

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
95th General Assembly
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As Engrossed: S4/7/25

A Bill

SENATE BILL 492

By: Senator J. Bryant
By: Representative Lundstrum

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE RELOCATION OF UTILITY FACILITIES; TO AMEND THE LAW CONCERNING THE ACQUISITION, CONDEMNATION, AND DISPOSITION OF REAL PROPERTY BY THE STATE HIGHWAY COMMISSION; TO ESTABLISH A PROCESS FOR THE RELOCATION OF A UTILITY FACILITY LOCATED ON A PUBLIC RIGHT OF WAY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING THE RELOCATION OF UTILITY FACILITIES; AND TO AMEND THE LAW CONCERNING THE ACQUISITION, CONDEMNATION, AND DISPOSITION OF REAL PROPERTY BY THE STATE HIGHWAY COMMISSION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 27, Chapter 67, Subchapter 3, is amended to add additional sections to read as follows:

27-67-325. Relocation of utility facility – Definitions.

(a) As used in this section and § 27-67-326:

(1) "Extraordinary event" means:

(A) An event beyond the reasonable control of a utility;

or

(B) A change of plans that causes a delay in the work of a utility required under a relocation agreement;



(2)(A) "Municipal utility system" means a utility system owned or operated by a municipality that provides or removes at least one (1) of the following:

- (i) Electricity;
- (ii) Water;
- (iii) Wastewater;
- (iv) Gas;
- (v) Cable television; or
- (vi) Broadband service.

(B) "Municipal utility system" includes without limitation

a:

- (i) Consolidated waterworks system under the Consolidated Waterworks Authorization Act, § 25-20-301 et seq.;
- (ii) Utility system managed or operated by a nonprofit corporation under § 14-199-701 et seq.; and
- (iii) Utility system owned or operated by a municipality or by a consolidated utility district under the General Consolidated Public Utility System Improvement District Law, § 14-217-101 et seq.;

(3)(A) "Public transportation facility" means a transportation facility and a right-of-way that serves the public.

(B) "Public transportation facility" includes without limitation a:

- (i) Highway, interstate, freeway, street, or other road;
- (ii) Trail;
- (iii) Bicycle trail; and
- (iv) Sidewalk or other pedestrian facility;

(4)(A) "Relocation" means the adjustment, removal, or relocation of a utility facility determined by the Arkansas Department of Transportation to be necessary or appropriate in connection with the construction or reconstruction of a public transportation facility.

(B) "Relocation" includes without limitation:

- (i) Removing and reinstalling a utility facility, including a necessary temporary utility facility;
- (ii) Moving, rearranging, or changing the type of

existing utility facility;

(iii) Taking necessary safety and protective measures; and

(iv) Constructing a replacement utility facility that is functionally equivalent to an existing utility facility and necessary for the continuous operation of the utility service, the project economy, or the sequence of public transportation facility construction;

(5) "Relocation agreement" means a written agreement between the department and a utility concerning a specific relocation;

(6) "Relocation proposal" means a formal written submission prepared by a utility in response to a request from the department concerning a specific relocation;

(7)(A) "Utility" means a private, public, or cooperative utility that transmits or distributes *communications, including without limitation cable service and broadband service*, electricity, gas, liquids, steam, or sewerage by means of a utility facility.

(B) "Utility" does not include a railway or railroad engaged in interstate commerce;

(8) "Utility accommodation rules" means the rules adopted by the State Highway Commission and administered by the department that:

(A) Address the processes and procedures for a utility to receive reimbursement for a relocation on public transportation facilities of the commission; and

(B) Establish the process for permits for the placement of utility facilities on public transportation facilities of the commission; and

(9) "Utility facility" means a line, facility, or system of a utility that is used, is available for use, or was formerly used to transmit or distribute *communications, including without limitation cable service and broadband service*, electricity, gas, liquids, steam, water, or sewerage to the public.

(b)(1) When a utility facility located on a public transportation facility must be removed, relocated, or adjusted to accommodate a change to a public transportation facility, the department and the utility shall negotiate a relocation agreement establishing the reasonable schedule for relocation and the duties of the department and the utility concerning the relocation.

(2) When negotiating the relocation agreement under subdivision (b)(1) of this section, the:

(A) Department shall:

(i) Provide written notice to the utility of the need for the relocation located on the public transportation facility that shall include:

(a) Plans that clearly identify all known utilities that own a utility facility that is subject to relocation;

(b) The area of the public transportation facility the department or commission intends to acquire for the project; and

(c) The proposed right-of-way acquisition and timeline;

(ii) Provide to the utility the construction plans for the project that demonstrate the need for the relocation;

(iii) Establish a reasonable date for the submission of a relocation proposal;

(iv) Coordinate a relocation agreement for the work to be performed by the utility, including a schedule for the relocation; and

(v) Issue a *notice to proceed* to the utility to begin the relocation upon execution of a relocation agreement; and

(B) Utility shall:

(i) Submit to the department a relocation proposal in accordance with the utility accommodation rules that includes without limitation:

(a) A plan for the relocation in accordance with the construction plans for the project provided by the department as required under subdivision (b)(2)(A)(ii);

(b) A reasonable schedule for the completion of the relocation;

(c) Reasonable cost estimates for the relocation; and

(d) A final date all work will be complete for the relocation;

(ii) Begin and complete the relocation within the time frame specified in the relocation agreement negotiated under subdivision (b)(1) of this section; and

(iii) Submit a progress report every two (2) months to the department regarding the status of the relocation after a notice to proceed is issued under subdivision (c)(1) of this section until the relocation is complete.

(c)(1) After a relocation agreement is executed under this section, the department shall issue a notice to proceed with the relocation to the owner of the utility facility that is the subject of the relocation agreement.

(2) A notice to proceed issued under subdivision (c)(1) of this section serves as the formal authorization for the utility to commence work on the relocation in accordance with terms of the relocation agreement.

(d)(1) If a utility other than a municipal utility system fails to follow the process established in the utility accommodation rules or the relocation agreement to complete the relocation within the time period stated in the relocation agreement, the department may assess and collect a civil penalty from a utility other than a municipal utility system after:

(A) The department provides notice to the utility under subdivision (e)(2)(A) of this section; and

(B) The expiration of a thirty-day time period for the utility to comply with the requirements stated in the utility accommodation rules or the relocation agreement.

(2) The civil penalty authorized under subdivision (d)(1) of this section shall be five hundred dollars (\$500) for each business day the utility fails to:

(A) Respond to the written notice to the utility of the need for the relocation located on the public transportation facility provided under subdivision (b)(2)(A)(i) of this section;

(B) Enter into negotiations for a relocation agreement between the department and the utility; or

(C)(i) Comply with a relocation agreement to which the utility is a party, including completing the work according to the schedule in the relocation agreement.

(ii) A civil penalty shall not be assessed under this subdivision (d)(2)(C) if the utility does not meet the agreed-upon schedule but meets the final relocation completion date in the relocation agreement.

(iii) A civil penalty may be assessed under this subdivision (d)(2)(C) if a utility fails to:

(a) Act in good faith to comply with the relocation agreement; or

(b) Request a reasonable modification of the schedule.

(e)(1) A civil penalty shall not be assessed under subsection (d) for a delay that is the result of:

(A) An extraordinary event;

(B) Excavation that damages an underground utility facility for which:

(i) The owner of the utility facility was not provided notice of the intent to excavate; or

(ii) The utility facility was not located and marked properly under the Arkansas Underground Facilities Damage Prevention Act, § 14-271-101 et seq.; or

(C) A delay in acquiring right-of-way after a good faith effort by the utility to complete the acquisition of the right-of-way.

(2)(A) The department shall give a utility written notice of the intent to assess a civil penalty under this subsection and an opportunity to appeal the department's decision and show cause why the civil penalty should not be assessed.

(B) Upon a finding that a civil penalty should be assessed under subsection (d) of this section, the department shall issue an appropriate order to the utility.

(C) If a civil penalty has not been paid in full within ninety (90) days after the entry of an order under subdivision (e)(3)(B) of this section, the civil penalty may be:

(i) Deducted from the final reimbursement payment by the department to the utility; or

(ii) Subject to a collection action.

(3) An appeal of a decision to assess a civil penalty under this subsection (e) shall be in accordance with the utility accommodation rules and the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4) Moneys collected as civil penalties under this subsection (e) shall be paid into the State Highway and Transportation Department Fund

and designated for use in a utility relocation grant and loan program to be established by the department for the purpose of providing a grant or loan to a small utility for a relocation that is nonreimbursable.

(f)(1) If a municipal utility system fails to follow the process established in the utility accommodation rules or the relocation agreement to complete a relocation within the time period stated in the relocation agreement, the department may relocate the utility facility that is the subject of the relocation agreement.

(2) If the department relocates a utility facility under subdivision (f)(1) of this section, the department may enter into a contract to complete the engineering, relocation, or other work required to relocate the utility facility of a municipal utility system after providing written notice to the municipal utility system.

(3)(A)(i) If within ten (10) days of the receipt of written notice from the department under subdivision (f)(2) of this section, the municipal utility system provides the department with a list of three (3) or more approved engineers and three (3) or more approved contractors to perform the relocation or design specifications for the utility facility that is to be relocated, the department shall enter into a contract only with an engineer or contractor contained in the list to perform the relocation.

(ii) The department shall not enter into a contract with an engineer or contractor who does not comply with the procurement process of the department.

(B) If within ten (10) days of the receipt of written notice from the department under subdivision (f)(2) of this section, the municipal utility system provides the department with design specifications for the utility facility that is to be relocated, then the department shall require compliance with the design specifications in the contract for the relocation.

(4) A contract entered into by the department to relocate a utility facility of a municipal utility system under this subsection shall identify the municipal utility system as the beneficiary of the contract.

(5) A municipal utility system that has entered into a contract with the department to relocate a utility system of the municipal utility system under this subsection may:

(A) Inspect the relocation of the utility facility;

(B) Inspect an underground utility facility before it is covered; and

(C) Pursue a claim against a person or entity other than the department based on the relocation of the utility facility whether provided under the contract with the department or by law.

(6) Within ninety (90) days of the receipt of a written invoice from the department for the cost of a relocation under this subsection, a municipal utility system shall:

(A) Pay to the department the non-reimbursable portion of the cost of the relocation that the municipal utility system does not dispute; and

(B) Enter into a dispute resolution process with the department for any disputed portion of the invoice.

(7) If a municipal utility system fails to comply with subdivision (f)(6) of this section, the department may offset and collect the amount owed by the municipal utility system from any funds administered by the department for disbursement to the municipality, including without limitation turnback and state aid street funds that may be lawfully applied to the relocation costs.

(g) A municipal utility system may agree to the relocation of a utility facility of the municipal utility system by the department using the process provided in subsection (f) of this section.

(h)(1) The department shall not act under subsection (d) or subsection (f) of this section if an extraordinary event prevents the completion of a relocation within the time frame specified in the relocation agreement.

(2) If an extraordinary event occurs under subdivision (h)(1) of this section, the utility shall provide the department with a:

(A) Written notice of the extraordinary event; and

(B) Revised relocation proposal and schedule under subdivision (b)(2)(B)(i) of this section.

(3) Upon receipt of a written notice under subdivision (h)(2) of this section, the department shall issue a modification to the relocation agreement reflecting a new date for the completion of the relocation as determined by the department.

(i) The department shall promulgate rules for the implementation of this section.

27-67-326. Relocation of utility facility – Rules.

(a)(1) Utility accommodation rules adopted by the State Highway Commission concerning relocation under § 27-67-325 shall include without limitation the relocation coordination process between the Arkansas Department of Transportation and the utility.

(2) Rules concerning the relocation coordination process between the department and the utility shall include without limitation that:

(A) The department shall schedule a meeting with the owner of the utility facility at a time mutually convenient for both parties; and

(B) Before a meeting under subdivision (a)(2)(A) of this section, the department shall provide the owner of the utility facility with plans for a proposed relocation.

(3) The plans for a proposed relocation under subdivision (a)(2)(B) of this section shall:

(A) Clearly indicate:

(i) All identified existing utilities affected by the relocation; and

(ii) The right-of-way the department intends to acquire for the relocation; and

(B) Use criteria that satisfy Subsurface Utility Engineering Quality Level C or better.

(4) During a meeting under subdivision (a)(2)(A) of this section, the department and the owner of the utility facility shall:

(A) Identify the scope of utility facilities that will be subject to relocation;

(B) Discuss:

(i) Proposed arrangements for the relocation, including any right-of-way provided by the department for relocation;

(ii) The expected cost of the relocation; and

(iii) A deadline by which the owner of the utility facility shall submit a relocation proposal to the department; and

(C) Agree upon the number of days required for the relocation.

(5)(A) The department shall provide the utility with a written report summarizing the decisions made and agreements reached during the

meeting held under subdivision (a)(2)(A) of this section.

(B) The report provided under subdivision (a)(5)(A) of this section shall serve as the basis for the relocation proposal.

(b)(1) The rules promulgated by the department concerning a relocation under § 27-67-325 shall include without limitation:

(A) The process for the creation of a relocation proposal and relocation agreement; and

(B) The procedure for the reimbursement of the costs of a relocation.

(2) The rules for a relocation proposal shall include without limitation that a relocation proposal:

(A) Be provided to each party in written form;

(B) Be signed by the authorized representatives of the department and the utility; and

(C) Include:

(i) The plan for the relocation;

(ii) The schedule for the utility to complete the relocation;

(iii) A cost estimate for the relocation;

(iv) Deadlines for the commencement and completion of the relocation; and

(v) The estimated cost of reimbursement by the department for the relocation.

(3)(A) The rules for a relocation agreement shall include that a relocation agreement may be modified if:

(i) An extraordinary event occurs; and

(ii) Either party requests a modification to the relocation agreement.

(B) The modification of a relocation agreement shall:

(i) Be documented in writing;

(ii) Include updated timelines, costs, or other relevant terms; and

(iii) Be approved by both parties.

(4) Rules for the reimbursement of the costs for a relocation shall include without limitation that the:

(A) Utility owner may submit an invoice for the

reimbursement of costs to the department upon completion of the relocation;

(B) Invoice for the reimbursement of costs for the relocation shall reflect all costs and expenses incurred by the utility for the relocation; and

(C) Department shall pay a complete invoice submitted under subdivision (b)(4)(A) of this section within ninety (90) days of receipt of the complete invoice by the department.

/s/J. Bryant