

**SENATE, No. 1452**

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**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

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INTRODUCED FEBRUARY 13, 2020

**Sponsored by:**

**Senator BRIAN P. STACK**

**District 33 (Hudson)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



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

3  
4       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7       1. Section 1 of P.L.1991, c.366 (C.48:3-17a) is amended to  
8 read as follows:

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

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

40       c. After completing the placement, replacement, repair, or  
41 removal of a pole or an underground facility pursuant to this  
42 section, the public utility shall remove from such right of way any  
43 pole or underground facility no longer in use as well as any other  
44 debris created from such placement, replacement, repair, or removal  
45 and restore the property including, but not limited to, the  
46 installation of a hot patch and the repaving of a portion of any

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

14 d. For the purposes of this section **[.1]**:

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

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

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

1 court shall have jurisdiction to enforce the provisions of this  
2 section. Consistent with section 1 of P.L.1988, c.100 (C.48:2-  
3 21.14), any penalty imposed pursuant to this section shall not be  
4 recoverable from ratepayers. In the case of removal or replacement  
5 of a pole or an underground facility utilized by two or more public  
6 utilities, the public utility last removing its pipes, cables, wires,  
7 lines or other structures shall be liable for the removal and  
8 restoration required under subsection c. of this section, unless a  
9 written agreement between the public utilities provides otherwise.

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

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

31  
32 2. This act shall take effect immediately.

#### 33 34 35 STATEMENT

36  
37 This bill adds gas and sewer public utilities and cable television  
38 companies to the types of public utilities required to notify a  
39 municipality prior to the placement, replacement, or removal of the  
40 public utility's poles and underground facilities and includes the  
41 repair of these poles or underground facilities to the notification  
42 requirement. The bill removes the provision of law that requires a  
43 municipality to first adopt an ordinance requiring a public utility to  
44 notify the municipality prior to a public utility undertaking this  
45 work.

1       The bill requires a public utility to repave a portion of a street,  
2 road, or highway that was excavated to undertake the work to  
3 restore the property to its previous condition as much as possible  
4 and require a public utility to pay workers no less than the  
5 prevailing wage rate for restoring the property where the work was  
6 undertaken to its previous condition as much as possible. The bill  
7 increases the amount of a fine a municipality may assess against a  
8 public utility in the event a public utility does not meet the law's  
9 requirements concerning the removal of debris and the restoration  
10 of property within a right of way to its previous condition from up  
11 to \$100 per day to up to \$1,000 per day. The bill prohibits a public  
12 utility from recovering from its ratepayers the costs of a fine  
13 assessed against a public utility as provided in the bill.