

SENATE, No. 2412

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED SEPTEMBER 18, 2014

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Monmouth)

SYNOPSIS

“Water Infrastructure Protection Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/19/2014)

1 AN ACT concerning certain public water and wastewater assets,
2 supplementing Title 58 of the Revised Statutes, and amending
3 R.S.40:62-3.

4

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

7

8 1. (New section) Sections 1 through 9 of this act shall be
9 known and may be cited as the “Water Infrastructure Protection
10 Act.”

11

12 2. (New section) The Legislature finds and declares that:

13 a. The maintenance of water and wastewater treatment and
14 conveyance systems is vital to ensuring the protection of clean
15 drinking water in New Jersey;

16 b. There are public water and wastewater systems in the State
17 that present serious risks to the integrity of drinking water and the
18 environment because of issues such as aging combined sanitary and
19 storm sewer overflow systems, the threat of sodium intrusion, the
20 deterioration of the physical assets of the systems, or damage to
21 infrastructure so severe that it is beyond governmental capacity to
22 restore;

23 c. The transfer of these threatened water and wastewater assets
24 to a private entity with the financial resources and expertise to
25 improve management, operation, and continued maintenance of the
26 assets would protect drinking water; and

27 d. It is in the public interest that public entities have the option
28 to transfer, lease, or sell water or wastewater assets if there exists
29 emergent conditions that threaten drinking water or the
30 environment.

31

32 3. (New section) As used in this act,

33 “Board” means the Board of Public Utilities.

34 “Director” means the Director of the Division of Local
35 Government Services in the Department of Community Affairs.

36 “Governing body” means a “governing body” as defined in
37 section 3 of the "New Jersey Wastewater Treatment Public-Private
38 Contracting Act," P.L.1995, c.216 (C.58:27-19 through C.58:27-
39 27).

40 “Licensed engineer” means a professional engineer licensed
41 pursuant to P.L.1938, c.342 (C.45:8-27 et seq.).

42 “Municipal or county utilities authority” means a “municipal
43 authority” as defined in section 3 of the "municipal and county
44 utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.).

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

Matter underlined thus is new matter.

1 “Owner” means any municipality or municipal, county, or
2 regional utilities authority that owns water or wastewater assets.

3 “Regional utilities authorities” means any “regional authority” as
4 defined in subsection a. of section 9 of P.L.2011, c.167 (C.40:56A-
5 4.1).

6 “Registered apprenticeship program” means an apprenticeship
7 program registered with and approved by the United States
8 Department of Labor and which provides to each trainee combined
9 classroom and on-the-job training under the direct and close
10 supervision of a highly skilled worker in an occupation recognized
11 as an apprenticeable trade, and which meets the program
12 performance standards of enrollment and graduation under 29
13 C.F.R. s.29.6.

14 “System” means the plants, structures, and other real and
15 personal property of an owner that is, or is to be, acquired,
16 constructed, or operated for the purpose of processing water or
17 wastewater, including sewage, for distribution or treatment.

18 “Water or wastewater assets” means any system along with any
19 other related buildings, equipment, or other infrastructure.
20

21 4. (New section) If an owner determines that emergent
22 conditions exist, the owner may lease or sell its water or wastewater
23 assets to a private entity pursuant to the provisions of sections 5
24 through 9 of P.L. , c. (C.) (pending before the Legislature
25 as this bill). An owner may so lease or sell its water or wastewater
26 assets without any referendum except as may be required pursuant
27 to subsection f. of section 5 of P.L. , c. (C.) (pending
28 before the Legislature as this bill).
29

30 5. (New section) a. If the owner is a municipality, the
31 determination that emergent conditions exist shall be made by
32 certification of the mayor, or other chief executive officer of the
33 municipality, and a licensed engineer. If the owner is a municipal,
34 county, or regional utilities authority, the determination that
35 emergent conditions exist shall be made by certification of the chair
36 and chief operating officer of the authority, and a licensed engineer.

37 b. Emergent conditions shall exist if at least one of the
38 following conditions is met:

39 (1) The system has a combined sanitary and storm sewer
40 overflow system;

41 (2) The system is located in an area designated by the
42 Department of Environmental Protection as within Water Supply
43 Critical Area I or II;

44 (3) The ground water has the potential for sodium intrusion that
45 may impact the water supply system according to the New Jersey
46 Statewide Water Supply Plan adopted pursuant to section 13 of
47 P.L.1981, c.262 (C.58:1A-13) or the potential for any other
48 intrusion that may negatively impact the system;

1 (4) The system has received an environmental violation, has an
2 existing unfulfilled administrative consent order with the
3 Department of Environmental Protection, or has previously entered
4 into an administrative consent order with the Department of
5 Environmental Protection with respect to the operation of the
6 system;

7 (5) There is a present deficiency concerning the availability or
8 potability of water, or concerning the provision of water at adequate
9 volume or pressure, and the owner lacks the financial or structural
10 capability to immediately and adequately repair or otherwise
11 alleviate the deficiency; or

12 (6) There is material damage to the infrastructure of the system
13 and the owner lacks the financial or structural capability to
14 immediately and adequately repair or otherwise alleviate the
15 damage.

16 c. After an emergent conditions certification is made, a public
17 hearing on the certification shall be held. The owner shall provide
18 notice of the public hearing no less than 10 days prior to the date of
19 the hearing. The notice shall prominently state that the certification
20 is in anticipation of a lease or sale of water or wastewater assets to a
21 private entity. If the owner is a municipality or municipal utilities
22 authority, notice of the public hearing shall be published on the
23 official Internet website of the municipality and at least once in one
24 or more newspapers circulating in the municipality. If the owner is
25 a county utilities authority, notice of the public hearing shall be
26 published on the official Internet website of the county and at least
27 once in one or more newspapers circulating in the county. If the
28 owner is a regional utilities authority, notice of the public hearing
29 shall be published on the official Internet website of the authority
30 and at least once in one or more newspapers circulating in the
31 region. If an applicable official website does not exist, notice of the
32 public hearing shall be published on the official Internet website of
33 the Department of Community Affairs.

34 d. After the public hearing, the governing body of the owner
35 shall, by resolution, cause the emergent conditions certification to
36 be submitted to the Department of Environmental Protection for
37 approval. The Department of Environmental Protection shall
38 approve or reject a certification within 30 days of receipt thereof. If
39 no disposition is made within 30 days, the certification shall be
40 deemed approved.

41 e. Upon receipt of the approval of the emergent conditions
42 certification by the Department of Environmental Protection, the
43 owner shall publish notice of the approval. The notice shall
44 prominently state that the certification is in anticipation of a lease
45 or sale of water or wastewater assets to a private entity. If the
46 owner is a municipality or municipal utilities authority, notice of
47 the approval shall be published on the official Internet website of
48 the municipality and at least once in one or more newspapers

1 circulating in the municipality, and shall prominently state that a
2 petition may be filed within 20 days after the publication of such
3 notice to require a referendum before a resolution authorizing the
4 lease or sale of water or wastewater assets may take effect. If the
5 owner is a county utilities authority, notice of the approval shall be
6 published on the official Internet website of the county and at least
7 once in one or more newspapers circulating in the county. If the
8 owner is a regional utilities authority, notice of the approval shall
9 be published on the official Internet website of the authority and at
10 least once in one or more newspapers circulating in the region. If
11 an applicable official website does not exist, notice of the approval
12 shall be published on the official Internet website of the Department
13 of Community Affairs.

14 f. If the owner is a municipality or municipal utilities
15 authority, a petition may be filed with the municipal clerk, no later
16 than 20 days after the notice of the approval of the emergent
17 conditions certification is published, protesting the lease or sale of
18 water or wastewater assets without a public referendum. If the
19 petition is signed by a number of legal voters of the municipality
20 equal to at least 15% of the total votes cast in the municipality at
21 the last election at which members of the General Assembly were
22 elected, a resolution to lease or sell water or wastewater assets shall
23 not take effect unless the lease or sale of such assets is approved
24 pursuant to R.S.40:62-4 and R.S.40:62-5. If a petition is not filed
25 pursuant to this subsection, a resolution to lease or sell water or
26 wastewater assets shall not be subject to a public referendum.

27
28 6. (New section) a. A request for qualifications shall be
29 advertised pending approval of the emergent conditions certification
30 pursuant to subsection d. of section 5 of P.L. , c. (C.)
31 (pending before the Legislature as this bill), but no less than 30
32 days prior to the date on which responses to the request are due. If
33 the owner is a municipality or municipal utilities authority, the
34 advertisement of the request for qualifications shall be published on
35 the official Internet website of the municipality and at least once in
36 one or more newspapers circulating in the municipality. If the
37 owner is a county utilities authority, the advertisement of the
38 request for qualifications shall be published on the official Internet
39 website of the county and at least once in one or more newspapers
40 circulating in the county. If the owner is a regional utilities
41 authority, the advertisement of the request for qualifications shall
42 be published on the official Internet website of the authority and at
43 least once in one or more newspapers circulating in the region. An
44 owner shall also publish the advertisement of the request for
45 qualifications at least once in one or more newspapers with
46 Statewide circulation. If an applicable official website does not
47 exist, the advertisement of the request for qualifications shall be

1 published on the official Internet website of the Department of
2 Community Affairs.

3 b. After an emergent conditions certification is approved
4 pursuant to subsection d. of section 5 of P.L. , c. (C.)
5 (pending before the Legislature as this bill), the owner shall
6 determine the qualified respondents. The owner shall issue a
7 request for proposals to each qualified respondent no less than 14
8 days prior to the date established for submission of the proposals.
9 The request for proposals shall include relevant technical
10 submissions, documents, and criteria including but not limited to a
11 description of the facilities and the debt related thereto and the
12 evaluation criteria to be used in the selection of the designated
13 respondent.

14 c. Upon a review of the proposals submitted by qualified
15 respondents, the governing body of an owner shall, by resolution,
16 designate one qualified respondent, whose proposal the governing
17 body finds to be the most advantageous to the public, taking into
18 consideration the evaluation criteria set forth in the request for
19 proposals. The resolution shall include the governing body's
20 findings that the proposal of the designated respondent is most
21 advantageous to the public.

22
23 7. (New section) a. After the designated respondent is
24 selected, negotiations for a contract for the lease or sale of the water
25 or wastewater assets may commence between the owner and the
26 designated respondent.

27 b. After an agreement on a proposed contract is reached
28 between the owner and the designated respondent, the governing
29 body of the owner shall, by resolution, cause the proposed contract
30 to be submitted to the board for approval and cause the proposed
31 use of proceeds of the lease or sale to be submitted to the director
32 for approval.

33 c. (1) The proposed contract submitted to the board shall
34 include the rent or sale price, any appraisals supporting the rent or
35 sale price, documentation regarding the defeasance of debt, and any
36 other information requested by the board. The board shall approve
37 or reject the proposed contract within 30 days of receipt thereof. If
38 no disposition is made within 30 days, the proposed contract shall
39 be deemed approved.

40 (2) For the purposes of rate making and recovery, the board
41 shall accept the negotiated sale price between the owner and the
42 designated respondent as the new rate base effective as of the date
43 of the approval of the lease or sale, as may be the case, provided the
44 price is deemed reasonable.

45 The rent or sale price shall be deemed reasonable if it meets the
46 following conditions:

47 (a) The rent or sale price is sufficient to defease the debt of the
48 owner; and either

1 (b) (i) The rent or sale price is within the range of any appraisals
2 obtained with respect to the lease or sale of the water or wastewater
3 assets; or

4 (ii) If there is little or no established rate base for the water or
5 wastewater assets, the rent or sale price is reasonably comparable to
6 a proxy rate base equivalent to the rate base of the designated
7 respondent.

8 (3) In valuing the water or wastewater assets, appraisers shall
9 comply with the Uniform Standards of Professional Appraisal
10 Practice promulgated by the Appraisal Standards Board of the
11 Appraisal Foundation.

12 (4) In valuing the water or wastewater assets and for the
13 purposes of rate making, the original source of funding for any part
14 of the water or wastewater assets shall not be relevant.

15 (5) Reasonable and prudent transaction, closing, and transition
16 costs incurred by the designated respondent shall be recoverable in
17 rates.

18 (6) The proposed use of proceeds submitted to the director shall
19 include the rent or sale price, the total debt payment amount, the
20 remaining proceeds after the debt payment, the amount dedicated to
21 community and capital improvements, and the amount dedicated for
22 general purposes of the owner. The amount dedicated to
23 community and capital improvements must represent at least 50
24 percent of the remaining proceeds once the debt is defeased. The
25 director shall approve or reject the proposed use of proceeds within
26 30 days of receipt thereof. If no disposition is made within 30 days,
27 the proposed use of proceeds shall be deemed approved.

28
29 8. (New section) After the proposed contract and proposed use
30 of proceeds have been approved pursuant to subsection c. of section
31 7 of P.L. , c. (C.) (pending before the Legislature as this
32 bill), the governing body of the owner may, by resolution, enter into
33 a contract for the lease or sale of the water or wastewater assets
34 with the designated respondent.

35
36 9. (New section) Any contractor or subcontractor hired by the
37 designated respondent, in the performance of a contract entered into
38 pursuant to section 8 of P.L. , c. (C.) (pending before the
39 Legislature as this bill), shall only employ a worker from an
40 apprenticeable trade who is either an apprentice participating in a
41 registered apprenticeship program or who has completed a
42 registered apprenticeship program, unless the contractor or
43 subcontractor certifies that each such worker shall be paid no less
44 than the journeyman rate established for the apprenticeable trade
45 performed pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

1 and a licensed engineer would have to certify that one of these
2 conditions exists. The certification would be the subject of a public
3 hearing and have to be approved by the Department of
4 Environmental Protection.

5 If the public owner is a municipality or municipal utilities
6 authority, a petition may be filed with the municipal clerk
7 protesting the resolution authorizing the lease or sale of water or
8 wastewater assets without a public referendum within 20 days after
9 the notice of the approval of the emergent conditions certification is
10 published. If the petition is signed by a number of legal voters of
11 the municipality equal to at least 15% of the total votes cast in the
12 municipality at the last election at which members of the General
13 Assembly were elected, a resolution to lease or sell water or
14 wastewater assets would be suspended from taking effect until the
15 lease or sale of such assets is approved in a public referendum in
16 accordance with R.S.40:62-4 and R.S.40:62-5. If such petition is
17 not filed within this timeframe, a resolution to lease or sell water or
18 wastewater assets would not be subject to a public referendum.

19 The public owner would advertise a request for qualifications
20 pending approval of the emergent conditions certification by the
21 Department of Environmental Protection. If the certification is
22 approved, the public owner would next determine the qualified
23 respondents and issue a request for proposals. The request for
24 proposals would have to include relevant technical submissions,
25 documents, and criteria including but not limited to a description of
26 the facilities and the debt related thereto and the evaluation criteria
27 to be used in the selection of the designated respondent. After a
28 review of the proposals submitted by qualified respondents, the
29 governing body of the owner would, by resolution, designate one
30 respondent, whose proposal is found to be most advantageous to the
31 public, taking into consideration the request for proposals criteria.

32 After the designated respondent is selected, negotiations for a
33 contract for the lease or sale of the water or wastewater assets
34 would commence between the public owner and the designated
35 respondent. After an agreement on a proposed contract is reached
36 between the public owner and the designated respondent, the
37 governing body of the public owner would then, by resolution,
38 cause the proposed contract to be submitted to the Board of Public
39 Utilities for approval and cause the proposed use of proceeds to be
40 submitted to the Director of the Division of Local Government
41 Services in the Department of Community Affairs for approval.
42 After these matters are approved by their respective reviewing
43 agencies, the governing body of the public owner would be able to,
44 by resolution, enter into a contract with the designated respondent
45 for the lease or sale of the water or wastewater assets.

46 Each worker from an apprenticeable trade employed in the
47 performance of the contract would have to be an apprentice
48 participating in a registered apprenticeship program or have

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- 1 completed a registered apprenticeship program, unless the
- 2 contractor or subcontractor certifies that each worker will be paid
- 3 no less than the journeyman rate for the apprenticeable trade
- 4 performed established under the prevailing wage laws.