

ENROLLED SENATE
BILL NO. 1574

By: Corn of the Senate

and

Smithson, Miller (Ray),
Pope, McCarter, Pettigrew,
Roan, Walker and Adkins of
the House

An Act relating to roads, bridges and ferries; amending 69 O.S. 2001, Sections 1401, 1402 and 1403, which relate to public utilities; clarifying entity promulgating certain rules; specifying rights of utilities and cable television systems when relocating facilities; defining term; providing for forfeiture of rights and claims under certain circumstances; requiring conformation of certain public utility apparatus to provisions of specified code; modifying conditions for forfeiture of certain rights; providing for definition of specified systems; requiring notice be given to the Department of Transportation of certain proceedings; clarifying obligation to pay for certain relocations of utility facilities; and declaring an emergency.

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

SECTION 1. AMENDATORY 69 O.S. 2001, Section 1401, is amended to read as follows:

Section 1401. ~~(a)~~ A. Any public ~~utilities~~ utility, or cable television system, not otherwise authorized to do so, lawfully operating or doing business in the State of Oklahoma shall have the right to use the public roads and highways of this state, including the right-of-way and all easements pertaining thereto, as ~~hereinafter~~ provided for in this section.

~~(b)~~ B. The use of the public roads and highways by such public ~~utilities~~ utility or cable television system shall be for the purpose of erecting poles and posts, attaching equipment, wires and fixtures thereto and laying pipes and conduits under the surface thereof. ~~Such~~ All poles, wires, fixtures, pipes and conduits shall be erected, placed, adjusted or laid and maintained only after obtaining the consent ~~of, and under such~~ pursuant to rules and regulations as shall be prescribed promulgated by, the ~~Commission~~ Department of Transportation as to the state highway system, and the boards of county commissioners of the various counties as to roads and highways under their jurisdiction. Provided, ~~that nothing~~

herein however, in the event a utility or cable television system which has facilities located on private easements is included within the public right-of-way as a result of construction, reconstruction, improvement or other modification, it shall be granted prior rights, as defined below. Such utility or cable television system, which complies with the Underground Damage Prevention Act shall not be liable for damages to any other utility, which locates facilities within the area encompassed, to the extent practicable without interfering with or endangering the public in the use of its roads and highways, by the private easements of the public utility or cable television system included within the public right-of-way, as a result of the operation, maintenance or repair of such utility's or cable television system's facilities. The term "prior rights" as used in this section refers to a situation involving a utility company that was located on private easements which are later encompassed by the state's right-of-way. When a utility company is in private easements which are acquired or encompassed by the right-of-way of the Department, it is given a choice of relocating their conflicting facilities into a public right-of-way or acquiring a new private easement and relocating onto it. Either of said relocations shall be at the expense of the Department. Whenever a utility company relocates into a public right-of-way, the utility company shall have prior rights. If a subsequent relocation is required by the Department, the utility company shall be given a choice to relocate onto public easements or to relocate into a private right-of-way, and both will be at the expense of the Department. The utility shall have prior rights for any subsequent relocation requested by the Department. If a public utility or cable television system elects to relocate its facilities to a newly acquired private right-of-way, the utility shall forfeit all rights and claims in its easements to the extent such easements are now contained in the public right-of-way as a result of construction, reconstruction, improvement, or other modification. Nothing in this section shall be construed to grant the right to use the streets or other places of any municipality of this state without the consent of ~~such~~ the municipality. Provided, further, that the boards of county commissioners may grant to any citizen the right to lay pipes and conduits under the surface of any road or highway under their jurisdiction, subject to such rules, regulations and conditions as shall be prescribed by the board of county commissioners. ~~Provided, further, that nothing herein~~ Nothing in this section shall be construed to limit any rights granted by other provisions of law. ~~Provided, further, that such~~ All poles, wires, posts, conduits and equipment shall be erected, placed, adjusted, laid, constructed and maintained so as not to incommode inconvenience or endanger the public in the use of its roads and highways and shall conform to all applicable provisions of the National Electrical Safety Code approved by the American National Standards Institute, in effect at the time of such erection, placement, adjustment, or construction.

Public utilities or cable television systems shall completely repair or replace any damage, injury or other change to public roads or highways ~~of~~ or rights-of-way of this state or any county or municipality which would incommode inconvenience or endanger the public which are caused by the erection, placement, adjustment, construction or maintenance of any public utility or cable television system poles, wires, posts, conduits or other equipment.

~~Provided that nothing~~ Nothing in this act shall be interpreted to impair the right of recovery against any third party for such damage or injury.

~~(c)~~ C. The failure of any ~~such~~ public utility or cable television system to construct or maintain its poles, wires, conduits, pipe lines and equipment upon or under such public highways in full compliance with the rules ~~and regulations~~ promulgated by the ~~Commission~~ Department of Transportation or the board of county commissioners ~~involved~~, including placement of its poles, wires, conduits, pipe lines and equipment, shall forfeit the right of ~~such~~ the utility or cable television system ~~herein granted~~ to use ~~such~~ the public highway or highways, and ~~such~~ the utility or cable television system may thereupon be ousted from the use of ~~such~~ the highway.

D. "Public utility" and "cable television systems" as used in this section and in Sections 1402 and 1403 of this title shall be defined as a person, corporation, association, limited liability company or partnership, company, or any other form of entity organized and existing or domesticated under the laws of this state, and whose users lie within the State of Oklahoma. Such terms as used in this section and Sections 1402 and 1403 of this title specifically shall not apply to persons, corporations, associations, limited liability companies or partnerships, companies, or any other form of entity which obtains status through the Corporation Commission as a public utility, but whose end users are not within the State of Oklahoma.

SECTION 2. AMENDATORY 69 O.S. 2001, Section 1402, is amended to read as follows:

Section 1402. The rights ~~herein~~ granted pursuant to this act shall not be exercised as to interfere with the free and ordinary use of public highways or the exercise of the rights of other public utilities lawfully located ~~thereon~~ on the highways. The ~~State~~ Corporation Commission shall have authority to hear and determine all complaints and controversies involving any interference with public rights, or the right of other public service concerns in connection with the exercise of the rights and authority ~~herein~~ granted to public utilities, pursuant to this act and fix reasonable terms and conditions to be complied with by the respective parties. Proceedings on ~~complaint under this article~~ complaints pursuant to this act shall be upon notice and subject to the right of appeal as in other cases where notice and right of appeal is granted under the laws of this state and the Department of Transportation shall be given notice of any complaint filed or hearing set, and shall have the right to appear on all related issues.

SECTION 3. AMENDATORY 69 O.S. 2001, Section 1403, is amended to read as follows:

Section 1403. ~~(a)~~ A. The location and removal of all telephone, telegraph, electric light and power transmission lines, poles, wires and conduits, water, sewers and all pipelines erected, constructed or in place upon, across or under any state highway shall be under the control and supervision of the ~~Commission~~

Department of Transportation; and the location and removal of any facility placed under rights granted hereunder on county highways shall be under the jurisdiction of the particular board of county commissioners involved insofar as same affects the public travel or interferes with the construction and maintenance of such highway.

~~(b)~~ B. Whenever the authority having jurisdiction over a particular highway plans an improvement or construction or reconstruction ~~thereof~~ of the highway, and before ~~such~~ the work is started, it shall serve a written notice upon the person, firm or corporation owning or maintaining any such facility, which notice shall contain a plan or chart indicating the places on the right-of-way where ~~such~~ the facilities may be maintained. The notice shall state the time when the work of improving ~~such~~ the highway is proposed to commence, and a reasonable time shall be allowed to the owner of the facility to remove and relocate its property; ~~provided, however, that the~~. The effect of any change ordered by the public authority shall not be to exclude the facilities from the right-of-way of highways.

~~(c)~~ C. The removal and relocation of all ~~such~~ the facilities located within the public right-of-way prior to the planned improvement, construction or reconstruction shall be made at the cost and expense of the owners ~~thereof~~, unless otherwise provided by law or order of the Commission Department of Transportation, and in the event of the failure of such owners to remove the same at the time set out in the notice, they may be removed by ~~such~~ the public authority and the cost ~~thereof~~ of the removal collected from ~~such~~ the owners, and ~~such~~ the authority shall not be liable in any way to any person for the locating or relocating of ~~such~~ the facilities at the places prescribed. Any corporation or association, or the officers or agents of such corporation or association, or any other person who shall erect or maintain any such lines, poles, wires, conduits, pipelines, equipment or other facilities within the right-of-way of such highways in a manner not in complete accordance with the orders of the respective public authority shall be deemed guilty of a misdemeanor.

~~(d)~~ D. The Department of Transportation may promulgate such rules ~~and regulations~~ as it may deem necessary for the planting of trees and shrubbery and parking along such state highways.

~~(e)~~ E. Rural water districts, nonprofit water corporations, and municipal public water systems in municipalities with a population of ten thousand (10,000) or less, according to the latest Federal Decennial Census, or their beneficial trusts shall be exempt from the payment of the costs and expenses for the removal and relocation of water and sewer pipelines and all such facilities constructed or in place in the public right-of-way when the removal and relocation of such facilities is necessary for the improvement, construction or reconstruction of any road or highway which is part of the state highway system or turnpike project as defined in ~~Sections 501 (a)~~ subsection A of Section 501 and Section 1705 of this title. ~~Such~~ Any costs and expenses, including any unpaid on ~~the effective date of this act~~ July 1, 1990, shall be paid by the public authority having jurisdiction over the particular road or highway.

SECTION 4. 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.

Passed the Senate the 13th day of April, 2004.

Presiding Officer of the Senate

Passed the House of Representatives the 8th day of April, 2004.

Presiding Officer of the House
of Representatives