

State of Wisconsin



2023 Senate Bill 270

Date of enactment: **December 6, 2023**

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2023 WISCONSIN ACT 46

AN ACT to *renumber* 84.063 (1) (a) and 84.063 (1) (b); to *amend* 84.01 (31) and 84.062 (1) (L); and to *create* 84.063 (1) (c), 84.063 (1) (e), 84.063 (1) (g) and 84.063 (4m) of the statutes; **relating to:** damages claims relating to delayed relocation of utilities in a highway right-of-way and modifying administrative rules promulgated by the Department of Transportation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 84.01 (31) of the statutes is amended to read:

84.01 (31) ACCOMMODATION OF UTILITY FACILITIES WITHIN HIGHWAY RIGHTS-OF-WAY. Notwithstanding ss. 84.06 (4), 84.063, 84.065, and 84.093, the department may, upon finding that it is feasible and advantageous to the state, negotiate and enter into an agreement to accept any plant or equipment used for the conveyance, by wire, optics, radio signal, or other means, of voice, data, or other information at any frequency over any part of the electromagnetic spectrum, or to accept any services associated with the collection, storage, forwarding, switching, and delivery incidental to such communication, as payment for the accommodation of a utility facility, as defined in s. 84.063 (1) ~~(b)~~ (f), within a highway right-of-way. Any agreement under this subsection is exempt from ss. 16.70 to 16.75, 16.755 to 16.82, and 16.85 to 16.89, but ss. 16.528, 16.752, and 16.754 apply to such agreement.

SECTION 2. 84.062 (1) (L) of the statutes is amended to read:

84.062 (1) (L) "Project" means a project involving a highway improvement, as defined in s. 84.063 (1) ~~(a)~~ (d).

SECTION 3. 84.063 (1) (a) of the statutes is renumbered 84.063 (1) (d).

SECTION 4. 84.063 (1) (b) of the statutes is renumbered 84.063 (1) (f).

SECTION 5. 84.063 (1) (c) of the statutes is created to read:

84.063 (1) (c) "Contractor" means a person who is seeking or has entered into a highway improvement contract with the department under s. 84.06.

SECTION 6. 84.063 (1) (e) of the statutes is created to read:

84.063 (1) (e) "Owner" means an owner of a utility facility.

SECTION 7. 84.063 (1) (g) of the statutes is created to read:

84.063 (1) (g) "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 plan under sub. (3).

SECTION 8. 84.063 (4m) of the statutes is created to read:

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

84.063 (4m) UTILITY RELOCATION DELAY DAMAGES CLAIMS. (a) A contractor that incurs costs as a result of a utility relocation delay may file a utility relocation delay damages claim with the department.

(b) The department shall notify the owner of the relevant utility facility upon receipt of a claim under par. (a). The owner may respond to the claim by providing additional information related to the claim. The owner may not request a contested case hearing under par. (d) 2. unless the owner provides additional information under this paragraph.

(c) The department shall consider all information provided by the contractor under par. (a) and, if applicable, the owner under par. (b). If the department determines that a utility relocation delay occurred, the department shall compensate the contractor for costs incurred as a result of the utility relocation delay. The department may not impose liquidated damages for work required by the contract that is not completed within the contract time or within extra time allowed by the department as a result of the utility relocation delay. The amount of compensation under this paragraph shall be calculated and paid in accordance with the department's standard specifications for compensable delays.

(d) 1. If a utility relocation delay identified under par. (c) was caused by an owner's failure to complete a relocation in accordance with a work plan approved by the department under sub. (3), the owner shall be liable to the department for compensation paid to a contractor under par. (c). An owner shall not be liable under this subdivision when the failure to complete a relocation is caused by circumstances outside of the owner's reasonable control, as determined by the department upon consideration of any information provided by the owner to the department under sub. (3) or this subsection, including a delay caused by another owner identified in the work plan or reliance on a 3rd party to identify and verify the location of a utility facility requiring relocation. The department may not assess against the owner any fees, costs, or expenses in excess of the compensation paid under par. (c). Subject to subd. 2., an owner shall make payment to the department no later than 90 days after receiving notice of the amount owed.

2. Within 90 days after receiving an assessment notice under subd. 1., an owner may request a contested case hearing under s. 227.42 to review the decision of the department under subd. 1., and a hearing shall be scheduled if the owner previously responded to the claim as provided in par. (b). Any amount that the owner owes to the department under subd. 1. shall be stayed pending the contested case hearing.

3. If an owner fails to make payment of amounts owed to the department under this paragraph, the depart-

ment may seek remedy by filing a civil suit against the owner.

(e) The department may not consider amounts paid or owed under par. (d) when making a determination on an owner's permit application, amounts paid to the owner under sub. (4) (a) or s. 84.09, or any other matter involving the owner.

SECTION 9. Trans 220.06 (7) (c) of the administrative code is amended to read:

Trans 220.06 (7) (c) ~~If the owner fails to provide a work plan as provided in s. Trans 220.05, or fails to complete the alteration or relocation of its facilities in accordance with the work plan approved by the department as provided in s. Trans 220.05, the owner shall be liable to the contractor for all delay costs and liquidated damages incurred by the contractor which are~~ The department shall compensate the contractor for any costs caused by or which grow out of failure of the owner to carry out and complete its work in accordance with the approved work plan attributed to a utility relocation delay as defined in s. 84.063 (1) (g), Stats., and may not impose liquidated damages. The owner shall be liable, subject to the right to appeal the decision of the department as provided under s. 84.063 (4m) (d) 2., Stats., for compensation paid by the department to a contractor under this paragraph for a utility relocation delay, as defined in s. 84.063 (1) (g), Stats., that was caused by the owner's failure to complete a relocation in accordance with the work plan approved by the department as provided in s. Trans 220.05. The owner shall not be liable to the department or any other party for any delay if the owner's failure to complete the relocation in accordance with the work plan approved by the department was due to circumstances outside of the owner's reasonable control.

SECTION 10. Nonstatutory provisions.

(1) No later than 60 days after the effective date of this subsection, the department of transportation shall update its standard specifications for compensable delays to conform with the requirements under s. 84.063 (4m).

(2) No later than 4 years after the effective date of this subsection, the department of transportation shall submit a report to the joint committee on finance detailing utility relocation damages claims received by the department, including total claims received, claims denied, payments made to contractors, damages recovered from owners, the length and impact of delays, and net expenditures by the department. No later than 6 months after receipt of the report under this subsection, the joint committee on finance shall make a recommendation to the legislature as to whether s. 84.063 (4m) should be amended or repealed.