



## Plans, Compensation, Penalties

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

The University of Tennessee  
Municipal Technical Advisory Service  
1610 University Avenue  
Knoxville, TN 37921-6741  
865-974-0411 phone  
865-974-0423 fax  
[www.mtas.tennessee.edu](http://www.mtas.tennessee.edu)

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## Plans, Compensation, Penalties

**Reference Number:** MTAS-805

### ***Drawings, Plans for Relocation and Schedule for Relocation of Utilities along State Highways***

Once the owner of the utility is notified and the owner has responded as requested, the department must provide each owner with a set of complete project plans either by providing the owner with a paper copy or a digital copy, by hand delivery or return receipt mail, or by electronic transmission of a digital copy. Digital copies shall be in the format, and subject to such restrictions on use, as the department may specify. T.C.A. § 54-5-854(a).

The city has 120 calendar days following the receipt of the plans to mark on the plans the approximate location of utilities, any proposed new utilities within the right-of-way, and prepare a plan and a schedule of calendar days to accomplish the proposed new location for utilities. The marked plans and schedule for relocation must be returned to the department in care of the person whose name and address are listed on the project plans.

The commissioner may approve the plans and schedule for relocation, or he/she may direct the city to relocate utilities in accordance with an approved plan and schedule. The utility bears the cost of all utility inspections. The department will communicate approval or direction to the city via certified mail.

### ***Relocation under Reservation of Rights***

In the event the department and the city fail to agree on a reasonable plan and schedule, the city may proceed with the schedule under a reservation of rights notice to the department. The notice should be filed within 10 days of the issuance of a notice to proceed by the department. The notice should contain the city's objections to the relocation schedule and should state the reasons for the objections.

### ***Compensation for Additional Relocation or Adjustments***

After the city has completed the relocation and the department requires any additional relocation or adjustment, the department reimburses the city for the cost incurred. The department gives its contractor and the city notice of any change in highway construction that would require additional relocation or adjustment, and the city designates an agreed reasonable time to accomplish the work. In addition, the department reimburses the city for costs of all materials that have been purchased and cannot be used as a result of the change.

### ***Construction Progress Reports***

During the construction phase of the project, the city furnishes the department with monthly progress reports regarding the status of the relocation of the utility, until its relocation is completed. If the city regularly reports progress during the course of preconstruction meetings held by the contractor and the department, the progress report requirement is met. The contents of the reports reflect in the minutes of the meeting, and the minutes constitute the monthly progress report, whether or not the meetings are held on a monthly basis. The department's resident engineer acts as liaison between the owner and the department's contractor.

### ***Civil Penalties for Non-Compliance***

If the city fails to complete the relocation of utilities within the approved schedule of calendar days, the commissioner has the authority to assess and collect from the city a civil penalty of \$500 for each calendar day after the scheduled completion date that the city fails to complete the required relocation. If the city has less than 3,000 customers, the city is subject to a civil penalty of \$250 per calendar day when the city fails to complete the relocation of utilities within the approved schedule of calendar days.

### ***Appeal Provisions***

The department gives the city written notice of the intent to assess a civil penalty and the opportunity to appear before the commissioner or his/her designee to show cause why the penalty should not be assessed. Upon findings that a civil penalty should be assessed, the commissioner or his/her designee issues an appropriate order to the city. If the penalty is not paid within 90 days after entry of the order, the matter is turned over to the attorney general and reporter for collection, and the city is liable for all expenses associated with the enforcement action, including court costs and attorney fees.

### **Recommendations**

MTAS recommends that cities pay particular attention to proposed construction notices issued by the Tennessee Department of Transportation that may involve utility relocations. Such notices should be reviewed with the city's utility engineer and the city's attorney should review the provisions of T.C.A. §§ 54-5-853–854 to ensure that the city fully complies with the notices of the department of transportation. Public works and utility directors and supervisors should become familiar with the regulations governing the relocation of utilities on a state right-of-way. The city should request that the commissioner include the relocation of utilities as a project cost to the state when federal highway dollars are being used to fund highway improvements.

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*DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.*

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