

**Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 24-0679.01 Rebecca Bayetti x4348

HOUSE BILL 24-1266

HOUSE SPONSORSHIP

Hamrick and Frizell, Bird, Lindsay, Marshall, Ricks, Snyder, Soper, Story, Taggart,
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SENATE SPONSORSHIP

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House Committees

Transportation, Housing & Local Government

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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.

HOUSE
3rd Reading Unamended
March 18, 2024

HOUSE
Amended 2nd Reading
March 15, 2024

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 road
7 improvement project partially depends on coordination with utility
8 companies for the prompt performance of utility relocation work
9 necessitated by construction of the road improvement project;

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

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

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

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

3 **38-5-109. Utility relocation clearance letter - definitions.**

4 (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
5 REQUIRES:

6 (a) "CLEARANCE LETTER" MEANS A WRITTEN AGREEMENT
7 BETWEEN A LOCAL GOVERNMENT PROPOSING A ROAD IMPROVEMENT
8 PROJECT AND A UTILITY COMPANY, IN WHICH THE UTILITY COMPANY AND
9 THE LOCAL GOVERNMENT MUTUALLY ESTABLISH THE SCOPE, CONDITIONS,
10 AND SCHEDULE FOR THE UTILITY RELOCATION REQUIRED FOR THE ROAD
11 IMPROVEMENT PROJECT.

12 (b) "FORCE MAJEURE" MEANS FIRE, EXPLOSION, FLOODS, ACTION
13 OF THE ELEMENTS, STRIKE, LABOR DISPUTES, INTERRUPTION OF
14 TRANSPORTATION, RATIONING, SHORTAGE OF EQUIPMENT OR MATERIALS,
15 COURT ACTION, ILLEGALITY, UNUSUALLY SEVERE WEATHER, ACT OF GOD,
16 ACT OF WAR OR TERRORISM, EPIDEMICS OR PANDEMICS, QUARANTINES,
17 SEASONAL LIMITATIONS ON UTILITY OPERATIONS, OR ANY OTHER CAUSE
18 THAT IS BEYOND THE REASONABLE CONTROL OF THE ENTITY PERFORMING
19 THE UTILITY RELOCATION.

20 (c) "HAZARDOUS MATERIAL" MEANS ANY SUBSTANCE, POLLUTANT,
21 CONTAMINANT, CHEMICAL, MATERIAL, OR WASTE, OR ANY SOIL OR WATER
22 CONTAMINATED WITH SUCH HAZARDOUS MATERIAL, THAT IS:

23 (I) INCLUDED IN THE DEFINITION OF HAZARDOUS SUBSTANCE,
24 HAZARDOUS WASTE, TOXIC SUBSTANCE, HAZARDOUS POLLUTANT, TOXIC
25 POLLUTANT, NONHAZARDOUS WASTE, OR UNIVERSAL WASTE, AS
26 REGULATED BY ANY APPLICABLE ENVIRONMENTAL LAW; OR

27 (II) TOXIC, EXPLOSIVE, CORROSIVE, FLAMMABLE, IGNITABLE,

1 INFECTIOUS, RADIOACTIVE, CARCINOGENIC, MUTAGENIC, OR THAT
2 OTHERWISE POSES A HAZARD TO LIVING THINGS OR THE ENVIRONMENT.

3 (d) "LOCAL GOVERNMENT" MEANS A STATUTORY OR HOME RULE
4 COUNTY, CITY AND COUNTY, MUNICIPALITY, OR TOWN, EXCLUDING A
5 LOCAL GOVERNMENT THAT HAS GRANTED A FRANCHISE TO A UTILITY
6 COMPANY PURSUANT TO SECTION 31-32-101 OR ARTICLE XX OF THE
7 STATE CONSTITUTION.

8 (e) "PLANS AND SPECIFICATIONS" MEANS THE PLANS, DRAWINGS,
9 AND SPECIFICATIONS DESIGNED AND ENGINEERED BY A LOCAL
10 GOVERNMENT OR ITS CONTRACTOR, WHICH ARE NECESSARY TO COMPLETE
11 THE ROAD IMPROVEMENT PROJECT IN ACCORDANCE WITH APPLICABLE
12 LAWS, RULES, AND REGULATIONS.

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

16 (I) REQUIRES THE REMOVAL, RELOCATION, OR ALTERATION OF
17 UTILITY FACILITIES;

18 (II) IS NECESSARY TO FACILITATE THE DEVELOPMENT OF PRIVATE
19 PROPERTY; AND

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

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

27 (h) "PUBLIC ROADWAY" MEANS PROPERTY CONTROLLED BY A

1 LOCAL GOVERNMENT THAT IS ACQUIRED, DEDICATED, OR RESERVED FOR
2 THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF A STREET OR
3 PUBLIC HIGHWAY AND THAT IS OPEN TO PUBLIC TRAVEL OR ANY OTHER
4 PUBLIC HIGHWAY ESTABLISHED BY LAW.

5 (i) (I) "ROAD IMPROVEMENT PROJECT" MEANS ANY CONSTRUCTION
6 OR RECONSTRUCTION PROJECT FOR THE ADJUSTMENT, EXPANSION, OR
7 REALIGNMENT OF A PUBLIC ROADWAY OR PUBLIC RIGHT-OF-WAY,
8 INCLUDING BUT NOT LIMITED TO MAINTENANCE, REPLACEMENT, BRIDGE,
9 CULVERT, OR TRAFFIC SIGNAL PROJECTS.

10 (II) "ROAD IMPROVEMENT PROJECT" DOES NOT INCLUDE A PROJECT
11 ON, ALONG, OR IN A PUBLIC OR STATE HIGHWAY OR ROADWAY UNDER THE
12 CONTROL OF THE COLORADO DEPARTMENT OF TRANSPORTATION UNLESS
13 A LOCAL GOVERNMENT PERFORMS THE CONSTRUCTION OR
14 RECONSTRUCTION AS PART OF A PROJECT UNDER THE DIRECTION OF THE
15 LOCAL GOVERNMENT AND PURSUANT TO AN AGREEMENT WITH THE
16 COLORADO DEPARTMENT OF TRANSPORTATION.

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

20 (k) "UTILITY CONFLICT" MEANS CIRCUMSTANCES IN WHICH A
21 PROPOSED ROAD IMPROVEMENT PROJECT BRINGS UTILITY FACILITIES OUT
22 OF COMPLIANCE WITH REGULATORY AGENCY STANDARDS OR EXISTING
23 UTILITY FACILITIES PRECLUDE OR HINDER THE CONSTRUCTION OF A ROAD
24 IMPROVEMENT PROJECT.

25 (l) "UTILITY FACILITIES" MEANS ANY LINES OF ELECTRIC LIGHT OR
26 WIRE, POWER, OR PIPELINE OF A UTILITY COMPANY AND ANY RELATED
27 SUPPORT STRUCTURES, ATTACHMENTS, APPURTENANCES, EQUIPMENT,

1 VALVES, CABLE, OR CONDUIT FOR THE LINES, WIRES, OR PIPELINES.

2 "UTILITY FACILITIES" INCLUDE BOTH THOSE ABOVE AND BELOW GROUND.

3 (m) "UTILITY RELOCATION" OR "RELOCATION OF UTILITY
4 FACILITIES" MEANS THE REMOVAL, RELOCATION, OR ALTERATION OF
5 UTILITY FACILITIES NECESSARY TO RESOLVE A UTILITY CONFLICT CAUSED
6 BY A ROAD IMPROVEMENT PROJECT FUNDED IN FULL OR IN PART BY A
7 LOCAL GOVERNMENT OR WITH STATE, FEDERAL, OR OTHER PUBLIC MONEY;
8 EXCEPT THAT "UTILITY RELOCATION" DOES NOT INCLUDE A PRIVATE
9 PROJECT RELOCATION.

10 (2) (a) IF A LOCAL GOVERNMENT ENGAGES IN OR PROPOSES TO
11 ENGAGE IN A ROAD IMPROVEMENT PROJECT THAT WILL REQUIRE THE
12 RELOCATION OF UTILITY FACILITIES DUE TO A UTILITY CONFLICT, THE
13 LOCAL GOVERNMENT SHALL:

14 (I) NOTIFY THE NOTIFICATION ASSOCIATION, CREATED IN SECTION
15 9-1.5-105 (1), WITH AN ENGINEERING OR SUBSURFACE UTILITY
16 ENGINEERING NOTIFICATION TO IDENTIFY EACH UTILITY COMPANY THAT
17 HAS UTILITY FACILITIES IN THE AREA OF THE ROAD IMPROVEMENT
18 PROJECT; AND

19 (II) ELECTRONICALLY NOTIFY IN WRITING EACH UTILITY COMPANY
20 IDENTIFIED PURSUANT TO SUBSECTION (2)(a)(I) OF THIS SECTION. THE
21 NOTICE PROVIDED MUST FOLLOW THE REQUIREMENTS OF SUBSECTION
22 (2)(b) OF THIS SECTION.

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

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

27 (II) ANY POTENTIAL UTILITY CONFLICT THAT MAY BE CREATED BY

1 THE ROAD IMPROVEMENT PROJECT;

2 (III) THE ESTIMATED TIMELINE AND DURATION OF THE ROAD
3 IMPROVEMENT PROJECT;

4 (IV) THE ESTIMATED TIME FRAME IN WHICH THE UTILITY
5 RELOCATION SHOULD BE COMPLETED;

6 (V) THE FEDERAL IDENTIFYING PROJECT NUMBER, IF APPLICABLE;
7 AND

8 (VI) WHETHER THE UTILITY COMPANY MAY QUALIFY FOR
9 ASSISTANCE TO OFFSET EXPENSES INCURRED IN RELOCATING ITS UTILITY
10 FACILITIES TO ACCOMMODATE THE PROPOSED ROAD IMPROVEMENT
11 PROJECT.

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

16 (I) THE COMPLETION OF THIRTY PERCENT OF THE PRELIMINARY
17 DESIGN PLANS;

18 (II) THE PROJECT DEVELOPMENT SCOPING MEETING FOR THE ROAD
19 IMPROVEMENT PROJECT; OR

20 (III) THE INVITATION TO BID FOR THE ROAD IMPROVEMENT
21 PROJECT.

22 (d) THE UTILITY COMPANY TO WHICH THE NOTICE REQUIRED BY
23 SUBSECTION (2)(a)(II) OF THIS SECTION IS DIRECTED SHALL ACKNOWLEDGE
24 RECEIPT OF THE NOTICE.

25 (e) IF THERE IS A CHANGE IN THE SCOPE OF A ROAD IMPROVEMENT
26 PROJECT OR THE PLANS AND SPECIFICATIONS THAT AFFECTS THE UTILITY
27 FACILITIES AND THE UTILITY COMPANY'S ABILITY TO REASONABLY MEET

1 ITS OBLIGATIONS FOR THE UTILITY RELOCATION IN ACCORDANCE WITH THE
2 SCHEDULE ESTABLISHED FOR THE ROAD IMPROVEMENT PROJECT, A LOCAL
3 GOVERNMENT SHALL:

4 (I) GIVE EACH AFFECTED UTILITY COMPANY A NEW WRITTEN
5 NOTICE THAT INCLUDES ALL APPLICABLE INFORMATION IN SUBSECTION
6 (2)(b) OF THIS SECTION; AND

7 (II) COORDINATE WITH THE AFFECTED UTILITY COMPANY AND
8 THIRD-PARTY CONTRACTOR, AS APPLICABLE, TO AMEND ANY CLEARANCE
9 LETTER AS NECESSARY TO REFLECT MUTUALLY AGREED UPON CHANGES TO
10 THE ORIGINAL COMMITMENTS IN THE LETTER, INCLUDING REASONABLE
11 SCHEDULE ADJUSTMENTS, IF AN EXECUTED CLEARANCE LETTER COVERING
12 THE UTILITY RELOCATION EXISTS.

13 (e) (I) IF UTILITY FACILITIES ARE DISCOVERED DURING A ROAD
14 IMPROVEMENT PROJECT THAT WERE NOT PREVIOUSLY IDENTIFIED, THE
15 LOCAL GOVERNMENT, THE AFFECTED UTILITY COMPANY, AND THE
16 THIRD-PARTY CONTRACTOR, AS APPLICABLE, SHALL CONFER WITHIN
17 FORTY-EIGHT HOURS OF DISCOVERY TO DETERMINE APPROPRIATE
18 RELOCATION PROCEDURES.

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

23 (3) (a) TO FACILITATE A UTILITY RELOCATION, A LOCAL
24 GOVERNMENT AND AN AFFECTED UTILITY COMPANY SHALL NEGOTIATE IN
25 GOOD FAITH AND SHALL ENTER INTO A MUTUALLY AGREEABLE CLEARANCE
26 LETTER.

27 (b) THE CLEARANCE LETTER MUST INCLUDE:

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

3 (II) THE SCOPE OF THE UTILITY RELOCATION, INCLUDING THE
4 EXTENT OF THE UTILITY FACILITIES NEEDING TO BE RELOCATED AS
5 EVIDENCED BY THE PLANS AND SPECIFICATIONS;

6 (III) WHETHER THE UTILITY RELOCATION WILL BE PERFORMED BY
7 THE UTILITY COMPANY OR BY A THIRD-PARTY CONTRACTOR AGREED TO BY
8 THE UTILITY COMPANY;

9 (IV) REQUIREMENTS FOR COORDINATION AMONG THE LOCAL
10 GOVERNMENT, THE UTILITY COMPANY, AND ANY THIRD-PARTY
11 CONTRACTOR THROUGHOUT THE ROAD IMPROVEMENT PROJECT AND
12 UTILITY RELOCATION, INCLUDING THROUGHOUT ANY PREREQUISITE WORK
13 THAT NEEDS TO OCCUR BEFORE THE UTILITY RELOCATION;

14 (V) WHICH ENTITY IS RESPONSIBLE FOR TRAFFIC MANAGEMENT
15 DURING THE UTILITY RELOCATION;

16 (VI) THE NUMBER OF DAYS OF NOTICE THAT THE LOCAL
17 GOVERNMENT MUST GIVE TO THE UTILITY COMPANY AHEAD OF THE DATE
18 BY WHICH THE UTILITY RELOCATION MUST BE STARTED IN ORDER TO
19 ADHERE TO THE ROAD IMPROVEMENT PROJECT SCHEDULE;

20 (VII) AN ESTIMATED SCHEDULE FOR THE PERFORMANCE OF THE
21 UTILITY RELOCATION, INCLUDING THE DURATION OF THE UTILITY
22 RELOCATION;

23 (VIII) A REQUIREMENT OF PROMPT PERFORMANCE OF THE UTILITY
24 RELOCATION BY THE UTILITY COMPANY IF THE UTILITY COMPANY IS
25 PERFORMING THE UTILITY RELOCATION OR BY THE THIRD-PARTY
26 CONTRACTOR AGREED TO BY THE UTILITY COMPANY TO PERFORM THE
27 UTILITY RELOCATION, EXCEPT WHEN PERFORMANCE IS EXCUSED DUE TO

1 FORCE MAJEURE, THE DISCOVERY OF HAZARDOUS MATERIAL IN THE PUBLIC
2 ROADWAY, OR A CHANGE IN THE SCOPE OR AGREED-TO SCHEDULE OF A
3 ROAD IMPROVEMENT PROJECT OR THE PLANS AND SPECIFICATIONS THAT
4 AFFECTS THE UTILITY FACILITIES;

5 (IX) A REQUIREMENT OF PAYMENT BY THE UTILITY COMPANY FOR
6 ACTUAL DAMAGES CAUSED BY THE UTILITY COMPANY'S DELAY IN THE
7 PERFORMANCE OF THE UTILITY RELOCATION OR INTERFERENCE WITH THE
8 PERFORMANCE OF THE UTILITY RELOCATION BY ANY CONTRACTOR NOT
9 HIRED BY THE UTILITY COMPANY; EXCEPT THAT DELAY OR INTERFERENCE
10 CAUSED BY THE FOLLOWING WILL NOT BE CHARGED TO THE UTILITY
11 COMPANY:

12 (A) A FORCE MAJEURE;

13 (B) THE DISCOVERY OF HAZARDOUS MATERIAL IN THE PUBLIC
14 ROADWAY; OR

15 (C) A CHANGE IN THE SCOPE OR AGREED-TO SCHEDULE OF A ROAD
16 IMPROVEMENT PROJECT OR THE PLANS AND SPECIFICATIONS THAT AFFECTS
17 THE UTILITY FACILITIES AND THE UTILITY COMPANY'S ABILITY TO PERFORM
18 THE RELOCATION WORK AS ESTABLISHED IN THE CLEARANCE LETTER;

19 (X) A REQUIREMENT THAT THE LOCAL GOVERNMENT, AT ITS SOLE
20 COST, SURVEY AND STAKE THE LOCATION WHERE THE UTILITY FACILITIES
21 WILL BE LOCATED PRIOR TO THE BEGINNING OF THE UTILITY RELOCATION,
22 AND THAT THE COST OF ANY REQUIRED RE-STAKING DUE TO THE ACTIONS
23 OF A UTILITY COMPANY OR ITS CONTRACTOR BE PAID BY THE UTILITY
24 COMPANY;

25 (XI) A REQUIREMENT THAT, UPON THE DISCOVERY OF HAZARDOUS
26 MATERIAL IN A PUBLIC ROADWAY IN CONNECTION WITH UTILITY
27 RELOCATION, THE UTILITY RELOCATION WORK CEASE UNTIL THE LOCAL

1 GOVERNMENT TAKES NECESSARY STEPS TO PROVIDE A UTILITY CORRIDOR
2 FREE FROM HAZARDOUS MATERIAL, AND THAT THE LOCAL GOVERNMENT
3 IS RESPONSIBLE FOR THE MANAGEMENT, TRANSPORTATION, AND DISPOSAL
4 OF ANY SOIL FROM THE PUBLIC RIGHT-OF-WAY CONTAMINATED WITH
5 HAZARDOUS MATERIAL;

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

10 (XIII) A DISPUTE RESOLUTION PROVISION THAT INCLUDES
11 MECHANISMS FOR NOTICE OF A FAILURE TO PERFORM IN ACCORDANCE
12 WITH THE CLEARANCE LETTER AND FOR A REASONABLE OPPORTUNITY TO
13 CURE.

14 (c) (I) THE CLEARANCE LETTER MAY ALLOW FOR UTILITY
15 COMPANY BETTERMENT AT THE EXPENSE OF THE UTILITY COMPANY;
16 EXCEPT THAT ANY UTILITY COMPANY BETTERMENT MUST NOT
17 MATERIALLY DELAY THE UTILITY RELOCATION.

18 (II) AS USED IN THIS SUBSECTION (3)(c), "UTILITY COMPANY
19 BETTERMENT" MEANS ANY UPGRADE OF THE UTILITY FACILITIES BEING
20 RELOCATED THAT IS NOT ATTRIBUTABLE TO THE ROAD IMPROVEMENT
21 PROJECT AND THAT IS MADE SOLELY FOR THE BENEFIT AND AT THE
22 ELECTION OF THE AFFECTED UTILITY COMPANY.

23 (4) (a) UPON BEING PROVIDED WRITTEN DOCUMENTATION FROM
24 THE UTILITY COMPANY INDICATING, AT A MINIMUM, THE HORIZONTAL AND
25 VERTICAL LOCATIONS OF THE RELOCATED UTILITY FACILITIES, A LOCAL
26 GOVERNMENT SHALL COMPLETE ITS REVIEW OF THE UTILITY RELOCATION
27 AND PROVIDE A WRITTEN DETERMINATION OF WHETHER IT ACCEPTS OR

1 REJECTS THE COMPLETED UTILITY RELOCATION WITHIN FOURTEEN
2 CALENDAR DAYS OF COMPLETION OF THE RELOCATION OR RECEIPT OF THE
3 DOCUMENTATION INDICATING THE LOCATION OF THE RELOCATED UTILITY
4 FACILITIES FROM THE UTILITY COMPANY, WHICHEVER IS LATER.

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

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

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

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

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

1 (5) A LOCAL GOVERNMENT MAY, AFTER OPPORTUNITY FOR RELIEF
2 BETWEEN THE LOCAL GOVERNMENT AND THE UTILITY COMPANY
3 PURSUANT TO THE DISPUTE RESOLUTION PROCESS OUTLINED IN THE
4 CLEARANCE LETTER, WITHHOLD ISSUANCE OF A PERMIT FOR THE LOCATION
5 OR INSTALLATION OF OTHER UTILITY FACILITIES IN A PUBLIC ROADWAY TO
6 A UTILITY COMPANY UNTIL THE UTILITY COMPANY PAYS THE LOCAL
7 GOVERNMENT FOR ANY ACTUAL DAMAGES CAUSED BY THE UTILITY
8 COMPANY'S DELAY IN THE PERFORMANCE OF A UTILITY RELOCATION.

9 (6) WHEN NECESSARY AND FEASIBLE AND AFTER MUTUAL
10 AGREEMENT WITH AN AFFECTED UTILITY COMPANY, A LOCAL
11 GOVERNMENT MAY OBTAIN ADDITIONAL PUBLIC RIGHTS-OF-WAY OR
12 EASEMENTS TO ACCOMMODATE A UTILITY RELOCATION. THE LOCAL
13 GOVERNMENT IS RESPONSIBLE FOR THE COST OF OBTAINING ANY
14 ADDITIONAL RIGHT-OF-WAY UNLESS THE ADDITIONAL RIGHT-OF-WAY IS
15 ONLY NEEDED TO ACCOMMODATE A UTILITY COMPANY BETTERMENT AND
16 IS NOT REQUIRED FOR A ROAD IMPROVEMENT PROJECT.

17 (7) A LOCAL GOVERNMENT AND AN AFFECTED UTILITY COMPANY
18 SHALL MAKE ARRANGEMENTS FOR FUNDING ANY UTILITY RELOCATION AS
19 SPECIFIED IN ANY EASEMENTS, LICENSES, OR OTHER PROPERTY INTERESTS
20 OR RIGHTS OF USE HELD BY THE LOCAL GOVERNMENT OR THE UTILITY
21 COMPANY. THE RECOVERY OF UNDERGROUND UTILITY LOCATE COSTS, AS
22 INCURRED BY THE UTILITY COMPANY, MUST OCCUR THROUGH
23 APPROPRIATE RATE ADJUSTMENT CLAUSES.

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

27 (9) NOTHING IN THIS SECTION:

1 (a) ALTERS OR DIMINISHES THE AUTHORITY OF A LOCAL
2 GOVERNMENT TO LAWFULLY EXERCISE ITS POLICE POWERS WITH RESPECT
3 TO THE RELOCATION OF UTILITY FACILITIES WITHIN THE LOCAL
4 GOVERNMENT BOUNDARIES;

5 (b) ALTERS EXISTING PROPERTY AGREEMENTS, LICENSES,
6 FRANCHISE AGREEMENTS, OR OTHER VESTED INTERESTS OF A LOCAL
7 GOVERNMENT OR A UTILITY COMPANY ESTABLISHED IN THE EXISTING
8 PROPERTY AGREEMENT, LICENSE, FRANCHISE AGREEMENT, OR OTHER
9 VESTED INTEREST, INCLUDING THE OBLIGATION TO PAY FOR UTILITY
10 RELOCATION;

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

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

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

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

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 commencing on or
7 after the applicable effective date of this act.