

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 2175

By: Branan

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5  
6 AS INTRODUCED

7 An Act relating to roads, bridges and ferries;  
8 amending 69 O.S. 2001, Section 1401, as amended by  
9 Section 1, Chapter 137, O.S.L. 2004 (69 O.S. Supp.  
10 2009, Section 1401), which relates to easements;  
11 clarifying statutory references; and declaring an  
12 emergency.

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

14 SECTION 1. AMENDATORY 69 O.S. 2001, Section 1401, as  
15 amended by Section 1, Chapter 137, O.S.L. 2004 (69 O.S. Supp. 2009,  
16 Section 1401), is amended to read as follows:

17 Section 1401. A. Any public utility, or cable television  
18 system, not otherwise authorized to do so, lawfully operating or  
19 doing business in the State of Oklahoma shall have the right to use  
20 the public roads and highways of this state, including the  
21 right-of-way and all easements pertaining thereto, as provided for  
22 in this section.

23 B. The use of the public roads and highways by such public  
24 utility or cable television system shall be for the purpose of  
erecting poles and posts, attaching equipment, wires and fixtures

1 thereto and laying pipes and conduits under the surface thereof.  
2 All poles, wires, fixtures, pipes and conduits shall be erected,  
3 placed, adjusted or laid and maintained only after obtaining the  
4 consent pursuant to rules promulgated by the Department of  
5 Transportation as to the state highway system, and the boards of  
6 county commissioners of the various counties as to roads and  
7 highways under their jurisdiction. Provided, however, in the event  
8 a utility or cable television system which has facilities located on  
9 private easements is included within the public right-of-way as a  
10 result of construction, reconstruction, improvement or other  
11 modification, it shall be granted prior rights, as defined below.  
12 Such utility or cable television system, which complies with the  
13 Oklahoma Underground Facilities Damage Prevention Act, Section 1421  
14 et seq. of Title 63 of the Oklahoma Statutes, shall not be liable  
15 for damages to any other utility, which locates facilities within  
16 the area encompassed, to the extent practicable without interfering  
17 with or endangering the public in the use of its roads and highways,  
18 by the private easements of the public utility or cable television  
19 system included within the public right-of-way, as a result of the  
20 operation, maintenance or repair of such utility's or cable  
21 television system's facilities. The term "prior rights" as used in  
22 this section refers to a situation involving a utility company that  
23 was located on private easements which are later encompassed by the  
24 state's right-of-way. When a utility company is in private

1 easements which are acquired or encompassed by the right-of-way of  
2 the Department, it is given a choice of relocating their conflicting  
3 facilities into a public right-of-way or acquiring a new private  
4 easement and relocating onto it. Either of said relocations shall  
5 be at the expense of the Department. Whenever a utility company  
6 relocates into a public right-of-way, the utility company shall have  
7 prior rights. If a subsequent relocation is required by the  
8 Department, the utility company shall be given a choice to relocate  
9 onto public easements or to relocate into a private right-of-way,  
10 and both will be at the expense of the Department. The utility  
11 shall have prior rights for any subsequent relocation requested by  
12 the Department. If a public utility or cable television system  
13 elects to relocate its facilities to a newly acquired private right-  
14 of-way, the utility shall forfeit all rights and claims in its  
15 easements to the extent such easements are now contained in the  
16 public right-of-way as a result of construction, reconstruction,  
17 improvement, or other modification. Nothing in this section shall  
18 be construed to grant the right to use the streets or other places  
19 of any municipality of this state without the consent of the  
20 municipality. Provided, further, that the boards of county  
21 commissioners may grant to any citizen the right to lay pipes and  
22 conduits under the surface of any road or highway under their  
23 jurisdiction, subject to such rules, regulations and conditions as  
24 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 Section 1401 et seq. of this title shall be interpreted to impair  
17 the right of recovery against any third party for such damage or  
18 injury.

19 C. The failure of any public utility or cable television system  
20 to construct or maintain its poles, wires, conduits, pipe lines and  
21 equipment upon or under such public highways in full compliance with  
22 the rules promulgated by the Department of Transportation or the  
23 board of county commissioners, including placement of its poles,  
24 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 within the State of Oklahoma. Such terms as  
10 used in this section and Sections 1402 and 1403 of this title  
11 specifically shall not apply to persons, corporations, associations,  
12 limited liability companies or partnerships, companies, or any other  
13 form of entity which obtains status through the Corporation  
14 Commission as a public utility, but whose end users are not within  
15 the State of Oklahoma.

16 SECTION 2. It being immediately necessary for the preservation  
17 of the public peace, health and safety, an emergency is hereby  
18 declared to exist, by reason whereof this act shall take effect and  
19 be in full force from and after its passage and approval.

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