

ASSEMBLY, No. 2233

STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

SYNOPSIS

Requires public utilities and cable television companies to accommodate and relocate facilities and pay costs thereof when necessary for infrastructure projects.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the accommodation and relocation of certain
2 public utility and cable television facilities for the purposes of
3 infrastructure projects, supplementing Title 27 of the Revised
4 Statutes, and repealing section 1 of P.L.1983, c.283.

5

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

8

9 1. a. The Legislature finds and declares that:

10 (1) infrastructure projects, such as highways projects,
11 transportation projects, or other types of projects in the public
12 rights-of-way, are vital to maintaining the quality of life the citizens
13 of this State enjoy and to ensuring the health, safety, and welfare of
14 its residents;

15 (2) very often these infrastructure projects can not be
16 undertaken without impact costs resulting from ancillary
17 accommodation work and the relocation of public utility and cable
18 television facilities located in project areas, and along roads and
19 highways, and in the public rights-of-way;

20 (3) public utilities and cable television companies doing
21 business in the State of New Jersey have been granted a privilege to
22 occupy the public rights-of-way and to occupy areas along the
23 State's roads and highways as public utilities and cable television
24 companies provide vital public services;

25 (4) current law authorizes the Commissioner of Transportation
26 to include the costs associated with any ancillary accommodation
27 work or cost of the relocation of public utility and cable television
28 facilities in the overall cost of highway projects, thereby requiring
29 taxpayers and citizens of this State to fund these costs;

30 (5) in addition, other costs are also passed on to the taxpayers as
31 a result of the existence of facilities during the planning and design
32 phase, the bidding phase, and the construction phase of
33 infrastructure projects; and

34 (6) in many instances, public utilities and cable television
35 companies delay the relocation of their facilities, thereby increasing
36 the costs of infrastructure projects and denying taxpayers the use of
37 infrastructure projects.

38 b. The Legislature therefore determines that, in any
39 infrastructure project undertaken by a State, county, or municipal
40 contracting entity and financed with public funds, wherein the
41 existence of public utility or cable television facilities will cause
42 ancillary accommodation work or relocation of public utility or
43 cable television facilities, the cost of the accommodation or
44 relocation shall be borne by that public utility or cable television
45 company and shall not be passed along to the taxpayers of this
46 State.

1 2. As used in P.L. , c. (C.) (pending before the
2 Legislature as this bill):

3 “Ancillary accommodation work” means any work caused by, or
4 resulting from, the existence of a public utility or cable television
5 facility within any project area, including but, not limited to, a
6 public right-of-way in the course of the design or performance of
7 any infrastructure project. “Ancillary accommodation work” shall
8 include, but not be limited to, any work associated with any
9 interference with the construction, loss of production, relocation,
10 installation, support, or protection in place, or removal of public
11 utility or cable television company facilities within a project area.

12 “Cable television company” shall have the same meaning as
13 provided in section 3 of P.L.1972, c.186 (C.48:5A-3).

14 “Contracting entity” means any State, county, or municipal entity
15 that enters into a contract with a contractor for an infrastructure
16 project.

17 “Contractor” means a person who is directly awarded and enters
18 into a contract for services related to an infrastructure project by a
19 contracting entity.

20 “Coordination meeting” means the meeting conducted by a
21 contracting entity for the purpose of coordinating the design,
22 planning, and construction of an infrastructure project.

23 “Draft infrastructure project work plan and construction
24 schedule” means a draft of a plan and construction schedule for an
25 infrastructure project being contemplated by a contracting entity,
26 which shall include, but not be limited to, the preliminary design
27 and construction completion schedule anticipated for the
28 infrastructure project.

29 “Final infrastructure project work plan and construction
30 schedule” means a plan and construction schedule for an
31 infrastructure project that has been adopted by the contracting entity
32 and shall include, at a minimum, the final design and construction
33 completion schedule anticipated for the infrastructure project.

34 “Highway” means any road, street, highway, thoroughfare,
35 bridge, tunnel, overpass, interchange, or right-of-way which is open
36 to the use of the public for the purpose of vehicular travel and
37 which is maintained, owned, controlled, or otherwise under the
38 jurisdiction of the State, a county, or municipality.

39 “Highway project” means a project comprising the planning,
40 acquisition, engineering, construction, reconstruction, repair,
41 resurfacing, and rehabilitation of a highway and the planning,
42 acquisition, engineering, construction, reconstruction, repair,
43 maintenance, and rehabilitation of a public transportation project
44 and of any other transportation project in which the State or a
45 county or municipality may be authorized by law to undertake.

46 “Impact cost” means any direct or indirect cost associated with
47 any adverse impact on the productive cycle of construction activity
48 on an infrastructure project or, any impact that will prevent a

1 contracting entity from proceeding with the construction and
2 completion of an infrastructure project caused by public utility or
3 cable television company facilities in the project area during the
4 course of an infrastructure project. These costs shall include, but
5 not be limited to, any cost as a result of delay in the construction of
6 the project, loss of production, lost profit, and extended field and
7 home office overhead.

8 “Infrastructure project” means any highway project or
9 transportation project or the construction, reconstruction, alteration,
10 addition, physical betterment, or improvement of any other
11 infrastructure within a contracting entity’s jurisdiction.

12 “Infrastructure project contract” means any contract entered into
13 by a contracting entity and a contractor related to an infrastructure
14 project.

15 “Project area” means the physical area in which an infrastructure
16 project is located.

17 “Public highway” means a public road, street, expressway,
18 freeway, parkway, motorway and boulevard, including a bridge,
19 tunnel, overpass, underpass, interchange, rest area, express bus
20 roadway, bus pullout and turnaround, park-ride facility, traffic
21 circle, grade separation, traffic control device, the elimination or
22 improvement of a railroad or highway crossing, whether at grade or
23 not at grade, a bicycle and pedestrian pathway, pedestrian and
24 bicycle bridge traversing a public highway, and any facility,
25 equipment, property, right-of-way, easement and interest therein
26 needed for the construction, improvement, and maintenance of a
27 highway.

28 "Public transportation project" means, in connection with public
29 transportation service, a passenger station, shelter and terminal,
30 automobile parking facility, ferry and ferry facility, including a
31 capital project for a ferry terminal, approach roadway, pedestrian
32 accommodation, parking, dock, and other necessary land-side
33 improvement, ramp, track connection, signal system, power system,
34 information and communication system, roadbed, transit lane or
35 right-of-way, equipment storage, pedestrian walkway and bridge
36 connecting to a passenger station and servicing facility, bridge,
37 grade crossing, rail car, locomotive, motorbus and other motor
38 vehicle, maintenance and garage facility, revenue handling
39 equipment, and any other equipment, facility, or property useful for
40 or related to the provision of a public transportation service.

41 “Public utility” means an entity, publicly, cooperatively, or
42 investor-owned, established for the purpose of transmitting or
43 distributing telecommunications, power, electricity, light, heat, gas,
44 oil, crude product, water, steam, waste, storm water, or any other
45 similar commodity.

46 “Public utility facility” means any track, pipe, main or lateral,
47 conduit, access manhole or chamber, cable, wire, tower, pole,
48 telecommunications equipment, data transmissions system, or other

1 equipment, appliance, or apparatus of any public utility, but shall
2 not include any railroad or any cable television company.

3 "Right-of-way" means any right-of-way dedicated to public use,
4 the jurisdiction over which is held by the State or a county or
5 municipal entity.

6 "Transportation project" means, in addition to a public highway
7 and public transportation project, any equipment, facility or
8 property useful or related to the provision of any ground,
9 waterborne, or air transportation for the movement of people and
10 goods including rail freight infrastructure.

11

12 3. a. A contracting entity shall prepare a written draft
13 infrastructure project work plan and construction schedule for a
14 proposed infrastructure project within its jurisdiction. The draft
15 infrastructure project work plan and construction schedule shall
16 include, but need not be limited to, the following information: a
17 description of the infrastructure project; the time frame in which the
18 infrastructure project shall commence; the time frame for
19 completion of the infrastructure project; a listing of every public
20 utility and cable television company doing business or located
21 within the contracting entity's jurisdiction; and any other relevant
22 information concerning the infrastructure project.

23 b. A contracting entity shall prepare a written final
24 infrastructure project work plan and construction schedule after the
25 coordination meeting required to be held pursuant to section 4 of
26 P.L. , c. (C.) (pending before the Legislature as this bill).
27 The final infrastructure project work plan and construction schedule
28 shall include, but need not be limited to, the following information:
29 a detailed description of the infrastructure project; the time frame in
30 which the infrastructure project shall commence; the time frame for
31 completion of the infrastructure project; a listing of every public
32 utility and cable television doing business or located within the
33 contracting entity's jurisdiction; and any other relevant information
34 concerning the infrastructure project.

35

36 4. a. A contracting entity shall provide notice to any public
37 utility and cable television company, which does business or is
38 located within the contracting entity's jurisdiction, of any
39 impending infrastructure project within that jurisdiction during the
40 initial planning and design phase of project and no later than 120
41 calendar days prior to the solicitation of bids for that infrastructure
42 project. The notice shall be provided by certified mail, return
43 receipt requested, and shall include a copy of the draft infrastructure
44 project work plan and construction schedule required pursuant to
45 subsection a. of section 3 of P.L. , c. (C.) (pending before
46 the Legislature as this bill).

47 b. Within 60 days of the date of notice provided pursuant to
48 subsection a. of this section, the contracting entity shall schedule

1 and hold a coordination meeting between the contracting entity and
2 all authorized representatives from any public utility or cable
3 television company provided notice of the infrastructure project
4 pursuant to subsection a. of this section in order to establish the
5 coordination of the infrastructure project and any public utility or
6 cable television company facility protection or relocation work that
7 is required for purposes of the infrastructure project.

8
9 5. a. Immediately upon receipt of the draft infrastructure work
10 plan and construction schedule required to be noticed to a public
11 utility or cable television company pursuant to subsection a. of
12 section 4 of P.L. , c. (C.) (pending before the legislature as
13 this bill) and prior to the coordination meeting, an affected public
14 utility and cable television company shall undertake all necessary
15 pre-engineering and field location testing, as required, to determine
16 the precise location and extent of their facilities that exist within,
17 and adjacent to, the project area. All costs associated with this pre-
18 engineering shall be borne by the public utility or the cable
19 television company, or both, as appropriate.

20 b. At the coordination meeting, any public utility and cable
21 television company whose facility is located in the project area shall
22 provide, in writing, an accurate description, characteristic, and
23 location of all of their facilities, and shall provide a written
24 determination of every facility that will have an impact on the
25 infrastructure project, including whether the characteristic or
26 location of the facility will adversely impact the productive cycle of
27 construction activity on the infrastructure project or, in any manner,
28 will prevent a contracting entity from proceeding in the
29 construction and completion of the infrastructure project.

30
31 6. Within 30 days of the coordination meeting held pursuant to
32 section 4 of P.L. , c. (C.) (pending before the Legislature
33 as this bill), the contracting entity shall distribute to every public
34 utility and cable television company who attended the coordination
35 meeting, the final infrastructure project work plan and construction
36 schedule.

37
38 7. At the discretion of the public utility or cable television
39 company, if it is determined that the public utility or cable
40 television company will perform all, or a portion of, the ancillary
41 accommodation work prior to commencing the infrastructure
42 project, the public utility or cable television company shall perform
43 and complete the ancillary accommodation work in accordance with
44 the final infrastructure project work plan and construction schedule
45 and without any interference or delay to the contractor's work
46 schedule. The public utility or cable television company shall be
47 liable to the contracting entity for any impact costs incurred by the
48 contractor as a result of the failure of the public utility or cable

1 television company to complete the ancillary accommodation work
2 in accordance with the final infrastructure project work plan and
3 construction schedule.

4
5 8. At the discretion of a public utility or cable television
6 company whose facility adversely impacts the productive cycle of
7 construction activity on an infrastructure project or in any matter
8 prevents a contracting entity from proceeding in the construction
9 and completion of an infrastructure project, if it is determined that,
10 due to circumstances beyond the control of that public utility or
11 cable television company, it cannot eliminate a portion, or all, of
12 the ancillary accommodation work within, or adjacent to, the
13 project area, and that the contracting entity will be required to
14 perform a portion, or all, of the ancillary accommodation work
15 under the infrastructure project contract, the contracting entity shall
16 include in its solicitation for bid an allowance item to be funded by
17 the public utility or cable television company to reimburse the
18 contracting entity for any impact costs associated with the ancillary
19 accommodation work. In order to ensure funding for the ancillary
20 accommodation work, the public utility or cable television company
21 shall post a payment bond payable to the contracting entity for the
22 estimated cost of the ancillary accommodation work as determined
23 by the contracting entity.

24
25 9. If, at the discretion of the contracting entity, it is determined
26 that a public utility or cable television facility, in any manner, will
27 delay or prevent the contracting entity from proceeding with the
28 construction and completion of the infrastructure project, the
29 contracting entity shall notify the public utility or cable television
30 company, as appropriate, that the public utility or cable television
31 company is interfering with the infrastructure project and has a set
32 amount of time to relocate, remove, shift, alter, or protect, as
33 appropriate, their facility or facilities so as not to interfere in any
34 way with the infrastructure project.

35
36 10. If, at the discretion of the contracting entity with jurisdiction
37 over a project area, the existing public utility or cable television
38 facilities are deemed to be of a poor and deteriorated condition such
39 that those facilities require replacement, the public utility or cable
40 television company responsible for maintaining the facilities shall
41 perform the replacement work prior to the completion of the
42 infrastructure project contract.

43
44 11. A contractor awarded a infrastructure project contract by the
45 contracting entity for a infrastructure project shall be given priority
46 over other entities to perform any non-specialized public utility or
47 cable television facility work performed by the public utility or

1 cable television company during the construction phase of the
2 infrastructure project.

3

4 12. It shall be an unlawful practice and a violation of
5 P.L.1960, c.39 (C.56:8-1 et seq.) for any person to violate any
6 provision of P.L. , c. (C.) (pending before the Legislature
7 as this bill).

8

9 13. Section 1 of P.L.1983, c.283 (C. 27:7-44.16) is repealed.

10

11 14. This act shall take effect on the first day of the third month
12 after enactment and shall apply to projects that are, or scheduled to
13 be, bid 190 days after the effective date of this act.

14

15

16

STATEMENT

17

18 This bill provides for the accommodation and relocation of
19 public utility and cable television company facilities during the
20 course of an infrastructure project undertaken by the State or a
21 county or municipality (contracting entity).

22 Under current law, the cost associated with the accommodation
23 or relocation of public utility and cable television facilities are
24 calculated into the overall cost of highway projects are paid by the
25 State. This bill would improve the process for public utility and
26 cable television company facility accommodation and relocation
27 and would also require public utilities and cable television
28 companies to bear the costs for the accommodation or relocation of
29 their facilities when a contracting entity is undertaking any
30 infrastructure project.

31 This bill establishes a framework in which contracting entities,
32 and public utilities and cable television companies have delineated
33 rights and responsibilities during an infrastructure project. A
34 contracting entity is required to do the following:

35 • Prepare a written draft infrastructure project work plan and
36 construction schedule for any proposed infrastructure project
37 within its jurisdiction to include a description of the
38 infrastructure project and certain other relevant information
39 about the project and provide notice of it to public utilities
40 and cable television companies.

41 • Provide this notice to any public utility and cable television
42 company which does business or is located within the
43 contracting entity's jurisdiction of any impending
44 infrastructure project within that jurisdiction during the
45 initial planning and design phase of project and no later than
46 120 calendar days prior to the solicitation of bids for that
47 infrastructure project.

- 1 • Schedule and hold a coordination meeting between the
2 contracting entity and all authorized representatives from
3 any public utility or cable television company provided
4 notice of the infrastructure project to establish the
5 coordination of the infrastructure project and any public
6 utility or cable television company facility protection or
7 relocation work that is required for purposes of the
8 infrastructure project.
 - 9 • Prepare and distribute a written final infrastructure project
10 work plan and construction schedule for an infrastructure
11 project within its jurisdiction.
 - 12 • Determine if a public utility or cable television facility, in
13 any manner, will delay or prevent the contracting entity from
14 proceeding in the construction and completion of the
15 infrastructure project, and notify the public utility or cable
16 television company that the contracting entity has a set
17 amount of time to relocate, remove, shift, alter, or protect, as
18 appropriate, their facility or facilities so as not to interfere in
19 any way with the infrastructure project.
 - 20 • Determine if the existing public utility or cable television
21 facilities are of a poor and deteriorated condition such that
22 those facilities require replacement and require that the
23 appropriate public utility or cable television company
24 perform this work prior to the completion of the
25 infrastructure project contract.
- 26 A noticed public utility or cable television company is
27 responsible to do the following:
- 28 • Undertake all necessary pre-engineering and field location
29 testing, as required, to determine the precise location and
30 extent of their facilities that exist within, and adjacent to, the
31 project area. All costs associated with this pre-engineering
32 are to be borne by the appropriate public utility or the cable
33 television company.
 - 34 • Provide in writing, an accurate description, characteristic,
35 and location of all of their facilities, and a written
36 determination of every facility that will have an impact on
37 the infrastructure project, including whether the
38 characteristic or location of the facility will adversely impact
39 the infrastructure project.
 - 40 • Determine whether it will perform all, or any, of the facility
41 ancillary accommodation or relocation work in accordance
42 with the final infrastructure project work plan and
43 construction schedule. A public utility or cable television
44 company is to be liable to a contracting entity for any impact
45 costs incurred by the contracting entity as a result of the
46 failure of the public utility or cable television company to
47 complete the ancillary accommodation work in accordance

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- 1 with the infrastructure project work plan and construction
2 schedule.
- 3 • Reimburse a contracting entity for any impact costs
4 associated with ancillary accommodation work when it is
5 determined that, due to circumstances beyond the control of
6 that public utility or cable television company, it cannot
7 eliminate a portion, or all, of the ancillary accommodation
8 work within, or adjacent to, the project area, and that the
9 contracting entity will be required to perform a portion, or
10 all, of the ancillary accommodation work.
- 11 A violation of this bill's provisions is an unlawful practice and a
12 violation of the consumer fraud act which includes a penalty of not
13 more than \$10,000 for the first offense and not more than \$20,000
14 for the second and each subsequent offense.