

1 STATE OF OKLAHOMA

2 1st Session of the 47th Legislature (1999)

3 COMMITTEE SUBSTITUTE  
4 FOR  
5 HOUSE BILL NO. 1109

By: Erwin

6  
7 COMMITTEE SUBSTITUTE

8 ( Corporation Commission and Conservation Commission  
9 - public utility fines - Oklahoma E911 Emergency  
10 Service Fund - Public Utility Assessment -  
11 Oklahoma Underground Facilities Damage Prevention  
12 Act - repealer - codification -  
13 effective date )

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16  
17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. AMENDATORY 82 O.S. 1991, Section 1501-205, as  
19 renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last  
20 amended by Section 2, Chapter 271, O.S.L. 1998 (27A O.S. Supp. 1998,  
21 Section 3-2-106), is amended to read as follows:

22 Section 3-2-106. A. In addition to other powers and duties  
23 specified by law and except as otherwise provided by law, the  
24 Oklahoma Conservation Commission shall have the power and duty to:

25 1. Offer the assistance as may be appropriate to the directors  
26 of conservation districts in the carrying out of any of their powers  
27 and programs and to:

28 a. assist and guide districts in the preparation and  
29 carrying out of programs for resource conservation  
30 authorized under the Conservation District Act,

31 b. review district programs,  
32

- 1 c. coordinate the programs of the several districts and  
2 resolve any conflicts in such programs, and  
3 d. facilitate, promote, assist, harmonize, coordinate and  
4 guide the resource conservation programs and  
5 activities of districts as they relate to other  
6 special purpose districts, counties and other public  
7 agencies;

8 2. Keep the directors of each of the several districts informed  
9 of the activities and experience of all other districts, and to  
10 facilitate an interchange of advice and experience between such  
11 districts and cooperation between them;

12 3. Review agreements, or forms of agreements, proposed to be  
13 entered into by districts with other districts or with any state,  
14 federal, or interstate, or other public or private agency,  
15 organization or individual, and advise the districts concerning such  
16 agreements or forms of agreements;

17 4. Secure the cooperation and assistance of the United States  
18 and any of its agencies, and of agencies of this state, in the work  
19 of such districts and to accept donations, grants, gifts and  
20 contributions in money, services or otherwise from the United States  
21 or any of its agencies or from the state or any of its agencies in  
22 order to carry out the purposes of the Conservation District Act;

23 5. Disseminate information throughout the state concerning the  
24 activities and programs of the conservation districts and to make  
25 available information concerning the needs and the work of the  
26 conservation districts and Commission to the Governor, the  
27 Legislature, executive agencies of the government of this state,  
28 political subdivisions of this state, cooperating federal agencies  
29 and the general public;

30 6. Serve along with conservation districts as the official  
31 state agencies for cooperating with the Natural Resources  
32 Conservation Service of the United States Department of Agriculture

1 and carrying on conservation operations within the boundaries of  
2 conservation districts;

3 7. Cooperate with and give such assistance as they deem  
4 necessary and proper to conservancy districts, watershed  
5 associations and other special purpose districts in the State of  
6 Oklahoma for the purpose of cooperating with the United States  
7 through the Secretary of Agriculture in the furtherance of  
8 conservation pursuant to the provisions of the Federal Watershed  
9 Protection and Flood Prevention Act, as amended;

10 8. Recommend the inclusion in annual and longer term budgets  
11 and appropriation legislation of the State of Oklahoma of funds  
12 necessary for appropriation by the Legislature to finance the  
13 activities of the Commission and the conservation districts and to:

14 a. administer the provisions of the Conservation District  
15 Act hereafter enacted by the Legislature appropriating  
16 funds for expenditure in connection with the  
17 activities of conservation districts,

18 b. distribute to conservation districts funds, equipment,  
19 supplies and services received by the Commission for  
20 that purpose from any source, subject to such  
21 conditions as shall be made applicable thereto in any  
22 state or federal statute or local ordinance making  
23 available such funds, property or services,

24 c. issue regulations establishing guidelines and suitable  
25 controls to govern the use by conservation districts  
26 of such funds, property and services; and to review  
27 all budgets, administrative procedures and operations  
28 of such districts and advise the districts concerning  
29 their conformance with applicable laws and  
30 regulations;

31 9. Enlist the cooperation and collaboration of state, federal,  
32 regional, interstate, local, public and private agencies with the

1 conservation districts and to facilitate arrangements under which  
2 the conservation districts may serve county governing bodies and  
3 other agencies as their local operating agencies in the  
4 administration of any activity concerned with the conservation of  
5 renewable natural resources;

6 10. Pursuant to procedures developed mutually by the Commission  
7 and federal, state and local agencies that are authorized to plan or  
8 administer activities significantly affecting the conservation of  
9 renewable natural resources, receive from such agencies for review  
10 and comment suitable descriptions of their plans, programs and  
11 activities for purposes of coordination with district conservation  
12 programs and to arrange for and participate in conferences necessary  
13 to avoid conflict among such plans and programs, to call attention  
14 to omissions and to avoid duplication of effort;

15 11. Compile information and make studies, summaries and  
16 analyses of district programs in relation to each other and to other  
17 resource conservation programs on a statewide basis;

18 12. Except as otherwise assigned by law, carry out the policies  
19 of this state in programs at the state level for the conservation of  
20 the renewable natural resources of this state and represent the  
21 state in matters affecting such resources;

22 13. Assist conservation districts in obtaining legal services  
23 from state and local legal officers;

24 14. Require annual reports from conservation districts, the  
25 form and content of which shall be developed by the Commission in  
26 consultation with the district directors;

27 15. Establish by ~~regulations~~ rules, with the assistance and  
28 advice of the State Auditor and Inspector, adequate and reasonably  
29 uniform accounting and auditing procedures which shall be used by  
30 conservation districts;

31 16. Conduct workshops for district directors to instruct them  
32 on the subjects of district finances, the Conservation District Law

1 and related laws, and their duties and responsibilities as  
2 directors;

3 17. Assist and supervise districts in carrying out their  
4 responsibilities in accordance with the Oklahoma laws;

5 18. Have power, by administrative order, upon the written  
6 request of the board of directors of the conservation district or  
7 districts involved, with a showing that such request has been  
8 approved by a majority vote of the members of each of the boards  
9 involved, to:

10 a. transfer lands from one district established under the  
11 provisions of the Conservation District Act to  
12 another,

13 b. divide a single district into two or more districts,  
14 each of which shall thereafter operate as a separate  
15 district under the provisions of the Conservation  
16 District Act, and

17 c. consolidate two or more districts established under  
18 the provisions of the Conservation District Act, which  
19 consolidated area shall operate thereafter as a single  
20 district under the provisions of the Conservation  
21 District Act;

22 19. Except as otherwise provided by law, act as the management  
23 agency having jurisdiction over and responsibility for directing  
24 nonpoint source pollution prevention programs outside the  
25 jurisdiction or control of cities or towns in Oklahoma. The  
26 Commission, otherwise, shall be responsible for all identified  
27 nonpoint source categories except silviculture, urban storm water  
28 runoff and industrial runoff;

29 20. Administer cost-share programs for the purpose of carrying  
30 out conservation or best management practices on the land to benefit  
31 the public through the prevention or reduction of soil erosion and  
32 nonpoint source pollution and through general resource management.

1 The Commission is not authorized to implement mandatory compliance  
2 with management practices, except as otherwise provided by law, to  
3 abate agricultural nonpoint source pollution;

4 21. Plan watershed-based nonpoint source pollution control  
5 activities, including the development and implementation of  
6 conservation plans for the improvement and protection of the  
7 resources of the state;

8 22. Provide assistance to the Oklahoma Water Resources Board on  
9 lake projects through stream and river monitoring, assessing  
10 watershed activities impacting lake water quality and assisting in  
11 the development of a watershed management plan;

12 23. Maintain the activities of the state's nonpoint source  
13 working group;

14 24. Prepare, revise and review Oklahoma's nonpoint source  
15 management program and nonpoint source assessment report in  
16 coordination with other state environmental agencies and compile a  
17 comprehensive assessment for the state every five (5) years. Such  
18 management program and assessment report shall be distributed to the  
19 Governor, Secretary of Environment, the President Pro Tempore of the  
20 Senate and the Speaker of the House of Representatives;

21 25. Under the direction of the Office of the Secretary of the  
22 Environment, develop and implement the state's nonpoint source water  
23 quality monitoring strategy in coordination with other environmental  
24 agencies;

25 26. Monitor, evaluate and assess waters of the state to  
26 determine the condition of streams and rivers impacted by nonpoint  
27 source pollution. In carrying out this area of responsibility, the  
28 Conservation Commission shall serve as the technical lead agency for  
29 nonpoint source pollution categories as defined in Section 319 of  
30 the Federal Clean Water Act or other subsequent federal or state  
31 nonpoint source programs;

32 27. Administer the Blue Thumb Program;

1 28. Enter into agreements or contracts for services with any of  
2 the substate planning districts recognized by the Oklahoma  
3 Department of Commerce;

4 29. Cooperate with the federal government, or any agency  
5 thereof, to participate in and coordinate with federal programs that  
6 will yield additional federal funds to the state for programs within  
7 the jurisdiction of the Conservation Commission. This participation  
8 shall be subject to the availability of state funds; ~~and~~

9 30. Implement pilot projects and programs, subject to the  
10 availability of funds, that will demonstrate the latest technologies  
11 and applications in conservation programs that may provide direct or  
12 residual benefits to conservation practices in the state;

13 31. Issue and sell bonds in such amounts as shall be needed  
14 from time to time for the purposes set forth in the Conservation  
15 District Act.

16 a. Such bonds may:

- 17 (1) be issued in one or more series,  
18 (2) bear such date or dates,  
19 (3) mature at such time or times not exceeding twenty  
20 (20) years from their date,  
21 (4) be in such denomination or denominations,  
22 (5) be in such form, either coupon or registered,  
23 (6) carry such registration and conversion  
24 privileges,  
25 (7) be executed in such manner,  
26 (8) be payable in such medium of payment at such  
27 place or places,  
28 (9) be subject to such terms of redemption with or  
29 without premium, and  
30 (10) bear such rate or rates of interest,  
31 as may be provided by resolution or resolutions to be  
32 adopted by the Commission within such limits provided

1 by law, and be sold in such manner and at such price  
2 or prices as may be considered by the Commission to be  
3 advisable.

4 b. Bonds shall have all the qualities and incidents of  
5 negotiable paper and the interest thereon shall not be  
6 subject to taxation by the State of Oklahoma.

7 c. The bonds issued pursuant to the Conservation District  
8 Act shall not be an indebtedness of the State of  
9 Oklahoma but shall be special obligations payable  
10 solely from assessments, fees or other charges imposed  
11 by the Commission. The Commission is authorized and  
12 directed to pledge all or any part of such  
13 assessments, fees or other charges imposed by the  
14 Commission to the payment of and interest on the  
15 bonds.

16 d. The Commission may enter into any agreement or  
17 contracts with the United States of America or the  
18 State of Oklahoma or any agency or instrumentality  
19 thereof which it may consider advisable or necessary  
20 in order to obtain a grant of funds or other aid to be  
21 used in connection with the proceeds of the bonds.

22 e. All bonds issued pursuant to the Conservation District  
23 Act shall have on the backs thereof the certificate  
24 required by Section 29 of Article X of the  
25 Constitution of the State of Oklahoma. Such bonds  
26 shall be submitted to the Attorney General of Oklahoma  
27 for examination. Such bonds, having been examined and  
28 certified as legal obligations by the Attorney General  
29 in accordance with such requirements as the Attorney  
30 General may make, shall be incontestable in any court  
31 in the State of Oklahoma unless suit thereon shall be  
32 brought in a court having jurisdiction thereof within

1 thirty (30) days from the date of such approval.  
2 Bonds so approved by the Attorney General shall be  
3 prima facie valid and binding obligations according to  
4 their terms. The only defense which may be offered  
5 thereto in any suit instituted after such thirty-day  
6 period shall have expired shall be a violation of the  
7 Constitution.

8 f. Any bank, trust or insurance company organized under  
9 the laws of Oklahoma may invest its capital, surplus  
10 and reserves in bonds issued under the provisions of  
11 the Conservation District Act; and

12 32. File an application, at its discretion, with the Supreme  
13 Court of Oklahoma for the validation of the Conservation District  
14 Act or for the approval of any series of bonds to be issued  
15 hereunder or any other actions to be taken by the Commission.  
16 Exclusive original jurisdiction is hereby conferred upon the Supreme  
17 Court to hear and determine each such application.

18 a. It shall be the duty of the Supreme Court to give such  
19 applications precedence over the other business of the  
20 Supreme Court and to consider and pass upon the  
21 applications and any protests which may be filed  
22 thereto as speedily as possible.

23 b. Notice of the hearing on each application shall be  
24 given by a notice published in a newspaper of general  
25 circulation in the state that on a day named, the  
26 Commission will ask the court to hear its application.  
27 Such notice shall inform all persons interested that  
28 they may file protests against the validation or  
29 approval and be present at the hearing and contest the  
30 same. Such notice shall be published one time, not  
31 less than ten (10) days prior to the date named for  
32

1 the hearing, and the hearing may be adjourned from  
2 time to time at the discretion of the court.

3 c. In any action to approve bonds, if the Supreme Court  
4 is satisfied that the bonds have been properly  
5 authorized in accordance with the provisions of the  
6 Commission and that when issued they will constitute  
7 valid obligations in accordance with their terms, the  
8 Supreme Court shall render its written opinion  
9 approving the bonds and shall fix the time within  
10 which a petition for rehearing may be filed. The  
11 decision of the Supreme Court shall be a judicial  
12 determination of the validity of the bonds, shall be  
13 conclusive as to the board of directors, its officers  
14 and agents, and thereafter the bonds so approved and  
15 the revenues pledged to their payment shall be  
16 incontestable in any court in the State of Oklahoma.

17 B. Nothing in ~~this act~~ the Conservation District Act shall take  
18 away any of the present duties or responsibilities delegated by law  
19 or constitution to other environmental agencies.

20 SECTION 2. AMENDATORY 17 O.S. 1991, Section 1, as  
21 amended by Section 1, Chapter 48, O.S.L. 1998 (17 O.S. Supp. 1998,  
22 Section 1), is amended to read as follows:

23 Section 1. ~~Any~~ A. 1. Upon a determination of violation by the  
24 Corporation Commission of any of its rules, orders or other  
25 requirements, a corporation, person or firm may be fined by the  
26 ~~Corporation~~ Commission, a sum not to exceed Five Hundred Dollars  
27 (\$500.00), as the Commission may deem proper, ~~for the violation of~~  
28 ~~any of its rules or requirements and each.~~ Each day's continuance  
29 of such violation, after due service upon such corporation, person  
30 or firm, of the order or requirement of the Commission shall be a  
31 separate offense. ~~Should~~

1        2. If the operation of such order or requirement ~~be~~ is  
2 suspended, pending an appeal therefrom, the period of such  
3 suspension shall not be computed against the corporation, person or  
4 firm, ~~in the matter of~~ with regard to its liability ~~to~~ for fines and  
5 penalties.

6        B. Any corporation, person or firm that switches the local or  
7 long distance telephone service provider of a customer without the  
8 consent of the customer may be fined by the ~~Corporation~~ Commission a  
9 sum not to exceed Ten Thousand Dollars (\$10,000.00) per occurrence,  
10 as the Commission may deem proper after notice and opportunity for  
11 hearing.

12        C. Any corporation, person or firm that is also a public  
13 utility, as defined by law, may be fined by the Commission a sum not  
14 exceeding Ten Thousand Dollars (\$10,000.00), as the Commission may  
15 deem proper, for the violation of any of its rules or requirements.  
16 Each day's continuance of such violation, after due service upon  
17 such corporation, person or firm, of the order or requirement of the  
18 Commission, shall be a separate offense.

19        SECTION 3.        AMENDATORY        Section 9, Chapter 408, O.S.L.  
20 1997 (17 O.S. Supp. 1998, Section 139.109), is amended to read as  
21 follows:

22        Section 139.109 A. 1. There is hereby created within the  
23 Oklahoma Corporation Commission the "Oklahoma E911 Emergency Service  
24 Fund".

25        2. Beginning September 1, 1997, each local exchange  
26 telecommunications service provider shall annually contribute fifty  
27 cents (\$.50) per retail local exchange access line to the Oklahoma  
28 E911 Emergency Service Fund until the total amount contributed by  
29 all providers to the Fund equals Five Million Dollars  
30 (\$5,000,000.00). The contribution amount for each service provider  
31 shall be based upon the number of retail local exchange access lines  
32

1 of that service provider in service on July 1 of each applicable  
2 year.

3 3. The Oklahoma E911 Emergency Service Fund shall be  
4 administered by the ~~Oklahoma Corporation Commission~~ and used to  
5 defray the cost of purchasing and installing equipment for enhanced  
6 911 emergency systems across the state.

7 4. The Commission shall recover the cost of administering the  
8 Fund from the Fund directly. Preference for funding shall be given  
9 first to those systems established in areas of the state which do  
10 not have access to 911 emergency service before July 1, 1997, and  
11 second to areas of the state which do not have access to enhanced  
12 911 emergency services.

13 5. Funding from the E911 Emergency Service Fund shall not be  
14 used for ongoing operating costs of any emergency telephone service  
15 system. To qualify for funding, the emergency telephone service  
16 system shall have been or be in the process of being approved as  
17 provided for in the Nine-One-One Emergency Number Act. Local  
18 exchange telecommunications service providers serving fifteen  
19 percent (15%) or more of the access lines in the state may not apply  
20 for recovery of the contributions made to the E911 Emergency Service  
21 Fund from the Oklahoma Universal Service Fund created in Section ~~6~~  
22 139.106 of this ~~act~~ title.

23 6. All monies in the Oklahoma E911 Emergency Service Fund shall  
24 be expended only for the purposes set forth in this subsection.

25 B. 1. There is hereby created within the Oklahoma Department  
26 of Vocational and Technical Education the "Oklahoma  
27 Telecommunications Technology Training Fund".

28 2. Beginning September 1, 1997, each local exchange  
29 telecommunications service provider shall annually contribute  
30 seventy-five cents (\$.75) per retail local exchange access line to  
31 the Oklahoma Telecommunications Technology Training Fund until the  
32 total amount contributed by all providers to the Fund equals Seven

1 Million Dollars (\$7,000,000.00). The contribution amount for each  
2 service provider shall be based upon the number of retail local  
3 exchange access lines of that service provider in service on July 1  
4 of each applicable year.

5 3. The Oklahoma Telecommunications Technology Training Fund  
6 shall be administered by the Oklahoma Department of Vocational and  
7 Technical Education working in conjunction with OneNet, and shall be  
8 used to provide statewide teacher training in the most effective use  
9 of telecommunications and distance learning technology for the  
10 enhancement of education throughout the state.

11 4. Local exchange telecommunications service providers serving  
12 fifteen percent (15%) or more of the access lines in the state may  
13 not apply for recovery of the contributions made to the Oklahoma  
14 Telecommunications Technology Training Fund from the Oklahoma  
15 Universal Service Fund created in Section ~~6~~ 139.106 of this ~~act~~  
16 title.

17 5. All monies in the Oklahoma Telecommunications Technology  
18 Training Fund shall be expended only for the purposes set forth in  
19 this subsection.

20 C. The following services are hereby declared to be Special  
21 Universal Services and such services shall be provided only after  
22 funding for the Oklahoma Universal Service Fund is implemented as  
23 set forth in this act:

24 1. Each not-for-profit hospital in the state shall, upon  
25 written request, receive one incoming, toll-free phone number and up  
26 to a total of five access lines, free of charge, to allow incoming,  
27 toll-free calls from any location within the geographic area served  
28 by the hospital;

29 2. Each public school building wherein classrooms are contained  
30 and each public library in the state shall, upon written request,  
31 receive one incoming, toll-free phone number and up to a total of  
32 five access lines, free of charge, to allow incoming, toll-free

1 calls from any location within the geographic area served by the  
2 school or the public library;

3 3. Each public school building wherein classrooms are contained  
4 and each public library in the state shall, upon written request,  
5 receive one access line, free of charge, with the ability to connect  
6 to an Internet service provider at 56 kbps, in the most economically  
7 efficient manner for the carrier, or an equivalent dollar credit to  
8 be applied by the public school or public library toward similar  
9 services provided by the same carrier, for the purpose of accessing  
10 the Internet. In no case shall the Oklahoma Universal Service Fund  
11 reimburse an entity for an Internet subscriber fee or charges  
12 incurred as a result of services accessed via the Internet; and

13 4. Each county seat in the state shall, upon written request of  
14 the board of county commissioners, receive one incoming, toll-free  
15 phone number and up to a total of five access lines, free of charge,  
16 to allow incoming, toll-free calls from any location within the  
17 geographic area served by the county seat.

18 D. To the extent Special Universal Services are purchased from  
19 a telecommunications service provider by another carrier, the  
20 Special Universal Services are for the exclusive use of the not-for-  
21 profit hospital, public school, public library or county government.  
22 Under no circumstances shall the not-for-profit hospital, public  
23 school, public library or county government sell, repackage or share  
24 Special Universal Services with any other entity.

25 SECTION 4. AMENDATORY Section 43, Chapter 278, O.S.L.  
26 1993, as last amended by Section 1, Chapter 126, O.S.L. 1998 (17  
27 O.S. Supp. 1998, Section 180.11), is amended to read as follows:

28 Section 180.11 A. The Corporation Commission is hereby  
29 authorized to assess a fee of no less than Fifty Dollars (\$50.00)  
30 upon each public utility to provide adequate funding to the Public  
31 Utility Division of the ~~Oklahoma Corporation~~ Commission for the  
32 regulation of public utilities in this state and for providing for

1 timely and expeditious reviews and completion of rate cases, and  
2 increased responsiveness to the needs of consumers and the regulated  
3 community.

4 B. 1. The assessment authorized by this section may, after  
5 excluding the amount allocated to interexchange telecommunications  
6 companies, resellers, pay phone service providers and operator  
7 service providers in paragraph 2 of this subsection, be borne by the  
8 affected public utilities as follows:

9 a. one-half shall be allocated based on that proportion  
10 which the total regulated Oklahoma jurisdictional  
11 gross operating revenues of each public utility bear  
12 to the total regulated Oklahoma jurisdictional gross  
13 operating revenues of all public utilities, and

14 b. one-half shall be allocated based on that proportion  
15 which the total number of regulated Oklahoma  
16 jurisdictional customers of each public utility bears  
17 to the total number of regulated Oklahoma  
18 jurisdictional customers of all public utilities.

19 2. For interexchange telecommunications companies, resellers,  
20 pay phone service providers and operator service providers, the  
21 allocation may be based on the total regulated Oklahoma  
22 jurisdictional gross operating revenues that each interexchange  
23 telecommunications company, reseller or operator service provider  
24 bears in proportion to the total regulated Oklahoma jurisdictional  
25 gross operating revenue of all public utilities as applied to the  
26 total amount of the assessment to be collected from all public  
27 utilities for each year.

28 3. If the calculated annual assessment amount for any public  
29 utility pursuant to this section is less than Fifty Dollars  
30 (\$50.00), the Commission shall levy a fifty-dollar annual assessment  
31 on each such facility.  
32

1 C. Any assessment levied pursuant to this section shall be  
2 recoverable as an operating expense to the public utility and shall  
3 be included in a utility's base rates or basic monthly service  
4 charge. The ~~Corporation~~ Commission shall take such action necessary  
5 to ensure recovery of the assessment by a public utility during the  
6 period for which it is levied.

7 D. The ~~Corporation~~ Commission may provide that each public  
8 utility shall pay any assessment levied pursuant to this section on  
9 a quarterly basis. Notice of the annual assessment shall be sent by  
10 certified mail, return receipt requested, to each public utility.  
11 Each public utility shall pay the amount assessed to the Commission  
12 for deposit to the Public Utility Regulation Revolving Fund created  
13 in subsection E of this section. A public utility may, at its  
14 discretion, pay its annual assessment prior to the due date of the  
15 quarterly payments.

16 E. Any assessment collected by the Commission pursuant to this  
17 section shall be deposited in the Public Utility Regulation  
18 Revolving Fund hereby created. The fund shall be a continuing fund  
19 not subject to fiscal year limitations and shall consist of the  
20 monies received by the Commission from any assessment levied  
21 pursuant to the provisions of this section. All monies accruing to  
22 the credit of the fund are hereby appropriated and may be budgeted  
23 and expended by the Commission to pay the costs, both direct and  
24 indirect, of the Public Utilities Division incurred to regulate  
25 public utilities. Expenditures from said fund shall be made upon  
26 warrants issued by the State Treasurer against claims filed as  
27 prescribed by law with the Director of State Finance for approval  
28 and payment.

29 F. The Legislature shall establish budgetary limits for the  
30 Public Utility Division of the ~~Corporation~~ Commission. Any  
31 assessment levied pursuant to this section shall not exceed the  
32 amount of the budgetary limits and indirect costs for related

1 support functions established by the Legislature for any fiscal  
2 year.

3 G. For purposes of this section, "public utility" means:

4 1. A public utility as defined by Section 151 of ~~Title 17 of~~  
5 ~~the Oklahoma Statutes~~ this title, excluding those companies  
6 encompassed by paragraph (d) of Section 151 of ~~Title 17 of the~~  
7 ~~Oklahoma Statutes~~ this title;

8 2. Any telephone or telecommunications company subject to  
9 Section 131 et seq. of ~~Title 17 of the Oklahoma Statutes~~ this title,  
10 including interexchange telecommunications companies or such other  
11 telecommunications companies as defined by OCC Rule OAC 165:55-1-4,  
12 resellers as defined by OCC Rule OAC 165:56-1-4 and operator service  
13 providers as defined by OCC Rule OAC 165:57-1-4; and

14 3. Any association or cooperative corporation doing business  
15 under the Rural Electric Cooperative Act except for generation and  
16 transmission associations or cooperative corporations, or  
17 transmission associations or cooperative corporations.

18 H. It is the intention of the Legislature that this entire  
19 section is an amendment to and alteration of Sections 18 through 34,  
20 inclusive, of Article IX of the Constitution of the State of  
21 Oklahoma, as authorized by Section 35 of Article IX of said  
22 Constitution.

23 SECTION 5. AMENDATORY 63 O.S. 1991, Section 142.2, as  
24 amended by Section 27, Chapter 344, O.S.L. 1995 (63 O.S. Supp. 1998,  
25 Section 142.2), is amended to read as follows:

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

28 1. "Certified project" means a project where the public agency  
29 responsible for the public project, as part of its procedure,  
30 certifies that the project right-of-way is free and clear of  
31 underground facilities or wherein the public agency responsible for  
32 such project, as part of its procedure, notifies all persons

1 determined by the public agency to have underground facilities  
2 located within the construction right-of-way and certifies that all  
3 known underground facilities are duly located or noted on the  
4 engineering drawings for the project;

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

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

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

14 5. "Excavate" means to dig, compress or remove earth, rock or  
15 other materials in or on the ground by use of mechanized equipment  
16 or blasting, including, but not necessarily limited to, augering,  
17 boring, backfilling, drilling, grading, pile driving, plowing in,  
18 pulling in, trenching, tunneling and plowing; provided, however,  
19 that ~~neither~~:

20 a. the moving of earth by tools manipulated only by human  
21 or animal power, ~~nor~~

22 b. any form of cultivation for agricultural purposes, ~~nor~~  
23 or any augering, dozing by noncommercial dozer  
24 operators or digging for postholes, farm ponds, land  
25 clearing or other normal agricultural purposes, ~~nor~~

26 c. routine maintenance, ~~nor~~

27 d. ~~work by a public agency or its contractors on a~~  
28 ~~preengineered project, nor~~

29 e. ~~work on a certified project, nor~~

30 f. ~~work on a permitted project, nor~~

31 g. the opening of a grave in a cemetery, ~~nor~~

32



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

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

15           14. "Routine maintenance" means the grading of roads and barrow  
16 or drainage ditches, ~~the removal and replacement of pavement,~~  
17 ~~including excavation relating thereto and the installation and~~  
18 ~~maintenance of drainage and bridge facilities, signs, guardrails,~~  
19 ~~and electrical and communications facilities in or on the public~~  
20 ~~rights-of-way by a public agency.~~ The term "routine road  
21 maintenance" shall not mean the progressive reduction of the  
22 elevation of the roadway surface or drainage ditch, nor the grading  
23 of the sub-base of the roadway; and

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

29           SECTION 6.           AMENDATORY           63 O.S. 1991, Section 142.3, as  
30 amended by Section 1, Chapter 25, O.S.L. 1992 (63 O.S. Supp. 1998,  
31 Section 142.3), is amended to read as follows:  
32

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

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

16 SECTION 7. AMENDATORY 63 O.S. 1991, Section 142.5, as  
17 amended by Section 28, Chapter 344, O.S.L. 1995 (63 O.S. Supp. 1998,  
18 Section 142.5), is amended to read as follows:

19 Section 142.5 No excavator shall demolish a structure,  
20 discharge an explosive or commence to excavate in a ~~highway, street,~~  
21 ~~alley or other~~ any public ground or way, including, but not limited  
22 to, a highway, street or alley, a private easement, or on or near  
23 the location of the facilities of an operator without first  
24 complying with the requirements of the Oklahoma Underground  
25 Facilities Damage Prevention Act and the Oklahoma Explosives and  
26 Blasting Regulation Act.

27 SECTION 8. AMENDATORY 63 O.S. 1991, Section 142.6, is  
28 amended to read as follows:

29 Section 142.6 A. Before an excavator ~~shall demolish~~ demolishes  
30 a structure, ~~discharge~~ discharges any explosive or ~~commence~~  
31 commences to excavate in a ~~highway, street, alley or other~~ any  
32 public ground or way, including, but not limited to, a highway,

1 street or alley, on or near the location of an operator's  
2 underground facilities, or a private easement, such excavator shall  
3 first notify ~~all operators in the county who have on file with the~~  
4 ~~county clerk a notice pursuant to Section 3 of this act, and all~~  
5 ~~notification centers who have on file with the county clerk a~~  
6 ~~statement pursuant to Section 10 of this act, to determine whether~~  
7 any operators have underground facilities in or near the proposed  
8 area of excavation or demolition; ~~except that when an excavator has~~  
9 ~~knowledge that an operator does not have underground facilities~~  
10 ~~within the area of the proposed excavation such excavator need not~~  
11 ~~notify such operator of the proposed excavation; provided however,~~  
12 ~~that such excavator shall be responsible for damage to the~~  
13 ~~underground facilities of an operator that was not so notified.~~

14 Such notice shall be given no more than ten (10) days nor less than  
15 forty-eight (48) hours, excluding Saturdays, Sundays and legal  
16 holidays, prior to the commencement of the excavation or demolition.

17 B. Each operator served with notice in accordance with  
18 subsection A ~~above either directly or by notice to a notification~~  
19 ~~center of which such operator is a member or participant~~ of this  
20 section, shall, within forty-eight (48) hours after receipt thereof,  
21 excluding Saturdays, Sundays and legal holidays, unless otherwise  
22 agreed to between the excavator and operator, locate and mark or  
23 otherwise provide the approximate location of the underground  
24 facilities of the operator in such a manner as to enable the  
25 excavator to employ hand-dug test holes to determine the precise  
26 location of the underground facilities in advance of excavation; ~~and~~  
27 ~~provided however, that the operators of a municipally owned water,~~  
28 ~~sewage and communication facility need only notify the excavator~~  
29 ~~within the prescribed period that they have facilities located in or~~  
30 ~~near the proposed area of excavation or demolition, the type of~~  
31 ~~facilities and their approximate location, if known. For the~~  
32 purpose of ~~this act~~ the Oklahoma Underground Facilities Damage

1 Prevention Act, the approximate location of the underground  
2 facilities shall be defined as a strip of land two (2) feet on  
3 either side of such underground facilities. Whenever an operator is  
4 served with notice of an excavation or demolition and determines  
5 that he does not have underground facilities located within the  
6 proposed area of excavation or demolition, the operator shall  
7 communicate this information to the excavator originating the notice  
8 prior to the commencement of such excavation or demolition.

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

17 D. Every notice given by an excavator to an operator pursuant  
18 to this section or to a notification center pursuant to Section ~~10~~  
19 142.10 of this ~~act~~ title, shall contain at least the following  
20 information:

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

31  
32

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

4 <u>OPERATOR AND TYPE OF PRODUCT</u>	<u>SPECIFIC GROUP IDENTIFYING COLOR</u>
5 Electric Power Distribution 6 and Transmission	Safety Red
7 Municipal Electric Systems	Safety Red
8 Gas Distribution and 9 Transmission	High Visibility Safety Yellow
10 Oil Distribution and 11 Transmission	High Visibility Safety Yellow
12 Dangerous Materials, Product 13 Lines, Steam Lines	High Visibility Safety Yellow
14 Telephone and Telegraph 15 Systems	Safety Alert Orange
16 Police and Fire 17 Communications	Safety Alert Orange
18 Cable Television	Safety Alert Orange
19 Water Systems	Safety Precaution Blue
20 Slurry Systems	Safety Precaution Blue
21 Sewer Systems	Safety Green
22 <u>Temporary Survey Marking</u>	<u>Fluorescent Pink</u>
23 <u>Proposed Excavation</u>	<u>White</u>

24 SECTION 9. AMENDATORY 63 O.S. 1991, Section 142.7, is  
 25 amended to read as follows:

26 Section 142.7 A. Except as provided in subsection B of this  
 27 section, powered or mechanized equipment shall not be used directly  
 28 over marked routes of underground facilities until the precise  
 29 location of the underground facilities has been determined by the  
 30 excavator, and then only after the facilities have been exposed and  
 31 properly protected to avoid damage to them. If, after hand  
 32 excavating within two (2) feet of either side of the mark, the

1 precise location of the underground facilities cannot be determined  
2 by the excavator, the operator thereof shall be notified by the  
3 excavator so that the operator can determine the precise location of  
4 the underground facilities by exposing them prior to ~~continuing~~  
5 continued excavation or demolition.

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

10 SECTION 10. AMENDATORY 63 O.S. 1991, Section 142.8, is  
11 amended to read as follows:

12 Section 142.8 In addition to the notice required by Section ~~6~~  
13 142.6 of this ~~act~~ title, whenever the demolition of a structure is  
14 proposed, ~~operators in the county who have a notice on file with the~~  
15 ~~county clerk pursuant to Section 3 of this act and all notification~~  
16 ~~centers who have a notice on file with the county clerk pursuant to~~  
17 ~~Section 10 of this act~~ shall be given at least sixty (60) days'  
18 notice of the proposed demolition before the demolition work begins  
19 unless a public agency determines that such structure endangers the  
20 public health or safety, then the public agency may, in the manner  
21 provided by law, order the immediate demolition of such structure.

22 SECTION 11. AMENDATORY Section 1, Chapter 369, O.S.L.  
23 1992 (63 O.S. Supp. 1998, Section 142.9a), is amended to read as  
24 follows:

25 Section 142.9a On and after ~~the effective date of this act~~  
26 September 1, 1992, any excavator except for public agencies who  
27 fails to comply with the Oklahoma Underground Facilities Damage  
28 Prevention Act and who damages an underground facility owned or  
29 operated by a nonprofit rural water corporation organized pursuant  
30 to Section 863 of Title 18 of the Oklahoma Statutes or a rural water  
31 district organized pursuant to the Rural Water, Sewer, Gas, and  
32 Solid Waste Management Districts Act shall be liable for the

1 underground damage to and responsible for the repair of such  
2 facilities. On and after ~~the effective date of this act~~ September  
3 1, 1992, any new relocated or replaced underground facilities shall  
4 contain materials capable of being detected so that the facilities  
5 can be accurately located.

6 SECTION 12. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section 142.9b of Title 63, unless there  
8 is created a duplication in numbering, reads as follows:

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

14 B. Any operator not subject to the jurisdiction of the  
15 Corporation Commission pursuant to Section 5 of Title 52 of the  
16 Oklahoma Statutes and the Hazardous Liquid Transportation System  
17 Safety Act who violates any provision of the Oklahoma Underground  
18 Facilities Damage Prevention Act is subject to a civil penalty in an  
19 amount not to exceed Two Thousand Dollars (\$2,000.00) to be imposed  
20 by the court in favor of the state. Any penalties received by the  
21 state shall be deposited in the general fund.

22 C. Any operator subject to the jurisdiction of the Corporation  
23 Commission pursuant to Section 5 of Title 52 of the Oklahoma  
24 Statutes and the Hazardous Liquid Transportation System Safety Act  
25 who violates any provision of the Oklahoma Underground Facilities  
26 Damage Prevention Act is subject to a civil penalty pursuant to  
27 Section 6 of Title 17 of the Oklahoma Statutes and of Title 52 of  
28 the Oklahoma Statutes.

29 D. If a violation of the Oklahoma Underground Facilities Damage  
30 Prevention Act results in physical contact with an underground  
31 facility, the violator is liable to the owner of the facility for  
32 all damages to the facilities and costs, expenses and damages to

1 third parties incurred by the owner of the facility as a result of  
2 the contact.

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

8 F. This section is not applicable to an excavation made during  
9 an emergency which involves danger to life, health or property if  
10 reasonable precautions are taken to protect underground facilities.

11 SECTION 13. AMENDATORY 63 O.S. 1991, Section 142.10, is  
12 amended to read as follows:

13 Section 142.10 A. ~~This act recognizes~~ The provisions of the  
14 Oklahoma Underground Facilities Damage Prevention Act recognize the  
15 value of and ~~encourages~~ encourage and ~~authorizes~~ authorize the  
16 establishment of statewide notification centers.

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

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

25 D. All operators who have underground facilities within the  
26 defined geographical boundary of a notification center shall be  
27 afforded the opportunity to become ~~a member~~ members of the  
28 notification center on the same terms as the original members.

29 ~~Others may participate as nonmembers on such terms and conditions as~~  
30 ~~the members deem appropriate.~~

31 E. ~~The management of a notification center shall file with the~~  
32 ~~county clerk of each county, within which the notification center~~

1 ~~operates, a statement that the notification center is serving the~~  
2 ~~respective county, a list of the operators in the county who are~~  
3 ~~members or participants in the notification center and the telephone~~  
4 ~~number and mailing address of the notification center.~~

5 F. A suitable record shall be maintained by the notification  
6 center to document the receipt of the notices from excavators as  
7 required by ~~this act~~ the Oklahoma Underground Facilities Damage  
8 Prevention Act.

9 SECTION 14. AMENDATORY 63 O.S. 1991, Section 142.11, is  
10 amended to read as follows:

11 Section 142.11 Notwithstanding anything which may be contained  
12 in ~~this act~~ the Oklahoma Underground Facilities Damage Prevention  
13 Act to the contrary, ~~public agencies and their contractors engaged~~  
14 ~~in work within the public right-of-way which work is a~~  
15 ~~pre-engineered project, certified project or routine maintenance~~  
16 shall be exempt from the provisions of ~~this act~~ the Oklahoma  
17 Underground Facilities Damage Prevention Act.

18 SECTION 15. REPEALER 63 O.S. 1991, Section 142.4, is  
19 hereby repealed.

20 SECTION 16. This act shall become effective November 1, 1999.

21  
22 47-1-15105 JB 6/11/15  
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