

## CHAPTER 154

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

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

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

C.48:3-17a Public utility pole or underground facility placement; municipal consent required; procedures, enforcement.

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

b. After the effective date of P.L.2004, c.154, before a public utility places, replaces or removes a pole or an underground facility located in a single municipality within a 24-hour period, which pole or underground facility is used for the supplying and distribution of electricity for light, heat or power, or for the furnishing of water service or telephone or other telecommunications service on or below a public right of way in that municipality, the public utility shall, in addition to any other requirements of law, notify an appropriately licensed municipal code official of the municipality at least 24 hours before undertaking any construction or excavation related to the placement, replacement or removal of such pole or underground facility. The provisions of this subsection shall 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 this subsection in the municipality. For the purposes of this section, "underground facility" means one or more underground pipes, cables, wires, lines or other structures used for the supplying and distribution of electricity for light, heat or power or for the providing of water service, or for the furnishing of telephone or other telecommunications service.

c. After completing the placement, replacement or removal of a pole or an underground facility pursuant to this section, the public utility shall 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 including, but not limited to, the installation of a hot patch as needed to restore the property within the right of way to its previous condition as much as possible. As used in this section, "hot patch" means the installation of a mixture of asphalt to restore property within the right of way to its previous condition subsequent to the construction or excavation of a site required for the placement, replacement of a pole or an underground facility pursuant to this section.

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

e. In the event a public utility does not meet the requirements of subsection c. of this section concerning the removal of debris and the restoring of property including, but not limited to, the installation of a hot patch, within a right of way to its previous condition within 90 days of placement, replacement or removal of a pole or an underground facility, the municipality shall be authorized to impose a fine up to an amount not to exceed \$100 each day until the requirements of subsection c. are met, except that if the public utility is unable to complete the installation of a hot patch due to the unavailability of asphalt material during the period of time from November through April, the public utility shall not be required to complete the hot patch installation until 60 days immediately following the end of the November through April period. At least five business days prior to the end of the 90-day period established by this subsection, the municipality shall notify the public utility that the penalties authorized by this subsection shall begin to be assessed against the utility after the end of the 90-day period unless the utility complies with the requirements of subsection c. of this section. Any penalty imposed shall be collected or enforced in a summary manner, without a jury, in any court of competent jurisdiction according to the procedure provided by "The Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court and municipal court shall have

jurisdiction to enforce the provisions of this section. In the case of removal or replacement of a pole or an underground facility utilized 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 required under subsection c. of this section, unless a written agreement between the public utilities provides otherwise.

f. Under emergency conditions which significantly impact the placement of a pole or underground facility resulting from natural forces or human activities beyond the control of the public utility, or which pose an imminent or existing threat of loss of electrical, water, power, 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 provisions of subsection b. of this section shall not apply when a public utility undertakes any construction or excavation related to the placement, replacement or removal of a pole or an underground facility in response to such an emergency, provided that the public utility undertaking such construction or excavation notifies the appropriately licensed municipal code official of the municipality in which such construction or excavation occurs at the earliest reasonable opportunity and that all reasonable efforts are taken by the public utility to comply with the removal and restoration requirements of subsection c. of this section after responding to the emergency.

2. This act shall take effect immediately.

Approved November 8, 2004.