

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

2ND CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1592

By: Pope and Hilliard of the
House

and

Price of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to utilities; amending 63 O.S. 2001, Sections 142.2, as amended by Section 1, Chapter 412, O.S.L. 2002, 142.3, 142.4, 142.6, 142.8, 142.9a, as amended by Section 2, Chapter 412, O.S.L. 2002, 142.10 and 142.11 (63 O.S. Supp. 2002, Sections 142.2 and 142.9a), which relate to the Oklahoma Underground Facilities Damages Prevention Act; modifying certain definitions; deleting the county filing option; expanding entities required to participate; requiring the filing of a notice; listing certain information required in notice; providing an option for municipalities; modifying authority to charge certain fees; providing an exception; changing amount and process for collection of fees; changing area in which operators are provided notification; modifying notice requirements; updating statutory references; changing area in which operators are notified of demolition; deleting certain contractors from exemption from an injunction; changing number of authorized notification centers; requiring notification center to operate certain hours; deleting certain filing requirement; requiring a public agency contractor to take certain steps prior to routine maintenance; establishing notification procedure for municipalities that elect not to participate in the statewide one-call notification center; listing information to be provided; defining certain terms; providing procedure to be utilized by a municipal contractor; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 142.2, as amended by Section 1, Chapter 412, O.S.L. 2002 (63 O.S. Supp. 2002, Section 142.2), is amended to read as follows:

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

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

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

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

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

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

- a. the moving of earth by tools manipulated only by human or animal power, nor
- b. any form of cultivation for agricultural purposes, nor any augering, dozing by noncommercial dozer operators or digging for postholes, farm ponds, land clearing or other normal agricultural purposes, nor

- c. routine maintenance, nor
- d. work by a public agency or its contractors on a pre-engineered 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 pre-engineered 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~~ the statewide center operated by an organization currently known as the Oklahoma One-Call System, Inc., 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. "Underground facility" means any underground line, cable, facility, system and appurtenances thereto, for producing, storing, conveying, transmitting or distributing communication (including voice, video, or data information), 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 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~~ Except for a municipality, 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~~ the statewide one-call notification center whether or not they have filed with the county clerks of the counties in which they have facilities and shall have on file with the notification center a notice that such operator has underground facilities, the county or counties where such facilities are located, and the address and telephone number of the person or persons from whom information about such underground facilities may be obtained. A municipality may, at its discretion, participate in the statewide one-call notification center as provided for in this section or may provide information concerning the underground facilities of the municipality as provided for in Section 9 of this act.

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

Section 142.4 A. ~~The county clerk~~ As provided for in this section, the notification center shall charge and collect fees from operators filing notices pursuant to Section 3 142.3 of this act and notification centers filing statements pursuant to subsection E of Section 10 below title, except public agencies, as follows: for rural water districts which have less than one thousand one hundred

(1,100) meters and municipalities which have a population of less than three thousand (3,000).

~~1. B. Upon the initial filing of a notice or statement and annually thereafter, a fee of ~~One Hundred Dollars (\$100.00); and~~~~

~~2. Annually thereafter a fee of One Hundred Dollars (\$100.00).~~

~~a. This shall be collected in a manner as provided for in Section 142.10 of this title. The 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~~ notification center shall remove such operator ~~or notification center~~ from the list of operators ~~and notification centers~~ having underground facilities in the county.~~

~~e. Such operator ~~or notification center~~ may thereafter file again pursuant to this act, but only upon payment to the ~~county clerk~~ notification center of the above-specified initial filing fee and an additional late filing fee of Fifty Dollars (\$50.00).~~

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

SECTION 4. AMENDATORY 63 O.S. 2001, Section 142.6, 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 geographic area defined by the notification center who have

on file with the ~~county clerk~~ notification center a notice pursuant to Section 3 142.3 of this act, ~~and all notification centers who have on file with the county clerk a statement pursuant to Section 10 of this act,~~ title to determine whether any operators have underground facilities in or near the proposed area of excavation or demolition; ~~except that when.~~ When an excavator has knowledge that an operator does not have underground facilities within the area of the proposed excavation ~~such~~ the excavator need not notify ~~such~~ the operator of the proposed excavation; ~~provided however, that such.~~ However, an excavator shall be responsible for damage to the underground facilities of an operator ~~that was not so~~ if the notification center was not notified. ~~Such notice~~ 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~~ the notification center ~~of which such operator is a member or participant,~~ shall, within forty-eight (48) hours after receipt ~~thereof~~ of verification from the notification center that the notice has been accepted and acknowledged, 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.~~ The operators of a municipally owned water, sewage ~~and,~~ traffic control, communication facility or any other municipally owned 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 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~~ the notification center pursuant to Section ~~10~~ 142.3 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 5. 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~~ geographic area defined by the notification center who have a notice on file with the ~~county clerk~~ notification center pursuant to Section ~~3~~ 142.3 of this ~~act~~ and all notification centers who have a notice on file with the county clerk pursuant to Section 10 of this act 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~~

the structure endangers the public health or safety, then the public agency may, in the manner provided by law, order the immediate demolition of ~~such~~ the structure.

SECTION 6. AMENDATORY 63 O.S. 2001, Section 142.9a, as amended by Section 2, Chapter 412, O.S.L. 2002 (63 O.S. Supp. 2002, Section 142.9a), is amended to read as follows:

Section 142.9a A. Any excavator, except for a public agencies agency 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. 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.

B. Any excavator who damages or cuts an underground facility, as a result of negligently failing to comply with the provisions of the Oklahoma Underground Facilities Damage Prevention Act or as a result of failing to take measures for the protection of an underground facility shall be liable to the operator of the underground facility for the repair of the damaged underground facility.

C. Except for public agencies ~~and their contractors~~, any excavator who by willful act or by reckless disregard of the rights of others, repeatedly violates the provisions of the Oklahoma Underground Facilities Damage Prevention Act and repeatedly damages underground facilities, thereby threatening the public health, safety, and welfare, may be enjoined by a court of competent jurisdiction from further excavation.

SECTION 7. AMENDATORY 63 O.S. 2001, Section 142.10, is amended to read as follows:

Section 142.10 A. This act recognizes the value of and ~~encourages and~~ authorizes the establishment of a statewide notification center.

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

~~C. Upon the establishment of a,~~ the notification center and compliance with subsection E of this section, notification shall operate twenty-four (24) hours a day, seven (7) days a week.

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.~~ C. All operators who have underground facilities within the defined geographical boundary of ~~a~~ the 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.~~ D. 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 8. 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 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. Provided, a public agency contractor, prior to engaging in routine maintenance, shall take reasonable steps to determine the location of underground facilities in or near the proposed area of work. Reasonable steps may include utilization of the statewide one-call notification center procedures as provided for in Section 142.6 of this title.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A municipality that elects not to participate in the statewide one-call notification center, pursuant to Section 142.3 of Title 63 of the Oklahoma Statutes, shall designate one or more persons who are authorized to provide information concerning the underground facilities of the municipality. The name, address, and telephone number or numbers of the person or persons designated to provide information shall be made available at the main office of the municipality. The designated person or persons shall be available to provide information twenty-four (24) hours a day, seven (7) days a week. After notification is received by the designated person the municipality shall, within forty-eight (48) hours, excluding Saturdays, Sundays, and legal holidays, locate and mark or otherwise provide the approximate location of the underground facilities of the municipality.

B. The information provided by the person designated by the municipality as provided for in subsection A of this section shall include the:

1. Approximate location, if known, of any underground facilities of the municipality located within the county and located in or near the proposed area of excavation or demolition; and

2. Type of underground facilities of the municipality located within the county and in or near the proposed area of excavation or demolition.

C. For purposes of this section, the approximate location of the underground facilities shall be defined as a strip of land two (2) feet on either side of the underground facilities.

D. A contractor for a municipality shall utilize the notification procedure, either the statewide one-call notification center or the procedure set forth in this section, that is utilized by the municipality. A contractor for a municipality that utilizes a designated person shall also comply with the provisions of this section.

SECTION 10. This act shall become effective November 1, 2003.

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