

1 State of Arkansas
2 95th General Assembly
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4

As Engrossed: S4/7/25

A Bill

SENATE BILL 492

5 By: Senator J. Bryant
6 By: Representative Lundstrum
7

For An Act To Be Entitled

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

18 TO AMEND THE LAW CONCERNING THE
19 RELOCATION OF UTILITY FACILITIES; AND TO
20 AMEND THE LAW CONCERNING THE
21 ACQUISITION, CONDEMNATION, AND
22 DISPOSITION OF REAL PROPERTY BY THE
23 STATE HIGHWAY COMMISSION.
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

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

30 27-67-325. Relocation of utility facility – Definitions.

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

32 (1) "Extraordinary event" means:

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

34 or

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



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

4 (i) Electricity;

5 (ii) Water;

6 (iii) Wastewater;

7 (iv) Gas;

8 (v) Cable television; or

9 (vi) Broadband service.

10 (B) "Municipal utility system" includes without limitation

11 a:

12 (i) Consolidated waterworks system under the
13 Consolidated Waterworks Authorization Act, § 25-20-301 et seq.;

14 (ii) Utility system managed or operated by a
15 nonprofit corporation under § 14-199-701 et seq.; and

16 (iii) Utility system owned or operated by a
17 municipality or by a consolidated utility district under the General
18 Consolidated Public Utility System Improvement District Law, § 14-217-101 et
19 seq.;

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

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

24 (i) Highway, interstate, freeway, street, or other
25 road;

26 (ii) Trail;

27 (iii) Bicycle trail; and

28 (iv) Sidewalk or other pedestrian facility;

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

33 (B) "Relocation" includes without limitation:

34 (i) Removing and reinstalling a utility facility,
35 including a necessary temporary utility facility;

36 (ii) Moving, rearranging, or changing the type of

1 existing utility facility;

2 (iii) Taking necessary safety and protective
3 measures; and

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

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

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

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

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

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

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

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

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

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

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

3 (A) Department shall:

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

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

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

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

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

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

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

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

21 (B) Utility shall:

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

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

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

30 (c) Reasonable cost estimates for the
31 relocation; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (b) Request a reasonable modification of the
6 schedule.

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

9 (A) An extraordinary event;

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

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

14 (ii) The utility facility was not located and marked
15 properly under the Arkansas Underground Facilities Damage Prevention Act, §
16 14-271-101 et seq.; or

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

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

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

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

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

31 (ii) Subject to a collection action.

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

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

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

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

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

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

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

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

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

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

36 (A) Inspect the relocation of the utility facility;

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

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

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

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

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

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

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

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

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

28 (A) Written notice of the extraordinary event; and

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

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

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

1
2 27-67-326. Relocation of utility facility – Rules.

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

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

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

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

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

16 (A) Clearly indicate:

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

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

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

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

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

27 (B) Discuss:

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

30 (ii) The expected cost of the relocation; and

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

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

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

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

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

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

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

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

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

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

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

15 (C) Include:

16 (i) The plan for the relocation;

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

19 (iii) A cost estimate for the relocation;

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

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

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

26 (i) An extraordinary event occurs; and

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

29 (B) The modification of a relocation agreement shall:

30 (i) Be documented in writing;

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

33 (iii) Be approved by both parties.

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

36 (A) Utility owner may submit an invoice for the

1 reimbursement of costs to the department upon completion of the relocation;
2 (B) Invoice for the reimbursement of costs for the
3 relocation shall reflect all costs and expenses incurred by the utility for
4 the relocation; and

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

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9 /s/J. Bryant

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12 **APPROVED: 4/16/25**
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