

**ASSEMBLY, No. 309**

**STATE OF NEW JERSEY**

INTRODUCED FEBRUARY 6, 1923.

By Mr. PASCOE.

Referred to Committee on Municipal Corporations.

AN ACT to authorize two or more municipalities in this State by means of a commission to acquire, either by purchase or condemnation, and operate privately owned water works now or hereafter supplying water therein, and in other municipalities, if any, in which water is supplied by the same water works, together with the franchises, rights, and any or all other appurtenant property of the owner or owners, of such works, and to enlarge and extend the same.

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

1 1. The governing body of two or more municipalities in this State in which now  
2 or hereafter water is supplied for domestic and public use by privately owned water  
3 works, whether such water works are owned by one or more corporations or parties,  
4 may make application to any justice of the Supreme Court for the appointment  
5 of a commission in their behalf to acquire such water works, either by purchase  
6 or condemnation, together with all rights and franchises relating thereto,  
6½ and the rights and franchises to obtain an additional supply of water,  
7 and any or all other property of the owner of such water works that  
8 may be necessary to maintain, operate, enlarge or extend the water works so acquired,  
9 and to enlarge, extend, maintain and operate the same to supply water in the mu-  
10 nicipalities acquiring such water works as aforesaid and in all other municipalities  
11 theretofore supplied with water by the same water works, provided that all of the  
12 municipalities so supplied with water shall be notified in writing of such application

13 at least sixty days before the same is made, and may join therein. Any vacancy in  
14 said commission shall be filled by appointment as above provided, and upon such  
15 notice as a justice of the Supreme Court shall direct; inability of any member of  
16 the commission to serve shall be treated as a vacancy. The application to appoint  
17 the commission or to fill any vacancy may be continued from time to time by the  
18 justice of the Supreme Court to whom the same is made.

1       2. Every commission appointed in pursuance of the first section of this act shall  
2 consist of not more than five persons, residents of the municipalities making the ap-  
3 plication for their appointment and joining therein, if any; they shall organize as  
4 soon as practicable by electing one of their number as president, and shall appoint  
5 a secretary and a treasurer, who need not be members of the commission, and adopt  
6 a seal, and a name whereby they may sue and be sued. The secretary shall keep  
7 full and correct minutes of all the meetings and transactions of the commission,  
8 and perform such other duties as may be required of him; the treasurer shall give  
9 bond for the faithful performance of his duties in such amount as the commission  
10 shall prescribe. The offices of secretary and treasurer may be held by the same  
11 person. The members of the commission shall receive for their services compensa-  
12 tion to be fixed by agreement with municipalities having at least two-thirds of the  
13 population by the last national or State census of all of the municipalities making  
14 the application for their appointment and joining therein, if any; or, in case of  
15 failure to agree, by a justice of the Supreme Court. The secretary and the treas-  
16 urer shall each receive such compensation as the commission may determine. All  
17 expenses incurred prior to the acquisition of the water works shall be considered  
18 as part of the cost thereof; all expenses subsequently incurred for operating the  
19 water works and all other expenses and charges not properly chargeable to capital  
20 account shall be paid or set aside out of earnings.

1       3. Immediately after organization the commission shall proceed to negotiate for  
2 the purchase of the entire water works supplying water in the municipalities making  
3 the application for its appointment, and in the other municipalities, if any, supplied  
4 with water by the same water works; and may enter into a contract to purchase

5 such water works for compensation to be agreed upon or fixed by condemnation  
6 proceedings as hereinafter provided. A copy of every contract to purchase such  
7 water works, without condemnation, made by the owner thereof and such commis-  
8 sion, shall forthwith be served by the commission on each of the municipalities that  
9 made and joined in the application, if any, for the appointment of the commission,  
10 and said contract shall become binding only as to such two or more of the munici-  
11 palities that made the application for the appointment of the commission, and joined  
12 therein, if any, as shall by resolution of their governing bodies file with the commis-  
13 sion their assent thereto; *provided*, that such assents shall be so filed within three  
14 months after the copies of said contract have been served on the municipalities by  
15 the commission, as above provided. If the commission and the owner of the water  
16 works cannot agree on terms for the sale thereof, or if such proposed contract shall  
17 not become binding as herein provided, application shall be made by the commis-  
18 sion to a justice of the Supreme Court for the appointment of commissioners to  
19 condemn the water works in pursuance of and in the manner prescribed by an act  
20 entitled "An act to regulate the ascertainment and payment of compensation for  
21 property condemned or taken for public use (Revision of 1900)," approved March  
22 twentieth, one thousand nine hundred, and the amendments and supplements thereto;  
23 and the commission is hereby further authorized to invoke and exercise in the man-  
24 ner prescribed in said act approved March twentieth, one thousand nine hundred,  
25 and its supplements and amendments, for the purpose aforesaid, either in its own  
26 name, or in the name of any or all of the municipalities so supplied with water, all  
27 of the powers of such municipalities, or any of them, to acquire property for public  
28 use. If the property of more than one owner is proposed to be acquired by condem-  
29 nation, applications for the appointment of commissioners for that purpose may be  
30 consolidated by order of a justice of the Supreme Court, and thereafter carried on  
31 as far as practicable as one proceeding. If the water works is located in more than  
32 one county a duplicate of the petition for the appointment of commissioners, and  
33 of all orders, reports and other proceedings shall be filed in the office of the clerk  
34 of each county in which any part of the property is located. In all applications,

35 orders, reports and proceedings a general description of the property to be con-  
36 demned shall be sufficient. The water works acquired by the commission ap-  
37 pointed in pursuance of the first section of this act, whether by a single purchase  
38 or two or more purchases, or by one, or more than one, condemnation proceeding,  
39 shall be the property of the municipalities making the application or applications  
40 for the appointment of such commission, and the municipalities, if any, joining  
41 therein, as if they constituted a single municipality. The term "water works" used  
42 in this act shall be construed to include one system or more than one system of  
43 water works, whether or not such water works extend into or supply water in other  
44 municipalities than those proposing to acquire or owning the same, and water works,  
45 rights and franchises owned by one corporation or party, or more than one, and  
46 shall include rights and franchises to obtain an additional supply of water, and any  
47 or all other appurtenant property of such owner or owners.

1       4. Any such water works may be acquired subject to the lien of any mortgage  
2 or mortgages thereon; and for the purpose of raising the money to pay the compen-  
3 sation agreed upon or fixed by condemnation proceedings for the water works so  
4 acquired or to be acquired, and to pay the cost, or part of the cost, of enlarging, extend-  
5 ing and improving the same, the commission appointed in pursuance of the first sec-  
6 tion of this act, and any succeeding commission, however appointed or elected, shall  
7 be and hereby is fully authorized to issue bonds in the names of the municipalities  
8 making the application for the appointment of such commission and of the munici-  
9 palities, if any, joining therein, the bonds to be under the seal of the commission,  
10 signed by the president, and attested by the secretary thereof. The term of such  
11 bonds, which shall not exceed forty years, the rate of interest thereon, sinking fund  
12 and amortization provision therefor, and other conditions that may be deemed ad-  
13 visable, shall be prescribed by the commission issuing said bonds, and said bonds  
14 shall be sold in the manner provided by law for the sale of municipal bonds. The  
15 bonds so issued shall be the joint and several obligations of the municipalities in  
16 whose names they are issued, but the municipalities shall be liable as among them-  
16½ selves for the payment of the principal and interest thereon in the proportion that

17 the assessed value for taxation of all the real estate in each of the municipalities for  
18 the year preceding the time when such water works shall be acquired bears to the  
19 total assessed value for said year of all the real estate in all of the municipalities  
20 making application for the appointment of the commission, and of the municipali-  
21 ties, if any, joining therein; and the amount of said bonds, or any portion thereof,  
22 shall not be taken into account in ascertaining the amount of indebtedness that any  
23 of the municipalities may now, or at any time hereafter, be authorized to incur by  
24 any law of this State.

1       5. The commission appointed pursuant to the first section of this act, and  
2 any succeeding commission, however appointed or elected, shall have power to en-  
3 large and extend the water works and operate the same, or may make a contract  
4 for a period not exceeding ten years, or a succession of contracts each not exceed-  
5 ing said period, with any individual, firm or corporation, to operate such water  
6 works on such terms as may be agreed upon, and such commission may prescribe  
7 and change from time to time rates to be charged for water supplied by the water  
8 works so acquired, and by any extension or enlargement thereof, provided that  
9 rates for the same kind or class of service shall be uniform in all the municipalities  
10 supplied by such water works. As soon as practicable after acquiring the water  
11 works rates shall be prescribed, and shall be revised from time to time whenever  
12 necessary, so that the water works shall be and remain at least self-supporting, the  
13 earnings to be at least sufficient to provide for all expenses of operation and main-  
14 tenance and such charges as interest, sinking fund and amortization, so as to prevent  
15 any deficit to be paid by taxation from accruing; and said commission and any suc-  
16 ceeding commission shall have power to prescribe and alter and enforce all reason-  
17 able rules and regulations for the maintenance and operation of such water works and  
18 the collection of rates.

1       6. At any time after water works shall have been acquired in pursuance of this  
2 act, it shall be lawful for the governing bodies of the municipalities owning the  
3 same to enter into an agreement prescribing a method of electing or appointing a  
4 commission to succeed the commission appointed as provided in the first section of

5 this act; the agreement so made shall specify the number of persons to constitute the  
6 commission, their term or terms of office, method of organization, and powers and  
7 duties and compensation; *provided*, that the members of the commission may agree  
8 to serve without, or at nominal, compensation; it shall also provide for the appoint-  
9 ment or election of a secretary, treasurer, and such other officers as may be neces-  
10 sary, and prescribe their duties and compensation, and shall contain such other pro-  
11 visions as may be necessary for the maintenance and efficient operation of such  
12 water works, the extension and enlargement thereof, and the proper management  
13 of its financial affairs; and may be amended from time to time. Any such agree-  
14 ment or amendment thereof shall be valid when assented to by the governing bodies  
15 of the municipalities containing at least two-thirds of the population of all municipali-  
16 ties owning such water works according to the last preceding national or State  
17 census; *provided*, that the governing bodies of all municipalities owning the water  
18 works shall have had an opportunity to approve or disapprove any proposed agree-  
19 ment or amendment thereof. The commission elected or appointed in pursuance of  
20 such agreement shall organize as soon as practicable, adopt a seal, and a name by  
21 which it may sue and be sued, and enter upon the discharge of its duties, where-  
22 upon the terms of office of the members of the commission appointed in pursu-  
23 ance of the first section of this act shall cease and determine. Any commission ap-  
24 pointed in pursuance of the first section of this act, or by virtue of such agreement,  
25 may sell any part of the property in its charge not needed for public use, and may  
26 also sell to any municipality the distributing system of mains therein and enter into  
27 a contract to supply water in quantity to the municipality purchasing such distribut-  
28 ing system; *provided*, that no distributing system shall be sold to any municipality  
29 without the consent of the governing bodies of the municipalities owning the same  
30 having by the last national or State census at least two-thirds of the population of  
31 all such municipalities.

1       7. In all cases in which the owner of water works purchased or condemned in  
2 pursuance of this act has at the time of such purchase or condemnation the con-  
3 sent of the State to take and divert water from any source for domestic and public

4 use, the rights obtained by such consent shall pass to and vest in the municipalities  
5 acquiring the water works as herein provided, and no further or other consent of  
6 any State board or commission shall be necessary.

1 8. At any time after the appointment of such commission by a justice of the  
2 Supreme Court, any municipality in which water is supplied by the water works  
3 which it is proposed to acquire, or which may have been acquired as provided in  
4 this act, may be permitted to join with the municipalities making or joining in the  
5 application for the appointment of the commission, or owning the water works, on  
6 such terms and conditions as may be agreed on; provided that municipalities con-  
7 taining at least two-thirds of the population according to the last State or national  
8 census of all the municipalities seeking to acquire or owning such water works  
9 shall agree to permit such other municipality to join.

1 9. All acts and parts of acts inconsistent with this act be and the same are  
2 hereby repealed, and this act shall take effect immediately.

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#### STATEMENT.

The object of this bill is to enable two or more municipalities to acquire by purchase or condemnation a system, or more than one system, of privately owned water works operating therein and in other municipalities, if any, in which water is supplied by the same water works, and to enlarge and extend the works when acquired and operate the same. A very serious situation exists in twenty-six municipalities in this State, which requires prompt action to avoid a water famine.

This bill authorizes the municipalities to acquire only such water rights as the water companies now have, and therefore it does not conflict with the State policy regarding the acquisition of new sources of supply.

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

1 1. The governing body of two or more municipalities in this State in which now  
2 or hereafter water is supplied for domestic and public use by privately owned water  
3 works, whether such water works are owned by one or more corporations or parties,  
4 may make application to any justice of the Supreme Court for the appointment  
5 of a commission in their behalf to acquire such water works, either by purchase  
6 or condemnation, together with all rights and franchises relating thereto,  
6½ and the rights and franchises to obtain an additional supply of water,  
7 and any or all other property of the owner of such water works that  
8 may be necessary to maintain, operate, enlarge or extend the water works so acquired,  
9 and to enlarge, extend, maintain and operate the same to supply water in the mu-  
10 nicipalities acquiring such water works as aforesaid and in all other municipalities  
11 theretofore supplied with water by the same water works, provided that all of the  
12 municipalities so supplied with water shall be notified in writing of such application

13 at least sixty days before the same is made, and may join therein. Any vacancy in  
14 said commission shall be filled by appointment as above provided, and upon such  
15 notice as a justice of the Supreme Court shall direct; inability of any member of  
16 the commission to serve shall be treated as a vacancy. The application to appoint  
17 the commission or to fill any vacancy may be continued from time to time by the  
18 justice of the Supreme Court to whom the same is made.

1 2. Every commission appointed in pursuance of the first section of this act shall  
2 consist of not more than five persons, residents of the municipalities making the ap-  
3 plication for their appointment and joining therein, if any; they shall organize as  
4 soon as practicable by electing one of their number as president, and shall appoint  
5 a secretary and a treasurer, who need not be members of the commission, and adopt  
6 a seal, and a name whereby they may sue and be sued. The secretary shall keep  
7 full and correct minutes of all the meetings and transactions of the commission,  
8 and perform such other duties as may be required of him; the treasurer shall give  
9 bond for the faithful performance of his duties in such amount as the commission  
10 shall prescribe. The offices of secretary and treasurer may be held by the same  
11 person. The members of the commission shall receive for their services compensa-  
12 tion to be fixed by agreement with municipalities having at least two-thirds of the  
13 population by the last national or State census of all of the municipalities making  
14 the application for their appointment and joining therein, if any; or, in case of  
15 failure to agree, by a justice of the Supreme Court. The secretary and the treas-  
16 urer shall each receive such compensation as the commission may determine. All  
17 expenses incurred prior to the acquisition of the water works shall be considered  
18 as part of the cost thereof; all expenses subsequently incurred for operating the  
19 water works and all other expenses and charges not properly chargeable to capital  
20 account shall be paid or set aside out of earnings.

1 3. Immediately after organization the commission shall proceed to negotiate for  
2 the purchase of the entire water works supplying water in the municipalities making  
3 the application for its appointment, and in the other municipalities, if any, supplied  
4 with water by the same water works; and may enter into a contract to purchase

5 such water works for compensation to be agreed upon or fixed by condemnation  
6 proceedings as hereinafter provided. A copy of every contract to purchase such  
7 water works, without condemnation, made by the owner thereof and such commis-  
8 sion, shall forthwith be served by the commission on each of the municipalities that  
9 made and joined in the application, if any, for the appointment of the commission,  
10 and said contract shall become binding only as to such two or more of the munici-  
11 palities that made the application for the appointment of the commission, and joined  
12 therein, if any, as shall by resolution of their governing bodies file with the commis-  
13 sion their assent thereto; *provided*, that such assents shall be so filed within three  
14 months after the copies of said contract have been served on the municipalities by  
15 the commission, as above provided. If the commission and the owner of the water  
16 works cannot agree on terms for the sale thereof, or if such proposed contract shall  
17 not become binding as herein provided, application shall be made by the commis-  
18 sion to a justice of the Supreme Court for the appointment of commissioners to  
19 condemn the water works in pursuance of and in the manner prescribed by an act  
20 entitled "An act to regulate the ascertainment and payment of compensation for  
21 property condemned or taken for public use (Revision of 1900)," approved March  
22 twentieth, one thousand nine hundred, and the amendments and supplements thereto;  
23 and the commission is hereby further authorized to invoke and exercise in the man-  
24 ner prescribed in said act approved March twentieth, one thousand nine hundred,  
25 and its supplements and amendments, for the purpose aforesaid, either in its own  
26 name, or in the name of any or all of the municipalities so supplied with water, all  
27 of the powers of such municipalities, or any of them, to acquire property for public  
28 use. If the property of more than one owner is proposed to be acquired by condem-  
29 nation, applications for the appointment of commissioners for that purpose may be  
30 consolidated by order of a justice of the Supreme Court, and thereafter carried on  
31 as far as practicable as one proceeding. If the water works is located in more than  
32 one county a duplicate of the petition for the appointment of commissioners, and  
33 of all orders, reports and other proceedings shall be filed in the office of the clerk  
34 of each county in which any part of the property is located. In all applications,

35 orders, reports and proceedings a general description of the property to be con-  
36a demned shall be sufficient. Any municipality may withdraw from the condemnation  
36b proceedings at any time within thirty days after the award of the commissioners  
36c shall have been made. The water works acquired by the commission ap-  
37 pointed in pursuance of the first section of this act, whether by a single purchase  
38 or two or more purchases, or by one, or more than one, condemnation proceeding,  
39 shall be the property of the municipalities making the application or applications  
40 for the appointment of such commission, and the municipalities, if any, joining  
41 therein, as if they constituted a single municipality. The term "water works" used  
42 in this act shall be construed to include one system or more than one system of  
43 water works, whether or not such water works extend into or supply water in other  
44 municipalities than those proposing to acquire or owning the same, and water works,  
45 rights and franchises owned by one corporation or party, or more than one, and  
46 shall include rights and franchises to obtain an additional supply of water, and any  
47 or all other appurtenant property of such owner or owners.

1     4. Any such water works may be acquired subject to the lien of any mortgage  
2 or mortgages thereon; and for the purpose of raising the money to pay the compen-  
3 sation agreed upon or fixed by condemnation proceedings for the water works so  
4 acquired or to be acquired, and to pay the cost, or part of the cost, of enlarging, extend-  
5 ing and improving the same, the commission appointed in pursuance of the first sec-  
6 tion of this act, and any succeeding commission, however appointed or elected, shall  
7 be and hereby is fully authorized to issue bonds in the names of the municipalities  
8 making the application for the appointment of such commission and of the munici-  
9 palities, if any, joining therein, the bonds to be under the seal of the commission,  
10 signed by the president, and attested by the secretary thereof. The term of such  
11 bonds, which shall not exceed forty years, the rate of interest thereon, sinking fund  
12 and amortization provision therefor, and other conditions that may be deemed ad-  
13 visable, shall be prescribed by the commission issuing said bonds, and said bonds  
14 shall be sold in the manner provided by law for the sale of municipal bonds. The  
15 bonds so issued shall be the joint and several obligations of the municipalities in

16 whose names they are issued, but the municipalities shall be liable as among them-  
16½ selves for the payment of the principal and interest thereon in the proportion that  
17 the assessed value for taxation of all the real estate in each of the municipalities for  
18 the year preceding the time when such water works shall be acquired bears to the  
19 total assessed value for said year of all the real estate in all of the municipalities  
20 making application for the appointment of the commission, and of the municipali-  
21 ties, if any, joining therein; and the amount of said bonds, or any portion thereof,  
22 shall not be taken into account in ascertaining the amount of indebtedness that any  
23 of the municipalities may now, or at any time hereafter, be authorized to incur by  
24 any law of this State.

1       5. The commission appointed pursuant to the first section of this act, and  
2 any succeeding commission, however appointed or elected, shall have power to en-  
3 large and extend the water works and operate the same, or may make a contract  
4 for a period not exceeding ten years, or a succession of contracts each not exceed-  
5 ing said period, with any individual, firm or corporation, to operate such water  
6 works on such terms as may be agreed upon, and such commission may prescribe  
7 and change from time to time rates to be charged for water supplied by the water  
8 works so acquired, and by any extension or enlargement thereof, provided that  
9 rates for the same kind or class of service shall be uniform in all the municipalities  
10 supplied by such water works. As soon as practicable after acquiring the water  
11 works rates shall be prescribed, and shall be revised from time to time whenever  
12 necessary, so that the water works shall be and remain self-supporting, the  
13 earnings to be sufficient to provide for all expenses of operation and mainte-  
14 nance and such charges as interest, sinking fund and amortization, so as to prevent  
15 any deficit to be paid by taxation from accruing; and said commission and any suc-  
16 ceeding commission shall have power to prescribe and alter and enforce all reason-  
17 able rules and regulations for the maintenance and operation of such water works and  
18 the collection of rates.

1       6. At any time after water works shall have been acquired in pursuance of this  
2 act, it shall be lawful for the governing bodies of the municipalities owning the

3 same to enter into an agreement prescribing a method of electing or appointing a  
4 commission to succeed the commission appointed as provided in the first section of  
5 this act; the agreement so made shall specify the number of persons to constitute the  
6 commission, their term or terms of office, method of organization, and powers and  
7 duties and compensation; *provided*, that the members of the commission may agree  
8 to serve without, or at nominal, compensation; it shall also provide for the appoint-  
9 ment or election of a secretary, treasurer, and such other officers as may be neces-  
10 sary, and prescribe their duties and compensation, and shall contain such other pro-  
11 visions as may be necessary for the maintenance and efficient operation of such  
12 water works, the extension and enlargement thereof, and the proper management  
13 of its financial affairs; and may be amended from time to time. Any such agree-  
14 ment or amendment thereof shall be valid when assented to by the governing bodies  
15 of the municipalities containing at least two-thirds of the population of all municipali-  
16 ties owning such water works according to the last preceding national or State  
17 census; *provided*, that the governing bodies of all municipalities owning the water  
18 works shall have had an opportunity to approve or disapprove any proposed agree-  
19 ment or amendment thereof. The commission elected or appointed in pursuance of  
20 such agreement shall organize as soon as practicable, adopt a seal, and a name by  
21 which it may sue and be sued, and enter upon the discharge of its duties, where-  
22 upon the terms of office of the members of the commission appointed in pursu-  
23 ance of the first section of this act shall cease and determine. Any commission ap-  
24 pointed in pursuance of the first section of this act, or by virtue of such agreement,  
25 may sell any part of the property in its charge not needed for public use, and may  
26 also sell to any municipality the distributing system of mains therein and enter into  
27 a contract to supply water in quantity to the municipality purchasing such distribut-  
28 ing system; *provided*, that no distributing system shall be sold to any municipality  
29 without the consent of the governing bodies of the municipalities owning the same  
30 having by the last national or State census at least two-thirds of the population of  
31 all such municipalities.

1     7. In all cases in which the owner of water works purchased or condemned in  
2 pursuance of this act has at the time of such purchase or condemnation the con-  
3 sent of the State to take and divert water from any source for domestic and public  
4 use, the rights obtained by such consent shall pass to and vest in the municipalities  
5 acquiring the water works as herein provided, and no further or other consent of  
6 any State board or commission shall be necessary. *Provided, however,* said mu-  
7 nicipalities shall be bound by all the terms and conditions attached to such consent  
8 and accepted by the owner of the water works purchased or condemned; *and pro-*  
9 *vided, further,* that nothing in this act shall be interpreted to affect the power and  
10 authority of the Board of Conservation and Development over the sources of water  
11 supply in this State.

1     8. At any time after the appointment of such commission by a justice of the  
2 Supreme Court, any municipality in which water is supplied by the water works  
3 which it is proposed to acquire, or which may have been acquired as provided in  
4 this act, may be permitted to join with the municipalities making or joining in the  
5 application for the appointment of the commission, or owning the water works, on  
6 such terms and conditions as may be agreed on; provided that municipalities con-  
7 taining at least two-thirds of the population according to the last State or national  
8 census of all the municipalities seeking to acquire or owning such water works  
9 shall agree to permit such other municipality to join.

1     9. All acts and parts of acts inconsistent with this act be and the same are  
2 hereby repealed, and this act shall take effect immediately.