

1583

2009-2010 Regular Sessions

I N S E N A T E

February 3, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to cooperation in the removal, protection and replacement of utility facilities in cities having a population of one million or more persons

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The public service law is amended by adding a new section
2 119-d to read as follows:
3 S 119-D. UTILITY FACILITY COORDINATING COMMITTEES. 1. A UTILITY FACIL-
4 ITY COORDINATING COMMITTEE MAY BE ESTABLISHED IN ANY CITY HAVING A POPU-
5 LATION OF ONE MILLION OR MORE PERSONS BY ITS MAYOR OR OTHER CHIEF EXECU-
6 TIVE OFFICER. THE COMMITTEE SHALL CONSIST OF FIVE MEMBERS APPOINTED BY
7 SUCH MAYOR OR OTHER CHIEF EXECUTIVE OFFICER, ONE OF WHOM SHALL BE DESIG-
8 NATED AS CHAIRPERSON, AND FOUR ADDITIONAL MEMBERS APPOINTED BY THE MAYOR
9 OR OTHER CHIEF EXECUTIVE OFFICER UPON THE RECOMMENDATION OF PUBLIC UTIL-
10 ITY COMPANIES PROVIDING SERVICE IN SUCH CITY. MEMBERS SHALL SERVE AT THE
11 PLEASURE OF THE APPOINTING AUTHORITY.
12 2. THE UTILITY FACILITY COORDINATING COMMITTEE SHALL DEVELOP AND
13 IMPLEMENT PROCEDURES UNDER WHICH EACH GAS CORPORATION, ELECTRIC CORPO-
14 RATION, STEAM CORPORATION, TELEPHONE CORPORATION, WATER-WORKS CORPO-
15 RATION AND CORPORATION AUTHORIZED TO INSTALL AND LEASE UNDERGROUND
16 CONDUIT FACILITIES, PROVIDING SERVICE IN THE CITY SHALL COOPERATE WITH
17 SUCH CITY IN DEVELOPING PLANS FOR THE REMOVAL, PROTECTION OR REPLACEMENT
18 OF ANY FACILITIES OF SUCH CORPORATION WHICH ARE TO BE DISTURBED, OR MAY
19 OTHERWISE BE AFFECTED, BY THE LAYING OUT, ESTABLISHMENT, CONSTRUCTION,
20 MAINTENANCE, OPERATION, ALTERATION OR DISCONTINUANCE OF ANY STREET,
21 SEWER AND DRAINAGE SYSTEM, OR WATER SUPPLY SYSTEM IN SUCH CITY AND SHALL
22 COOPERATE WITH SUCH CITY WHERE THE REMOVAL, PROTECTION OR REPLACEMENT OF

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 SUCH FACILITIES IS UNDERTAKEN. SUCH COOPERATIVE PROCEDURES SHALL INCLUDE
2 BUT NEED NOT BE LIMITED TO:

3 (A) NOTIFICATION TO SUCH CORPORATIONS THAT A STREET, SEWER, DRAINAGE
4 OR WATER SUPPLY PROJECT PROPOSED BY THE CITY MAY DISTURB FACILITIES OF
5 SUCH CORPORATION, AND NOTIFICATION TO SUCH CITY THAT A PROJECT PROPOSED
6 BY ANY SUCH CORPORATION MAY DISTURB FACILITIES OF SUCH CITY;

7 (B) PROVISION OF INFORMATION TO THE CITY REGARDING ANY FACILITIES OF
8 SUCH A CORPORATION WHICH MAY BE DISTURBED BY A STREET, SEWER, DRAINAGE
9 OR WATER SUPPLY PROJECT PROPOSED BY SUCH CITY AS TO WHICH NOTIFICATION
10 WAS GIVEN PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, AND PROVISION
11 OF INFORMATION TO ANY SUCH CORPORATION REGARDING ANY FACILITIES OF THE
12 CITY WHICH MAY BE DISTURBED BY A PROJECT PROPOSED BY SUCH CORPORATION AS
13 TO WHICH NOTIFICATION WAS GIVEN PURSUANT TO PARAGRAPH (A) OF THIS SUBDI-
14 VISION;

15 (C) COORDINATION BETWEEN THE CITY AND ANY SUCH CORPORATION PRIOR TO
16 THE UNDERTAKING OF A STREET, SEWER, DRAINAGE OR WATER SUPPLY PROJECT FOR
17 THE PURPOSE OF JOINTLY IDENTIFYING THOSE FACILITIES WHICH MAY BE
18 DISTURBED, SO AS TO DEVELOP PLANS FOR AVOIDING OR AMELIORATING SUCH
19 DISTURBANCES AND, WHERE APPROPRIATE, TO DESIGN PLANS FOR THE REMOVAL,
20 PROTECTION OR REPLACEMENT OF AFFECTED FACILITIES;

21 (D) DEVELOPMENT OF JOINT-PLANNING AGREEMENTS BETWEEN SUCH CITY AND ANY
22 SUCH CORPORATION WHERE THE CITY SEEKS A CONTRACT FOR THE PERFORMANCE OF
23 A STREET, SEWER, DRAINAGE OR WATER-SUPPLY PROJECT THAT WOULD PROVIDE FOR
24 THE REMOVAL, PROTECTION OR REPLACEMENT OF ANY FACILITIES OF SUCH CORPO-
25 RATION WHICH MAY BE DISTURBED BY SUCH PROJECT; AND

26 (E) COOPERATION IN IDENTIFYING ANY FACILITIES OF ANY SUCH CORPORATION
27 WHICH MAY BE DISTURBED BY A STREET, SEWER, DRAINAGE OR WATER SUPPLY
28 PROJECT UNDERTAKEN BY SUCH CITY, WHICH WERE NOT PREVIOUSLY IDENTIFIED
29 PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION, SO AS TO DEVELOP PLANS
30 FOR AVOIDING OR AMELIORATING SUCH DISTURBANCES AND, WHERE APPROPRIATE,
31 TO DESIGN A PLAN FOR THE REMOVAL, PROTECTION OR REPLACEMENT OF AFFECTED
32 FACILITIES.

33 3. THE COMMITTEE SHALL CONSIDER SUCH FACTORS AS THE LOCATION, NATURE
34 AND COST OF PROJECTS PROPOSED AND UNDERTAKEN BY THE CITY, SUCH THAT
35 APPROPRIATE PROCEDURES MAY BE DEVELOPED FOR DIFFERENT TYPES OF PROJECTS.

36 4. THE COMMITTEE SHALL STUDY AND MAKE RECOMMENDATIONS AS TO THE FEASI-
37 BILITY OF COMPREHENSIVE, LONG TERM PLANS FOR REMOVING, PROTECTING AND
38 REPLACING THE FACILITIES OF SUCH CORPORATIONS. THE COMMITTEE SHALL ALSO
39 STUDY THE EFFECT OF THIS SECTION UPON THE COSTS OF STREET, SEWER, DRAIN-
40 AGE AND WATER-WORKS PROJECTS TO THE PUBLIC AND TO THE CUSTOMERS OF SUCH
41 CORPORATIONS AND THE FEASIBILITY OF SUCH CORPORATIONS PROVIDING FULL
42 COMPENSATION TO THE CITY FOR THE REMOVAL, PROTECTION OR REPLACEMENT OF
43 ANY FACILITIES OF SUCH CORPORATION ON A PERIODIC, RATHER THAN A PER
44 PROJECT, BASIS. THE COMMITTEE SHALL ISSUE A PRELIMINARY REPORT TO THE
45 LEGISLATURE SETTING FORTH ITS FINDINGS AND RECOMMENDATIONS NOT LATER
46 THAN JANUARY FIRST, TWO THOUSAND TWELVE.

47 5. FOR PURPOSES OF THIS SECTION THE TERM "JOINT-PLANNING AGREEMENT"
48 SHALL MEAN AN AGREEMENT BETWEEN THE CITY AND ANY CORPORATION OR CORPO-
49 RATIONS IDENTIFIED IN SUBDIVISION TWO OF THIS SECTION REGARDING THE WORK
50 TO BE PERFORMED UNDER A STREET, SEWER, DRAINAGE OR WATER SUPPLY CONTRACT
51 PROPOSED BY THE CITY PROVIDING FOR THE REMOVAL, PROTECTION OR REPLACE-
52 MENT OF ANY FACILITY OF SUCH CORPORATION OR CORPORATIONS WHICH MAY BE
53 DISTURBED BY SUCH PROJECT. SUCH JOINT-PLANNING AGREEMENTS MAY PROVIDE
54 FOR AN ALLOCATION OF THE COSTS BETWEEN THE CITY AND SUCH CORPORATION OR
55 CORPORATIONS UNDER A CONTRACT FOR THE PERFORMANCE OF A STREET, SEWER,
56 DRAINAGE OR WATER SUPPLY PROJECT, PROVIDED THAT SUCH CORPORATION OR

CORPORATIONS SHALL COMPENSATE THE CITY FOR ANY COSTS INCURRED BY SUCH CITY IN THE REMOVAL, PROTECTION OR REPLACEMENT OF ANY FACILITIES OF SUCH CORPORATION OR CORPORATIONS PURSUANT TO SUCH CONTRACT OR OTHERWISE.

6. WITHIN SIX MONTHS OF THE ESTABLISHMENT OF A UTILITY FACILITY COORDINATING COMMITTEE IN A CITY PURSUANT TO THIS SECTION, SUCH CITY SHALL SELECT AT LEAST ONE STREET, SEWER, DRAINAGE OR WATER SUPPLY PROJECT AND DETERMINE THE GAS CORPORATIONS, ELECTRIC CORPORATIONS, STEAM CORPORATIONS, TELEPHONE CORPORATIONS, WATER-WORKS CORPORATIONS AND CORPORATIONS AUTHORIZED TO INSTALL AND LEASE UNDERGROUND CONDUIT FACILITIES, WHICH HAVE FACILITIES WHICH MAY BE DISTURBED BY SUCH PROJECT. SUCH CITY SHALL SEEK TO ENTER INTO A JOINT-PLANNING AGREEMENT WITH ONE OR MORE OF SUCH CORPORATIONS FOR THE REMOVAL, PROTECTION OR REPLACEMENT OF SUCH FACILITIES. THE UTILITY FACILITY COORDINATING COMMITTEE SHALL MONITOR THE PERFORMANCE OF THE JOINT-PLANNING AGREEMENT AND THE REMOVAL, PROTECTION OR REPLACEMENT OF SUCH FACILITIES, AND SHALL EVALUATE AND AUDIT PERFORMANCE COSTS AND OTHER DATA FOR THE PURPOSE OF DETERMINING THE EFFECTIVENESS OF THE JOINT-PLANNING AGREEMENT.

7. FOR PURPOSES OF THIS SECTION, ANY STREET, SEWER, DRAINAGE OR WATER SUPPLY PROJECT PROPOSED OR UNDERTAKEN BY A WATER BOARD CREATED BY A SPECIAL ACT OF THE LEGISLATURE AT THE REQUEST OF A CITY, AS A BODY CORPORATE AND POLITIC, CONSTITUTING A CORPORATE MUNICIPAL INSTRUMENTALITY, SHALL BE DEEMED TO BE A PROJECT PROPOSED OR UNDERTAKEN BY SUCH CITY.

8. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY IN THE CASE OF A PUBLIC EMERGENCY ARISING OUT OF AN ACCIDENT OR OTHER OCCURRENCE OR CONDITION WHEREBY CIRCUMSTANCES AFFECTING PUBLIC BUILDINGS, PUBLIC PROPERTY OR THE LIFE, HEALTH, SAFETY OR PROPERTY OF THE INHABITANTS OF A CITY OR DISTRICT THEREIN, REQUIRE EXPEDITIOUS ACTION.

9. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT OR MODIFY IN ANY WAY THE OBLIGATIONS OR LIABILITY OF ANY PERSON UNDER APPLICABLE GENERAL, SPECIAL OR LOCAL LAW, COMMON LAW OR CONTRACT FOR THE REMOVAL, PROTECTION OR REPLACEMENT OF UTILITY FACILITIES OR FOR ANY DAMAGES, INJURY OR LOSS RESULTING FROM ANY ACT OR OMISSION PERTAINING TO SUCH OBLIGATIONS OR LIABILITY. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO IMPOSE OR OTHERWISE PROVIDE FOR ANY OBLIGATIONS OR LIABILITY UPON CITIES FOR THE REMOVAL, PROTECTION OR REPLACEMENT OF UTILITY FACILITIES.

S 2. This act shall take effect immediately, provided however that procedures implemented pursuant to section 119-d of the public service law, as added by section one of this act, shall not apply to projects undertaken prior to July 1, 1992 or after June 30, 2010, except as is otherwise provided in subdivision 6 of such section.