

2019 -- S 0041

LC000510

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS - DUTIES OF UTILITIES AND CARRIERS

Introduced By: Senators Coyne, Felag, Conley, Seveney, and DiPalma

Date Introduced: January 16, 2019

Referred To: Senate Commerce

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 39-2-15 of the General Laws in Chapter 39-2 entitled "Duties of
2 Utilities and Carriers" is hereby amended to read as follows:

3 **39-2-15. Interference with construction -- Notice.**

4 (a) No utility shall interfere with, or delay the progress of work under any contract with
5 or undertaken by the state department, agency, division or board, or any municipality, political
6 subdivision, or quasi-governmental entity of the state of Rhode Island, for the construction,
7 reconstruction, or improvements of any highway, street, road, railroad grade crossing, bridge,
8 tunnel, underpass, overpass, laying of sewer or water or other underground pipes, or any other
9 state or municipal contract work, by failing to remove or relocate its poles, wires, cables,
10 conduits, pipes, or any other facilities or structures within the time schedule therefor by an
11 agreement or under the terms of an agreement between the department, agency, division or board,
12 municipality, political subdivision or quasi-governmental entity, and the utility, or, if no time is
13 fixed by an agreement or under the terms of such an agreement, within the time fixed by the
14 department, agency, division, or board, municipality, political subdivision or quasi-governmental
15 entity, by notice served upon the utility by the state department, agency, division, or board,
16 municipality, political subdivision or quasi-governmental entity.

17 (b) If the notice is utilized, it shall describe the public improvement and the geographical
18 location thereof, the date of commencement, and the date of completion, if any, provided for by

1 the contract, the contractor's name and address, the manner in which and the extent to which the
2 facilities and structures of the utility obstruct or prevent the contractor from progressing or
3 performing the work comprehended by the contract, and shall fix the date or time within which
4 the utility is required to remove or relocate its facilities or structures, specifying the same, in
5 order to provide the contractor with the site when required by the contractor for progressing or
6 performing the work pursuant to the ~~state~~ contract. The notice shall be in writing and shall be
7 served upon the utility either personally or by certified mail at its principal office or place of
8 business in the county where the work under the contract is to be performed, or, if there is no
9 principal office or place of business in the county, at the nearest principal office or place of
10 business of the utility, outside of the county.

11 (c) In the event the utility to whom the notice described in subsection (b) of this section
12 was directed is, for any reason, unable, within the prescribed period, to remove or relocate the
13 facilities or structures specified in the notice, the utility shall immediately advise the department,
14 agency, division, or board, municipality, political subdivision or quasi-governmental entity, and
15 the contractor, in writing, of the inability, and in the same communication so advise the
16 department, agency, division, or board, municipality, political subdivision or quasi-governmental
17 entity, and the contractor of the approximate date that the removal or relocation of facilities or
18 structures could be effected; and shall further state the basis for the inability of the utility to
19 remove or relocate the facilities or structures within the time specified by the notice served
20 thereon by the department, agency, division, or board, municipality, political subdivision or
21 quasi-governmental entity. The department, agency, division, or board, municipality, political
22 subdivision or quasi-governmental entity, after examining and considering the utility's basis for
23 establishing a different schedule for the removal or relocation, shall, if its basis is reasonable,
24 establish and notify the utility of a revised schedule for completing the removal or relocation.

25 (d) In cases where the utility has been reimbursed for removal, relocation, replacement,
26 or reconstruction, a utility failing to complete the removal or relocation of the structures or
27 facilities within a period of thirty (30) days beyond the time fixed therefor by the latest time
28 schedule established in accordance with this section, shall be liable and responsible to any
29 contractor for any damages, direct or consequential, sustained by any contractor as the result
30 thereof, in an action to be brought by the contractor against the utility in a court of competent
31 jurisdiction within three (3) years from the time fixed for the removal or relocation of the
32 structures or facilities. If an action is commenced against a utility, as heretofore provided, the
33 utility may interpose in its answer in the action any defense available under the provisions of the
34 civil practice law and rules. The unreasonableness of the time schedule imposed by the state

1 department, agency, division, or board, [municipality, political subdivision or quasi-governmental](#)
2 [entity](#), shall be an absolute defense by the utility to any action by the contractor. If, in any action,
3 the utility is found to owe nothing to the contractor, or if an offer of settlement is made by the
4 utility which is not accepted by the contractor, and the resulting verdict against the utility is less
5 than the offer of settlement, then in either event, the total cost of the utility of litigation, including
6 reasonable attorney's fees, shall be paid to the utility by the contractor.

7 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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1 This act would extend the co-operation requirement public utilities have by law with
2 contractors involved in state construction projects to municipal, political subdivisions and other
3 quasi-governmental agencies.

4 This act would take effect upon passage.

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