

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT

No. _____

COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend House Bill No. 2028, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Allen

Allen-APW-FS-Req#2084
4/14/2021 10:13 AM

(Floor Amendments Only) Date and Time Filed: _____

Untimely

Amendment Cycle Extended

Secondary Amendment

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 FLOOR SUBSTITUTE
4 FOR ENGROSSED

5 HOUSE BILL NO. 2028

By: O'Donnell of the House

and

Allen of the Senate

7
8
9 FLOOR SUBSTITUTE

10 An Act relating to public health and safety; amending
11 63 O.S. 2011, Section 142.6, as last amended by
12 Section 2, Chapter 65, O.S.L. 2020 (63 O.S. Supp.
13 2020, Section 142.6), which relates to notice of
14 proposed demolition, explosion or excavation;
15 prohibiting excavation or demolition in certain
16 circumstance; defining term; requiring notice and
17 marking of facilities in certain situations;
18 requiring maintenance and preservation of marks;
19 requiring certain notice if marks become invisible or
20 are removed; providing time limits for certain
21 notice; providing for states of emergency; providing
22 for liability in certain situations; amending 63 O.S.
23 2011, Section 142.9, as amended by Section 2, Chapter
24 192, O.S.L. 2017 (63 O.S. Supp. 2020, Section 142.9),
which relates to damage to underground facilities;
requiring certain notice when damage occurs; amending
63 O.S. 2011, Section 142.10, as amended by Section
3, Chapter 65, O.S.L. 2020 (63 O.S. Supp. 2020,
Section 142.10), which relates to the statewide
notification center; requiring participation by
certain entities; requiring certain documentation;
and providing an effective date.

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

1 SECTION 1. AMENDATORY 63 O.S. 2011, Section 142.6, as
2 last amended by Section 2, Chapter 65, O.S.L. 2020 (63 O.S. Supp.
3 2020, Section 142.6), is amended to read as follows:

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

1 through circumstantial evidence and if the circumstances are such
2 that a defendant must have known, an inference of actual knowledge
3 is permitted. The excavator shall maintain and preserve all
4 hydrocarbon and hazardous liquids markings for the duration of the
5 excavation or demolition and shall notify the notification center if
6 such marks are no longer visible or are removed and underground
7 facilities have not been exposed. An excavator must check for
8 positive response at the notification center prior to excavating or
9 demolishing to ensure that all operators have responded and that all
10 facilities that may be affected by the proposed excavation or
11 demolition have been marked. Notice shall be given no ~~more than ten~~
12 ~~(10) days nor~~ less than forty-eight (48) hours, excluding the date
13 of notification, Saturdays, Sundays and legal holidays, prior to the
14 commencement of the excavation or demolition. Notice shall expire
15 fourteen (14) calendar days from the excavation start date. No
16 excavation may continue after the fourteenth day unless subsequent
17 notice has been submitted pursuant to notice requirements. If
18 excessive and unreasonable requests for marking are made by an
19 excavator when no excavation is taking place within fourteen (14)
20 calendar days, the excavator may be liable to the owner or operator
21 for the reasonable cost of such marking.

22 B. Each operator served with notice in accordance with
23 subsection A of this section either directly or by notice to the
24 notification center shall, prior to the date and time work is

1 scheduled to begin, unless otherwise agreed to between the excavator
2 and operator, locate and mark or otherwise provide the approximate
3 location of the underground facilities of the operator in a manner
4 as to enable the excavator to employ hand-dug test holes to
5 determine the precise location of the underground facilities in
6 advance of excavation. However, during any state of emergency
7 declared by the Governor or Legislature that impacts the area of
8 excavation or demolition, the time limitations of this subsection
9 shall be inapplicable. Each operator shall provide a positive
10 response to the notification center prior to the expiration of the
11 required notice period. This response shall indicate the status of
12 the required activities of the operator or designated representative
13 in regard to the proposed excavation or demolition. For the purpose
14 of the Oklahoma Underground Facilities Damage Prevention Act, the
15 approximate location of the underground facilities shall be defined
16 as a strip of land two (2) feet on either side of such underground
17 facilities. Whenever an operator is served with notice of an
18 excavation or demolition and determines that the operator does not
19 have underground facilities located within the proposed area of
20 excavation or demolition, the operator shall communicate this
21 information to the excavator originating the notice prior to the
22 commencement of such excavation or demolition.

23 C. The only exception to subsection A of this section shall be
24 when an emergency exists that endangers life, health or property.

1 Under these conditions, excavation operations may begin immediately,
2 providing reasonable precautions are taken to protect underground
3 facilities. All operators of underground facilities within the area
4 of the emergency must be notified promptly when an emergency
5 requires excavation prior to the location of the underground
6 facilities being marked. If requests for emergency locates are made
7 by an excavator when there is no emergency, the excavator may be
8 liable to the owner or operator for the reasonable cost of emergency
9 response.

10 D. Every notice given by an excavator to an operator pursuant
11 to this section or to the notification center pursuant to Section
12 142.3 of this title shall contain at least the following
13 information:

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

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

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

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

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

23 6. Whether or not the discharging of explosives is anticipated;
24 and

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

2 E. In marking the approximate location of underground
3 facilities, an operator shall follow the standard color coding
4 described herein:

5 OPERATOR AND TYPE OF PRODUCT SPECIFIC GROUP IDENTIFYING COLOR

6 Electric Power
7 Distribution and

8 Transmission..... Safety Red

9 Municipal Electric Systems..... Safety Red

10 Gas Distribution and

11 Transmission.....High Visibility Safety Yellow

12 Oil Distribution and

13 Transmission.....High Visibility Safety Yellow

14 Dangerous Materials, Product

15 Lines, Steam Lines.....High Visibility Safety Yellow

16 Telephone and Telegraph

17 Systems..... Safety Alert Orange

18 Police and Fire

19 Communications.....Safety Alert Orange

20 Cable Television.....Safety Alert Orange

21 Water Systems.....Safety Precaution Blue

22 Slurry Systems.....Safety Precaution Blue

23 Sewer Systems.....Safety Green

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

4 Section 142.9. A. When any damage occurs to an underground
5 facility or its protective covering, the operator thereof and the
6 notification center shall be notified immediately by any person who
7 caused the damage.

8 B. Upon receiving notice of such damage, the operator shall
9 promptly dispatch personnel to the location to effect temporary or
10 permanent repairs.

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

18 D. An excavator shall delay any backfilling in the immediate
19 area of the damaged underground facilities until the damage has been
20 repaired, unless the operator authorizes otherwise. The repair of
21 such damage must be performed by the operator or by qualified
22 personnel authorized by the operator.

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

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

6 B. Upon establishment, the notification center shall operate
7 twenty-four (24) hours a day, seven (7) days a week. Notification,
8 as required by Section 142.6 of this title, to operators who are
9 members of or participants in the notification center, shall be
10 given by notifying the notification center by telephone or other
11 acceptable means of communication, the content of such notification
12 to conform to Section 142.6 of this title.

13 C. All operators who have underground facilities within the
14 defined geographical boundary of the notification center shall be
15 ~~afforded the opportunity to become a member~~ required to be members
16 in good standing of the notification center ~~on the same terms as the~~
17 ~~original members. Others may participate as nonmembers on terms and~~
18 ~~conditions as the members deem appropriate.~~

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

22 Public agencies, as defined in this act, shall have access to
23 the record of underground facilities.
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SECTION 4. This act shall become effective November 1, 2021.

58-1-2084 APW 4/14/2021 10:13:46 AM