

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 59th Legislature (2024)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 4095

By: Caldwell (Trey)

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to the Oklahoma Underground
10 Facilities Damage Prevention Act; amending 63 O.S.
11 2021, Section 142.2, as amended by Section 1, Chapter
12 211, O.S.L. 2023 (63 O.S. Supp. 2023, Section 142.2),
13 which relates to definitions; modifying definition;
14 defining terms; amending 63 O.S. 2021, Section 142.6,
15 which relates to notice of proposed demolition,
16 explosion or excavation; disallowing certain
17 excavation; modifying certain time frames; requiring
18 certain information be provided; requiring certain
19 parties to be present; modifying type of information
20 certain notice contains; amending 63 O.S. 2021,
21 Section 142.8, as amended by Section 2, Chapter 211,
22 O.S.L. 2023 (63 O.S. Supp. 2023, Section 142.8),
23 which relates to additional notice required;
24 requiring certain meeting request be submitted within
 certain time frame; requiring notice contain certain
 information; requiring meeting take place within
 certain time frame; allowing certain parties to meet
 at their choosing; requiring certain parties be
 notified; requiring certain coordination; providing
 for submission and transmission of certain notices;
 amending 63 O.S. 2021, Section 142.10, which relates
 to the statewide notification center; modifying
 statutory references; requiring certain records be
 kept for four years; and providing an effective date.

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

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

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

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

16 2. "Damage" means any impact upon or removal of support from an
17 underground facility as a result of explosion, excavation or
18 demolition which according to the operating practices of the
19 operator of the underground facilities would necessitate the repair
20 thereof;

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

23 4. "Demolition" means the act or operation of demolishing a
24 structure;

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

7 a. the moving of earth by tools manipulated only by human
8 or animal power, except in a private or public
9 easement or right-of-way,

10 b. the moving of earth by tools manipulated only by human
11 power for burying communication lines of a
12 communications provider in a private or public
13 easement or right-of-way when depth is not greater
14 than twelve (12) inches and within twelve (12) inches
15 of a communications provider terminal,

16 c. any form of cultivation for agricultural purposes, nor
17 any augering, dozing by noncommercial dozer operators
18 or digging for postholes, farm ponds, land clearing or
19 other normal agricultural purposes,

20 d. routine maintenance,

21 e. work by a public agency or its contractors on a
22 preengineered project,

23 f. work on a certified project,

24 g. work on a permitted project,

- 1 h. the opening of a grave in a cemetery,
2 i. a solid waste disposal site which is a preengineered
3 project, nor
4 j. any individual excavating on his or her own property
5 and who is not in the excavating business for hire,
6 except in a private or public easement or right-of-
7 way,

8 shall be deemed excavation;

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

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

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

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

20 10. "Permitted project" means a project where a permit for the
21 work to be performed must be issued by a state or federal agency
22 and, as a prerequisite to receiving such permit, the applicant must
23 locate all underground facilities in the area of the work and in the
24

1 vicinity of any blasting and notify each owner of such underground
2 facilities;

3 11. "Person" includes any individual, partnership, corporation,
4 association, cooperative, trust or other entity, including a person
5 engaged as a contractor by a public agency, but not including a
6 public agency;

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

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

21 14. "Routine maintenance" means the grading of roads and barrow
22 or drainage ditches, the removal and replacement of pavement,
23 including excavation relating thereto and the installation and
24 maintenance of drainage and bridge facilities, signs, guardrails,

1 and electrical and communications facilities in or on the public
2 rights-of-way by a public agency;

3 15. "Underground facility" means any underground line, cable,
4 facility, system and appurtenances thereto, for producing, storing,
5 conveying, transmitting or distributing communication (including
6 voice, video, or data information), electricity, power, light, heat,
7 intrastate and interstate gas pipelines, as described in 49 CFR Part
8 192.1, intrastate and interstate hazardous liquid or carbon dioxide
9 pipelines, as described in 49 CFR Part 195.1, water (including storm
10 water), steam, sewage and other commodities and any oil and gas
11 pipeline located in a private or public easement or right-of-way;
12 and

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

17 17. "Watch and Protect" means an operator or its designated
18 representative is present to observe an excavation within ten (10)
19 feet of the operator's marking of its existing underground facility;

20 18. "Pre-Excavation Meeting Request" means a notice to
21 underground facility operators to participate in scheduled meetings
22 for the purpose of planning large projects and coordinate resources
23 accordingly; and

24

1 19. "Large projects" are those excavation projects that involve
2 one of the following:

3 a. exceeds distances defined in paragraph 5 of subsection
4 D of Section 142.6 of this title, or

5 b. estimated duration is more than ninety (90) days.

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

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

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

1 subsequent notice has been submitted pursuant to notice
2 requirements. If excessive and unreasonable requests for marking
3 are made by an excavator when no excavation is taking place ~~within~~
4 ~~fourteen (14) calendar days~~ prior to notice expiration, the
5 excavator may be liable to the owner or operator for the reasonable
6 cost of such marking.

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

1 as a strip of land two (2) feet on either side of such underground
2 facilities. If a positive response to watch and protect is
3 indicated, the operator shall provide the name and phone number of
4 the contact who shall be present for observation and a designated
5 operator representative shall be on site at the ticket date and time
6 agreed upon in writing by the excavator and operator. Whenever an
7 operator is served with notice of an excavation or demolition and
8 determines that the operator does not have underground facilities
9 located within the proposed area of excavation or demolition, the
10 operator shall communicate this information to the excavator
11 originating the notice prior to the commencement of such excavation
12 or demolition.

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

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

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

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

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

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

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 Electric Power Distribution	
24 and Transmission.....	Safety Red

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

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

19 Section 142.8 A. In addition to the notice required by Section
20 142.6 of this title, whenever the demolition of a structure is
21 proposed, operators in the geographic area defined by the
22 notification center who have a notice on file with the notification
23 center pursuant to Section 142.3 of this title shall be given at
24 least seven (7) business days' notice of the proposed demolition

1 before the demolition work begins. Such notice shall be initiated
2 by the notification center after the excavator has met local code
3 requirements for a demolition permit. When an operator is served
4 with notice and determines that underground facilities are within
5 the proposed area of demolition and such facilities require
6 additional protection, service removal or termination, the operator
7 shall communicate this information to the excavator and by mutual
8 agreement the operator and excavator shall determine a date to begin
9 the demolition which shall not exceed sixty (60) business days from
10 the original demolition notice. If a public agency determines that
11 the structure endangers the public health or safety, then the public
12 agency may, in the manner provided by law, order the immediate
13 demolition of the structure.

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

22 C. Excavators involved in large projects may submit a pre-
23 excavation meeting request no less than fourteen (14) calendar days
24 prior to beginning excavation or blasting activities. Such

1 notification shall include the excavator's proposed meeting date,
2 time, location, and contact information including name, telephone,
3 and email. The date of the meeting shall be a minimum of seventy-
4 two (72) hours after the notification has been submitted.
5 Notwithstanding the information above, nothing prevents the
6 excavator and underground facility operators from choosing to meet
7 otherwise. All affected facility owners shall be notified once the
8 pre-excavation meeting request has been submitted and in turn will
9 provide a positive response within seventy-two (72) hours to the
10 notification center indicating their ability to meet on the proposed
11 meeting date. All parties involved in the pre-excavation meeting
12 shall coordinate a marking plan and take actions necessary to ensure
13 proper notice requirements are met for affected facility operators.

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

16 Section 142.10 A. ~~This act~~ Section 142.1 et seq. of this title
17 recognizes the value of and authorizes the establishment of a
18 statewide notification center.

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

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

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

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

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

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14 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND NATURAL RESOURCES,
15 dated 02/15/2024 - DO PASS, As Amended.

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