WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2804

(By Delegates Hrutkay, Crosier, Manchin and Martin)

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Passed March 10, 2007

In Effect Ninety Days from Passage
AN ACT to amend and reenact §17-4-17b of the Code of West Virginia, 1931, as amended, relating to time schedules for utility relocation on highway projects; placing liability and costs on the utility company for failure to comply with proper removal notice; allowing the division of highways to reimburse utility companies for subsequent relocations due to plan change after a project is let to construction; and providing for meetings between division of highways and utilities.

Be it enacted by the Legislature of West Virginia:

That §17-4-17b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-17b. Relocation of public utility lines on highway construction projects.

(a) Whenever the division reasonably determines that any
public utility line or facility located upon, across or under any
portion of a state highway needs to be removed, relocated or
adjusted in order to accommodate a highway project, the
division shall give to the utility reasonable notice in writing
as mutually agreed, but not to exceed eighteen months
directing it to begin the physical removal, relocation or
adjustment of such utility obstruction or interference at the
cost of the utility, including construction inspection costs and
in compliance with the rules of the division and the
provisions of article three, chapter twenty-nine-a of this code.

(b) If the notice is in conjunction with a highway
improvement project, it will be provided at the date of
advertisement or award. Prior to the notice directing the
physical removal, relocation or adjustment of a utility line or
facility, the utility shall adhere to the division’s utility
relocation procedures for public road improvements which
shall include, but not be limited to, the following:

(1) The division will submit to the utility a letter and a set
of plans for the proposed highway improvement project;

(2) The utility must within a reasonable time submit to
the division a written confirmation acknowledging receipt of
the plans and a declaration of whether or not its facilities are
within the proposed project limits and the extent to which the
facilities are in conflict with the project;

(3) If the utility is adjusting, locating or relocating
facilities or lines from or into the division’s right-of-way, the
utility must submit to the division plans showing existing and
proposed locations of utility facilities.

(4) The utility’s submission shall include with the plans
a work plan demonstrating that the utility adjustment,
location or relocation will be accomplished in a manner and
time frame established by the division’s written procedures
and instructions. The work plan shall specify the order and
calendar days for removal, relocation or adjustment of the
utility from or within the project site and any staging property
acquisition or other special requirements needed to complete
the removal, relocation or adjustment. The division shall approve the work plan, including any requests for compensation, submitted by a utility for a highway improvement project if it is submitted within the established schedule and does not adversely affect the letting date. The division will review the work plan to ensure compliance with the proposed improvement plans and schedule.

(c) If additional utility removal, relocation, or adjustment work is found necessary after the letting date of the highway improvement project, the utility shall provide a revised work plan within thirty calendar days after receipt of the division’s written notification of the additional work. The utility’s revised work plan shall be reviewed by the division to ensure compliance with the highway project or improvement. The division shall reimburse the utility for work performed by the utility that must be performed again as the result of a plan change on the part of the division.

(d) Should the utility fail to comply with the notice to remove, relocate or adjust, the utility is liable to the division for direct contract damages, including costs, fees, penalties or other contract charges, for which the division is proven to be liable to a contractor caused by the utility’s failure to timely remove, relocate or adjust, unless a written extension is granted by the division. The utility shall not be liable for any delay or other failure to comply with a notice to remove, relocate or adjust that is not solely the fault of the utility, including but not limited to the following:

(1) The division has not performed its obligations in accordance with the division’s rules;

(2) The division has not obtained all necessary rights-of-way that affect the utility;

(3) The division seeks to impose liability on the utility
(5) The division changes construction plans in any manner following the notice to remove or relocate and the change affects the utility’s facilities; or,

(6) Other good cause, beyond the control of and not the fault of the utility, including but not limited to, labor disputes, unavailability of materials on a national level, act of God, or extreme weather conditions.

(e) In order to avoid construction delays and to create an efficient and effective highway program, the division may schedule program meetings with the public utility on a quarterly basis to assure that schedules are maintained.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 3rd day of April, 2007.

Governor