**A** **BILL**

TO AMEND ARTICLE 5, CHAPTER 5, TITLE 57 OF THE 1976 CODE, RELATING TO THE CONSTRUCTION OF THE STATE HIGHWAY SYSTEM, BY ADDING SECTION 57-5-880, TO PROVIDE THAT AN ENTITY UNDERTAKING A TRANSPORTATION IMPROVEMENT PROJECT SHALL BEAR THE COSTS RELATED TO RELOCATING WATER AND SEWER LINES; TO PROVIDE THE REQUIREMENTS FOR UTILITIES TO BE ELIGIBLE FOR RELOCATION PAYMENTS; AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 5, Chapter 5, Title 57 of the 1976 Code is amended by adding:

“Section 57‑5‑880. (A) For the purposes of this section:

(1) ‘Betterment’ means any upgrade to a facility being relocated that is made solely for the benefit of the public water system and is not attributable to the improvement, construction, reconstruction, or alteration of roads, streets, or highways undertaken by the department.

(2) ‘Costs related to relocating water and sewer lines’ means the amount attributable to the relocation, less the amount of any betterment made to the system. Costs related to relocating water and sewer lines include, but are not limited to, right‑of‑way acquisition to accommodate the relocated utility when in the best interests of the transportation improvement project, design, engineering, permitting, removal, installation, inspection, materials, and labor costs.

(3)(a) ‘Large public water utility’ means a public water utility that does not meet the definition of a small public water utility.

(b) ‘Large public sewer utility’ means a public sewer utility that does not meet the definition of a small public sewer utility.

(4) ‘Public highway system’ means:

(a) the state highway system as defined in Section 57‑5‑10;

(b) roads, streets, and highways under the jurisdiction of a county or municipality; and

(c) bridges, tunnels, overpasses, underpasses, interchanges, and other similar facilities located throughout the State.

(5) ‘Public water system’ has the same meaning as in Section 44‑55‑20(13).

(6) ‘Public sewer system’ means a sewer system that provides sewer services to the public that is publicly owned or owned by a private, not for profit entity.

(7) ‘Relocating’ or ‘relocated’ means the adjustment necessitated by a transportation improvement project of a public water system or public sewer system facility by removing and reinstalling the facility; a move, rearrangement, or change of the type of existing facilities; necessary safety and protective measures; and the construction of a replacement facility that is both functionally equivalent to, but not including any betterment of, the existing facility and necessary for continuous operation of the system’s service.

(8)(a) ‘Small public water utility’ means a public water utility that has ten thousand or fewer water taps and serves a population of thirty thousand or less.

(b) ‘Small public sewer utility’ means a public sewer utility that has ten thousand or fewer sewer connections and serves a population of thirty thousand or less.

(9) ‘Transportation improvement project’ or ‘project’ means a permanent improvement, construction, reconstruction, or alteration to the public highway system undertaken by a state or local government entity, or a political subdivision.

(B)(1) An entity undertaking a transportation improvement project must bear the costs, according to the schedule prescribed in subsections (C) and (D), related to relocating water and sewer lines:

(a) that are maintained and operated by a public water system or a public sewer system and are located within the rights‑of‑way for a transportation improvement project; and

(b) that must be relocated to undertake the project.

(2) To be eligible for payment of the relocation costs, the relocation must be placed under the control of the general contractor for the transportation improvement project, unless the public water or public sewer system opts out of placing the relocation under the control of the general contractor according to subsection (F).

(3) 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. Failure to meet the schedule requirements shall result in the utility having to bear all relocation costs, except when the delay is due to an act of God.

(C) For a small public water utility or a small public sewer utility, the transportation improvement project shall bear all of the relocation costs, including design costs. In determining whether a public utility offering water or sewer services qualifies as a ‘small’ utility, the number of water taps and sewer connections shall be counted separately and shall not be combined.

(D) Subject to subsection (E) below, for a large public water utility or a large public sewer utility, the transportation improvement project shall bear all of the relocation costs, including design costs, up to four percent of the original construction bid amount of the transportation improvement project. Should more than one large public water utility or large public sewer utility be required to relocate by a single transportation improvement project, the total cost share of up to four percent under this section shall be divided pro rata among the large public water or public sewer utilities required to relocated under the project.

(E) For a transportation improvement project that impacts both a large public utility and a small public utility, the entity undertaking the transportation improvement must pay all of the small public utility’s relocation costs, without limitation. The entity must also pay up to four and one-half percent, minus the costs of the small public utility’s relocation costs, of the original construction bid amount of the transportation improvement project toward the large public entity’s relocation costs. Illustration: for a $1 million transportation project where a small water utility faces $22,000 in relocation costs and a large sewer utility faces $50,000 in relocation costs, the small utility would receive its full $22,000 in relocation costs and the large utility would receive 4.5% of the project costs ($45,000) less the small utility reimbursement costs ($22,000) = $23,000 toward its relocation costs.

(F) A large public water utility or a large public sewer utility may choose not to have the relocation placed under the control of the general contractor, provided that a memorandum of agreement outlining meeting requirements and other milestones that the public utility must meet is agreed upon by the entity undertaking the transportation improvement project, the general contractor, and the public utility. A decision by the large public water utility or large public sewer utility to not have the relocations placed under the control of the general contractor must be communicated in writing to the entity undertaking the transportation improvement project prior to the initiation of preliminary engineering for the project. Failure to meet the memorandum of agreement requirements and schedule shall result in the utility having to bear all relocation costs.

(G) Nothing herein shall prohibit or limit the payment by the transportation improvement project for the relocation of public water or public sewer lines necessary for the transportation improvement project when the public utility has a prior right to situate the water or sewer lines in their present location.”

SECTION 2. This act shall apply to all transportation improvement projects that have not had funds authorized for preliminary engineering by the effective date of this act.

SECTION 3. This act takes effect upon approval by the Governor.

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