

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1744

By: Paxton

COMMITTEE SUBSTITUTE

An Act relating to the Oklahoma Underground Facilities Damage Prevention Act; amending 63 O.S. 2021, Sections 142.2, as amended by Section 1, Chapter 211, O.S.L. 2023, 142.6, 142.8, as amended by Section 2, Chapter 211, O.S.L. 2023, and 142.10 (63 O.S. Supp. 2023, Sections 142.2 and 142.8), which relate to definitions, notice requirements, and notification centers; modifying definitions; defining terms; prohibiting certain excavation without certain observation; modifying notice requirements; requiring certain contact information be provided to certain excavator; providing for pre-excavation meeting process; requiring maintenance of certain records; updating statutory language; updating statutory references; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2021, Section 142.2, as amended by Section 1, Chapter 211, O.S.L. 2023 (63 O.S. Supp. 2023, Section 142.2), is amended to read as follows:

Section 142.2. As used in the Oklahoma Underground Facilities Damage Prevention Act:

1 1. "Certified project" means a project where the public agency
2 responsible for the public project, in consultation with the
3 statewide one-call notification center, as part of its procedure,
4 certifies that the project right-of-way is free and clear of
5 underground facilities or wherein the public agency responsible for
6 such project, as part of its procedure, notifies all persons
7 determined by the public agency to have underground facilities
8 located within the construction right-of-way and certifies that all
9 known underground facilities are duly located or noted on the
10 engineering drawings for the project;

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

16 3. "Demolish" means to wreck, raze, render, move or remove a
17 structure by means of any equipment or explosive;

18 4. "Demolition" means the act or operation of demolishing a
19 structure;

20 5. "Excavate" means to dig, compress or remove earth, rock or
21 other materials in or on the ground by use of mechanized equipment
22 or blasting, including, but not necessarily limited to, augering,
23 boring, backfilling, drilling, grading, pile driving, plowing in,
24

1 pulling in, trenching, tunneling and plowing; provided, however,
2 that neither:

- 3 a. the moving of earth by tools manipulated only by human
4 or animal power, except in a private or public
5 easement or right-of-way,
- 6 b. the moving of earth by tools manipulated only by human
7 power for burying communication lines of a
8 communications provider in a private or public
9 easement or right-of-way when depth is not greater
10 than twelve (12) inches and within twelve (12) inches
11 of a communications provider terminal,
- 12 c. any form of cultivation for agricultural purposes, nor
13 any augering, dozing by noncommercial dozer operators
14 or digging for postholes, farm ponds, land clearing or
15 other normal agricultural purposes,
- 16 d. routine maintenance,
- 17 e. work by a public agency or its contractors on a
18 preengineered project,
- 19 f. work on a certified project,
- 20 g. work on a permitted project,
- 21 h. the opening of a grave in a cemetery,
- 22 i. a solid waste disposal site which is a preengineered
23 project, nor

1 j. any individual excavating on his or her own property
2 and who is not in the excavating business for hire,
3 except in a private or public easement or right-of-
4 way,
5 shall be deemed excavation;

6 6. "Excavation" means the act or operation of excavating;

7 7. "Excavator" means a person or public agency that intends to
8 excavate or demolish within the this state;

9 8. "Notification center" means the statewide center currently
10 known as the Oklahoma One-Call System, Inc., which has as one of its
11 purposes to receive notification of planned excavation and
12 demolition in a specified area from excavators, and to disseminate
13 such notification of planned excavation or demolition to operators
14 who are members and participants;

15 9. "Operator" shall mean and include any person or public
16 agency owning or operating underground facilities;

17 10. "Permitted project" means a project where a permit for the
18 work to be performed must be issued by a state or federal agency
19 and, as a prerequisite to receiving such permit, the applicant must
20 locate all underground facilities in the area of the work and in the
21 vicinity of any blasting and notify each owner of such underground
22 facilities;

23 11. "Person" includes any individual, partnership, corporation,
24 association, cooperative, trust or other entity, including a person

1 engaged as a contractor by a public agency, but not including a
2 public agency;

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

15 13. "Public agency" means the state or any board, commission or
16 agency of the state;

17 14. "Routine maintenance" means the grading of roads and barrow
18 or drainage ditches, the removal and replacement of pavement,
19 including excavation relating thereto and the installation and
20 maintenance of drainage and bridge facilities, signs, guardrails,
21 and electrical and communications facilities in or on the public
22 rights-of-way by a public agency;

23 15. "Underground facility" means any underground line, cable,
24 facility, system and appurtenances thereto, for producing, storing,

1 conveying, transmitting or distributing communication (including
2 voice, video, or data information), electricity, power, light, heat,
3 intrastate and interstate gas pipelines, as described in 49 CFR Part
4 192.1, intrastate and interstate hazardous liquid or carbon dioxide
5 pipelines, as described in 49 CFR Part 195.1, water (including storm
6 water), steam, sewage and other commodities and any oil and gas
7 pipeline located in a private or public easement or right-of-way;
8 and

9 16. "Design" or "survey" means a notice to facility operators
10 to provide underground facility information during the design or
11 engineering phase of a project to mitigate potential impact to
12 existing underground facilities;

13 17. "Watch and protect" means an operator or their designated
14 representative is present to observe an excavation within ten (10)
15 feet of the underground facility;

16 18. "Pre-excavation meeting request" means a notice to an
17 underground facility operator to participate in a scheduled meeting
18 for the purpose of planning large projects and coordinating
19 resources accordingly; and

20 19. "Large projects" means an excavation project that involves
21 one of the following:

22 a. the project exceeds distances defined in Section 142.6
23 of this title, or
24

1 b. the estimated duration of the project is more than
2 ninety (90) days.

3 SECTION 2. AMENDATORY 63 O.S. 2021, Section 142.6, is
4 amended to read as follows:

5 Section 142.6. A. Before an excavator shall demolish a
6 structure, discharge any explosive or commence to excavate in a
7 highway, street, alley or other public ground or way, on or near the
8 location of an operator's underground facilities, or a private
9 easement, such excavator shall first notify all operators in the
10 geographic area defined by the notification center who have on file
11 with the notification center a notice pursuant to Section 142.3 of
12 this title to determine whether any operators have underground
13 facilities in or near the proposed area of excavation or demolition.
14 When an excavator has knowledge that an operator does not have
15 underground facilities within the area of the proposed excavation,
16 the excavator need not notify the operator of the proposed
17 excavation. However, an excavator shall be responsible for damage
18 to the underground facilities of an operator if the notification
19 center was not notified. When an excavator has actual knowledge
20 that an operator has unmarked hydrocarbon and hazardous liquid
21 underground facilities within the area of proposed excavation, the
22 excavator shall not commence excavation or demolition until notice
23 has been given and such facilities have been marked. For purposes
24 of this section, "actual knowledge" shall mean direct and clear

1 knowledge; provided, however, actual knowledge may be demonstrated
2 through circumstantial evidence and if the circumstances are such
3 that a defendant must have known, an inference of actual knowledge
4 is permitted. The excavator shall maintain and preserve all
5 hydrocarbon and hazardous liquid markings for the duration of the
6 excavation or demolition and shall notify the notification center if
7 such marks are no longer visible or are removed and underground
8 facilities have not been exposed. An excavator must check for
9 positive response at the notification center prior to excavating or
10 demolishing to ensure that all operators have responded and that all
11 facilities that may be affected by the proposed excavation or
12 demolition have been marked. Notice shall be given no less than
13 forty-eight (48) hours, excluding the date of notification,
14 Saturdays, Sundays and legal holidays, prior to the commencement of
15 the excavation or demolition. If a positive response to watch and
16 protect has been indicated, no excavation may take place without the
17 operator or their designated representative present to observe the
18 excavation within ten (10) feet of the operator's markings of the
19 existing underground facility. Notice shall expire fourteen (14)
20 calendar days from the excavation start date. No excavation may
21 continue after the ~~fourteenth-day~~ notice expiration unless
22 subsequent notice has been submitted pursuant to notice
23 requirements. If excessive and unreasonable requests for marking
24 are made by an excavator when no excavation is taking place ~~within~~

1 ~~fourteen (14) calendar days~~ prior to notice expiration, the
2 excavator may be liable to the owner or operator for the reasonable
3 cost of such marking.

4 B. Each operator served with notice in accordance with
5 subsection A of this section either directly or by notice to the
6 notification center shall, prior to the date and time work is
7 scheduled to begin, unless otherwise agreed to between the excavator
8 and operator, locate and mark or otherwise provide the approximate
9 location of the underground facilities of the operator in a manner
10 as to enable the excavator to employ hand-dug test holes to
11 determine the precise location of the underground facilities in
12 advance of excavation. However, during any state of emergency
13 declared by the Governor or Legislature that impacts the area of
14 excavation or demolition, the time limitations of this subsection
15 shall be inapplicable. Each operator shall provide a positive
16 response to the notification center prior to the expiration of the
17 required notice period. This response shall indicate the status of
18 the required activities of the operator or designated representative
19 in regard to the proposed excavation or demolition. For the purpose
20 of the Oklahoma Underground Facilities Damage Prevention Act, the
21 approximate location of the underground facilities shall be defined
22 as a strip of land two (2) feet on either side of such underground
23 facilities. If a positive response to the watch and protect has
24 been indicated, the operator shall provide the name and phone number

1 of the representative who shall be present for observation and the
2 representative designated by the operator shall be on-site at the
3 ticket date and time, or at the start date and time agreed upon in
4 writing by the excavator and operator. Whenever an operator is
5 served with notice of an excavation or demolition and determines
6 that the operator does not have underground facilities located
7 within the proposed area of excavation or demolition, the operator
8 shall communicate this information to the excavator originating the
9 notice prior to the commencement of such excavation or demolition.

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

21 D. Every notice given by an excavator to an operator pursuant
22 to this section or to the notification center pursuant to Section
23 142.3 of this title shall contain at least the following
24 information:

- 1 1. The name of the individual serving such notice;
- 2 2. The location of the proposed area of excavation or
- 3 demolition;
- 4 3. The name, address and telephone number of the excavator or
- 5 excavator's company;
- 6 4. ~~The excavator's field telephone number, if one is available~~
- 7 The name and phone number of an excavator field contact with actual
- 8 knowledge of the excavation site and project;
- 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 Distribution	
20	and Transmission.....	Safety Red
21	Municipal Electric Systems.....	Safety Red
22	Gas Distribution and	
23	Transmission.....	High Visibility Safety Yellow

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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 3. AMENDATORY 63 O.S. 2021, Section 142.8, as
14 amended by Section 2, Chapter 211, O.S.L. 2023 (63 O.S. Supp. 2023,
15 Section 142.8), is amended to read as follows:

16 Section 142.8. A. In addition to the notice required by
17 Section 142.6 of this title, whenever the demolition of a structure
18 is proposed, operators in the geographic area defined by the
19 notification center who have a notice on file with the notification
20 center pursuant to Section 142.3 of this title shall be given at
21 least seven (7) business days' notice of the proposed demolition
22 before the demolition work begins. Such notice shall be initiated
23 by the notification center after the excavator has met local code
24 requirements for a demolition permit. When an operator is served

1 with notice and determines that underground facilities are within
2 the proposed area of demolition and such facilities require
3 additional protection, service removal or termination, the operator
4 shall communicate this information to the excavator and by mutual
5 agreement the operator and excavator shall determine a date to begin
6 the demolition which shall not exceed sixty (60) business days from
7 the original demolition notice. If a public agency determines that
8 the structure endangers the public health or safety, then the public
9 agency may, in the manner provided by law, order the immediate
10 demolition of the structure.

11 B. When a design or survey notice is received, operators or
12 their designee shall provide underground facilities information
13 within fourteen (14) calendar days from the time of the request
14 which may include physical markings at the project site, facility
15 mapping, or both. No excavation may take place on a design or
16 survey notice. Operators shall provide the one-call notification
17 center with the necessary information for notices to be sent to the
18 appropriate person within their company or organization.

19 C. Excavators involved in large projects may submit a pre-
20 excavation meeting request no less than fourteen (14) calendar days
21 prior to beginning excavation or blasting activities. Such
22 notification shall include the excavator's proposed meeting date,
23 time, location, and contact information including name, phone, and
24 email. The date of the meeting shall be a minimum of seventy-two

1 (72) hours after the notification has been submitted.

2 Notwithstanding the information above, nothing shall prevent the
3 excavator and underground facility operator from choosing to meet
4 otherwise. All affected facility owners shall be notified once the
5 pre-excavation meeting request has been submitted and in turn will
6 provide a positive response within seventy-two (72) hours to the
7 notification center indicating their ability to meet on the proposed
8 meeting date. All parties involved in the pre-excavation meeting
9 shall coordinate a marking plan and take actions necessary to ensure
10 proper notice requirements are met for affected facility operators.

11 SECTION 4. AMENDATORY 63 O.S. 2021, Section 142.10, is
12 amended to read as follows:

13 Section 142.10. A. ~~This act~~ Section 142.1 et seq. of this
14 title recognizes the value of and authorizes the establishment of a
15 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.

1 C. All operators who have underground facilities within the
2 defined geographical boundary of the notification center shall be
3 required to be members in good standing of the notification center.

4 D. A suitable record shall be maintained by the notification
5 center for not less than four (4) years to document the receipt of
6 the notices from excavators and positive responses from operators as
7 required by ~~this act~~ Section 142.1 et seq. of this title.

8 Public agencies, as defined in ~~this act~~ Section 142.2 of this
9 title, shall have access to the record of underground facilities.

10 SECTION 5. This act shall become effective November 1, 2024.

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