

House Bill 1342

By: Representatives McDonald III of the 26th, Jasperse of the 11th, Hawkins of the 27th,
Parsons of the 44th, Cox of the 28th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 6 of Chapter 6 of Title 32 of the Official Code of Georgia
2 Annotated, relating to regulation of maintenance and use of public road relative to public
3 utilities in general, so as to provide for procedures and remedies when a highway
4 improvement project is delayed due to the removal, relocation, or adjustment of utility
5 facilities; to provide for damages; to repeal provisions relative to mediation boards; to
6 provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Part 1 of Article 6 of Chapter 6 of Title 32 of the Official Code of Georgia Annotated,
10 relating to regulation of maintenance and use of public road relative to public utilities in
11 general, is amended by revising Code Section 32-6-171, relating to authority of department
12 to order removal, relocation, or adjustment of utility facilities, as follows:

13 "32-6-171.

14 (a) Any utility using, occupying, or adjacent to any part of a public road which the
15 department has undertaken to improve or intends to improve shall remove, relocate, or
16 make the necessary adjustments to its facility when, in the reasonable opinion of the

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17 department, the facility constitutes an obstruction or interference with the use or safe
18 operation of such road by the traveling public or when, in the reasonable opinion of the
19 department, the facility will interfere with such contemplated construction or maintenance.
20 In undertaking such removal, relocation, or adjustment, if the department has notified the
21 utility in writing that the facility constitutes an obstruction or interference with the
22 construction, use, or safe operation of the roadway, then the utility shall be exempt from
23 the requirements of Code Sections 22-1-10 and 22-1-10.1. Nothing in this Code section
24 shall be construed so as to deprive any utility relocated from a location in which it owned
25 a property interest of compensation for such interest.

26 (b) Whenever the department reasonably determines it necessary to have a utility facility
27 removed, relocated, or adjusted, the department shall give to the utility at least 60 days'
28 written notice directing it to begin the physical removal, or relocation, or adjustment of
29 such utility obstruction or interference. If such notice is part of a highway improvement
30 project, it is ~~normally~~ shall be provided at the date of advertisement or award; provided,
31 however, that. ~~However,~~ prior to the notice directing the physical removal, relocation, or
32 adjustment of a utility facility, the utility and the department shall adhere to the
33 department's utility relocation procedures for public road improvements which shall
34 include but not be limited to the following:

35 (1) The department's submission ~~by the department~~ to the utility of a letter and set of
36 preliminary plans for the proposed highway improvement project and the utility's
37 submission to the department of written confirmation acknowledging receipt of the plans;
38 (2) The utility's submission to the department of plans showing existing and proposed
39 locations of facilities within a reasonable time as specified by the department in the letter
40 required under paragraph (1) of this subsection; provided, however, that the time
41 specified by the department shall not be sooner than 30 days and shall not be greater than
42 120 days. If the utility fails to submit to the department the plans within the allotted 120
43 days, the department may no longer be required to pay the costs of removal, relocation,

44 or adjustment as prescribed in subsection (b) of Code Section 32-6-170 even if those
45 costs had previously been included in the contract between the department and the
46 department's contractor; instead, such costs shall be borne by the utility; and
47 (3) The utility's submission for department approval shall include with the plans a work
48 plan in a manner and time frame established by the department's written procedures and
49 instructions. No work plan shall be approved when, in the reasonable opinion of the
50 department, it causes a highway improvement project to be delayed beyond the
51 completion time frames established by the department. If the utility fails to submit an
52 acceptable work plan, the department shall give the utility written notice that if the utility
53 fails to submit an acceptable work plan within 30 days, the department will let the
54 proposed highway improvement project. The utility may be liable to the department or
55 its contractors for costs incurred by the department or its contractors for failure of a utility
56 to provide an acceptable work plan to the department. If the utility does not thereafter
57 begin removal, relocation, or adjustment within the time specified in the work plan, the
58 department may give the utility a final notice directing that such removal, relocation, or
59 adjustment shall commence not later than ten days from the receipt of such final notice.
60 If such utility does not, within ten days from receipt of such final notice, begin to remove,
61 relocate, or adjust the facility or, having so begun removal, relocation, or adjustment,
62 thereafter fails to complete the removal, relocation, or adjustment within the time
63 specified in the work plan, the department may exercise its right to obtain injunctive
64 relief as provided in Code Section 32-6-175. If utility removal, relocation, or adjustment
65 work is found necessary after the letting date of the highway improvement project, the
66 utility shall provide a revised work plan within 30 calendar days after becoming aware
67 of such additional work or upon receipt of the department's written notification advising
68 of such additional work. The utility's revised work plan shall be reviewed by the
69 department to ensure compliance with additional work. Once the removal, relocation, or
70 adjustment of a facility has started, if such removal, relocation, or adjustment falls behind

71 schedule by 20 percent or more than set forth in the approved work plan, the department
72 shall suspend the permit of such utility until such removal, relocation, or adjustment
73 progresses to at least 80 percent or more of the schedule set forth in the approved work
74 plan.

75 (c) In addition to the foregoing, the owner of the utility ~~may~~ shall be responsible for and
76 liable to the department or its contractors for documented damages resulting solely from
77 failure on the part of the utility to comply with requirements of the submitted and approved
78 work plan under the control of the utility. If the utility owner fails to provide a work plan
79 or fails to complete the removal, relocation, or adjustment of its facilities in accordance
80 with the work plan approved by the department, then the utility owner ~~may~~ shall be liable
81 to the contractor for delay costs incurred by the contractor and approved by the department
82 which are caused by or which grow out of the failure of the utility owner to carry out and
83 complete its work in accordance with the approved work plan or in a timely and reasonable
84 manner if a work plan or revised work plan was not submitted. Upon notification in
85 writing by the department or its contractors that the utility is liable for damages or delay
86 costs, the utility company shall have 45 days from receipt of such letter to ~~either pay the~~
87 ~~amount of the damages or delay costs to the department or its contractors or to request~~
88 ~~mediation as provided in subsection (d) of this Code section.~~ A utility owner shall not be
89 subject to the damages or delay costs authorized by this subsection when the utility owner
90 contracts with and reimburses the department to incorporate the removal, relocation, or
91 adjustment of such utility owner's facilities into the department's contract for the
92 development or construction of the highway improvement project.

93 ~~(d) The department's utility relocation procedures shall include, in addition to the~~
94 ~~provisions set forth in subsection (b) of this Code section, provisions for the establishment~~
95 ~~of mediation boards to hear and decide disputes that may arise between the department and~~
96 ~~the utility concerning (i) a work plan or revised work plan that has been submitted by the~~
97 ~~utility but not approved by the department; (ii) a contractor's claim for delay costs or other~~

98 ~~damages related to the utility's removal, relocation, or adjustment of its facilities; and (iii)~~
99 ~~any other matter related to the removal, relocation, or adjustment of the utility's facilities~~
100 ~~pursuant to this Code section. Such procedures shall include but not be limited to the~~
101 ~~following:~~

102 ~~(1) Each mediation board shall consist of one mediator who shall be designated by the~~
103 ~~department, one mediator who shall be designated by the utility, and an independent~~
104 ~~mediator who shall be mutually selected by the department's designee and the utility's~~
105 ~~designee and shall serve as the presiding officer of the mediation board;~~

106 ~~(2) The mediators shall hold a hearing with regard to each dispute that is submitted to~~
107 ~~the mediation board for resolution, shall provide notice of the hearing to each party~~
108 ~~involved in the dispute, and shall afford each party an opportunity to present evidence at~~
109 ~~the hearing; provided, however, that unless the parties otherwise agree, the provisions of~~
110 ~~Code Sections 50-13-13, 50-13-14, and 50-13-15, relating to proceedings in a contested~~
111 ~~case under the Georgia Administrative Procedure Act, shall not apply to the hearing~~
112 ~~before the mediation board;~~

113 ~~(3) The mediators shall decide each issue presented to the mediation board by a majority~~
114 ~~vote of the mediators;~~

115 ~~(4) The mediators shall issue a final decision in writing with regard to each dispute that~~
116 ~~is submitted to the mediation board for resolution and shall serve a copy of the final~~
117 ~~decision on each party involved in the dispute; and~~

118 ~~(5) All final decisions of the mediation board shall be subject to de novo review in the~~
119 ~~Superior Court of Fulton County by way of a petition for judicial review filed by the~~
120 ~~department or the utility within 30 days after service of the final decision.~~

121 ~~(e) The department shall promulgate reasonable regulations governing the mediation~~
122 ~~board, including the procedural rules governing the mediation of a contested case and the~~
123 ~~creation of a list of qualified mediators. The department shall consult with the Georgia~~

124 ~~Utilities Coordinating Council in the development of these regulations, and these~~
125 ~~regulations shall be adopted by the department on or before January 1, 2008."~~

126 **SECTION 2.**

127 All laws and parts of laws in conflict with this Act are repealed.