

CHAPTER 336

TRANSPORTATION

SENATE BILL 00-203

BY SENATOR Powers;
also REPRESENTATIVES George, Kaufman, and Mace.

AN ACT

CONCERNING THE PERFORMANCE OF UTILITY RELOCATION WORK IN CONJUNCTION WITH DESIGN-BUILD
TRANSPORTATION PROJECTS.

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

SECTION 1. 43-1-1402, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

43-1-1402. Definitions. As used in this part 14:

(4.5) "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 DESIGN-BUILD TRANSPORTATION OR UTILITY RELOCATION PROJECT AND THAT COULD NOT HAVE BEEN PREVENTED BY THE PARTY WHILE EXERCISING REASONABLE DILIGENCE.

(4.7) "PROJECT SPECIFIC UTILITY RELOCATION AGREEMENT" MEANS AN AGREEMENT ENTERED INTO BY THE DEPARTMENT AND A UTILITY COMPANY FOR THE PURPOSE OF PERFORMING UTILITY RELOCATION WORK NECESSITATED BY A DESIGN-BUILD TRANSPORTATION PROJECT. THE AGREEMENT MAY INCORPORATE REASONABLE AND APPROPRIATE CONDITIONS, INCLUDING, BUT NOT LIMITED TO, CONDITIONS FOR ENSURING:

(a) THE PROMPT PERFORMANCE OF UTILITY RELOCATION WORK BY EITHER THE UTILITY COMPANY OR THE CONTRACTOR FOR THE DESIGN-BUILD TRANSPORTATION PROJECT, AS SPECIFIED IN THE AGREEMENT;

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

(b) THE COOPERATION OF THE UTILITY COMPANY WITH THE CONTRACTOR FOR THE DESIGN-BUILD TRANSPORTATION PROJECT;

(c) THE TIMELY REPAYMENT OF ANY FUNDS ADVANCED TO THE UTILITY COMPANY FOR THE RELOCATION CONSTRUCTION, INCLUDING INTEREST BASED ON THE COSTS INCURRED BY THE DEPARTMENT FOR ADVANCING THE FUNDS; AND

(d) 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.

(6) "UTILITY COMPANY" OR "UTILITY" SHALL HAVE THE SAME MEANING AS SET FORTH IN 23 C.F.R. 645.105 (m).

SECTION 2. 43-1-1409, Colorado Revised Statutes, is amended to read:

43-1-1409. Rule-making authority. (1) The department may adopt rules in accordance with sections 43-1-110 and 24-4-103, C.R.S., to:

(a) Establish requirements for the procurement of design-build contracts that it determines necessary or appropriate, including but not limited to rules implementing the design-build selection and contract procedures, subcontracting, and the warranty provisions of this part 14; AND

(b) FURTHER DEFINE AND IMPLEMENT THE PROCESSES AND PROCEDURES FOR THE PERFORMANCE OF UTILITY RELOCATION WORK NECESSITATED BY A DESIGN-BUILD TRANSPORTATION PROJECT, INCLUDING, BUT NOT LIMITED TO, THE ALLOCATION OF RESPONSIBILITY FOR DAMAGES DUE TO DELAY AMONG THE DEPARTMENT, THE DESIGN-BUILD CONTRACTOR, AND UTILITY COMPANIES THAT DO NOT ENTER INTO PROJECT SPECIFIC UTILITY RELOCATION AGREEMENTS, AND THE CREATION OF A FORUM AND PROCESS TO RESOLVE CHANGES IN THE CONDITIONS OF THE DESIGN-BUILD TRANSPORTATION PROJECT THAT IMPACT UTILITY RELOCATION WORK WHEN THE DEPARTMENT AND A UTILITY COMPANY HAVE NOT ENTERED INTO A PROJECT SPECIFIC UTILITY RELOCATION AGREEMENT.

SECTION 3. Part 14 of article 1 of title 43, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

43-1-1410. Utility relocation - legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) THE DEPARTMENT IS AUTHORIZED BY LAW TO USE A DESIGN-BUILD PROCESS FOR TRANSPORTATION PROJECTS THAT ALLOWS FOR THE IMPROVED COORDINATION, SCHEDULING, AND TIMELY PERFORMANCE OF TRANSPORTATION PROJECTS, RESULTING IN TIME AND COST EFFICIENCY;

(b) THE SCHEDULING AND TIMELY PERFORMANCE OF DESIGN-BUILD TRANSPORTATION PROJECTS PARTIALLY DEPEND UPON THE COORDINATION WITH UTILITY COMPANIES FOR THE PROMPT PERFORMANCE OF UTILITY RELOCATION WORK

NECESSITATED BY THE PROJECT;

(c) INCREASED COORDINATION BETWEEN THE DEPARTMENT AND UTILITY COMPANIES IS IN THE PUBLIC INTEREST AND THE ENCOURAGEMENT AND REQUIREMENT OF PROMPT PERFORMANCE OF UTILITY RELOCATION WORK WITHIN THE DESIGN-BUILD TRANSPORTATION PROJECT PERFORMANCE SCHEDULE WILL REDUCE DELAYS AND COSTS OF THE PROJECTS;

(d) THE PREFERRED APPROACH FOR UTILITY RELOCATION WORK IN A DESIGN-BUILD TRANSPORTATION PROJECT IS FOR THE UTILITY COMPANY TO AUTHORIZE THE DEPARTMENT'S DESIGN-BUILD CONTRACTOR TO ENGAGE THE SERVICES OF THE UTILITY COMPANY'S PREQUALIFIED CONTRACTORS FOR THE DESIGN AND CONSTRUCTION OF THE RELOCATION WORK BECAUSE IT PLACES THE RESPONSIBILITY FOR THE TIMELY PERFORMANCE OF THE UTILITY RELOCATION WORK ON THE DESIGN-BUILD CONTRACTOR AND REMOVES THE RISK OF UTILITY RELOCATION DELAYS FROM MULTIPLE UTILITY COMPANIES;

(e) CURRENT LAW LIMITS THE DEPARTMENT'S AUTHORITY IN RELATION TO PAYMENT FOR UTILITY RELOCATION, AND NOTHING IN THIS PART 14 IS INTENDED TO ALTER THE DEPARTMENT'S OBLIGATION TO PAY FOR UTILITY RELOCATIONS PURSUANT TO SECTION 43-1-225 OR TO PAY FOR UTILITY RELOCATIONS WHEN UTILITY FACILITIES ARE LOCATED ON EASEMENTS OWNED BY THE UTILITY;

(f) ALLOWING THE DEPARTMENT TO FUND THE DESIGN OF THE UTILITY RELOCATION WORK NECESSITATED BY A DESIGN-BUILD TRANSPORTATION PROJECT WILL FOSTER THE COORDINATION OF THE UTILITY RELOCATION WORK, WHICH IS IN THE PUBLIC INTEREST;

(g) IN THE INTEREST OF THE PUBLIC, THE DEPARTMENT, THE DESIGN-BUILD CONTRACTOR, AND THE UTILITY COMPANY SHOULD COORDINATE THEIR EFFORTS, PERFORM THE UTILITY RELOCATION WORK IN ACCORDANCE WITH THE DESIGN-BUILD TRANSPORTATION PROJECT PERFORMANCE SCHEDULE, AND ALLOCATE THE RESPONSIBILITY FOR ANY DAMAGES CAUSED BY A PARTY'S FAILURE TO TIMELY PERFORM THE RELOCATION WORK, EXCEPT WHEN SUCH FAILURE IS DUE TO A FORCE MAJEURE;

(h) THE REVIEW AND APPROVAL OF THE UTILITY COMPANY OF ANY DESIGN WORK PRIOR TO THE COMMENCEMENT OF ANY UTILITY RELOCATION CONSTRUCTION IN RELATION TO A DESIGN-BUILD TRANSPORTATION PROJECT WILL ASSURE THAT SUCH WORK MEETS THE QUALITY STANDARDS AND CONSTRUCTION METHODS OF THE UTILITY COMPANY. THE DEPARTMENT ALSO RECOGNIZES THE OBLIGATION OF UTILITY COMPANIES TO MAINTAIN SERVICE TO THEIR CUSTOMERS, AND THE DEPARTMENT AGREES TO WORK WITHIN UTILITY COMPANY TERMS AND CONDITIONS TO MAINTAIN SERVICE CONTINUITY.

(i) FOR PURPOSES OF DESIGN-BUILD TRANSPORTATION PROJECTS, ALLOWING THE DEPARTMENT TO PROVIDE AND CONDEMN, WHEN NECESSARY, A REPLACEMENT EASEMENT FOR A UTILITY COMPANY TO RELOCATE ITS FACILITIES WHEN THE UTILITY COMPANY'S FACILITIES ARE LOCATED IN AN EASEMENT OWNED BY THE UTILITY COMPANY AND TO PAY FOR THE FUTURE RELOCATION OF A UTILITY COMPANY'S FACILITIES IF NO REPLACEMENT EASEMENT IS PROVIDED IS IN THE PUBLIC INTEREST.

43-1-1411. Project specific utility relocation agreements.

(1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF A UTILITY COMPANY ENTERS INTO A PROJECT SPECIFIC UTILITY RELOCATION AGREEMENT WITH THE DEPARTMENT, THE DEPARTMENT MAY:

(a) PAY FOR THE PERFORMANCE OF THE DESIGN WORK TO RELOCATE A UTILITY COMPANY'S FACILITIES THAT ARE AFFECTED BY THE SCOPE OF THE DESIGN-BUILD TRANSPORTATION PROJECT;

(b) ADVANCE FUNDS FOR THE PERFORMANCE OF THE CONSTRUCTION WORK TO RELOCATE A UTILITY COMPANY'S FACILITIES AFFECTED BY THE SCOPE OF THE DESIGN-BUILD TRANSPORTATION PROJECT; EXCEPT THAT ANY ADVANCE OF FUNDS PURSUANT TO THIS PARAGRAPH (b) SHALL BE SUBJECT TO FULL REPAYMENT BY THE UTILITY COMPANY WITH INTEREST BASED ON THE COST INCURRED BY THE DEPARTMENT FOR ADVANCING THE FUNDS; AND

(c) PERFORM ANY UTILITY RELOCATION WORK THROUGH THE CONTRACTOR FOR THE DESIGN-BUILD TRANSPORTATION PROJECT IN ACCORDANCE WITH THE UTILITY COMPANY'S SPECIFICATIONS FOR THE RELOCATION WORK AND SUBJECT TO THE UTILITY COMPANY'S PRIOR REVIEW AND WRITTEN APPROVAL OF THE RELOCATION WORK TO ASSURE THAT THE WORK MEETS THE QUALITY STANDARDS AND CONSTRUCTION METHODS OF THE COMPANY. THE PERFORMANCE OF ANY RELOCATION WORK SHALL ALSO BE SUBJECT TO INSPECTION AND APPROVAL BY THE UTILITY COMPANY, DURING THE PERFORMANCE OF THE WORK AND PRIOR TO COMPLETION OF THE RELOCATION WORK, AND THE DEPARTMENT SHALL TAKE APPROPRIATE MEASURES TO ENSURE SERVICE CONTINUITY.

(2) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE DEPARTMENT WORK WITH THE UTILITY COMPANY TO COME TO A MUTUALLY SATISFACTORY AGREEMENT WITH THE UTILITY COMPANY SO THAT THE DESIGN-BUILD TRANSPORTATION PROJECT MAY PROCEED TO BE CONSTRUCTED IN AN EFFICIENT MANNER WITHOUT CAUSING INTERRUPTION OF UTILITY SERVICES. IF THE UTILITY COMPANY IS UNABLE TO REACH A PROJECT SPECIFIC UTILITY RELOCATION AGREEMENT WITH THE PROJECT MANAGER NEGOTIATING SUCH AGREEMENT FOR THE DEPARTMENT, THE UTILITY COMPANY SHALL BE PROVIDED THE OPPORTUNITY TO ADDRESS ITS CONCERNS WITH THE DEPARTMENT'S DISTRICT ENGINEER, WHO SHALL GIVE DUE CONSIDERATION TO ALL ISSUES RAISED BY THE UTILITY COMPANY AND SHALL STRIVE TO ACCOMMODATE REASONABLE MODIFICATIONS REQUESTED BY THE UTILITY COMPANY TO THE DEPARTMENT'S PROPOSED PROJECT SPECIFIC UTILITY RELOCATION AGREEMENT. IF AN AGREEMENT CANNOT BE REACHED BETWEEN THE DISTRICT ENGINEER AND THE UTILITY COMPANY, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT SHALL REVIEW THE DISPUTED ISSUES AND SEEK TO RESOLVE THE DISPUTE. IF THE EXECUTIVE DIRECTOR IS UNABLE TO REACH AGREEMENT WITH THE UTILITY COMPANY, THE EXECUTIVE DIRECTOR SHALL PREPARE A WRITTEN REPORT SETTING FORTH THE REASONS THAT THE DISPUTE COULD NOT BE RESOLVED AND SHALL PROVIDE SUCH REPORT TO THE UTILITY COMPANY WITHIN THREE BUSINESS DAYS.

(3) FOR ANY UTILITY COMPANY THAT CHOOSES NOT TO ENTER INTO A PROJECT SPECIFIC UTILITY RELOCATION AGREEMENT WITH THE DEPARTMENT FOR THE PERFORMANCE OF UTILITY RELOCATION WORK:

(a) THE DEPARTMENT MAY DIRECT THE UTILITY COMPANY TO PERFORM OR ALLOW

THE PERFORMANCE OF THE UTILITY RELOCATION WORK WITHIN THE PERFORMANCE SCHEDULE FOR THE DESIGN-BUILD TRANSPORTATION PROJECT;

(b) THE UTILITY COMPANY SHALL PAY FOR DAMAGES CAUSED BY THE COMPANY'S DELAY IN THE PERFORMANCE OF THE UTILITY RELOCATION WORK OR INTERFERENCE WITH THE PERFORMANCE OF THE DESIGN-BUILD TRANSPORTATION PROJECT BY OTHER CONTRACTORS, INCLUDING, BUT NOT LIMITED TO, PAYMENTS MADE BY THE DEPARTMENT TO ANY THIRD PARTY BASED ON A CLAIM THAT PERFORMANCE OF THE DESIGN-BUILD TRANSPORTATION PROJECT WAS DELAYED OR INTERFERED WITH AS A DIRECT RESULT OF THE UTILITY COMPANY'S FAILURE TO TIMELY PERFORM THE UTILITY RELOCATION WORK; EXCEPT THAT DAMAGES RESULTING FROM DELAYS IN THE PERFORMANCE OF THE UTILITY RELOCATION WORK CAUSED BY A FORCE MAJEURE SHALL NOT BE CHARGED TO THE UTILITY COMPANY; AND

(c) THE DEPARTMENT MAY WITHHOLD ISSUANCE OF A PERMIT FOR THE LOCATION OR INSTALLATION OF OTHER FACILITIES TO A UTILITY COMPANY UNTIL THE COMPANY PAYS THE DEPARTMENT DAMAGES CAUSED BY THE COMPANY'S DELAY IN THE PERFORMANCE OF THE RELOCATION WORK OR INTERFERENCE WITH THE PERFORMANCE OF THE DESIGN-BUILD TRANSPORTATION PROJECT BY ANY OTHER CONTRACTOR. ANY PERSON AGGRIEVED BY AN ACTION OF THE DEPARTMENT IN DENYING A PERMIT MAY APPLY TO A COURT OF COMPETENT JURISDICTION FOR APPROPRIATE RELIEF PURSUANT TO THE COLORADO RULES OF CIVIL PROCEDURE OR SECTION 24-4-106, C.R.S.

(4) THE DEPARTMENT SHALL PROVIDE WRITTEN NOTICE TO ANY UTILITY COMPANY OF A DESIGN-BUILD TRANSPORTATION PROJECT THAT WILL REQUIRE THE RELOCATION OF THE COMPANY'S FACILITIES AS SOON AS PRACTICABLE FOLLOWING THE ENVIRONMENTAL CLEARANCE FOR THE PROJECT. THE NOTICE SHALL INCLUDE ALL AVAILABLE AND RELEVANT INFORMATION CONCERNING THE PROJECT, INCLUDING THE PERFORMANCE SCHEDULE FOR THE PROJECT WITHIN WHICH THE UTILITY RELOCATION WORK MUST BE COMPLETED IN ORDER TO COORDINATE WITH AND AVOID DELAY IN THE PERFORMANCE OF THE PROJECT.

(5) WHEN FEASIBLE, THE DEPARTMENT SHALL PROVIDE A REPLACEMENT EASEMENT FOR A UTILITY COMPANY WHOSE FACILITIES ARE TO BE RELOCATED FROM AN EASEMENT OWNED BY THE UTILITY COMPANY TO ACCOMMODATE A DESIGN-BUILD TRANSPORTATION PROJECT AND THE DEPARTMENT SHALL CONDEMN THE REPLACEMENT EASEMENT WHEN NECESSARY. IF NO REPLACEMENT EASEMENT IS PROVIDED, THE DEPARTMENT SHALL FUND THE INITIAL RELOCATION OF THE EASEMENT OWNER'S FACILITIES AND SHALL ALSO FUND ALL FUTURE RELOCATIONS OF THOSE UTILITY COMPANIES WHOSE FACILITIES OCCUPY THE EASEMENT AT THE TIME OF THE DESIGN-BUILD TRANSPORTATION PROJECT AT THE DEPARTMENT'S SOLE EXPENSE IN LIEU OF COMPENSATING THE UTILITY COMPANIES FOR THE LOSS OF THE EASEMENT. THE UTILITY COMPANY SHALL QUITCLAIM TO THE DEPARTMENT THAT PORTION OF THE EASEMENT THAT IS REPLACED OR EXTINGUISHED.

(6) NOTHING IN THIS SECTION OR IN SECTION 43-1-1412 SHALL CHANGE THE AUTHORITY, RIGHTS, RESPONSIBILITIES, OR OBLIGATIONS OF THE DEPARTMENT OR OF ANY OWNER OF REAL OR PERSONAL PROPERTY IN AN EMINENT DOMAIN PROCEEDING OR ANY EXISTING STATUTORY OR CASE LAW APPLICABLE TO EMINENT DOMAIN PROCEEDINGS.

43-1-1412. Utility relocation delays. (1) WHEN A UTILITY COMPANY DELEGATES THE RESPONSIBILITY FOR THE PERFORMANCE OF ANY UTILITY RELOCATION WORK NECESSITATED BY A DESIGN-BUILD TRANSPORTATION PROJECT TO THE DEPARTMENT'S CONTRACTOR FOR THE PROJECT PURSUANT TO A PROJECT SPECIFIC UTILITY RELOCATION AGREEMENT, THE UTILITY COMPANY SHALL NOT BE RESPONSIBLE TO THE DEPARTMENT FOR ANY DAMAGES CAUSED BY THE DELAY IN THE PERFORMANCE OF THE RELOCATION WORK OR THE INTERFERENCE BY THE DEPARTMENT'S CONTRACTOR IN THE PERFORMANCE OF ANY PART OF THE PROJECT BY ANOTHER CONTRACTOR.

(2) (a) WHEN A UTILITY COMPANY CHOOSES TO PERFORM ANY UTILITY RELOCATION WORK NECESSITATED BY A DESIGN-BUILD TRANSPORTATION PROJECT, THE UTILITY COMPANY SHALL COMPLETE THE RELOCATION WORK WITHIN THE TIME SPECIFIED IN THE PROJECT SPECIFIC UTILITY RELOCATION AGREEMENT OR IN THE PERFORMANCE SCHEDULE FOR THE PROJECT AS SET FORTH IN THE WRITTEN NOTICE PROVIDED TO THE COMPANY BY THE DEPARTMENT IN ACCORDANCE WITH SECTION 43-1-1411 (4). THE COMPANY SHALL NOT INTERFERE WITH THE PERFORMANCE OF THE DESIGN-BUILD TRANSPORTATION PROJECT BY ANY OTHER CONTRACTOR.

(b) NOTWITHSTANDING THE PROVISIONS OF SECTION 43-1-1411 (3) (b), 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 DESIGN-BUILD TRANSPORTATION PROJECT BY ANY OTHER CONTRACTOR WHEN THE FAILURE TO PERFORM OR THE INTERFERENCE IS CAUSED BY A FORCE MAJEURE.

SECTION 4. 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: June 1, 2000