

SENATE, No. 634

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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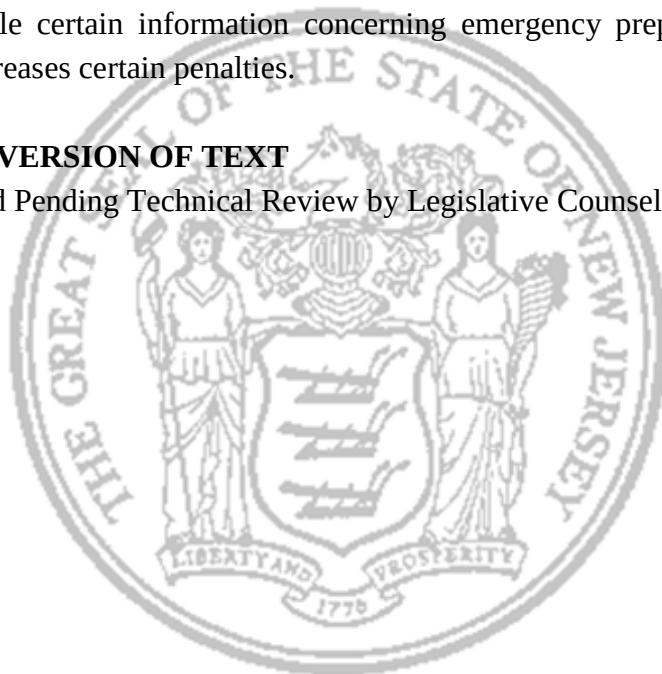
Senators Oroho, O'Scanlon, Holzapfel, T.Kean, Singer, Corrado and Lagana

SYNOPSIS

“Reliability, Preparedness, and Storm Response Act”; requires public utilities to file certain information concerning emergency preparedness with BPU and increases certain penalties.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 3/11/2021)

1 **AN ACT** concerning emergency preparedness and supplementing
2 Title 48 of the Revised Statutes and amending R.S.48:2-42.

3

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

6

7 1. (New section) Sections 1 through 6 of P.L. , c. (C.)
8 (pending before the Legislature as this bill) shall be known and may
9 be cited as the “Reliability, Preparedness, and Storm Response
10 Act.”

11

12 2. (New section) As used in sections 1 through 6 of P.L. ,
13 c. (C.) (pending before the Legislature as this bill):

14 “Board” means the Board of Public Utilities or any successor
15 agency.

16 “Electric public utility” means a public utility, as that term is
17 defined in R.S.48:2-13, that distributes electricity to end users
18 within this State.

19 “Public utility” means a public utility as that term is defined in
20 R.S.48:2-13.

21

22 3. (New section) a. Consistent with federal law, the board
23 shall develop and enforce performance benchmarks for service
24 reliability, service disruption preparedness, service restoration, and
25 communications for electric public utilities conducting business in
26 the State. The board shall require, no less than annually, periodic
27 reliability performance reporting by the electric public utilities.

28 b. Consistent with federal law, the board shall develop and
29 enforce standards for service reliability, service disruption
30 preparedness, service restoration, and communications for public
31 utilities conducting business in the State that are not electric public
32 utilities. The board shall require, no less than annually, periodic
33 reliability performance reporting by the public utilities subject to
34 the standards developed pursuant to this section.

35 c. The board shall undertake a detailed and comprehensive
36 study of public utility service reliability in this State. Within 24
37 months after the effective date of P.L. , c. (C.) (pending
38 before the Legislature as this bill), the board shall prepare a report
39 of its study, including findings and recommendations, and shall
40 provide a copy thereof to the Governor and, pursuant to section 2 of
41 P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

42

43 4. (New section) a. Each electric public utility conducting
44 business in the State shall annually, on or before May 15, submit to
45 the board an emergency response plan for review and approval.

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 The emergency response plan shall be designed for the reasonably
2 prompt restoration of service in the event of a widespread power
3 outage in the service area of the electric public utility due to storms
4 or other causes beyond the control of the electric public utility, and
5 the provisions of the plan shall reflect the performance benchmarks
6 established pursuant to subsection a. of section 3 of P.L. ,
7 c. (C.) (pending before the Legislature as this bill). The
8 emergency response plan shall include, but not be limited to, the
9 following:

10 (1) The identification of management staff responsible for
11 electric public utility operations during an emergency;

12 (2) An explanation of the electric public utility's system for
13 communicating with customers during an emergency that extends
14 beyond normal business hours and business conditions;

15 (3) A history, for the year ending April 30, of the electric public
16 utility's contacts with all customers that report or document to the
17 electric public utility a need of essential electricity for medical
18 reasons;

19 (4) The designation of electric public utility staff to
20 communicate with local officials and relevant regulatory agencies;

21 (5) Provisions regarding how the electric public utility will
22 assure the safety of its employees and contractors;

23 (6) Procedures for deploying electric public utility and mutual
24 aid crews to work assignment areas;

25 (7) The designation and prioritization of areas where a power
26 outage may result in the malfunctioning of septic systems or the
27 loss of drinkable water due to customers' use of electric well water
28 pumps;

29 (8) Strategies to mitigate potential flooding of substations
30 constructed within flood hazard areas, as defined by the Department
31 of Environmental Protection, to mitigate potential wind damage
32 during storms, and to address vegetation management concerns; and

33 (9) The identification of supplies and equipment reasonably
34 anticipated by the electric public utility to be needed during an
35 emergency and the means of obtaining additional supplies and
36 equipment.

37 b. After review of an electric public utility's emergency
38 response plan, the board may request that the electric public utility
39 amend the plan. If the board finds a material deficiency in the plan,
40 the board may order the electric public utility to make modifications
41 as it deems reasonably necessary to remedy the deficiency.

42 c. Any electric public utility failing to file its emergency
43 response plan annually by May 15, may be fined \$1,000 per day
44 until an emergency response plan is filed.

45

46 5. (New section) a. The board shall have the authority to open
47 an investigation to review:

1 (1) the performance of any electric public utility in restoring
2 service during a widespread power outage in the electric public
3 utility's service area; and

4 (2) the communications of any electric public utility during a
5 widespread power outage in the electric public utility's service area.

6 b. If, after evidentiary hearings or other investigatory
7 proceedings, the board finds that, as a result of the electric public
8 utility's failure to implement its emergency response plan, the
9 length of the widespread outage was materially longer than it would
10 have been but for the electric public utility's failure or the electric
11 public utility's communications were materially less effective than
12 they would have been but for the electric public utility's failure, the
13 board may impose a civil administrative penalty pursuant to section
14 7 of P.L. , c. (C.) (pending before the Legislature as
15 this bill).

16

17 6. (New section) a. The board shall require each public utility
18 conducting business in the State that is not an electric public utility
19 to annually submit to the board, on or before May 15th of each year,
20 a service reliability plan and an emergency communications plan
21 for the board's review and approval. After review of a service
22 reliability plan or an emergency communications plan submitted
23 pursuant to this section, the board may order the submitting public
24 utility to make modifications to a service reliability plan or an
25 emergency communications plan as the board deems reasonably
26 necessary to remedy any deficiency in the service reliability plan or
27 the emergency communications plan.

28 b. (1) A service reliability plan shall include, but not be
29 limited to, standards established pursuant to subsection b. of section
30 3 of P.L. , c. (C.) (pending before the Legislature as this
31 bill) for the provision of safe and reliable service and the reasonably
32 prompt restoration of service in the event of a service disruption in
33 the service area of the public utility submitting the service
34 reliability plan.

35 (2) An emergency communications plan shall include, but not be
36 limited to, standards established pursuant to subsection b. of section
37 3 of P.L. , c. (C.) (pending before the Legislature as this
38 bill) for the public utility's system for communicating with
39 customers during and after an emergency that extends beyond
40 normal business hours and a designation of public utility staff to
41 communicate with local officials and relevant regulatory agencies.

42 c. (1) For a public utility that submits a plan pursuant to this
43 section, the board shall have the authority to open an investigation
44 to review the public utility's performance in restoring service
45 during a service disruption in the utility's service area or to review
46 the communications of the public utility during a disruption of
47 service in the utility's service area.

1 (2) The board may impose a civil administrative penalty
2 pursuant to section 7 of P.L. , c. (C.) (pending before the
3 Legislature as this bill) if, after evidentiary hearings or other
4 investigatory proceedings, the board finds that:

5 (a) as a result of the failure of the public utility to implement its
6 service reliability plan, the duration of the service disruption was
7 materially longer than it would have been but for the public utility's
8 failure; or

9 (b) as a result of the failure of the public utility to implement its
10 emergency communications plan, the public utility's
11 communications were materially less effective than they would
12 have been but for the public utility's failure.

13 d. A public utility that is required to annually submit a service
14 reliability plan and an emergency communications plan pursuant to
15 this section, but fails to submit either plan by May 15, may be fined
16 \$1,000 per day until both required plans are filed.

17

18 7. R.S.48:2-42 is amended to read as follows:

19 48:2-42. **Any** a. Notwithstanding the provisions of any
20 law, rule, regulation, or board order to the contrary, any person
21 **or**, public utility, or entity subject to the jurisdiction of the board
22 **that shall fail** fails to perform the performance benchmarks
23 developed in an applicable emergency response plan submitted
24 pursuant to P.L. , c. (C.) (pending before the Legislature as
25 this bill), fails to meet standards in an applicable service reliability
26 plan or in an applicable emergency communications plan submitted
27 pursuant to section 6 of P.L. , c. (C.) (pending before the
28 Legislature as this bill), or fails to comply with an any law, rule,
29 regulation, or order of the board , except an order to resume
30 service which has been discontinued, shall be subject to a penalty
31 of one hundred dollars for every day during which the default
32 continues. Any person or public utility that shall fail to comply with
33 any order of the board directing the public utility to resume service
34 which has been discontinued shall be subject to a penalty of two
35 hundred and fifty dollars for every day during which such default
36 continues. Such penalties shall be recovered in an action at law in
37 the name of the state] liable for a civil administrative penalty not to
38 exceed \$25,000 for each violation, except that any maximum civil
39 penalty may not exceed \$2,000,000 for any related series of events.
40 Each day during which the violation continues shall constitute an
41 additional, separate, and distinct violation.

42 b. In addition to any civil administrative penalty imposed,
43 pursuant to subsection a. of this section, on any person, public
44 utility, or entity subject to the jurisdiction of the board that fails to
45 perform the performance benchmarks developed in an applicable
46 emergency response plan submitted pursuant to P.L. ,
47 c. (C.) (pending before the Legislature as this bill), or fails to

1 meet standards in an applicable service reliability plan or in an
2 applicable emergency communications plan submitted pursuant to
3 section 6 of P.L. , c. (C.) (pending before the Legislature
4 as this bill), the board may direct an amount that shall be credited to
5 ratepayers in accordance with the current rate design directly
6 through bill credits or by refund check within 120 days after the
7 date that the board issued the amount directed. The amount
8 directed by the board shall not exceed \$25,000 for each violation,
9 except that any maximum amount directed may not exceed
10 \$2,000,000 for any related series of events. Each day during which
11 the violation continues shall constitute an additional, separate, and
12 distinct violation. Any credits or refunds paid pursuant to this
13 subsection shall not be recoverable from ratepayers.

14 c. Any civil administrative penalty or payment ordered by the
15 board may be compromised by the board in an amount and with
16 conditions the board deems appropriate. In determining the amount
17 of the civil administrative penalty, the payment ordered by the
18 board pursuant to this section, or the amount agreed upon in
19 compromise, the board shall consider:

- 20 (1) the nature, circumstances, and gravity of the violation;
21 (2) the degree of the violator's culpability;
22 (3) any history of prior violations;
23 (4) any good faith effort on the part of the violator in attempting
24 to achieve compliance with performance benchmarks; and
25 (5) any other factors the board determines to be appropriate.

26 d. Pursuit of any remedy specified in this section shall not
27 preclude the pursuit of any other remedy provided by any other law
28 except, if the penalty amount set forth in any other law, rule,
29 regulation, or board order is less than the amount set forth in this
30 section, then amounts set forth in this section shall control. The
31 distribution of civil administrative penalties ordered by the board
32 shall be consistent with the prevailing language established in the
33 provisions of the applicable law, rule, regulation or board order.

34 e. Civil administrative penalties may be recovered, if
35 necessary, in a summary proceeding pursuant to the "Penalty
36 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
37 The Superior Court shall have jurisdiction to enforce the provisions
38 of the "Penalty Enforcement Law of 1999" in connection with this
39 section.

40 f. Consistent with the provisions of section 1 of P.L.1988,
41 c.100 (C.48:2-21.14), any civil administrative penalty or payment
42 imposed under this section shall not be recoverable from ratepayers.
43 (cf: R.S.48:2-42)

44
45 8. This act shall take effect on January 1 of the year following
46 enactment, except that the board may take any anticipatory
47 administrative action in advance as shall be necessary for the
48 administration of this act.

STATEMENT

This bill, known as “The Reliability, Preparedness, and Storm Response Act of 2018,” requires the Board of Public Utilities (BPU) to develop and enforce performance benchmarks for service reliability, service disruption, service restoration, and communications for electric public utilities that distribute electricity to end users within New Jersey.

The bill requires every electric public utility to file an emergency response plan with the BPU, which is to reflect the performance benchmarks established by the BPU. This plan is to serve as an official plan of action for each electric public utility in the event of a widespread power outage and is to include, but not be limited to: 1) the identification of management staff responsible for electric public utility operations during an emergency; 2) an explanation of the electric public utility’s system of communication with customers during an emergency that extends beyond normal business hours and business conditions; 3) a history of contacts with customers that report or document to the electric public utility a need of essential electricity for medical reasons; 4) designation of electric public utility staff to communicate with local officials and relevant regulatory agencies; 5) provisions regarding how the electric public utility will assure the safety of its employees and contractors; 6) procedures for deploying electric public utility and mutual aid crews to work assignment areas; 7) the designation and prioritization of areas where a power outage may result in the malfunctioning of septic systems or the loss of drinkable water due to customers’ use of electric well water pumps; 8) strategies to address flooding, wind damage, and vegetation management; and 9) identification of supplies and equipment anticipated to be needed by the electric public utility during an emergency and the means of obtaining additional supplies and equipment.

The bill requires BPU to establish and enforce separate standards concerning service reliability, service disruption, service restoration, and communications for public utilities that are not electric public utilities, and requires each of those public utilities to annually submit a service reliability plan and an emergency communications plan to the BPU.

The bill also requires the BPU to undertake a detailed and comprehensive study of public utility service reliability in this State, to prepare a report on the study, and to submit the report to the Governor and the Legislature. This bill reaffirms the BPU’s authority to open an investigation to review the performance or communications of any public utility during a disruption of service in the public utility’s service area. If the BPU finds that certain harms occurred as a result of a public utility’s failure follow an applicable emergency response plan, an applicable service reliability plan, or an applicable emergency communications plan, the BPU may impose certain civil

1 administrative penalties. The bill also allows the BPU to fine any
2 public utility for failing to file a required plan in a timely manner.
3 The bill increases the maximum for existing civil penalties paid by
4 all public utilities, subject to the jurisdiction of the BPU, for violating
5 any law, rule, regulation, or order by the BPU. Civil penalties are
6 increased from \$100 a day to \$25,000 a day for each violation, but
7 penalties are not to exceed \$2,000,000 for any series of related events.
8 The bill also extends the applicability of these civil penalties to include
9 failure to meet the performance benchmarks described in an
10 emergency response plan and failure to meet standards described in a
11 service reliability plan or an emergency communications plan. The
12 “Board of Public Utilities Civil Penalty Fund” is established in the
13 BPU, into which all collected penalties will be deposited. The BPU is
14 required to use the monies in the fund to provide grants for certain
15 municipal maintenance activities and to otherwise increase public
16 utilities’ service quality and reliability. Civil penalties will not be
17 recoverable from ratepayers.