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February 22, 2024

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1744

By: Paxton

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. "Certified project" means a project where the public agency responsible for the public project, in consultation with the

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

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

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

16 4. "Demolition" means the act or operation of demolishing a
17 structure;

18 5. "Excavate" means to dig, compress or remove earth, rock or
19 other materials in or on the ground by use of mechanized equipment
20 or blasting, including, but not necessarily limited to, augering,
21 boring, backfilling, drilling, grading, pile driving, plowing in,
22 pulling in, trenching, tunneling and plowing; provided, however,
23 that neither:

24

- a. the moving of earth by tools manipulated only by human or animal power, except in a private or public easement or right-of-way,
- b. the moving of earth by tools manipulated only by human power for burying communication lines of a communications provider in a private or public easement or right-of-way when depth is not greater than twelve (12) inches and within twelve (12) inches of a communications provider terminal,
- c. any form of cultivation for agricultural purposes, nor any augering, dozing by noncommercial dozer operators or digging for postholes, farm ponds, land clearing or other normal agricultural purposes,
- d. routine maintenance,
- e. work by a public agency or its contractors on a preengineered project,
- f. work on a certified project,
- g. work on a permitted project,
- h. the opening of a grave in a cemetery,
- i. a solid waste disposal site which is a preengineered project, nor
- j. any individual excavating on his or her own property and who is not in the excavating business for hire,

1 except in a private or public easement or right-of-
2 way,
3 shall be deemed excavation;

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

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

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

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

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

21 11. "Person" includes any individual, partnership, corporation,
22 association, cooperative, trust or other entity, including a person
23 engaged as a contractor by a public agency, but not including a
24 public agency;

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

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

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

21 15. "Underground facility" means any underground line, cable,
22 facility, system and appurtenances thereto, for producing, storing,
23 conveying, transmitting or distributing communication (including
24 voice, video, or data information), electricity, power, light, heat,

intrastate and interstate gas pipelines, as described in 49 CFR Part 192.1, intrastate and interstate hazardous liquid or carbon dioxide pipelines, as described in 49 CFR Part 195.1, water (including storm water), steam, sewage and other commodities and any oil and gas pipeline located in a private or public easement or right-of-way; and

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

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

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

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

- a. the project exceeds distances defined in Section 142.6 of this title, or
- b. the estimated duration of the project is more than ninety (90) days.

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

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

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

1 excavator may be liable to the owner or operator for the reasonable
2 cost of such marking.

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

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

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

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

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

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

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

5 4. ~~The excavator's field telephone number, if one is available~~
6 The name and phone number of an excavator field contact with actual
7 knowledge of the excavation site and project;

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

11 6. Whether or not the discharging of explosives is anticipated;
12 and

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

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

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

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

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

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

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

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

17 C. Excavators involved in large projects may submit a pre-
18 excavation meeting request no less than fourteen (14) calendar days
19 prior to beginning excavation or blasting activities. Such
20 notification shall include the excavator's proposed meeting date,
21 time, location, and contact information including name, phone, and
22 email. The date of the meeting shall be a minimum of seventy-two
23 (72) hours after the notification has been submitted.
24 Notwithstanding the information above, nothing shall prevent the

1 excavator and underground facility operator from choosing to meet
2 otherwise. All affected facility owners shall be notified once the
3 pre-excavation meeting request has been submitted and in turn will
4 provide a positive response within seventy-two (72) hours to the
5 notification center indicating their ability to meet on the proposed
6 meeting date. All parties involved in the pre-excavation meeting
7 shall coordinate a marking plan and take actions necessary to ensure
8 proper notice requirements are met for affected facility operators.

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

11 Section 142.10. A. ~~This act~~ Section 142.1 et seq. of this
12 title recognizes the value of and authorizes the establishment of a
13 statewide notification center.

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

21 C. All operators who have underground facilities within the
22 defined geographical boundary of the notification center shall be
23 required to be members in good standing of the notification center.
24

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

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

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

8 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND TELECOMMUNICATIONS
9 February 22, 2024 - DO PASS AS AMENDED BY CS
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