Sponsored by:
Assemblyman HAROLD "HAL" J. WIRTHS
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.
AN ACT concerning the accommodation and relocation of certain public utility and cable television facilities for the purposes of transportation infrastructure projects and amending P.L.1983, c.283.

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

1. Section 1 of P.L.1983, c.283 (C.27:7-44.9) is amended to read as follows:

    1. In addition to other powers conferred upon the Commissioner of Transportation by any other law and not in limitation thereof, the commissioner, in connection with the construction, reconstruction, maintenance or operation of any infrastructure project, may make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances, herein called "facilities," of any public utility company, as defined in R.S.48:2-13, and of any cable television company as defined in the "Cable Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.), subsection c. of this section, having been granted privileges by the State or any political subdivision thereof, in, on, along, over or under any highway infrastructure project. Whenever the commissioner determines that it is necessary that facilities which now are, or hereafter may be, located in, on, along, over or under any highway infrastructure project shall be relocated in the project or should be removed from the project, the public utility [or cable television] company owning or operating the facilities shall relocate or remove the same in accordance with the order of the commissioner. The cost and expenses of such relocation or removal, including the cost of installing the facilities in a new location, or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights acquired to accomplish the relocation or removal, shall be ascertained and paid by the commissioner as a part of the cost of the infrastructure project, provided the utility company complies with all applicable federal and State statutes and regulations as they apply to the contracting for, and the cost reimbursement and accounting of, the accommodation of facilities within the highway right-of-way. The department may audit all records associated with the reimbursement of facilities accommodation costs within three years of completion of the accommodation work and recover or deduct from future payments for any other infrastructure project requiring facilities.
accommodation work, any non-allowable costs discovered through
that audit. In the case of the relocation or removal of facilities, [as
aforesaid,] the [public] utility [or cable television] company
owning or operating the same, its successors or assigns may
maintain and operate the facilities, with the necessary
appurtenances, in the new location or new locations for as long a
period, and upon the same terms and conditions, as it had the right
to maintain and operate the facilities in the former location or
locations.

b. [As used in this act, "highway project," in addition to its
ordinary meaning, means one which is administered and contracted
for by the commissioner.

c.] For infrastructure projects undertaken by the department and
financed with public funds wherein utility facilities will require
accommodation, the accommodation work shall be done in
accordance with a final infrastructure project work plan, utility
accommodation plan, and construction schedule developed by the
department, in consultation with the utility companies. Costs
associated with pre-engineering, field location testing, engineering
design and review, and any costs attributable to the utility company
from its delay in the relocation of its facilities, shall be paid by the
utility company.

c. As used in this act:
“Cable television company” shall have the same meaning as
defined in section 3 of P.L.1972, c.186 (C.48:5A-3).
“Contractor” means a person who is directly awarded and enters
into a contract for services related to an infrastructure project by the
department.
“Department” means the Department of Transportation.
“Draft infrastructure project work plan and construction
schedule” means a draft of a plan and construction schedule for an
infrastructure project being contemplated by the department, which
shall include, but need not be limited to, the preliminary design and
construction completion schedule anticipated for the infrastructure
project.
“Facilities” means a utility company’s tracks, pipes, mains or
l laterals, conduits, access manholes or chambers, cables, wires,
towers, poles, telecommunications equipment, data transmissions
systems, or other equipment, appliances, or apparatus, but not
including any railroad.
“Final infrastructure project work plan and construction
schedule” means a plan and construction schedule for an
infrastructure project that has been adopted by the department. This
shall include, at a minimum, the final design and construction
completion schedule anticipated for the infrastructure project.
“Highway” means any road, street, highway, thoroughfare,
bridge, tunnel, overpass, interchange, or right-of-way which is open
to the use of the public for the purpose of vehicular travel and
which is maintained, owned, controlled, or otherwise under the
jurisdiction of the department.

“Highway project” means a project comprising the planning,
acquisition, engineering, construction, reconstruction, repair,
resurfacing, and rehabilitation of highways and the planning,
acquisition, engineering, construction, reconstruction, repair,
maintenance, and rehabilitation of public transportation projects or
other transportation projects which the department may be
authorized by law to undertake.

“Impact cost” means any direct or indirect cost resulting from
any action or inaction by a utility company required by this section
that prevents the department, a contractor, or both from timely
proceeding with the construction and completion of an
infrastructure project.

“Infrastructure project” means any highway project, public
transportation project, transportation project, or the construction,
reconstruction, alteration, addition, physical betterment, or
improvement of any other infrastructure within the department’s
jurisdiction.

“Project area” means the physical area in which an infrastructure
project is located, including, but not limited to, a public right-of-
way.

“Public highways” means public roads, streets, expressways,
freeways, parkways, motorways and boulevards, including bridges,
tunnels, overpasses, underpasses, interchanges, rest areas, express
bus roadways, bus pullouts and turnarounds, park-ride facilities,
traffic circles, grade separations, traffic control devices, the
elimination or improvement of crossings of railroads and highways,
whether at grade or not at grade, bicycle and pedestrian pathways
and pedestrian and bicycle bridges traversing public highways and
any facilities, equipment, property, rights of way, easements and
interests therein needed for the construction, improvement, and
maintenance of highways.

“Public transportation project” means, in connection with public
transportation service, passenger stations, shelters and terminals,
automobile parking facilities, ferries and ferry facilities, including
capital projects for ferry terminals, approach roadways, pedestrian
accommodations, parking, docks, and other necessary land-side
improvements, ramps, track connections, signal systems, power
systems, information and communication systems, roadbeds, transit
lanes or rights of way, equipment storage, pedestrian walkways and
bridges connecting to passenger stations and servicing facilities,
bridges, grade crossings, rail cars, locomotives, motorbuses and
other motor vehicles, maintenance and garage facilities, revenue
handling equipment and any other equipment, facility or property
useful for or related to the provision of public transportation
service.
“Public utility” shall have the same meaning as defined in R.S.48:2-13.

“Rights-of-way” means any right-of-way dedicated to public use, the jurisdiction over which is held by the department.

“Transportation project” means, in addition to public highways and public transportation projects, any equipment, facility or property useful or related to the provision of any ground, waterborne, or air transportation for the movement of people and goods, including rail freight infrastructure.

“Utility accommodation plan” means a plan that includes, but is not limited to: (1) an accurate description, characteristic, and location of all of the facilities in a project area; and (2) a written determination of all facilities that will have an impact on the infrastructure project, including whether the characteristic or location of the facilities will impact the productive cycle of construction activity on the infrastructure project or, in any manner, will prevent the department from proceeding in the construction and completion of the infrastructure project, and engineering plans showing the means by which the facilities shall be relocated or accommodated.

“Utility accommodation work” means any work caused by, or resulting from, facilities within any project area, in the course of the design or performance of any infrastructure project. This shall include, but need not be limited to, any work associated with any interference with construction, relocation, installation, support, or protection in place, or removal of facilities within a project area.

“Utility company” means any public utility or any cable television company, or both.

d. (1) The department shall develop a draft infrastructure project work plan and construction schedule, in consultation with all utility companies doing business or located within the project area.

(2) The department shall provide a copy of the draft infrastructure project work plan and construction schedule for a proposed infrastructure project to all utility companies doing business or located within the project area and request verification and information as to the extent of its facilities that exist within and adjacent to the project area. Utility companies shall provide the verification and information related to its facilities in the project area to the department within 60 days of receipt of the request. Failure to provide such verification and information within the given timeframe shall be considered to delay or interfere with the project work plan and a utility company shall be liable to the department for any impact costs incurred by the department as a result of these delays. Verification and review costs incurred by a utility company shall be paid by the utility company.

(3) If, upon final notice from the department, a utility company is advised that it will delay or prevent the department from
proceeding with the design of the infrastructure project by a failure to provide necessary information or failure to respond to the department in a timely manner, a utility company shall be liable to the department for impact costs incurred as a result of the infrastructure project design delays.

e. Based on the information provided pursuant to subsection d, of this section, the department shall prepare, in consultation with all utility companies within the project area, a final infrastructure project work plan and construction schedule and the utility accommodation plan. Engineering design and review costs incurred by a utility company, in support of the development of the final infrastructure project work plan and construction schedule and the utility accommodation plan, shall be paid by the utility company.

f. (1) The department shall provide all utility companies within the project area a copy of the final infrastructure project work plan and construction schedule and the utility accommodation plan. Responsibility for the relocation or accommodation of facilities in the project area shall be assigned by the department, at its discretion, and identified in the final infrastructure project work plan.

(2) Within 30 days of receipt of the final infrastructure project work plan and construction schedule and the utility accommodation plan, a utility company within the project area shall provide the department acknowledgement of assignment of responsibility for the relocation or accommodation of their facility, as well as verification of acceptance of the final infrastructure project work plan and construction schedule and the utility accommodation plan. Failure to provide such acknowledgement and verification within the given timeframe shall be considered to delay or interfere with the project work plan and the utility company shall be liable to the department for any impact costs incurred by the department as a result of these delays.

g. A utility company shall be responsible for any work it performs in accordance with the final infrastructure project work plan and construction schedule and the utility accommodation plan. A utility company shall be liable to the department for any impact costs incurred by the department as a result of the failure of the utility company to complete the accommodation work in accordance with the final infrastructure project work plan and construction schedule and the utility accommodation plan. A utility company shall be liable to the contractor for any impact costs incurred by the contractor as a result of the failure of a utility company to complete the accommodation work in accordance with the final infrastructure project work plan and construction schedule and the utility accommodation plan. The department shall not be liable to the contractor for any impact costs incurred by the contractor as a result of the failure of a utility company to complete the accommodation work in accordance with the final infrastructure
project work plan and construction schedule and the utility accommodation plan.

h. If the department determines that a utility company provided incorrect information regarding the location or type of its facilities, a utility company shall be liable to the department and the contractor for any impact costs incurred by the contractor as a result of the delays associated with the incorrect information. The department shall not be liable to the contractor for any impact costs incurred by the contractor as a result of this delay.

The powers conferred upon the commissioner by this section also are conferred upon the governing body of any county having under its jurisdiction a limited access highway in the meaning of section 1 of P.L.1945, c.83 (C.27:7A-1) with respect to the construction, reconstruction, maintenance or operation of any highway project on that limited access highway.

(cf: P.L.1989, c.32, s.12)

2. This act shall take effect on the first day of the third month after enactment and shall apply to projects that are, or scheduled to be, bid 180 days after the effective date of this act, but shall not apply to projects for which engineering or construction agreements have been executed between the department and a utility company as of the effective date of this act.

STATEMENT

This bill expands the current requirement that a public utility or a cable television company (collectively, “utility company”) accommodate and relocate facilities when necessary for transportation infrastructure projects, at the direction of the Department of Transportation (“department”).

The bill defines facilities as a utility company’s tracks, pipes, mains or laterals, conduits, access manholes or chambers, cables, wires, towers, poles, telecommunications equipment, data transmissions systems, or other equipment, appliances, or apparatus, but not including any railroad.

The bill creates a process whereby the department and a utility company establish and assign responsibility for the relocation of utility facilities within the limits of construction projects. The bill permits the department to manage utility relocations through its construction contract, and allows the department’s contractor to control the project’s construction schedule and the timing for utility facilities relocation work. Where appropriate, the department may assign responsibility for the utility relocation to a utility company.

The bill’s provisions allow the department to hold a utility company liable for delaying the department or its contractor for failure to provide necessary data and support during the design
process, or failure to relocate their facilities according to the
construction schedule when the utility company accepts
responsibility for relocating their facilities.

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

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