COMMITTEE REPORT

February 20, 2018

**H. 3739**

Introduced by Reps. Loftis, Burns, Williams and Jefferson

S. Printed 2/20/18--H.

Read the first time February 14, 2017.

**THE COMMITTEE ON EDUCATION AND PUBLIC WORKS**

To whom was referred a Bill (H. 3739) to amend the Code of Laws of South Carolina, 1976, by adding Section 57‑5‑880 so as to define necessary terms, to provide that the Department of, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

\ 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 transportation improvement project.

(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, but does not include a repair made necessary by a public water or sewer facility.

(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. \

Renumber sections to conform.

Amend title to conform.

MERITA A. ALLISON for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 57‑5‑880 SO AS TO DEFINE NECESSARY TERMS, TO PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION SHALL BEAR COSTS, NOT TO EXCEED SEVEN AND ONE‑HALF PERCENT OF THE TOTAL PROJECT COSTS, FOR CONSTRUCTION PROJECTS OR IMPROVEMENTS, TO PROVIDE THAT THIS SECTION DOES NOT GRANT THE DEPARTMENT THE AUTHORITY TO PREVENT OR MATERIALLY LIMIT A PUBLIC WATER SYSTEM’S UTILIZATION OF PROPERTY LOCATED WITHIN A STATE TRANSPORTATION IMPROVEMENT PROJECT’S RIGHT OF WAY, AND TO PROVIDE THAT THE DEPARTMENT MAY ACQUIRE ADDITIONAL RIGHTS OF WAY TO FACILITATE THE LOCATION OF UTILITIES OUTSIDE OF RIGHTS OF WAY CURRENTLY CONTAINED IN THE PUBLIC HIGHWAY SYSTEM.

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 the facility being relocated that is made solely for the benefit of the public water system and is not attributable to 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, design, engineering, permitting, removal, installation, inspection, materials, and labor costs.

(3) ‘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.

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

(5) ‘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.

(6) ‘Relocating’ or ‘relocated’ means the adjustment of a public water system facility by removing and reinstalling the facility, including necessary temporary facilities; 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 a betterment of, the existing facility and necessary for continuous operation of the system’s service.

(7) ‘Transportation improvement project’ or ‘project’ means a permanent improvement, construction, reconstruction, or alteration to the public highway system, undertaken by the Department of Transportation, a county, or a municipality.

(B) An entity undertaking a transportation improvement project must bear the costs, not to exceed seven and one‑half percent of the total cost of the transportation improvement project, related to relocating water and sewer lines:

(1) 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

(2) that must be relocated to undertake the project or that are otherwise required by the department to relocate.

(C) Nothing contained in this section grants the department the authority to prevent or materially limit a public water system’s utilization of property located within a state transportation improvement project’s right of way for water and sewer construction, installation, maintenance, and operations.

(D) In conjunction with new road construction or the maintenance or reconstruction of existing roadways in the public highway system, the department may acquire additional rights of way to facilitate the location of utilities outside of rights of way currently contained in the public highway system. Additional rights of way acquired pursuant to this subsection shall be funded pursuant to an agreement entered into between the department and the utility desiring to utilize the newly acquired right of way.”

SECTION 2. This act takes effect upon approval by the Governor.

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