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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**2023 Senate Bill 270**

**Senate  
Amendment 2**

### BACKGROUND

Current law governs the process for the relocation of a utility facility<sup>1</sup> that is located within the right-of-way of a proposed state trunk highway improvement project (project). Key steps in this process are as follows:

- The Department of Transportation (DOT) notifies a utility facility owner (owner) of the project.
- The owner provides DOT with a work plan that verifies the location of each utility facility and includes a schedule of working days to accomplish the relocation.
- If DOT approves the work plan, DOT notifies the owner of the date on which the owner may proceed with relocation work.
- If a change in the project requires additional utility facility relocation, DOT must reimburse the owner for the additional work.

Under DOT's administrative rules, if an owner fails to provide a work plan or fails to complete a relocation in accordance with an approved work plan, the owner is liable to the contractor for delay costs and liquidated damages incurred by the contractor which are caused by or which grow out of failure of the owner to complete its work in accordance with the approved work plan.

### 2023 SENATE BILL 270

2023 Senate Bill 270 addresses responsibility for costs incurred as a result of a utility relocation delay.<sup>2</sup> The bill establishes in statute a modified version of the administrative rules described above, and amends the administrative code to reflect that revised process. Under the bill, this process is as follows:

- A contractor that incurs costs as a result of a utility relocation delay may file a damages claim with DOT, which must notify the owner of the receipt of a claim.
- The owner may provide additional information relating to the claim.
- If DOT determines that a utility relocation delay occurred, DOT must compensate the contractor for the costs incurred as a result of the delay and may not impose liquidated damages.

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<sup>1</sup> "Utility facility" means any pipe, pipeline, duct, wire line, conduit, pole, tower, equipment, or other structure, whether above ground or underground, used for the transmission, distribution, or delivery of electrical power or light, heat, water, gas, sewer, or telegraph or telecommunication services.

<sup>2</sup> "Utility relocation delay" means a change in operations of a contractor or the rescheduling of work by a contractor that is caused by the uncompleted relocation or adjustment of a utility facility located in the right-of-way, regardless of whether the relocation or adjustment of the utility facility is identified in a work plan submitted to DOT by the owner.

- The amount of compensation is calculated and paid in accordance with DOT's standard specifications for compensable delays.
- If the delay was caused by the owner's failure to complete a relocation in accordance with an approved work plan, the owner is liable to DOT for the compensation it paid to the contractor. The owner must make payment to DOT within 60 days after receiving notice of the amount owed. If the owner had responded to the notification from DOT that DOT had received a damages claim, the owner may request a contested case hearing, in which case any amount owed is stayed pending that appeal.
- The owner is not liable if the failure to complete a relocation was caused by circumstances outside of the owner's reasonable control.
- If an owner fails to pay DOT an amount owed, DOT may seek judicial remedies against the owner but may not consider amounts paid or owed in any other matter involving the owner.

Finally, the bill requires DOT to: (1) update its standard specifications for compensable delays to conform to changes made by the bill not later than the last day of the first month following the effective date of the bill; and (2) submit a report to the Joint Committee on Finance (JCF) within four years of the effective date of the bill detailing utility relocation damages claims received by DOT. Not later than six months after receiving the report, JCF shall make a recommendation to the Legislature regarding whether the changes made by the bill should be amended or repealed.

## **SENATE AMENDMENT 2**

Senate Amendment 2 makes the following changes to the bill. The amendment:

- Requires the owner to make payment to DOT within 90 days (rather than 60 days).
- Specifies that circumstances outside of the owner's reasonable control include a delay caused by another owner identified in the work plan or reliance on a third party to identify and verify the location of a utility facility requiring relocation and clarifies that the determination of whether circumstances are outside of the owner's reasonable control is determined by DOT upon consideration of any information that had been provided by the owner to DOT.
- Clarifies that an owner may not request a contested case hearing on DOT's decision that a delay was caused by the owner's failure to complete a relocation unless the owner had provided additional information upon being notified that DOT had received a damages claim. The amendment also requires that the request for the contested case hearing be made within 90 days after the owner receives notice of the amount owed, and that a hearing be scheduled.
- Clarifies that the prohibition on DOT imposing liquidated damages means liquidated damages for work required by the contract that is not completed within the contract time or within extra time allowed by DOT as a result of the utility relocation delay.
- Requires DOT to update its standard specifications not later than 60 days (rather than the last day of the first month) after the effective date of the bill.

## **BILL HISTORY**

Senator Tomczyk offered Senate Amendment 2 to Senate Bill 270 on August 22, 2023. On September 6, 2023, the Senate Committee on Transportation and Local Government voted unanimously to recommend adoption of Senate Amendment 2 and passage of Senate Bill 270, as amended.

For a full history of the bill, visit the Legislature's [bill history page](#).

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