



## **HB24-1266**

### **Ensuring Timely Relocation of Utilities in County Right-of-Way**

Sponsors: Reps. Hamrick and Frizell; Sen. Zenzinger

When local governments undertake transportation/roadway expansion projects, they often work with utility companies (predominantly electric, gas and telecommunications) to relocate existing utility lines in the right-of-way in order to carry out these roadway improvements. Even with advanced notice and coordination, utility lines are sometimes not relocated in a timely manner and projects incur unanticipated delays resulting in project cost overruns, unexpected financial burdens for local governments and unnecessary impacts to the traveling public.

While these utilities have a statutory right to locate lines in the local government right-of-way, there is no enforcement mechanism in statute to compel utility companies to heed requests for utility relocation to allow roadway projects to proceed.

In recent years, several counties have incurred significant costs on largescale capital road projects as a result of a failure by a utility to relocate in accordance with the established project schedule. In one instance, this resulted in a metro county paying out millions of dollars to a construction company in a financial settlement because of the delays – all because of the utility owner’s failure to relocate their utility lines as requested.

HB 1266 will ensure responsiveness, transparency and accountability for utility providers by amending existing statutes to codify the “clearance letter” agreement process, thereby requiring investor-owned utility companies to cooperate with local government road improvement projects in terms of establishing relocation schedules for required relocations of the utility facilities and to require these utility owners to pay any costs the county incurs for unnecessary delays. This model legislation will foster better communication between counties and utility owners, save taxpayer dollars and expedite improvements to our county and city roadways.

**Please Support Additional County Right-of-Way Authority**  
**Vote YES on HB 1266**

Contact: Eric Bergman // 303.915.2909 // [ebergman@ccionline.org](mailto:ebergman@ccionline.org)

April 8, 2024

Honorable Members of the Senate Local  
Government and Housing Committee  
Colorado State Capitol  
200 East Colfax Avenue  
Denver, CO 80203

RE: Douglas County Support for HB 24 - 1266

Dear Committee Members:

I am writing today in support of HB 24-1266 and want to thank the sponsors, Representatives Hamrick and Frizell and Senator Zenzinger, for their support and engagement on this important transportation issue regarding local governments being able to implement transportation projects cost effectively and in a timely and fiduciary responsible manner. This legislation represents months of negotiations between affected stakeholders, and we are grateful for the hard work and collaboration that resulted in this bill.

The issue of utility relocation and the critical role it plays in county roadway projects cannot be understated. Douglas County has been engaged in the US 85 widening and reconstruction project located between Highlands Ranch Parkway and Dad Clark Gulch (1,200-foot north of County Line Road). This \$130 million major widening and reconstruction project required significant utility relocations over this 2.5 mile stretch of US 85 in a highly urbanized area.

Approximately six (6) years before construction began in October 2022, Douglas County began holding monthly meetings with Xcel Energy (Xcel) representatives to develop various options to relocate several of Xcel facilities throughout the US 85 Corridor. With limited right-of-way available along the US 85 Corridor, Xcel had to relocate several of their facilities outside of the US 85 corridor, adding complexities and time to their relocation process.

Over the past several years, our consultant team worked closely with Xcel representatives to develop conceptual alignments to relocate Xcel facilities. Unfortunately, many of Xcel's relocation design plans were not finalized in a timely manner (often due to staffing changes and lack of commitment to a relocation schedule). In fact, in some cases, the alignment for a major Xcel facility wasn't finalized until late summer 2023, about a year after the County's construction project had started. As a result of delays due to Xcel utility relocations, the County's contractor had to work around the existing utility conflicts and the County began incurring additional construction costs.

In November 2021, almost 11 months prior to construction commencing, the County sent Xcel utility clearance letters (basically memorandums of understanding/commitment letters, which include identifying when Xcel would need to complete their specific utility relocations

**Letter from Douglas County Public Works / Engineering (dated April 8, 2024)  
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at specific locations identified in the utility plans). Unfortunate for Douglas County, Xcel refused to sign these utility clearance letter requests, putting the County at risk to potential delay claims due to the utility relocations needed for the proposed transportation improvements associated with this project.

Currently, Douglas County is continuing to face additional project costs and potential construction delay claims due to Xcel not completing their necessary utility relocation in a timely manner, despite the fact that Douglas County initiated utility coordination efforts with Xcel over six (6) years before awarding a construction contract.

To be clear, during the current construction utility relocation phase, we have a very high opinion of the Xcel employees and their construction contractors assigned to this project; and we appreciate the partnership with these Xcel representatives. However, Douglas County's frustration with Xcel has been primarily with the lack of commitment to complete their design plans and initiate their construction work in a timely manner. Therefore, the County believes legislation to create a better working relationship and provide more certainty for **both** local governments and utility owners is warranted.

The legislation in HB 24-1266 will help ensure transparency, commitment, responsibility, and accountability for utility providers to complete their utility relocations in a reasonable and timely manner; and in a way that does not jeopardize local government's ability to implement public improvements cost effectively and with minimum impacts the public.

Thank you for your time and consideration of this legislation. If you have any questions, please contact me at [agriffit@douglas.co.us](mailto:agriffit@douglas.co.us) or at **303-947-8731**.

Sincerely,

Arthur E. Griffith, P.E.  
Transportation Capital Improvements Projects Manager  
Douglas County

## 4/09/2024 Testimony on HB24-1266

Good Afternoon Mister Chair and Committee Members:

I am Dale Miller, the most recent past Larimer County Road and Bridge Director and the CARSE (Colorado Association of Road Supervisors and Engineers) Legislative Liaison to CCI for the last seven years. I have decades of field and senior management experience in both the private and public sectors involved in highway construction and maintenance. In addition, I am a past CO 811 Board Member and Officer. I am well acquainted with the intricacies of successful project initiation, prosecution and completion while working with subsurface utility owners.

I apologize for a prior commitment preventing my attendance today. I'll be quite brief.

The Bill, as amended in the House, which you have before you is the result of several years of cooperative effort between CCI, CARSE, CML, utility companies, the Engineers Council and other interested parties.

This effort first began as a request for consideration from Arapahoe County, but soon grew to recognize similar concerns were held by multiple counties, municipalities and expressly Xcel Energy (arguably the largest investor owned utility in Colorado), relative to the need to smooth out working relationships regarding capital construction and improvement projects on local roads statewide. Our working group first met to acquaint ourselves with, and better understand, our mutual frustrations.

It is fair to say that our initial gatherings had their moments!

However, we quickly recognized that, through the points identified in our Issue Statement, our success was only to be achievable through complete cooperation (copies of our White Paper are available from Eric Bergman and highly applicable to other potential areas of your interest and/or involvement).

Our efforts have NOT been of the "US" versus "THEM" mentality. Our methods are applicable to solving conflict.

We have met in the spirit of better communication through mutual cooperation.

Upon passing the House, the measure was forwarded to the CARSE membership. I have not received any opposition to date.

I ask for your unanimous vote of support for these efforts to speed roadway improvements on local roads, reduce costs and increase safety for local agencies and utility companies alike.

I'm happy to address any of your questions or concerns at [askanypilot@gmail.com](mailto:askanypilot@gmail.com) or 970-215-9887.

Thank you.

# UTILITY RELOCATION ISSUE STATEMENT

## **Background:**

As local governments are constructing transportation/roadway projects, they typically have to work with utility companies (predominantly electric/gas and telecommunications) to relocate existing utility lines in the right-of-way to accommodate these improvements. Utility relocations are often critical path components for capital improvement projects, so any delays can significantly impact project timelines and place additional, unexpected financial burdens on local governments responsible for the project.

Arapahoe County has experienced significant delay costs in capital road projects that have been caused by a delay by a utility owner in performing relocation work, including design and construction items. In one particular case, the County worked with the utility during the design phase for three plus years and due to federal funding timelines, needed to bid the project and commence construction. The County had difficulty getting the utility owner to relocate in accordance with the project schedule resulting in significant delays to the project.

While these utilities have a statutory right to locate lines in the public right of way, there is no enforcement mechanism in those statutes to incentivize utility companies to partner in a reasonable manner during design and construction, to take accountability for their actions, and be responsive to requests and need for utility relocations as needed for projects to maintain and improve roads.

While this may not be a common issue, it is a serious concern and impedance to the public improvement projects needed to keep such roads open and safe for travel.

## **Approach:**

Several public sector agencies have convened a working group to explore options and approaches which might result in better outcomes for BOTH private utility owners and public agencies working in this arena. Additionally, improvements to this process will also benefit the taxpayers and users of the transportation system.

## **Considerations/Core values:**

1. This must be a cooperative effort to be successful.
2. There is no room for an “US” versus “THEM” mentality.
3. Recognize that, for the most part, private sector utility companies are in business to make a profit from providing goods and services like natural gas, electricity, and internet and telecommunications to our citizens. NOTE: The public sector is capable of “making money” too – by achieving efficiencies that will save taxpayer dollars and allow those resources to go farther.
4. Utility companies are charged with and expected to keep the public (and our employees) safe from the dangers inherent in their products and modes of delivery (even phone service). This is not dissimilar from certain expectations placed upon the public sector.

5. Identify decision-making authorities for private and public sector stakeholders. Private sector staff usually cannot commit to an agreement – they must get permission from management. The same applies to local governments.

6. Identify what motivates an agency.

7. ASK what motivates a utility owner (money, accuracy, expediency, etc.)

8. Any letters of understanding, MOUs and/or other agreements and documents supporting such cooperation must be developed jointly by the signatory parties. Local governments with responsibility for roads have no ability to compel utilities to enter into enforceable agreements regarding relocations or to cooperate with road project schedules.

9. This effort must consider existing right-of-way permits as well as those that will be approved in the future.

10. We must consider recent/current health (COVID-19) and employment market conditions regarding a utility owner's ability to respond.

11. A general overlying umbrella approach is likely to be the most beneficial and most successful for all parties involved.