

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2834

By: Rice

AS INTRODUCED

An Act relating to public health and safety; amending 63 O.S. 1991, Section 142.2, as amended by Section 27, Chapter 344, O.S.L. 1995, 142.3, as amended by Section 1, Chapter 25, O.S.L. 1992, 142.5, as amended by Section 28, Chapter 344, O.S.L. 1995, 142.6, 142.7, 142.8, 142.10 and 142.11 (63 O.S. Supp. 1997, Sections 142.2, 142.3 and 142.5), which relate to the Oklahoma Underground Facilities Damage Prevention Act; modifying definitions; requiring all operations to become members of a statewide one-call notification center; expanding application of act; modifying notification requirements; requiring notification; adding items to be color coded; requiring certain hand excavations; requiring notice within certain time period; providing penalty; providing for liability; requiring certain facilities to contain detectable material; removing certain filing requirements; providing for statewide notification centers; removing certain exemptions; repealing 63 O.S. 1991, Sections 142.4 and 142.9, which relate to certain filing fees and notification for damage to underground facilities; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 142.2, as amended by Section 27, Chapter 344, O.S.L. 1995 (63 O.S. Supp. 1997, Section 142.2), is amended to read as follows:

Section 142.2 As used in the Oklahoma Underground Facilities Damage Prevention Act:

1. "Certified project" means a project where the public agency responsible for the public project, as part of its procedure, certifies that the project right-of-way is free and clear of underground facilities or wherein the public agency responsible for such project, as part of its procedure, notifies all persons determined by the public agency to have underground facilities located within the construction right-of-way and certifies that all known underground facilities are duly located or noted on the engineering drawings for the project;

2. "Damage" means any impact upon or removal of support from an underground facility as a result of explosion, excavation or demolition which according to the operating practices of the operator of the underground facilities would necessitate the repair thereof;

3. "Demolish" means to wreck, raze, render, move or remove a structure by means of any equipment or explosive;

4. "Demolition" means the act or operation of demolishing a structure;

5. "Excavate" means to dig, compress or remove earth, rock or other materials in or on the ground by use of mechanized equipment or blasting, including, but not necessarily limited to, augering, boring, backfilling, drilling, grading, pile driving, plowing in,

pulling in, trenching, tunneling and plowing; provided, however, that neither:

- a. the moving of earth by tools manipulated only by human or animal power, ~~nor~~
- b. any form of cultivation for agricultural purposes, nor any augering, dozing by noncommercial dozer operators or digging for postholes, farm ponds, land clearing or other normal agricultural purposes, ~~nor~~
- c. routine maintenance, ~~nor~~
- d. ~~work by a public agency or its contractors on a preengineered project, nor~~
- e. ~~work on a certified project, nor~~
- f. ~~work on a permitted project, nor~~
- g. ~~the opening of a grave in a cemetery, nor~~
- h. e. a solid waste disposal site which is a preengineered project, ~~nor~~ or
- i. f. any individual excavating on his own property and who is not in the excavating business for hire,

shall be deemed excavation;

6. "Excavation" means the act or operation of excavating;

7. "Excavator" means a person or public agency that ~~intends to excavate~~ conducts excavation or ~~demolish~~ demolition within the State of Oklahoma;

8. "Notification center" means a statewide center operated by an organization with members collectively having facilities in all seventy-seven counties, which has as one of its purposes to receive notification of planned excavation and demolition in a specified area from excavators, and to disseminate such notification of planned excavation or demolition to operators who are members and participants;

9. "Operator" shall mean and include any person or public agency owning or operating underground facilities; except private

underground facilities not used to service the public, which serve residential or rural customers one or more of whom is the owner of such facilities;

10. "Permitted project" means a project where a permit for the work to be performed must be issued by a state or federal agency and, as a prerequisite to receiving such permit, the applicant must locate all underground facilities in the area of the work and in the vicinity of any blasting and notify each owner of such underground facilities;

11. "Person" includes any individual, partnership, corporation, association, cooperative, trust or other entity, including a person engaged as a contractor by a public agency, but not including a public agency;

12. "Preengineered project" means a public project wherein the public agency responsible for such project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and where the location of all known underground facilities are duly located or noted on the engineering drawing and specifications for the project;

13. "Public agency" means the state or any board, commission or agency of the state, and any city, town, county, subdivision thereof or other governmental entity;

14. "Routine maintenance" means the grading of roads and barrow or drainage ditches, ~~the removal and replacement of pavement, including excavation relating thereto and the installation and maintenance of drainage and bridge facilities, signs, guardrails, and electrical and communications facilities in or on the public~~

rights-of-way by a public agency; provided, however, that routine road maintenance does not mean the progressive reduction of the elevation of the roadway surface or drainage ditch, nor the grading of the sub-base of the roadway; and

15. "Underground facility" means any underground line, facility, system and appurtenances thereto, for producing, storing, conveying, transmitting or distributing communication, electricity, power, light, heat, gas, oil, petroleum products, water (including storm water), steam, sewage and other commodities.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 142.3, as amended by Section 1, Chapter 25, O.S.L. 1992 (63 O.S. Supp. 1997, Section 142.3), is amended to read as follows:

Section 142.3 ~~A. Unless an operator is a member of or participant in a notification center which has filed a statement with the county clerk, pursuant to Section 142.10 of this title, all operators having underground facilities within a county shall have on file with the county clerk in such county a notice that such operator has underground facilities located within the county and the address and telephone number of the person or persons from whom information about such underground facilities may be obtained.~~

~~B. All~~ It shall be mandatory for all operators of underground facilities ~~that are subject to the Hazardous Liquid Transportation System Safety Act and all operators of natural gas pipelines subject to the jurisdiction of the Oklahoma Corporation Commission shall participate to become members in a statewide one-call notification center ~~whether or not they have filed with the county clerks of the counties in which they have facilities.~~~~

SECTION 3. AMENDATORY 63 O.S. 1991, Section 142.5, as amended by Section 28, Chapter 344, O.S.L. 1995 (63 O.S. Supp. 1997, Section 142.5), is amended to read as follows:

Section 142.5 No excavator shall demolish a structure, discharge an explosive or commence to excavate in ~~a highway, street,~~

~~alley or other~~ any public ground or way, including, but not limited to, a highway, street or alley, a private easement, or on or near the location of the facilities of an operator without first complying with the requirements of the Underground Facilities Damage Prevention Act and the Oklahoma Explosives and Blasting Regulation Act.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 142.6, is amended to read as follows:

Section 142.6 A. Before an excavator shall demolish a structure, discharge any explosive or commence to excavate in a ~~highway, street, alley or other~~ any public ground or way, including, but not limited to, a highway, street or alley, on or near the location of an operator's underground facilities, or a private easement, such excavator shall first notify ~~all operators in the county who have on file with the county clerk a notice pursuant to Section 3 of this act,~~ and all notification centers ~~who have on file with the county clerk a statement pursuant to Section 10 of this act,~~ to determine whether any operators have underground facilities in or near the proposed area of excavation or demolition; ~~except that when an excavator has knowledge that an operator does not have underground facilities within the area of the proposed excavation such excavator need not notify such operator of the proposed excavation; provided however, that such excavator shall be responsible for damage to the underground facilities of an operator that was not so notified.~~ Such notice shall be given no more than ten (10) days nor less than forty-eight (48) hours, excluding Saturdays, Sundays and legal holidays, prior to the commencement of the excavation or demolition.

B. Each operator served with notice in accordance with subsection A ~~above either directly or by notice to a notification center of which such operator is a member or participant,~~ of this section shall, within forty-eight (48) hours after receipt thereof,

excluding Saturdays, Sundays and legal holidays, unless otherwise agreed to between the excavator and operator, locate and mark or otherwise provide the approximate location of the underground facilities of the operator in such a manner as to enable the excavator to employ hand-dug test holes to determine the precise location of the underground facilities in advance of excavation, ~~provided however, that the operators of a municipally owned water, sewage and communication facility need only notify the excavator within the prescribed period that they have facilities located in or near the proposed area of excavation or demolition, the type of facilities and their approximate location, if known.~~ For the purpose of ~~this act~~ the Oklahoma Underground Facilities Damage Prevention Act, the approximate location of the underground facilities shall be defined as a strip of land two (2) feet on either side of such underground facilities. Whenever an operator is served with notice of an excavation or demolition and determines that he does not have underground facilities located within the proposed area of excavation or demolition, the operator shall communicate this information to the excavator originating the notice prior to the commencement of such excavation or demolition.

C. The only exception to subsection A of this section shall be when an emergency exists that endangers life, health or property. Under these conditions, excavation operations may begin immediately, providing reasonable precautions are taken to protect underground facilities. All operators of underground facilities within the area of the emergency must be notified promptly when an emergency requires excavation prior to the location of the underground facilities being marked.

D. Every notice given by an excavator to an operator pursuant to this section or to a notification center pursuant to Section ~~10~~ 142.10 of this ~~act~~ title, shall contain at least the following information:

1. The name of the individual serving such notice;
  2. The location of the proposed area of excavation or demolition;
  3. The name, address and telephone number of the excavator or excavator's company;
  4. The excavator's field telephone number, if one is available;
  5. The type and the extent of the proposed work;
  6. Whether or not the discharging of explosives is anticipated;
- and
7. The date and time when work is to begin.

E. In marking the approximate location of underground facilities, an operator shall follow the standard color coding described herein:

<u>OPERATOR AND TYPE OF PRODUCT</u>	<u>SPECIFIC GROUP IDENTIFYING COLOR</u>
Electric Power Distribution and Transmission	Safety Red
Municipal Electric Systems	Safety Red
Gas Distribution and Transmission	High Visibility Safety Yellow
Oil Distribution and Transmission	High Visibility Safety Yellow
Dangerous Materials, Product Lines, Steam Lines	High Visibility Safety Yellow
Telephone and Telegraph Systems	Safety Alert Orange
Police and Fire Communications	Safety Alert Orange
Cable Television	Safety Alert Orange
Water Systems	Safety Precaution Blue
Slurry Systems	Safety Precaution Blue
Sewer Systems	Safety Green
<u>Temporary Survey Marking</u>	<u>Fluorescent Pink</u>

SECTION 5. AMENDATORY 63 O.S. 1991, Section 142.7, is amended to read as follows:

Section 142.7 A. Except as provided in subsection B of this section, powered or mechanized equipment shall not be used directly over marked routes of underground facilities until the precise location of the underground facilities has been determined by the excavator, and then only after the facilities have been exposed and properly protected to avoid damage to them. If, after hand excavating within two (2) feet of either side of the mark, the precise location of the underground facilities cannot be determined by the excavator, the operator thereof shall be notified by the excavator ~~so that~~ whereby the operator can determine the precise location of the underground facilities by exposing them prior to ~~continuing~~ continued excavation or demolition.

B. The only exception to the prohibition of the use of powered or mechanized equipment directly over marked routes of underground facilities shall be for the removal of pavement or masonry, and then only to the depth of such pavement or masonry.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 142.8, is amended to read as follows:

Section 142.8 In addition to the notice required by Section ~~6~~ 142.6 of this ~~act~~ title, whenever the demolition of a structure is proposed, ~~operators in the county who have a notice on file with the county clerk pursuant to Section 3 of this act and all notification centers who have a notice on file with the county clerk pursuant to Section 10 of this act~~ shall be given at least sixty (60) days' notice of the proposed demolition before the demolition work begins unless a public agency determines that such structure endangers the public health or safety, then the public agency may, in the manner provided by law, order the immediate demolition of such structure.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142.9b of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A person who violates any provision of the Oklahoma Underground Facilities Damage Prevention Act is subject to a civil penalty in an amount not to exceed Two Thousand Dollars (\$2,000.00) to be imposed by the court in favor of the state. Any penalties received by the state shall be deposited in the general fund of this state.

B. If a violation of the Oklahoma Underground Facilities Damage Prevention Act results in physical contact with an underground facility, the violator is liable to the owner of the facility for all damages to the facilities and costs, expenses and damages to third parties incurred by the owner of the facility as a result of the contact.

C. If the owner or operator fails to locate or incorrectly locates the underground facility pursuant to the Oklahoma Underground Facilities Damage Prevention Act, the owner or operator becomes liable for resulting damages, costs and expenses to the injured party.

D. On and after the effective date of this act, any new, relocated or replaced underground facilities shall contain materials capable of being detected so that the facilities can be accurately located.

E. This section is not applicable to an excavation made during an emergency which involves damage to life, health or property if reasonable precautions are taken to protect underground facilities.

SECTION 8. AMENDATORY 63 O.S. 1991, Section 142.10, is amended to read as follows:

Section 142.10 A. ~~This act recognizes~~ The provisions of the Oklahoma Underground Facilities Damage Prevention Act recognize the

value of and ~~encourages~~ encourage and ~~authorizes~~ authorize the establishment of statewide notification centers.

B. Two or more operators may establish a notification center.

C. Upon the establishment of a notification center ~~and compliance with subsection E of this section,~~ notification, as required by Section ~~6~~ 142.6 of this ~~act~~ title to the operators who are members of or participants in the notification center, shall be given by notifying the notification center by telephone or other acceptable means of communication, the content of such notification to conform to Section ~~6~~ 142.6 of this ~~act~~ title.

D. All operators who have underground facilities within the defined geographical boundary of a notification center shall be afforded the opportunity to become ~~a member~~ members of the notification center on the same terms as the original members. ~~Others may participate as nonmembers on such terms and conditions as the members deem appropriate.~~

~~E. The management of a notification center shall file with the county clerk of each county, within which the notification center operates, a statement that the notification center is serving the respective county, a list of the operators in the county who are members or participants in the notification center and the telephone number and mailing address of the notification center.~~

~~F.~~ E. A suitable record shall be maintained by the notification center to document the receipt of the notices from excavators as required by this act.

SECTION 9. AMENDATORY 63 O.S. 1991, Section 142.11, is amended to read as follows:

Section 142.11 Notwithstanding anything which may be contained in ~~this act~~ the Oklahoma Underground Facilities Damage Prevention Act to the contrary, ~~public agencies and their contractors engaged in work within the public right-of-way which work is a pre-engineered project, certified project or routine maintenance~~

shall be exempt from the provisions of ~~this act~~ the Oklahoma  
Underground Facilities Damage Prevention Act.

SECTION 10. REPEALER 63 O.S. 1991, Sections 142.4 and  
142.9, are hereby repealed.

SECTION 11. This act shall become effective November 1, 1998.

46-2-8930 KSM