
Wisconsin Legislative Council

ACT MEMO



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December 15, 2023

2023 Wisconsin Act 46
[2023 Senate Bill 270]

**Damages for Utility Relocation
Delays**

BACKGROUND

Wisconsin law provides a process for relocating a utility facility¹ 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.

A prior administrative rule promulgated by DOT provided that 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 WISCONSIN ACT 46

2023 Wisconsin Act 46 establishes a process for compensating costs a contractor incurred as a result of a utility relocation delay and addresses responsibility for these costs.² Under the act, 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 the claim. The owner may respond by providing 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 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 is calculated and paid in accordance with DOT's standard specification for compensable delays.

¹ "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.

² "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.

Under the act, 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 and the owner must make payment to DOT within 90 days after receiving notice of the amount owed.

Alternatively, the owner may request a contested case hearing within 90 days after receiving notice of the amount owed, but only if the owner provided additional information to DOT in response to DOT's notification to the owner that it had received a damages claim. If the owner requests a contested case hearing, any amount owed is stayed pending that appeal. If an owner fails to pay DOT an amount owed, DOT may seek remedy by filing a civil suit against the owner.

Under the act, an owner is not liable to DOT for compensation it paid to the contractor if the failure to complete a relocation was caused by circumstances outside of the owner's reasonable control, including 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. DOT determines whether circumstances are outside of the owner's reasonable control upon consideration of any information the owner has provided to DOT.

Finally, the act requires DOT to: (1) update its standard specifications for compensable delays to conform to changes made by the act not later than 60 days following the effective date of the act; 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 act should be amended or repealed.

Effective date: December 8, 2023

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

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