



State of Wisconsin  
2023 - 2024 LEGISLATURE

LRB-1867/1  
ZDW:klm

## 2023 SENATE BILL 270

May 8, 2023 - Introduced by Senators TOMCZYK, COWLES and TESTIN, cosponsored by Representatives STEFFEN, EDMING, BODDEN, GREEN, MAXEY, MURSAU, PLUMER, RETTINGER, SCHMIDT, SPIROS, SWEARINGEN, VANDERMEER and WITTKE. Referred to Committee on Transportation and Local Government.

1     **AN ACT** *to renumber* 84.063 (1) (a) and 84.063 (1) (b); *to amend* 84.01 (31) and  
2           84.062 (1) (L); and *to create* 84.063 (1) (c), 84.063 (1) (e), 84.063 (1) (g) and  
3           84.063 (4m) of the statutes; **relating to:** damages claims relating to delayed  
4           relocation of utilities in a highway right-of-way and modifying administrative  
5           rules promulgated by the Department of Transportation.

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### *Analysis by the Legislative Reference Bureau*

This bill creates a process for a highway improvement contractor to seek damages for project delays that are the result of an uncompleted relocation or adjustment of a utility facility located in the right-of-way of the highway. "Utility facility" means any pipe, pipeline, duct, wire line, conduit, pole, tower, equipment, or other structure used for transmission, distribution, or delivery of electrical power, light, heat, water, gas, sewer, telegraph, or telecommunication services.

Under current law, if a utility facility is within the right-of-way of a proposed highway project, the Department of Transportation must notify the owner, who must then provide DOT with a description and general location of each utility facility. DOT must then provide the owner with a set of plans for the proposed project. The owner must submit a work plan to DOT proposing any relocations or adjustments to utility facilities required by the proposed project. DOT must review work plans for compliance with permit requirements and, once approved, notify the owner when utility facility relocation work may begin.

Under the bill, a contractor that incurs costs as a result of a utility relocation delay may file a utility delay damages claim with the department. "Utility relocation

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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.

The bill requires DOT to notify the owner of the relevant utility facility upon receipt of a damages claim. The owner may respond to the claim by providing additional information related to the claim. DOT must consider all information provided and, if DOT determines that a utility relocation delay occurred, must compensate the contractor for costs incurred as a result.

Under the bill, if a utility relocation delay was caused by a utility facility owner’s failure to complete a relocation in accordance with an approved plan, the utility facility owner is liable to DOT for any compensation paid to a contractor as a result of a utility relocation delay. The owner must make payment to DOT within 60 days, subject to the right to appeal DOT’s determination. If the owner fails to make the required payment, DOT may seek remedy by filing a civil suit against the owner.

The bill requires DOT to submit a report to the Joint Committee on Finance within four years providing specified information about utility relocation damages claims received by DOT. Within six months of receipt of the report, JFC must make a recommendation as to whether the process created by the bill should be amended or repealed.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 84.01 (31) of the statutes is amended to read:  
2           84.01 (31) ACCOMMODATION OF UTILITY FACILITIES WITHIN HIGHWAY RIGHTS-OF-WAY.  
3           Notwithstanding ss. 84.06 (4), 84.063, 84.065, and 84.093, the department may, upon  
4           finding that it is feasible and advantageous to the state, negotiate and enter into an  
5           agreement to accept any plant or equipment used for the conveyance, by wire, optics,  
6           radio signal, or other means, of voice, data, or other information at any frequency  
7           over any part of the electromagnetic spectrum, or to accept any services associated  
8           with the collection, storage, forwarding, switching, and delivery incidental to such  
9           communication, as payment for the accommodation of a utility facility, as defined in  
10          s. 84.063 (1) ~~(b)~~ (f), within a highway right-of-way. Any agreement under this

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1 subsection is exempt from ss. 16.70 to 16.75, 16.755 to 16.82, and 16.85 to 16.89, but  
2 ss. 16.528, 16.752, and 16.754 apply to such agreement.

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

4 84.062 (1) (L) “Project” means a project involving a highway improvement, as  
5 defined in s. 84.063 (1) ~~(a)~~ (d).

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

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

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

9 84.063 (1) (c) “Contractor” means a person who is seeking or has entered into  
10 a highway improvement contract with the department under s. 84.06.

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

12 84.063 (1) (e) “Owner” means an owner of a utility facility.

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

14 84.063 (1) (g) “Utility relocation delay” means a change in operations of a  
15 contractor or the rescheduling of work by a contractor that is caused by the  
16 uncompleted relocation or adjustment of a utility facility located in the right-of way,  
17 regardless of whether the relocation or adjustment of the utility facility is identified  
18 in a plan under sub. (3).

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

20 84.063 (4m) UTILITY RELOCATION DELAY DAMAGES CLAIMS. (a) A contractor that  
21 incurs costs as a result of a utility relocation delay may file a utility relocation delay  
22 damages claim with the department.

23 (b) The department shall notify the owner of the relevant utility facility upon  
24 receipt of a claim under par. (a). The owner may respond to the claim by providing  
25 additional information related to the claim.

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1 (c) The department shall consider all information provided by the contractor  
2 under par. (a) and, if applicable, the owner under par. (b). If the department  
3 determines that a utility relocation delay occurred, the department shall compensate  
4 the contractor for costs incurred as a result of the utility relocation delay and may  
5 not impose liquidated damages. The amount of compensation under this paragraph  
6 shall be calculated and paid in accordance with the department's standard  
7 specifications for compensable delays.

8 (d) 1. If a utility relocation delay identified under par. (c) was caused by an  
9 owner's failure to complete a relocation in accordance with a work plan approved by  
10 the department under sub. (3), the owner shall be liable to the department for  
11 compensation paid to a contractor under par. (c). An owner shall not be liable under  
12 this subdivision when the failure to complete a relocation is caused by circumstances  
13 outside of the owner's reasonable control. The department may not assess against  
14 the owner any fees, costs, or expenses in excess of the compensation paid under par.  
15 (c). Subject to subd. 2., an owner shall make payment to the department no later than  
16 60 days after receiving notice of the amount owed.

17 2. An owner may appeal the decision of the department under subd. 1. as  
18 provided in s. 227.42 if the owner previously responded to the claim as provided in  
19 par. (b). Any amount that the owner owes to the department under subd. 1. shall be  
20 stayed pending the appeal.

21 3. If an owner fails to make payment of amounts owed to the department under  
22 this paragraph, the department may seek remedy by filing a civil suit against the  
23 owner.

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

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

5 ~~Trans 220.06 (7) (c) If the owner fails to provide a work plan as provided in s.~~  
6 ~~Trans 220.05, or fails to complete the alteration or relocation of its facilities in~~  
7 ~~accordance with the work plan approved by the department as provided in s. Trans~~  
8 ~~220.05, the owner shall be liable to the contractor for all delay costs and liquidated~~  
9 ~~damages incurred by the contractor which are~~ The department shall compensate the  
10 contractor for any costs caused by or which grow out of failure of the owner to carry  
11 out and complete its work in accordance with the approved work plan attributed to  
12 a utility relocation delay as defined in s. 84.063 (1) (g), Stats., and may not impose  
13 liquidated damages. The owner shall be liable, subject to the right to appeal the  
14 decision of the department under s. 227.42, Stats., for compensation paid by the  
15 department to a contractor under this paragraph for a utility relocation delay, as  
16 defined in s. 84.063 (1) (g), Stats., that was caused by the owner's failure to complete  
17 a relocation in accordance with the work plan approved by the department as  
18 provided in s. Trans 220.05. The owner shall not be liable to the department for any  
19 delay if the owner's failure to complete the relocation in accordance with the work  
20 plan approved by the department was due to circumstances outside of the owner's  
21 reasonable control.

22 **SECTION 10. Nonstatutory provisions.**

23 (1) No later than the last day of the first month following the effective date of  
24 this subsection, the department of transportation shall update its standard

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1 specifications for compensable delays to conform with the requirements under s.  
2 84.063 (4m).

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

11 (END)