

1 STATE OF OKLAHOMA

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

3 SENATE BILL NO. \_\_\_\_\_

By: Dunlap

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5  
6 AS INTRODUCED

7 An Act relating to the Oklahoma Underground  
8 Facilities Damage Prevention Act; amending 63 O.S.  
9 1991, Sections 142.2, as amended by Section 27,  
10 Chapter 344, O.S.L. 1995, 142.3, as amended by  
11 Section 1, Chapter 25, O.S.L. 1992, 142.5, as amended  
12 by Section 28, Chapter 344, O.S.L. 1995, 142.6,  
13 142.7, 142.8, Section 1, Chapter 369, O.S.L. 1992,  
14 142.10 and 142.11 (63 O.S. Supp. 1998, Sections  
15 142.2, 142.3, 142.5, and 142.9a), which relate to the  
16 Oklahoma Underground Facilities Damage Prevention  
17 Act; modifying definitions; requiring mandatory  
18 membership in certain statewide notification center;  
19 requiring compliance with certain acts prior to  
20 certain excavation; requiring certain notification  
21 prior to excavation or demolition; stating  
22 notification requirements and exceptions; stating  
23 requirements for use of certain power equipment;  
24 requiring certain notice; requiring certain  
25 underground facilities to contain materials capable  
26 of detection; providing penalties; stating liability;  
27 stating applicability; modifying certain  
28 requirements for statewide notification centers;  
29 exempting certain routine maintenance from act;  
30 repealing 63 O.S. 1991, Section 142.4, which relates  
31 to filing fees; providing for codification; and  
32 providing an effective date.

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

SECTION 226. 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

1 such project, as part of its procedure, notifies all persons  
2 determined by the public agency to have underground facilities  
3 located within the construction right-of-way and certifies that all  
4 known underground facilities are duly located or noted on the  
5 engineering drawings for the project;

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

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

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

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

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

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

27 c. routine maintenance, ~~nor~~

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

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

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

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



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 or  
13 agency of the state, and any city, town, county, subdivision thereof  
14 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; provided, however, that routine~~  
21 road maintenance does 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 1. 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:

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

16 SECTION 2. 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 the  
23 location of the facilities of an operator without first complying  
24 with the requirements of the Underground Facilities Damage  
25 Prevention Act and the Oklahoma Explosives and Blasting Regulation  
26 Act.

27 SECTION 3. 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 a  
30 structure, discharge any explosive or commence to excavate in ~~a~~  
31 ~~highway, street, alley or other~~ any public ground or way, including,  
32 but not limited to, a highway, street or alley, on or near the

1 location of an operator's underground facilities, or a private  
2 easement, such excavator shall first notify all ~~operators in the~~  
3 ~~county who have on file with the county clerk a notice pursuant to~~  
4 ~~Section 3 of this act, and all notification centers who have on file~~  
5 ~~with the county clerk a statement pursuant to Section 10 of this~~  
6 ~~act,~~ to determine whether any operators have underground facilities  
7 in or near the proposed area of excavation or demolition; ~~except~~  
8 ~~that when an excavator has knowledge that an operator does not have~~  
9 ~~underground facilities within the area of the proposed excavation~~  
10 ~~such excavator need not notify such operator of the proposed~~  
11 ~~excavation; provided however, that such excavator shall be~~  
12 ~~responsible for damage to the underground facilities of an operator~~  
13 ~~that was not so notified.~~ Such notice shall be given no more than  
14 ten (10) days nor less than forty-eight (48) hours, excluding  
15 Saturdays, Sundays and legal holidays, prior to the commencement of  
16 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,~~ Section 142.1 et seq. of this title, the

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

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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 SECTION 4. AMENDATORY 63 O.S. 1991, Section 142.7, is  
23 amended to read as follows:

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

1 excavator ~~so that~~ whereby the operator can determine the precise  
2 location of the underground facilities by exposing them prior to  
3 ~~continuing~~ continued excavation or demolition.

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

8 SECTION 5. AMENDATORY 63 O.S. 1991, Section 142.8, is  
9 amended to read as follows:

10 Section 142.8 In addition to the notice required by Section ~~6~~  
11 142.6 of this ~~act~~ title, whenever the demolition of a structure is  
12 proposed, ~~operators in the county who have a notice on file with the~~  
13 ~~county clerk pursuant to Section 3 of this act and all notification~~  
14 ~~centers who have a notice on file with the county clerk pursuant to~~  
15 ~~Section 10 of this act~~ shall be given at least sixty (60) days'  
16 notice of the proposed demolition before the demolition work begins  
17 unless a public agency determines that such structure endangers the  
18 public health or safety, then the public agency may, in the manner  
19 provided by law, order the immediate demolition of such structure.

20 SECTION 6. AMENDATORY Section 1, Chapter 369, O.S.L.  
21 1992 (63 O.S. Supp. 1998, Section 142.9a), is amended to read as  
22 follows:

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

1 or replaced underground facilities shall contain materials capable  
2 of being detected so that the facilities can be accurately located.

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

6 A. Any excavator who violates any provision of Section 142.1 et  
7 seq. of this title, is subject to a civil penalty in an amount not  
8 to exceed Two Thousand Dollars (\$2,000.00) to be imposed by the  
9 court in favor of the state. Any penalties received by the state  
10 shall be deposited in the General Revenue Fund of the State  
11 Treasury.

12 B. Any operator not subject to the jurisdiction of the Oklahoma  
13 Corporation Commission pursuant to the provisions of Sections 5 and  
14 47.1 et seq. of Title 52 of the Oklahoma Statutes who violates any  
15 provision of this act is subject to a civil penalty in an amount not  
16 to exceed Two Thousand Dollars (\$2,000.00) to be imposed by the  
17 court in favor of the state. Any penalties received by the state  
18 shall be deposited in the General Revenue Fund of the State  
19 Treasury.

20 C. Any operator subject to the jurisdiction of the Corporation  
21 Commission pursuant to the provisions of Sections 5 and 47.1 et seq.  
22 of Title 52 of the Oklahoma Statutes who violates any provisions of  
23 this act is subject to a civil penalty pursuant to the provisions of  
24 Section 6.1 of Title 17 of the Oklahoma Statutes and Section 47.6 of  
25 Title 52 of the Oklahoma Statutes.

26 D. If a violation of this act results in physical contact with  
27 an underground facility, the violator is liable to the owner of the  
28 facility for all damages to the facilities and costs, expenses and  
29 damages to third parties incurred by the owner of the facility as a  
30 result of the contact.

31 E. If the owner or operator fails to locate or incorrectly  
32 locates the underground facility pursuant to this act, the owner or

1 operator becomes liable for resulting damages, costs and expenses to  
2 the injured party.

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

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

8 Section 142.10 A. This act, Section 142.1 et seq. of this  
9 title, recognizes the value of and encourages and authorizes the  
10 establishment of statewide notification centers.

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

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

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

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

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

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

6 Section 142.11 Notwithstanding anything which may be contained  
7 in this act, Section 142.1 et seq. of this title, to the contrary,  
8 ~~public agencies and their contractors engaged in work within the~~  
9 ~~public right-of-way which work is a pre-engineered project,~~  
10 ~~certified project or~~ routine maintenance shall be exempt from the  
11 provisions of this act.

12 SECTION 10. REPEALER 63 O.S. 1991, Section 142.4, is  
13 hereby repealed.

14 SECTION 11. This act shall become effective November 1, 1999.

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