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]

1   A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,

2   designated §17-4-17f; relating to costs of relocating public utility facilities, lines, or systems

3   for certain highway construction projects; identifying projects that are subject to this

4   statute; providing for sharing of relocation costs between the utility and the Division of

5   Highways; providing for expedient relocation of such facilities if they would impede a

6   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.

1   (a) The relocation of water and/or wastewater utility lines, facilities, or systems is an

2   integral part of highway improvements. Accordingly, the cost of relocating water and/or

3   wastewater utility lines, facilities, or systems in connection with any federal-aid highway project is

4   hereby declared to be a cost of highway construction.

5   (b) Subject to the provisions of §17-4-17d of this code, and notwithstanding any other

6   provisions to the contrary, whenever the Commissioner of Highways determines that any utility

7   lines, facilities, or systems or that are located upon, across, above, or under any portion of a state

8   highway need to be relocated in order to accommodate a highway project funded, in whole or in

9   part, from federal funding sources, the commissioner shall notify the utility owning or operating the

10   utility line, facility, or system, which shall relocate the utility line, facility, or system in accordance

11   with this article and in accordance with the cost-sharing provisions of this section.

12   (c) The utility shall bear none of any such relocation costs, and the Division of Highways

13   shall bear 100 percent of any such relocation costs. The division's share shall be paid out of the

14   State Road Fund or paid with other eligible funds, within two years of completion of the highway

15   project, and shall be considered a cost of the highway project: *Provided*, That nothing in this

16   section shall alter or amend the responsibility of the division to pay for the cost of utility lines,

17   facilities, or systems relocation when such costs are incurred to accommodate a highway project

18   and such utilities maintain pre-existing property rights in their facilities' present location.

19   (d) If, after receiving notice to proceed with the removal, relocation, or adjust, the utility fails

20   to remove, relocate, or adjust the facility within schedule and duration of work submitted to the

21   division by the utility, and causes direct contract damages pursuant to this article, the division can

22   relocate the facility as an additional remedy. Any extra cost to move the facility over and above

23   what would have been normally incurred by the utility is the responsibility of the utility as damages

24   under this article and further cannot be recovered in a rate case before the Public Service

25   Commission: *Provided*, That, the division may, at its option, require the utility to complete the

26   removal, relocation, or adjust of the facility, but can reduce the amount of reimbursement agreed

27   upon by the amount of contract damages directly caused by the delay: *Provided further*, That if the

28   contract damages directly caused by the delay exceeds the amount of reimbursement agreed

29   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.