

**19A NCAC 02B .0515 RELOCATION OF UTILITIES ENCOUNTERED IN HIGHWAY IMPROVEMENTS**

(a) The Department of Transportation shall assume the financial responsibility for non-betterment costs of adjusting or relocating utilities which are in conflict with the construction of a highway project and occupy a valid utility right of way. A valid utility right of way for the purpose of this Rule is one in which the Municipality or other utility owner has a compensable interest. The Department of Transportation, upon the request of the Municipality or other utility owner, may provide the engineering and include the utility adjustment or relocation in the highway improvement contract at no cost to the Municipality or other utility owner.

(b) The Department of Transportation shall assume the financial responsibility for the non-betterment cost of adjusting or relocating those municipally-owned utilities necessitated by highway construction when said utilities are located on a non-system right of way provided that:

- (1) the highway construction does not constitute an improvement to the non-system street in which the utilities are located, and
- (2) the non-system street in which the utilities are located is not incorporated into or obliterated by the highway project. The mere crossing of a project by a street either at-grade or by separation shall not constitute "incorporation" into the project.

(c) The Municipality or other utility owner is financially responsible for the adjustment or relocation of utilities in conflict with a highway improvement when such utilities are located within the existing right of way of a State system highway, except as provided for in G.S. 136-27.1.

(d) The owner of the utility is financially responsible for the adjustment or relocation of utilities in conflict with a highway improvement when such utilities are located on a non-valid utility easement.

(e) The Department of Transportation may enter into agreements with Municipalities or other utility owners to provide that the necessary engineering and utility construction be accomplished by the Department on a reimbursement basis as follows:

- (1) Reimbursement to the Department will be due after completion of the work and within 60 days after date of invoice.
- (2) Interest shall be paid at the rate of eight percent on any unpaid balance due.

(f) Should a Municipality fail to pay the Department of Transportation in accordance with the provisions of the Utility Agreement, the Department may apply up to ten percent of each year's allocation of the Municipality's share of funds allocated under the provisions of G.S. 136-41.1 (Powell Bill) until the Municipality's obligation is paid.

(g) In those cases where no agreement can be reached, or in cases where the utility owner refuses to relocate or refuses to claim ownership, the Board shall issue an order on the authority of G.S. 136-18(10) requiring the necessary adjustments. Upon failure of the utility to comply with the order, all utility construction shall be included in the highway improvement contract. Upon completion of the work, the owner of the utility shall be invoiced for the work performed. If the invoice is not paid, the Board of Transportation shall refer the matter to the Office of the Attorney General for further action.

*History Note: Authority G.S. 136-18(10); 136-27.1; 136-93;  
Eff. November 1, 1991;  
Amended Eff. October 1, 1993;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*