engaged in any business which is a public utility or public service corporation;

2. "Utility easement" means a right of a public utility to use the land of another for the purpose of producing, transmitting, delivering, monitoring or furnishing gas, electricity, heat, light or power to another;

3. "Historic property" means any structure or property on the National Register of Historic Sites or any structure or property that has received notice of review or investigation within the last three (3) years from the State Historic Preservation Officer for consideration as a site to be placed on the National Historic Register; and

4. "Adverse effect on historic property" means:

- a. physical destruction, damage or alteration of all or part of the property,
- b. isolation of the property or alteration of the character of the property setting when that character contributes to the property's qualification for the National Register, and

- c. introduction of visual, audible or atmospheric elements that are out of character with the property or alter its setting.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 363 of Title 53, unless there is created a duplication in numbering, reads as follows:

A. 1. From and after the effective date of this act, a public utility that either:

- a. seeks to acquire a utility easement on or adjoining historic property, or
- b. seeks to begin to use an easement which it already owns on or adjoining historic property,

shall file a notice of its intent with the Oklahoma Historical Society, on a form prescribed by the Oklahoma Historical Society.

2. The notice shall inform the Oklahoma Historical Society in detail of:

- a. the use to be made of the utility easement in question,
- b. the structures to be constructed upon the easement, complete with working drawings of the structures, and
- c. the exact location of all structures to be constructed on the utility easement.

B. At the time a public utility files a notice with the Oklahoma Historical Society, it shall also file proof that it has caused to be published, for two (2) consecutive weeks, in a newspaper of general circulation in the county or counties in which the easement is located, a notice of its intent. This published notice shall, except for working drawings of the structures, contain the same information required in the notice filed with the Oklahoma Historical Society. The published notice shall also notify the public of its right to file public comment with the Oklahoma Historical Society and further notify the public of the date on

which the public utility's notice will be filed with the Oklahoma Historical Society.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 364 of Title 53, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Historical Society shall, within forty-five (45) days of the receipt of a notice, determine if the proposed use of the utility easement will have an adverse effect on the historic property. In considering whether the proposed use of an easement has an adverse effect on the historic property, the Oklahoma Historical Society shall, in addition to all the material provided by the public utility, consider the results of a site inspection made by a member of its staff, and any public comment received by the Oklahoma Historical Society. The Oklahoma Historical Society, to aid it in determining whether an adverse effect on historic property exists, shall receive written public comment for a period of thirty (30) days commencing with the date on which the public utility notice is received.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 365 of Title 53, unless there is created a duplication in numbering, reads as follows:

A. When the Oklahoma Historical Society finds that the proposed use of a utility easement will have an adverse effect upon historic property, it shall reduce its findings to writing, and in those findings shall set forth the conditions it finds necessary to minimize the adverse effect. A copy of those findings shall be sent to the public utility, and to every person or entity who filed public comment with the Oklahoma Historical Society.

B. If within fifteen (15) days of receipt of the Oklahoma Historical Society's findings, the public utility concurs in the conditions which the Oklahoma Historical Society has established as necessary to minimize the adverse effect on the historic property,

the proceedings before the Oklahoma Historical Society shall be concluded and the utility shall be permitted to acquire or use the easement as specified in its notice, unless a person or entity who had filed a public comment appeals the Oklahoma Historical Society's findings to the district court, pursuant to the provisions of Section 308a et seq. of Title 75 of the Oklahoma Statutes, and a stay is issued.

C. A public utility that does not concur in the conditions specified by the Oklahoma Historical Society as necessary to minimize adverse effects on the historic property may, pursuant to the provisions of Section 308a et seq. of Title 75 of the Oklahoma Statutes, appeal the Oklahoma Historical Society's findings to the district court.

D. Appeals from findings of the Oklahoma Historical Society by either the public utility or a party or entity filing public comments with the Oklahoma Historical Society, shall in all respects, except as hereinafter provided, be commenced as any other appeal from an administrative order under Oklahoma's Administrative Procedures Act, Section 308a et seq. of Title 75 of the Oklahoma Statutes. In such administrative appeals, the only substantive issues which may be raised on appeal are:

1. Errors of the Oklahoma Historical Society in determining that the proposed use of an easement would or would not have an adverse effect on a historic property; and

2. The Oklahoma Historical Society's abuse of its discretion in establishing the conditions necessary to minimize the adverse effect on historic properties.

SECTION 4. This act shall become effective September 1, 1995.

44-2-2077

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