

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Transportation, Housing & Local Government.

HB24-1266 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and  
2 substitute:

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

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

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

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

15 (d) Colorado statute outlines this type of coordination between the  
16 regional transportation district and utility companies in section  
17 32-9-119.1, Colorado Revised Statutes;

18 (e) Colorado statute outlines this type of coordination between the  
19 Colorado department of transportation and utility companies in section  
20 43-1-1411, Colorado Revised Statutes; and

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

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

26 **38-5-109. Utility relocation clearance letter - definitions.**

27 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE  
28 REQUIRES:

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

35 (b) "FORCE MAJEURE" MEANS FIRE, EXPLOSION, FLOODS, ACTION  
36 OF THE ELEMENTS, STRIKE, LABOR DISPUTES, INTERRUPTION OF  
37 TRANSPORTATION, RATIONING, SHORTAGE OF EQUIPMENT OR MATERIALS,  
38 COURT ACTION, ILLEGALITY, UNUSUALLY SEVERE WEATHER, ACT OF GOD,  
39 ACT OF WAR OR TERRORISM, EPIDEMICS OR PANDEMICS, QUARANTINES,  
40 SEASONAL LIMITATIONS ON UTILITY OPERATIONS, OR ANY OTHER CAUSE

1 THAT IS BEYOND THE REASONABLE CONTROL OF THE ENTITY PERFORMING  
2 THE UTILITY RELOCATION.

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

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

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

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

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

23 (f) "PRIVATE PROJECT RELOCATION" MEANS ANY CONSTRUCTION  
24 OR RECONSTRUCTION PROJECT FOR THE ADJUSTMENT, EXPANSION, OR  
25 REALIGNMENT OF A PUBLIC ROADWAY OR PUBLIC RIGHT-OF-WAY THAT:

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

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

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

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

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

42 (i) (I) "ROAD IMPROVEMENT PROJECT" MEANS ANY CONSTRUCTION  
43 OR RECONSTRUCTION PROJECT FOR THE ADJUSTMENT, EXPANSION, OR  
44 REALIGNMENT OF A PUBLIC ROADWAY OR PUBLIC RIGHT-OF-WAY,  
45 INCLUDING BUT NOT LIMITED TO MAINTENANCE, REPLACEMENT, BRIDGE,

1 CULVERT, OR TRAFFIC SIGNAL PROJECTS.

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

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

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

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

22 (m) "UTILITY RELOCATION" OR "RELOCATION OF UTILITY  
23 FACILITIES" MEANS THE REMOVAL, RELOCATION, OR ALTERATION OF  
24 UTILITY FACILITIES NECESSARY TO RESOLVE A UTILITY CONFLICT CAUSED  
25 BY A ROAD IMPROVEMENT PROJECT FUNDED IN FULL OR IN PART BY A  
26 LOCAL GOVERNMENT OR WITH STATE, FEDERAL, OR OTHER PUBLIC MONEY;  
27 EXCEPT THAT "UTILITY RELOCATION" DOES NOT INCLUDE A PRIVATE  
28 PROJECT RELOCATION.

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

33 (I) NOTIFY THE NOTIFICATION ASSOCIATION, CREATED IN SECTION  
34 9-1.5-105 (1), WITH AN ENGINEERING OR SUBSURFACE UTILITY  
35 ENGINEERING NOTIFICATION TO IDENTIFY EACH UTILITY COMPANY THAT  
36 HAS UTILITY FACILITIES IN THE AREA OF THE ROAD IMPROVEMENT  
37 PROJECT; AND

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

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

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

1 (II) ANY POTENTIAL UTILITY CONFLICT THAT MAY BE CREATED BY  
2 THE ROAD IMPROVEMENT PROJECT;  
3 (III) THE ESTIMATED TIMELINE AND DURATION OF THE ROAD  
4 IMPROVEMENT PROJECT;  
5 (IV) THE ESTIMATED TIME FRAME IN WHICH THE UTILITY  
6 RELOCATION SHOULD BE COMPLETED;  
7 (V) THE FEDERAL IDENTIFYING PROJECT NUMBER, IF APPLICABLE;  
8 AND  
9 (VI) WHETHER THE UTILITY COMPANY MAY QUALIFY FOR  
10 ASSISTANCE TO OFFSET EXPENSES INCURRED IN RELOCATING ITS UTILITY  
11 FACILITIES TO ACCOMMODATE THE PROPOSED ROAD IMPROVEMENT  
12 PROJECT.  
13 (c) THE LOCAL GOVERNMENT SHALL GIVE THE NOTICE REQUIRED  
14 BY SUBSECTION (2)(a)(II) OF THIS SECTION TO THE UTILITY COMPANY AS  
15 EARLY AS PRACTICABLE AND AT LEAST FORTY-FIVE CALENDAR DAYS  
16 BEFORE THE EARLIEST OF THE FOLLOWING:  
17 (I) THE COMPLETION OF THIRTY PERCENT OF THE PRELIMINARY  
18 DESIGN PLANS;  
19 (II) THE PROJECT DEVELOPMENT SCOPING MEETING FOR THE ROAD  
20 IMPROVEMENT PROJECT; OR  
21 (III) THE INVITATION TO BID FOR THE ROAD IMPROVEMENT  
22 PROJECT.  
23 (d) THE UTILITY COMPANY TO WHICH THE NOTICE REQUIRED BY  
24 SUBSECTION (2)(a)(II) OF THIS SECTION IS DIRECTED SHALL ACKNOWLEDGE  
25 RECEIPT OF THE NOTICE.  
26 (e) IF THERE IS A CHANGE IN THE SCOPE OF A ROAD IMPROVEMENT  
27 PROJECT OR THE PLANS AND SPECIFICATIONS THAT AFFECTS THE UTILITY  
28 FACILITIES AND THE UTILITY COMPANY'S ABILITY TO REASONABLY MEET  
29 ITS OBLIGATIONS FOR THE UTILITY RELOCATION IN ACCORDANCE WITH THE  
30 SCHEDULE ESTABLISHED FOR THE ROAD IMPROVEMENT PROJECT, A LOCAL  
31 GOVERNMENT SHALL:  
32 (I) GIVE EACH AFFECTED UTILITY COMPANY A NEW WRITTEN  
33 NOTICE THAT INCLUDES ALL APPLICABLE INFORMATION IN SUBSECTION  
34 (2)(b) OF THIS SECTION; AND  
35 (II) COORDINATE WITH THE AFFECTED UTILITY COMPANY AND  
36 THIRD-PARTY CONTRACTOR, AS APPLICABLE, TO AMEND ANY CLEARANCE  
37 LETTER AS NECESSARY TO REFLECT MUTUALLY AGREED UPON CHANGES TO  
38 THE ORIGINAL COMMITMENTS IN THE LETTER, INCLUDING REASONABLE  
39 SCHEDULE ADJUSTMENTS, IF AN EXECUTED CLEARANCE LETTER COVERING  
40 THE UTILITY RELOCATION EXISTS.  
41 (e) (I) IF UTILITY FACILITIES ARE DISCOVERED DURING A ROAD  
42 IMPROVEMENT PROJECT THAT WERE NOT PREVIOUSLY IDENTIFIED, THE  
43 LOCAL GOVERNMENT, THE AFFECTED UTILITY COMPANY, AND THE  
44 THIRD-PARTY CONTRACTOR, AS APPLICABLE, SHALL CONFER WITHIN  
45 FORTY-EIGHT HOURS OF DISCOVERY TO DETERMINE APPROPRIATE

1 RELOCATION PROCEDURES.

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

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

10 (b) THE CLEARANCE LETTER MUST INCLUDE:

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

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

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

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

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

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

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

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

42 (IX) A REQUIREMENT OF PAYMENT BY THE UTILITY COMPANY FOR  
43 ACTUAL DAMAGES CAUSED BY THE UTILITY COMPANY'S DELAY IN THE  
44 PERFORMANCE OF THE UTILITY RELOCATION OR INTERFERENCE WITH THE  
45 PERFORMANCE OF THE UTILITY RELOCATION BY ANY CONTRACTOR NOT

1 HIRED BY THE UTILITY COMPANY; EXCEPT THAT DELAY OR INTERFERENCE  
2 CAUSED BY THE FOLLOWING WILL NOT BE CHARGED TO THE UTILITY  
3 COMPANY:  
4 (A) A FORCE MAJEURE;  
5 (B) THE DISCOVERY OF HAZARDOUS MATERIAL IN THE PUBLIC  
6 ROADWAY; OR  
7 (C) A CHANGE IN THE SCOPE OR AGREED-TO SCHEDULE OF A ROAD  
8 IMPROVEMENT PROJECT OR THE PLANS AND SPECIFICATIONS THAT AFFECTS  
9 THE UTILITY FACILITIES AND THE UTILITY COMPANY'S ABILITY TO PERFORM  
10 THE RELOCATION WORK AS ESTABLISHED IN THE CLEARANCE LETTER;  
11 (X) A REQUIREMENT THAT THE LOCAL GOVERNMENT, AT ITS SOLE  
12 COST, SURVEY AND STAKE THE LOCATION WHERE THE UTILITY FACILITIES  
13 WILL BE LOCATED PRIOR TO THE BEGINNING OF THE UTILITY RELOCATION,  
14 AND THAT THE COST OF ANY REQUIRED RE-STAKING DUE TO THE ACTIONS  
15 OF A UTILITY COMPANY OR ITS CONTRACTOR BE PAID BY THE UTILITY  
16 COMPANY;  
17 (XI) A REQUIREMENT THAT, UPON THE DISCOVERY OF HAZARDOUS  
18 MATERIAL IN A PUBLIC ROADWAY IN CONNECTION WITH UTILITY  
19 RELOCATION, THE UTILITY RELOCATION WORK CEASE UNTIL THE LOCAL  
20 GOVERNMENT TAKES NECESSARY STEPS TO PROVIDE A UTILITY CORRIDOR  
21 FREE FROM HAZARDOUS MATERIAL, AND THAT THE LOCAL GOVERNMENT  
22 IS RESPONSIBLE FOR THE MANAGEMENT, TRANSPORTATION, AND DISPOSAL  
23 OF ANY SOIL FROM THE PUBLIC RIGHT-OF-WAY CONTAMINATED WITH  
24 HAZARDOUS MATERIAL;  
25 (XII) A REQUIREMENT THAT ALL DESIGN AND CONSTRUCTION OF  
26 THE UTILITY RELOCATION ARE SUBJECT TO REVIEW AND APPROVAL BY  
27 ENGINEERS FOR THE LOCAL GOVERNMENT AND FOR THE UTILITY  
28 COMPANY; AND  
29 (XIII) A DISPUTE RESOLUTION PROVISION THAT INCLUDES  
30 MECHANISMS FOR NOTICE OF A FAILURE TO PERFORM IN ACCORDANCE  
31 WITH THE CLEARANCE LETTER AND FOR A REASONABLE OPPORTUNITY TO  
32 CURE.  
33 (c) (I) THE CLEARANCE LETTER MAY ALLOW FOR UTILITY  
34 COMPANY BETTERMENT AT THE EXPENSE OF THE UTILITY COMPANY;  
35 EXCEPT THAT ANY UTILITY COMPANY BETTERMENT MUST NOT  
36 MATERIALLY DELAY THE UTILITY RELOCATION.  
37 (II) AS USED IN THIS SUBSECTION (3)(c), "UTILITY COMPANY  
38 BETTERMENT" MEANS ANY UPGRADE OF THE UTILITY FACILITIES BEING  
39 RELOCATED THAT IS NOT ATTRIBUTABLE TO THE ROAD IMPROVEMENT  
40 PROJECT AND THAT IS MADE SOLELY FOR THE BENEFIT AND AT THE  
41 ELECTION OF THE AFFECTED UTILITY COMPANY.  
42 (4) (a) UPON BEING PROVIDED WRITTEN DOCUMENTATION FROM  
43 THE UTILITY COMPANY INDICATING, AT A MINIMUM, THE HORIZONTAL AND  
44 VERTICAL LOCATIONS OF THE RELOCATED UTILITY FACILITIES, A LOCAL  
45 GOVERNMENT SHALL COMPLETE ITS REVIEW OF THE UTILITY RELOCATION

1 AND PROVIDE A WRITTEN DETERMINATION OF WHETHER IT ACCEPTS OR  
2 REJECTS THE COMPLETED UTILITY RELOCATION WITHIN FOURTEEN  
3 CALENDAR DAYS OF COMPLETION OF THE RELOCATION OR RECEIPT OF THE  
4 DOCUMENTATION INDICATING THE LOCATION OF THE RELOCATED UTILITY  
5 FACILITIES FROM THE UTILITY COMPANY, WHICHEVER IS LATER.

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

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

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

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

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

29 (5) A LOCAL GOVERNMENT MAY, AFTER OPPORTUNITY FOR RELIEF  
30 BETWEEN THE LOCAL GOVERNMENT AND THE UTILITY COMPANY  
31 PURSUANT TO THE DISPUTE RESOLUTION PROCESS OUTLINED IN THE  
32 CLEARANCE LETTER, WITHHOLD ISSUANCE OF A PERMIT FOR THE LOCATION  
33 OR INSTALLATION OF OTHER UTILITY FACILITIES IN A PUBLIC ROADWAY TO  
34 A UTILITY COMPANY UNTIL THE UTILITY COMPANY PAYS THE LOCAL  
35 GOVERNMENT FOR ANY ACTUAL DAMAGES CAUSED BY THE UTILITY  
36 COMPANY'S DELAY IN THE PERFORMANCE OF A UTILITY RELOCATION.

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

45 (7) A LOCAL GOVERNMENT AND AN AFFECTED UTILITY COMPANY

1 SHALL MAKE ARRANGEMENTS FOR FUNDING ANY UTILITY RELOCATION AS  
2 SPECIFIED IN ANY EASEMENTS, LICENSES, OR OTHER PROPERTY INTERESTS  
3 OR RIGHTS OF USE HELD BY THE LOCAL GOVERNMENT OR THE UTILITY  
4 COMPANY. THE RECOVERY OF UNDERGROUND UTILITY LOCATE COSTS, AS  
5 INCURRED BY THE UTILITY COMPANY, MUST OCCUR THROUGH  
6 APPROPRIATE RATE ADJUSTMENT CLAUSES.

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

10 (9) NOTHING IN THIS SECTION:

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

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

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

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

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

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

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

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

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