

ASSEMBLY, No. 4779

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED DECEMBER 6, 2018

Sponsored by:

Assemblyman HAROLD "HAL" J. WIRTHS

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Requires public utilities and cable television companies to accommodate and relocate facilities when necessary for transportation infrastructure projects at direction of DOT.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the accommodation and relocation of certain
2 public utility and cable television facilities for the purposes of
3 transportation infrastructure projects and amending P.L.1983,
4 c.283.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. Section 1 of P.L.1983, c.283 (C.27:7-44.9) is amended to
10 read as follows:

11 1. a. In addition to other powers conferred upon the
12 Commissioner of Transportation by any other law and not in
13 limitation thereof, the commissioner, in connection with the
14 construction, reconstruction, maintenance or operation of any
15 **[highway]** infrastructure project, may make reasonable regulations
16 for the installation, construction, maintenance, repair, renewal,
17 relocation and removal of **[pipes, mains, conduits, cables, wires,**
18 **towers, poles and other equipment and appliances, herein called**
19 **"facilities,"]** facilities of any **[public]** utility company, as defined
20 in **[R.S.48:2-13,** and of any cable television company as defined in
21 the "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.),
22 subsection c. of this section, having been granted privileges by the
23 State or any political subdivision thereof, in, on, along, over or
24 under any [highway] infrastructure project. Whenever the
25 commissioner determines that it is necessary that facilities which
26 now are, or hereafter may be, located in, on, along, over or under
27 any [highway] infrastructure project shall be relocated in the
28 project or should be removed from the project, the [public] utility
29 [or cable television] company owning or operating the facilities
30 shall relocate or remove the same in accordance with the order of
31 the commissioner. The cost and expenses of such relocation or
32 removal, including the cost of installing the facilities in a new
33 location, or new locations, and the cost of any lands, or any rights
34 or interests in lands, and any other rights acquired to accomplish the
35 relocation or removal, shall be ascertained and paid by the
36 commissioner as a part of the cost of the infrastructure project,
37 provided the utility company complies with all applicable federal
38 and State statutes and regulations as they apply to the contracting
39 for, and the cost reimbursement and accounting of, the
40 accommodation of facilities within the highway right-of-way. The
41 department may audit all records associated with the reimbursement
42 of facilities accommodation costs within three years of completion
43 of the accommodation work and recover or deduct from future
44 payments for any other infrastructure project requiring facilities

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 accommodation work, any non-allowable costs discovered through
2 that audit. In the case of the relocation or removal of facilities, [as
3 aforesaid,] the [public] utility [or cable television] company
4 owning or operating the same, its successors or assigns may
5 maintain and operate the facilities, with the necessary
6 appurtenances, in the new location or new locations for as long a
7 period, and upon the same terms and conditions, as it had the right
8 to maintain and operate the facilities in the former location or
9 locations.

10 b. [As used in this act, "highway project," in addition to its
11 ordinary meaning, means one which is administered and contracted
12 for by the commissioner.

13 c. For infrastructure projects undertaken by the department and
14 financed with public funds wherein utility facilities will require
15 accommodation, the accommodation work shall be done in
16 accordance with a final infrastructure project work plan, utility
17 accommodation plan, and construction schedule developed by the
18 department, in consultation with the utility companies. Costs
19 associated with pre-engineering, field location testing, engineering
20 design and review, and any costs attributable to the utility company
21 from its delay in the relocation of its facilities, shall be paid by the
22 utility company.

23 c. As used in this act:

24 "Cable television company" shall have the same meaning as
25 defined in section 3 of P.L.1972, c.186 (C.48:5A-3).

26 "Contractor" means a person who is directly awarded and enters
27 into a contract for services related to an infrastructure project by the
28 department.

29 "Department" means the Department of Transportation.

30 "Draft infrastructure project work plan and construction
31 schedule" means a draft of a plan and construction schedule for an
32 infrastructure project being contemplated by the department, which
33 shall include, but need not be limited to, the preliminary design and
34 construction completion schedule anticipated for the infrastructure
35 project.

36 "Facilities" means a utility company's tracks, pipes, mains or
37 laterals, conduits, access manholes or chambers, cables, wires,
38 towers, poles, telecommunications equipment, data transmissions
39 systems, or other equipment, appliances, or apparatus, but not
40 including any railroad.

41 "Final infrastructure project work plan and construction
42 schedule" means a plan and construction schedule for an
43 infrastructure project that has been adopted by the department. This
44 shall include, at a minimum, the final design and construction
45 completion schedule anticipated for the infrastructure project.

46 "Highway" means any road, street, highway, thoroughfare,
47 bridge, tunnel, overpass, interchange, or right-of-way which is open
48 to the use of the public for the purpose of vehicular travel and

1 which is maintained, owned, controlled, or otherwise under the
2 jurisdiction of the department.

3 “Highway project” means a project comprising the planning,
4 acquisition, engineering, construction, reconstruction, repair,
5 resurfacing, and rehabilitation of highways and the planning,
6 acquisition, engineering, construction, reconstruction, repair,
7 maintenance, and rehabilitation of public transportation projects or
8 other transportation projects which the department may be
9 authorized by law to undertake.

10 “Impact cost” means any direct or indirect cost resulting from
11 any action or inaction by a utility company required by this section
12 that prevents the department, a contractor, or both from timely
13 proceeding with the construction and completion of an
14 infrastructure project.

15 “Infrastructure project” means any highway project, public
16 transportation project, transportation project, or the construction,
17 reconstruction, alteration, addition, physical betterment, or
18 improvement of any other infrastructure within the department’s
19 jurisdiction.

20 “Project area” means the physical area in which an infrastructure
21 project is located, including, but not limited to, a public right-of-
22 way.

23 “Public highways” means public roads, streets, expressways,
24 freeways, parkways, motorways and boulevards, including bridges,
25 tunnels, overpasses, underpasses, interchanges, rest areas, express
26 bus roadways, bus pullouts and turnarounds, park-ride facilities,
27 traffic circles, grade separations, traffic control devices, the
28 elimination or improvement of crossings of railroads and highways,
29 whether at grade or not at grade, bicycle and pedestrian pathways
30 and pedestrian and bicycle bridges traversing public highways and
31 any facilities, equipment, property, rights of way, easements and
32 interests therein needed for the construction, improvement, and
33 maintenance of highways.

34 “Public transportation project” means, in connection with public
35 transportation service, passenger stations, shelters and terminals,
36 automobile parking facilities, ferries and ferry facilities, including
37 capital projects for ferry terminals, approach roadways, pedestrian
38 accommodations, parking, docks, and other necessary land-side
39 improvements, ramps, track connections, signal systems, power
40 systems, information and communication systems, roadbeds, transit
41 lanes or rights of way, equipment storage, pedestrian walkways and
42 bridges connecting to passenger stations and servicing facilities,
43 bridges, grade crossings, rail cars, locomotives, motorbuses and
44 other motor vehicles, maintenance and garage facilities, revenue
45 handling equipment and any other equipment, facility or property
46 useful for or related to the provision of public transportation
47 service.

1 “Public utility” shall have the same meaning as defined in
2 R.S.48:2-13.

3 “Rights-of-way” means any right-of-way dedicated to public use,
4 the jurisdiction over which is held by the department.

5 “Transportation project” means, in addition to public highways
6 and public transportation projects, any equipment, facility or
7 property useful or related to the provision of any ground,
8 waterborne, or air transportation for the movement of people and
9 goods, including rail freight infrastructure.

10 “Utility accommodation plan” means a plan that includes, but is
11 not limited to: (1) an accurate description, characteristic, and
12 location of all of the facilities in a project area; and (2) a written
13 determination of all facilities that will have an impact on the
14 infrastructure project, including whether the characteristic or
15 location of the facilities will impact the productive cycle of
16 construction activity on the infrastructure project or, in any manner,
17 will prevent the department from proceeding in the construction and
18 completion of the infrastructure project, and engineering plans
19 showing the means by which the facilities shall be relocated or
20 accommodated.

21 “Utility accommodation work” means any work caused by, or
22 resulting from, facilities within any project area, in the course of the
23 design or performance of any infrastructure project. This shall
24 include, but need not be limited to, any work associated with any
25 interference with construction, relocation, installation, support, or
26 protection in place, or removal of facilities within a project area.

27 “Utility company” means any public utility or any cable
28 television company, or both.

29 d. (1) The department shall develop a draft infrastructure
30 project work plan and construction schedule, in consultation with
31 all utility companies doing business or located within the project
32 area.

33 (2) The department shall provide a copy of the draft
34 infrastructure project work plan and construction schedule for a
35 proposed infrastructure project to all utility companies doing
36 business or located within the project area and request verification
37 and information as to the extent of its facilities that exist within and
38 adjacent to the project area. Utility companies shall provide the
39 verification and information related to its facilities in the project
40 area to the department within 60 days of receipt of the request.
41 Failure to provide such verification and information within the
42 given timeframe shall be considered to delay or interfere with the
43 project work plan and a utility company shall be liable to the
44 department for any impact costs incurred by the department as a
45 result of these delays. Verification and review costs incurred by a
46 utility company shall be paid by the utility company.

47 (3) If, upon final notice from the department, a utility company
48 is advised that it will delay or prevent the department from

1 proceeding with the design of the infrastructure project by a failure
2 to provide necessary information or failure to respond to the
3 department in a timely manner, a utility company shall be liable to
4 the department for impact costs incurred as a result of the
5 infrastructure project design delays.

6 e. Based on the information provided pursuant to subsection d.
7 of this section, the department shall prepare, in consultation with all
8 utility companies within the project area, a final infrastructure
9 project work plan and construction schedule and the utility
10 accommodation plan. Engineering design and review costs incurred
11 by a utility company, in support of the development of the final
12 infrastructure project work plan and construction schedule and the
13 utility accommodation plan, shall be paid by the utility company.

14 f. (1) The department shall provide all utility companies within
15 the project area a copy of the final infrastructure project work plan
16 and construction schedule and the utility accommodation plan.
17 Responsibility for the relocation or accommodation of facilities in
18 the project area shall be assigned by the department, at its
19 discretion, and identified in the final infrastructure project work
20 plan.

21 (2) Within 30 days of receipt of the final infrastructure project
22 work plan and construction schedule and the utility accommodation
23 plan, a utility company within the project area shall provide the
24 department acknowledgement of assignment of responsibility for
25 the relocation or accommodation of their facility, as well as
26 verification of acceptance of the final infrastructure project work
27 plan and construction schedule and the utility accommodation plan.
28 Failure to provide such acknowledgement and verification within
29 the given timeframe shall be considered to delay or interfere with
30 the project work plan and the utility company shall be liable to the
31 department for any impact costs incurred by the department as a
32 result of these delays.

33 g. A utility company shall be responsible for any work it
34 performs in accordance with the final infrastructure project work
35 plan and construction schedule and the utility accommodation plan.
36 A utility company shall be liable to the department for any impact
37 costs incurred by the department as a result of the failure of the
38 utility company to complete the accommodation work in
39 accordance with the final infrastructure project work plan and
40 construction schedule and the utility accommodation plan. A utility
41 company shall be liable to the contractor for any impact costs
42 incurred by the contractor as a result of the failure of a utility
43 company to complete the accommodation work in accordance with
44 the final infrastructure project work plan and construction schedule
45 and the utility accommodation plan. The department shall not be
46 liable to the contractor for any impact costs incurred by the
47 contractor as a result of the failure of a utility company to complete
48 the accommodation work in accordance with the final infrastructure

1 project work plan and construction schedule and the utility
2 accommodation plan.

3 h. If the department determines that a utility company provided
4 incorrect information regarding the location or type of its facilities,
5 a utility company shall be liable to the department and the
6 contractor for any impact costs incurred by the contractor as a result
7 of the delays associated with the incorrect information. The
8 department shall not be liable to the contractor for any impact costs
9 incurred by the contractor as a result of this delay.

10 i. The powers conferred upon the commissioner by this section
11 also are conferred upon the governing body of any county having
12 under its jurisdiction a limited access highway in the meaning of
13 section 1 of P.L.1945, c.83 (C.27:7A-1) with respect to the
14 construction, reconstruction, maintenance or operation of any
15 highway project on that limited access highway.
16 (cf: P.L.1989, c.32, s.12)

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18 2. This act shall take effect on the first day of the third month
19 after enactment and shall apply to projects that are, or scheduled to
20 be, bid 180 days after the effective date of this act, but shall not
21 apply to projects for which engineering or construction agreements
22 have been executed between the department and a utility company
23 as of the effective date of this act.

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26 STATEMENT

27

28 This bill expands the current requirement that a public utility or a
29 cable television company (collectively, “utility company”)
30 accommodate and relocate facilities when necessary for
31 transportation infrastructure projects, at the direction of the
32 Department of Transportation (“department”).

33 The bill defines facilities as a utility company’s tracks, pipes,
34 mains or laterals, conduits, access manholes or chambers, cables,
35 wires, towers, poles, telecommunications equipment, data
36 transmissions systems, or other equipment, appliances, or apparatus,
37 but not including any railroad.

38 The bill creates a process whereby the department and a utility
39 company establish and assign responsibility for the relocation of
40 utility facilities within the limits of construction projects. The bill
41 permits the department to manage utility relocations through its
42 construction contract, and allows the department’s contractor to
43 control the project’s construction schedule and the timing for utility
44 facilities relocation work. Where appropriate, the department may
45 assign responsibility for the utility relocation to a utility company.

46 The bill’s provisions allow the department to hold a utility
47 company liable for delaying the department or its contractor for
48 failure to provide necessary data and support during the design
49 process, or failure to relocate their facilities according to the

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1 construction schedule when the utility company accepts
2 responsibility for relocating their facilities.

3 The bill maintains current practice by not requiring the utility
4 company to pay relocation costs, but does require the utility
5 company to pay for costs associated with pre-engineering, field
6 location testing, engineering design and review, and any costs
7 attributable to the utility company from its delay in the relocation of
8 its facilities.

9 Delays in relocating utility facilities typically delay other
10 construction activities that are dependent on their relocation,
11 thereby affecting the overall construction schedule. Construction
12 delays can increase material costs, which can increase over time,
13 and labor costs as personnel must be retained on a construction
14 project for a longer period of time. Additionally, the general public
15 may be inconvenienced by longer construction periods. The bill is
16 intended to considerably reduce delays and costs when a utility
17 company's facilities are not relocated in accordance with the
18 construction schedule.