

State DOT Authorized to Pay Full Costs of Utility Relocations

In what could be a significant benefit to municipal utilities affected by state road projects – or not – the General Assembly has passed legislation authorizing the Commissioner of Transportation to reimburse public and private utilities the full costs of relocating caused by state road projects. The Act (Chapter No. 86, Public Acts of 2003) was pushed by the Tennessee Association of Utility Districts and takes effect September 1, 2003. The catch is that the Act is subject to funding. If funding is not forthcoming, then the common law rule that utilities are responsible for their own relocation costs would apparently prevail.

The new law provides two (2) methods utilities may use to take advantage of the state's potential generosity: (1) The utility may enter into a written agreement with the Commissioner to include the relocation costs as a part of the Department's highway construction contract, or (2) the utility may enter an agreement that the utility will remove all facilities that the Department wants moved before the Department lets the construction contract. In this latter scenario, the utility will be reimbursed for the cost of the relocation work it has undertaken if the Department does not undertake the project within a specified time. In either case, the utility will be responsible for inspecting all phases of the relocation to ensure compliance with all specifications and safety codes.

Before making the decision about how the relocation will be done, however, the utility must mark the location of the utility's facilities on the project plans provided by the Department. The utility must then prepare and submit to the Department the utility's relocation plan, its cost estimate, and the schedule for completing the relocation within specified allowed times.

The Department will make no reimbursement until the Commissioner is satisfied that the relocation has been performed in accordance with the plans and the schedule of calendar days approved by the Department. This Act also requires the utility to reimburse the Department to the extent the Department is not compensated from federal funds for the relocation costs.

This Act prohibits any funds for utility relocation from being expended by the Department unless they are specifically appropriated in the appropriations act. Whether that will happen remains to be seen.