COMMITTEE REPORT

April 25, 2019

**S. 401**

Introduced by Senators Campbell and Scott

S. Printed 4/25/19--H.

Read the first time April 2, 2019.

**THE COMMITTEE ON EDUCATION AND PUBLIC WORKS**

To whom was referred a Bill (S. 401) 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, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

MERITA A. ALLISON for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Amended by the Senate on March 27, 2019**

**State Expenditure**

This bill requires an entity that undertakes a transportation improvement project to bear the costs related to relocating water and sewer lines, up to four percent of the original construction bid amount for a large public water utility or large public sewer utility. In addition, DOT must include metrics on utility relocation in its annual accountability report.

DOT indicates that the bill could increase recurring other funds expenses by $12,900,000 annually, beginning in FY 2019-20. This estimate is based upon project costs for future projects. Further, DOT indicates that expenses will depend upon the actual projects for which the agency is able to contract in a given year.

**Local Expenditure**

The Revenue and Fiscal Affairs Office surveyed twenty-three county governments regarding the expenditure impact of this amendment. We received responses from three county governments.

Florence County does not own a water or sewer system. Therefore, this bill will have no expenditure impact on Florence County.

Lancaster County indicates that most of its road projects are limited to resurfacing or initial paving, and the county usually does not participate in widening projects where a utility line may have to be relocated. Therefore, the bill will have no expenditure impact on Lancaster County.

Charleston County references ten featured projects and an estimate of unallocated money for the next eleven years to which this bill would apply. The value of the ten projects is approximately $678,000,000, and the percentage of the unallocated money that will be allocated to Charleston County road projects is estimated to be $62,370,000. The county indicates that the four percent threshold applies to these ten projects. Therefore, the expenditure impact of these projects is estimated to be approximately $29,614,800 to the county.

In addition, Charleston County has an additional ongoing project that will not cost the full four percent authorized by this bill. From the $725,000,000 project total, the expenditure impact will be approximately $10,000,000 to $12,000,000, bringing the total expenditure impact to the county to between $39,614,800 and $41,614,800.

Due to the various combination of parties that may be affected, the expenditure impact of this bill on local governments cannot be estimated. Determination of the expenditure impact is further complicated, because increased costs and savings depend upon the specific project plans and their costs as well as the existence of prior rights.

**Introduced on January 22, 2019**

**State Expenditure**

This bill requires an entity that undertakes a transportation improvement project to bear the costs related to relocating water and sewer lines, up to four percent of the original construction bid amount for a large public water utility or large public sewer utility.

DOT indicates that the bill could increase recurring other funds expenses by $12,900,000 annually, beginning in FY 2019-20. This estimate is based upon project costs for future projects. Further, DOT indicates that expenses will depend upon the actual projects for which the agency is able to contract in a given year.

**Local Expenditure**

The Revenue and Fiscal Affairs Office surveyed twenty-three county governments regarding the expenditure impact of this amendment. We received responses from three county governments.

Florence County does not own a water or sewer system. Therefore, this bill will have no expenditure impact on Florence County.

Lancaster County indicates that most of its road projects are limited to resurfacing or initial paving, and the county usually does not participate in widening projects where a utility line may have to be relocated. Therefore, the bill will have no expenditure impact on Lancaster County.

Charleston County references ten featured projects and an estimate of unallocated money for the next eleven years to which this bill would apply. The value of the ten projects is approximately $678,000,000, and the percentage of the unallocated money that will be allocated to Charleston County road projects is estimated to be $62,370,000. The county indicates that the four percent threshold applies to these ten projects. Therefore, the expenditure impact of these projects is estimated to be approximately $29,614,800 to the county.

In addition, Charleston County has an additional ongoing project that will not cost the full four percent authorized by this bill. From the $725,000,000 project total, the expenditure impact will be approximately $10,000,000 to $12,000,000, bringing the total expenditure impact to the county to between $39,614,800 and $41,614,800.

Due to the various combination of parties that may be affected, the expenditure impact of this bill on local governments cannot be estimated. Determination of the expenditure impact is further complicated, because increased costs and savings depend upon the specific project plans and their costs as well as the existence of prior rights.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**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.

Amend Title To Conform

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 that 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, if in the best interests of the transportation improvement project, design, engineering, permitting, removal, installation, inspection, materials, and labor costs.

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

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

(5) ‘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.

(6) ‘Public sewer system’ means a sewer system that provides sewer services to the public and that is publicly owned or owned by a private, not-for-profit entity as defined in Title 33, Chapter 31.

(7) ‘Public water system’ means, for the purposes of this chapter, any publicly owned or privately owned not‑for‑profit, as defined in Chapter 31, Title 33, waterworks system that provides water, whether piped or delivered through some other constructed conveyance, for human consumption, including the source of supply, whether the source of supply is of surface or subsurface origin.

(8) ‘Relocating’ or ‘relocated’ means an 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; or the construction of a replacement facility that is both functionally equivalent to, but not including any betterment of, the existing facility that is necessary for the continuous operation of the system’s service.

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

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

(11) ‘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) Notwithstanding any encroachment permit conditions to the contrary, 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. All documents necessary for inclusion in the transportation improvement project must be provided by the utility at least one hundred eighty days 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.

(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.

(D) Subject to subsection (E), 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 relocate 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 utility’s 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. A decision by a 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 one hundred eighty days prior to the receipt of bids for the project. Failure to meet the project contract requirements and construction schedule shall result in the utility having to bear all relocation costs.

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

(H) The department shall include metrics on utility relocation under this section in its annual accountability report.”

SECTION 2. The requirements of Section 57‑5‑880, as added by this act, expire on July 1, 2026, unless otherwise extended by the General Assembly.

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

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