

# ASSEMBLY, No. 209

## STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

**Sponsored by:**

**Assemblyman MICHAEL INGANAMORT**

**District 24 (Morris, Sussex and Warren)**

**Assemblywoman DAWN FANTASIA**

**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**

Introduced Pending Technical Review by Legislative Counsel.



A209 INGANAMORT, FANTASIA

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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.

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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

A209 INGANAMORT, FANTASIA

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  
15 within the project area a copy of the final infrastructure project  
16 work plan and construction schedule and the utility accommodation  
17 plan. Responsibility for the relocation or accommodation of  
18 facilities in the project area shall be assigned by the department, at  
19 its 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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#### STATEMENT

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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

1 process, or failure to relocate their facilities according to the  
2 construction schedule when the utility company accepts  
3 responsibility for relocating their facilities.

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

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