

1 **SENATE FLOOR VERSION**

2 February 23, 2021

3 SENATE BILL NO. 636

By: Jett

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5  
6 An Act relating to roads and bridges; amending 69  
7 O.S. 2011, Section 1401, which relates to use of  
8 public rights-of-way by utilities and cable  
9 television systems; authorizing tribally owned  
10 utilities to use public roads and highway; adding  
11 definition of tribally owned utility; amending 69  
12 O.S. 2011, Section 1402, which relates to  
13 interference with public use by utilities;  
14 prohibiting interference with use of public highways;  
15 giving Corporation Commission authority over  
16 interference claims; and providing an effective date.

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

18 SECTION 1. AMENDATORY 69 O.S. 2011, Section 1401, is  
19 amended to read as follows:

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

B. The use of the public roads and highways by such public  
utility, tribally owned utility or cable television system shall be

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

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

1 road or highway under their jurisdiction, subject to such rules,  
2 regulations and conditions as shall be prescribed by the board of  
3 county commissioners. Nothing in this section shall be construed to  
4 limit any rights granted by other provisions of law. All poles,  
5 wires, posts, conduits and equipment shall be erected, placed,  
6 adjusted, laid, constructed and maintained so as not to  
7 inconvenience or endanger the public in the use of its roads and  
8 highways and shall conform to all applicable provisions of the  
9 National Electrical Safety Code approved by the American National  
10 Standards Institute, in effect at the time of such erection,  
11 placement, adjustment, or construction.

12 Public utilities, tribally owned utilities or cable television  
13 systems shall completely repair or replace any damage, injury or  
14 other change to public roads or highways or rights-of-way of this  
15 state or any county or municipality which would inconvenience or  
16 endanger the public which are caused by the erection, placement,  
17 adjustment, construction or maintenance of any public utility,  
18 tribally owned utility or cable television system poles, wires,  
19 posts, conduits or other equipment. Nothing in ~~this act~~ Section  
20 1401 et seq. of this title shall be interpreted to impair the right  
21 of recovery against any third party for such damage or injury.

22 C. The failure of any public utility, tribally owned utility or  
23 cable television system to construct or maintain its poles, wires,  
24 conduits, pipe lines and equipment upon or under such public

1 highways in full compliance with the rules promulgated by the  
2 Department of Transportation or the board of county commissioners,  
3 including placement of its poles, wires, conduits, pipe lines and  
4 equipment, shall forfeit the right of the utility or cable  
5 television system to use the public highway or highways, and the  
6 utility or cable television system may thereupon be ousted from the  
7 use of the highway.

8 D. "Public utility" and "cable television systems" as used in  
9 this section and in Sections 1402 and 1403 of this title shall be  
10 defined as a person, corporation, association, limited liability  
11 company or partnership, company, or any other form of entity  
12 organized and existing or domesticated under the laws of this state,  
13 and whose users lie within ~~the State of Oklahoma~~ this state. Such  
14 terms as used in this section and Sections 1402 and 1403 of this  
15 title specifically shall not apply to persons, corporations,  
16 associations, limited liability companies or partnerships,  
17 companies, or any other form of entity which obtains status through  
18 the Corporation Commission as a public utility, but whose end users  
19 are not within the State of Oklahoma.

20 E. "Tribally owned utility" as used in this section and in  
21 Section 1402 of this title means any individual, firm, association,  
22 partnership, corporation or any combination thereof, which is owned  
23 and operated by a federally recognized Indian tribe or nation on  
24 Indian country within the territorial jurisdiction of that tribe or

1 nation or which is duly licensed by such tribe or nation pursuant to  
2 tribal laws or ordinances to conduct business located on Indian  
3 country within the territorial jurisdiction of that tribe or nation,  
4 other than a municipal corporation or their lessees, trustees and  
5 receivers, owning or operating for compensation in this state  
6 equipment or facilities for:

7       a. producing, generating, transmitting, distributing,  
8       selling or furnishing electricity, or

9       b. transmitting, directly or indirectly, or distributing  
10       combustible hydrocarbon natural or synthetic natural  
11       gas for sale to the public or for wholesale, unless  
12       its wholesale rates are regulated by a federal agency.

13       SECTION 2.       AMENDATORY       69 O.S. 2011, Section 1402, is  
14 amended to read as follows:

15       Section 1402. The rights granted pursuant to this act shall not  
16 be exercised as to interfere with the free and ordinary use of  
17 public highways or the exercise of the rights of other public or  
18 tribally owned utilities lawfully located on the highways. The  
19 Corporation Commission shall have authority to hear and determine  
20 all complaints and controversies involving any interference with  
21 public rights, or the right of other public service concerns in  
22 connection with the exercise of the rights and authority granted to  
23 public or tribally owned utilities, pursuant to this act and fix  
24 reasonable terms and conditions to be complied with by the

1 respective parties. Proceedings on complaints pursuant to this act  
2 shall be upon notice and subject to the right of appeal as in other  
3 cases where notice and right of appeal is granted under the laws of  
4 this state and the Department of Transportation shall be given  
5 notice of any complaint filed or hearing set, and shall have the  
6 right to appear on all related issues.

7 SECTION 3. This act shall become effective November 1, 2021.

8 COMMITTEE REPORT BY: COMMITTEE ON TRANSPORTATION  
9 February 23, 2021 - DO PASS

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