

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1644

By: Roussetot

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5
6 AS INTRODUCED

7 An Act relating to public health and safety; amending
8 63 O.S. 2001, Sections 142.2, as last amended by
9 Section 1, Chapter 427, O.S.L. 2004, 142.3, as
10 amended by Section 2, Chapter 362, O.S.L. 2003,
11 142.9, 142.9a, as last amended by Section 6, Chapter
12 362, O.S.L. 2003 and 142.11, as amended by Section 8,
13 Chapter 362, O.S.L. 2003 (63 O.S. Supp. 2008,
14 Sections 142.2, 142.3, 142.9a and 142.11), which
15 relate to the Oklahoma Underground Facilities Damage
16 Prevention Act; adding a definition; deleting certain
17 exemption for municipalities; deleting certain option
18 for municipalities; requiring an excavator to report
19 damages within certain time period; providing
20 penalties for violation of the act; providing
21 penalties for intentional violation of the act;
22 making each violation a separate offense; setting
23 time limitation for imposing penalties; authorizing
24 the Corporation Commission to reduce any penalties
upon certain actions by the excavator; setting
conditions; allowing the Attorney General to bring an
action to collect penalties; providing for deposit of
penalties; limiting authority of the Commission to
seek penalties; authorizing the Commission to
investigate complaints of violations; directing the
Commission to establish an enforcement committee;
providing for membership, meetings, and duties of the
committee; providing for formal hearing proceeding;
deleting certain exemption for public agencies;
requiring public agencies to make certain
notification for certain projects; creating the
Oklahoma Underground Facilities Damage Prevention
Training Revolving Fund; making fund continuing;
stating source of funding; providing for budgeting
and expenditure; stating purpose; requiring claims to
be filed in certain manner; amending 17 O.S. 2001,

1 Section 180.11, which relates to the assessment upon
2 public utilities; expanding the use of the assessment
3 on public utilities; requiring credit of certain
4 portion of monies to the Pipeline Safety Department
5 for certain purposes; directing the Legislature to
6 establish certain budgetary limits; repealing Section
7 9, Chapter 362, O.S.L. 2003 (63 O.S. Supp. 2008,
8 Section 142.12), which relates to authorization to
9 elect to participate in the one-call notification
10 center; providing for codification; and providing an
11 effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 142.2, as
last amended by Section 1, Chapter 427, O.S.L. 2004 (63 O.S. Supp.
2008, 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. "Commission" means the Corporation Commission;

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

6 ~~3.~~ 4. "Demolish" means to wreck, raze, render, move or remove a
7 structure by means of any equipment or explosive;

8 ~~4.~~ 5. "Demolition" means the act or operation of demolishing a
9 structure;

10 ~~5.~~ 6. "Excavate" means to dig, compress or remove earth, rock
11 or other materials in or on the ground by use of mechanized
12 equipment or blasting, including, but not necessarily limited to,
13 augering, boring, backfilling, drilling, grading, pile driving,
14 plowing in, pulling in, trenching, tunneling and plowing; provided,
15 however, that neither:

16 a. the moving of earth by tools manipulated only by human
17 or animal power, nor

18 b. any form of cultivation for agricultural purposes, nor
19 any augering, dozing by noncommercial dozer operators
20 or digging for postholes, farm ponds, land clearing or
21 other normal agricultural purposes, nor

22 c. routine maintenance, nor

23 d. work by a public agency or its contractors on a
24 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.~~ 7. "Excavation" means the act or operation of excavating;

~~7.~~ 8. "Excavator" means a person or public agency that intends to excavate or demolish within the State of Oklahoma;

~~8.~~ 9. "Notification center" means the statewide center 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.~~ 10. "Operator" shall mean and include any person or public agency owning or operating underground facilities;

~~10.~~ 11. "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

1 vicinity of any blasting and notify each owner of such underground
2 facilities;

3 ~~11.~~ 12. "Person" includes any individual, partnership,
4 corporation, association, cooperative, trust or other entity,
5 including a person engaged as a contractor by a public agency, but
6 not including a public agency;

7 ~~12.~~ 13. "Preengineered project" means a public project wherein
8 the public agency responsible for such project, as part of its
9 engineering and contract procedures, holds a meeting prior to the
10 commencement of any construction work on such project in which all
11 persons, determined by the public agency to have underground
12 facilities located within the construction area of the project, are
13 invited to attend and given an opportunity to verify or inform the
14 public agency of the location of their underground facilities, if
15 any, within the construction area and where the location of all
16 known underground facilities are duly located or noted on the
17 engineering drawing and specifications for the project;

18 ~~13.~~ 14. "Public agency" means the state or any board,
19 commission or agency of the state, and any city, town, county,
20 subdivision thereof or other governmental entity;

21 ~~14.~~ 15. "Routine maintenance" means the grading of roads and
22 barrow or drainage ditches, the removal and replacement of pavement,
23 including excavation relating thereto and the installation and
24 maintenance of drainage and bridge facilities, signs, guardrails,

1 and electrical and communications facilities in or on the public
2 rights-of-way by a public agency; and

3 ~~15.~~ 16. "Underground facility" means any underground line,
4 cable, facility, system and appurtenances thereto, for producing,
5 storing, conveying, transmitting or distributing communication
6 (including voice, video, or data information), electricity, power,
7 light, heat, refined petroleum products, water (including storm
8 water), steam, sewage and other commodities. Underground facilities
9 shall also mean oil and natural gas pipelines that are subject to
10 the Hazardous Liquid Transportation System Safety Act and natural
11 gas pipelines subject to the jurisdiction of the Oklahoma
12 Corporation Commission Pipeline Safety Department, and any oil and
13 gas pipeline located in a public right-of-way.

14 SECTION 2. AMENDATORY 63 O.S. 2001, Section 142.3, as
15 amended by Section 2, Chapter 362, O.S.L. 2003 (63 O.S. Supp. 2008,
16 Section 142.3), is amended to read as follows:

17 Section 142.3 ~~Except for a municipality, all~~ All operators of
18 underground facilities shall participate in the statewide one-call
19 notification center and shall have on file with the notification
20 center a notice that such operator has underground facilities, the
21 county or counties where such facilities are located, and the
22 address and telephone number of the person or persons from whom
23 information about such underground facilities may be obtained. A
24 ~~municipality may, at its discretion, participate in the statewide~~

1 ~~one call notification center as provided for in this section or may~~
2 ~~provide information concerning the underground facilities of the~~
3 ~~municipality as provided for in Section 9 of this act.~~

4 SECTION 3. AMENDATORY 63 O.S. 2001, Section 142.9, is
5 amended to read as follows:

6 Section 142.9 A. When any damage occurs to an underground
7 facility or its protective covering, the operator ~~thereof~~ of the
8 facility shall be notified immediately by the excavator who caused
9 the damage. In addition, within forty-eight (48) hours after the
10 damage occurred, the excavator shall report the incident to the one-
11 call notification center. The notification center shall keep a
12 record of all reported incidents.

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

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

23 D. An excavator shall delay any backfilling in the immediate
24 area of the damaged underground facilities until the damage has been

1 repaired, unless the operator authorizes otherwise. The repair of
2 ~~such~~ damage must be performed by the operator or by qualified
3 personnel authorized by the operator.

4 SECTION 4. AMENDATORY 63 O.S. 2001, Section 142.9a, as
5 last amended by Section 6, Chapter 362, O.S.L. 2003 (63 O.S. Supp.
6 2008, Section 142.9a), is amended to read as follows:

7 Section 142.9a A. Any excavator, except for a public agency
8 who fails to comply with the Oklahoma Underground Facilities Damage
9 Prevention Act and who damages an underground facility owned or
10 operated by a nonprofit rural water corporation organized pursuant
11 to Section 863 of Title 18 of the Oklahoma Statutes or a rural water
12 district organized pursuant to the Rural Water, Sewer, Gas, and
13 Solid Waste Management Districts Act, shall be liable for the
14 underground damage to and responsible for the repair of such
15 facilities. Any new underground facilities installed on and after
16 September 1, 1992, shall contain materials capable of being detected
17 so that the facilities can be accurately located.

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

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

8 D. 1. Except as otherwise provided for in paragraph 2 of this
9 subsection, and in addition to all other penalties provided by law,
10 any excavator found to have violated any provision of the Oklahoma
11 Underground Facilities Damage Prevention Act which results in damage
12 to underground facilities shall be subject to a penalty of not more
13 than One Thousand Dollars (\$1,000.00) for the first violation and
14 not more than Five Thousand Dollars (\$5,000.00) for each subsequent
15 violation.

16 2. In addition to all other penalties provided by law, any
17 excavator who intentionally violates or who intentionally procures,
18 aids or abets in the violation of any provision of the Oklahoma
19 Underground Facilities Damage Prevention Act shall be subject to a
20 penalty of not more than Five Thousand Dollars (\$5,000.00) for the
21 first violation and not more than Ten Thousand Dollars (\$10,000.00)
22 for each subsequent violation.

23 3. Each violation of any provision of the Oklahoma Underground
24 Facilities Damage Prevention Act shall be a separate offense. In

1 the case of a continuing violation, each day that the violation
2 continues shall constitute a separate violation.

3 4. Penalties provided for pursuant to this subsection shall not
4 be imposed except by order of the Corporation Commission. A
5 complaint must be filed within two (2) years following the date of
6 the violation.

7 5. The Commission may reduce any penalty provided in this
8 section on any terms the Commission considers proper if the
9 excavator:

10 a. admits to the violation or violations alleged in the
11 complaint and makes a timely request for reduction of
12 the penalty or the defendant submits to the Commission
13 a written request for reduction of the penalty within
14 fifteen (15) days from the date of the penalty order,
15 and

16 b. participates in training on the excavation laws
17 offered or approved by the Commission.

18 The Commission may hold the reduced portion of the penalty in
19 abeyance and if the excavator complies with the provisions of this
20 paragraph and can demonstrate that for a period of at least twelve
21 (12) months from the date of the last violation that the excavator
22 has not been in violation of the act, the Commission may waive that
23 portion of the penalty.

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1 6. If the amount of the penalty is not paid to the Commission,
2 the Attorney General, at the request of the Commission, shall bring
3 an action in the name of the state in district court to recover the
4 penalty. The action shall not be commenced until after the time has
5 expired for an appeal from the findings, conclusions and order of
6 the Commission.

7 7. Notwithstanding any other provision of law, all penalties
8 recovered pursuant to this subsection shall be deposited in the
9 Oklahoma Underground Facilities Damage Prevention Training Revolving
10 Fund established pursuant to Section 6 of this act.

11 8. The Commission shall not seek penalties under this
12 subsection except in response to a complaint alleging a violation of
13 an Oklahoma Underground Facilities Damages Prevention Act filed with
14 the one-call notification center. The Commission may investigate
15 any complaint, and the Commission shall have sole discretion to seek
16 penalties under this subsection.

17 9. The Commission shall establish an enforcement committee that
18 shall provide an informal process for all parties involved in the
19 complaint to discuss the issues. The enforcement committee shall be
20 composed of one representative from each of the following:

- 21 a. the one-call notification center board of directors,
- 22 b. the pipeline industry,
- 23 c. the utility industry,
- 24 d. the telecommunications industry,

1 e. a municipality with underground facilities, and

2 f. a county commissioner.

3 The enforcement committee shall meet as needed to address
4 complaints. After reviewing a complaint, the enforcement committee
5 shall report their findings and recommendations to the Commission.

6 The recommendations of the enforcement committee shall be advisory
7 only and not binding on the Commission.

8 10. If resolution of a complaint cannot be reached through the
9 procedures set forth in paragraphs 8 and 9 of this subsection, the
10 complaint shall proceed to formal hearing before the Commission.

11 SECTION 5. AMENDATORY 63 O.S. 2001, Section 142.11, as
12 amended by Section 8, Chapter 362, O.S.L. 2003 (63 O.S. Supp. 2008,
13 Section 142.11), is amended to read as follows:

14 Section 142.11 Notwithstanding anything which may be contained
15 in this act to the contrary, public agencies and their contractors
16 engaged in work within the public right-of-way which work is a
17 preengineered project, certified project or routine maintenance
18 shall ~~be exempt from the provisions of this act. Provided, a public~~
19 ~~agency contractor,~~ prior to engaging in work on such a project or
20 routine maintenance, ~~shall~~ take reasonable steps to determine the
21 location of underground facilities in or near the proposed area of
22 work. Reasonable steps ~~may~~ shall include utilization of the
23 statewide one-call notification center procedures as provided for in

1 Section 142.6 of this title at least forty-eight (48) hours prior to
2 engaging in the work.

3 SECTION 6. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 180.12 of Title 17, unless there
5 is created a duplication in numbering, reads as follows:

6 There is hereby created in the State Treasury a revolving fund
7 for the Corporation Commission to be designated the "Oklahoma
8 Underground Facilities Damage Prevention Training Revolving Fund".
9 The fund shall be a continuing fund, not subject to fiscal year
10 limitations, and shall consist of all monies received by the
11 Commission from penalties collected as provided for in Section
12 142.9a of Title 63 of the Oklahoma Statutes. All monies accruing to
13 the credit of said fund are hereby appropriated and may be budgeted
14 and expended by the Commission for the purpose of providing training
15 to excavators found in violation of the Oklahoma Underground
16 Facilities Damage Prevention Act. Expenditures from said fund shall
17 be made upon warrants issued by the State Treasurer against claims
18 filed as prescribed by law with the Director of State Finance for
19 approval and payment.

20 SECTION 7. AMENDATORY 17 O.S. 2001, Section 180.11, is
21 amended to read as follows:

22 Section 180.11 A. The Corporation Commission is hereby
23 authorized to assess a fee upon each public utility to provide
24 adequate funding to the Public Utility Division of the ~~Oklahoma~~

1 Corporation Commission for the regulation of public utilities in
2 this state and for providing for timely and expeditious reviews and
3 completion of rate cases, ~~and~~ providing increased responsiveness to
4 the needs of consumers and the regulated community, and to provide
5 adequate funding to the Pipeline Safety Department of the
6 Corporation Commission to investigate complaints of violations of
7 the Oklahoma Underground Facilities Damage Prevention Act.

8 B. 1. The assessment authorized by this section may, after
9 excluding the amount allocated to interexchange telecommunications
10 companies, resellers, pay phone service providers and operator
11 service providers in paragraph 2 of this subsection, be borne by the
12 affected public utilities as follows:

13 a. one-half (1/2) shall be allocated based on that
14 proportion which the total regulated Oklahoma
15 jurisdictional gross operating revenues of each public
16 utility bear to the total regulated Oklahoma
17 jurisdictional gross operating revenues of all public
18 utilities, and

19 b. one-half (1/2) shall be allocated based on that
20 proportion which the total number of regulated
21 Oklahoma jurisdictional customers of each public
22 utility bears to the total number of regulated
23 Oklahoma jurisdictional customers of all public
24 utilities.

1 2. For interexchange telecommunications companies, resellers,
2 pay phone service providers and operator service providers, the
3 allocation may be based on the total regulated Oklahoma
4 jurisdictional gross operating revenues that each interexchange
5 telecommunications company, reseller or operator service provider
6 bears in proportion to the total regulated Oklahoma jurisdictional
7 gross operating revenue of all public utilities as applied to the
8 total amount of the assessment to be collected from all public
9 utilities for each year.

10 C. Any assessment levied pursuant to this section shall be
11 recoverable as an operating expense to the public utility and shall
12 be included in a utility's base rates or basic monthly service
13 charge. The Corporation Commission shall take such action necessary
14 to ensure recovery of the assessment by a public utility during the
15 period for which it is levied.

16 D. The Corporation Commission may provide that each public
17 utility shall pay any assessment levied pursuant to this section on
18 a quarterly basis. Notice of the annual assessment shall be sent by
19 certified mail, return receipt requested, to each public utility.
20 Each public utility shall pay the amount assessed to the Commission
21 for deposit to the Public Utility Regulation Revolving Fund created
22 in subsection E of this section. A public utility may, at its
23 discretion, pay its annual assessment prior to the due date of the
24 quarterly payments.

1 E. Any assessment collected by the Commission pursuant to this
2 section shall be deposited in the Public Utility Regulation
3 Revolving Fund hereby created. The fund shall be a continuing fund
4 not subject to fiscal year limitations and shall consist of the
5 monies received by the Commission from any assessment levied
6 pursuant to the provisions of this section. All monies accruing to
7 the credit of the fund are hereby appropriated and may be budgeted
8 and expended by the Commission to pay the costs, both direct and
9 indirect, of the Public Utilities Division incurred to regulate
10 public utilities. A portion of monies accruing to the credit of the
11 fund shall be transferred to the Pipeline Safety Department and used
12 to investigate violations of the Oklahoma Underground Facilities
13 Damage Prevention Act. Expenditures from said fund shall be made
14 upon warrants issued by the State Treasurer against claims filed as
15 prescribed by law with the Director of State Finance for approval
16 and payment.

17 F. The Legislature shall establish budgetary limits for the
18 Public Utility Division of the Corporation Commission and the
19 Pipeline Safety Department of the Corporation Commission for
20 purposes of investigating violations of the Oklahoma Underground
21 Facilities Damage Prevention Act. Any assessment levied pursuant to
22 this section shall not exceed the amount of the budgetary limits and
23 indirect costs for related support functions established by the
24 Legislature for any fiscal year.

1 G. For purposes of this section, "public utility" means:

2 1. A public utility as defined by Section 151 of ~~Title 17 of~~
3 ~~the Oklahoma Statutes~~ this title, excluding those companies
4 encompassed by paragraph (d) of Section 151 of ~~Title 17 of the~~
5 ~~Oklahoma Statutes~~ this title;

6 2. Any telephone or telecommunications company subject to
7 Section 131 et seq. of ~~Title 17 of the Oklahoma Statutes~~ this title,
8 including interexchange telecommunications companies or such other
9 telecommunications companies as defined by OCC Rule OAC 165:55-1-4,
10 resellers as defined by OCC Rule OAC 165:56-1-4 and operator service
11 providers as defined by OCC Rule OAC 165:57-1-4; and

12 3. Any association or cooperative corporation doing business
13 under the Rural Electric Cooperative Act except for generation and
14 transmission associations or cooperative corporations, or
15 transmission associations or cooperative corporations.

16 H. It is the intention of the Legislature that this entire
17 section is an amendment to and alteration of Sections 18 through 34,
18 inclusive, of Article IX of the Constitution of the State of
19 Oklahoma, as authorized by Section 35 of Article IX of said
20 Constitution.

21 SECTION 8. REPEALER Section 9, Chapter 362, O.S.L. 2003
22 (63 O.S. Supp. 2008, Section 142.12), is hereby repealed.

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SECTION 9. This act shall become effective November 1, 2009.

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