

1 State of Arkansas  
2 95th General Assembly  
3 Regular Session, 2025  
4

# A Bill

SENATE BILL 492

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

## For An Act To Be Entitled

8  
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.  
16  
17

## Subtitle

18  
19 TO AMEND THE LAW CONCERNING THE  
20 RELOCATION OF UTILITY FACILITIES; AND TO  
21 AMEND THE LAW CONCERNING THE  
22 ACQUISITION, CONDEMNATION, AND  
23 DISPOSITION OF REAL PROPERTY BY THE  
24 STATE HIGHWAY COMMISSION.  
25

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;

28                   (iv) Sidewalk or other pedestrian facility; and

29                   (v) Railway;

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

34           (B) "Relocation" includes without limitation:

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

1                   (ii) Moving, rearranging, or changing the type of  
2 existing utility facility;

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

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

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

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

14                   (7) "Utility" means a private, public, or cooperative utility  
15 that transmits or distributes communications, electricity, gas, liquids,  
16 steam, or sewerage by means of a utility facility;

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

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

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

24                   (9) "Utility facility" means a line, facility, or system of a  
25 utility that is used, is available for use, or was formerly used to transmit  
26 or distribute communications, electricity, gas, liquids, steam, water, or  
27 sewerage to the public.

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

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

36                   (A) Department shall:

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

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

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

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

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

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

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

16                  (v) Issue a work order to the utility to begin the  
17 relocation upon execution of a relocation agreement; and

18                  (B) Utility shall:

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

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

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

27                   (c) Reasonable cost estimates for the  
28 relocation; and

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

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

34                  (iii) Submit a monthly progress report to the  
35 department regarding the status of the relocation until the relocation is  
36 complete.

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

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

8       (d) If a utility other than a municipal utility system fails to follow  
9 the process established in the utility accommodation rules or the relocation  
10 agreement to complete the relocation within the time period stated in the  
11 relocation agreement, the department may do one (1) or both of the following:

12       (1) Withhold approval of a permit application for utility work  
13 occurring on the right-of-way of the department or the commission by the  
14 utility except for permits required to address an emergency; or

15       (2) Assess and collect from the utility a civil penalty under  
16 subsection (e) of this section for each day the utility fails to comply with  
17 the requirements stated in the utility accommodation rules or the relocation  
18 agreement.

19       (e)(1) The department may assess and collect from a utility other than  
20 a municipal utility system a civil penalty of five hundred dollars (\$500) for  
21 each business day the utility fails to:

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

24       (B) Comply with a relocation agreement to which the  
25 utility is a party, including completing the work according to the schedule  
26 in the relocation agreement.

27       (2) A civil penalty shall not be assessed under this subsection  
28 (e) for a delay that is the result of:

29       (A) An extraordinary event; or

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

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

34       (ii) The utility facility was not located and marked  
35 properly under the Arkansas Underground Facilities Damage Prevention Act, §  
36 14-271-101 et seq.

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

5           (B) Upon a finding that a civil penalty should be assessed  
6 under this subsection (e), the department shall issue an appropriate order to  
7 the utility.

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

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

13           (ii) Subject to a collection action.

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

17           (5) Moneys collected as civil penalties under this subsection  
18 (e) shall be paid into the State Highway and Transportation Department Fund  
19 and designated for use in a utility relocation grant and loan program to be  
20 established by the department for the purpose of providing a grant or loan to  
21 a small utility for a relocation that is nonreimbursable.

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

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

32           (3)(A)(i) If within ten (10) days of the receipt of written  
33 notice from the department under subdivision (f)(2) of this section, the  
34 municipal utility system provides the department with a list of three (3) or  
35 more approved engineers and three (3) or more approved contractors to perform  
36 the relocation or design specifications for the utility facility that is to

1 be relocated, the department shall enter into a contract only with an  
2 engineer or contractor contained in the list to perform the relocation.

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

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

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

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

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

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

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

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

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

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

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

1 to the relocation costs.

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

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

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

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

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

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

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

19  
20 27-67-326. Relocation of utility facility – Rules.

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

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

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

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

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

34 (A) Clearly indicate:

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



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

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

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

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

9                   (B) Discuss:

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

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

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

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

17                   (5)(A) The department shall provide the utility with a written  
18 report summarizing the decisions made and agreements reached during the  
19 meeting held under subdivision (a)(2)(A) of this section.

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

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

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

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

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

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

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

33                   (C) Include:

34                   (i) The plan for the relocation;

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

1                   (iii) A cost estimate for the relocation;  
2                   (iv) Deadlines for the commencement and completion  
3 of the relocation; and  
4                   (v) The estimated cost of reimbursement by the  
5 department for the relocation.

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

8                   (i) An extraordinary event occurs; and  
9                   (ii) Either party requests a modification to the  
10 relocation agreement.

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

12                   (i) Be documented in writing;  
13                   (ii) Include updated timelines, costs, or other  
14 relevant terms; and

15                   (iii) Be approved by both parties.

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

18                   (A) Utility owner may submit an invoice for the  
19 reimbursement of costs to the department upon completion of the relocation;

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

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

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