

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2777

By: Adkins

COMMITTEE SUBSTITUTE

An Act relating to telecommunications; amending 63 O.S. 2001, Sections 142.2, 142.3, 142.4, 142.5, 142.6, 142.7, 142.8, 142.9, 142.9a, 142.10 and 142.11, which relate to the Oklahoma Underground Facilities Damage Prevention Act; modifying definitions; adding definition; updating statutory references, clarifying statutory language; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 142.2, is amended to read as follows:

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

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

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

operator of the underground facilities would necessitate the repair thereof;

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

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

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

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

shall be deemed excavation;

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

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

8. "Notification center" means a center operated by an organization 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; ~~and~~

15. "Telecommunications company" means any person or state agency owning or operating underground cable facilities for the purpose of transmitting voice, video, or data information; and

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

SECTION 2. AMENDATORY 63 O.S. 2001, 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~~ the county a notice that ~~such~~ the operator has underground facilities located within the county and the address and telephone number of the person or persons from whom information about ~~such~~ the 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 in a statewide

one-call notification center whether or not they have filed with the county clerks of the counties in which they have facilities.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 142.4, is amended to read as follows:

Section 142.4 A. The county clerk shall charge and collect fees from operators filing notices pursuant to Section ~~3~~ 142.3 of this ~~act~~ title and notification centers filing statements pursuant to subsection E of Section ~~10 below~~ 142.10 of this title, except public agencies, as follows:

1. Upon the initial filing of a notice or statement, a fee of One Hundred Dollars (\$100.00); and
2. Annually thereafter a fee of One Hundred Dollars (\$100.00).
 - a. This fee shall be due and payable on January 1 of each year, money to go into county general fund.
 - b. Failure to pay such fee on or before February 1 of such year shall result in the filing being void and the county clerk shall remove such operator or notification center from the list of operators and notification centers having underground facilities in the county.
 - c. Such operator or notification center may thereafter file again pursuant to this act, but only upon payment to the county clerk of the above-specified initial filing fee and an additional late filing fee of Fifty Dollars (\$50.00).

B. The county clerk shall maintain a current list of all operators and notification centers on file pursuant to ~~this act~~ the Oklahoma Underground Facilities Damage Prevention Act and shall make copies of such list available upon payment of the appropriate statutory fees.

SECTION 4. AMENDATORY 63 O.S. 2001, 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 public ground or way, 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 5. AMENDATORY 63 O.S. 2001, Section 142.6, is amended to read as follows:

Section 142.6 A. Before an excavator shall demolish a structure, discharge any explosive or commence to excavate in a highway, street, alley or other public ground or way, 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~~ 142.3 of this ~~act~~ title, and all notification centers who have on file with the county clerk a statement pursuant to Section ~~10~~ 142.10 of this ~~act~~ title, 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, 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 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~~ the operator does not have underground facilities located within the proposed area of excavation or demolition, the operator shall communicate this information to the excavator originating the notice prior to the commencement of such excavation or demolition.

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

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

1. The name of the individual serving such notice;

2. The location of the proposed area of excavation or demolition;

3. The name, address and telephone number of the excavator or excavator's company;

4. The excavator's field telephone number, if one is available;

5. The type and the extent of the proposed work;

6. Whether or not the discharging of explosives is anticipated; and

7. The date and time when work is to begin.

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

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

SECTION 6. AMENDATORY 63 O.S. 2001, 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 the precise location of the underground facilities cannot be determined by the excavator, the operator ~~thereof~~ of the underground facilities shall be notified by the excavator so that the operator can determine the precise location of the underground facilities prior to continuing 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 7. AMENDATORY 63 O.S. 2001, 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~~ 142.3 of this ~~act~~ title and all notification centers who have a notice on file with the county clerk pursuant to Section ~~10~~ 142.10 of this ~~act~~ title 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 8. AMENDATORY 63 O.S. 2001, Section 142.9, is amended to read as follows:

Section 142.9 A. When any damage occurs to an underground facility or its protective covering, the operator ~~thereof~~ of the

underground facility shall be notified immediately by the excavator who caused the damage.

B. Upon receiving notice of such damage, the operator shall promptly dispatch personnel to the location to effect temporary or permanent repairs.

C. Should damage occur that endangers life, health or property, the excavator responsible for the work shall keep all sources of ignition away from the damaged area and shall take immediate action to protect the public and property and to minimize the hazard until arrival of the operator's personnel or until the appropriate police or fire officials shall have arrived and taken charge of the damaged area.

D. An excavator shall delay any backfilling in the immediate area of the damaged underground facilities until the damage has been repaired, unless the operator authorizes otherwise. The repair of such damage ~~must~~ shall be performed by the operator or by qualified personnel authorized by the operator.

SECTION 9. AMENDATORY 63 O.S. 2001, Section 142.9a, is amended to read as follows:

Section 142.9a ~~On and after the effective date of this act, any~~ 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, any~~ Any new underground facilities installed on and after September 1, 1992, shall contain materials capable of being detected so that the facilities can be accurately located.

SECTION 10. AMENDATORY 63 O.S. 2001, Section 142.10, is amended to read as follows:

Section 142.10 A. ~~This act~~ The Oklahoma Underground Facilities Damage Prevention Act recognizes the value of and encourages and authorizes the establishment of 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 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.

SECTION 11. AMENDATORY 63 O.S. 2001, 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~~ the act.

SECTION 12. This act shall become effective July 1, 2002.

SECTION 13. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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