



PUBLIC WATER AND SEWER RELOCATION LEGISLATION OVERVIEW

On May 13, 2019, Governor McMaster signed S.401 into law. This bill is the culmination of many years of effort by SCRWA, SC AWWA-WUC, the SC Municipal Association, SC Associations of Counties, and the SC Association of Special Purpose Districts to include the relocation costs for public water and sewer lines associated with highway projects included in the highway project funding. The new law allows for the highway projects to pay for all relocation costs including design, materials, and construction. This will remove the burden of these costs from the utility provider's customers. There are some prerequisites for this to occur as briefly outlined below. We are working with SC DOT to work out the specific details of how all of this will transpire and SCRWA will provide further guidance in the near future. This is a significant win for all public utility providers and their customers.

Background

DOT has often experienced project delays due to the inability of smaller utilities identifying funding for relocations and to complete water and sewer line relocations in a timely manner. With the highway projects paying 100 percent of the relocation costs for the smaller utilities, these delays can be avoided. By making the payment contingent upon meeting the bid and schedule requirements, utilities have an incentive to communicate and coordinate actions with the entity undertaking the project.

Improved communication and coordination with large utilities is also an important advantage for the entity undertaking the project. Relocation costs can be avoided through early planning and design which can reduce overall project costs. This will aid in overall project delivery in a timely and cost-effective manner.

Under the new law, the relocation of public water or sewer lines within the ROW are treated much like those outside of the ROW. Smaller utilities will have all relocation costs paid. Larger utilities will have their costs paid up to the cap. The negative impact on customer rates is lessened. In addition, this structure gives the transportation improvement project a financial incentive to minimize or avoid relocating public water/sewer lines. This will result in lower overall project costs and improved schedule attainment which benefits everyone.

What It Means to You

The new relocation law will cover costs imposed on public water and sewer utilities (including not-for-profits, as defined in Charter 31, Title 33) for relocation of public water and/or sewer lines within DOT's right-of-way (ROW) when costs are necessitated by a transportation improvement project. It requires the transportation improvement project to bear the relocation costs for lines within the ROW and caps the amount paid by the project at no more than 4.5 percent of the original contract bid.

Small and Large Utilities Defined

For the purposes of this legislation, public utilities are grouped into two groups: (1) small utilities which have 10,000 or less water taps or sewer connections and serve a population of 30,000 or less; and (2) large utilities which have more than 10,000 water taps or sewer connections and serve greater than 30,000 population. The transportation project will pay 100 percent of the relocation costs for the small utilities. For large utilities, the project will pay the relocation costs but caps the amount paid by the project at no more than 4.0 percent of the original contract bid. If a small and large utility are affected by the same project, the cap goes to 4.5%, but the small utility gets all costs covered, which is subtracted from the 4.5%, while any remainder goes to cover the large utility.

What Relocation Projects Are Included?

The legislation includes transportation improvement projects undertaken by DOT, the State Infrastructure Bank, a County Transportation Committee, a county (including projects paid by a local option sales tax), and a city. The transportation project will not pay for the betterment of any public water or sewer lines. It only pays for the relocation of "like lines." It includes all costs for the project including design/engineering, procurement, and construction.

The relocation is placed under the control of the general contractor of the transportation improvement project which will improve communication and coordination between the general contractor and the public utility. However, a large public utility may opt out of placement under the general contractor, as long a memorandum of agreement is signed by the entity undertaking the project, the general contractor, and the public utility.

Eligibility Requirements

To be eligible for payment of the relocation, the public water or public sewer utility must meet the bidding and construction schedule established by the entity undertaking the transportation improvement project, such as design conferences and submittal of all relocation drawings and bid documents. All documents necessary for inclusion in the transportation improvement project (line locations, tech specs, and at least three preferred construction vendors, etc.) must be provided by the utility at least one hundred eighty days (180) prior to the receipt of bids for the project. However, if the transportation improvement project is under an accelerated schedule, then the entity undertaking the project shall notify the utility of the date by which the documents must be provided. Failure to meet the bidding and construction schedule requirements shall result in the utility having to bear all relocation costs, except if the delay is due to an event beyond the control of the utility.

Seven Year Sunset Clause

The legislation includes the reporting of metrics of the program by DOT in its annual report to the legislature. The legislation also includes a 7-year sunset, but gives time for evaluation and possible extension or removal of the sunset.

When Does it Become Effective?

The legislation was signed into law yesterday (May 13, 2019) and became effective upon the Governor's signature.