

48:3-17

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2004 **CHAPTER:** 154

NJSA: 48:3-17 (Procedures with respect to placement or removal of utility poles)

BILL NO: A1771 (Substituted for S1771)

SPONSOR(S): Sires and others

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Telecommunications and Utilities
SENATE: Economic Growth

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 24, 2004

SENATE: October 25, 2004

DATE OF APPROVAL: November 8, 2004

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) 3rd reprint enacted

A1771

[SPONSOR'S STATEMENT:](#) (Begins on page 3 of original bill) [Yes](#)

COMMITTEE STATEMENT: **[ASSEMBLY:](#)** [Yes](#)

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: Yes [6-10-2004](#)
[6-17-2004](#)

LEGISLATIVE FISCAL ESTIMATE: No

S1771

[SPONSOR'S STATEMENT:](#) (Begins on page 4 of original bill) [Yes](#)

COMMITTEE STATEMENT: **[ASSEMBLY:](#)** No

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

No

P.L. 2004, CHAPTER 154, *approved November 8, 2004*
Assembly, No. 1771 (*Third Reprint*)

1 AN ACT concerning certain facilities of public utilities and amending
2 P.L.1991, c.366.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 1 of P.L.1991, c.366 (C.48:3-17a) is amended to read
8 as follows:

9 1. a. After the effective date of [this act] P.L.1991, c.366
10 (C.48:3-17a), before a public utility places a pole, used for the
11 supplying and distributing of electricity for light, heat or power, or for
12 the furnishing of telegraph, telephone or other telecommunications
13 service, on a public right of way on which the predominant method of
14 lighting is gas lighting, a public utility shall, in addition to any other
15 requirements of law, first acquire the consent of the governing body
16 of the municipality in which the public right of way is located.

17 b. After the effective date of P.L. , c. (C.) (now before the
18 Legislature as this bill), before a public utility places, replaces or
19 removes ¹[two or more poles] a pole or an underground facility¹
20 located in a single municipality within a 24-hour period, which ¹[poles
21 are] pole or underground facility is¹ used for the supplying and
22 distribution of electricity for light, heat or power, or for the furnishing
23 of ¹water service or¹ telephone or other telecommunications service
24 on ¹or below¹ a public right of way in that municipality, the public
25 utility shall, in addition to any other requirements of law, ¹[file an
26 engineering report with the municipal engineer or] notify¹ an
27 appropriately licensed municipal code official of the municipality ¹at
28 least 24 hours before undertaking any construction or excavation
29 related to the placement, replacement or removal of such pole or
30 underground facility¹. ³The provisions of this subsection shall apply
31 only to a municipality where the governing body of that municipality
32 has first adopted an ordinance requiring the notification of a public
33 utility that provides service in that municipality of the application of
34 the provisions of this subsection in the municipality.³ ¹For the
35 purposes of this section, "underground facility" means one or more
36 underground pipes, cables, wires, lines or other structures used for the
37 supplying and distribution of electricity for light, heat or power or for
38 the providing of water service, or for the furnishing of telephone 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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ATU committee amendments adopted May 13, 2004.

² Assembly floor amendments adopted June 10, 2004.

³ Assembly floor amendments adopted June 17, 2004.

1 other telecommunications service.¹
2 ¹c.¹ After completing the placement, replacement or removal of
3 ¹[such poles] a pole or an underground facility pursuant to this
4 section¹, the public utility shall remove from such right of way any
5 pole ¹or underground facility¹ no longer in use as well as any other
6 debris created from such placement, replacement or removal and
7 restore the property ¹including, but not limited to, the installation of
8 a hot patch as needed to restore the property¹ within the right of way
9 to its previous condition as much as possible. ¹As used in this section,
10 "hot patch" means the installation of a mixture of asphalt to restore
11 property within the right of way to its previous condition subsequent
12 to the construction or excavation of a site required for the placement,
13 replacement of a pole or an underground facility pursuant to this
14 section.¹

15 ¹[c.] d.¹ For ¹the¹ purposes of ¹[this act] this section¹, "pole"
16 means, in addition to its commonly accepted meaning, any wires or
17 cable connected thereto, and any replacements therefor which are
18 similar in construction and use.

19 ¹[d.] e.¹ In the event a public utility does not meet the
20 requirements of subsection ¹[b.] c.¹ of this section concerning the
21 removal of debris and the restoring of property ¹including, but not
22 limited to, the installation of a hot patch,¹ within a right of way to its
23 previous condition within ²[30] 90² days of placement, replacement
24 or removal of ¹[poles] a pole or an underground facility¹, the
25 municipality shall be authorized to impose a fine up to an amount not
26 to exceed ¹[\$100] ²[\$250]¹ \$100² each day until the requirements of
27 subsection ¹[b.] c.¹ are met ², except that if the public utility is unable
28 to complete the installation of a hot patch due to the unavailability of
29 asphalt material during the period of time from November through
30 April, the public utility shall not be required to complete the hot patch
31 installation until 60 days immediately following the end of the
32 November through April period. At least five business days prior to
33 the end of the 90-day period established by this subsection, the
34 municipality shall notify the public utility that the penalties authorized
35 by this subsection shall begin to be assessed against the utility after the
36 end of the 90-day period unless the utility complies with the
37 requirements of subsection c. of this section². Any penalty imposed
38 shall be collected or enforced in a summary manner, without a jury, in
39 any court of competent jurisdiction according to the procedure
40 provided by "the penalty enforcement law" (N.J.S.2A:58-1 et seq.).
41 The Superior Court and municipal court shall have jurisdiction to
42 enforce the provisions of this section. ²In the case of removal or
43 replacement of a pole or an underground facility utilized by two or
44 more public utilities, the public utility last removing its pipes, cables,
45 wires, lines or other structures shall be liable for the removal and
46 restoration required under subsection c. of this section, unless a

1 written agreement between the public utilities provides otherwise.²
2 ¹f. Under emergency conditions ²which significantly impact the
3 placement of a pole or underground facility resulting from natural
4 forces or human activities beyond the control of the public utility, or²
5 which pose an imminent or existing threat ²of loss of electrical, water,
6 power, telephone, or other telecommunication service, or which pose
7 an imminent or existing threat² to the safety and security of persons or
8 property, or both, ²[and] or² which require immediate action by a
9 public utility to prevent bodily harm or substantial property damage
10 from occurring, the provisions of ²[subsections b. and c.] subsection
11 b. ² of this section shall not apply when a public utility undertakes any
12 construction or excavation related to the placement, replacement or
13 removal of a pole or an underground facility in response to such an
14 emergency, provided that the public utility undertaking such
15 construction or excavation notifies the appropriately licensed
16 municipal code official of the municipality in which such construction
17 or excavation occurs at the earliest reasonable opportunity and that all
18 reasonable efforts are taken by the public utility to comply with the
19 removal and restoration requirements of subsection c. of this section
20 after responding to the emergency.¹

21 (cf. P.L.1991, c.366, s.1)

22

23 2. This act shall take effect immediately.

24

25

26

27

28 Concerns procedures with respect to placement, replacement or
29 removal of public utility poles and underground facilities under certain
30 circumstances.

ASSEMBLY, No. 1771

STATE OF NEW JERSEY 211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

Sponsored by:

Assemblyman ALBIO SIRES

District 33 (Hudson)

Assemblyman JOSEPH VAS

District 19 (Middlesex)

Assemblyman BRIAN P. STACK

District 33 (Hudson)

Co-Sponsored by:

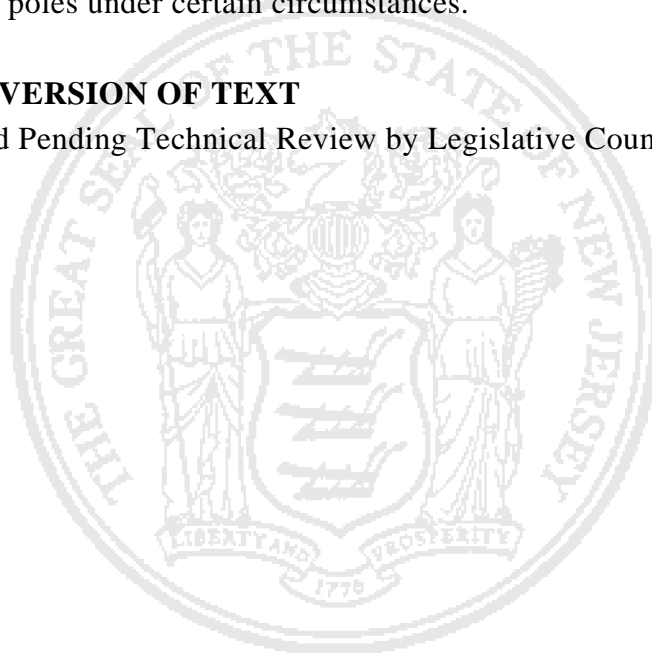
Assemblyman Eagler

SYNOPSIS

Concerns procedures with respect to placement, replacement or removal of public utility poles under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 5/21/2004)

A1771 SIRES, VAS

2

1 AN ACT concerning certain facilities of public utilities and amending
2 P.L.1991, c.366.

3

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

6

7 1. Section 1 of P.L.1991, c.366 (C.48:3-17a) is amended to read
8 as follows:

9 1. a. After the effective date of **[this act]** P.L.1991, c.366
10 (C.48:3-17a), before a public utility places a pole, used for the
11 supplying and distributing of electricity for light, heat or power, or for
12 the furnishing of telegraph, telephone or other telecommunications
13 service, on a public right of way on which the predominant method of
14 lighting is gas lighting, a public utility shall, in addition to any other
15 requirements of law, first acquire the consent of the governing body
16 of the municipality in which the public right of way is located.

17 b. After the effective date of P.L. , c. (C.) (now before the
18 Legislature as this bill), before a public utility places, replaces or
19 removes two or more poles located in a single municipality within a
20 24-hour period, which poles are used for the supplying and distribution
21 of electricity for light, heat or power, or for the furnishing of
22 telephone or other telecommunications service on a public right of way
23 in that municipality, the public utility shall, in addition to any other
24 requirements of law, file an engineering report with the municipal
25 engineer or an appropriately licensed municipal code official of the
26 municipality. After completing the placement, replacement or removal
27 of such poles, the public utility shall remove from such right of way
28 any pole no longer in use as well as any other debris created from such
29 placement, replacement or removal and restore the property within the
30 right of way to its previous condition as much as possible.

31 c. For purposes of this act, "pole" means, in addition to its
32 commonly accepted meaning, any wires or cable connected thereto,
33 and any replacements therefor which are similar in construction and
34 use.

35 d. In the event a public utility does not meet the requirements of
36 subsection b. of this section concerning the removal of debris and the
37 restoring of property within a right of way to its previous condition
38 within 30 days of placement, replacement or removal of poles, the
39 municipality shall be authorized to impose a fine up to an amount not
40 to exceed \$100 each day until the requirements of subsection b. are
41 met. Any penalty imposed shall be collected or enforced in a summary
42 manner, without a jury, in any court of competent jurisdiction
43 according to the procedure provided by "the penalty enforcement law"

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 (N.J.S.2A:58-1 et seq.). The Superior Court and municipal court shall
2 have jurisdiction to enforce the provisions of this section.
3 (cf: P.L.1991, c.366, s.1)

4

5 2. This act shall take effect immediately.

6

7

8

STATEMENT

9

10 This bill would require a public utility that places, replaces or
11 removes two or more utility poles on a public right of way within any
12 24-hour period to first file an engineering report with the municipal
13 engineer or an appropriately licensed municipal code official of the
14 municipality in which the public right of way is located. After
15 completing the placement, replacement or removal of such poles, the
16 public utility shall remove from such right of way any pole no longer
17 in use as well as any other debris created from such placement,
18 replacement or removal and restore the property within the right of
19 way to its previous condition as much as possible. The bill authorizes
20 a municipality to fine a public utility that does not remove the old
21 poles or debris within 30 days after completing the placement,
22 replacement or removal of poles, up to a maximum of \$100 a day.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1771

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 13, 2004

The Assembly Telecommunications and Utilities Committee reports favorably and with committee amendments Assembly Bill No. 1771.

As amended, this bill requires certain public utilities that place, replace or remove a utility pole or an underground facility on or below a public right of way within any 24-hour period to first notify an appropriately licensed municipal code official of the municipality in which the public right of way is located at least 24 hours before starting construction related to the placement, replacement or removal of such pole or underground facility.

The bill also requires those public utilities, after completing the placement, replacement or removal of a pole or underground facility, to remove from such right of way any pole or underground facility no longer in use as well as any other debris created from such placement, replacement or removal and restore the property within the right of way to its previous condition as much as possible, including the installation of a hot patch.

The bill authorizes a municipality to fine those public utilities that do not meet the removal and restoration requirements of subsection c. of the bill within 30 days after completing the placement, replacement or removal of a pole or underground facility, up to a maximum of \$250 a day until the requirements are met.

The bill also provides that in the event of an emergency requiring immediate action by those public utilities to prevent bodily harm or substantial property damage from occurring, the notification and penalty provisions of the bill do not apply when the utilities are responding to such an emergency. The bill would require the utilities to notify an appropriate municipal code official at the earliest reasonable opportunity and to make all reasonable efforts to restore the construction or excavation site to its previous condition after responding to an emergency.

This bill was prefiled for introduction in the 2004-2005 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

COMMITTEE AMENDMENTS

The committee adopted amendments to:

(1) Require utilities that undertake construction or excavation work for underground facilities as well as for poles on municipal rights of way to be subject to the provisions of the bill;

(2) Clarify that utilities that provide water service are subject to the provisions of the bill;

(3) Require utilities to notify an appropriately licensed municipal code official instead of requiring the filing of an engineering report with the municipal engineer prior to undertaking construction or excavation;

(4) Require utilities to remove any underground facility or pole no longer in use from a municipal right of way together with any other debris and to restore property to its previous condition including installation of a "hot patch," after completing construction or excavation work;

(5) Increase the daily fine a municipality may impose on a public utility from \$100 to \$250 until the utility complies with the removal and restoration requirements of subsection c. of the bill; and

(6) Provide an exemption from restoration requirements in cases in which utilities are required to perform emergency work to prevent loss of life or substantial property damage.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

[Third Reprint]

ASSEMBLY, No. 1771

STATE OF NEW JERSEY

DATED: OCTOBER 4, 2004

The Senate Economic Growth Committee reports favorably Assembly Bill No. 1771 (3R).

As reported, this bill requires certain public utilities that place, replace or remove a utility pole or an underground facility on or below a public right of way within any 24-hour period to notify an appropriately licensed municipal code official of the municipality in which the public right of way is located at least 24 hours before starting construction related to the placement, replacement or removal of such pole or underground facility if the governing body of that municipality has first adopted an ordinance requiring the notification of the municipality by a public utility that provides service to the municipality.

The bill also requires those public utilities, after completing the placement, replacement or removal of a pole or underground facility, to remove from such right of way any pole or underground facility no longer in use as well as any other debris created from such placement, replacement or removal and restore the property within the right of way to its previous condition as much as possible, including the installation of a hot patch within 90 days, except that in the case of a hot patch installation, if the public utility is unable to complete the installation due to unavailability of asphalt materials from November through April, the utility shall not be required to complete the installation until 60 days after the end of the November through April period. In addition, the bill requires notice by the municipality to the public utility at least five business days prior to the end of the 90-day period that penalties shall begin to be assessed unless the utility complies with the removal and restoration requirements.

The bill provides that in the case of removal or replacement of a pole or underground facility used by two or more public utilities, the public utility last removing its pipes, cables, wires, lines or other structures shall be liable for the removal and restoration requirements, unless a written agreement between the public utilities provides otherwise.

The bill also provides that in the event of an emergency requiring immediate action by those public utilities to prevent bodily harm or

substantial property damage from occurring, the notification and penalty provisions of the bill do not apply when the utilities are responding to such an emergency. The bill would require the utilities to notify an appropriate municipal code official at the earliest reasonable opportunity and to make all reasonable efforts to restore the construction or excavation site to its previous condition after responding to an emergency. The bill also provides that "emergency conditions" shall include natural forces or human activities beyond the control of the public utility which significantly impact the placement of a pole or underground facility, conditions which pose an imminent or existing threat of loss of electrical, water, telephone, or other telecommunication service, or which pose an imminent or existing threat to the safety and security of persons or property, or both, or which require immediate action by a public utility to prevent bodily harm or substantial property damage from occurring.

The bill authorizes a municipality to fine those public utilities that do not meet the removal and restoration requirements of subsection c. of the bill within 90 days after completing the placement, replacement or removal of a pole or underground facility, up to a maximum of \$100 a day until the requirements are met.

As reported by the committee, Assembly Bill, No. 1771 (3R) is identical to Senate Bill, No. 1771 which was also reported by the committee on this date.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 1771

with Assembly Floor Amendments
(Proposed By Assemblyman SIRES)

ADOPTED: JUNE 10, 2004

These amendments increase the time during which a public utility may remove debris and restore property to its previous condition following the placement, replacement or removal of a pole or underground facility from 30 to 90 days except that in the case of a hot patch installation, if the public utility is unable to complete the installation due to unavailability of asphalt materials from November through April, the utility shall not be required to complete the installation until 60 days after the end of the November through April period. In addition, the amendments require notice by the municipality to the public utility at least five business days prior to the end of the 90-day period that penalties shall begin to be assessed unless the utility complies with the removal and restoration requirements.

The amendments reduce the fine that a municipality may impose for failure to clean up debris and restore property to its previous condition from \$250 to \$100 for each day until the removal and restoration requirements are met. The amendments provide that in the case of removal or replacement of a pole or underground facility used by two or more public utilities, the public utility last removing its pipes, cables, wires, lines or other structures shall be liable for the removal and restoration requirements, unless a written agreement between the public utilities provides otherwise.

The amendments also provide that "emergency conditions" shall include natural forces or human activities beyond the control of the public utility which significantly impact the placement of a pole or underground facility, conditions which pose an imminent or existing threat of loss of electrical, water, telephone, or other telecommunication service, or which pose an imminent or existing threat to the safety and security of persons or property, or both, or which require immediate action by a public utility to prevent bodily harm or substantial property damage from occurring.

STATEMENT TO
[Second Reprint]
ASSEMBLY, No. 1771

with Assembly Floor Amendments
(Proposed By Assemblyman SIRES)

ADOPTED: JUNE 17, 2004

These amendments provide that the notification provisions in subsection b. of section 1 of the bill apply only to a municipality where the governing body of that municipality has first adopted an ordinance requiring the notification of a public utility that provides service in that municipality of the application of the provisions of subsection b. of section 1 of the bill.

SENATE, No. 1771

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED JUNE 17, 2004

Sponsored by:

Senator BERNARD F. KENNY, JR.

District 33 (Hudson)

Senator JOSEPH V. DORIA, JR.

District 31 (Hudson)

SYNOPSIS

Concerns procedures with respect to placement, replacement or removal of public utility poles and underground facilities under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/26/2004)

1 AN ACT concerning certain facilities of public utilities and amending
2 P.L.1991, c.366.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 1 of P.L.1991, c.366 (C.48:3-17a) is amended to read
8 as follows:

9 1. a. After the effective date of **[this act]** P.L.1991, c.366
10 (C.48:3-17a), before a public utility places a pole, used for the
11 supplying and distributing of electricity for light, heat or power, or for
12 the furnishing of telegraph, telephone or other telecommunications
13 service, on a public right of way on which the predominant method of
14 lighting is gas lighting, a public utility shall, in addition to any other
15 requirements of law, first acquire the consent of the governing body
16 of the municipality in which the public right of way is located.

17 b. After the effective date of P.L. , c. (C.) (now before the
18 Legislature as this bill), before a public utility places, replaces or
19 removes a pole or an underground facility located in a single
20 municipality within a 24-hour period, which pole or underground
21 facility is used for the supplying and distribution of electricity for light,
22 heat or power, or for the furnishing of water service or telephone or
23 other telecommunications service on or below a public right of way in
24 that municipality, the public utility shall, in addition to any other
25 requirements of law, notify an appropriately licensed municipal code
26 official of the municipality at least 24 hours before undertaking any
27 construction or excavation related to the placement, replacement or
28 removal of such pole or underground facility. The provisions of this
29 subsection shall apply only to a municipality where the governing body
30 of that municipality has first adopted an ordinance requiring the
31 notification of a public utility that provides service in that municipality
32 of the application of the provisions of this subsection in the
33 municipality. For the purposes of this section, "underground facility"
34 means one or more underground pipes, cables, wires, lines or other
35 structures used for the supplying and distribution of electricity for
36 light, heat or power or for the providing of water service, or for the
37 furnishing of telephone or other telecommunications service.

38 c. After completing the placement, replacement or removal of a
39 pole or an underground facility pursuant to this section, the public
40 utility shall remove from such right of way any pole or underground
41 facility no longer in use as well as any other debris created from such
42 placement, replacement or removal and restore the property including,
43 but not limited to, the installation of a hot patch as needed to restore

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 the property within the right of way to its previous condition as much
2 as possible. As used in this section, "hot patch" means the installation
3 of a mixture of asphalt to restore property within the right of way to
4 its previous condition subsequent to the construction or excavation of
5 a site required for the placement, replacement of a pole or an
6 underground facility pursuant to this section.

7 d. For the purposes of [this act] this section, "pole" means, in
8 addition to its commonly accepted meaning, any wires or cable
9 connected thereto, and any replacements therefor which are similar in
10 construction and use.

11 e. In the event a public utility does not meet the requirements of
12 subsection c. of this section concerning the removal of debris and the
13 restoring of property including, but not limited to, the installation of
14 a hot patch, within a right of way to its previous condition within 90
15 days of placement, replacement or removal of a pole or an
16 underground facility, the municipality shall be authorized to impose a
17 fine up to an amount not to exceed \$100 each day until the
18 requirements of subsection c. are met, except that if the public utility
19 is unable to complete the installation of a hot patch due to the
20 unavailability of asphalt material during the period of time from
21 November through April, the public utility shall not be required to
22 complete the hot patch installation until 60 days immediately following
23 the end of the November through April period. At least five business
24 days prior to the end of the 90-day period established by this
25 subsection, the municipality shall notify the public utility that the
26 penalties authorized by this subsection shall begin to be assessed
27 against the utility after the end of the 90-day period unless the utility
28 complies with the requirements of subsection c. of this section. Any
29 penalty imposed shall be collected or enforced in a summary manner,
30 without a jury, in any court of competent jurisdiction according to the
31 procedure provided by "the penalty enforcement law" (N.J.S.2A:58-1
32 et seq.). The Superior Court and municipal court shall have
33 jurisdiction to enforce the provisions of this section. In the case of
34 removal or replacement of a pole or an underground facility utilized by
35 two or more public utilities, the public utility last removing its pipes,
36 cables, wires, lines or other structures shall be liable for the removal
37 and restoration required under subsection c. of this section, unless a
38 written agreement between the public utilities provides otherwise.

39 f. Under emergency conditions which significantly impact the
40 placement of a pole or underground facility resulting from natural
41 forces or human activities beyond the control of the public utility, or
42 which pose an imminent or existing threat of loss of electrical, water,
43 power, telephone, or other telecommunication service, or which pose
44 an imminent or existing threat to the safety and security of persons or
45 property, or both, or which require immediate action by a public utility
46 to prevent bodily harm or substantial property damage from occurring,

1 the provisions of subsection b. of this section shall not apply when a
2 public utility undertakes any construction or excavation related to the
3 placement, replacement or removal of a pole or an underground
4 facility in response to such an emergency, provided that the public
5 utility undertaking such construction or excavation notifies the
6 appropriately licensed municipal code official of the municipality in
7 which such construction or excavation occurs at the earliest reasonable
8 opportunity and that all reasonable efforts are taken by the public
9 utility to comply with the removal and restoration requirements of
10 subsection c. of this section after responding to the emergency.

11 (cf. P.L.1991, c.366, s.1)

12
13 2. This act shall take effect immediately.

14
15
16 STATEMENT

17
18 This bill requires certain public utilities that place, replace or
19 remove a utility pole or an underground facility on or below a public
20 right of way within any 24-hour period to notify an appropriately
21 licensed municipal code official of the municipality in which the public
22 right of way is located at least 24 hours before starting construction
23 related to the placement, replacement or removal of such pole or
24 underground facility if the governing body of that municipality has first
25 adopted an ordinance requiring the notification of the municipality by
26 a public utility that provides service to the municipality.

27 The bill also requires those public utilities, after completing the
28 placement, replacement or removal of a pole or underground facility,
29 to remove from such right of way any pole or underground facility no
30 longer in use as well as any other debris created from such placement,
31 replacement or removal and restore the property within the right of
32 way to its previous condition as much as possible, including the
33 installation of a hot patch within 90 days, except that in the case of a
34 hot patch installation, if the public utility is unable to complete the
35 installation due to unavailability of asphalt materials from November
36 through April, the utility shall not be required to complete the
37 installation until 60 days after the end of the November through April
38 period. In addition, the bill requires notice by the municipality to the
39 public utility at least five business days prior to the end of the 90-day
40 period that penalties shall begin to be assessed unless the utility
41 complies with the removal and restoration requirements.

42 The bill provides that in the case of removal or replacement of a
43 pole or underground facility used by two or more public utilities, the
44 public utility last removing its pipes, cables, wires, lines or other
45 structures shall be liable for the removal and restoration requirements,
46 unless a written agreement between the public utilities provides

1 otherwise.

2 The bill also provides that in the event of an emergency requiring
3 immediate action by those public utilities to prevent bodily harm or
4 substantial property damage from occurring, the notification and
5 penalty provisions of the bill do not apply when the utilities are
6 responding to such an emergency. The bill would require the utilities
7 to notify an appropriate municipal code official at the earliest
8 reasonable opportunity and to make all reasonable efforts to restore
9 the construction or excavation site to its previous condition after
10 responding to an emergency. The bill also provides that "emergency
11 conditions" shall include natural forces or human activities beyond the
12 control of the public utility which significantly impact the placement
13 of a pole or underground facility, conditions which pose an imminent
14 or existing threat of loss of electrical, water, telephone, or other
15 telecommunication service, or which pose an imminent or existing
16 threat to the safety and security of persons or property, or both, or
17 which require immediate action by a public utility to prevent bodily
18 harm or substantial property damage from occurring.

19 The bill authorizes a municipality to fine those public utilities that
20 do not meet the removal and restoration requirements of subsection c.
21 of the bill within 90 days after completing the placement, replacement
22 or removal of a pole or underground facility, up to a maximum of
23 \$100 a day until the requirements are met.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 1771

STATE OF NEW JERSEY

DATED: OCTOBER 4, 2004

The Senate Economic Growth Committee reports favorably Senate Bill No. 1771.

As reported, this bill requires certain public utilities that place, replace or remove a utility pole or an underground facility on or below a public right of way within any 24-hour period to notify an appropriately licensed municipal code official of the municipality in which the public right of way is located at least 24 hours before starting construction related to the placement, replacement or removal of such pole or underground facility if the governing body of that municipality has first adopted an ordinance requiring the notification of the municipality by a public utility that provides service to the municipality.

The bill also requires those public utilities, after completing the placement, replacement or removal of a pole or underground facility, to remove from such right of way any pole or underground facility no longer in use as well as any other debris created from such placement, replacement or removal and restore the property within the right of way to its previous condition as much as possible, including the installation of a hot patch within 90 days, except that in the case of a hot patch installation, if the public utility is unable to complete the installation due to unavailability of asphalt materials from November through April, the utility shall not be required to complete the installation until 60 days after the end of the November through April period. In addition, the bill requires notice by the municipality to the public utility at least five business days prior to the end of the 90-day period that penalties shall begin to be assessed unless the utility complies with the removal and restoration requirements.

The bill provides that in the case of removal or replacement of a pole or underground facility used by two or more public utilities, the public utility last removing its pipes, cables, wires, lines or other structures shall be liable for the removal and restoration requirements, unless a written agreement between the public utilities provides otherwise.

The bill also provides that in the event of an emergency requiring immediate action by those public utilities to prevent bodily harm or substantial property damage from occurring, the notification and penalty provisions of the bill do not apply when the utilities are

responding to such an emergency. The bill would require the utilities to notify an appropriate municipal code official at the earliest reasonable opportunity and to make all reasonable efforts to restore the construction or excavation site to its previous condition after responding to an emergency. The bill also provides that "emergency conditions" shall include natural forces or human activities beyond the control of the public utility which significantly impact the placement of a pole or underground facility, conditions which pose an imminent or existing threat of loss of electrical, water, telephone, or other telecommunication service, or which pose an imminent or existing threat to the safety and security of persons or property, or both, or which require immediate action by a public utility to prevent bodily harm or substantial property damage from occurring.

The bill authorizes a municipality to fine those public utilities that do not meet the removal and restoration requirements of subsection c. of the bill within 90 days after completing the placement, replacement or removal of a pole or underground facility, up to a maximum of \$100 a day until the requirements are met.

As reported by the committee, Senate Bill, No. 1771 is identical to Assembly Bill, No. 1771 (3R) which was also reported by the committee on this date.