

40:62-13 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 40:62-13 et al; 40A:4-35.1

(Public utilities - rates -
municipalities supplying service
beyond city limits)

LAWS OF: 1983

CHAPTER: 111

Bill No: S1317

Sponsor(s): Dorsey

Date Introduced: May 10, 1982

Committee: Assembly: Municipal Government

Senate: County and Municipal Government

Amended during passage: Yes // Amendments denoted by
asterisks

according to Governor's recommendations:

Date of Passage: Assembly: Nov. 29, 1982 Re-enacted 2-24-83

Senate: July 22, 1982 Re-enacted 3-14-83

Date of Approval: March 16, 1983

Following statements are attached if available:

Sponsor statement: Yes // Also attached:
Senate amendments,
adopted 7-22-82 and
Assembly
amendments
adopted 11-15-82
(with statements)

Committee statement: Assembly Yes //

Senate Yes //

Fiscal Note: /// No

Veto Message: Yes //

Message on Signing: /// No

Following were printed:

Reports: /// No

Hearings: /// No

Higgs v. Borough of Madison:
188 N.J. Super 212 (1983)

CHAPTER 111 LAWS OF N. J. 1983
APPROVED 3-16-83

[FOURTH OFFICIAL COPY REPRINT]

SENATE, No. 1317

STATE OF NEW JERSEY

INTRODUCED MAY 10, 1982

By Senator DORSEY

Referred to Committee on County and Municipal Government

AN ACT concerning municipal utility rates, amending sections 40:62-13, 40:62-24 and 40:62-77 of the Revised Statutes and P. L. 1975, c. 184 and supplementing chapter 4 of Title 40A of the New Jersey Statutes.

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

1 1. R. S. 40:62-13 is amended to read as follows:

2 40:62-13. The governing body may elect all officers, agents,
3 engineers, employees or committeemen necessary to be employed
4 in the maintenance and operation of any such light, heat or power
5 plant, or works, define their duties, regulate their compensation
6 and provide for their removal.

7 It may make, ordain and establish all such ordinances, resolutions,
8 rules and regulations as it may deem necessary and proper for the
9 introduction, transmission, distribution, use and supply of light,
10 heat or power, and for the protection of the buildings, machinery,
11 apparatus, wires, poles, pipes, subways and conduits, and other
12 works and ***[apurtenances]*** **appurtenances** used in connection
13 therewith; and for the fixing and collection of all rates, rents or
14 charges for supplying light, heat or power for private or commer-
15 cial use in such municipality, and for the imposition of penalties
16 upon the nonpayment thereof.

17 *In fixing the rates, rents or charges for supplying light, heat or*
18 *power, the governing body shall establish a rate structure which*
19 *allows the ***[municipalities]*** **municipality, within the limits of*
19A *any covenants made with bondholders pursuant to law,* to:**

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted June 14, 1982.

**—Senate committee amendments adopted July 22, 1982.

***—Assembly amendments adopted November 15, 1982.

****—Senate amendments adopted in accordance with the Governor's recommendations January 31, 1983.

20 a. *Recoup all costs of operation*,* including but not limited to
 21 *the* costs of*~~—~~*raw materials, administration, equipment,
 22 buildings, property, maintenance, taxes, debt service, fees and off-
 23 setting any budget deficit occurring in the immediately preceding
 23A fiscal year;

24 b. *Establish a contingency fund not exceeding 10% of the*
 25 *annual costs of operation of the utility; and*

26 c. *Establish a surplus not exceeding* ~~10%~~ *5%* *of the annual*
 27 *costs of operation of the utility.*~~***~~ ~~***~~ ~~***~~ *Allow for an annual in-*
 28 *crease in surplus in an amount not exceeding 15% of the annual*
 29 *costs of operation of the utility.*~~***~~ ~~***~~ ~~***~~ *Establish a surplus*
 30 ~~***~~ ~~***~~ ~~***~~ *[not exceeding 15% of the annual costs of operation of the*
 31 *utility.*~~***~~ ~~***~~ ~~***~~ *sufficient to provide for the reasonable antici-*
 32 *pation of contingencies which may affect the operation of the util-*
 33 *ity.*~~***~~ ~~***~~ ~~***~~

1 2. R. S. 40:62-24 is amended to read as follows:

2 40:62-24. Every municipality in supplying electricity, gas, steam
 3 or other product beyond its corporate limits is hereby declared to
 4 be a public utility. The ~~board of public utility commissioners~~
 5 *Board of Public Utilities* shall have the same supervision and
 6 regulation of, and jurisdiction and control over such municipality
 7 in respect to its acts in supplying electricity, gas, steam or other
 8 product beyond its corporate limits, and of and over the property,
 9 property rights, equipment, facilities and franchises used in sup-
 10 plying electricity, gas, steam or other product beyond its corporate
 11 limits as over other public utilities. Every such municipality shall
 12 be subject as to its service, accounts, property rights, equipment,
 13 franchises, extensions, reports, ~~rates,~~ issuance of bonds or other
 14 indebtedness maturing in more than 1 year from the date thereof,
 15 to the jurisdiction of the ~~board of public utility commissioners~~
 16 *Board of Public Utilities* to the same extent as other public utilities.

17 *Every municipality supplying electricity, gas, steam or other*
 18 *product beyond its corporate limits shall have the rates for these*
 19 *utilities subject to the jurisdiction of the Board of Public Utilities.*
 20 *The board in* ~~fixing these rates shall establish a rate structure~~
 21 *which allows the municipalities*~~***~~ ~~***~~ ~~***~~ *regulating these rates shall*
 21A *provide for a rate structure which allows the municipality, within*
 21B *the limits of any covenants made with bondholders pursuant to*
 21C *law,** to:

22 a. *Recoup all costs of operation*,* including but not limited to
 23 *the* costs of*~~—~~*raw materials, administration, equipment,
 24 buildings, property, maintenance, taxes, debt service, fees and
 25 offsetting any budget deficit occurring in the immediately preceding
 25A fiscal year;

26 *b. **[Establish a contingency fund of 10% of the annual costs of*
 27 *operation of the utility; and*

28 *c. Establish a surplus of *~~[10%]~~* *5%* of the annual costs of*
 29 *operation of the utility.]*** ***[** Allow for an annual increase in*
 30 *surplus in an amount equal to 15% of the annual costs of operation*
 31 *of the utility.**]*** ***Establish a surplus ****[not exceeding 15%*
 32 *of the annual costs of operation of the utility.***]***** ****suffi-*
 33 *cient to provide for the reasonable anticipation of contingencies*
 34 *which may affect the operation of the utility and for an amount*
 35 *which may be transferred from the accounts of the municipal util-*
 36 *ity and included in the local budget pursuant to section 5 of this*
 37 *amendatory and supplementary act.*****

1 3. R. S. 40:62-77 is amended to read as follows:

2 40:62-77. The governing body of every municipality providing
 3 and supplying water for the public and private use of such
 4 municipality and its inhabitants, may make, enforce, amend and
 5 repeal all such ordinances, resolutions and regulations as it may
 6 deem necessary and proper for the distribution, supply, use and
 7 protection of the water and the protection of the buildings, ma-
 8 chinery, canals, aqueducts, reservoirs and other works and appurte-
 9 nances thereto; for the installation and protection of meters, for
 10 fixing and collecting the water rents or prices for water, and for
 11 imposing penalties in addition to cutting off the water for non-
 12 payment thereof.

13 *In fixing the rents or prices for supplying water, the governing*
 14 *body shall establish a rate structure which allows the municipality*,*
 15 *within the limits of any covenants made with bondholders pursuant*
 15A *to law,* to:*

16 *a. Recoup all costs of operation*,* including but not limited to*
 17 **the* costs of*~~[-]~~*raw materials, administration, equipment,*
 18 *buildings, property, maintenance, taxes, debt service, fees and off-*
 19 *setting any budget deficit occurring in the immediately preceding*
 19A *fiscal year;*

20 *b. **[Establish a contingency fund not exceeding 10% of the*
 21 *annual costs of operation of the utility; and*

22 *c. Establish a surplus not exceeding *~~[10%]~~* *5%* of the annual*
 23 *costs of operation of the utility.]*** ***[** Allow for an annual in-*
 24 *crease in surplus in an amount not exceeding 15% of the annual*
 25 *costs of operation of the utility.**]*** ***Establish a surplus*
 26 *****[not exceeding 15% of the annual costs of operation of the*
 27 *utility.***]***** ****sufficient to provide for the reasonable antici-*
 28 *pation of contingencies which may affect the operation of the util-*
 29 *ity.*****

1 4. Section 1 of P. L. 1975, c. 184 (C. 40:62-85.2) is amended to
2 read as follows:

3 1. Whenever any municipality solely owning or controlling water-
4 works or its own water supply is supplying water to more than
5 1,000 billed customers within any other municipality, the supplying
6 municipality shall with respect to such service be subject to the
7 jurisdiction, regulation and control of the Board of Public Utilities
8 in the same manner and to the same extent as are the services of
9 public utilities and to that extent and for that purpose such supply-
10 ing municipality shall be deemed to be a public utility. *The Board*
11 *of Public Utilities in* *~~fixing the rates for supplying this water~~
12 *shall establish a rate structure, except as otherwise required by this*
13 *section, which allows the municipalities** *regulating the rates for*
13A *supplying this water shall, except as otherwise required by this*
13B *section, provide for a rate structure which allows the supplying*
13C *municipality, within the limits of any covenants made with bond-*
13D *holders pursuant to law,* to:*

14 a. *Recoup all costs of operation*,* including but not limited to*
15 *the costs of* *~~—~~* *raw materials, administration, equipment,*
16 *buildings, property, maintenance, taxes, debt service, fees and*
17 *offsetting any budget deficit occurring in the immediately preceding*
17A *fiscal year;*

18 b. *Establish a contingency fund of 10% of the annual costs of*
19 *operation of the utility; and*

20 c. *Allows** *Establish** a surplus of *~~10%~~* *5%* of the
21 *annual costs of operation of the utility.**** *Allow for an*
21A *annual increase in surplus in an amount equal to 15% of the annual*
21B *costs of operation of the utility.**** *Establish a surplus*
21C *not exceeding 15% of the annual costs of operation of the*
21D *utility.**** *sufficient to provide for the reasonable antici-*
21E *pation of contingencies which may affect the operation of the util-*
21F *ity and for an amount which may be transferred from the accounts*
21G *of the municipal utility and included in the local budget pursuant*
21H *to section 5 of this amendatory and supplementary act.****

22 Whenever any municipality solely owning or controlling water-
23 works or its own water supply is supplying water to 1,000 or less
24 billed customers who do not buy water at a bulk rate within any
25 other municipality, the supplying municipality shall with respect
26 to such service be exempt from the jurisdiction, regulation and
27 control of the Board of Public Utilities provided that the revenue
28 derived from the sale of water outside of its boundaries does not
29 exceed 25% of its total water revenue.

30 Whenever any supplying municipality is exempt from the juris-
31 diction, regulation and control of the Board of Public Utilities, the
32 rates charged to the billed customers within any other municipality
33 shall be the same as those charged to customers within the supply-
34 ing municipality. Any increase in the water rates shall be autho-
35 rized by ordinance. Notice of the second reading of such ordinance
36 shall be sent by regular mail to billed customers outside of the
37 supplying municipality at least 1 week prior to the public hearing
38 for the said ordinance. Such customers shall have an opportunity
39 to be heard at the public hearing.

40 No rates or charges shall include the imposition of any fees in
41 excess of the cost of water actually used for any sprinkler system
42 required to be installed in any residential health care facility pur-
43 suant to the "Health Care Facilities Planning Act," P. L. 1971,
44 c. 136 (C. 26:2H-1 et seq.) and regulations promulgated thereunder
45 or in any rooming or boarding house pursuant to the "Rooming
46 and Boarding House Act of 1979," P. L. 1979, c. 496 (C. 55:13B-1
47 et al.) and regulations promulgated thereunder. Nothing in this
48 amendatory act shall preclude any municipality from charging for
49 the actual cost of water main connection.

1 5. (New section) ****[Any]**** *****[**An amount not to exceed**
2 **33 1/3% of]** *****To the extent there is*** available** surplus**
3 revenue collected by a municipality pursuant to chapter 62 of Title
4 40 of the Revised Statutes for supplying a utility service ******which**
5 **is regulated by the Board of Public Utilities pursuant to R. S.**
5A **40:62-24 or section 1 of P. L. 1975, c. 184 (C. 40:62-85.2),****** *****an**
5B **amount not to exceed 5% of the annual costs of operation of the**
6 **utility***** may be transferred *****annually***** from the accounts of
7 the municipal utility and included in the local budget pursuant to
8 N. J. S. 40A:4-35.

1 6. This act shall take effect immediately.

SENATE, No. 1317
STATE OF NEW JERSEY

INTRODUCED MAY 10, 1982

By Senator DORSEY

Referred to Committee on County and Municipal Government

AN ACT concerning municipal utility rates, amending sections 40:62-13, 40:62-24 and 40:62-77 of the Revised Statutes and P. L. 1975, c. 184 and supplementing chapter 4 of Title 40A of the New Jersey Statutes.

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

1 1. R. S. 40:62-13 is amended to read as follows:

2 40:62-13. The governing body may elect all officers, agents,
3 engineers, employees or committeemen necessary to be employed
4 in the maintenance and operation of any such light, heat or power
5 plant, or works, define their duties, regulate their compensation
6 and provide for their removal.

7 It may make, ordain and establish all such ordinances, resolutions,
8 rules and regulations as it may deem necessary and proper for the
9 introduction, transmission, distribution, use and supply of light,
10 heat or power, and for the protection of the buildings, machinery,
11 apparatus, wires, poles, pipes, subways and conduits, and other
12 works and appurtenances used in connection therewith; and for the
13 fixing and collection of all rates, rents or charges for supplying
14 light, heat or power for private or commercial use in such munici-
15 pality, and for the imposition of penalties upon the nonpayment
16 thereof.

17 *In fixing the rates, rents or charges for supplying light, heat or*
18 *power, the governing body shall establish a rate structure which*
19 *allows the municipalities to:*

20 *a. Recoup all costs of operation including but not limited to*

**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 printed in italics thus is new matter.

21 *costs of—raw materials, administration, equipment, buildings, pro-*
 22 *perty, maintenance, taxes, debt service, fees and offsetting any*
 23 *budget deficit occurring in the immediately preceding fiscal year;*

24 *b. Establish a contingency fund not exceeding 10% of the annual*
 25 *costs of operation of the utility; and*

26 *c. Establish a surplus not exceeding 10% of the annual costs of*
 27 *operation of the utility.*

1 2. R. S. 40:62-24 is amended to read as follows :

2 40:62-24. Every municipality in supplying electricity, gas, steam
 3 or other product beyond its corporate limits is hereby declared to
 4 be a public utility. The [board of public utility commissioners]
 5 *Board of Public Utilities* shall have the same supervision and
 6 regulation of, and jurisdiction and control over such municipality
 7 in respect to its acts in supplying electricity, gas, steam or other
 8 product beyond its corporate limits, and of and over the property,
 9 property rights, equipment, facilities and franchises used in sup-
 10 plying electricity, gas, steam or other product beyond its corporate
 11 limits as over other public utilities. Every such municipality shall
 12 be subject as to its service, accounts, property rights, equipment,
 13 franchises, extensions, reports, [rates,] issuance of bonds or other
 14 indebtedness maturing in more than 1 year from the date thereof,
 15 to the jurisdiction of the [board of public utility commissioners]
 16 *Board of Public Utilities* to the same extent as other public utilities.

17 *Every municipality supplying electricity, gas, steam or other*
 18 *product beyond its corporate limits shall have the rates for these*
 19 *utilities subject to the jurisdiction of the Board of Public Utilities.*
 20 *The board in fixing these rates shall establish a rate structure which*
 21 *allows the municipalities to:*

22 *a. Recoup all costs of operation including but not limited to costs*
 23 *of—raw materials, administration, equipment, buildings, property,*
 24 *maintenance, taxes, debt service, fees and offsetting any budget*
 25 *deficit occurring in the immediately preceding fiscal year;*

26 *b. Establish a contingency fund of 10% of the annual costs of*
 27 *operation of the utility; and*

28 *c. Establish a surplus of 10% of the annual costs of operation*
 29 *of the utility.*

1 3. R. S. 40:62-77 is amended to read as follows :

2 40:62-77. The governing body of every municipality providing
 3 and supplying water for the public and private use of such
 4 municipality and its inhabitants, may make, enforce, amend and
 5 repeal all such ordinances, resolutions and regulations as it may
 6 deem necessary and proper for the distribution, supply, use and
 7 protection of the water and the protection of the buildings, ma-

8 chinery, canals, aqueducts, reservoirs and other works and appurte-
 9 nances thereto; for the installation and protection of meters, for
 10 fixing and collecting the water rents or prices for water, and for
 11 imposing penalties in addition to cutting off the water for non-
 12 payment thereof.

13 *In fixing the rents or prices for supplying water, the governing*
 14 *body shall establish a rate structure which allows the municipality*
 15 *to:*

16 *a. Recoup all costs of operation including but not limited to costs*
 17 *of—raw materials, administration, equipment, buildings, property,*
 18 *maintenance, taxes, debt service, fees and offsetting any budget*
 19 *deficit occurring in the immediately preceding fiscal year;*

20 *b. Establish a contingency fund not exceeding 10% of the annual*
 21 *costs of operation of the utility; and*

22 *c. Establish a surplus not exceeding 10% of the annual costs of*
 23 *operation of the utility.*

1 4. Section 1 of P. L. 1975, c. 184 (C. 40:62-85.2) is amended to
 2 read as follows:

3 1. Whenever any municipality solely owning or controlling water-
 4 works or its own water supply is supplying water to more than
 5 1,000 billed customers within any other municipality, the supplying
 6 municipality shall with respect to such service be subject to the
 7 jurisdiction, regulation and control of the Board of Public Utilities
 8 in the same manner and to the same extent as are the services of
 9 public utilities and to that extent and for that purpose such supply-
 10 ing municipality shall be deemed to be a public utility. *The Board*
 11 *of Public Utilities in fixing the rates for supplying this water shall*
 12 *establish a rate structure, except as otherwise required by this*
 13 *section, which allows the municipalities to:*

14 *a. Recoup all costs of operation including but not limited to costs*
 15 *of—raw materials, administration, equipment, buildings, property,*
 16 *maintenance, taxes, debt service, fees and offsetting any budget*
 17 *deficit occurring in the immediately preceding fiscal year;*

18 *b. Establish a contingency fund of 10% of the annual costs of*
 19 *operation of the utility; and*

20 *c. Allows a surplus of 10% of the annual costs of operation of*
 21 *the utility.*

22 Whenever any municipality solely owning or controlling water-
 23 works or its own water supply is supplying water to 1,000 or less
 24 billed customers who do not buy water at a bulk rate within any
 25 other municipality, the supplying municipality shall with respect
 26 to such service be exempt from the jurisdiction, regulation and
 27 control of the Board of Public Utilities provided that the revenue

28 derived from the sale of water outside of its boundaries does not
29 exceed 25% of its total water revenue.

30 Whenever any supplying municipality is exempt from the juris-
31 diction, regulation and control of the Board of Public Utilities, the
32 rates charged to the billed customers within any other municipality
33 shall be the same as those charged to customers within the supply-
34 ing municipality. Any increase in the water rates shall be autho-
35 rized by ordinance. Notice of the second reading of such ordinance
36 shall be sent by regular mail to billed customers outside of the
37 supplying municipality at least 1 week prior to the public hearing
38 for the said ordinance. Such customers shall have an opportunity
39 to be heard at the public hearing.

40 No rates or charges shall include the imposition of any fees in
41 excess of the cost of water actually used for any sprinkler system
42 required to be installed in any residential health care facility pur-
43 suant to the "Health Care Facilities Planning Act," P. L. 1971,
44 c. 136 (C. 26:2H-1 et seq.) and regulations promulgated thereunder
45 or in any rooming or boarding house pursuant to the "Rooming
46 and Boarding House Act of 1979," P. L. 1979, c. 496 (C. 55:13B-1
47 et al.) and regulations promulgated thereunder. Nothing in this
48 amendatory act shall preclude any municipality from charging for
49 the actual cost of water main connection.

1 5. (New section) Any surplus revenue collected by a municipality
2 pursuant to chapter 62 of Title 40 of the Revised Statutes for
3 supplying a utility service may be transferred from the accounts
4 of the municipal utility and included in the local budget pursuant
5 to N. J. S. 40A:4-35.

1 6. This act shall take effect immediately.

STATEMENT

This bill amends existing law to set out the items the governing body of a municipality shall include in fixing rates for municipal utilities. The bill also sets out the items the Board of Public Utilities shall include in fixing rates for municipalities supplying utility services beyond their corporate limits. These items are: (1) costs of operation, which would include but not be limited to costs of—raw materials, administration, equipment, buildings, property, maintenance, taxes, debt service, fees and offsetting any budget deficit occurring in the immediately preceding fiscal year; (2) an allowance for the establishment of a contingency fund; and (3) an allowance of a surplus. For a municipality which supplies utilities solely within its corporate limits, both the contingency fund and the surplus shall not exceed 10% of the annual costs of operation

of the utility. For a municipal utility under the jurisdiction of the Board of Public Utilities, the contingency fund and the surplus shall each equal 10% of the annual costs of operation. The bill also specifically allows for surplus revenue to be transferred from the accounts of the municipal utility and included in the local budget pursuant to N. J. S. 40A:4-35.

This bill is in response to a recent Superior Court decision, *H. P. Higgs Company, Inc. v. Borough of Madison*, Docket No. L-22362-80 P. W., to date unreported, which called into question certain municipal utility practices. The bill goes beyond the decision in also amending those sections of the law dealing with municipalities supplying utility services outside the municipality.

**SENATE COUNTY AND MUNICIPAL
GOVERNMENT COMMITTEE**

STATEMENT TO

SENATE, No. 1317

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 14, 1982

Senate Bill No. 1317 concerns rate setting for municipal utilities. It amends R. S. 40:62-13, 40:62-24, and 40:62-77, and P. L. 1975, c. 184 (C. 40:62-85.2) to specify the items which a municipal governing body shall include in fixing rates for certain municipal utilities and the items which the Board of Public Utilities (BPU) shall consider in regulating rates for a municipality supplying utility services beyond its corporate boundaries. These items are: (1) all costs of operation, which would include but not be limited to the costs of raw materials, administration, equipment, buildings, property, maintenance, taxes, debt service, fees and offsetting any budget deficit occurring in the immediately preceding fiscal year; (2) an allowance for the establishment of a contingency fund for depreciation; and (3) an allowance of a surplus. For a municipality which supplies utilities solely within its corporate limits, the contingency fund shall not exceed 10%, and the surplus shall not exceed 5%, of the annual costs of operation of the utility. For a municipal utility under the jurisdiction of the BPU, the contingency fund shall equal 10%, and the surplus shall equal 5%, of the annual costs of operation.

The bill also supplements Title 40A of the New Jersey Statutes by stipulating that any surplus revenue generated by the operations of a municipal utility may be included in the general budget for that municipality.

Currently, under R. S. 40:62-13 and 40:62-77, a municipal governing body may, at its own discretion, establish the rate structure for a utility operating within its own boundaries. The statutes do not set forth the items which shall be included in this rate structure. A municipal utility supplying services outside the municipality becomes a public utility under R. S. 40:62-24 and P. L. 1975, c. 184 (C. 40:62-85.2), and its rates are subject to regulation by the BPU. These statutes also do not specify the items to be included in the determination and regulation of rates.

In reviewing utility rates, the BPU considers variables in three general categories: (1) reasonable costs of operation; (2) depreciation, often provided for through the establishment of a contingency fund; and

(3) a reasonable rate of return on investment. Historically, this type of approach to rate regulation has been upheld at common law.

The amendments delineating certain operating costs and requiring a contingency fund establish procedures for a municipal government to follow in fixing utility rates for residents of the municipality, and clarify existing procedures followed by both a municipal government and the BPU in fixing rates for services provided outside the municipality. The amendments concerning the surplus fund set a range for the rate of return from services provided within municipal boundaries, and require a uniform rate of return for services provided outside these boundaries.

Section 5 of the bill, supplementing Title 40A, is intended to address an issue raised by *Higgs v. Borough of Madison*, Docket No. L-22362-80 P. W. (N. J. Super., Law Div.). In this case, the Superior Court held that surplus income from the operation of a municipal utility, which is realized under the existing rate structure, must be dedicated to the continued operation of that utility pursuant to N. J. S. 40A:4-33 and 40A:4-62. Only income beyond this level, according to the court, may be included in the general municipal budget pursuant to N. J. S. 40A:4-35. The court concluded that surplus revenues are not to "subsidize the general budget on a regular and planned basis."

This bill would allow a municipal government to include any surplus revenue in its general budget. The bill goes beyond *Higgs*, in that the decision dealt solely with services provided within municipal boundaries, while the bill concerns services provided both within and outside those boundaries.

The Senate committee amendments are for the most part technical and clarifying in nature. The only substantive change are to acknowledge that bond covenants must be honored in regulating and fixing utility rates, and to reduce from 10% to 5% the percentage of the annual costs of operation which will be allowed for surplus.

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SENATE, No. 1317

STATE OF NEW JERSEY

INTRODUCED MAY 10, 1982

By Senator DORSEY

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6 and provide for their removal.

7 It may make, ordain and establish all such ordinances, resolutions,
8 rules and regulations as it may deem necessary and proper for the
9 introduction, transmission, distribution, use and supply of light,
10 heat or power, and for the protection of the buildings, machinery,
11 apparatus, wires, poles, pipes, subways and conduits, and other
12 works and ***[apurtenances]*** **appurtenances** used in connection
13 therewith; and for the fixing and collection of all rates, rents or
14 charges for supplying light, heat or power for private or commer-
15 cial use in such municipality, and for the imposition of penalties
16 upon the nonpayment thereof.

17 *In fixing the rates, rents or charges for supplying light, heat or*
18 *power, the governing body shall establish a rate structure which*
19 *allows the ***[municipalities]*** **municipality, within the limits of*
19A *any covenants made with bondholders pursuant to law,* to:**

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Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted June 14, 1982.

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 23 setting any budget deficit occurring in the immediately preceding
 23A fiscal year;

24 b. Establish a contingency fund not exceeding 10% of the annual
 25 costs of operation of the utility; and

26 c. Establish a surplus not exceeding *~~10%~~* *5%* of the annual
 27 costs of operation of the utility.

1 2. R. S. 40:62-24 is amended to read as follows:

2 40:62-24. Every municipality in supplying electricity, gas, steam
 3 or other product beyond its corporate limits is hereby declared to
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 5 Board of Public Utilities shall have the same supervision and
 6 regulation of, and jurisdiction and control over such municipality
 7 in respect to its acts in supplying electricity, gas, steam or other
 8 product beyond its corporate limits, and of and over the property,
 9 property rights, equipment, facilities and franchises used in sup-
 10 plying electricity, gas, steam or other product beyond its corporate
 11 limits as over other public utilities. Every such municipality shall
 12 be subject as to its service, accounts, property rights, equipment,
 13 franchises, extensions, reports, ~~rates,~~ issuance of bonds or other
 14 indebtedness maturing in more than 1 year from the date thereof,
 15 to the jurisdiction of the ~~board of public utility commissioners~~
 16 Board of Public Utilities to the same extent as other public utilities.

17 Every municipality supplying electricity, gas, steam or other
 18 product beyond its corporate limits shall have the rates for these
 19 utilities subject to the jurisdiction of the Board of Public Utilities.
 20 The board in *~~fixing these rates shall establish a rate structure~~
 21 which allows the municipalities]* *regulating these rates shall
 21A provide for a rate structure which allows the municipality, within
 21B the limits of any covenants made with bondholders pursuant to
 21C law,* to:

22 a. Recoup all costs of operation*,* including but not limited to
 23 *the* costs of*~~—~~*raw materials, administration, equipment,
 24 buildings, property, maintenance, taxes, debt service, fees and
 25 offsetting any budget deficit occurring in the immediately preceding
 25A fiscal year;

26 b. Establish a contingency fund of 10% of the annual costs of
 27 operation of the utility; and

28 c. Establish a surplus of *~~10%~~* *5%* of the annual costs of
 29 operation of the utility.

1 3. R. S. 40:62-77 is amended to read as follows:

2 40:62-77. The governing body of every municipality providing
 3 and supplying water for the public and private use of such
 4 municipality and its inhabitants, may make, enforce, amend and
 5 repeal all such ordinances, resolutions and regulations as it may
 6 deem necessary and proper for the distribution, supply, use and
 7 protection of the water and the protection of the buildings, ma-
 8 chinery, canals, aqueducts, reservoirs and other works and appurte-
 9 nances thereto; for the installation and protection of meters, for
 10 fixing and collecting the water rents or prices for water, and for
 11 imposing penalties in addition to cutting off the water for non-
 12 payment thereof.

13 *In fixing the rents or prices for supplying water, the governing*
 14 *body shall establish a rate structure which allows the municipality*,*
 15 *within the limits of any covenants made with bondholders pursuant*
 15A *to law,* to:*

16 a. *Recoup all costs of operation*,* including but not limited to*
 17 **the* costs of*~~---~~*raw materials, administration, equipment,*
 18 *buildings, property, maintenance, taxes, debt service, fees and off-*
 19 *setting any budget deficit occurring in the immediately preceding*
 19A *fiscal year;*

20 b. *Establish a contingency fund not exceeding 10% of the annual*
 21 *costs of operation of the utility; and*

22 c. *Establish a surplus not exceeding ~~10%~~* *5%* of the annual*
 23 *costs of operation of the utility.*

1 4. Section 1 of P. L. 1975, c. 184 (C. 40:62-85.2) is amended to
 2 read as follows:

3 1. Whenever any municipality solely owning or controlling water-
 4 works or its own water supply is supplying water to more than
 5 1,000 billed customers within any other municipality, the supplying
 6 municipality shall with respect to such service be subject to the
 7 jurisdiction, regulation and control of the Board of Public Utilities
 8 in the same manner and to the same extent as are the services of
 9 public utilities and to that extent and for that purpose such supply-
 10 ing municipality shall be deemed to be a public utility. *The Board*
 11 *of Public Utilities in ~~fixing the rates for supplying this water~~*
 12 *shall establish a rate structure, except as otherwise required by this*
 13 *section, which allows the municipalities]* *regulating the rates for*
 13A *supplying this water shall, except as otherwise required by this*
 13B *section, provide for a rate structure which allows the supplying*
 13C *municipality, within the limits of any covenants made with bond-*
 13D *holders pursuant to law,* to:*

14 a. *Recoup all costs of operation*,* including but not limited to*
 15 **the* costs of ~~---~~*raw materials, administration, equipment,*

16 *buildings, property, maintenance, taxes, debt service, fees and*
17 *offsetting any budget deficit occurring in the immediately preceding*
17A *fiscal year;*

18 *b. Establish a contingency fund of 10% of the annual costs of*
19 *operation of the utility; and*

20 *c. ***[Allows]*** ***Establish*** a surplus of ***[10%]*** ***5%*** of the*
21 *annual costs of operation of the utility.*

22 Whenever any municipality solely owning or controlling water-
23 works or its own water supply is supplying water to 1,000 or less
24 billed customers who do not buy water at a bulk rate within any
25 other municipality, the supplying municipality shall with respect
26 to such service be exempt from the jurisdiction, regulation and
27 control of the Board of Public Utilities provided that the revenue
28 derived from the sale of water outside of its boundaries does not
29 exceed 25% of its total water revenue.

30 Whenever any supplying municipality is exempt from the juris-
31 diction, regulation and control of the Board of Public Utilities, the
32 rates charged to the billed customers within any other municipality
33 shall be the same as those charged to customers within the supply-
34 ing municipality. Any increase in the water rates shall be autho-
35 rized by ordinance. Notice of the second reading of such ordinance
36 shall be sent by regular mail to billed customers outside of the
37 supplying municipality at least 1 week prior to the public hearing
38 for the said ordinance. Such customers shall have an opportunity
39 to be heard at the public hearing.

40 No rates or charges shall include the imposition of any fees in
41 excess of the cost of water actually used for any sprinkler system
42 required to be installed in any residential health care facility pur-
43 suant to the "Health Care Facilities Planning Act," P. L. 1971,
44 c. 136 (C. 26:2H-1 et seq.) and regulations promulgated thereunder
45 or in any rooming or boarding house pursuant to the "Rooming
46 and Boarding House Act of 1979," P. L. 1979, c. 496 (C. 55:13B-1
47 et al.) and regulations promulgated thereunder. Nothing in this
48 amendatory act shall preclude any municipality from charging for
49 the actual cost of water main connection.

1 5. (New section) Any surplus revenue collected by a municipality
2 pursuant to chapter 62 of Title 40 of the Revised Statutes for
3 supplying a utility service may be transferred from the accounts
4 of the municipal utility and included in the local budget pursuant
5 to N. J. S. 40A:4-35.

1 6. This act shall take effect immediately.

ADOPTED
JUL 12 1982

-0-25-82 - R-40

OK TRM

SENATE Amendments

to

SENATE Bill No. 1317 OCR

(by Senator Dorsey, sponsor)

Amend:

Page	Sec.	Line	
2	1	24-27	<p><i>balance of omit lines 25-27</i></p> <p>After "b." on line 24 omit these lines, insert "Allow for an annual increase in surplus in an amount not exceeding 15% of the annual costs of operation of the utility."</p>
2	2	26-29	<p><i>balance of omit lines 27-29</i></p> <p>After "b." on line 26 omit these lines, insert "Allow for an annual increase in surplus in an amount equal to 15% of the annual costs of operation of the utility."</p>
3	3	20-23	<p><i>balance of omit lines 21-22</i></p> <p>After "b." on line 20 omit these lines, insert "Allow for an annual increase in surplus in an amount not exceeding 15% of the annual costs of operation of the utility."</p>
4	4	18-21	<p><i>balance of omit lines 19-21</i></p> <p>After "b." on line 18 omit these lines, insert "Allow for an annual increase in surplus in an amount equal to 15% of the annual costs of operation of the utility."</p>
4	5	1	<p>Omit "Any" insert "An amount not to exceed 33-1/3% of available"</p>

STATEMENT

These amendments clarify the provisions of Senate Bill 1317 by acknowledging therein that municipal utilities do not normally maintain separate contingency funds for capital improvement purposes, but provide for those purposes from their surplus funds. The amendment, therefore, collapses the 10% contingency fund and 5% surplus fund of the original bill into a 15% surplus fund, but maintains the intent of the original 5% surplus fund.

SENATE _____ Amendments

to

SENATE _____ Bill No. 1317 OCR

(by Senator Dorsey, sponsor)

Amend:

Page

Sec.

Line

viding that no more than 33 1/3% of available surplus may be transfered to the municipality for inclusion in the municipal budget.

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 1317

STATE OF NEW JERSEY

INTRODUCED MAY 10, 1982

By Senator DORSEY

Referred to Committee on County and Municipal Government

AN ACT concerning municipal utility rates, amending sections 40:62-13, 40:62-24 and 40:62-77 of the Revised Statutes and P. L. 1975, c. 184 and supplementing chapter 4 of Title 40A of the New Jersey Statutes.

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

1 1. R. S. 40:62-13 is amended to read as follows:

2 40:62-13. The governing body may elect all officers, agents,
3 engineers, employees or committeemen necessary to be employed
4 in the maintenance and operation of any such light, heat or power
5 plant, or works, define their duties, regulate their compensation
6 and provide for their removal.

7 It may make, ordain and establish all such ordinances, resolutions,
8 rules and regulations as it may deem necessary and proper for the
9 introduction, transmission, distribution, use and supply of light,
10 heat or power, and for the protection of the buildings, machinery,
11 apparatus, wires, poles, pipes, subways and conduits, and other
12 works and ***[apurtenances]*** **appurtenances** used in connection
13 therewith; and for the fixing and collection of all rates, rents or
14 charges for supplying light, heat or power for private or commer-
15 cial use in such municipality, and for the imposition of penalties
16 upon the nonpayment thereof.

17 *In fixing the rates, rents or charges for supplying light, heat or*
18 *power, the governing body shall establish a rate structure which*
19 *allows the ***[municipalities]*** **municipality, within the limits of**
19A *any covenants made with bondholders pursuant to law,* to:*

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 printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted June 14, 1982.

**—Senate committee amendments adopted July 22, 1982.

20 a. Recoup all costs of operation*,* including but not limited to
 21 *the* costs of***[—]***raw materials, administration, equipment,
 22 buildings, property, maintenance, taxes, debt service, fees and off-
 23 setting any budget deficit occurring in the immediately preceding
 23A fiscal year;

24 b. ****[Establish a contingency fund not exceeding 10% of the**
 25 **annual costs of operation of the utility; and**

26 c. Establish a surplus not exceeding ***[10%]* *5%*** of the annual
 27 costs of operation of the utility.**]** **Allow for an annual increase**
 28 **in surplus in an amount not exceeding 15% of the annual costs of**
 29 **operation of the utility.****

1 2. R. S. 40:62-24 is amended to read as follows:

2 40:62-24. Every municipality in supplying electricity, gas, steam
 3 or other product beyond its corporate limits is hereby declared to
 4 be a public utility. The **[board of public utility commissioners]**
 5 *Board of Public Utilities* shall have the same supervision and
 6 regulation of, and jurisdiction and control over such municipality
 7 in respect to its acts in supplying electricity, gas, steam or other
 8 product beyond its corporate limits, and of and over the property,
 9 property rights, equipment, facilities and franchises used in sup-
 10 plying electricity, gas, steam or other product beyond its corporate
 11 limits as over other public utilities. Every such municipality shall
 12 be subject as to its service, accounts, property rights, equipment,
 13 franchises, extensions, reports, **[rates,]** issuance of bonds or other
 14 indebtedness maturing in more than 1 year from the date thereof,
 15 to the jurisdiction of the **[board of public utility commissioners]**
 16 *Board of Public Utilities* to the same extent as other public utilities.

17 *Every municipality supplying electricity, gas, steam or other*
 18 *product beyond its corporate limits shall have the rates for these*
 19 *utilities subject to the jurisdiction of the Board of Public Utilities.*
 20 *The board in ***[fixing these rates shall establish a rate structure***
 21 *which allows the municipalities]* *regulating these rates shall*
 21A *provide for a rate structure which allows the municipality, within*
 21B *the limits of any covenants made with bondholders pursuant to*
 21C *law,* to:*

22 a. Recoup all costs of operation*,* including but not limited to
 23 *the* costs of***[—]***raw materials, administration, equipment,
 24 buildings, property, maintenance, taxes, debt service, fees and
 25 offsetting any budget deficit occurring in the immediately preceding
 25A fiscal year;

26 b. ****[Establish a contingency fund of 10% of the annual costs of**
 27 **operation of the utility; and**

28 c. Establish a surplus of ***[10%]* *5%*** of the annual costs of

29 operation of the utility.】** **Allow for an annual increase in
30 surplus in an amount equal to 15% of the annual costs of operation
31 of the utility.**

1 3. R. S. 40:62-77 is amended to read as follows:

2 40:62-77. The governing body of every municipality providing
3 and supplying water for the public and private use of such
4 municipality and its inhabitants, may make, enforce, amend and
5 repeal all such ordinances, resolutions and regulations as it may
6 deem necessary and proper for the distribution, supply, use and
7 protection of the water and the protection of the buildings, ma-
8 chinery, canals, aqueducts, reservoirs and other works and appurte-
9 nances thereto; for the installation and protection of meters, for
10 fixing and collecting the water rents or prices for water, and for
11 imposing penalties in addition to cutting off the water for non-
12 payment thereof.

13 *In fixing the rents or prices for supplying water, the governing*
14 *body shall establish a rate structure which allows the municipality*,*
15 *within the limits of any covenants made with bondholders pursuant*
15A *to law,* to:*

16 a. *Recoup all costs of operation*,* including but not limited to*
17 **the* costs of*【—】*raw materials, administration, equipment,*
18 *buildings, property, maintenance, taxes, debt service, fees and off-*
19 *setting any budget deficit occurring in the immediately preceding*
19A *fiscal year;*

20 b. ***【Establish a contingency fund not exceeding 10% of the*
21 *annual costs of operation of the utility; and*

22 c. *Establish a surplus not exceeding *【10%】* *5%* of the annual*
23 *costs of operation of the utility.】** **Allow for an annual increase*
24 *in surplus in an amount not exceeding 15% of the annual costs of*
25 *operation of the utility.***

1 4. Section 1 of P. L. 1975, c. 184 (C. 40:62-85.2) is amended to
2 read as follows:

3 1. Whenever any municipality solely owning or controlling water-
4 works or its own water supply is supplying water to more than
5 1,000 billed customers within any other municipality, the supplying
6 municipality shall with respect to such service be subject to the
7 jurisdiction, regulation and control of the Board of Public Utilities
8 in the same manner and to the same extent as are the services of
9 public utilities and to that extent and for that purpose such supply-
10 ing municipality shall be deemed to be a public utility. *The Board*
11 *of Public Utilities in *【fixing the rates for supplying this water*
12 *shall establish a rate structure, except as otherwise required by this*
13 *section, which allows the municipalities】* *regulating the rates for*

13A *supplying this water shall, except as otherwise required by this*
 13B *section, provide for a rate structure which allows the supplying*
 13C *municipality, within the limits of any covenants made with bond-*
 13D *holders pursuant to law,* to:*

14 *a. Recoup all costs of operation*,* including but not limited to*
 15 **the* costs of *[-]*raw materials, administration, equipment,*
 16 *buildings, property, maintenance, taxes, debt service, fees and*
 17 *offsetting any budget deficit occurring in the immediately preceding*
 17A *fiscal year;*

18 *b. **[Establish a contingency fund of 10% of the annual costs of*
 19 *operation of the utility; and*

20 *c. *[Allows]* *Establish* a surplus of *[10%]* *5%* of the*
 21 *annual costs of operation of the utility.]*** **Allow for an annual*
 21A *increase in surplus in an amount equal to 15% of the annual costs*
 21B *of operation of the utility.***

22 Whenever any municipality solely owning or controlling water-
 23 works or its own water supply is supplying water to 1,000 or less
 24 billed customers who do not buy water at a bulk rate within any
 25 other municipality, the supplying municipality shall with respect
 26 to such service be exempt from the jurisdiction, regulation and
 27 control of the Board of Public Utilities provided that the revenue
 28 derived from the sale of water outside of its boundaries does not
 29 exceed 25% of its total water revenue.

30 Whenever any supplying municipality is exempt from the juris-
 31 diction, regulation and control of the Board of Public Utilities, the
 32 rates charged to the billed customers within any other municipality
 33 shall be the same as those charged to customers within the supply-
 34 ing municipality. Any increase in the water rates shall be autho-
 35 rized by ordinance. Notice of the second reading of such ordinance
 36 shall be sent by regular mail to billed customers outside of the
 37 supplying municipality at least 1 week prior to the public hearing
 38 for the said ordinance. Such customers shall have an opportunity
 39 to be heard at the public hearing.

40 No rates or charges shall include the imposition of any fees in
 41 excess of the cost of water actually used for any sprinkler system
 42 required to be installed in any residential health care facility pur-
 43 suant to the "Health Care Facilities Planning Act," P. L. 1971,
 44 c. 136 (C. 26:2H-1 et seq.) and regulations promulgated thereunder
 45 or in any rooming or boarding house pursuant to the "Rooming
 46 and Boarding House Act of 1979," P. L. 1979, c. 496 (C. 55:13B-1
 47 et al.) and regulations promulgated thereunder. Nothing in this
 48 amendatory act shall preclude any municipality from charging for
 49 the actual cost of water main connection.

1 5. (New section) ****[Any]**** ***An amount not to exceed 33 1/3%*
1A *of available*** surplus revenue collected by a municipality
2 pursuant to chapter 62 of Title 40 of the Revised Statutes for
3 supplying a utility service may be transferred from the accounts
4 of the municipal utility and included in the local budget pursuant
5 to N. J. S. 40A:4-35.

1 6. This act shall take effect immediately.

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 1317

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: OCTOBER 18, 1982

The Senate County and Municipal Government Committee Statement to Senate Bill No. 1317 OCR attached hereto adequately expresses the Assembly Municipal Government Committee's understanding of the bill.

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO

SENATE BILL No. 1317 [OCR]

Senate Bill No. 1317 concerns rate setting for municipal utilities. It amends R. S. 40:62-13, 40:62-24, and 40:62-77, and P. L. 1975, c. 184 (C. 40:62-85.2) to specify the items which a municipal governing body shall include in fixing rates for certain municipal utilities and the items which the Board of Public Utilities (BPU) shall consider in regulating rates for a municipality supplying utility services beyond its corporate boundaries. These items are: (1) all costs of operation, which would include but not be limited to the costs of raw materials, administration, equipment, buildings, property, maintenance, taxes, debt service, fees and offsetting any budget deficit occurring in the immediately preceding fiscal year; (2) an allowance for the establishment of a contingency fund for depreciation; and (3) an allowance of a surplus. For a municipality which supplies utilities solely within its corporate limits, the contingency fund shall not exceed 10%, and the surplus shall not exceed 5%, of the annual costs of operation of the utility. For a municipal utility under the jurisdiction of the BPU, the contingency fund shall equal 10%, and the surplus shall equal 5%, of the annual costs of operation.

The bill also supplements Title 40A of the New Jersey Statutes by stipulating that any surplus revenue generated by the operations of a municipal utility may be included in the general budget for that municipality.

Currently, under R. S. 40:62-13 and 40:62-77, a municipal governing body may, at its own discretion, establish the rate structure for a utility operating within its own boundaries. The statutes do not set forth the items which shall be included in this rate structure. A municipal utility supplying services outside the municipality becomes a public utility under R. S. 40:62-24 and P. L. 1975, c. 184 (C. 40:62-85.2), and its rates are subject to regulation by the BPU. These statutes also do not specify the items to be included in the determination and regulation of rates.

In reviewing utility rates, the BPU considers variables in three general categories: (1) reasonable costs of operation; (2) depreciation, often provided for through the establishment of a contingency fund; and (3) a reasonable rate of return on investment. Historically, this type of approach to rate regulation has been upheld at common law.

The amendments delineating certain operating costs and requiring a contingency fund establish procedures for a municipal government to follow in fixing utility rates for residents of the municipality, and clarify existing procedures followed by both a municipal government and the BPU in fixing rates for services provided outside the municipality. The amendments concerning the surplus fund set a range for the rate of return from services provided within municipal boundaries, and require a uniform rate of return for services provided outside these boundaries.

Section 5 of the bill, supplementing Title 40A, is intended to address an issue raised by *Higgs v. Borough of Madison*, Docket No. L-22362-80 P. W. (N. J. Super., Law Div.). In this case, the Superior Court held that surplus income from the operation of a municipal utility, which is realized under the existing rate structure, must be dedicated to the continued operation of that utility pursuant to N. J. S. 40A:4-33 and 40A:4-62. Only income beyond this level, according to the court, may be included in the general municipal budget pursuant to N. J. S. 40A:4-35. The court concluded that surplus revenues are not to "subsidize the general budget on a regular and planned basis."

This bill would allow a municipal government to include any surplus revenue in its general budget. The bill goes beyond *Higgs*, in that the decision dealt solely with services provided within municipal boundaries, while the bill concerns services provided both within and outside those boundaries.

12
30

ASSEMBLY FLOOR Amendments

to

ADOPTED

NOV 15 1982

Senate Bill No. 1317^{2nd} (OCR)
by Assemblyman Albohn

Amend:

Page	Sec.	Line	
2	1	27-29	On line 27 omit "Allow for an annual increase" Omit lines 27 and 28 in entirety. Insert Omit these lines in their entirety and insert "Establish a surplus not exceeding 15% of the annual costs of operation of the utility."
3	2	29-31	On line 29 "Allow for an annual increase" Omit these lines in their entirety and insert Omit lines 30-31 in entirety. Insert "Establish a surplus not exceeding 15% of the annual costs of operation of the utility."
3	3	23-25	On line 23 "allow for an annual increase" Omit lines 24 and 25 in entirety and insert Omit these lines in their entirety and insert "Establish a surplus not exceeding 15% of the annual costs of operation of the utility."
4	4	21-21 B	On line 21 "Allow for an annual increase" Omit lines 21A-21B in entirety and insert Omit these lines in their entirety and insert "Establish a surplus not exceeding 15% of the annual costs of operation of the utility."
5	5	1-1A	On line 1 Omit "An amount not to exceed 33-1/3% ^{and on line 1A} omit "of" and Insert "To the extent there is"
5	5	3	After "service" insert "an amount not to exceed 5% of the annual costs of operation of the utility" After "transferred" insert "annually"

STATEMENT

The purpose of these Floor Amendments is to establish a "cap" on the amount of surplus a municipal utility may establish. In its present form, the bill would permit a municipal utility to annually increase its surplus in an amount equal to 15% of the annual costs of its operation. Under that format, a municipal utility's surplus account would grow incrementally, accumulating funds at

[ASSEMBLY REPRINT]
SENATE, No. 1317
[SECOND OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

INTRODUCED MAY 10, 1982

By Senator DORSEY

Referred to Committee on County and Municipal Government

AN ACT concerning municipal utility rates, amending sections 40:62-13, 40:62-24 and 40:62-77 of the Revised Statutes and P. L. 1975, c. 184 and supplementing chapter 4 of Title 40A of the New Jersey Statutes.

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

1 1. R. S. 40:62-13 is amended to read as follows:

2 40:62-13. The governing body may elect all officers, agents,
3 engineers, employees or committeemen necessary to be employed
4 in the maintenance and operation of any such light, heat or power
5 plant, or works, define their duties, regulate their compensation
6 and provide for their removal.

7 It may make, ordain and establish all such ordinances, resolutions,
8 rules and regulations as it may deem necessary and proper for the
9 introduction, transmission, distribution, use and supply of light,
10 heat or power, and for the protection of the buildings, machinery,
11 apparatus, wires, poles, pipes, subways and conduits, and other
12 works and ***[apurtenances]*** **appurtenances** used in connection
13 therewith; and for the fixing and collection of all rates, rents or
14 charges for supplying light, heat or power for private or commer-
15 cial use in such municipality, and for the imposition of penalties
16 upon the nonpayment thereof.

17 *In fixing the rates, rents or charges for supplying light, heat or*
18 *power, the governing body shall establish a rate structure which*

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 printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate committee amendments adopted June 14, 1982.**

****—Senate committee amendments adopted July 22, 1982.**

*****—Assembly amendments adopted November 15, 1982.**

19 allows the ***[municipalities]*** **municipality, within the limits of*
 19A *any covenants made with bondholders pursuant to law,** to:

20 a. *Recoup all costs of operation*,* including but not limited to*
 21 **the* costs of***[—]***raw materials, administration, equipment,*
 22 *buildings, property, maintenance, taxes, debt service, fees and off-*
 23 *setting any budget deficit occurring in the immediately preceding*
 23A *fiscal year;*

24 b. ****[Establish a contingency fund not exceeding 10% of the**
 25 *annual costs of operation of the utility; and*

26 c. *Establish a surplus not exceeding ***[10%]*** *5%* of the annual*
 27 *costs of operation of the utility.*** *****[** Allow for an annual in-**
 28 *crease in surplus in an amount not exceeding 15% of the annual*
 29 *costs of operation of the utility.**] ******* *Establish a surplus not*
 30 *exceeding 15% of the annual costs of operation of the utility.****

1 2. R. S. 40:62-24 is amended to read as follows:

2 40:62-24. Every municipality in supplying electricity, gas, steam
 3 or other product beyond its corporate limits is hereby declared to
 4 be a public utility. The **[board of public utility commissioners]**
 5 *Board of Public Utilities* shall have the same supervision and
 6 regulation of, and jurisdiction and control over such municipality
 7 in respect to its acts in supplying electricity, gas, steam or other
 8 product beyond its corporate limits, and of and over the property,
 9 property rights, equipment, facilities and franchises used in sup-
 10 plying electricity, gas, steam or other product beyond its corporate
 11 limits as over other public utilities. Every such municipality shall
 12 be subject as to its service, accounts, property rights, equipment,
 13 franchises, extensions, reports, **[rates,]** issuance of bonds or other
 14 indebtedness maturing in more than 1 year from the date thereof,
 15 to the jurisdiction of the **[board of public utility commissioners]**
 16 *Board of Public Utilities* to the same extent as other public utilities.

17 *Every municipality supplying electricity, gas, steam or other*
 18 *product beyond its corporate limits shall have the rates for these*
 19 *utilities subject to the jurisdiction of the Board of Public Utilities.*
 20 *The board in ***[fixing these rates shall establish a rate structure***
 21 *which allows the municipalities]** **regulating these rates shall*
 21A *provide for a rate structure which allows the municipality, within*
 21B *the limits of any covenants made with bondholders pursuant to*
 21C *law,** to:

22 a. *Recoup all costs of operation*,* including but not limited to*
 23 **the* costs of***[—]***raw materials, administration, equipment,*
 24 *buildings, property, maintenance, taxes, debt service, fees and*
 25 *offsetting any budget deficit occurring in the immediately preceding*
 25A *fiscal year;*

26 b. ****[Establish a contingency fund of 10% of the annual costs of**
 27 *operation of the utility; and*

28 c. *Establish a surplus of ***[10%]* *5%*** of the annual costs of*
 29 *operation of the utility.]** ***[**Allow for an annual increase in*
 30 *surplus in an amount equal to 15% of the annual costs of operation*
 31 *of the utility.**]*** ***Establish a surplus not exceeding 15% of*
 32 *the annual costs of operation of the utility.****

1 3. R. S. 40:62-77 is amended to read as follows:

2 40:62-77. The governing body of every municipality providing
 3 and supplying water for the public and private use of such
 4 municipality and its inhabitants, may make, enforce, amend and
 5 repeal all such ordinances, resolutions and regulations as it may
 6 deem necessary and proper for the distribution, supply, use and
 7 protection of the water and the protection of the buildings, ma-
 8 chinery, canals, aqueducts, reservoirs and other works and appurte-
 9 nances thereto; for the installation and protection of meters, for
 10 fixing and collecting the water rents or prices for water, and for
 11 imposing penalties in addition to cutting off the water for non-
 12 payment thereof.

13 *In fixing the rents or prices for supplying water, the governing*
 14 *body shall establish a rate structure which allows the municipality*,*
 15 *within the limits of any covenants made with bondholders pursuant*
 15A *to law,* to:*

16 a. *Recoup all costs of operation*,* including but not limited to*
 17 **the* costs of***[—]***raw materials, administration, equipment,*
 18 *buildings, property, maintenance, taxes, debt service, fees and off-*
 19 *setting any budget deficit occurring in the immediately preceding*
 19A *fiscal year;*

20 b. ****[Establish a contingency fund not exceeding 10% of the**
 21 *annual costs of operation of the utility; and*

22 c. *Establish a surplus not exceeding ***[10%]* *5%*** of the annual*
 23 *costs of operation of the utility.]** ***[**Allow for an annual in-*
 24 *crease in surplus in an amount not exceeding 15% of the annual*
 25 *costs of operation of the utility.**]*** ***Establish a surplus not*
 26 *exceeding 15% of the annual costs of operation of the utility.****

1 4. Section 1 of P. L. 1975, c. 184 (C. 40:62-85.2) is amended to
 2 read as follows:

3 1. Whenever any municipality solely owning or controlling water-
 4 works or its own water supply is supplying water to more than
 5 1,000 billed customers within any other municipality, the supplying
 6 municipality shall with respect to such service be subject to the
 7 jurisdiction, regulation and control of the Board of Public Utilities
 8 in the same manner and to the same extent as are the services of

9 public utilities and to that extent and for that purpose such supply-
 10 ing municipality shall be deemed to be a public utility. *The Board*
 11 *of Public Utilities in* *~~fixing the rates for supplying this water~~
 12 *shall establish a rate structure, except as otherwise required by this*
 13 *section, which allows the municipalities** *regulating the rates for*
 13A *supplying this water shall, except as otherwise required by this*
 13B *section, provide for a rate structure which allows the supplying*
 13C *municipality, within the limits of any covenants made with bond-*
 13D *holders pursuant to law,* to:*

14 a. *Recoup all costs of operation*,* including but not limited to*
 15 *the* costs of* *~~—~~* *raw materials, administration, equipment,*
 16 *buildings, property, maintenance, taxes, debt service, fees and*
 17 *offsetting any budget deficit occurring in the immediately preceding*
 17A *fiscal year;*

18 b. *Establish a contingency fund of 10% of the annual costs of*
 19 *operation of the utility; and*

20 c. *Allows** *Establish** a surplus of *[10%]** *5%** of the
 21 *annual costs of operation of the utility.]*** *Allow for an*
 21A *annual increase in surplus in an amount equal to 15% of the annual*
 21B *costs of operation of the utility.**]* *Establish a surplus not*
 21C *exceeding 15% of the annual costs of operation of the utility.***

22 Whenever any municipality solely owning or controlling water-
 23 works or its own water supply is supplying water to 1,000 or less
 24 billed customers who do not buy water at a bulk rate within any
 25 other municipality, the supplying municipality shall with respect
 26 to such service be exempt from the jurisdiction, regulation and
 27 control of the Board of Public Utilities provided that the revenue
 28 derived from the sale of water outside of its boundaries does not
 29 exceed 25% of its total water revenue.

30 Whenever any supplying municipality is exempt from the juris-
 31 diction, regulation and control of the Board of Public Utilities, the
 32 rates charged to the billed customers within any other municipality
 33 shall be the same as those charged to customers within the supply-
 34 ing municipality. Any increase in the water rates shall be autho-
 35 rized by ordinance. Notice of the second reading of such ordinance
 36 shall be sent by regular mail to billed customers outside of the
 37 supplying municipality at least 1 week prior to the public hearing
 38 for the said ordinance. Such customers shall have an opportunity
 39 to be heard at the public hearing.

40 No rates or charges shall include the imposition of any fees in
 41 excess of the cost of water actually used for any sprinkler system
 42 required to be installed in any residential health care facility pur-
 43 suant to the "Health Care Facilities Planning Act," P. L. 1971,

44 c. 136 (C. 26:2H-1 et seq.) and regulations promulgated thereunder
45 or in any rooming or boarding house pursuant to the "Rooming
46 and Boarding House Act of 1979," P. L. 1979, c. 496 (C. 55:13B-1
47 et al.) and regulations promulgated thereunder. Nothing in this
48 amendatory act shall preclude any municipality from charging for
49 the actual cost of water main connection.

1 5. (New section) ****[Any]**** *****[**An amount not to exceed**
2 **33 1/3% of]** *****To the extent there is***** surplus
3 revenue collected by a municipality pursuant to chapter 62 of Title
4 40 of the Revised Statutes for supplying a utility service *****an**
5 **amount not to exceed 5% of the annual costs of operation of the**
6 **utility***** may be transferred *****annually***** from the accounts of
7 the municipal utility and included in the local budget pursuant to
8 N. J. S. 40A:4-35.

1 6. This act shall take effect immediately.

REF. DIV.
Law Room

1-31-83

[THIRD OFFICIAL COPY REPRINT]

SENATE, No. 1317

STATE OF NEW JERSEY

INTRODUCED MAY 10, 1982

By Senator DORSEY

Referred to Committee on County and Municipal Government

AN ACT concerning municipal utility rates, amending sections 40:62-13, 40:62-24 and 40:62-77 of the Revised Statutes and P. L. 1975, c. 184 and supplementing chapter 4 of Title 40A of the New Jersey Statutes.

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

1 1. R. S. 40:62-13 is amended to read as follows:

2 40:62-13. The governing body may elect all officers, agents,
3 engineers, employees or committeemen necessary to be employed
4 in the maintenance and operation of any such light, heat or power
5 plant, or works, define their duties, regulate their compensation
6 and provide for their removal.

7 It may make, ordain and establish all such ordinances, resolutions,
8 rules and regulations as it may deem necessary and proper for the
9 introduction, transmission, distribution, use and supply of light,
10 heat or power, and for the protection of the buildings, machinery,
11 apparatus, wires, poles, pipes, subways and conduits, and other
12 works and ***[apurtenances]*** **appurtenances** used in connection
13 therewith; and for the fixing and collection of all rates, rents or
14 charges for supplying light, heat or power for private or commer-
15 cial use in such municipality, and for the imposition of penalties
16 upon the nonpayment thereof.

17 *In fixing the rates, rents or charges for supplying light, heat or*
18 *power, the governing body shall establish a rate structure which*

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted June 14, 1982.

**—Senate committee amendments adopted July 22, 1982.

***—Assembly amendments adopted November 15, 1982.

19 allows the ***[municipalities]*** **municipality, within the limits of*
 19A *any covenants made with bondholders pursuant to law,** to:

20 a. *Recoup all costs of operation*,* including but not limited to*
 21 **the* costs of*[—]*raw materials, administration, equipment,*
 22 *buildings, property, maintenance, taxes, debt service, fees and off-*
 23 *setting any budget deficit occurring in the immediately preceding*
 23A *fiscal year;*

24 b. ****[Establish a contingency fund not exceeding 10% of the**
 25 *annual costs of operation of the utility; and*

26 c. *Establish a surplus not exceeding* ***[10%]*** **5%* of the annual*
 27 *costs of operation of the utility.]** *****[**Allow for an annual in-**
 28 *crease in surplus in an amount not exceeding 15% of the annual*
 29 *costs of operation of the utility.*]* ***** **Establish a surplus not**
 30 *exceeding 15% of the annual costs of operation of the utility.****

1 2. R. S. 40:62-24 is amended to read as follows:

2 40:62-24. Every municipality in supplying electricity, gas, steam
 3 or other product beyond its corporate limits is hereby declared to
 4 be a public utility. The **[board of public utility commissioners]**
 5 *Board of Public Utilities* shall have the same supervision and
 6 regulation of, and jurisdiction and control over such municipality
 7 in respect to its acts in supplying electricity, gas, steam or other
 8 product beyond its corporate limits, and of and over the property,
 9 property rights, equipment, facilities and franchises used in sup-
 10 plying electricity, gas, steam or other product beyond its corporate
 11 limits as over other public utilities. Every such municipality shall
 12 be subject as to its service, accounts, property rights, equipment,
 13 franchises, extensions, reports, **[rates,]** issuance of bonds or other
 14 indebtedness maturing in more than 1 year from the date thereof,
 15 to the jurisdiction of the **[board of public utility commissioners]**
 16 *Board of Public Utilities* to the same extent as other public utilities.

17 *Every municipality supplying electricity, gas, steam or other*
 18 *product beyond its corporate limits shall have the rates for these*
 19 *utilities subject to the jurisdiction of the Board of Public Utilities.*
 20 *The board in* ***[fixing these rates shall establish a rate structure**
 21 *which allows the municipalities]** **regulating these rates shall*
 21A *provide for a rate structure which allows the municipality, within*
 21B *the limits of any covenants made with bondholders pursuant to*
 21C *law,** to:

22 a. *Recoup all costs of operation*,* including but not limited to*
 23 **the* costs of*[—]*raw materials, administration, equipment,*
 24 *buildings, property, maintenance, taxes, debt service, fees and*
 25 *offsetting any budget deficit occurring in the immediately preceding*
 25A *fiscal year;*

26 b. ****[Establish a contingency fund of 10% of the annual costs of**
 27 *operation of the utility; and*

28 c. *Establish a surplus of ***[10%]* *5%*** of the annual costs of*
 29 *operation of the utility.]** ***[**Allow for an annual increase in*
 30 *surplus in an amount equal to 15% of the annual costs of operation*
 31 *of the utility.**]*** ***Establish a surplus not exceeding 15% of*
 32 *the annual costs of operation of the utility.****

1 3. R. S. 40:62-77 is amended to read as follows:

2 40:62-77. The governing body of every municipality providing
 3 and supplying water for the public and private use of such
 4 municipality and its inhabitants, may make, enforce, amend and
 5 repeal all such ordinances, resolutions and regulations as it may
 6 deem necessary and proper for the distribution, supply, use and
 7 protection of the water and the protection of the buildings, ma-
 8 chinery, canals, aqueducts, reservoirs and other works and appurte-
 9 nances thereto; for the installation and protection of meters, for
 10 fixing and collecting the water rents or prices for water, and for
 11 imposing penalties in addition to cutting off the water for non-
 12 payment thereof.

13 *In fixing the rents or prices for supplying water, the governing*
 14 *body shall establish a rate structure which allows the municipality*,*
 15 *within the limits of any covenants made with bondholders pursuant*
 15A *to law,* to:*

16 a. *Recoup all costs of operation*,* including but not limited to*
 17 **the* costs of***[—]***raw materials, administration, equipment,*
 18 *buildings, property, maintenance, taxes, debt service, fees and off-*
 19 *setting any budget deficit occurring in the immediately preceding*
 19A *fiscal year;*

20 b. ****[Establish a contingency fund not exceeding 10% of the**
 21 *annual costs of operation of the utility; and*

22 c. *Establish a surplus not exceeding ***[10%]* *5%*** of the annual*
 23 *costs of operation of the utility.]** ***[**Allow for an annual in-*
 24 *crease in surplus in an amount not exceeding 15% of the annual*
 25 *costs of operation of the utility.**]*** ***Establish a surplus not*
 26 *exceeding 15% of the annual costs of operation of the utility.****

1 4. Section 1 of P. L. 1975, c. 184 (C. 40:62-85.2) is amended to
 2 read as follows:

3 1. Whenever any municipality solely owning or controlling water-
 4 works or its own water supply is supplying water to more than
 5 1,000 billed customers within any other municipality, the supplying
 6 municipality shall with respect to such service be subject to the
 7 jurisdiction, regulation and control of the Board of Public Utilities
 8 in the same manner and to the same extent as are the services of

9 public utilities and to that extent and for that purpose such supply-
 10 ing municipality shall be deemed to be a public utility. *The Board*
 11 *of Public Utilities in* *~~fixing the rates for supplying this water~~
 12 *shall establish a rate structure, except as otherwise required by this*
 13 *section, which allows the municipalities** *regulating the rates for*
 13A *supplying this water shall, except as otherwise required by this*
 13B *section, provide for a rate structure which allows the supplying*
 13C *municipality, within the limits of any covenants made with bond-*
 13D *holders pursuant to law,* to:*

14 a. *Recoup all costs of operation*,* including but not limited to*
 15 *the* costs of* *~~---~~* *raw materials, administration, equipment,*
 16 *buildings, property, maintenance, taxes, debt service, fees and*
 17 *offsetting any budget deficit occurring in the immediately preceding*
 17A *fiscal year;*

18 b. *Establish a contingency fund of 10% of the annual costs of*
 19 *operation of the utility; and*

20 c. *Allows** *Establish** a surplus of *10%** *5%** of the
 21 *annual costs of operation of the utility.*** *Allow for an*
 21A *annual increase in surplus in an amount equal to 15% of the annual*
 21B *costs of operation of the utility.*** *Establish a surplus not*
 21C *exceeding 15% of the annual costs of operation of the utility.***

22 Whenever any municipality solely owning or controlling water-
 23 works or its own water supply is supplying water to 1,000 or less
 24 billed customers who do not buy water at a bulk rate within any
 25 other municipality, the supplying municipality shall with respect
 26 to such service be exempt from the jurisdiction, regulation and
 27 control of the Board of Public Utilities provided that the revenue
 28 derived from the sale of water outside of its boundaries does not
 29 exceed 25% of its total water revenue.

30 Whenever any supplying municipality is exempt from the juris-
 31 diction, regulation and control of the Board of Public Utilities, the
 32 rates charged to the billed customers within any other municipality
 33 shall be the same as those charged to customers within the supply-
 34 ing municipality. Any increase in the water rates shall be autho-
 35 rized by ordinance. Notice of the second reading of such ordinance
 36 shall be sent by regular mail to billed customers outside of the
 37 supplying municipality at least 1 week prior to the public hearing
 38 for the said ordinance. Such customers shall have an opportunity
 39 to be heard at the public hearing.

40 No rates or charges shall include the imposition of any fees in
 41 excess of the cost of water actually used for any sprinkler system
 42 required to be installed in any residential health care facility pur-
 43 suant to the "Health Care Facilities Planning Act," P. L. 1971,

44 c. 136 (C. 26:2H-1 et seq.) and regulations promulgated thereunder
45 or in any rooming or boarding house pursuant to the "Rooming
46 and Boarding House Act of 1979," P. L. 1979, c. 496 (C. 55:13B-1
47 et al.) and regulations promulgated thereunder. Nothing in this
48 amendatory act shall preclude any municipality from charging for
49 the actual cost of water main connection.

1 5. (New section) ****[Any]**** *****[**An amount not to exceed**
2 **33 1/3% of]** *****To the extent there is***** available** surplus
3 revenue collected by a municipality pursuant to chapter 62 of Title
4 40 of the Revised Statutes for supplying a utility service *****an**
5 **amount not to exceed 5% of the annual costs of operation of the**
6 **utility***** may be transferred *****annually***** from the accounts of
7 the municipal utility and included in the local budget pursuant to
8 N. J. S. 40A:4-35.

1 6. This act shall take effect immediately.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

January 31, 1983

SENATE BILL NO. 1317 (3rd OCR)

To the Senate:

Pursuant to Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Senate Bill No. 1317 (3rd OCR) with my recommendations for reconsideration.

This bill which set limits on the surplus that can be generated through the rate structures of certain local public utilities, and would limit the amount of generated surplus that can be used for general municipal purposes. These limits would apply to both those municipally-owned utilities which supply electricity, gas, steam or other products or water supplies within their corporate limits and those that provide these services beyond their corporate limits if their rates are subject, pursuant to law, to the jurisdiction of the Board of Public Utilities.

The bill limits the amount of the surplus which can be generated by any municipal utility to 15% of the annual costs of operation of the utility. It is ill-advised to impose such a rigid limit because the extent and effect of the possible contingencies which might arise concerning these utilities vary greatly. For some municipally-owned utilities which have specialized needs, the 15% limit is unduly restrictive and will not allow the utilities to adequately prepare for foreseeable or unforeseeable events which effect their operation. It is more sensible to impose a standard which ensures that such a surplus is sufficient to allow the reasonable anticipation of any contingencies which may occur. Pursuant to this criterion, the burden would be upon the municipal utility to justify the amount of the surplus which it intends to generate as being reasonable and necessary given its own particular situation and characteristics.

The bill also allows any municipal utility to transfer an amount not exceeding 5% of its annual costs of operation to the local budget of the municipality. It is reasonable to provide for such a limited transfer of funds for those municipally-owned utilities that provide services outside their corporate limits and which fall under the jurisdiction of the Board of Public Utilities. However, for municipally-owned utilities that provide services only

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EXECUTIVE DEPARTMENT

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to residents within the borders of the municipality, the need for such a limit is not compelling. The municipality itself should be allowed to determine when and how much of the surplus of the utility may be transferred over to its general budget. If the local residents who are consumers of the services provided by the local utility do not like the way in which the utility is managed or the rates which are set for it, they have the power to vote out of office their municipal officials.

Therefore, I herewith return Senate Bill No. 1317 (3rd OCR) and recommend that it be amended as follows:

Page 2, Section 1, Lines 29-30: After "surplus" delete "not exceeding 15% of the annual costs of operation of the utility." and insert "sufficient to provide for the reasonable anticipation of contingencies which may affect the operation of the utility."

Page 3, Section 2, Line 31-32: After "surplus" delete "not exceeding 15% of the annual costs of operation of the utility." and insert "sufficient to provide for the reasonable anticipation of contingencies which may affect the operation of the utility and for an amount which may be transferred from the accounts of the municipal utility and included in the local budget pursuant to section 5 of this amendatory and supplementary act."

Page 3, Section 3, Lines 25-26: After "surplus" delete "not exceeding 15% of the annual costs of operation of the utility." and insert "sufficient to provide for the reasonable anticipation of contingencies which may affect the operation of the utility."

Page 4, Section 4, Lines 21B-21C: After "surplus" delete "not exceeding 15% of the annual costs of operation of the utility." and insert "sufficient to provide for the reasonable anticipation of contingencies which may affect the operation of the utility and for an amount which may be transferred from the accounts of the municipal utility and included in the local budget pursuant to section 5 of this amendatory and supplementary act."

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Page 5, Section 5, Line 4: After "service" insert "which is regulated by the Board of Public Utilities pursuant to N.J.S. 40:62-24 or N.J.S. 40:62-85.2,".

Respectfully,

/s/ Thomas H. Kean
GOVERNOR

[seal]

attest:

/s/ W. Cary Edwards
Chief Counsel to the Governor