

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0679.01 Rebecca Bayetti x4348

HOUSE BILL 24-1266

HOUSE SPONSORSHIP

Hamrick and Frizell,

SENATE SPONSORSHIP

(None),

House Committees

Transportation, Housing & Local Government

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE RELOCATION OF UTILITY FACILITIES IN A LOCAL
102 GOVERNMENT RIGHT-OF-WAY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires local governments to notify affected utility companies of road improvement projects and establishes the process by which local governments and utility companies may enter into agreements governing the relocation of utility facilities. The bill requires local governments and utility companies to coordinate on road improvement projects necessitating the removal, relocation, or alteration of utility lines

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

in a local government's right-of-way and to commit to a schedule for utility relocation by means of either a utility relocation agreement or a clearance letter. If the actions of a utility company unreasonably delay the utility relocation schedule or the schedule of the road improvement project, the utility company must pay for the costs associated with the delay. The bill does not alter the terms of any franchises or licenses granted pursuant to statute or the state constitution.

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

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

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

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

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

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

16 **38-5-109. Utility relocation agreements - definitions.** (1) As
17 USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

18 (a) "CLEARANCE LETTER" MEANS A WRITTEN AGREEMENT
19 BETWEEN A UTILITY COMPANY AND A LOCAL GOVERNMENT PROPOSING A
20 ROAD IMPROVEMENT PROJECT IN WHICH THE UTILITY COMPANY AND THE
21 LOCAL GOVERNMENT MUTUALLY ESTABLISH A TIME FRAME FOR UTILITY
22 RELOCATION WORK REQUIRED FOR THE ROAD IMPROVEMENT PROJECT.

1 (b) "FORCE MAJEURE" MEANS FIRE, EXPLOSION, ACTION OF THE
2 ELEMENTS, STRIKE, INTERRUPTION OF TRANSPORTATION, RATIONING,
3 SHORTAGE OF LABOR, EQUIPMENT, OR MATERIALS, COURT ACTION,
4 ILLEGALITY, UNUSUALLY SEVERE WEATHER, ACT OF GOD, ACT OF WAR,
5 SEASONAL LIMITATIONS ON ELECTRIC LINES OR PIPELINE OPERATIONS THAT
6 AFFECT THE SERVICE AREA AND FOR WHICH NO ALTERNATIVE EXISTS TO
7 CONTINUE TO PROVIDE SERVICE TO THE AFFECTED AREA, OR ANY OTHER
8 CAUSE THAT IS BEYOND THE CONTROL OF THE ENTITY PERFORMING
9 UTILITY RELOCATION WORK AND THAT COULD NOT HAVE BEEN PREVENTED
10 BY THAT ENTITY WHILE EXERCISING REASONABLE DILIGENCE.

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

16 (d) "PROMPT PERFORMANCE" MEANS ACTING IN GOOD FAITH AND
17 MAKING ALL REASONABLE EFFORTS TO PERFORM THE SPECIFIC ACTIONS
18 AND OBLIGATIONS SET FORTH IN THE UTILITY RELOCATION AGREEMENT OR
19 CLEARANCE LETTER, EXCEPT AS MAY BE EXCUSED BY REASON OF FORCE
20 MAJEURE OR SUBSEQUENT AGREEMENT BETWEEN THE UTILITY COMPANY
21 AND THE LOCAL GOVERNMENT.

22 (e) "ROAD IMPROVEMENT PROJECT" MEANS ANY CONSTRUCTION
23 OR RECONSTRUCTION PROJECT ON A PUBLIC ROADWAY.

24 (f) "UTILITY COMPANY" MEANS AN INVESTOR-OWNED ELECTRIC OR
25 GAS UTILITY COMPANY.

26 (g) "UTILITY CONFLICT" MEANS CIRCUMSTANCES IN WHICH
27 PROPOSED ROAD IMPROVEMENTS, RELOCATION OF OTHER UTILITY

1 FACILITIES, OR OTHER PROPOSED IMPROVEMENTS BRING UTILITY
2 FACILITIES OUT OF COMPLIANCE WITH REGULATORY AGENCY STANDARDS.

3 (h) "UTILITY FACILITIES" MEANS ANY LINES OF ELECTRIC LIGHT,
4 WIRE, OR POWER OR PIPELINE OF A UTILITY COMPANY AND ANY RELATED
5 SUPPORT STRUCTURES, APPURTENANCES, EQUIPMENT, OR CONDUIT FOR
6 THE LINES, WIRES, OR PIPELINES. "UTILITY FACILITIES" INCLUDE BOTH
7 THOSE ABOVE AND BELOW GROUND.

8 (i) "UTILITY RELOCATION" OR "RELOCATION OF UTILITY
9 FACILITIES" MEANS THE REMOVAL, RELOCATION, OR ALTERATION OF
10 UTILITY FACILITIES IF REQUIRED FOR A ROAD IMPROVEMENT PROJECT
11 FUNDED IN FULL OR IN PART BY A LOCAL GOVERNMENT OR WITH STATE,
12 FEDERAL, OR OTHER PUBLIC MONEY.

13 (j) "UTILITY RELOCATION AGREEMENT" OR "AGREEMENT" MEANS
14 AN AGREEMENT ENTERED INTO BY A LOCAL GOVERNMENT AND A UTILITY
15 COMPANY FOR THE PURPOSE OF PERFORMING UTILITY RELOCATION WORK
16 DEEMED NECESSARY BY THE LOCAL GOVERNMENT.

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

21 (I) NOTIFY THE NOTIFICATION ASSOCIATION, CREATED IN SECTION
22 9-1.5-105 (1), WITH AN ENGINEERING OR SUBSURFACE UTILITY
23 ENGINEERING NOTIFICATION TO IDENTIFY EACH UTILITY COMPANY THAT
24 HAS UTILITY FACILITIES IN THE AREA OF THE ROAD IMPROVEMENT
25 PROJECT; AND

26 (II) ELECTRONICALLY NOTIFY IN WRITING EACH UTILITY COMPANY
27 IDENTIFIED PURSUANT TO SUBSECTION (2)(a)(I) OF THIS SECTION. THE

1 NOTICE PROVIDED MUST FOLLOW THE REQUIREMENTS OF SUBSECTION
2 (2)(b) OF THIS SECTION.

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

5 (I) AN EXPLANATION OF THE PROPOSED DESIGN OF THE ROAD
6 IMPROVEMENT PROJECT;

7 (II) THE PROPOSED DATE BY WHICH THE UTILITY RELOCATION
8 MUST BE COMPLETED;

9 (III) THE FEDERAL IDENTIFYING PROJECT NUMBER, IF APPLICABLE;
10 AND

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

15 (c) THE LOCAL GOVERNMENT SHALL GIVE THE NOTICE REQUIRED
16 BY SUBSECTION (2)(a)(II) OF THIS SECTION TO THE UTILITY COMPANY AS
17 EARLY AS PRACTICABLE AND AT LEAST FORTY-FIVE DAYS BEFORE THE
18 EARLIEST OF THE FOLLOWING:

19 (I) THE PRELIMINARY DESIGN OR PROJECT DEVELOPMENT MEETING
20 FOR THE ROAD IMPROVEMENT PROJECT; OR

21 (II) THE INVITATION TO BID FOR THE ROAD IMPROVEMENT
22 PROJECT.

23 (d) IF THERE IS A CHANGE IN THE SCOPE OF A ROAD IMPROVEMENT
24 PROJECT THAT AFFECTS THE UTILITY FACILITIES, A LOCAL GOVERNMENT
25 SHALL GIVE EACH AFFECTED UTILITY COMPANY A NEW WRITTEN NOTICE
26 THAT INCLUDES ALL APPLICABLE INFORMATION IN SUBSECTION (2)(b) OF
27 THIS SECTION.

1 (e) (I) IF UTILITY FACILITIES ARE DISCOVERED DURING A ROAD
2 IMPROVEMENT PROJECT THAT WERE NOT PREVIOUSLY IDENTIFIED, THE
3 LOCAL GOVERNMENT AND THE AFFECTED UTILITY COMPANY SHALL
4 CONFER WITHIN FORTY-EIGHT HOURS OF DISCOVERY TO DETERMINE
5 APPROPRIATE RELOCATION PROCEDURES.

6 (II) WITHIN TEN DAYS OF THE DISCOVERY OF THE UTILITY
7 FACILITIES, THE AFFECTED UTILITY COMPANY SHALL EITHER DELIVER A
8 SIGNED OR EXECUTED CLEARANCE LETTER TO THE LOCAL GOVERNMENT OR
9 ENTER INTO AN AGREEMENT WITH THE LOCAL GOVERNMENT PURSUANT TO
10 SUBSECTION (3) OF THIS SECTION.

11 (3) (a) TO FACILITATE THE UTILITY RELOCATION, A LOCAL
12 GOVERNMENT AND AN AFFECTED UTILITY COMPANY SHALL ENTER INTO A
13 UTILITY RELOCATION AGREEMENT.

14 (b) THE AGREEMENT MUST INCLUDE THE FOLLOWING:

15 (I) THE SCOPE OF THE UTILITY RELOCATION;

16 (II) WHETHER THE UTILITY RELOCATION WORK WILL BE
17 PERFORMED BY THE UTILITY COMPANY OR BY A THIRD-PARTY
18 CONTRACTOR SELECTED BY THE UTILITY COMPANY;

19 (III) A COORDINATED SCHEDULE FOR THE UTILITY RELOCATION
20 WORK AGREED UPON BY THE LOCAL GOVERNMENT AND THE UTILITY
21 COMPANY, WHICH MUST INCLUDE THE DURATION OF THE UTILITY
22 RELOCATION WORK;

23 (IV) A REQUIREMENT OF PROMPT PERFORMANCE OF THE UTILITY
24 RELOCATION WORK BY THE UTILITY COMPANY IF THE UTILITY COMPANY IS
25 PERFORMING THE UTILITY RELOCATION WORK OR BY THE THIRD-PARTY
26 CONTRACTOR SELECTED BY THE UTILITY COMPANY TO PERFORM THE
27 UTILITY RELOCATION WORK;

1 (V) A REQUIREMENT OF PAYMENT BY THE UTILITY COMPANY FOR
2 DAMAGES CAUSED BY THE UTILITY COMPANY'S DELAY IN THE
3 PERFORMANCE OF THE UTILITY RELOCATION WORK OR INTERFERENCE WITH
4 THE PERFORMANCE OF THE UTILITY RELOCATION WORK BY ANY OTHER
5 CONTRACTOR, EXCEPT WHEN THE DELAY OR INTERFERENCE IS CAUSED BY
6 A FORCE MAJEURE; AND

7 (VI) A REQUIREMENT THAT ALL DESIGN AND CONSTRUCTION OF
8 THE UTILITY RELOCATION ARE SUBJECT TO REVIEW AND APPROVAL BY
9 ENGINEERS FOR THE LOCAL GOVERNMENT AND FOR THE UTILITY COMPANY.

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

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 OF AND AT THE
18 ELECTION OF THE AFFECTED UTILITY COMPANY.

19 (4) (a) IF A UTILITY COMPANY DELIVERS A SIGNED OR EXECUTED
20 CLEARANCE LETTER TO A LOCAL GOVERNMENT, THE REQUIREMENTS SET
21 FORTH IN SUBSECTIONS (2) AND (3) OF THIS SECTION DO NOT APPLY.

22 (b) BY DELIVERING A SIGNED OR EXECUTED CLEARANCE LETTER
23 TO A LOCAL GOVERNMENT, A UTILITY COMPANY ACKNOWLEDGES THAT:

24 (I) THE UTILITY COMPANY CAN AND WILL COMPLY WITH THE
25 UTILITY RELOCATION WORK ABSENT AN EVENT OF FORCE MAJEURE; AND

26 (II) THE UTILITY COMPANY IS RESPONSIBLE FOR DAMAGES CAUSED
27 BY THE UTILITY COMPANY'S DELAY IN THE PERFORMANCE OF THE UTILITY

1 RELOCATION WORK OR INTERFERENCE WITH THE PERFORMANCE OF THE
2 UTILITY RELOCATION WORK BY ANY OTHER CONTRACTOR, EXCEPT WHEN
3 THE DELAY OR INTERFERENCE IS CAUSED BY A FORCE MAJEURE.

4 (5) (a) A LOCAL GOVERNMENT AND AN AFFECTED UTILITY
5 COMPANY SHALL MAKE ARRANGEMENTS FOR FUNDING ANY UTILITY
6 RELOCATION AS SPECIFIED IN ANY EASEMENTS, LICENSES, OR OTHER
7 PROPERTY INTERESTS AND RIGHTS OF USE HELD BY THE LOCAL
8 GOVERNMENT OR THE UTILITY COMPANY.

9 (b) NOTHING IN THIS SECTION ALTERS EXISTING PROPERTY
10 AGREEMENTS, LICENSES, OR OTHER INTERESTS OF A LOCAL GOVERNMENT
11 OR A UTILITY COMPANY REGARDING THE OBLIGATION TO PAY FOR UTILITY
12 RELOCATION.

13 (6) NO THIRD PARTY MAY RELOCATE UTILITY FACILITIES WITHOUT
14 THE EXPRESS CONSENT OF THE AFFECTED UTILITY COMPANY.

15 (7) NOTHING IN THIS SECTION:

16 (a) ALTERS OR DIMINISHES THE AUTHORITY OF LOCAL
17 GOVERNMENTS TO LAWFULLY EXERCISE THEIR POLICE POWERS WITH
18 RESPECT TO THE RELOCATION OF UTILITY FACILITIES WITHIN THE LOCAL
19 GOVERNMENT BOUNDARIES; OR

20 (b) ALTERS THE TERMS OF ANY FRANCHISE OR LICENSE GRANTED
21 PURSUANT TO SECTION 31-32-101 OR ARTICLE XX OF THE STATE
22 CONSTITUTION.

23 **SECTION 3. Act subject to petition - effective date -**
24 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
25 the expiration of the ninety-day period after final adjournment of the
26 general assembly; except that, if a referendum petition is filed pursuant
27 to section 1 (3) of article V of the state constitution against this act or an

1 item, section, or part of this act within such period, then the act, item,
2 section, or part will not take effect unless approved by the people at the
3 general election to be held in November 2024 and, in such case, will take
4 effect on the date of the official declaration of the vote thereon by the
5 governor.

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