

HB 2804
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FILED

2007 APR -3 PM 4: 26

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2804**

(By Delegates Hrutkay, Crosier, Manchin and Martin)



Passed March 10, 2007

In Effect Ninety Days from Passage

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FOR

H. B. 2804

(BY DELEGATES HRUTKAY, CROSIER, MANCHIN AND MARTIN)

[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.

1 (a) Whenever the division reasonably determines that any

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

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

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

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

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

30 (4) The utility's submission shall include with the plans
31 a work plan demonstrating that the utility adjustment,
32 location or relocation will be accomplished in a manner and
33 time frame established by the division's written procedures
34 and instructions. The work plan shall specify the order and
35 calendar days for removal, relocation or adjustment of the
36 utility from or within the project site and any staging property
37 acquisition or other special requirements needed to complete

38 the removal, relocation or adjustment. The division shall
39 approve the work plan, including any requests for
40 compensation, submitted by a utility for a highway
41 improvement project if it is submitted within the established
42 schedule and does not adversely affect the letting date. The
43 division will review the work plan to ensure compliance with
44 the proposed improvement plans and schedule.

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

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

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

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

69 (3) The delay or other failure to comply by the utility is
70 due to the division's failure to manage schedules and
71 communicate with the utility;

72 (4) The division seeks to impose liability on the utility

73 based solely upon oral communications or communications
74 not directed to the utility's designated contact person;

75 (5) The division changes construction plans in any
76 manner following the notice to remove or relocate and the
77 change affects the utility's facilities; or,

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

82 (e) In order to avoid construction delays and to create an
83 efficient and effective highway program, the division may
84 schedule program meetings with the public utility on a
85 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



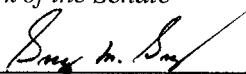
Chairman House Committee

Originating in the House.

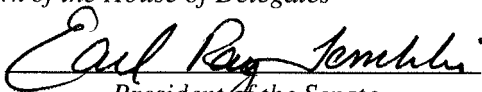
In effect ninety days from passage.



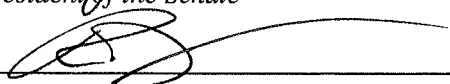
Clerk of the Senate



Clerk of the House of Delegates

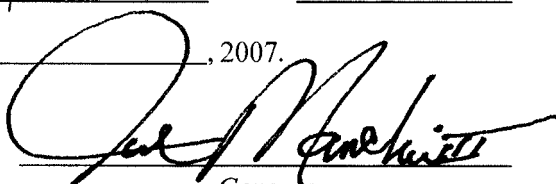


President of the Senate



Speaker of the House of Delegates

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



Governor

PRESENTED TO THE
GOVERNOR

MAR 26 2007

Time 3:50 pm