

ASSEMBLY, No. 2232

STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 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.



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:

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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

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

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

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

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

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

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

9 f. Under emergency conditions which significantly impact the
10 placement of a pole or underground facility resulting from natural
11 forces or human activities beyond the control of the public utility,
12 or which pose an imminent or existing threat of loss of electrical,
13 water, power, gas, or sewer service, or telephone, cable television,
14 or other **【telecommunication】** telecommunications service, or
15 which pose an imminent or existing threat to the safety and security
16 of persons or property, or both, or which require immediate action
17 by a public utility to prevent bodily harm or substantial property
18 damage from occurring, the provisions of subsection b. of this
19 section shall not apply when a public utility undertakes any
20 construction or excavation related to the placement, replacement,
21 repair, or removal of a pole or an underground facility in response
22 to such an emergency, provided that the public utility undertaking
23 such construction or excavation notifies the appropriately licensed
24 municipal code official of the municipality in which such
25 construction or excavation occurs at the earliest reasonable
26 opportunity and that all **【reasonable】** efforts are taken by the public
27 utility to comply with the removal and restoration requirements of
28 subsection c. of this section after responding to the emergency.
29 (cf: P.L.2004, c.154, s.1)

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31 2. This act shall take effect immediately.

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STATEMENT

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

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

A2232 LOPEZ, KARABINCHAK

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