

ASSEMBLY, No. 702

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ZISA

1 AN ACT providing immunity from liability to public entities under
2 certain circumstances, supplementing chapter 2 of Title 59 of the
3 New Jersey Statutes and amending R.S.48:17-11.

4

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

7

8 1. (New section) A public entity shall not be liable for injury
9 proximately caused by the siting and erection on any public road,
10 street or highway of any municipality or county of any pole, conduit,
11 wire or other fixture by any public or private utility company operating
12 in this State.

13

14 2. R.S.48:17-11 is amended to read as follows:

15 48:17-11. The governing body of any municipality or the board of
16 freeholders of any county [on] before granting permission to use any
17 street, road or highway for a local line, or on written application to it
18 by any such telegraph or telephone company desiring to construct any
19 through line, shall [designate by ordinance or resolution] require the
20 telegraph or telephone company to submit to it a plan showing the
21 streets, roads or highways in, along, over or under which the poles,
22 wires, conduits and other fixtures [shall] would be erected or
23 constructed and the manner of erecting or constructing the same and
24 the particular location in any street, road or highway where the same
25 [shall] would be placed.

26 [They shall be located and constructed according to a] The plan
27 [showing] shall show the location, number and size of the poles,
28 conduits and other fixtures [to be approved by the governing body or
29 board of freeholders before any work is begun. They shall be so] and
30 shall show that they will be placed as not to interfere with the safety
31 or convenience of persons or vehicles traveling on any such street,
32 road or highway. Before any work is begun, the telegraph or

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 telephone company shall obtain the permission of the governing body
2 of the municipality or board of chosen freeholders of the county, by
3 ordinance or resolution, as appropriate, to carry out the elements of
4 the plan. However, the governing body of the municipality or the
5 board of chosen freeholders of the county, in granting permission to
6 the telegraph or telephone company to carry out the elements of the
7 plan, shall not be liable for any injury proximately caused by the siting
8 and erection on any public road, street or highway of the municipality
9 or county, as appropriate, of any pole, conduit, wire or other fixture
10 of the telegraph or telephone company.

11 The use of all streets, roads or highways by the company shall be
12 subject to such police and other regulations and restrictions as may be
13 adopted by the governing body of the municipality or the board of
14 freeholders.

15 (cf: R.S.48:17-11)

16

17 3. This act shall take effect immediately.

18

19

STATEMENT

20

21 This bill provides that a public entity, such as a county or
22 municipality, shall not be liable for injury proximately caused by the
23 siting and erection on any public road, street or highway of any
24 municipality or county of any pole, conduit, wire or other fixture by
25 any public or private utility company operating in this State.

26 The bill also removes from current law the requirement that the
27 governing body of a municipality or county must designate, by
28 ordinance or resolution, as appropriate, the location on public streets,
29 roads or highways of the poles, wires, conduits or other fixtures of a
30 telegraph or telephone company, and the manner of construction of
31 such apparatus. This requirement is replaced by language requiring
32 the telegraph or telephone company to submit to the governing body
33 of the county or municipality a plan showing the location and manner
34 of construction of the poles, wires, conduits or other fixtures of the
35 utility, and requiring that the permission of the appropriate governing
36 body, by ordinance or resolution, as appropriate, must be obtained to
37 carry out the elements of the plan.

38 The provisions of this bill are intended to respond to the ruling of
39 the New Jersey State Supreme Court in Contey v. New Jersey Bell
40 Telephone Co., 136 N.J.582 (1994) that under current law the primary
41 responsibility for the safety of the motoring public rests with the
42 highway planners and engineers and the public bodies by whom they
43 are employed at the State, county and local level, and therefore,
44 municipalities and counties will not be able to ensure their protection
45 under the "New Jersey Tort Claims Act," N.J.S.A.59:1-1 et seq., if

1 they do not specifically approve the location and design of utility
2 fixtures.

3

4

5

6

7 Provides immunity under the "New Jersey Tort Claims Act" to public
8 entities under certain circumstances.