

CS for SB 278

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THE STATE SENATE
Thursday, February 24, 2005

Committee Substitute for
Senate Bill No. 278

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 278 - By: CORN of the Senate and SMITHSON of the House.

An Act relating to public utilities; amending 69 O.S. 2001, Section 1401, as amended by Section 1, Chapter 137, O.S.L. 2004 (69 O.S. Supp. 2004, Section 1401), which relates to use of highways, rights-of-way and easements by public utilities and cable television systems; modifying definition; and declaring an emergency.

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

SECTION 1. AMENDATORY 69 O.S. 2001, Section 1401, as amended by Section 1, Chapter 137, O.S.L. 2004 (69 O.S. Supp. 2004, Section 1401), is amended to read as follows:

Section 1401. A. Any public 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 provided for in this section.

B. The use of the public roads and highways by such public 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.

1 All poles, wires, fixtures, pipes and conduits shall be erected,
2 placed, adjusted or laid and maintained only after obtaining the
3 consent pursuant to rules promulgated by the Department of
4 Transportation as to the state highway system, and the boards of
5 county commissioners of the various counties as to roads and
6 highways under their jurisdiction. Provided, however, in the event
7 a utility or cable television system which has facilities located on
8 private easements is included within the public right-of-way as a
9 result of construction, reconstruction, improvement or other
10 modification, it shall be granted prior rights, as defined below.
11 Such utility or cable television system, which complies with the
12 Underground Damage Prevention Act shall not be liable for damages to
13 any other utility, which locates facilities within the area
14 encompassed, to the extent practicable without interfering with or
15 endangering the public in the use of its roads and highways, by the
16 private easements of the public utility or cable television system
17 included within the public right-of-way, as a result of the
18 operation, maintenance or repair of such utility's or cable
19 television system's facilities. The term "prior rights" as used in
20 this section refers to a situation involving a utility company that
21 was located on private easements which are later encompassed by the
22 state's right-of-way. When a utility company is in private
23 easements which are acquired or encompassed by the right-of-way of

1 the Department, it is given a choice of relocating their conflicting
2 facilities into a public right-of-way or acquiring a new private
3 easement and relocating onto it. Either of said relocations shall
4 be at the expense of the Department. Whenever a utility company
5 relocates into a public right-of-way, the utility company shall have
6 prior rights. If a subsequent relocation is required by the
7 Department, the utility company shall be given a choice to relocate
8 onto public easements or to relocate into a private right-of-way,
9 and both will be at the expense of the Department. The utility
10 shall have prior rights for any subsequent relocation requested by
11 the Department. If a public utility or cable television system
12 elects to relocate its facilities to a newly acquired private right-
13 of-way, the utility shall forfeit all rights and claims in its
14 easements to the extent such easements are now contained in the
15 public right-of-way as a result of construction, reconstruction,
16 improvement, or other modification. Nothing in this section shall
17 be construed to grant the right to use the streets or other places
18 of any municipality of this state without the consent of the
19 municipality. Provided, further, that the boards of county
20 commissioners may grant to any citizen the right to lay pipes and
21 conduits under the surface of any road or highway under their
22 jurisdiction, subject to such rules, regulations and conditions as
23 shall be prescribed by the board of county commissioners. Nothing

1 in this section shall be construed to limit any rights granted by
2 other provisions of law. All poles, wires, posts, conduits and
3 equipment shall be erected, placed, adjusted, laid, constructed and
4 maintained so as not to inconvenience or endanger the public in the
5 use of its roads and highways and shall conform to all applicable
6 provisions of the National Electrical Safety Code approved by the
7 American National Standards Institute, in effect at the time of such
8 erection, placement, adjustment, or construction.

9 Public utilities or cable television systems shall completely
10 repair or replace any damage, injury or other change to public roads
11 or highways or rights-of-way of this state or any county or
12 municipality which would inconvenience or endanger the public which
13 are caused by the erection, placement, adjustment, construction or
14 maintenance of any public utility or cable television system poles,
15 wires, posts, conduits or other equipment. Nothing in this act
16 shall be interpreted to impair the right of recovery against any
17 third party for such damage or injury.

18 C. The failure of any public utility or cable television system
19 to construct or maintain its poles, wires, conduits, pipe lines and
20 equipment upon or under such public highways in full compliance with
21 the rules promulgated by the Department of Transportation or the
22 board of county commissioners, including placement of its poles,
23 wires, conduits, pipe lines and equipment, shall forfeit the right

1 of the utility or cable television system to use the public highway
2 or highways, and the utility or cable television system may
3 thereupon be ousted from the use of the highway.

4 D. "Public utility" and "cable television systems" as used in
5 this section and in Sections 1402 and 1403 of this title shall be
6 defined as a person, corporation, association, limited liability
7 company or partnership, company, or any other form of entity
8 organized and existing or domesticated under the laws of this state,
9 and whose users ~~lie~~ receive service within the State of Oklahoma,
10 and whose rates and terms and conditions for service are regulated
11 by the Corporation Commission, and their affiliates, or a rural
12 electric cooperative, or is regulated as a cable television system
13 under the rules and regulations of the Federal Communications
14 Commission. Such terms as used in this section and Sections 1402
15 and 1403 of this title specifically shall not apply to persons,
16 corporations, associations, limited liability companies or
17 partnerships, companies, or any other form of entity which obtains
18 status through the Corporation Commission as a public utility, but
19 whose end users are not within the State of Oklahoma, or is not
20 deemed a public utility or cable television system by the Department
21 of Transportation.

22 SECTION 2. It being immediately necessary for the preservation
23 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.
3 COMMITTEE REPORT BY: COMMITTEE ON TRANSPORTATION, dated 2-22-05 - DO
4 PASS, As Amended and Coauthored.