WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3440

By Delegates Linville and Westfall

[Introduced February 13, 2023; Referred to the Committee on Technology and Infrastructure then Finance]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-4-17f; relating to costs of relocating public utility facilities, lines, or systems for certain highway construction projects; identifying projects that are subject to this statute; providing for sharing of relocation costs between the utility and the Division of Highways; providing for expedient relocation of such facilities if they would impede a project; and, limiting recovery of costs in such instances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-17f. Water or wastewater utility relocation on state highway construction projects financed by certain federal sources.

(a) The relocation of water and/or wastewater utility lines, facilities, or systems is an integral part of highway improvements. Accordingly, the cost of relocating water and/or wastewater utility lines, facilities, or systems in connection with any federal-aid highway project is hereby declared to be a cost of highway construction.

(b) Subject to the provisions of §17-4-17d of this code, and notwithstanding any other provisions to the contrary, whenever the Commissioner of Highways determines that any utility lines, facilities, or systems or that are located upon, across, above, or under any portion of a state highway need to be relocated in order to accommodate a highway project funded, in whole or in part, from federal funding sources, the commissioner shall notify the utility owning or operating the utility line, facility, or system, which shall relocate the utility line, facility, or system in accordance with this article and in accordance with the cost-sharing provisions of this section.

(c) The utility shall bear none of any such relocation costs, and the Division of Highways shall bear 100 percent of any such relocation costs. The division’s share shall be paid out of the State Road Fund or paid with other eligible funds, within two years of completion of the highway project, and shall be considered a cost of the highway project: *Provided*, That nothing in this section shall alter or amend the responsibility of the division to pay for the cost of utility lines, facilities, or systems relocation when such costs are incurred to accommodate a highway project and such utilities maintain pre-existing property rights in their facilities’ present location.

(d) If, after receiving notice to proceed with the removal, relocation, or adjust, the utility fails to remove, relocate, or adjust the facility within schedule and duration of work submitted to the division by the utility, and causes direct contract damages pursuant to this article, the division can relocate the facility as an additional remedy. Any extra cost to move the facility over and above what would have been normally incurred by the utility is the responsibility of the utility as damages under this article and further cannot be recovered in a rate case before the Public Service Commission: *Provided*, That, the division may, at its option, require the utility to complete the removal, relocation, or adjust of the facility, but can reduce the amount of reimbursement agreed upon by the amount of contract damages directly caused by the delay: *Provided further*, That if the contract damages directly caused by the delay exceeds the amount of reimbursement agreed upon, the division may seek damages pursuant to §17-4-17b of this code.

NOTE: The purpose of this bill is to establish a cost-sharing procedure providing for sharing of relocation costs between a water or wastewater public utility and the Division of Highways on certain projects.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.