ASSEMBLY, No. 1415

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Concerns procedures with respect to repair of certain public utility facilities and related street repaving.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning the repair of certain public utility facilities and amending P.L.1991, c.366.

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

1. Section 1 of P.L.1991, c.366 (C.48:3-17a) is amended to read as follows:

1. a. After the effective date of P.L.1991, c.366 (C.48:3-17a), before a public utility places a pole, used for the supplying and distributing of electricity for light, heat or power, or for the furnishing of telegraph, telephone or other telecommunications service, on a public right of way on which the predominant method of lighting is gas lighting, a public utility shall, in addition to any other requirements of law, first acquire the consent of the governing body of the municipality in which the public right of way is located.

b. After the effective date of P.L.2004, c.154, before a public utility places, replaces, repairs, or removes a pole or an underground facility located in a single municipality within a 24-hour period, which pole or underground facility is used for the supplying and distribution of electricity or gas for light, heat or power, or for the furnishing of water or sewer service or telephone or other telecommunications service on or below a public right of way in that municipality, the public utility shall, in addition to any other requirements of law, notify an appropriately licensed municipal code official of the municipality at least 24 hours before undertaking any construction or excavation related to the placement, replacement, repair, or removal of such pole or underground facility. **[**The provisions of this subsection shall apply only to a municipality where the governing body of that municipality has first adopted an ordinance requiring the notification of a public utility that provides service in that municipality of the application of the provisions of this subsection in the municipality.**]** For the purposes of this section, "underground facility" means one or more underground pipes, cables, wires, lines, or other structures used for the supplying and distribution of electricity or gas for light, heat or power or for the providing of water or sewer service, or for the furnishing of telephone or other telecommunications service.

c. After completing the placement, replacement, repair, or removal of a pole or an underground facility pursuant to this section, the public utility shall remove from such right of way any pole or underground facility no longer in use as well as any other debris created from such placement, replacement, repair, or removal and restore the property including, but not limited to, the

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.

installation of a hot patch and the repaving of a portion of any street, road, or highway that was excavated to undertake the work, as needed to restore the property within the right of way to its previous condition as much as possible. Not less than the prevailing wage rate, determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.), shall be paid to workers employed in the performance of any work undertaken in connection with this subsection. As used in this section, "hot patch" means the installation of a mixture of asphalt to restore property within the right of way to its previous condition subsequent to the construction or excavation of a site required for the placement, replacement, repair, or removal of a pole or an underground facility pursuant to this section.

d. For the purposes of this section [,]:

"pole" means, in addition to its commonly accepted meaning, any wires or cable connected thereto, and any replacements therefor which are similar in construction and use; and

"public utility" shall include a public utility as defined in R.S.48:2-13 and a "cable television company" and any other provider of "telecommunications service" as those terms are defined in section 3 of P.L.1972, c.186 (C.48:5A-3).

e. In the event a public utility does not meet the requirements of subsection c. of this section concerning the removal of debris and the restoring of property including, but not limited to, the installation of a hot patch or the repaving of a portion of a street, road, or highway, within a right of way to its previous condition within 90 days of placement, replacement, repair, or removal of a pole or an underground facility, the municipality shall be authorized to impose a fine up to an amount not to exceed [$100] $1,000 each day until the requirements of subsection c. are met, except that if the public utility is unable to complete the installation of a hot patch or the repaving of a portion of a street, road, or highway due to the unavailability of asphalt material during the period of time from November through April, the public utility shall not be required to complete the hot patch installation or repaving until 60 days immediately following the end of the November through April period. At least five business days prior to the end of the 90-day period established by this subsection, the municipality shall notify the public utility that the penalties authorized by this subsection shall begin to be assessed against the public utility after the end of the 90-day period unless the public utility complies with the requirements of subsection c. of this section. Any penalty imposed shall be collected or enforced in a summary manner, without a jury, in any court of competent jurisdiction according to the procedure provided by "The Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court and municipal court shall have jurisdiction to enforce the provisions of this

section. Consistent with section 1 of P.L.1988, c.100 (C.48:2-21.14), any penalty imposed pursuant to this section shall not be recoverable from ratepayers. In the case of removal or replacement of a pole or an underground facility utilized by two or more public utilities, the public utility last removing its pipes, cables, wires, lines or other structures shall be liable for the removal and restoration required under subsection c. of this section, unless a written agreement between the public utilities provides otherwise.

f. Under emergency conditions which significantly impact the placement of a pole or underground facility resulting from natural forces or human activities beyond the control of the public utility, or which pose an imminent or existing threat of loss of electrical, water, power, gas, or sewer service, or telephone, cable television, or other **[**telecommunication**]** telecommunications service, or which pose an imminent or existing threat to the safety and security of persons or property, or both, or which require immediate action by a public utility to prevent bodily harm or substantial property damage from occurring, the provisions of subsection b. of this section shall not apply when a public utility undertakes any construction or excavation related to the placement, replacement, repair, or removal of a pole or an underground facility in response to such an emergency, provided that the public utility undertaking such construction or excavation notifies the appropriately licensed municipal code official of the municipality in which such construction or excavation occurs at the earliest reasonable opportunity and that all **[**reasonable**]** efforts are taken by the public utility to comply with the removal and restoration requirements of subsection c. of this section after responding to the emergency.

(cf: P.L.2004, c.154, s.1)

2. This act shall take effect immediately.

STATEMENT

This bill adds gas and sewer public utilities and cable television companies to the types of public utilities required to notify a municipality prior to the placement, replacement, or removal of the public utility's poles and underground facilities and includes the repair of these poles or underground facilities to the notification requirement. The bill removes the provision of law that requires a municipality to first adopt an ordinance requiring a public utility to notify the municipality prior to a public utility undertaking this work.

The bill requires a public utility to repave a portion of a street, road, or highway that was excavated to undertake the work to restore the property to its previous condition as much as possible and require a public utility to pay workers no less than the

prevailing wage rate for restoring the property where the work was undertaken to its previous condition as much as possible. The bill increases the amount of a fine a municipality may assess against a public utility in the event a public utility does not meet the law's requirements concerning the removal of debris and the restoration of property within a right of way to its previous condition from up to $100 per day to up to $1,000 per day. The bill prohibits a public utility from recovering from its ratepayers the costs of a fine assessed against a public utility as provided in the bill.