

HOUSE COMMITTEE OF REFERENCE REPORT

March 13, 2024

Chair of Committee

Date

Committee on Transportation, Housing & Local Government.

After consideration on the merits, the Committee recommends the following:

HB24-1266 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. Legislative declaration. (1) The general
4 assembly finds and declares that:

5 (a) From time to time, local governments provide improvements
6 to their transportation systems through projects within their jurisdictions;

7 (b) The scheduling and timely performance of a road
8 improvement project partially depends on coordination with utility
9 companies for the prompt performance of utility relocation work
10 necessitated by construction of the road improvement project;

11 (c) Increased coordination between local governments and utility
12 companies is in the public interest, and prompt performance of utility
13 relocation work according to the project schedule will reduce delays and
14 the costs of construction;

15 (d) Colorado statute outlines this type of coordination between the
16 regional transportation district and utility companies in section
17 32-9-119.1, Colorado Revised Statutes;

18 (e) Colorado statute outlines this type of coordination between the
19 Colorado department of transportation and utility companies in section
20 43-1-1411, Colorado Revised Statutes; and

21 (f) Construction-related delays to road improvement projects can
22 cost local governments millions of dollars of unbudgeted and
23 unanticipated costs, thereby affecting the taxpayers of that community.

24 SECTION 2. In Colorado Revised Statutes, add 38-5-109 as
25 follows:

26 38-5-109. Utility relocation clearance letter - definitions.

27 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
28 REQUIRES:

1 (a) "CLEARANCE LETTER" MEANS A WRITTEN AGREEMENT
2 BETWEEN A LOCAL GOVERNMENT PROPOSING A ROAD IMPROVEMENT
3 PROJECT AND A UTILITY COMPANY, IN WHICH THE UTILITY COMPANY AND
4 THE LOCAL GOVERNMENT MUTUALLY ESTABLISH THE SCOPE, CONDITIONS,
5 AND SCHEDULE FOR THE UTILITY RELOCATION REQUIRED FOR THE ROAD
6 IMPROVEMENT PROJECT.

7 (b) "FORCE MAJEURE" MEANS FIRE, EXPLOSION, FLOODS, ACTION
8 OF THE ELEMENTS, STRIKE, LABOR DISPUTES, INTERRUPTION OF
9 TRANSPORTATION, RATIONING, SHORTAGE OF EQUIPMENT OR MATERIALS,
10 COURT ACTION, ILLEGALITY, UNUSUALLY SEVERE WEATHER, ACT OF GOD,
11 ACT OF WAR OR TERRORISM, EPIDEMICS OR PANDEMICS, QUARANTINES,
12 SEASONAL LIMITATIONS ON UTILITY OPERATIONS, OR ANY OTHER CAUSE
13 THAT IS BEYOND THE REASONABLE CONTROL OF THE ENTITY PERFORMING
14 THE UTILITY RELOCATION.

15 (c) "HAZARDOUS MATERIAL" MEANS ANY SUBSTANCE, POLLUTANT,
16 CONTAMINANT, CHEMICAL, MATERIAL, OR WASTE, OR ANY SOIL OR WATER
17 CONTAMINATED WITH SUCH HAZARDOUS MATERIAL, THAT IS:

18 (I) INCLUDED IN THE DEFINITION OF HAZARDOUS SUBSTANCE,
19 HAZARDOUS WASTE, TOXIC SUBSTANCE, HAZARDOUS POLLUTANT, TOXIC
20 POLLUTANT, NONHAZARDOUS WASTE, OR UNIVERSAL WASTE, AS
21 REGULATED BY ANY APPLICABLE ENVIRONMENTAL LAW; OR

22 (II) TOXIC, EXPLOSIVE, CORROSIVE, FLAMMABLE, IGNITABLE,
23 INFECTIOUS, RADIOACTIVE, CARCINOGENIC, MUTAGENIC, OR THAT
24 OTHERWISE POSES A HAZARD TO LIVING THINGS OR THE ENVIRONMENT.

25 (d) "LOCAL GOVERNMENT" MEANS A STATUTORY OR HOME RULE
26 COUNTY, CITY AND COUNTY, MUNICIPALITY, OR TOWN, EXCLUDING A
27 LOCAL GOVERNMENT THAT HAS GRANTED A FRANCHISE TO A UTILITY
28 COMPANY PURSUANT TO SECTION 31-32-101 OR ARTICLE XX OF THE
29 STATE CONSTITUTION.

30 (e) "PLANS AND SPECIFICATIONS" MEANS THE PLANS, DRAWINGS,
31 AND SPECIFICATIONS DESIGNED AND ENGINEERED BY A LOCAL
32 GOVERNMENT OR ITS CONTRACTOR, WHICH ARE NECESSARY TO COMPLETE
33 THE ROAD IMPROVEMENT PROJECT IN ACCORDANCE WITH APPLICABLE
34 LAWS, RULES, AND REGULATIONS.

35 (f) "PRIVATE PROJECT RELOCATION" MEANS ANY CONSTRUCTION
36 OR RECONSTRUCTION PROJECT FOR THE ADJUSTMENT, EXPANSION, OR
37 REALIGNMENT OF A PUBLIC ROADWAY OR PUBLIC RIGHT-OF-WAY THAT:

38 (I) REQUIRES THE REMOVAL, RELOCATION, OR ALTERATION OF
39 UTILITY FACILITIES;

40 (II) IS NECESSARY TO FACILITATE THE DEVELOPMENT OF PRIVATE
41 PROPERTY; AND

42 (III) IS REQUIRED BY REASON OF A LOCAL GOVERNMENT ZONING,
43 APPROVAL, OR OTHER LAND USE REGULATION PERMITTING REQUIREMENT.

1 (g) "PROMPT PERFORMANCE" MEANS ACTING IN GOOD FAITH AND
2 MAKING ALL REASONABLE EFFORTS TO PERFORM THE SPECIFIC ACTIONS
3 AND OBLIGATIONS SET FORTH IN A CLEARANCE LETTER, EXCEPT AS MAY BE
4 EXCUSED BY SUBSEQUENT AGREEMENT BETWEEN THE UTILITY COMPANY
5 AND THE LOCAL GOVERNMENT TO WHICH THE CLEARANCE LETTER APPLIES.

6 (h) "PUBLIC ROADWAY" MEANS PROPERTY CONTROLLED BY A
7 LOCAL GOVERNMENT THAT IS ACQUIRED, DEDICATED, OR RESERVED FOR
8 THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF A STREET OR
9 PUBLIC HIGHWAY AND THAT IS OPEN TO PUBLIC TRAVEL OR ANY OTHER
10 PUBLIC HIGHWAY ESTABLISHED BY LAW.

11 (i) (I) "ROAD IMPROVEMENT PROJECT" MEANS ANY CONSTRUCTION
12 OR RECONSTRUCTION PROJECT FOR THE ADJUSTMENT, EXPANSION, OR
13 REALIGNMENT OF A PUBLIC ROADWAY OR PUBLIC RIGHT-OF-WAY,
14 INCLUDING BUT NOT LIMITED TO MAINTENANCE, REPLACEMENT, BRIDGE,
15 CULVERT, OR TRAFFIC SIGNAL PROJECTS.

16 (II) "ROAD IMPROVEMENT PROJECT" DOES NOT INCLUDE A PROJECT
17 ON, ALONG, OR IN A PUBLIC OR STATE HIGHWAY OR ROADWAY UNDER THE
18 CONTROL OF THE COLORADO DEPARTMENT OF TRANSPORTATION UNLESS
19 A LOCAL GOVERNMENT PERFORMS THE CONSTRUCTION OR
20 RECONSTRUCTION AS PART OF A PROJECT UNDER THE DIRECTION OF THE
21 LOCAL GOVERNMENT AND PURSUANT TO AN AGREEMENT WITH THE
22 COLORADO DEPARTMENT OF TRANSPORTATION.

23 (j) "UTILITY COMPANY" MEANS AN INVESTOR-OWNED ELECTRIC OR
24 GAS UTILITY COMPANY WITH MORE THAN TWO HUNDRED FIFTY THOUSAND
25 RETAIL CUSTOMERS.

26 (k) "UTILITY CONFLICT" MEANS CIRCUMSTANCES IN WHICH A
27 PROPOSED ROAD IMPROVEMENT PROJECT BRINGS UTILITY FACILITIES OUT
28 OF COMPLIANCE WITH REGULATORY AGENCY STANDARDS OR EXISTING
29 UTILITY FACILITIES PRECLUDE OR HINDER THE CONSTRUCTION OF A ROAD
30 IMPROVEMENT PROJECT.

31 (l) "UTILITY FACILITIES" MEANS ANY LINES OF ELECTRIC LIGHT OR
32 WIRE, POWER, OR PIPELINE OF A UTILITY COMPANY AND ANY RELATED
33 SUPPORT STRUCTURES, ATTACHMENTS, APPURTENANCES, EQUIPMENT,
34 VALVES, CABLE, OR CONDUIT FOR THE LINES, WIRES, OR PIPELINES.
35 "UTILITY FACILITIES" INCLUDE BOTH THOSE ABOVE AND BELOW GROUND.

36 (m) "UTILITY RELOCATION" OR "RELOCATION OF UTILITY
37 FACILITIES" MEANS THE REMOVAL, RELOCATION, OR ALTERATION OF
38 UTILITY FACILITIES NECESSARY TO RESOLVE A UTILITY CONFLICT CAUSED
39 BY A ROAD IMPROVEMENT PROJECT FUNDED IN FULL OR IN PART BY A
40 LOCAL GOVERNMENT OR WITH STATE, FEDERAL, OR OTHER PUBLIC MONEY;
41 EXCEPT THAT "UTILITY RELOCATION" DOES NOT INCLUDE A PRIVATE
42 PROJECT RELOCATION.

43 (2) (a) IF A LOCAL GOVERNMENT ENGAGES IN OR PROPOSES TO

1 ENGAGE IN A ROAD IMPROVEMENT PROJECT THAT WILL REQUIRE THE
2 RELOCATION OF UTILITY FACILITIES DUE TO A UTILITY CONFLICT, THE
3 LOCAL GOVERNMENT SHALL:

4 (I) NOTIFY THE NOTIFICATION ASSOCIATION, CREATED IN SECTION
5 9-1.5-105 (1), WITH AN ENGINEERING OR SUBSURFACE UTILITY
6 ENGINEERING NOTIFICATION TO IDENTIFY EACH UTILITY COMPANY THAT
7 HAS UTILITY FACILITIES IN THE AREA OF THE ROAD IMPROVEMENT
8 PROJECT; AND

9 (II) ELECTRONICALLY NOTIFY IN WRITING EACH UTILITY COMPANY
10 IDENTIFIED PURSUANT TO SUBSECTION (2)(a)(I) OF THIS SECTION. THE
11 NOTICE PROVIDED MUST FOLLOW THE REQUIREMENTS OF SUBSECTION
12 (2)(b) OF THIS SECTION.

13 (b) THE NOTICE REQUIRED BY SUBSECTION (2)(a)(II) OF THIS
14 SECTION MUST INCLUDE THE FOLLOWING INFORMATION:

15 (I) AN EXPLANATION OF THE PROPOSED DESIGN OF THE ROAD
16 IMPROVEMENT PROJECT, INCLUDING INFORMATION ON FUNDING;

17 (II) ANY POTENTIAL UTILITY CONFLICT THAT MAY BE CREATED BY
18 THE ROAD IMPROVEMENT PROJECT;

19 (III) THE ESTIMATED TIMELINE AND DURATION OF THE ROAD
20 IMPROVEMENT PROJECT;

21 (IV) THE ESTIMATED TIME FRAME IN WHICH THE UTILITY
22 RELOCATION SHOULD BE COMPLETED;

23 (V) THE FEDERAL IDENTIFYING PROJECT NUMBER, IF APPLICABLE;
24 AND

25 (VI) WHETHER THE UTILITY COMPANY MAY QUALIFY FOR
26 ASSISTANCE TO OFFSET EXPENSES INCURRED IN RELOCATING ITS UTILITY
27 FACILITIES TO ACCOMMODATE THE PROPOSED ROAD IMPROVEMENT
28 PROJECT.

29 (c) THE LOCAL GOVERNMENT SHALL GIVE THE NOTICE REQUIRED
30 BY SUBSECTION (2)(a)(II) OF THIS SECTION TO THE UTILITY COMPANY AS
31 EARLY AS PRACTICABLE AND AT LEAST FORTY-FIVE CALENDAR DAYS
32 BEFORE THE EARLIEST OF THE FOLLOWING:

33 (I) THE COMPLETION OF THIRTY PERCENT OF THE PRELIMINARY
34 DESIGN PLANS;

35 (II) THE PROJECT DEVELOPMENT SCOPING MEETING FOR THE ROAD
36 IMPROVEMENT PROJECT; OR

37 (III) THE INVITATION TO BID FOR THE ROAD IMPROVEMENT
38 PROJECT.

39 (d) THE UTILITY COMPANY TO WHICH THE NOTICE REQUIRED BY
40 SUBSECTION (2)(a)(II) OF THIS SECTION IS DIRECTED SHALL ACKNOWLEDGE
41 RECEIPT OF THE NOTICE.

42 (e) IF THERE IS A CHANGE IN THE SCOPE OF A ROAD IMPROVEMENT
43 PROJECT OR THE PLANS AND SPECIFICATIONS THAT AFFECTS THE UTILITY

1 FACILITIES AND THE UTILITY COMPANY'S ABILITY TO REASONABLY MEET
2 ITS OBLIGATIONS FOR THE UTILITY RELOCATION IN ACCORDANCE WITH THE
3 SCHEDULE ESTABLISHED FOR THE ROAD IMPROVEMENT PROJECT, A LOCAL
4 GOVERNMENT SHALL:

5 (I) GIVE EACH AFFECTED UTILITY COMPANY A NEW WRITTEN
6 NOTICE THAT INCLUDES ALL APPLICABLE INFORMATION IN SUBSECTION
7 (2)(b) OF THIS SECTION; AND

8 (II) COORDINATE WITH THE AFFECTED UTILITY COMPANY AND
9 THIRD-PARTY CONTRACTOR, AS APPLICABLE, TO AMEND ANY CLEARANCE
10 LETTER AS NECESSARY TO REFLECT MUTUALLY AGREED UPON CHANGES TO
11 THE ORIGINAL COMMITMENTS IN THE LETTER, INCLUDING REASONABLE
12 SCHEDULE ADJUSTMENTS, IF AN EXECUTED CLEARANCE LETTER COVERING
13 THE UTILITY RELOCATION EXISTS.

14 (e) (I) IF UTILITY FACILITIES ARE DISCOVERED DURING A ROAD
15 IMPROVEMENT PROJECT THAT WERE NOT PREVIOUSLY IDENTIFIED, THE
16 LOCAL GOVERNMENT, THE AFFECTED UTILITY COMPANY, AND THE
17 THIRD-PARTY CONTRACTOR, AS APPLICABLE, SHALL CONFER WITHIN
18 FORTY-EIGHT HOURS OF DISCOVERY TO DETERMINE APPROPRIATE
19 RELOCATION PROCEDURES.

20 (II) WITHIN TEN BUSINESS DAYS OF THE DISCOVERY OF THE
21 UTILITY FACILITIES, THE LOCAL GOVERNMENT AND THE AFFECTED UTILITY
22 COMPANY SHALL NEGOTIATE A CLEARANCE LETTER PURSUANT TO
23 SUBSECTION (3) OF THIS SECTION.

24 (3) (a) TO FACILITATE A UTILITY RELOCATION, A LOCAL
25 GOVERNMENT AND AN AFFECTED UTILITY COMPANY SHALL NEGOTIATE IN
26 GOOD FAITH AND SHALL ENTER INTO A MUTUALLY AGREEABLE CLEARANCE
27 LETTER.

28 (b) THE CLEARANCE LETTER MUST INCLUDE:

29 (I) AN ACKNOWLEDGMENT BY THE LOCAL GOVERNMENT AND THE
30 UTILITY COMPANY THAT A UTILITY CONFLICT EXISTS;

31 (II) THE SCOPE OF THE UTILITY RELOCATION, INCLUDING THE
32 EXTENT OF THE UTILITY FACILITIES NEEDING TO BE RELOCATED AS
33 EVIDENCED BY THE PLANS AND SPECIFICATIONS;

34 (III) WHETHER THE UTILITY RELOCATION WILL BE PERFORMED BY
35 THE UTILITY COMPANY OR BY A THIRD-PARTY CONTRACTOR AGREED TO BY
36 THE UTILITY COMPANY;

37 (IV) REQUIREMENTS FOR COORDINATION AMONG THE LOCAL
38 GOVERNMENT, THE UTILITY COMPANY, AND ANY THIRD-PARTY
39 CONTRACTOR THROUGHOUT THE ROAD IMPROVEMENT PROJECT AND
40 UTILITY RELOCATION, INCLUDING THROUGHOUT ANY PREREQUISITE WORK
41 THAT NEEDS TO OCCUR BEFORE THE UTILITY RELOCATION;

42 (V) WHICH ENTITY IS RESPONSIBLE FOR TRAFFIC MANAGEMENT
43 DURING THE UTILITY RELOCATION;

1 (VI) THE NUMBER OF DAYS OF NOTICE THAT THE LOCAL
2 GOVERNMENT MUST GIVE TO THE UTILITY COMPANY AHEAD OF THE DATE
3 BY WHICH THE UTILITY RELOCATION MUST BE STARTED IN ORDER TO
4 ADHERE TO THE ROAD IMPROVEMENT PROJECT SCHEDULE;

5 (VII) AN ESTIMATED SCHEDULE FOR THE PERFORMANCE OF THE
6 UTILITY RELOCATION, INCLUDING THE DURATION OF THE UTILITY
7 RELOCATION;

8 (VIII) A REQUIREMENT OF PROMPT PERFORMANCE OF THE UTILITY
9 RELOCATION BY THE UTILITY COMPANY IF THE UTILITY COMPANY IS
10 PERFORMING THE UTILITY RELOCATION OR BY THE THIRD-PARTY
11 CONTRACTOR AGREED TO BY THE UTILITY COMPANY TO PERFORM THE
12 UTILITY RELOCATION, EXCEPT WHEN PERFORMANCE IS EXCUSED DUE TO
13 FORCE MAJEURE, THE DISCOVERY OF HAZARDOUS MATERIAL IN THE PUBLIC
14 ROADWAY, OR A CHANGE IN THE SCOPE OR AGREED-TO SCHEDULE OF A
15 ROAD IMPROVEMENT PROJECT OR THE PLANS AND SPECIFICATIONS THAT
16 AFFECTS THE UTILITY FACILITIES;

17 (IX) A REQUIREMENT OF PAYMENT BY THE UTILITY COMPANY FOR
18 ACTUAL DAMAGES CAUSED BY THE UTILITY COMPANY'S DELAY IN THE
19 PERFORMANCE OF THE UTILITY RELOCATION OR INTERFERENCE WITH THE
20 PERFORMANCE OF THE UTILITY RELOCATION BY ANY CONTRACTOR NOT
21 HIRED BY THE UTILITY COMPANY; EXCEPT THAT DELAY OR INTERFERENCE
22 CAUSED BY THE FOLLOWING WILL NOT BE CHARGED TO THE UTILITY
23 COMPANY:

24 (A) A FORCE MAJEURE;

25 (B) THE DISCOVERY OF HAZARDOUS MATERIAL IN THE PUBLIC
26 ROADWAY; OR

27 (C) A CHANGE IN THE SCOPE OR AGREED-TO SCHEDULE OF A ROAD
28 IMPROVEMENT PROJECT OR THE PLANS AND SPECIFICATIONS THAT AFFECTS
29 THE UTILITY FACILITIES AND THE UTILITY COMPANY'S ABILITY TO PERFORM
30 THE RELOCATION WORK AS ESTABLISHED IN THE CLEARANCE LETTER;

31 (X) A REQUIREMENT THAT THE LOCAL GOVERNMENT, AT ITS SOLE
32 COST, SURVEY AND STAKE THE LOCATION WHERE THE UTILITY FACILITIES
33 WILL BE LOCATED PRIOR TO THE BEGINNING OF THE UTILITY RELOCATION,
34 AND THAT THE COST OF ANY REQUIRED RE-STAKING DUE TO THE ACTIONS
35 OF A UTILITY COMPANY OR ITS CONTRACTOR BE PAID BY THE UTILITY
36 COMPANY;

37 (XI) A REQUIREMENT THAT, UPON THE DISCOVERY OF HAZARDOUS
38 MATERIAL IN A PUBLIC ROADWAY IN CONNECTION WITH UTILITY
39 RELOCATION, THE UTILITY RELOCATION WORK CEASE UNTIL THE LOCAL
40 GOVERNMENT TAKES NECESSARY STEPS TO PROVIDE A UTILITY CORRIDOR
41 FREE FROM HAZARDOUS MATERIAL, AND THAT THE LOCAL GOVERNMENT
42 IS RESPONSIBLE FOR THE MANAGEMENT, TRANSPORTATION, AND DISPOSAL
43 OF ANY SOIL FROM THE PUBLIC RIGHT-OF-WAY CONTAMINATED WITH

1 HAZARDOUS MATERIAL;

2 (XII) A REQUIREMENT THAT ALL DESIGN AND CONSTRUCTION OF
3 THE UTILITY RELOCATION ARE SUBJECT TO REVIEW AND APPROVAL BY
4 ENGINEERS FOR THE LOCAL GOVERNMENT AND FOR THE UTILITY
5 COMPANY; AND

6 (XIII) A DISPUTE RESOLUTION PROVISION THAT INCLUDES
7 MECHANISMS FOR NOTICE OF A FAILURE TO PERFORM IN ACCORDANCE
8 WITH THE CLEARANCE LETTER AND FOR A REASONABLE OPPORTUNITY TO
9 CURE.

10 (c) (I) THE CLEARANCE LETTER MAY ALLOW FOR UTILITY
11 COMPANY BETTERMENT AT THE EXPENSE OF THE UTILITY COMPANY;
12 EXCEPT THAT ANY UTILITY COMPANY BETTERMENT MUST NOT
13 MATERIALLY DELAY THE UTILITY RELOCATION.

14 (II) AS USED IN THIS SUBSECTION (3)(c), "UTILITY COMPANY
15 BETTERMENT" MEANS ANY UPGRADE OF THE UTILITY FACILITIES BEING
16 RELOCATED THAT IS NOT ATTRIBUTABLE TO THE ROAD IMPROVEMENT
17 PROJECT AND THAT IS MADE SOLELY FOR THE BENEFIT AND AT THE
18 ELECTION OF THE AFFECTED UTILITY COMPANY.

19 (4) (a) UPON BEING PROVIDED WRITTEN DOCUMENTATION FROM
20 THE UTILITY COMPANY INDICATING, AT A MINIMUM, THE HORIZONTAL AND
21 VERTICAL LOCATIONS OF THE RELOCATED UTILITY FACILITIES, A LOCAL
22 GOVERNMENT SHALL COMPLETE ITS REVIEW OF THE UTILITY RELOCATION
23 AND PROVIDE A WRITTEN DETERMINATION OF WHETHER IT ACCEPTS OR
24 REJECTS THE COMPLETED UTILITY RELOCATION WITHIN FOURTEEN
25 CALENDAR DAYS OF COMPLETION OF THE RELOCATION OR RECEIPT OF THE
26 DOCUMENTATION INDICATING THE LOCATION OF THE RELOCATED UTILITY
27 FACILITIES FROM THE UTILITY COMPANY, WHICHEVER IS LATER.

28 (b) IF THE LOCAL GOVERNMENT ACCEPTS THE UTILITY
29 RELOCATION, THE LOCAL GOVERNMENT SHALL PROVIDE ITS WRITTEN
30 ACCEPTANCE OF THE UTILITY RELOCATION TO THE UTILITY COMPANY.

31 (c) (I) IF THE LOCAL GOVERNMENT REJECTS THE UTILITY
32 RELOCATION, THE LOCAL GOVERNMENT SHALL PROVIDE ITS WRITTEN
33 REJECTION AND REASONING TO THE UTILITY COMPANY.

34 (II) THE UTILITY COMPANY SHALL PROMPTLY MAKE THE
35 NECESSARY CHANGES TO THE UTILITY RELOCATION IDENTIFIED IN THE
36 WRITTEN REJECTION TO CONFORM WITH THE PLANS AND SPECIFICATIONS
37 IDENTIFIED IN THE CLEARANCE LETTER. THE UTILITY COMPANY IS
38 RESPONSIBLE FOR PAYMENT OF ACTUAL DAMAGES CAUSED BY ANY DELAY
39 IN THE ROAD IMPROVEMENT PROJECT SCHEDULE AS A RESULT OF THE
40 NECESSARY CHANGES TO THE UTILITY RELOCATION TO BRING THE
41 RELOCATION INTO COMPLIANCE WITH THE PLANS AND SPECIFICATIONS
42 IDENTIFIED IN THE CLEARANCE LETTER.

43 (d) IF THE LOCAL GOVERNMENT FAILS TO TIMELY PROVIDE THE

1 WRITTEN DETERMINATION REQUIRED BY SUBSECTION (4)(a) OF THIS
2 SECTION, THE UTILITY RELOCATION IS DEEMED ACCEPTED.

3 (e) A UTILITY COMPANY SHALL NOT BE REQUIRED TO PAY FOR
4 RELOCATION OF PREVIOUSLY RELOCATED UTILITY FACILITIES WITHIN TWO
5 YEARS FOLLOWING THE ACCEPTANCE OF THE PREVIOUS UTILITY
6 RELOCATION BY THE LOCAL GOVERNMENT PURSUANT TO THIS SUBSECTION
7 (4), EXCEPT IN THE EVENT OF AN EMERGENCY.

8 (5) A LOCAL GOVERNMENT MAY, AFTER OPPORTUNITY FOR RELIEF
9 BETWEEN THE LOCAL GOVERNMENT AND THE UTILITY COMPANY
10 PURSUANT TO THE DISPUTE RESOLUTION PROCESS OUTLINED IN THE
11 CLEARANCE LETTER, WITHHOLD ISSUANCE OF A PERMIT FOR THE LOCATION
12 OR INSTALLATION OF OTHER UTILITY FACILITIES IN A PUBLIC ROADWAY TO
13 A UTILITY COMPANY UNTIL THE UTILITY COMPANY PAYS THE LOCAL
14 GOVERNMENT FOR ANY ACTUAL DAMAGES CAUSED BY THE UTILITY
15 COMPANY'S DELAY IN THE PERFORMANCE OF A UTILITY RELOCATION.

16 (6) WHEN NECESSARY AND FEASIBLE AND AFTER MUTUAL
17 AGREEMENT WITH AN AFFECTED UTILITY COMPANY, A LOCAL
18 GOVERNMENT MAY OBTAIN ADDITIONAL PUBLIC RIGHTS-OF-WAY OR
19 EASEMENTS TO ACCOMMODATE A UTILITY RELOCATION. THE LOCAL
20 GOVERNMENT IS RESPONSIBLE FOR THE COST OF OBTAINING ANY
21 ADDITIONAL RIGHT-OF-WAY UNLESS THE ADDITIONAL RIGHT-OF-WAY IS
22 ONLY NEEDED TO ACCOMMODATE A UTILITY COMPANY BETTERMENT AND
23 IS NOT REQUIRED FOR A ROAD IMPROVEMENT PROJECT.

24 (7) A LOCAL GOVERNMENT AND AN AFFECTED UTILITY COMPANY
25 SHALL MAKE ARRANGEMENTS FOR FUNDING ANY UTILITY RELOCATION AS
26 SPECIFIED IN ANY EASEMENTS, LICENSES, OR OTHER PROPERTY INTERESTS
27 OR RIGHTS OF USE HELD BY THE LOCAL GOVERNMENT OR THE UTILITY
28 COMPANY. THE RECOVERY OF UNDERGROUND UTILITY LOCATE COSTS, AS
29 INCURRED BY THE UTILITY COMPANY, MUST OCCUR THROUGH
30 APPROPRIATE RATE ADJUSTMENT CLAUSES.

31 (8) NO PARTY OTHER THAN THE OWNER OF THE UTILITY FACILITIES
32 MAY RELOCATE UTILITY FACILITIES WITHOUT THE EXPRESS CONSENT OF
33 THE AFFECTED UTILITY COMPANY.

34 (9) NOTHING IN THIS SECTION:

35 (a) ALTERS OR DIMINISHES THE AUTHORITY OF A LOCAL
36 GOVERNMENT TO LAWFULLY EXERCISE ITS POLICE POWERS WITH RESPECT
37 TO THE RELOCATION OF UTILITY FACILITIES WITHIN THE LOCAL
38 GOVERNMENT BOUNDARIES;

39 (b) ALTERS EXISTING PROPERTY AGREEMENTS, LICENSES,
40 FRANCHISE AGREEMENTS, OR OTHER VESTED INTERESTS OF A LOCAL
41 GOVERNMENT OR A UTILITY COMPANY ESTABLISHED IN THE EXISTING
42 PROPERTY AGREEMENT, LICENSE, FRANCHISE AGREEMENT, OR OTHER
43 VESTED INTEREST, INCLUDING THE OBLIGATION TO PAY FOR UTILITY

1 RELOCATION;
2 (c) ALTERS THE TERMS OF ANY FRANCHISE OR LICENSE GRANTED
3 PURSUANT TO SECTION 31-32-101 OR ARTICLE XX OF THE STATE
4 CONSTITUTION;
5 (d) ALTERS OR DIMINISHES THE LOCAL GOVERNMENT'S ABILITY TO
6 RECOVER COSTS OR DAMAGES FROM ANY PARTY RESPONSIBLE FOR
7 HAZARDOUS MATERIAL DISCOVERED IN A PUBLIC ROADWAY;
8 (e) ALTERS OR DIMINISHES THE UTILITY COMPANY'S ABILITY TO
9 RECOVER COSTS OR DAMAGES RESULTING FROM THE DISCOVERY OF
10 HAZARDOUS MATERIAL, PREVIOUSLY UNIDENTIFIED UTILITY CONFLICTS,
11 OR THE ACTS OR OMISSIONS OF A THIRD PARTY; OR
12 (f) ALTERS ANY COMMON LAW OF THE STATE ALLOCATING THE
13 COST OF UTILITY RELOCATION WITHIN A PUBLIC RIGHT-OF-WAY.
14 **SECTION 3. Act subject to petition - effective date -**
15 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
16 the expiration of the ninety-day period after final adjournment of the
17 general assembly; except that, if a referendum petition is filed pursuant
18 to section 1 (3) of article V of the state constitution against this act or an
19 item, section, or part of this act within such period, then the act, item,
20 section, or part will not take effect unless approved by the people at the
21 general election to be held in November 2024 and, in such case, will take
22 effect on the date of the official declaration of the vote thereon by the
23 governor.
24 (2) This act applies to utility relocation work commencing on or
25 after the applicable effective date of this act."

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