



# DAVID STEFFEN

STATE REPRESENTATIVE • 4<sup>TH</sup> ASSEMBLY DISTRICT

May 23, 2023

## Testimony to the Senate Committee on Transportation and Local Government on SB 270

Chairman Tomczyk and Committee Members:

Thank you for the opportunity to testify in support of Senate Bill 270 which will clarify and simplify the steps that take place when a highway construction project is delayed due to unreported or inaccurately marked utility infrastructure.

Today, if a transportation contractor has to delay their project because they run into utility infrastructure that has not been properly relocated, it is the job of the contractor to collect compensation from the utility to cover the costs associated with the delay. This results in litigation to resolve disputes between contractors and utilities. Consequently, contractors are incentivized to build potential risk costs into their project bids, resulting in higher costs to the taxpayers.

Senate Bill 270 simplifies this process by requiring the Wisconsin Department of Transportation to compensate the contractor in the event of a compensable utility-related delay in the project. This will ensure that projects move forward in a timely manner and eliminates the need for contractors to build in this additional cost within their bids. The WisDOT may then go through the process of collecting compensation from the responsible utility. The utility will have the ability to appeal this claim.

After four years under the new process created by SB 270, the WisDOT will provide a report related to this issue so that the legislature will have information and data to review and determine the effectiveness of this adjusted process.

I am very proud to have worked with Senator Tomczyk on this bill that will keep our state road construction projects on time and on budget. I am happy to answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "David Steffen".

David Steffen  
State Representative, 4<sup>th</sup> Assembly District



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# JAMES W. EDMING

STATE REPRESENTATIVE • 87<sup>TH</sup> ASSEMBLY DISTRICT

## Testimony in Support of Senate Bill 270

*Senate Committee on Transportation & Local Government*

Tuesday, May 23, 2023

Committee members, thank you for this opportunity to speak to you today in support of Senate Bill (SB) 270. I would like to thank Representative Steffen and Senator Tomczyk for bringing this legislation forward with me.

As I travel my district, one of the top concerns I hear about from folks is the need to invest more in our roads and bridges. I am sure that this is something that many of you have heard about from your constituents as well. We have made some great strides over the past few sessions on investing in our road and bridge infrastructure. However, we must also make sure the taxpayer dollars we are investing in transportation are being spent as efficiently as possible.

A few years ago, I was contacted by a road builder in my district with concerns about the issues that he and other roadbuilders were facing with delays caused by utilities. A short time later, he hosted my staff and me out at one of his company's job sites. While we were there, we were able to see several instances of utility-caused delays firsthand. For example, part of this road-building project was the construction of a storm water retention pond. We noticed that this retention pond was only about halfway finished. My constituent pointed out an electric utility pole near the unfinished pond and told us that the pole was supposed to have been moved weeks ago and they could not finish the pond until it was moved. We also had the opportunity to talk with one of the subcontractors on the project. They had been waiting several days on the relocation of utilities in order for them to begin work on their part of the project.

While contractors can seek compensation from utilities for delays in utility infrastructure relocation, this turns the contractors and utilities into adversaries. This often results in legal challenges and increased costs. To better insulate themselves from these increased costs, contractors are incentivized to build these costs into their bids increasing the costs of road-building projects for taxpayers. SB 270 would solve this problem by getting contractors out of the bill-collecting business and instead would have the Department of Transportation compensate contractors directly for utility-related delays.

Madam Chair and members, I ask for your support of SB 270 and thank you again for the opportunity to testify before you today.



**Wisconsin Department of Transportation**  
Office of the Secretary  
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Madison, WI 53705

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Secretary Craig Thompson  
[wisconsindot.gov](http://wisconsindot.gov)  
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**Testimony of Wisconsin Department of Transportation**  
**Assistant Deputy Secretary Joel Nilsestuen**  
**Before the Senate Committee on Transportation and Local Government**  
*May 23, 2023*

**RE: Senate Bill 270, 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.**

Thank you, Chairman Tomczyk, and members of the committee for having us before you today as you consider SB-270. Joining me today is Mr. Scott Lawry, Deputy Administrator of the Division of Transportation System Development, which oversees our highway program.

Delays incurred by utility relocates is an issue that impacts some construction projects and at WisDOT we are committed to being part of the solution. The department has been engaged with industry on this issue for several years. We believe that WisDOT, contractors, and utilities all have a responsibility to improve so that transportation projects are delivered in a way that increases safety, leads to timely project delivery, lowers service and cost impacts, and holds all parties accountable.

The primary change made by SB-270 is to transfer responsibility of seeking damages for utility-related project delays from the contractor to WisDOT. We recognize the desire for a mechanism to hold all parties accountable. We respect the concept of SB-270, but we also need to be good stewards of taxpayer funds and have the authority to effectively manage contracts.

WisDOT has engaged the road construction and utility industries on this issue, while also researching how other states approach utility coordination. From our analysis it is clear that a number of essential elements need to be added or changed in order for WisDOT to be more comfortable with the changes made by SB-270. I will detail these changes but will first ask Mr. Lawry to describe actions taken to improve utility coordination.

WisDOT wants to be part of the solution to improve utility coordination. We have taken action and have studied the approaches taken by other states. That research and our analysis of this legislation leads us to respectfully ask the committee to consider four changes to improve this proposal.

- Create a mechanism for WisDOT to receive damages from the utility should they be at fault for a delay. Such a mechanism is an essential component of how

other states manage utility coordination. It is also necessary so that WisDOT continues to be a good steward to taxpayer funding while limiting the need to sue in court.

- In section 9, removal of language regarding liquidated damages. WisDOT already adjusts contract time to reflect a delay due to utilities. As written, the language could be interpreted as no liquidated damages can occur on a project if a contractor is delayed, even if those damages were outside of a utility claim.
- In section 9, remove language that stipulates the utility owner shall not be liable if delays were outside the owner's reasonable control. WisDOT must be able to make this determination. Making accommodation for instances such as natural disasters is one thing, but losing the ability to manage the contract and the work required on our projects is quite another.
- In section 7, clarify the language that delay damages are on those items that control the overall project schedule. To extend to items other than controlling items undermines the structure of our specs and takes the onus off the contractor to put forward a viable schedule.

Thank you for your time and consideration today. We appreciate the committee's attention to this issue, and we stand ready to work with the bill authors and the committee to develop the changes the department feels are necessary to increase safety, add accountability, maintain timely project completion, and reduce service and cost impacts. We are happy to answer any questions that committee members may have.



**President**

JR Ramthun  
*Michels Road & Stone, Inc.*

**1st Vice President**

Brian Endres  
*Payne & Dolan, Inc.*

**2nd Vice President**

Dan Zignego  
*Zignego Companies*

**Past President**

Jeff Peterson  
*James Peterson Sons, Inc.*

**Treasurer**

Dan Weinkauf  
*Integrity Grading &  
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Neil Bakke  
*Mathy Construction Co.*

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*Edgerton Contractors, Inc.*

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*Zenith Tech, Inc.*

Josh Wade  
*Arbor Green, Inc.*

Travis Wise  
*Wingra Stone Co.*

**Executive Director**

Steve Baas

**Senate Committee on Transportation & Local Government  
WTBA Testimony in Favor of SB 270  
Elise Nelson, Director of Government Affairs – WTBA  
May 23, 2023**

Good afternoon. My name is Elise Nelson and I'm Director of Government Affairs at the Wisconsin Transportation Builders Association. We are a trade group working for Wisconsin's heavy highway contractors and their affiliates and represent more than 200 companies within our state's transportation industry.

Joining me today is Jodi Jensen, WTBA General Counsel, and Dan Sande, Manager of Gas and Electric Policy at WEC Energy Group. WEC Energy Group is Wisconsin's largest electric and natural gas utility serving more than 3 million customers. Recognizing that changes put forth by this bill have impacts on the utility industry, we worked hand in hand with WEC to ensure a workable solution for both industries involved. Jodi and Dan will help answer your questions about the implications of the bill at hand.

We thank you for considering SB 270 this afternoon and taking up such an important topic for Wisconsin's transportation industry.

The bill's authors already outlined current practice when contractors are authorized a "compensable delay" on a highway construction project. They also described the changes we've suggested to enhance that process for all involved. So I'll cut to the chase –

The bill before you today protects those doing the work, it protects the traveling public, and it protects the taxpayer. It does not change anything in terms of liability. Instead – it will reduce state highway project costs and create a safer work environment.

1. **Protecting those doing the work:** The bill encourages stronger coordination between utilities and DOT on the development and execution of their work plans. This will enhance the safety of our crews who are digging in the rights-of-way every day.

2. **Protecting the traveling public:** It's our belief that better coordination under the bill will reduce the number of utility conflicts – which will in turn shorten the length of time drivers must slow down through a work zone and navigate those orange cones.

3. Protecting the taxpayer: We are confident that by reducing litigation costs to contractors, taxpayers will ultimately save money. Why? By creating a more efficient and cooperative process on the front end, costs will be reduced on the back end and more companies will be willing to bid on projects. That competition will lead to lower-cost bids.

We've drafted a simple amendment to solve two issues that came up as we continued to work with utility stakeholders:

First, it clarifies that a utility shall not be held responsible for a delay caused by another utility – An example of a situation like this would be when the owner of an electric pole cannot move the pole because another utility has something attached to it.

Second – we're making the time consistent in which a utility must pay DOT when they're liable – changing the current language from 60 days to 90.

Shortly you'll hear first-hand from several of our members on the need for this legislation with examples from the field. But we're happy to answer any questions you may have at this time.

# Projects with Utility Conflicts

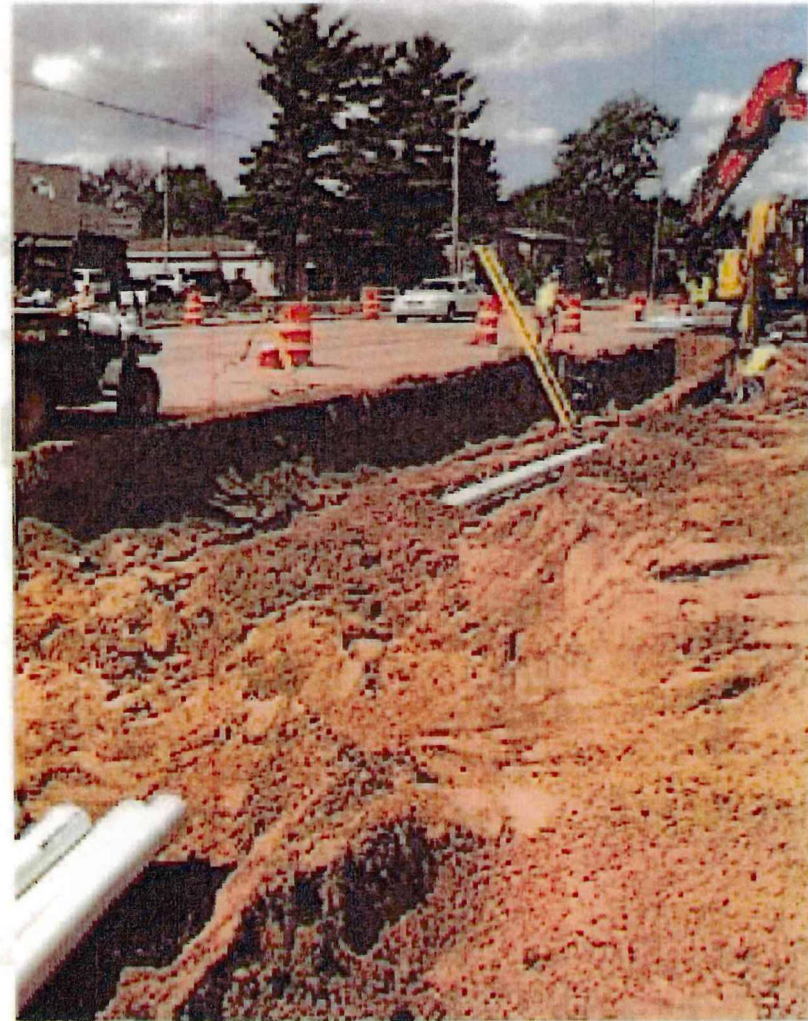


**WTBA Board of Directors May, 5 2020**



# Project: 6414-00-80

- **Company:** James Peterson, Sons
- **Utilities in conflict:** AT&T
- **Error:** Utility not moved
- **Description of Image:** Utility was not moved prior to construction





# Project: 2060-00-76

- **Company:** Musson
- **Utilities in conflict:** TDS, We Energies, AT&T, Municipality Water Main
- **Error:** Utility not moved and mismarked
- **Description of Image:**
  - Exposed facilities.
  - When lines are found that were either marked or not marked, workers are often left wondering weather the facility is live or dead.



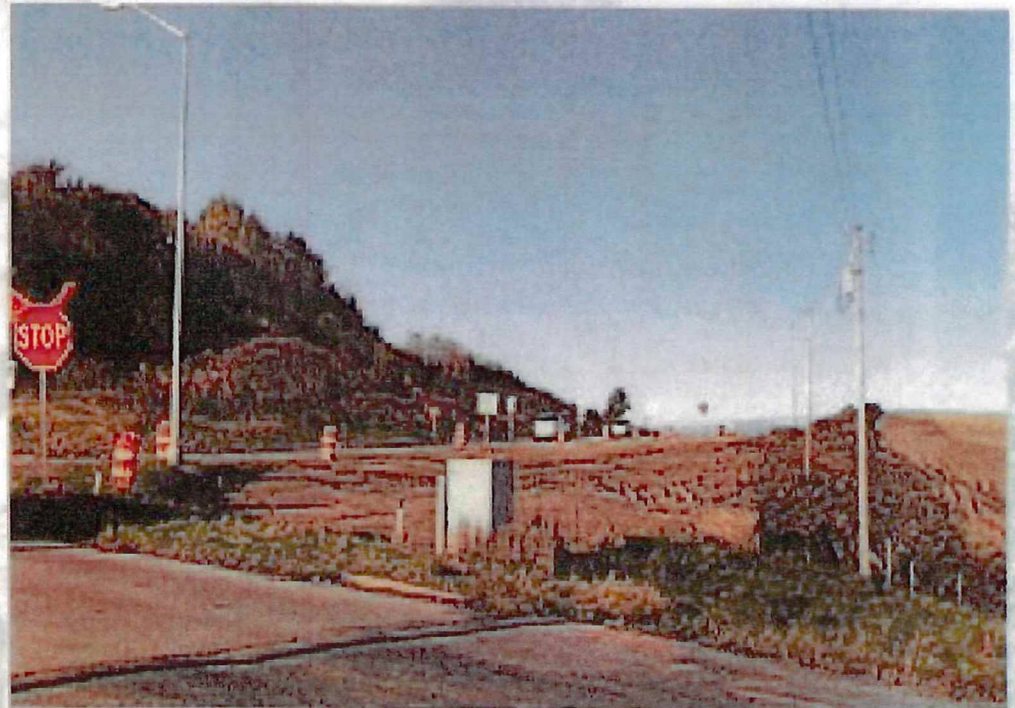
# Project: 6999-18-73

- **Company:** James Peterson Sons
- **Utilities in conflict:** WPS
- **Error:** Utility not moved
- **Description of Image:**
  - Facilities not moved prior to construction



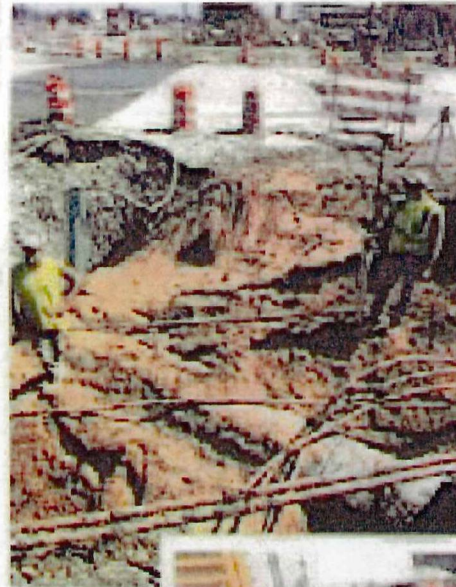
# Project: 5290-00-72

- **Company:**  
Zignego/James Peterson, Sons
- **Utilities in conflict:**  
Alliant Energy, MG&E  
CenturyLink
- **Error:** Utility not moved
- **Description of Image:**
  - Overhead facilities not moved prior to construction



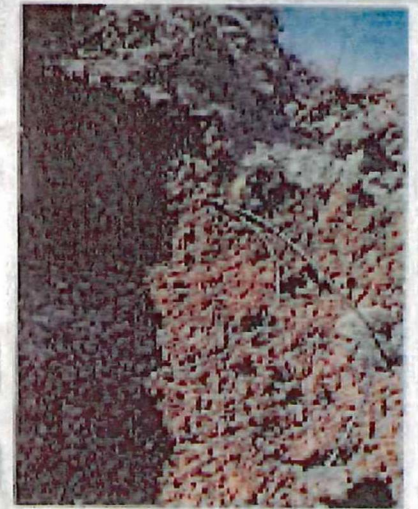
# Project: 1033-02-71

- **Company:**  
JPS/Zignego
- **Utilities in conflict:**  
AT&T, Charter, Mid  
West Fiber
- **Errors: Utility  
lines/conduit located  
too high. In the way  
of the pipe runs**



# Project: 6430-12-71 cond

- **Company:** JPS
- **Utilities in conflict:** WPS
- **Errors:** Supposed to be moved by start of construction, too high
- As of 4.1.20, still not moved, not marked at all, struck and found



# Project: 5849-02-02 con'd

- **Company:** Integrity Grading and Excavating
- **Utilities in conflict:** USIC/ ATT
- **Errors:** USIC didn't identify ATT Pack, treated the line as live, had to wait around



# Project: 5849-02-02

- **Company:** Integrity Grading and Excavating
- **Utilities in conflict:** USIC/ MG&E
- **Errors:**
  - The gas markings are 3-4 feet off.
  - Our crew found the actual gas without damage.



# Project: 1206-08-77

- **Company:** Integrity Grading and Excavating
- **Utilities in conflict:** USIC
- **Errors:** Did not identify gas or electrical lines or fiber lines on project





# Project: 2001 (non WisDOT)

- **Company:** IGE
- **Utilities in conflict:** WIN
- **Errors:** Relocate:  
**Bored through concrete storm sewer**



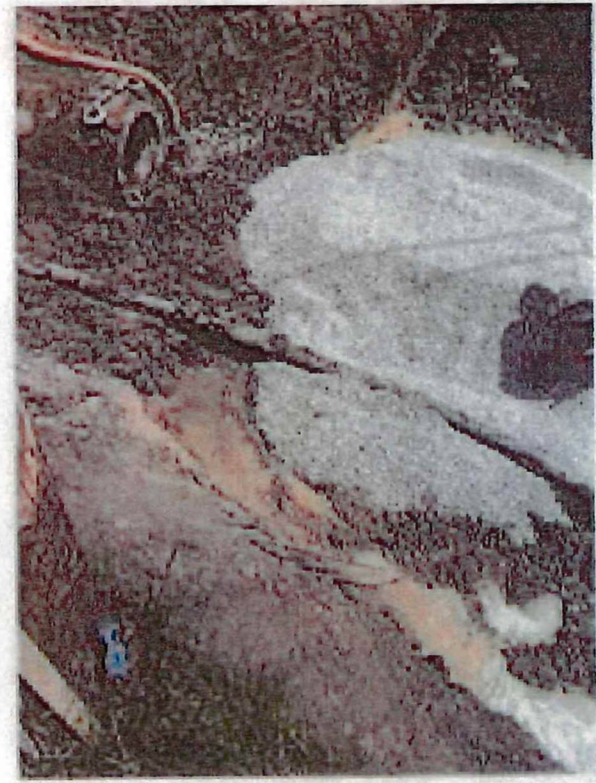
# Project: 2001 (non WisDOT)

- **Company: IGE**
- **Utilities in conflict: ATT/USIC**
- **Errors: Utility not located, as a result, struck, cut in half**



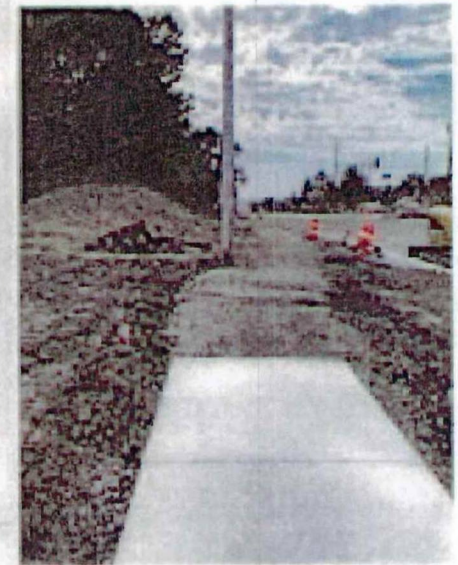
# Project: 2759-63-70

- **Company:** JPS
- **Utilities in conflict:**  
**AT&T**
- **Errors:** Not moved  
yet



# Project: 5992-09-26

- **Company: JPS**
- **Utilities in conflict: MG&E**
- **Errors: Light pole not removed**



# Project: 5992-09-26

- **Company: JPS**
- **Utilities in conflict: MG&E**
- **Errors: Electric Box is 3 feet above the subgrade**



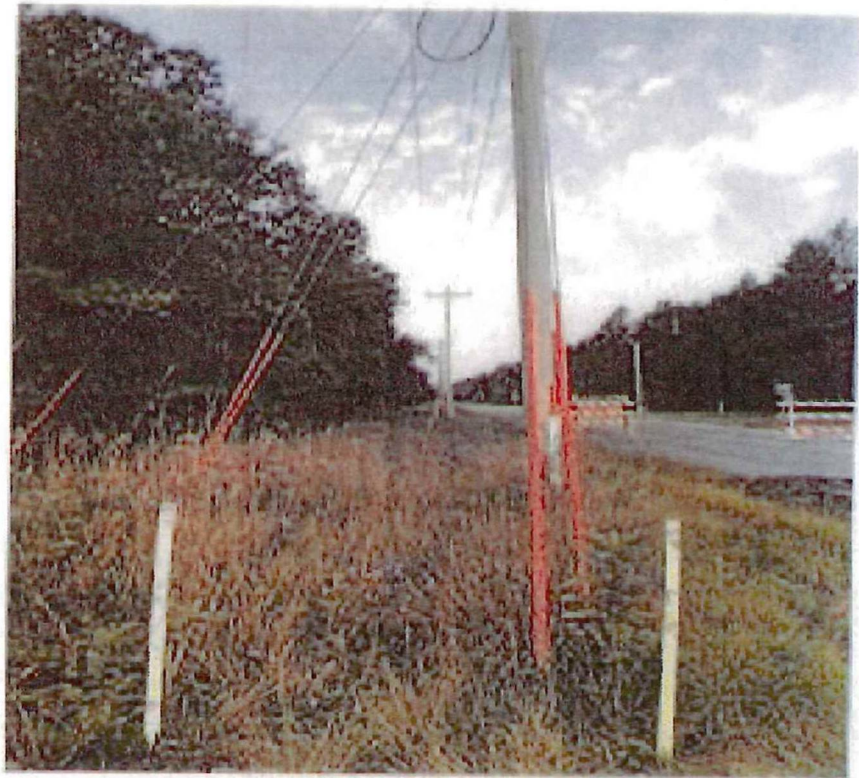
# Project: 5155-02-62

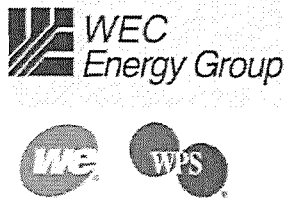
- **Company: JPS**
- **Utilities in conflict:  
Alliant Energy  
power**
- **Errors: Relocate:  
Electrical poles not  
moved prior to  
construction**



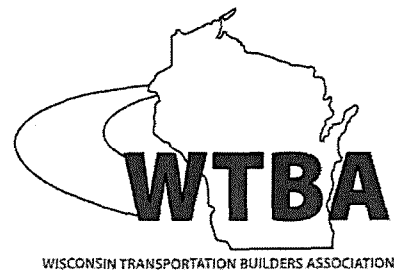
# Project: Adams Co. A57040-1

- **Company: JPS**
- **Utilities in conflict: Alliant**
- **Errors: Relocate issues, power pole is in the shoulder**





# WMC



**TO: Members of the Wisconsin State Legislature**

**FROM: WEC Energy  
Wisconsin Transportation Builders Association  
Wisconsin Manufacturers & Commerce**

**DATE: April 24, 2023**

**Re: Co-sponsor LRB 1867/1**

The safe and timely completion of Wisconsin's highway construction projects is important to the men and women who work in the transportation industry, those who own the underground utility infrastructure within work zones, the traveling public, and the Wisconsin taxpayers who are ultimately footing the bill. We therefore request your support for LRB 1867/1, which seeks to make process reforms at WisDOT that will benefit contractors, utilities, and the cost-effectiveness of our highway projects.

Currently, WisDOT can determine a contractor has experienced a "compensable delay" on a project when work is delayed because utility infrastructure is not moved according to the work plan set forth by WisDOT. However, under current law, the contractor must seek that compensation from the utility whose infrastructure is involved. This process places contractors and utilities in an adversarial position and often increases legal and procedural costs for both parties which then get built into the cost of the highway project.

To streamline this process and keep our highway contractors doing what they do best-- working on our roads and bridges-- and out of the bill collecting business, LRB 1867/1 would have WisDOT compensate contractors directly for utility-related delays, and would create a transparent, fair notification and appeals process for the owner of the utility infrastructure WisDOT alleges responsible for the delay.

We ask for your support of LRB 1867/1 and the improvements it makes to the way we build and pay for our roads.





P.O. Box 927  
Madison, WI 53701-0927  
Telephone (608) 283-1788  
Facsimile (608) 283-1709

To: Senate Committee on Transportation and Local Government Members  
From: Municipal Environmental Group – Water Division  
Date: May 23, 2023  
Re: Opposition to SB 270

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MEG – Water is an association of 73 municipal water systems which provides input on Wisconsin legislation and regulations that impact municipal water systems. MEG - Water opposes SB 270 as currently written.

SB 270 authorizes the DOT to decide whether to shift the costs for highway contractor utility relocation delay damages to a utility, subject to the utility's appeal rights. MEG - Water opposes granting this expansive – and expensive – authority to the DOT.

Because water pipes are typically located more than 6 feet underground and are more difficult to relocate than many other utilities, MEG - Water members are concerned that SB 270 will be used – either by the DOT or other utilities – to try and shift relocation delay costs to water utilities. If that is the case, water utilities (and their ratepayers) will be forced to incur costs to defend their relocations.

Water utilities take their responsibility to protect and relocate water utility facilities located in the public right-of-way seriously. The continued supply of safe water to residents depends upon it. Yet that does not mean that the relocation of water facilities always goes smoothly.

A water utility plans its relocation work based upon project plans provided by the DOT. If the DOT and its highway contractor subsequently modify the schedule for the project – as often happens – a water utility's relocation plans may need to be adjusted and this adjustment may result in a delay to the contractor's preferred work schedule.

Delays may also arise if a water utility needs to coordinate its relocations with other utilities. Since a water utility's facilities are located deeper in the right-of-way, there are often other utilities located above the water facilities that need to be moved first. If there is a delay in relocating utility facilities in that situation, who will the DOT determine is responsible?

The DOT should not be granted the authority to impose delay damages on a utility subject to appeal by the utility. The burden of proof should not be shifted to the utility to prove that they were not responsible for the delay.

MEG - Water asks you to oppose SB 270.

For further information, please contact MEG - Water's Legal Counsel, Lawrie Kobza at [lkobza@boardmanclark.com](mailto:lkobza@boardmanclark.com) or 608-283-1788.

Michael L. Gitter, P.E.  
Water Utility Director  
Nathaniel Tillis  
Wastewater Utility Director



Kenneth M. Scolaro, C.P.A.  
Administrative Manager  
Chad W. Regalia, P.E.  
Chief Engineer

May 22, 2023

Senate Committee on Transportation and Local Government  
P.O. Box 7882  
Madison, WI 53707

RE: Senate Bill 270

Please consider this letter as opposition to Senate Bill 270 introduced to the 2023-2024 Wisconsin State Legislature. 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 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 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.

I understand that the intent of the bill is to improve state DOT highway construction management efficiencies, and reduce project delays and thus costs. From the water utility perspective, I would agree with that goal. However, SB 270 will not effectively provide this desired output for the DOT. It is merely a tool for DOT to pass construction schedule delay costs to the local level, while increasing the administrative burden for all parties involved that will serve to increase overall costs.

Speaking from our water utility perspective, we do our best to comply with all DOT project requests and schedules and we are pretty good at completing our infrastructure relocation work on time. Unfortunately, construction projects are far from being well-defined and controllable. There is a myriad of reasons in which a project could be delayed, including unpredictable weather conditions, supply chain snags, or unforeseen issues that are not found until the subsurface is made visible. I also worry that applying the pressure of rushing to avoid potential penalties will lead to unsafe working conditions and injuries. The Racine Water Utility already has tremendous challenges in replacing local infrastructure and thousands of lead service lines. Adding additional costs for project delays as opined by the DOT will only increase our fiscal burden.

In conclusion, while I appreciate the DOT frustration and cost issues with project delays, I don't see SB 270 as fair as broadly described or as one-sided in terms of the claims process. I would assume that DOT has knowledge of specific service utilities that is most problematic. Yet, this bill would force our water utility to face costly claims and increased administrative time and expenses to react to such claims on any individual project out of our control, no matter how good our response record to date.

Sincerely,

Michael Gitter, P.E.  
Racine Water Utility Director

## Chapter Trans 220

### UTILITY FACILITIES RELOCATION

Trans 220.01 Purpose and scope.  
Trans 220.02 Applicability.  
Trans 220.03 Definitions.

Trans 220.04 Notification.  
Trans 220.05 Project and work plans.  
Trans 220.06 Responsibilities.

**Trans 220.01 Purpose and scope.** The purpose of this chapter is:

(1) To establish the administrative procedures for implementing s. 84.063, Stats., and to prevent delays to proposed state trunk highway improvement projects and contractor delay and expense due to uncertain scheduling of utility relocations.

(2) To define a process and scheduling procedure to deal with utility conflicts with state trunk highway construction and arrange for their timely resolution.

(3) To integrate the utility facility relocation process under s. 84.063, Stats., with several pre-existing statutes and regulations, including the following:

(a) The obligations of utilities and highway planners and contractors under s. 182.0175, Stats.;

(b) The obligations of utilities to pay the cost of protection or changes to utility facilities to accommodate highway work under s. 66.0831, Stats.; and

(c) The obligations of utilities to comply with the conditions of permits issued for the location of utilities within highways under s. 86.07 (2), Stats., and 23 CFR part 645 (April 1, 1993).

(4) To comply with federal law regarding utility accommodation when the project is on any right of way of any federal-aid highway and funded in whole or in part with federal funds (23 USC 109 (l) (1993)).

(5) To make it clear that this chapter is not applicable to railroad facility relocations or adjustments.

**History:** Cr. Register, February, 1994, No. 458, eff. 3-1-94; correction in (3) (b) made under s. 13.92 (4) (b) 7., Stats., Register March 2012 No. 675.

**Trans 220.02 Applicability.** (1) This chapter applies to state trunk highway improvement projects which have utility facilities located on them and are let for construction after this chapter has been published and for which the department has mailed the notification and plans prescribed in ss. Trans 220.04 and 220.05.

(2) The department shall begin sending the notification and plans prescribed in ss. Trans 220.04 and 220.05 for all state trunk highway improvement projects for which the design process is initiated after this chapter is published. The department will not be required to resend the notification and plans if it has already done so prior to this chapter being published.

(3) This chapter does not apply to the alteration or relocation of railroad facilities.

**History:** Cr. Register, February, 1994, No. 458, eff. 3-1-94.

**Trans 220.03 Definitions.** The definition of words and phrases in s. 84.063, Stats., apply to this chapter. In this chapter:

(1) "Business day" means any calendar day of the year exclusive of Saturdays, Sundays and legal holidays.

(2) "Calendar day" means any day of the year; if more than one day, it means any consecutive days of any year or years.

(3) "Compensable work" means utility facility alteration or relocation work for which the department will reimburse the utility facility owner under programs or policies of the department, including s. 84.295 (4m), Stats.

(4) "Contractor" means the person or entity that enters into an improvement project contract with the department under s. 84.06, Stats., and subcontractors or suppliers to the contractor.

(5) "Department" means the department of transportation or its agent.

(6) "Highway" has the meaning given in s. 340.01 (22), Stats.

(7) "Improvement" has the meaning given in s. 84.06 (1), Stats.

(8) "Letting date" means the date the department receives and opens bids for an improvement.

(9) "Mail" means a written transmittal, currently dated and sent to the addressee by regular or certified, return receipt requested United States postal service mail or other means.

(10) "Major reconditioning" means an improvement project which includes pavement resurfacing or minor reconditioning plus shoulder widening, ditch restoration, reduction of curvature or grades and intersection improvements.

(11) "Minor reconditioning" means an improvement project which includes pavement resurfacing, pavement widening, shoulder paving and intersection improvements.

(12) "Noncompensable work" means utility facility alteration or relocation work which the owner must carry out without cost to the department.

(13) "Owner" means the owner of a utility facility.

(14) "Project plan" means a plan for a highway improvement suitable for the design of utility facility alterations or relocations which the department sends to the owner.

(15) "Reconstruction" means an improvement project which rebuilds an existing facility and may include reducing curvature or grades and widening pavement and shoulders.

(16) "Resurfacing" means an improvement project which provides a new roadway surface on an existing pavement and may include minor base patching, intersection paving, shoulder gravel and selective beam guard.

(17) "State trunk highway" means any highway designated as part of the state trunk highway system pursuant to s. 84.02 or 84.29, Stats., exclusive of connecting highways.

(18) "Utility facility" includes cable services.

(19) "Work plan" means a plan of the owner to carry out utility facility alteration or relocation work to accommodate an improvement project of the department.

(20) "Working day" means a business day on which weather and other conditions not under the control of the owner will permit utility facility alteration and relocation work to proceed for at least 8 hours of the day with the normal working force of the owner engaged in performing the controlling item of work in accordance with the owner's approved work plan. In determining the normal working force of the owner, consideration shall be given for any diversion of the owner's working force that is required to respond to an emergency involving restoration of critical utility service.

**History:** Cr. Register, February, 1994, No. 458, eff. 3-1-94.

**Trans 220.04 Notification.** (1) The department shall make a reasonable effort to determine what utility facilities are located within the right of way of a proposed improvement project

by researching permit files, reviewing map files maintained by the department, field investigation or contact with one call locating services, and through contacts with local governmental units.

(2) The department shall identify the owner of facilities determined in sub. (1) by name.

(3) The department shall notify the owner of the proposed improvement by mail. The department may include a receipt of mailing form with the notification, in which case the owner shall complete the form and mail it back to the department within 7 calendar days of receipt.

(4) The notification shall include the name or route number, or both, of the highway, the geographical limits of the improvement, general description of the work to be done, desired date for completion of utility coordination and anticipated year of construction of the improvement.

(5) Within 60 calendar days of mailing the notification referred to in sub. (3), the owner shall provide the information specified in s. 84.063 (2) (b), Stats., by mail; that is, a description and the general location of each utility facility in the vicinity of the improvement. The utility shall reply whether or not it has facilities in the vicinity.

**Note:** Section 84.063 (2) (b), Stats., reads as follows:

(2) (b) *Within a specified period after the date the notice is received, the utility facility owner shall provide the department with a description and the general location of each utility facility in the proposed highway improvement right-of-way.*

**History:** Cr. Register, February, 1994, No. 458, eff. 3-1-94.

**Trans 220.05 Project and work plans.** (1) After the owner responds with the information specified in s. 84.063 (2) (b), Stats., the department shall mail the owner at least one set of the available project plan. The project plan shall show all existing utility facilities known to the department that are located in the right of way where they will conflict with the improvement.

(2) The department may include a receipt of mailing form. If a receipt of mailing form is sent, the owner shall complete the form and mail it back to the department within 7 calendar days of receipt.

(3) The project plan need only show those portions of the improvement which give the project location, the owner's existing utility facilities and how those facilities will be affected by the improvement. The department will also provide any additional and duplicate plan information needed by the owner to design and layout the removal, relocation or adjustment of existing utility facilities and the placement of relocated or additional facilities within the project limits.

(4) The owner shall provide the department with a work plan. The work plan shall be furnished within 60 calendar days after the date of mailing of the project plan by the department for resurfacing projects; within 90 calendar days for minor reconditioning projects; and within 120 calendar days for major reconditioning, reconstruction or new construction projects. Upon owner request or its own initiative, when the department determines there is a potential for conflict between work plans, the department will schedule a meeting that the owners are required to attend to coordinate the work. An additional 30 calendar days will be allowed to furnish the work plan if coordination is required with other utility facility owners or if the work is compensable.

(5) For noncompensable work, the work plan shall include, in addition to the information required in s. 84.063 (3) (b), Stats., a narrative description of what work will be done; whether the work is dependent on work by another owner; whether the work will be done prior to highway construction and which work will be necessary to coordinate with the work of the contractor; when the work will be started and the length of time in working days required to complete the work. A listing of approvals required by governmental agencies and the expected time schedule to obtain those approvals shall be provided. The project plan furnished by the department shall be reviewed by the owner to verify that the owner's utility facilities are shown. If the facilities are not shown, the

owner shall mark their location and return the marked up project plan to the department with a dated transmittal. If the utility facilities are shown, the owner shall advise the department by mail and need not return the project plan. For noncompensable work, the owner may also submit a request for a utility alteration or relocation loan pursuant to s. 84.065, Stats., and ch. Trans 30. If the owner's proposed relocated or additional utility facilities will be relocated within the highway right-of-way, a permit application may be submitted at the same time in accordance with "The Policy for the Accommodation of Utilities Within Highway Right-of-Way" of the department.

**Note:** A copy of this policy may be obtained at no cost upon request to the Division of Highways, Department of Transportation, P.O. Box 7916, Room 651, Madison, WI 53707-7916, telephone (608) 266-0233.

**Note:** Section 84.063 (3) (b), Stats., reads as follows:

(3) (b) *Within a specified period after receiving the project plans, the owner shall provide the department with a work plan. The period of time within which the owner is required to provide the department with a work plan shall reflect whether the utility facility owner is required to coordinate its work plan with another utility facility owner. The work plan provided by the owner shall include all of the following:*

1. *A copy of the project plans that verifies the location of all of the owner's existing utility facilities specified on the plans by the department and that identifies the owner's proposed location of relocated or additional utility facilities within the right-of-way of the proposed improvement.*

2. *A plan and a schedule of working days necessary to obtain any approval required by a governmental agency and to accomplish any proposed relocation or adjustment required by the proposed improvement.*

(6) For compensable work, in addition to the items specified in sub. (5), the work plan shall include an estimate of cost for utility facilities relocation including appropriate credits for betterments, used life and salvage. An executed conveyance of rights or quit-claim deed to the property occupied by the owner's facilities if one is required by the improvement project may be submitted at this time.

(7) The department shall review the work plan to ensure compatibility with permit requirements, the improvement plans and construction schedule, reasonableness of relocation scheme and reasonableness of cost for compensable work. If the work plan submitted by the owner is not compatible or reasonable, the department shall advise the owner by mail as soon as practicable. If sent through regular mail, the department may include a receipt of mailing form. If a receipt of mailing form is sent, the owner shall complete the form and mail it back to the department within 7 calendar days of receipt. The owner shall submit a revised work plan within 30 calendar days of receipt of advice by the department that the work plan is not compatible or reasonable. The department shall review the revised work plan and if the work plan is still not compatible or reasonable, the work plan revision process shall be repeated. When the work plan is compatible and reasonable, the department shall advise the owner by mail of its approval.

(8) The owner shall notify the department by mail within 15 calendar days of receiving all required approvals from government agencies.

(9) The department shall notify the owner by mail not less than 30 calendar days before the owner is required to begin the work provided for in the approved work plan. The department may include a receipt of mailing form which the owner shall complete and return within 7 calendar days of receipt.

(10) If the owner's approved work plan is dependent on work by the contractor, the contractor shall provide the department and the owner a good faith notice 14 to 16 calendar days before the work is expected to be complete and ready for the owner to begin its work. The contractor shall follow up with a confirmation notice to the department and the owner not less than 3 working days before the work will be ready for the owner to begin its work.

(11) The owner shall notify the department when its work has started. The owner shall complete its work within the time frame described in its work plan. The owner shall notify the department when the work is complete. Notices of work start and work completion shall be sent by mail within 15 calendar days of starting and completing the work, respectively.

(12) If, prior to the letting date of the highway improvement project, the department's project plan is changed so that additional utility relocation or adjustment work is found necessary, the department shall furnish a revised project plan per subs. (1) to (3), and the owner shall provide the department with a revised work plan per subs. (4) and (5), except that the time allowed for the owner to submit the revised work plan after receipt of the revised project plan shall not exceed 60 calendar days. Revisions to the project plan shall be identified to the owner.

(13) If, after the letting date of the highway improvement project, additional utility relocation or adjustment work is found necessary, the department shall notify the owner. The department and the owner shall agree on a revised work plan.

(14) If additional utility relocation or adjustment work is found necessary after the owner has been notified per sub. (9), refer to s. Trans 220.06.

**History:** Cr. Register, February, 1994, No. 458, eff. 3-1-94.

**Trans 220.06 Responsibilities.** (1) If the department requires additional work to a utility facility after the facility has been relocated or adjusted in accordance with a work plan approved by the department, the department shall bear the reasonable cost of the additional work.

(2) If the department requires relocation or adjustment of a noncompensable utility facility that was originally determined, per the work plan, to not need relocation or adjustment, the owner shall bear the cost of the relocation or adjustment.

(3) If the department requires relocation or adjustment of a compensable utility facility that was originally determined, per the work plan, to not need relocation or adjustment, the department shall bear the reasonable cost of the relocation or adjustment.

(4) The owner shall bear the cost of additional work to any portion of its facilities after the facilities have been relocated or adjusted in accordance with a work plan approved by the depart-

ment if the additional work is required by the department due to error by the owner in preparation of work plans for, field location of, or construction of the relocation or adjustment of its facilities.

(5) The contractor shall be responsible for compliance with s. 182.0175 (2), Stats., with respect to precautions to be taken to avoid and prevent damage to utility facilities.

(6) (a) The owner shall complete alteration or relocation of its utility facilities in accordance with the work plan approved by the department.

(b) The work shall be completed by the owner within the time frame of the approved work plan.

(7) (a) If the owner has complied with ss. 66.0831, 84.063 and 182.0175, Stats., and this chapter and the utility facilities are damaged by the contractor, the contractor shall be responsible to the owner for damages if the contractor has not complied with s. 182.0175 (2), Stats.

(b) The contractor shall not be responsible for damage to utility facilities if it has complied with ss. 66.0831 and 182.0175 (2), Stats.

(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 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.

(8) If one year or more has passed since the department approved a work plan, the owner may submit a revised work plan that must be considered by the department if it is submitted prior to the letting date and does not affect the letting date.

**History:** Cr. Register, February, 1994, No. 458, eff. 3-1-94; **corrections in (7) (a) and (b) made under s. 13.92 (4) (b) 7., Stats., Register March 2012 No. 675.**

**Opposition to Senate Bill 270**  
**Public Hearing: May 23, 2023, at 1:30 pm**  
**Nancy Quirk, Green Bay Water General Manager Testimony**

Chair Senator Tomczyk and esteemed committee members, thank you for the opportunity to speak today. My name is Nancy Quirk, General Manager of Green Bay Water, and I stand before you to express my serious concerns regarding Senate Bill 270, introduced in this current Legislature.

The intent of this bill, which aims to streamline highway projects and reduce delays, is something we can all appreciate. However, I worry that the proposal fails to recognize the complex realities that utility providers grapple with.

This bill, in its current form, places an undue financial burden on utility providers for project delays, regardless of whether these delays are within their control. Utility providers often contend with unforeseen construction challenges, inclement weather, and necessary safety precautions. These factors may cause delays, but they're part of ensuring the safety of our workers and the general public.

Let me illustrate with a pertinent example. In 2008, when the government issued federal ARRA money for "shovel ready" projects, a local project was fast-tracked. This disregarded the original project plan, and utilities weren't notified of the revised schedule. As a result, the project threatened to disrupt a 16-inch pressure transmission main in our water distribution section. To avoid risking our services, we had to pause the project until an alternative solution was found. The delay wasn't our intention, nor was it our fault, yet under the provisions of this bill, we would be unfairly penalized.

I fear the repercussions of this bill for the public. Financial penalties on utility providers may inevitably lead to higher utility bills for the people of Wisconsin, many of whom are already grappling with the rising cost of living.

The bill also fails to acknowledge that utility relocation and adjustment are complex, time-consuming processes that require adequate planning and resources. The proposed financial burden risks rushing these processes, potentially compromising safety standards, causing more project delays, and ultimately escalating costs.

Furthermore, the four-year review period suggested in this bill may not capture the full scope of its impact. Infrastructure projects often span more than four years, and a shorter review period might overlook the bill's long-term effects and unintended consequences.

In conclusion, while I understand and respect the motivation to improve the efficiency of highway projects, I firmly believe that Senate Bill 270 lacks a comprehensive understanding of the realities and challenges of utility relocations. I urge you all to reconsider your support for this bill. Let's advocate for a more balanced approach, one that takes into account the interests of not only highway contractors and utility providers, but above all, the people of Wisconsin.

May 23, 2023

The Honorable, Senator Cory Tomczyk  
and Wisconsin Senate Committee on  
Transportation & Local Government

Room 310  
State Capitol  
P.O. Box 7882  
Madison, WI 53707

Re: 2023 Senate Bill 270

Dear Senator Tomczyk and Committee Members,

Yesterday I spoke with Michael Donatello of Senator Tomczyk's office regarding SB 270 for which the Committee is conducting a hearing today. Unfortunately, I am unable to attend to provide comments in-person, but wish to have these entered in the record.

As a member of MEG Water I am aware of comments to be made by MEG and by MEG members, Racine Water and Wastewater, and Green Bay Water. First I will say that I support those comments and this letter is also in opposition to SB 270.

The Village of Weston owns and operates municipal utility operations for water and wastewater. Many municipalities in Wisconsin have water and/or wastewater utilities. Other municipalities also have municipal electric utilities. Some municipalities may have other utility operations. All would be "Utility facilities" as defined in §84.063(1)(b), 1. and 2., Stats.

Echoing comments from other municipal utility representatives, we appreciate the complexity and challenges of coordinating utility adjustments and relocations required when reconstructing state highway facilities. As I explained to Mr. Donatello yesterday, all municipal public works and utility operations live with the very same issues which it seems SB 270 is attempting to address relative to other "utility facilities" as we plan and perform our own municipal street system reconstructions. Are these problems universal though? I don't believe they are.

SB 270 does not distinguish between utility providers and perhaps it probably should not. However, when DOT funded highway projects are designed and constructed, municipal utility providers are very much involved in the planning and design. A prime example in Weston (Schofield and Rothschild) right now is the design for the reconstruction of Business Highway 51. All 3 municipalities have utility facilities within the travelled roadway. For this project the extent of construction disturbance makes it impractical for municipal utility reconstruction, relocation, and adjustments to be made in advance. For this project the municipalities have, therefore, opted to perform these as part of the DOT contract and pay the costs. This is referred to as "non-participating" cost in the contract.



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The Honorable, Senator Cory Tomczyk  
and Wisconsin Senate Committee on  
Transportation & Local Government

A not uncommon situation that can occur, especially in older communities, is discovery of unknown and undocumented buried facilities. How does SB 270 contemplate these would be handled?

Municipalities do not always elect to include utility work within DOT contracts, but I feel it is in the best interests of our customers to have the option to determine the best course for each project. My perspective is SB 270 will force municipalities to have their work included in all DOT project contracts. I do not have a good feeling that this would result in the most economical way for municipalities to accomplish their necessary work. Likewise for any other utility provider.

Based on my conversation with Mr. Donatello yesterday, I believe there should be more input from municipal utility providers as to the potential impacts of this legislation. What protects the best interests of all parties, and in the end, the people of Wisconsin.

Thank you in advance for considering this input in opposition to SB 270.

Sincerely,  
Village of Weston,



Keith E. Donner, P.E.  
Administrator