§ 11-102. Liability of utilities for compensation for damages caused by interfering with, or delaying the progress of work under state public construction contracts. 1. No utility shall interfere with, or delay the progress of work under any contract with the state department, agency, division or board, for the construction, reconstruction or improvement of any highway, street, road, railroad grade crossing, bridge, tunnel, underpass, overpass or other state contract work, by failing to remove or relocate its poles, wires, cables, conduits, pipes or any other facilities or structures within the time schedule therefor by an agreement or under the terms of an agreement between the department, agency, division or board and the utility, or if no time is fixed by such an agreement or under the terms of such an agreement, within the time fixed by the department, agency, division or board, by notice served upon such utility by such state department, agency, division or board.

2. If such notice is utilized, it shall describe the public improvement and the geographical location thereof, the date of commencement and the date of completion, if any, provided for by the contract, the contractor's name and address, the manner in which and the extent to which the facilities and structures of the utility obstruct or prevent the contractor from progressing or performing the work comprehended by the contract, and shall fix the date or time within such utility is required to remove or relocate its facilities or structures, specifying the same, in order to provide the contractor with the site when required by the contractor for progressing or performing the work pursuant to such state contract. Such notice shall be in writing and shall be served upon such utility either personally or by certified mail at its principal office or place of business in the county where the work under such contract is to be performed, or, if there be no such principal office or place of business in such county, at the nearest principal office or place of business of such utility, outside of such county. In the event the utility to whom the aforesaid notice was directed is for any reason unable, within the prescribed period, to remove or relocate said facilities or structures specified in the notice, said utility shall immediately advise said department, agency, division or board and the contractor, in writing, of such inability, and

in the same communication so advise said department, agency, division or board, and the contractor of the approximate date that such removal or relocation of facilities or structures could be effected; and shall further state the basis for the inability of said utility to remove or relocate said facilities or structures within the time specified by the notice served thereon by said department, agency, division or board. The department, agency, division or board, after examining and considering the utility's basis for establishing a different schedule for such removal or relocation, shall, if such basis is reasonable, establish and notify the utility of a revised schedule for completing such removal or relocation.

3. In cases where the utility has been reimbursed for removal, relocation, replacement or reconstruction pursuant to subdivision twenty-four-b of section ten of the highway law, a utility failing to complete the removal or relocation of such structures or facilities within a period of thirty days beyond the time fixed therefor by the latest time schedule established in accordance with this section, shall be liable and responsible to any such contractor for any damages, direct or consequential, sustained by any such contractor as the result thereof, in an action to be brought by such contractor against such utility in a court of competent jurisdiction within two years from the time fixed for the removal or relocation of such structures or facilities. If an action is commenced against a utility, as heretofore provided, said utility may interpose in its answer in such action any defense available under the provisions of the civil practice law and rules. The unreasonableness of the time schedule imposed by the state department, agency, division or board shall be an absolute defense by the utility to any such action by the contractor. If, in any such action, the utility is found to owe nothing to the contractor, or if an offer of settlement is made by the utility which is not accepted by the contractor and the resulting verdict against the utility is less than the offer of settlement, then in either such event the total cost of the utility of litigation, including reasonable attorney's fees, shall be paid to the utility by the contractor.