

## CHAPTER 196

---

**GOVERNMENT - SPECIAL DISTRICTS**

---

## SENATE BILL 07-205

BY SENATOR(S) Williams, Shaffer, Tapia, Ward, and Boyd;  
also REPRESENTATIVE(S) Pommer, Butcher, Green, and Labuda.

**AN ACT**

**CONCERNING THE PERFORMANCE OF UTILITY RELOCATION WORK IN CONJUNCTION WITH THE REGIONAL TRANSPORTATION DISTRICT'S TRANSPORTATION EXPANSION PLANS.**

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

**SECTION 1.** 32-9-103, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

**32-9-103. Definitions.** As used in this article, unless the context otherwise requires:

(3.7) "DISCOVERY" MEANS PHYSICAL DISCOVERY OF AN UNDOCUMENTED UTILITY COMMUNICATED BY THE DISTRICT OR ITS CONTRACTORS, AGENTS, OR EMPLOYEES VERBALLY OR IN WRITING TO THE UTILITY COMPANY'S DESIGNATED PROJECT REPRESENTATIVE OR, IF NO REPRESENTATIVE HAS BEEN DESIGNATED, TO THE CHIEF ENGINEER OR EQUIVALENT.

(6.4) "FIXED GUIDEWAY CORRIDOR UTILITY RELOCATION AGREEMENT" MEANS AN AGREEMENT ENTERED INTO BY THE DISTRICT AND A UTILITY COMPANY FOR THE PURPOSE OF PERFORMING UTILITY RELOCATION WORK NECESSITATED BY A TRANSPORTATION EXPANSION PLAN IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 32-9-119.1.

(6.7) "FORCE MAJEURE" MEANS FIRE, EXPLOSION, ACTION OF THE ELEMENTS, STRIKE, INTERRUPTION OF TRANSPORTATION, RATIONING, SHORTAGE OF LABOR, EQUIPMENT, OR MATERIALS, COURT ACTION, ILLEGALITY, UNUSUALLY SEVERE WEATHER, ACT OF GOD, ACT OF WAR, OR ANY OTHER CAUSE THAT IS BEYOND THE CONTROL OF THE PARTY PERFORMING WORK ON A UTILITY RELOCATION PROJECT AND THAT COULD NOT HAVE BEEN PREVENTED BY THE PARTY WHILE EXERCISING

---

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

REASONABLE DILIGENCE.

(6.9) "MAJOR ELECTRICAL FACILITIES" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 29-20-108 (3) (a), (3) (b), (3) (c), AND (3) (d), C.R.S.

(15.1) "UTILITY COMPANY" OR "UTILITY" SHALL HAVE THE SAME MEANING AS SET FORTH IN 23 CFR 645.105, AS AMENDED.

(15.5) "UTILITY FACILITY" MEANS ALL INSTALLED EQUIPMENT OF A UTILITY.

**SECTION 2.** Article 9 of title 32, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**32-9-119.1. Transportation expansion plan - utility relocation - legislative declaration - definitions.** (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) THE DISTRICT HAS BEEN AUTHORIZED TO CONSTRUCT A TRANSPORTATION EXPANSION PLAN ADOPTED BY THE BOARD AND APPROVED BY THE VOTERS ON NOVEMBER 2, 2004. THE TRANSPORTATION EXPANSION PLAN ANTICIPATES THAT CONSTRUCTION WILL BE COMPLETED ON ALL FIXED GUIDEWAY CORRIDORS IN A TWELVE-YEAR PERIOD.

(b) THE SCHEDULING AND TIMELY PERFORMANCE OF THE TRANSPORTATION EXPANSION PLAN PARTIALLY DEPENDS ON COORDINATION WITH UTILITY COMPANIES FOR THE PROMPT PERFORMANCE OF UTILITY RELOCATION WORK NECESSITATED BY CONSTRUCTION OF THE TRANSPORTATION EXPANSION PLAN.

(c) INCREASED COORDINATION BETWEEN THE DISTRICT AND UTILITY COMPANIES IS IN THE PUBLIC INTEREST, AND PROMPT PERFORMANCE OF UTILITY RELOCATION WORK WITHIN THE ADOPTED PLAN SCHEDULE WILL REDUCE DELAYS AND COSTS OF CONSTRUCTION. UTILITY RELOCATION WORK SHALL BE UNDERTAKEN IN A MANNER THAT MINIMIZES THE RELOCATION COST AND THE DISRUPTION OF UTILITY SERVICES.

(2) (a) THE DISTRICT SHALL NEGOTIATE WITH ANY AFFECTED UTILITY COMPANY IN EACH FIXED GUIDEWAY CORRIDOR. IN COORDINATION WITH THE DISTRICT, EACH UTILITY COMPANY SHALL DETERMINE WHETHER A DISTRICT CONTRACTOR OR THE UTILITY COMPANY SHALL BE RESPONSIBLE FOR THE RELOCATION OF ITS UTILITY FACILITIES. IN MAKING SUCH A DETERMINATION, THE UTILITY COMPANY SHALL TAKE INTO CONSIDERATION THE LOCATION OF THE UTILITY FACILITIES, COMPLEXITY OF THE RELOCATION, AND TIMING OF THE NEED FOR RELOCATION WORK.

(b) THE DISTRICT AND THE UTILITY COMPANY SHALL MAKE SUCH ARRANGEMENTS FOR FUNDING UTILITY RELOCATIONS AS ARE SPECIFIED IN THE EASEMENTS, LICENSES, FRANCHISES, OR OTHER PROPERTY INTERESTS AND RIGHTS OF USE HELD BY THE DISTRICT OR THE UTILITY COMPANY. NOTHING IN THIS SECTION IS INTENDED TO ALTER EXISTING PROPERTY AGREEMENTS, LICENSES, OR OTHER INTERESTS OF THE DISTRICT AND UTILITY COMPANY REGARDING THE OBLIGATION TO PAY FOR UTILITY RELOCATION.

(3) (a) THE DISTRICT MAY ENTER INTO FIXED GUIDEWAY CORRIDOR UTILITY

RELOCATION AGREEMENTS WITH A UTILITY COMPANY. SUCH AGREEMENTS SHALL BE FOR THE PERFORMANCE OF ALL SERVICES REQUIRED TO ASSURE TIMELY RELOCATION OF UTILITIES ACCORDING TO THE MOST CURRENT WRITTEN STANDARDS AND PRACTICES ESTABLISHED BY THE UTILITY COMPANY AT THE TIME THE AGREEMENT IS ENTERED INTO, UNLESS OTHER STANDARDS ARE MUTUALLY SELECTED BY THE DISTRICT AND THE UTILITY COMPANY.

(b) A FIXED GUIDEWAY CORRIDOR UTILITY RELOCATION AGREEMENT SHALL INCLUDE A SCHEDULE FOR DESIGN, REVIEW, DISPUTE RESOLUTION, AND CONSTRUCTION.

(c) (I) A FIXED GUIDEWAY CORRIDOR UTILITY RELOCATION AGREEMENT MAY PROVIDE FOR A UTILITY COMPANY BETTERMENT, INCLUDING, BUT NOT LIMITED TO, INCREASED CAPACITY AND EXTENSIONS OF SERVICES; EXCEPT THAT A BETTERMENT SHALL NOT MATERIALLY DELAY PROJECT CONSTRUCTION AND SHALL BE AT THE EXPENSE OF THE UTILITY COMPANY.

(II) AS USED IN THIS SECTION, "BETTERMENT" MEANS ANY UPGRADE OF THE UTILITY FACILITY BEING RELOCATED THAT IS NOT ATTRIBUTABLE TO PROJECT CONSTRUCTION AND IS MADE SOLELY FOR THE BENEFIT OF AND AT THE ELECTION OF THE UTILITY.

(d) A FIXED GUIDEWAY CORRIDOR UTILITY RELOCATION AGREEMENT MAY INCORPORATE REASONABLE AND APPROPRIATE CONDITIONS, INCLUDING, BUT NOT LIMITED TO, CONDITIONS FOR ENSURING:

(I) THE PROMPT PERFORMANCE OF UTILITY RELOCATION WORK BY EITHER THE DISTRICT, UTILITY COMPANY, OR CONTRACTOR FOR THE TRANSPORTATION EXPANSION PLAN, AS SPECIFIED IN THE AGREEMENT;

(II) THE COOPERATION OF THE UTILITY COMPANY WITH THE CONTRACTOR FOR THE TRANSPORTATION EXPANSION PLAN; AND

(III) THE PAYMENT BY THE UTILITY COMPANY OF ANY DAMAGES CAUSED BY THE COMPANY'S DELAY IN THE PERFORMANCE OF THE RELOCATION WORK OR INTERFERENCE WITH THE PERFORMANCE OF THE PROJECT BY ANY OTHER CONTRACTOR, EXCEPT WHEN SUCH DELAY OR INTERFERENCE IS CAUSED BY A FORCE MAJEURE.

(4) ALL DESIGN AND CONSTRUCTION OF UTILITY RELOCATION SHALL BE SUBJECT TO REVIEW AND APPROVAL BY DISTRICT AND UTILITY COMPANY ENGINEERS.

(5) (a) IF THE DISTRICT AND UTILITY COMPANY ARE UNABLE TO REACH A FIXED GUIDEWAY CORRIDOR UTILITY RELOCATION AGREEMENT, OR IF UTILITY RELOCATION DISPUTES ARISE UNDER AN AGREEMENT, THE DISTRICT AND UTILITY COMPANY SHALL EACH DESIGNATE AN OFFICIAL, AT NO LEVEL LOWER THAN DISTRICT CORRIDOR PROJECT MANAGER AND UTILITY COMPANY CHIEF ENGINEER, TO RESOLVE THE DIFFERENCES.

(b) IF THE DIFFERENCES CANNOT BE RESOLVED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (5), UTILITY RELOCATION DISPUTES SHALL BE HEARD IN THE

FOLLOWING DISTRICT COURTS FOR EACH OF THE FOLLOWING CORRIDORS AND PROJECTS:

- (I) FOR UNION STATION, DENVER COUNTY DISTRICT COURT;
- (II) FOR THE U.S. 36 CORRIDOR, BOULDER COUNTY DISTRICT COURT;
- (III) FOR THE WEST CORRIDOR, JEFFERSON COUNTY DISTRICT COURT;
- (IV) FOR THE GOLD LINE CORRIDOR, JEFFERSON COUNTY DISTRICT COURT;
- (V) FOR THE EAST CORRIDOR, DENVER COUNTY DISTRICT COURT;
- (VI) FOR THE I-225 CORRIDOR, ARAPAHOE COUNTY DISTRICT COURT;
- (VII) FOR THE SOUTHWEST CORRIDOR, ARAPAHOE COUNTY DISTRICT COURT; AND
- (VIII) FOR THE NORTH CORRIDOR, ADAMS COUNTY DISTRICT COURT.

(c) IT SHALL BE PRESUMED THAT THERE WILL BE IRREPARABLE HARM TO THE PUBLIC IF AN INJUNCTION IS NOT GRANTED TO REQUIRE UTILITY RELOCATION, REGARDLESS OF A LATER DETERMINATION AS TO WHICH PARTY IS RESPONSIBLE FOR THE COST OF RELOCATION.

(6) (a) THE DISTRICT SHALL PROVIDE A UTILITY COMPANY WITH DETAILED MAPS, DRAWINGS, PLANS, AND PROFILES OF THE DISTRICT'S PROPOSED IMPROVEMENTS IN EACH FIXED GUIDEWAY CORRIDOR IN THE TRANSPORTATION EXPANSION PLAN AT:

- (I) THE CONCLUSION OF PRELIMINARY ENGINEERING;
- (II) SIXTY PERCENT COMPLETION OF FINAL DESIGN;
- (III) THE CONCLUSION OF FINAL DESIGN; AND
- (IV) SUCH OTHER TIMES AS MAY BE REQUESTED BY THE UTILITY COMPANY.

(b) THE DISTRICT SHALL SOLICIT INFORMATION AS TO THE LOCATION OF UTILITY FACILITIES WITHIN THE FIXED GUIDEWAY CORRIDOR FROM THE UTILITY COMPANY.

(c) FOR ALL UTILITIES IDENTIFIED ON ANY DOCUMENTS PROVIDED TO OR IN THE POSSESSION OF THE DISTRICT, THE DISTRICT SHALL PROVIDE WRITTEN NOTICE TO A UTILITY COMPANY AS SOON AS PRACTICABLE OF A TRANSPORTATION EXPANSION PLAN THAT WILL REQUIRE THE RELOCATION OF THE COMPANY'S FACILITIES.

(d) (I) WHERE DOCUMENTS HAVE BEEN IN THE POSSESSION OF THE DISTRICT DURING FINAL DESIGN OF A FIXED GUIDEWAY CORRIDOR, THE DISTRICT SHALL PROVIDE NOTICE TO A UTILITY COMPANY OF A TRANSPORTATION EXPANSION PLAN THAT WILL REQUIRE THE RELOCATION OF THE COMPANY'S FACILITIES NOT LATER THAN ONE YEAR BEFORE RELOCATION IS REQUIRED FOR EACH RELOCATION ON EACH FIXED GUIDEWAY CORRIDOR.

(II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH (d), IF MAJOR ELECTRICAL FACILITIES MUST BE RELOCATED, THE DISTRICT SHALL PROVIDE NOTICE TO A UTILITY COMPANY AT LEAST EIGHTEEN MONTHS IN ADVANCE OF THE REQUIRED RELOCATION DATE OR THE DISTRICT SHALL PAY THE COST OF ANY TEMPORARY RELOCATION MEASURES REQUIRED TO MAINTAIN SERVICE TO UTILITY CUSTOMERS. IF TEMPORARY RELOCATION MEASURES ARE NECESSARY, SUCH MEASURES SHALL BE PROVIDED AT THE LOWEST POSSIBLE COST DURING CONSTRUCTION AND RELOCATION.

(III) FOR ANY DISCOVERY OF UTILITIES DURING CONSTRUCTION THAT ARE NOT IDENTIFIED ON DOCUMENTS PROVIDED TO OR IN POSSESSION OF THE DISTRICT, THE DISTRICT AND THE UTILITY COMPANY SHALL CONFER WITHIN FORTY-EIGHT HOURS OF DISCOVERY TO DETERMINE APPROPRIATE RELOCATION PROCEDURES.

(IV) THE DISTRICT AND UTILITY COMPANY SHALL, WITHIN TEN DAYS OF DISCOVERY, ENTER INTO AN AGREEMENT AS TO THE MANNER IN WHICH ANY NECESSARY RELOCATION WILL BE ACCOMPLISHED AND THE PARTY THAT SHALL PERFORM THE WORK.

(V) IF AN AGREEMENT IS REACHED AND IF THE UTILITY COMPANY PERFORMS UNDER THE AGREEMENT, THE UTILITY COMPANY SHALL NOT BE LIABLE FOR DELAY DAMAGES AS PROVIDED IN SUBSECTION (8) OF THIS SECTION.

(7) (a) FOR PURPOSES OF ENSURING CONTINUATION OF REQUIRED UTILITY SERVICES TO THE RESIDENTS OF THE DISTRICT DURING AND AFTER CONSTRUCTION OF THE FIXED GUIDEWAY CORRIDORS, THE DISTRICT MAY PROVIDE, AND CONDEMN WHEN NECESSARY, REPLACEMENT EASEMENTS FOR THE RELOCATION OF UTILITIES. IF SUCH REPLACEMENT EASEMENTS ARE NECESSARY, THE DISTRICT SHALL ENDEAVOR TO MEET ANY EXISTING STANDARDS OF THE UTILITY FOR EASEMENTS. ANY NECESSARY CONDEMNATION SHALL BE CONSIDERED A TRANSPORTATION PROJECT UNDERTAKEN BY THE DISTRICT. THE COST OF REPLACEMENT EASEMENTS SHALL BE PAID:

(I) BY THE DISTRICT IN THOSE INSTANCES WHERE THE DISTRICT HAS ACQUIRED, AT NO EXTRA COST, AN EASEMENT PREVIOUSLY OWNED AND OCCUPIED BY THE UTILITY; OR

(II) BY THE UTILITY IF THE DISTRICT HAS COMPENSATED THE UTILITY FOR A PREVIOUSLY OCCUPIED EASEMENT FROM WHICH THE UTILITY IS BEING RELOCATED.

(b) NOTWITHSTANDING ANY LOCAL LAW TO THE CONTRARY, ABOVEGROUND UTILITY FACILITIES SHALL BE RELOCATED ABOVEGROUND AND UNDERGROUND UTILITY FACILITIES SHALL BE RELOCATED UNDERGROUND. TO MINIMIZE THE COST OF THE RECONFIGURATION OF THE UTILITY FACILITY, THE REPLACEMENT EASEMENT SHALL BE ACQUIRED AS CLOSE AS POSSIBLE TO THE ORIGINAL LOCATION OF THE FACILITY THAT MUST BE RELOCATED.

(8) (a) WHERE THE UTILITY COMPANY HAS ELECTED TO PERFORM RELOCATION WORK OR WHERE THERE HAS BEEN NO AGREEMENT REACHED BETWEEN A UTILITY COMPANY AND THE DISTRICT, THE UTILITY COMPANY SHALL BE LIABLE TO THE DISTRICT FOR ACTUAL DAMAGES SUFFERED BY THE DISTRICT AS A DIRECT RESULT OF THE UTILITY COMPANY'S DELAY IN THE PERFORMANCE OF ANY UTILITY RELOCATION

WORK OR AS A DIRECT RESULT OF THE UTILITY COMPANY'S INTERFERENCE WITH THE PERFORMANCE OF FIXED GUIDEWAY CORRIDOR CONSTRUCTION BY OTHER CONTRACTORS.

(b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (8), A UTILITY COMPANY SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY THE FAILURE TO TIMELY PERFORM THE RELOCATION WORK OR THE INTERFERENCE WITH THE PERFORMANCE OF THE TRANSPORTATION EXPANSION PLAN BY ANOTHER CONTRACTOR WHEN THE FAILURE TO PERFORM OR THE INTERFERENCE IS CAUSED BY A FORCE MAJEURE.

**SECTION 3. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 3, 2007