

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 2028

By: O'Donnell of the House

and

Allen of the Senate

7 An Act relating to public health and safety; amending
63 O.S. 2011, Section 142.6, as last amended by
8 Section 2, Chapter 65, O.S.L. 2020 (63 O.S. Supp.
2020, Section 142.6), which relates to notice of
9 proposed demolition, explosion or excavation;
requiring notice and marking of facilities in certain
10 situations; requiring maintenance and preservation of
marks; requiring certain notice if marks become
11 invisible or are removed; providing time limits for
certain notice; providing for states of emergency;
12 providing for liability in certain situations;
amending 63 O.S. 2011, Section 142.9, as amended by
13 Section 2, Chapter 192, O.S.L. 2017 (63 O.S. Supp.
2020, Section 142.9), which relates to damage to
14 underground facilities; requiring certain notice when
damage occurs; amending 63 O.S. 2011, Section 142.10,
15 as amended by Section 3, Chapter 65, O.S.L. 2020 (63
O.S. Supp. 2020, Section 142.10), which relates to
16 the statewide notification center; requiring
participation by certain entities; requiring certain
17 documentation; and providing an effective date.

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19 AUTHOR: Add the following Senate Coauthor: Taylor

20 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and the
entire bill and insert

21
22 "An Act relating to public health and safety;
amending 63 O.S. 2011, Section 142.6, as last amended
23 by Section 2, Chapter 65, O.S.L. 2020 (63 O.S. Supp.
2020, Section 142.6), which relates to notice of
24 proposed demolition, explosion or excavation;

1 prohibiting excavation or demolition in certain
2 circumstance; defining term; requiring notice and
3 marking of facilities in certain situations;
4 requiring maintenance and preservation of marks;
5 requiring certain notice if marks become invisible or
6 are removed; providing time limits for certain
7 notice; providing for states of emergency; providing
8 for liability in certain situations; amending 63 O.S.
9 2011, Section 142.9, as amended by Section 2, Chapter
10 192, O.S.L. 2017 (63 O.S. Supp. 2020, Section 142.9),
11 which relates to damage to underground facilities;
12 requiring certain notice when damage occurs; amending
13 63 O.S. 2011, Section 142.10, as amended by Section
14 3, Chapter 65, O.S.L. 2020 (63 O.S. Supp. 2020,
15 Section 142.10), which relates to the statewide
16 notification center; requiring participation by
17 certain entities; requiring certain documentation;
18 and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 142.6, as
last amended by Section 2, Chapter 65, O.S.L. 2020 (63 O.S. Supp.
2020, 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
geographic area defined by the notification center who have on file
with the notification center a notice pursuant to Section 142.3 of
this title to determine whether any operators have underground

1 facilities in or near the proposed area of excavation or demolition.
2 When an excavator has knowledge that an operator does not have
3 underground facilities within the area of the proposed excavation,
4 the excavator need not notify the operator of the proposed
5 excavation. However, an excavator shall be responsible for damage
6 to the underground facilities of an operator if the notification
7 center was not notified. When an excavator has actual knowledge
8 that an operator has unmarked hydrocarbon and hazardous liquids
9 underground facilities within the area of proposed excavation, the
10 excavator shall not commence excavation or demolition until notice
11 has been given and such facilities have been marked. For purposes
12 of this section "actual knowledge" shall mean direct and clear
13 knowledge; provided, however, actual knowledge may be demonstrated
14 through circumstantial evidence and if the circumstances are such
15 that a defendant must have known, an inference of actual knowledge
16 is permitted. The excavator shall maintain and preserve all
17 hydrocarbon and hazardous liquids markings for the duration of the
18 excavation or demolition and shall notify the notification center if
19 such marks are no longer visible or are removed and underground
20 facilities have not been exposed. An excavator must check for
21 positive response at the notification center prior to excavating or
22 demolishing to ensure that all operators have responded and that all
23 facilities that may be affected by the proposed excavation or
24 demolition have been marked. Notice shall be given no ~~more than ten~~

1 ~~(10) days nor~~ less than forty-eight (48) hours, excluding the date
2 of notification, Saturdays, Sundays and legal holidays, prior to the
3 commencement of the excavation or demolition. Notice shall expire
4 fourteen (14) calendar days from the excavation start date. No
5 excavation may continue after the fourteenth day unless subsequent
6 notice has been submitted pursuant to notice requirements. If
7 excessive and unreasonable requests for marking are made by an
8 excavator when no excavation is taking place within fourteen (14)
9 calendar days, the excavator may be liable to the owner or operator
10 for the reasonable cost of such marking.

11 B. Each operator served with notice in accordance with
12 subsection A of this section either directly or by notice to the
13 notification center shall, prior to the date and time work is
14 scheduled to begin, unless otherwise agreed to between the excavator
15 and operator, locate and mark or otherwise provide the approximate
16 location of the underground facilities of the operator in a manner
17 as to enable the excavator to employ hand-dug test holes to
18 determine the precise location of the underground facilities in
19 advance of excavation. However, during any state of emergency
20 declared by the Governor or Legislature that impacts the area of
21 excavation or demolition, the time limitations of this subsection
22 shall be inapplicable. Each operator shall provide a positive
23 response to the notification center prior to the expiration of the
24 required notice period. This response shall indicate the status of

1 the required activities of the operator or designated representative
2 in regard to the proposed excavation or demolition. For the purpose
3 of the Oklahoma Underground Facilities Damage Prevention Act, the
4 approximate location of the underground facilities shall be defined
5 as a strip of land two (2) feet on either side of such underground
6 facilities. Whenever an operator is served with notice of an
7 excavation or demolition and determines that the operator does not
8 have underground facilities located within the proposed area of
9 excavation or demolition, the operator shall communicate this
10 information to the excavator originating the notice prior to the
11 commencement of such excavation or demolition.

12 C. The only exception to subsection A of this section shall be
13 when an emergency exists that endangers life, health or property.
14 Under these conditions, excavation operations may begin immediately,
15 providing reasonable precautions are taken to protect underground
16 facilities. All operators of underground facilities within the area
17 of the emergency must be notified promptly when an emergency
18 requires excavation prior to the location of the underground
19 facilities being marked. If requests for emergency locates are made
20 by an excavator when there is no emergency, the excavator may be
21 liable to the owner or operator for the reasonable cost of emergency
22 response.

23 D. Every notice given by an excavator to an operator pursuant
24 to this section or to the notification center pursuant to Section

1 142.3 of this title shall contain at least the following
2 information:
3 1. The name of the individual serving such notice;
4 2. The location of the proposed area of excavation or
5 demolition;
6 3. The name, address and telephone number of the excavator or
7 excavator's company;
8 4. The excavator's field telephone number, if one is available;
9 5. The type and the extent, not to exceed five hundred (500)
10 linear feet in incorporated areas or one (1) linear mile in
11 unincorporated areas, of the proposed work;
12 6. Whether or not the discharging of explosives is anticipated;
13 and
14 7. The date and time when work is to begin.

15 E. In marking the approximate location of underground
16 facilities, an operator shall follow the standard color coding
17 described herein:

18 OPERATOR AND TYPE OF PRODUCT	SPECIFIC GROUP IDENTIFYING COLOR
19 Electric Power	
20 Distribution and	
21 Transmission.....	Safety Red
22 Municipal Electric Systems.....	Safety Red
23 Gas Distribution and	
24 Transmission.....	High Visibility Safety Yellow

1 Oil Distribution and
2 Transmission.....High Visibility Safety Yellow
3 Dangerous Materials, Product
4 Lines, Steam Lines.....High Visibility Safety Yellow
5 Telephone and Telegraph
6 Systems..... Safety Alert Orange
7 Police and Fire
8 Communications.....Safety Alert Orange
9 Cable Television.....Safety Alert Orange
10 Water Systems.....Safety Precaution Blue
11 Slurry Systems.....Safety Precaution Blue
12 Sewer Systems.....Safety Green

13 SECTION 2. AMENDATORY 63 O.S. 2011, Section 142.9, as
14 amended by Section 2, Chapter 192, O.S.L. 2017 (63 O.S. Supp. 2020,
15 Section 142.9), is amended to read as follows:

16 Section 142.9. A. When any damage occurs to an underground
17 facility or its protective covering, the operator thereof and the
18 notification center shall be notified immediately by any person who
19 caused the damage.

20 B. Upon receiving notice of such damage, the operator shall
21 promptly dispatch personnel to the location to effect temporary or
22 permanent repairs.

23 C. Should damage occur that endangers life, health or property,
24 the excavator responsible for the work shall keep all sources of

1 ignition away from the damaged area and shall take immediate action
2 to protect the public and property and to minimize the hazard until
3 arrival of the operator's personnel or until the appropriate police
4 or fire officials shall have arrived and taken charge of the damaged
5 area.

6 D. An excavator shall delay any backfilling in the immediate
7 area of the damaged underground facilities until the damage has been
8 repaired, unless the operator authorizes otherwise. The repair of
9 such damage must be performed by the operator or by qualified
10 personnel authorized by the operator.

11 SECTION 3. AMENDATORY 63 O.S. 2011, Section 142.10, as
12 amended by Section 3, Chapter 65, O.S.L. 2020 (63 O.S. Supp. 2020,
13 Section 142.10), is amended to read as follows:

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

16 B. Upon establishment, the notification center shall operate
17 twenty-four (24) hours a day, seven (7) days a week. Notification,
18 as required by Section 142.6 of this title, to operators who are
19 members of or participants in the notification center, shall be
20 given by notifying the notification center by telephone or other
21 acceptable means of communication, the content of such notification
22 to conform to Section 142.6 of this title.

23 C. All operators who have underground facilities within the
24 defined geographical boundary of the notification center shall be

1 ~~afforded the opportunity to become a member~~ required to be members
2 in good standing of the notification center ~~on the same terms as the~~
3 ~~original members. Others may participate as nonmembers on terms and~~
4 ~~conditions as the members deem appropriate.~~

5 D. A suitable record shall be maintained by the notification
6 center to document the receipt of the notices from excavators and
7 positive responses from operators as required by this act.

8 Public agencies, as defined in this act, shall have access to
9 the record of underground facilities.

10 SECTION 4. This act shall become effective November 1, 2021."

11 Passed the Senate the 19th day of April, 2021.

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13 _____
14 Presiding Officer of the Senate

15 Passed the House of Representatives the ____ day of _____,
16 2021.

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18 _____
19 Presiding Officer of the House
20 of Representatives
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2 BILL NO. 2028

By: O'Donnell of the House

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4 Allen of the Senate
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7 An Act relating to public health and safety; amending
8 63 O.S. 2011, Section 142.6, as last amended by
9 Section 2, Chapter 65, O.S.L. 2020 (63 O.S. Supp.
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13 situations; requiring maintenance and preservation of
14 marks; requiring certain notice if marks become
15 invisible or are removed; providing time limits for
16 certain notice; providing for states of emergency;
17 providing for liability in certain situations;
18 amending 63 O.S. 2011, Section 142.9, as amended by
19 Section 2, Chapter 192, O.S.L. 2017 (63 O.S. Supp.
20 2020, Section 142.9), which relates to damage to
21 underground facilities; requiring certain notice when
22 damage occurs; amending 63 O.S. 2011, Section 142.10,
23 as amended by Section 3, Chapter 65, O.S.L. 2020 (63
24 O.S. Supp. 2020, Section 142.10), which relates to
the statewide notification center; requiring
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SECTION 5. AMENDATORY 63 O.S. 2011, Section 142.6, as
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2 structure, discharge any explosive or commence to excavate in a
3 highway, street, alley or other public ground or way, on or near the
4 location of an operator's underground facilities, or a private
5 easement, such excavator shall first notify all operators in the
6 geographic area defined by the notification center who have on file
7 with the notification center a notice pursuant to Section 142.3 of
8 this title to determine whether any operators have underground
9 facilities in or near the proposed area of excavation or demolition.
10 When an excavator has knowledge that an operator does not have
11 underground facilities within the area of the proposed excavation,
12 the excavator need not notify the operator of the proposed
13 excavation. However, an excavator shall be responsible for damage
14 to the underground facilities of an operator if the notification
15 center was not notified. When an excavator has knowledge that an
16 operator has unmarked underground facilities within the area of
17 proposed excavation, the excavator shall not commence excavation or
18 demolition until notice has been given and such facilities have been
19 marked. The excavator shall maintain and preserve all marks for the
20 duration of the excavation or demolition and shall notify the
21 notification center if such marks are no longer visible or are
22 removed and underground facilities have not been exposed. An
23 excavator must check for positive response at the notification
24 center prior to excavating or demolishing to ensure that all

1 operators have responded and that all facilities that may be
2 affected by the proposed excavation or demolition have been marked.
3 Notice shall be given no ~~more than ten (10) days nor~~ less than
4 forty-eight (48) hours, excluding the date of notification,
5 Saturdays, Sundays and legal holidays, prior to the commencement of
6 the excavation or demolition. Notice shall expire fourteen (14)
7 calendar days from the excavation start date. No excavation may
8 continue after the fourteenth day unless subsequent notice has been
9 submitted pursuant to notice requirements. If excessive requests
10 for marking are made by an excavator when no excavation is taking
11 place within fourteen (14) calendar days, the excavator may be
12 liable to the owner or operator for the reasonable cost of such
13 marking.

14 B. Each operator served with notice in accordance with
15 subsection A of this section either directly or by notice to the
16 notification center shall, prior to the date and time work is
17 scheduled to begin, unless otherwise agreed to between the excavator
18 and operator, locate and mark or otherwise provide the approximate
19 location of the underground facilities of the operator in a manner
20 as to enable the excavator to employ hand-dug test holes to
21 determine the precise location of the underground facilities in
22 advance of excavation. However, during any state of emergency
23 declared by the Governor or Legislature that encompasses the area of
24 excavation or demolition, the time limitations of this subsection

1 shall be inapplicable. Each operator must provide a positive
2 response to the notification center prior to the expiration of the
3 required notice period. This response shall indicate the status of
4 the required activities of the operator or designated representative
5 in regard to the proposed excavation or demolition. For the purpose
6 of the Oklahoma Underground Facilities Damage Prevention Act, the
7 approximate location of the underground facilities shall be defined
8 as a strip of land two (2) feet on either side of such underground
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11 have underground facilities located within the proposed area of
12 excavation or demolition, the operator shall communicate this
13 information to the excavator originating the notice prior to the
14 commencement of such excavation or demolition.

15 C. The only exception to subsection A of this section shall be
16 when an emergency exists that endangers life, health or property.
17 Under these conditions, excavation operations may begin immediately,
18 providing reasonable precautions are taken to protect underground
19 facilities. All operators of underground facilities within the area
20 of the emergency must be notified promptly when an emergency
21 requires excavation prior to the location of the underground
22 facilities being marked. If requests for emergency locates are made
23 by an excavator when there is no emergency, the excavator may be
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1 liable to the owner or operator for the reasonable cost of emergency
2 response.

3 D. Every notice given by an excavator to an operator pursuant
4 to this section or to the notification center pursuant to Section
5 142.3 of this title shall contain at least the following
6 information:

7 1. The name of the individual serving such notice;

8 2. The location of the proposed area of excavation or
9 demolition;

10 3. The name, address and telephone number of the excavator or
11 excavator's company;

12 4. The excavator's field telephone number, if one is available;

13 5. The type and the extent, not to exceed five hundred (500)
14 linear feet in incorporated areas or one (1) linear mile in
15 unincorporated areas, of the proposed work;

16 6. Whether or not the discharging of explosives is anticipated;
17 and

18 7. The date and time when work is to begin.

19 E. In marking the approximate location of underground
20 facilities, an operator shall follow the standard color coding
21 described herein:

22 OPERATOR AND TYPE OF PRODUCT SPECIFIC GROUP IDENTIFYING COLOR

23

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1 Electric Power
2 Distribution and
3 Transmission..... Safety Red
4 Municipal Electric Systems..... Safety Red
5 Gas Distribution and
6 Transmission.....High Visibility Safety Yellow
7 Oil Distribution and
8 Transmission.....High Visibility Safety Yellow
9 Dangerous Materials, Product
10 Lines, Steam Lines.....High Visibility Safety Yellow
11 Telephone and Telegraph
12 Systems..... Safety Alert Orange
13 Police and Fire
14 Communications.....Safety Alert Orange
15 Cable Television.....Safety Alert Orange
16 Water Systems.....Safety Precaution Blue
17 Slurry Systems.....Safety Precaution Blue
18 Sewer Systems.....Safety Green

19 SECTION 6. AMENDATORY 63 O.S. 2011, Section 142.9, as
20 amended by Section 2, Chapter 192, O.S.L. 2017 (63 O.S. Supp. 2020,
21 Section 142.9), is amended to read as follows:

22 Section 142.9 A. When any damage occurs to an underground
23 facility or its protective covering, the operator thereof and the
24

1 notification center shall be notified immediately by any person who
2 caused the damage.

3 B. Upon receiving notice of such damage, the operator shall
4 promptly dispatch personnel to the location to effect temporary or
5 permanent repairs.

6 C. Should damage occur that endangers life, health or property,
7 the excavator responsible for the work shall keep all sources of
8 ignition away from the damaged area and shall take immediate action
9 to protect the public and property and to minimize the hazard until
10 arrival of the operator's personnel or until the appropriate police
11 or fire officials shall have arrived and taken charge of the damaged
12 area.

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14 area of the damaged underground facilities until the damage has been
15 repaired, unless the operator authorizes otherwise. The repair of
16 such damage must be performed by the operator or by qualified
17 personnel authorized by the operator.

18 SECTION 7. AMENDATORY 63 O.S. 2011, Section 142.10, as
19 amended by Section 3, Chapter 65, O.S.L. 2020 (63 O.S. Supp. 2020,
20 Section 142.10), is amended to read as follows:

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

23 B. Upon establishment, the notification center shall operate
24 twenty-four (24) hours a day, seven (7) days a week. Notification,

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2 members of or participants in the notification center, shall be
3 given by notifying the notification center by telephone or other
4 acceptable means of communication, the content of such notification
5 to conform to Section 142.6 of this title.

6 C. All operators who have underground facilities within the
7 defined geographical boundary of the notification center shall be
8 ~~afforded the opportunity to become a member~~ required to be members
9 in good standing of the notification center ~~on the same terms as the~~
10 ~~original members. Others may participate as nonmembers on terms and~~
11 ~~conditions as the members deem appropriate.~~

12 D. A suitable record shall be maintained by the notification
13 center to document the receipt of the notices from excavators and
14 positive responses from operators as required by this act.

15 Public agencies, as defined in this act, shall have access to
16 the record of underground facilities.

17 SECTION 8. This act shall become effective November 1, 2021.
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1 Passed the House of Representatives the 1st day of March, 2021.

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4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2021.

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8 Presiding Officer of the Senate