

CHAPTER 336

GOVERNMENT - LOCAL

HOUSE BILL 24-1266

BY REPRESENTATIVE(S) Hamrick and Frizell, Bird, Lindsay, Marshall, Ricks, Snyder, Soper, Story, Taggart, Valdez, Vigil, Weinberg, Catlin, Froelich, Pugliese;
also SENATOR(S) Zenzinger.

AN ACT**CONCERNING THE RELOCATION OF UTILITY FACILITIES IN A LOCAL GOVERNMENT RIGHT-OF-WAY.**

Be it enacted by the General Assembly of the State of Colorado:

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

(a) Colorado statutes outline the use of public highways for the operation and maintenance of the transportation system, and utilities must be constructed so as not to obstruct or hinder the usual travel on such highways, as described in section 38-5-101, Colorado Revised Statutes;

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

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

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

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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

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

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

38-5-109. Utility relocation clearance letter - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

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

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

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

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

(f) "PRIVATE PROJECT RELOCATION" MEANS ANY CONSTRUCTION OR

RECONSTRUCTION PROJECT FOR THE ADJUSTMENT, EXPANSION, OR REALIGNMENT OF A PUBLIC ROADWAY OR PUBLIC RIGHT-OF-WAY THAT:

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

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

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

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

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

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

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

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

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

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

(m) "UTILITY RELOCATION" OR "RELOCATION OF UTILITY FACILITIES" MEANS THE REMOVAL, RELOCATION, OR ALTERATION OF UTILITY FACILITIES NECESSARY TO RESOLVE A UTILITY CONFLICT CAUSED BY A ROAD IMPROVEMENT PROJECT FUNDED

IN FULL OR IN PART BY A LOCAL GOVERNMENT OR WITH STATE, FEDERAL, OR OTHER PUBLIC MONEY; EXCEPT THAT "UTILITY RELOCATION" DOES NOT INCLUDE A PRIVATE PROJECT RELOCATION.

(2)(a) IF A LOCAL GOVERNMENT ENGAGES IN OR PROPOSES TO ENGAGE IN A ROAD IMPROVEMENT PROJECT THAT MAY REQUIRE THE RELOCATION OF UTILITY FACILITIES DUE TO A UTILITY CONFLICT, THE LOCAL GOVERNMENT SHALL:

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

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

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

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

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

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

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

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

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

(c) THE LOCAL GOVERNMENT SHALL GIVE THE NOTICE REQUIRED BY SUBSECTION (2)(a)(II) OF THIS SECTION TO THE UTILITY COMPANY AS EARLY AS PRACTICABLE AND:

(I) WITHIN FIFTEEN CALENDAR DAYS OF THE APPROVAL OF THE PRELIMINARY DESIGN OF THE ROAD IMPROVEMENT PROJECT; AND

(II) AT LEAST FORTY-FIVE CALENDAR DAYS BEFORE THE INVITATION TO BID FOR CONSTRUCTION OF THE ROAD IMPROVEMENT PROJECT.

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

(e) IF THERE IS A CHANGE IN THE SCOPE OF A ROAD IMPROVEMENT PROJECT OR THE PLANS AND SPECIFICATIONS THAT AFFECTS THE UTILITY FACILITIES AND THE UTILITY COMPANY'S ABILITY TO REASONABLY MEET ITS OBLIGATIONS FOR THE UTILITY RELOCATION IN ACCORDANCE WITH THE SCHEDULE ESTABLISHED FOR THE ROAD IMPROVEMENT PROJECT, A LOCAL GOVERNMENT SHALL:

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

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

(f) (I) IF UTILITY FACILITIES WERE NOT PREVIOUSLY IDENTIFIED AND RESULT IN A NEWLY DISCOVERED UTILITY CONFLICT, THE LOCAL GOVERNMENT, THE AFFECTED UTILITY COMPANY, AND THE THIRD-PARTY CONTRACTOR, AS APPLICABLE, SHALL CONFER WITHIN FORTY-EIGHT HOURS OF DISCOVERY TO DETERMINE APPROPRIATE RELOCATION PROCEDURES.

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

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

(b) THE CLEARANCE LETTER MUST INCLUDE:

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

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

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

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

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

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

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

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

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

(A) A FORCE MAJEURE;

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

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

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

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

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

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

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

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

(4) (a) UPON BEING PROVIDED WRITTEN DOCUMENTATION OF THE HORIZONTAL AND VERTICAL LOCATIONS OF THE RELOCATED UTILITY FACILITIES AND A STATEMENT BY THE UTILITY COMPANY OR ITS CONTRACTOR THAT THE UTILITY FACILITIES ARE RELOCATED IN ACCORDANCE WITH THE APPROVED UTILITY RELOCATION PLANS, A LOCAL GOVERNMENT SHALL COMPLETE ITS REVIEW OF THE COMPLETED UTILITY RELOCATION AND PROVIDE A WRITTEN DETERMINATION OF WHETHER IT ACCEPTS OR REJECTS THE COMPLETED UTILITY RELOCATION WITHIN FOURTEEN CALENDAR DAYS OF COMPLETION OF THE RELOCATION OR RECEIPT OF THE DOCUMENTATION INDICATING THE LOCATION OF THE RELOCATED UTILITY FACILITIES FROM THE UTILITY COMPANY, WHICHEVER IS LATER.

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

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

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

(d) IF THE LOCAL GOVERNMENT FAILS TO TIMELY PROVIDE THE WRITTEN DETERMINATION REQUIRED BY SUBSECTION (4)(a) OF THIS SECTION, THE UTILITY RELOCATION IS DEEMED ACCEPTED.

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

(5) A LOCAL GOVERNMENT MAY, AFTER OPPORTUNITY FOR RELIEF BETWEEN THE

LOCAL GOVERNMENT AND THE UTILITY COMPANY PURSUANT TO THE DISPUTE RESOLUTION PROCESS OUTLINED IN THE CLEARANCE LETTER, WITHHOLD ISSUANCE OF A PERMIT FOR THE LOCATION OR INSTALLATION OF OTHER UTILITY FACILITIES IN A PUBLIC ROADWAY TO A UTILITY COMPANY UNTIL THE DISPUTE IS RESOLVED, WHICH MAY INCLUDE PAYMENT TO THE LOCAL GOVERNMENT FOR ANY ACTUAL DAMAGES CAUSED BY THE UTILITY COMPANY'S DELAY IN THE PERFORMANCE OF A UTILITY RELOCATION.

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

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

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

(9) NOTHING IN THIS SECTION:

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

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

(c) ALTERS THE TERMS OF ANY FRANCHISE OR LICENSE GRANTED PURSUANT TO SECTION 31-32-101 OR ARTICLE XX OF THE STATE CONSTITUTION;

(d) ALTERS OR DIMINISHES THE LOCAL GOVERNMENT'S ABILITY TO RECOVER COSTS OR DAMAGES FROM ANY PARTY RESPONSIBLE FOR HAZARDOUS MATERIAL DISCOVERED IN A PUBLIC ROADWAY;

(e) ALTERS OR DIMINISHES THE UTILITY COMPANY'S ABILITY TO RECOVER COSTS OR DAMAGES RESULTING FROM THE DISCOVERY OF HAZARDOUS MATERIAL, PREVIOUSLY UNIDENTIFIED UTILITY CONFLICTS, OR THE ACTS OR OMISSIONS OF A THIRD PARTY;

(f) ALTERS ANY COMMON LAW OF THE STATE ALLOCATING THE COST OF UTILITY RELOCATION WITHIN A PUBLIC RIGHT-OF-WAY; OR

(g) PREVENTS A LOCAL GOVERNMENT FROM PURSUING ALTERNATIVE ARRANGEMENTS FOR ROAD IMPROVEMENT PROJECTS, IN WHICH CASE SUBSECTIONS (2) THROUGH (8) OF THIS SECTION DO NOT APPLY.

SECTION 3. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to utility relocation work commencing on or after the applicable effective date of this act.

Approved: June 3, 2024