HOUSE OF REPRESENTATIVES
Monday, February 22, 1999

Committee Substitute for
House Bill No. 1109

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1109 -- By ERWIN and POPE (Clay).

(Corporation Commission and Conservation Commission - public utility fines – Oklahoma E911 Emergency Service Fund – Public Utility Assessment - Oklahoma Underground Facilities Damage Prevention Act – repealer - codification – effective date)

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

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

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

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

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

b. review district programs,

c. coordinate the programs of the several districts and resolve any conflicts in such programs, and

d. facilitate, promote, assist, harmonize, coordinate and guide the resource conservation programs and activities of districts as they relate to other special purpose districts, counties and other public agencies;

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

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

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

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

6. Serve along with conservation districts as the official state agencies for cooperating with the Natural Resources Conservation Service of the United States Department of Agriculture and carrying on conservation operations within the boundaries of conservation districts;

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

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

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

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

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

9. Enlist the cooperation and collaboration of state, federal, regional, interstate, local, public and private agencies with the conservation districts and to facilitate arrangements under which the conservation districts may serve county governing bodies and other agencies as their local operating agencies in the administration of any activity concerned with the conservation of renewable natural resources;

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

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

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

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

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

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

16. Conduct workshops for district directors to instruct them on the subjects of district finances, the Conservation District Law and related laws, and their duties and responsibilities as directors;

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

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

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

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

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

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

20. Administer cost-share programs for the purpose of carrying out conservation or best management practices on the land to benefit the public through the prevention or reduction of soil erosion and nonpoint source pollution and through general resource management. The Commission is not authorized to implement mandatory compliance with management practices, except as otherwise provided by law, to abate agricultural nonpoint source pollution;

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

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

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

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

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

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

27. Administer the Blue Thumb Program;

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

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

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

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

a. Such bonds may:

(1) be issued in one or more series,

(2) bear such date or dates,

(3) mature at such time or times not exceeding twenty (20) years from their date,

(4) be in such denomination or denominations,

(5) be in such form, either coupon or registered,

(6) carry such registration and conversion privileges,

(7) be executed in such manner,

(8) be payable in such medium of payment at such place or places,

(9) be subject to such terms of redemption with or without premium, and

(10) bear such rate or rates of interest, as may be provided by resolution or resolutions to be adopted by the Commission within such limits provided by law, and be sold in such manner and at such price or prices as may be considered by the Commission to be advisable.

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

c. The bonds issued pursuant to the Conservation District Act shall not be an indebtedness of the State of Oklahoma but shall be special obligations payable solely from assessments, fees or other charges imposed by the Commission.

The Commission is authorized and directed to pledge all or any part of such assessments, fees or other charges imposed by the Commission to the payment of and interest on the bonds.

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

e. All bonds issued pursuant to the Conservation District Act shall have on the backs thereof the certificate required by Section 29 of Article X of the Constitution of the State of Oklahoma. Such bonds shall be submitted to the Attorney General of Oklahoma for examination. Such bonds, having been examined and certified as legal obligations by the Attorney General in accordance with such requirements as the Attorney General may make, shall be incontestable in any court in the State of Oklahoma unless suit thereon shall be brought in a court having jurisdiction thereof within thirty (30) days from the date of such approval. Bonds so approved by the Attorney General shall be prima facie valid and binding obligations according to their terms. The only defense which may be offered thereto in any suit instituted after such thirty-day period shall have expired shall be a violation of the Constitution.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Beginning September 1, 1997, each local exchange telecommunications service provider shall annually contribute fifty cents ($.50) per retail local exchange access line to the Oklahoma E911 Emergency Service Fund until the total amount contributed by all providers to the Fund equals Five Million Dollars ($5,000,000.00). The contribution amount for each service provider shall be based upon the number of retail local exchange access lines of that service provider in service on July 1 of each applicable year.

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

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

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

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

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

2. Beginning September 1, 1997, each local exchange telecommunications service provider shall annually contribute seventy-five cents ($.75) per retail local exchange access line to the Oklahoma Telecommunications Technology Training Fund until the total amount contributed by all providers to the Fund equals Seven Million Dollars ($7,000,000.00). The contribution

amount for each service provider shall be based upon the number of retail local exchange access lines of that service provider in service on July 1 of each applicable year.

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

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

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

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

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

2. Each public school building wherein classrooms are contained and each public library in the state shall, upon written request, receive one incoming, toll-free phone number and up to a total of five access lines, free of charge, to allow incoming, toll-free calls from any location within the geographic area served by the school or the public library;

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

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

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

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

Section 180.11 A. The Corporation Commission is hereby authorized to assess a fee of no less than Fifty Dollars ($50.00) upon each public utility to provide adequate funding to the Public Utility Division of the ~~Oklahoma Corporation~~ Commission for the regulation of public utilities in this state and for providing for timely and expeditious reviews and completion of rate cases, and increased responsiveness to the needs of consumers and the regulated community.

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

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

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

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

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

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

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

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

F. The Legislature shall establish budgetary limits for the Public Utility Division of the ~~Corporation~~ Commission. Any assessment levied pursuant to this section shall not exceed the amount of the budgetary limits and indirect costs for related support functions established by the Legislature for any fiscal year.

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

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

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

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

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

SECTION 5. AMENDATORY 63 O.S. 1991, Section 142.2, as amended by Section 27, Chapter 344, O.S.L. 1995 (63 O.S. Supp. 1998, 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~~ or 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 not be deemed excavation;

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

7. "Excavator" means a person or public agency that ~~intends to excavate or demolish~~ conducts excavation or 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 (77) 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~~. The term "routine road maintenance" shall 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 6. AMENDATORY 63 O.S. 1991, Section 142.3, as amended by Section 1, Chapter 25, O.S.L. 1992 (63 O.S. Supp. 1998, 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 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~~ 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 7. AMENDATORY 63 O.S. 1991, Section 142.5, as amended by Section 28, Chapter 344, O.S.L. 1995 (63 O.S. Supp. 1998, 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 Oklahoma Underground Facilities Damage Prevention Act and the Oklahoma Explosives and Blasting Regulation Act.

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

Section 142.6 A. Before an excavator ~~shall demolish~~ demolishes a structure, ~~discharge~~ discharges any explosive or ~~commence~~ commences 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:

OPERATOR AND TYPE OF PRODUCT	SPECIFIC GROUP IDENTIFYING COLOR
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
Temporary Survey Marking	Fluorescent Pink
Proposed Excavation	White

SECTION 9. 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 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 10. 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 11. AMENDATORY Section 1, Chapter 369, O.S.L. 1992 (63 O.S. Supp. 1998, Section 142.9a), is amended to read as follows:

Section 142.9a On and after ~~the effective date of this act~~ September 1, 1992, any excavator except for public agencies who fails to comply with the Oklahoma Underground Facilities Damage Prevention Act and who damages an underground facility owned or operated by a nonprofit rural water corporation organized pursuant to Section 863 of Title 18 of the Oklahoma Statutes or a rural water district organized pursuant to the Rural Water, Sewer, Gas, and Solid Waste Management Districts Act shall be liable for the underground damage to and responsible for the repair of such facilities. On and after ~~the effective date of this act~~ September 1, 1992, any new relocated or replaced underground facilities shall contain materials capable of being detected so that the facilities can be accurately located.

SECTION 12. 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. Any excavator 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.

B. Any operator not subject to the jurisdiction of the Corporation Commission pursuant to Section 5 of Title 52 of the Oklahoma Statutes and the Hazardous Liquid Transportation System Safety Act 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.

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

D. 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.

E. 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.

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

SECTION 13. 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.~~ A suitable record shall be maintained by the notification center to document the receipt of the notices from excavators as required by ~~this act~~ the Oklahoma Underground Facilities Damage Prevention Act.

SECTION 14. 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 15. REPEALER 63 O.S. 1991, Section 142.4, is hereby repealed.

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

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated 2-18-99 -- DO PASS, As Coauthored.