



SCWQA Utilities Relocation Bill Signed Into Law and In Effect June 2019

The SCWQA's legislation ([S 401](#)) requiring entities undertaking transportation improvement projects (TIPs) to bear the costs (including design costs) related to relocating public water and sewer lines, less the value of any betterments, was signed into law on May 13 and is now in effect. On May 21, it was officially assigned Act No. 36 of the 123rd General Assembly. This is a significant group accomplishment with our municipal partners made possible by the time and effort of many but especially Ed Saxon, Joey Jaco, Christy Everett, David Baize, Jay Nicholson, Charlie Gray, Jill Miller, along with lobbyists Eddie Twilley and Earl Hunter. Many, many thanks to them and to all of you for your active support over the past several years to make this program a reality.

This is not the end, but rather just the beginning in two ways. First, the legislation has a seven year sunset so we need to memorialize examples of how the law minimized (1) the need for relocations and (2) project delays in coordinating efforts by DOT and affected local water utilities.

A summary of what our new utility relocation funding law does is provided below.

Act No. 36 requires the TIP to bear the full relocation costs for small utilities (those with 10,000 or fewer water taps or sewer connections (counted separately) and which serve fewer than 30,000 in population). For larger utilities, the project will pay the relocation costs but cap the amount paid by the project at no more than 4.0% of the original contract bid. If a small and large utility are in the same project, the small utility's costs are 100% covered. Then, the large utility will be reimbursed up to 4.5% of the project costs less the amount paid first to cover the small utility's costs.

The law includes the reporting of program metrics by DOT in its annual report to the legislature. It will be essential that utilities capture the benefits from the law associated with each DOT/TIP-initiated relocation.

Advantages for Public Water and Sewer Utilities: In most cases, water and sewer lines that must be moved have not reached the end of their service life. The relocation adds no new capacity or new customers. For some utilities, capital must be diverted from other priority projects to pay for the relocation. Ultimately the utility's customers pay through higher service rates.

Under the new law, relocation of public water or sewer lines within the ROW are treated much like those outside of the ROW. Smaller utilities would have all relocation costs paid. Larger utilities would have their costs paid up to the 4.0 or 4.5% cap. The negative impact on customer rates is lessened. Also, this structure gives the TIP a financial incentive to minimize or avoid relocating public water/sewer lines. This will result in lower overall project costs – a benefit to everyone.

To be eligible for payment of the relocation costs, the public utilities must meet the TIP's bid and construction schedule. This involves the public utility very early in the project planning and design.

This provides both DOT and the utilities with the best opportunity to minimize/avoid relocation costs through project design.

Advantages for the Entity Undertaking the TIP: DOT has often experienced project delays due to the inability of small utilities to identify funding for relocation and to complete the relocation in a timely manner. If the project pays 100% of the relocation costs for the smaller utilities, the delay can be avoided. By making the payment contingent upon meeting the bid and schedule requirements, the utility has an incentive to communicate and coordinate its actions with the entity undertaking the TIP.

Improved communication and coordination with a large utility is also an important advantage for the entity undertaking the project. Relocation costs can be avoided through early planning and design which can reduce overall project costs. This will aid in overall project delivery in a timely and cost-effective manner.

The law applies to TIPs undertaken by DOT, the State Infrastructure Bank, a County Transportation Committee, a county (including TIPs paid by a local option sales tax), and a city. The TIP will not pay for the betterment of any public water or sewer lines.

The relocation is placed under the control of the general contractor of the TIP, which will improve communication and coordination between the general contractor and the public utility. However, a large public utility may opt out of placement under the general contractor, as long a memorandum of agreement is signed by the entity undertaking the TIP, the general contractor, and the public utility. Failure to meet the bid and construction schedule by the public utility can result in the utility bearing all relocation costs.