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"Christie signs bill easing water system sales," The Record, 2-6-15

"Christie oks quick sales of public water systems," The Star-Ledger, 2-6-15

LAW/RWH

Title 58.  
Chapter 30.(New)  
Water  
Infrastructure  
Protection Act  
§§1-9 -  
C.58:30-1 to  
58:30-9

P.L.2015, CHAPTER 18, *approved February 5, 2015*  
Assembly, No. 3628 (*First Reprint*)

1 AN ACT concerning certain public water and wastewater assets,  
2 supplementing Title 58 of the Revised Statutes, and amending  
3 R.S.40:62-3.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. (New section) Sections 1 through 9 of this act shall be  
9 known and may be cited as the “Water Infrastructure Protection  
10 Act.”  
11

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

13 a. The maintenance <sup>1</sup>and operation<sup>1</sup> of water and wastewater  
14 treatment and conveyance systems is vital to ensuring the protection  
15 of <sup>1</sup>water quality and<sup>1</sup> clean drinking water in New Jersey;

16 b. There are public water and wastewater systems in the State  
17 that present serious risks to the integrity of drinking water and the  
18 environment because of issues such as aging <sup>1</sup>combined sanitary  
19 and storm sewer overflow<sup>1</sup> infrastructure<sup>1</sup> systems, <sup>1</sup>the threat of  
20 sodium intrusion,<sup>1</sup> the deterioration of the physical assets of the  
21 systems, or damage to infrastructure so severe that it is beyond  
22 governmental capacity to restore;

23 c. <sup>1</sup>the<sup>1</sup> Under the appropriate circumstances, the<sup>1</sup> transfer of  
24 these threatened water and wastewater assets to a <sup>1</sup>capable<sup>1</sup> private  
25 <sup>1</sup>or public<sup>1</sup> entity with the financial resources and expertise to  
26 improve management, operation, and continued maintenance of the  
27 assets <sup>1</sup>would protect<sup>1</sup> could help ensure the protection of<sup>1</sup>  
28 drinking water; and

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly ASL committee amendments adopted December 11, 2014.

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

2 “Board” means the Board of Public Utilities.

3 <sup>1</sup>“Capable private or public entity” means any private or public  
4 water system owner who, at the time of submitting a proposal to  
5 long-term lease or purchase public water or wastewater assets,  
6 currently (1) owns a system serving no less than the number of  
7 residential and commercial accounts as the system which the entity  
8 is proposing to lease or purchase, and (2) is not a significant  
9 noncomplier, as defined pursuant to section 3 of P.L.1977, c.7  
10 (C.58:10A-3), is not currently the subject of a formal enforcement  
11 action initiated by the New Jersey Department of Environmental  
12 Protection to address a material violation by the entity which has  
13 not been corrected over a reasonable period of time given the  
14 specific situation, or is not substantially out of compliance with an  
15 administrative consent order, settlement agreement, stipulation of  
16 settlement or judicial consent order entered into with the  
17 department.

18 “Department” means the Department of Environmental  
19 Protection.”<sup>1</sup>

20 “Director” means the Director of the Division of Local  
21 Government Services in the Department of Community Affairs.

22 “Governing body” means a “governing body” as defined in  
23 section 3 of the "New Jersey Wastewater Treatment Public-Private  
24 Contracting Act," P.L.1995, c.216 (C.58:27-19 through C.58:27-  
25 27).

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

28 <sup>1</sup>“Long-term lease” means a lease of longer than 30 years under  
29 which the municipal owner seeks to transfer ownership of the  
30 system at the end of the lease term.<sup>1</sup>

31 <sup>1</sup>“Municipal or county utilities authority” means a “municipal  
32 authority” as defined in section 3 of the "municipal and county  
33 utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.).<sup>1</sup>

34 “Owner” means any municipality <sup>1</sup>[or municipal, county, or  
35 regional utilities authority], except a municipality that is a city of  
36 the first class with a population of 270,000 or more according to the  
37 latest federal decennial census,<sup>1</sup> that owns water or wastewater  
38 assets. <sup>1</sup>Municipalities constituting a joint meeting, and the joint  
39 meeting itself shall not be considered an owner for the purposes of  
40 this definition.<sup>1</sup>

41 <sup>1</sup>“Regional utilities authorities” means any “regional authority”  
42 as defined in subsection a. of section 9 of P.L.2011, c.167  
43 (C.40:56A-4.1).<sup>1</sup>

44 “Registered apprenticeship program” means an apprenticeship  
45 program registered with and approved by the United States  
46 Department of Labor and which provides to each trainee combined  
47 classroom and on-the-job training under the direct and close

1 supervision of a highly skilled worker in an occupation recognized  
2 as an apprenticeable trade, and which meets the program  
3 performance standards of enrollment and graduation under 29  
4 C.F.R. s.29.6.

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

9 “Water or wastewater assets” means any system along with any  
10 other related buildings, equipment, or other infrastructure.

11

12 4. (New section) If an owner determines that emergent  
13 conditions exist, the owner may <sup>1</sup>long-term<sup>1</sup> lease or sell its water  
14 or wastewater assets to a <sup>1</sup>capable<sup>1</sup> private <sup>1</sup>or public<sup>1</sup> entity  
15 pursuant to the provisions of sections 5 through 9 of P.L. ,  
16 c. (C. ) (pending before the Legislature as this bill). An  
17 owner may so <sup>1</sup>long-term<sup>1</sup> lease or sell its water or wastewater  
18 assets without any referendum except as may be required pursuant  
19 to subsection <sup>1</sup>[f.] <sup>1</sup>g.<sup>1</sup> of section 5 of P.L. , c. (C. )  
20 (pending before the Legislature as this bill).

21

22 5. (New section) a. <sup>1</sup>[If the owner is a municipality, the] <sup>1</sup>The<sup>1</sup>  
23 determination that emergent conditions exist shall be made by  
24 certification of the mayor, <sup>1</sup>[or other chief executive officer] <sup>1</sup>the  
25 mayor’s designee<sup>1</sup> of the municipality, and a licensed engineer.  
26 <sup>1</sup>[If the owner is a municipal, county, or regional utilities authority,  
27 the determination that emergent conditions exist shall be made by  
28 certification of the chair and chief operating officer of the authority,  
29 and a licensed engineer.]<sup>1</sup>

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

32 (1) <sup>1</sup>[The system has a combined sanitary and storm sewer  
33 overflow system;

34 (2)]<sup>1</sup> The system is located in an area designated by the  
35 Department of Environmental Protection as <sup>1</sup>[within] <sup>1</sup>an Area of  
36 Critical<sup>1</sup> Water Supply <sup>1</sup>[Critical Area] Concern<sup>1</sup> I or II <sup>1</sup>, or any  
37 future designation or newly added area of critical water supply  
38 concern<sup>1</sup>;

39 <sup>1</sup>[(3) The ground water has the potential for sodium intrusion  
40 that may impact the water supply system according to the New  
41 Jersey Statewide Water Supply Plan adopted pursuant to section 13  
42 of P.L.1981, c.262 (C.58:1A-13) or the potential for any other  
43 intrusion that may negatively impact the system;

44 (4)] (2)<sup>1</sup> The <sup>1</sup>owner of the<sup>1</sup> system <sup>1</sup>[has received an  
45 environmental violation, has an existing unfulfilled] is a significant  
46 noncomplier, as defined pursuant to section 3 of P.L.1977, c.7

1 (C.58:10A-3), has been the subject of a formal enforcement action  
2 initiated by the department, or is substantially out of compliance  
3 with an<sup>1</sup> administrative consent order <sup>1</sup>, settlement agreement,  
4 stipulation of settlement, or judicial consent order entered into<sup>1</sup>  
5 with the <sup>1</sup>【Department of Environmental Protection, or has  
6 previously entered into an administrative consent order with the  
7 Department of Environmental Protection with respect to the  
8 operation of the system】 department<sup>1</sup>; <sup>1</sup>or<sup>1</sup>

9 <sup>1</sup>【(5)】 (3)<sup>1</sup> There is a present deficiency <sup>1</sup>or violation of  
10 maximum contaminant levels established pursuant to the “Safe  
11 Drinking Water Act,” P.L.1977, c.224 (C.58:12A-1 et seq.),<sup>1</sup>  
12 concerning the availability or potability of water, or concerning the  
13 provision of water at adequate volume or pressure, <sup>1</sup>【and the owner  
14 lacks the financial or structural capability to immediately and  
15 adequately repair or otherwise alleviate the deficiency】 or  
16 distribution or treatment of wastewater<sup>1</sup>; <sup>1</sup>【or

17 (6)】 (4)<sup>1</sup> There is <sup>1</sup>a demonstrated lack of historical investment,  
18 repair, or sustainable maintenance as determined by the department,  
19 or<sup>1</sup> material damage to the infrastructure of the system <sup>1</sup>【and the  
20 owner lacks the financial or structural capability to immediately and  
21 adequately repair or otherwise alleviate the damage】 ; or

22 (5) The system owner lacks the financial, technical, or  
23 managerial capacity to adequately address any of the foregoing on a  
24 sustainable basis or own and operate the system in a way that  
25 supports economic activity in the municipality on a sustainable  
26 basis<sup>1</sup>.

27 c. <sup>1</sup>Should the owner determine that one or more emergent  
28 conditions contained in subsection b. of this section exists and that  
29 it is necessary to take steps to effectuate the sale or long-term lease  
30 of its water or wastewater assets to a capable private or public  
31 entity pursuant to this act to address these emergent conditions and  
32 to operate and maintain the system, the owner shall through the  
33 utilization of applicable public procurement laws of the State of  
34 New Jersey retain the services of an independent financial advisor  
35 to review, analyze and report on the value of the system and the  
36 short and long term impacts to rate-payers of the cash-flow  
37 structure of the proposed transaction and to provide an estimate as  
38 to the financial requirements necessary to address the emergent  
39 conditions and to operate and maintain the system. Upon  
40 completion of the analysis and review, the independent financial  
41 advisor shall transmit its report to the owner. Within 10 days of the  
42 approval of the report by the owner, the owner shall transmit copies  
43 to the board, the director, and the department and shall make the  
44 report available for public review.

45 d.<sup>1</sup> After <sup>1</sup>【an emergent conditions certification is made】 the  
46 independent financial advisor has completed its analysis of the  
47 financial aspects of the proposed transaction and has presented its

1 report to the owner<sup>1</sup>, a public hearing on the proposed emergent  
2 condition<sup>1</sup> certification shall be held. The owner shall provide  
3 notice of the public hearing no less than ~~10~~ 30<sup>1</sup> days prior to the  
4 date of the hearing. The notice shall prominently state the findings  
5 upon which the certification of emergent conditions is based, a  
6 summary of the findings by the independent financial advisor and<sup>1</sup>  
7 that the certification is in anticipation of a proposed long-term<sup>1</sup>  
8 lease or sale of water or wastewater assets to a capable<sup>1</sup> private or  
9 public<sup>1</sup> entity. ~~1~~ **1** Notice<sup>1</sup> of the public hearing shall be  
10 published on the official Internet website of the municipality and at  
11 least once in one or more newspapers circulating in the  
12 municipality. ~~1~~ **1** Notice<sup>1</sup> of the public hearing shall be published on the official  
13 Internet website of the county and at least once in one or more  
14 newspapers circulating in the county. ~~1~~ **1** Notice<sup>1</sup> of the public hearing shall be published on the official  
15 Internet website of the county and at least once in one or more  
16 newspapers circulating in the county. ~~1~~ **1** Notice<sup>1</sup> of the public hearing shall be published on the official  
17 Internet website of the authority and at least once in one  
18 or more newspapers circulating in the region. ~~1~~ **1** If an applicable  
19 official website does not exist, notice of the public hearing shall be  
20 published on the official Internet website of the Department of  
21 Community Affairs.

22 ~~1~~ **1** d.<sup>1</sup> After the public hearing and after giving due  
23 consideration to the findings of the independent financial advisor<sup>1</sup>,  
24 the governing body of the owner shall, by resolution adopted by at  
25 least two-thirds of its authorized membership<sup>1</sup>, ~~1~~ **1** cause the  
26 emergent conditions certification to be submitted to the Department  
27 of Environmental Protection for approval. The Department of  
28 Environmental Protection shall approve or reject a certification  
29 within 30 days of receipt thereof. If no disposition is made within  
30 30 days, the certification shall be deemed approved ~~1~~ **1** certify that one  
31 or more emergent conditions exist and that owner intends to sell or  
32 long-term lease its water or wastewater assets to a capable private  
33 or public entity to address these emergent conditions and to operate  
34 and maintain the system Within five days of the adoption of the  
35 resolution, the governing body of the owner shall transmit a true  
36 copy of the resolution, to the department, the board, and the  
37 director. Within 30 days of receipt of the resolution by the  
38 department, the department shall approve or reject the owner's  
39 emergent conditions certification as contained in the resolution<sup>1</sup>.

40 ~~1~~ **1** e.<sup>1</sup> Upon receipt of the approval of the emergent  
41 conditions certification by the Department of Environmental  
42 Protection, the owner shall publish notice of the approval if the  
43 owner chooses to proceed with the sale or long-term lease of its  
44 water or wastewater assets to a capable private or public entity<sup>1</sup>.  
45 The notice shall prominently state that the certification is in  
46

1 anticipation of a <sup>1</sup>long-term<sup>1</sup> lease or sale of water or wastewater  
 2 assets to a <sup>1</sup>capable<sup>1</sup> private <sup>1</sup>or public<sup>1</sup> entity. <sup>1</sup>**¶**If the owner is a  
 3 municipality or municipal utilities authority, notice <sup>1</sup>**¶** Notice<sup>1</sup> of the  
 4 approval shall be published on the official Internet website of the  
 5 municipality and at least once in one or more newspapers  
 6 circulating in the municipality, and shall prominently state that a  
 7 petition may be filed within <sup>1</sup>**¶**~~20~~ <sup>1</sup>45<sup>1</sup> days after the publication of  
 8 such notice to require a referendum before a resolution authorizing  
 9 the <sup>1</sup>long-term<sup>1</sup> lease or sale of water or wastewater assets may take  
 10 effect. <sup>1</sup>**¶**If the owner is a county utilities authority, notice of the  
 11 approval shall be published on the official Internet website of the  
 12 county and at least once in one or more newspapers circulating in  
 13 the county. If the owner is a regional utilities authority, notice of  
 14 the approval shall be published on the official Internet website of  
 15 the authority and at least once in one or more newspapers  
 16 circulating in the region.<sup>1</sup> If an applicable official website does  
 17 not exist, notice of the approval shall be published on the official  
 18 Internet website of the Department of Community Affairs.

19 <sup>1</sup>**¶**f. If the owner is a municipality or municipal utilities  
 20 authority, a <sup>1</sup>**¶** g. A<sup>1</sup> petition may be filed with the municipal clerk,  
 21 no later than <sup>1</sup>**¶**~~20~~ <sup>1</sup>45<sup>1</sup> days after the notice of the approval of the  
 22 emergent conditions certification is published, protesting the lease  
 23 or sale of water or wastewater assets without a public referendum.  
 24 If the petition is signed by a number of legal voters of the  
 25 municipality equal to at least 15% of the total votes cast in the  
 26 municipality at the last election at which members of the General  
 27 Assembly were elected, a resolution to lease or sell water or  
 28 wastewater assets shall not take effect unless the lease or sale of  
 29 such assets is approved pursuant to R.S.40:62-4 and R.S.40:62-5. If  
 30 a petition is not filed pursuant to this subsection, a resolution to  
 31 lease or sell water or wastewater assets shall not be subject to a  
 32 public referendum.

33  
 34 6. (New section) a. A request for qualifications <sup>1</sup>from a  
 35 capable private or public entity wishing to be considered fro the  
 36 long-term lease or sale of the owner's system<sup>1</sup> shall be advertised  
 37 <sup>1</sup>**¶**pending approval of <sup>1</sup>**¶** after<sup>1</sup> the emergent conditions certification  
 38 pursuant to subsection <sup>1</sup>**¶**~~d.~~ <sup>1</sup>e.<sup>1</sup> of section 5 of P.L. , c. (C. )  
 39 (pending before the Legislature as this bill), but no less than 30  
 40 days prior to the date on which responses to the request are due.  
 41 <sup>1</sup>**¶**If the owner is a municipality or municipal utilities authority,  
 42 the <sup>1</sup>**¶** The<sup>1</sup> advertisement of the request for qualifications shall be  
 43 published on the official Internet website of the municipality and at  
 44 least once in one or more newspapers circulating in the  
 45 municipality. <sup>1</sup>**¶**If the owner is a county utilities authority, the  
 46 advertisement of the request for qualifications shall be published on



1 the official Internet website of the county and at least once in one or  
2 more newspapers circulating in the county. If the owner is a  
3 regional utilities authority, the advertisement of the request for  
4 qualifications shall be published on the official Internet website of  
5 the authority and at least once in one or more newspapers  
6 circulating in the region.】<sup>1</sup> An owner shall also publish the  
7 advertisement of the request for qualifications at least once in one  
8 or more newspapers with Statewide circulation. If an applicable  
9 official website does not exist, the advertisement of the request for  
10 qualifications shall be published on the official Internet website of  
11 the Department of Community Affairs.

12 b. After an emergent conditions certification is <sup>1</sup>【approved】  
13 made<sup>1</sup> pursuant to subsection <sup>1</sup>【d.】 e.<sup>1</sup> of section 5 of P.L. ,  
14 c. (C. ) (pending before the Legislature as this bill), the  
15 owner shall determine the qualified respondents. The owner shall  
16 issue a request for proposals to each qualified respondent no less  
17 than 14 days prior to the date established for submission of the  
18 proposals. The request for proposals shall include relevant  
19 technical submissions, documents, and criteria including but not  
20 limited to a description of the facilities and the debt related thereto  
21 and the evaluation criteria to be used in the selection of the  
22 designated respondent. <sup>1</sup>The proposals shall include and shall be  
23 evaluated by, at a minimum, the following:

24 (1) the documented deficiencies of the owner’s system upon  
25 which the emergent conditions certification is based and a  
26 description of the corrective measures to be undertaken by the  
27 respondent to address and correct the identified emergent  
28 conditions;

29 (2) a description of the financial, managerial, and technical  
30 capabilities of the respondent to operate and maintain the system in  
31 compliance with all applicable State and federal laws and  
32 regulations, as well as a description of all the respondent’s  
33 outstanding and pending violations of the “Pollution Prevention  
34 Act,” P.L.1991, c.235 (C.13:1D-35 et seq.); P.L.1942, c.308  
35 (C.58:11-9.1 et seq.); “The Realty Improvement Sewerage and  
36 Facilities Act (1954),” P.L.1954, c.199 (C.58:11-23 et seq.); and the  
37 “Safe Drinking Water Act,” P.L.1977, c.224 (C.58:12A-1 et seq.);

38 (3) an analysis of the relevant expenditures associated with such  
39 activities and the projected impact on customer rates;

40 (4) an analysis of any Internal Revenue Code or other tax code  
41 issues that may arise from the long-term lease or sale of a publicly  
42 funded water or wastewater asset, as well as any potential short-  
43 term or long-term costs arising there from;

44 (5) a long-term capital improvement or asset management plan;  
45 and

46 (6) any other pertinent information required of or deemed  
47 appropriate by the owner.<sup>1</sup>

1 c. Upon a review of the proposals submitted by qualified  
2 respondents, the governing body of an owner shall, by resolution  
3 'adopted by at least two-thirds of its authorized membership',  
4 designate one qualified respondent, whose proposal the governing  
5 body finds to be the most advantageous to the public, taking into  
6 consideration the evaluation criteria set forth in the request for  
7 proposals 'and as specified under subsection b. of this section'.  
8 The resolution shall include 'a detailed summary of' the governing  
9 body's findings that the proposal of the designated respondent is  
10 most advantageous to the public. 'The summary shall be published  
11 in accordance with the notification requirements of section 5 of  
12 P.L. , c. (C. ) (pending before the Legislature as this bill).'  
13

14 7. (New section) a. After the designated respondent is  
15 selected, negotiations for a contract for the lease or sale of the water  
16 or wastewater assets may commence between the owner and the  
17 designated respondent.

18 b. '(1) Every proposed contract shall include a clause stating  
19 that to the extent it does not violate any existing collective  
20 bargaining agreements between the capable private or public entity  
21 and its employees, the capable private or public entity shall give  
22 first consideration in hiring to any public employees displaced by  
23 the long-term lease or sale of the water or waste water assets.

24 (2)<sup>1</sup> After an agreement on a proposed contract is reached  
25 between the owner and the designated respondent, the governing  
26 body of the owner shall, by resolution 'adopted by at least two-  
27 thirds of its authorized membership', cause the proposed contract to  
28 be submitted to the board for approval and cause the proposed use  
29 of proceeds of the 'long-term' lease or sale to be submitted to the  
30 director for approval.

31 c. (1) The proposed contract submitted to the board shall  
32 include the rent or sale price, any appraisals supporting the rent or  
33 sale price, documentation regarding the defeasance of debt, and any  
34 other information requested by the board. The board shall approve  
35 or reject the proposed contract within '[30] 90' days of receipt  
36 thereof. If no disposition is made within '[30] 90' days, the  
37 proposed contract shall be deemed approved.

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

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

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

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

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

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

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

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

18 (6) The proposed use of proceeds submitted to the director shall  
19 include the rent or sale price, the total <sup>1</sup>amount required to defease<sup>1</sup>  
20 debt <sup>1</sup>[payment amount], any costs associated with compliance  
21 with the Internal Revenue Code or other tax code that may arise  
22 from the long-term lease or sale of a publicly funded water or  
23 wastewater asset<sup>1</sup>, the remaining proceeds after the <sup>1</sup>defeasance of<sup>1</sup>  
24 debt <sup>1</sup>[payment, the amount dedicated to] and Internal Revenue  
25 Service compliance costs, the amount dedicated to the following, in  
26 order of priority: compliance with the provisions of the “Pollution  
27 Prevention Act,” P.L.1991, c.235 (C.13:1D-35 et seq.); P.L.1942,  
28 c.308 (C.58:11-9.1 et seq.); “The Realty Improvement Sewerage  
29 and Facilities Act (1954),” P.L.1954, c.199 (C.58:11-23 et seq.);  
30 and the “Safe Drinking Water Act,” P.L.1977, c.224 (C.58:12A-1 et  
31 seq.), any outstanding fees or fines owed by the entity to any  
32 federal, State, county or local governmental units, capital  
33 improvements,<sup>1</sup> community <sup>1</sup>[and capital]<sup>1</sup> improvements, and  
34 <sup>1</sup>[the amount dedicated for]<sup>1</sup> general purposes of the owner. The  
35 amount dedicated to <sup>1</sup>[community and]<sup>1</sup> capital improvements  
36 <sup>1</sup>shall comply with a previously adopted long-term capital  
37 improvement plan or asset management plan, and<sup>1</sup> must represent at  
38 least 50 percent of the remaining proceeds once the debt is  
39 defeased. The director shall approve or reject the proposed use of  
40 proceeds within 30 days of receipt thereof. If no disposition is  
41 made within 30 days, the proposed use of proceeds shall be deemed  
42 approved.

43  
44 8. (New section) After the proposed contract and proposed use  
45 of proceeds have been approved pursuant to subsection c. of section  
46 7 of P.L. , c. (C. ) (pending before the Legislature as this  
47 bill), the governing body of the owner may, by resolution <sup>1</sup>adopted

1 by at least two-thirds of its authorized membership<sup>1</sup>, enter into a  
2 contract for the <sup>1</sup>long-term<sup>1</sup> lease or sale of the water or wastewater  
3 assets with the designated respondent.  
4

5 9. (New section) Any contractor or subcontractor hired by the  
6 designated respondent, in the performance of a contract entered into  
7 pursuant to section 8 of P.L. , c. (C. ) (pending before the  
8 Legislature as this bill), shall <sup>1</sup>:

9 a. (1) be paid, or pay any worker employed by the contractor or  
10 subcontractor, not less than the wage rate for their craft or trade as  
11 determined by the Commissioner of Labor and Workforce  
12 Development pursuant to the provisions of the “New Jersey  
13 Prevailing Wage Act,” P.L.1963, c.150 (C.34:11-56.25 et seq.) and  
14 shall comply with the requirements of section 2 of P.L.2007, c.343  
15 (C.34:13B-2.1);

16 b.<sup>1</sup> only employ a worker from an apprenticeable trade who is  
17 either an apprentice participating in a registered apprenticeship  
18 program or who has completed a registered apprenticeship program,  
19 unless the contractor or subcontractor certifies that each such  
20 worker shall be paid no less than the journeyman rate established  
21 for the apprenticeable trade performed pursuant to P.L.1963, c.150  
22 (C.34:11-56.25 et seq.) <sup>1</sup>and;

23 c. all contractors and subcontractors shall comply with the  
24 provisions of “The Public Works Contractor Registration Act,”  
25 P.L.1999, c.238 (C.34:11-56.48 et. seq.)<sup>1</sup>.

26  
27 10. R.S.40:62-3 is amended to read as follows:

28 40:62-3. Any municipality owning a sewer plant, water plant,  
29 heat, light or power plant, system of transportation, or other public  
30 utility plant or system, may <sup>1</sup>long-term<sup>1</sup> lease or sell such plant or  
31 system. Such a <sup>1</sup>long-term<sup>1</sup> lease or sale to another municipality, a  
32 sanitary sewerage authority, a sewerage authority or any other  
33 authority, commission or public body shall be authorized by  
34 ordinance and may be made upon such terms as said ordinance shall  
35 provide and the provisions of R.S.40:62-4 and R.S.40:62-5 shall not  
36 apply thereto. Such a <sup>1</sup>long-term<sup>1</sup> lease or sale to any person except  
37 another municipality, a sanitary sewerage authority, a sewerage  
38 authority or any other authority, commission or public body shall,  
39 except as otherwise provided by law, be made only upon  
40 compliance with the provisions of R.S.40:62-4 and R.S.40:62-5 and  
41 after the same is authorized by the legal voters of the municipality  
42 in accordance with said sections , or upon compliance with the  
43 provisions of section 2 of P.L.1981, c.16 (C.40:62-3.1) or the  
44 “Water Infrastructure Protection Act,” sections 1 through 9 of  
45 P.L. , c. (C. ) (pending before the Legislature as this bill).  
46 (cf: P.L.1981, c.16, s.1)

1 11. This act shall take effect immediately.

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“Water Infrastructure Protection Act.”

# ASSEMBLY, No. 3628

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED SEPTEMBER 15, 2014

**Sponsored by:**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Burlington and Camden)**

**Assemblyman SEAN T. KEAN**

**District 30 (Monmouth and Ocean)**

**SYNOPSIS**

“Water Infrastructure Protection Act.”

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/10/2014)**

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

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. (New section) Sections 1 through 9 of this act shall be known  
9 and may be cited as the “Water Infrastructure Protection Act.”

10  
11 2. (New section) The Legislature finds and declares that:

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

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

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

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

30  
31 3. (New section) As used in this act,

32 “Board” means the Board of Public Utilities.

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

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

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

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

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

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

**Matter underlined thus is new matter.**

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

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

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

16       “Water or wastewater assets” means any system along with any  
17 other related buildings, equipment, or other infrastructure.

18

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

27

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

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

37       (1) The system has a combined sanitary and storm sewer  
38 overflow system;

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

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

47       (4) The system has received an environmental violation, has an  
48 existing unfulfilled administrative consent order with the



1 Department of Environmental Protection, or has previously entered  
2 into an administrative consent order with the Department of  
3 Environmental Protection with respect to the operation of the  
4 system;

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

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

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

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

39 e. Upon receipt of the approval of the emergent conditions  
40 certification by the Department of Environmental Protection, the  
41 owner shall publish notice of the approval. The notice shall  
42 prominently state that the certification is in anticipation of a lease  
43 or sale of water or wastewater assets to a private entity. If the  
44 owner is a municipality or municipal utilities authority, notice of  
45 the approval shall be published on the official Internet website of  
46 the municipality and at least once in one or more newspapers  
47 circulating in the municipality, and shall prominently state that a  
48 petition may be filed within 20 days after the publication of such

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

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

25  
26 6. (New section) a. A request for qualifications shall be  
27 advertised pending approval of the emergent conditions certification  
28 pursuant to subsection d. of section 5 of P.L. , c. (C. )  
29 (pending before the Legislature as this bill), but no less than 30  
30 days prior to the date on which responses to the request are due. If  
31 the owner is a municipality or municipal utilities authority, the  
32 advertisement of the request for qualifications shall be published on  
33 the official Internet website of the municipality and at least once in  
34 one or more newspapers circulating in the municipality. If the  
35 owner is a county utilities authority, the advertisement of the  
36 request for qualifications shall be published on the official Internet  
37 website of the county and at least once in one or more newspapers  
38 circulating in the county. If the owner is a regional utilities  
39 authority, the advertisement of the request for qualifications shall  
40 be published on the official Internet website of the authority and at  
41 least once in one or more newspapers circulating in the region. An  
42 owner shall also publish the advertisement of the request for  
43 qualifications at least once in one or more newspapers with  
44 Statewide circulation. If an applicable official website does not  
45 exist, the advertisement of the request for qualifications shall be  
46 published on the official Internet website of the Department of  
47 Community Affairs.

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

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

20

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 40:62-3. Any municipality owning a sewer plant, water plant,  
3 heat, light or power plant, system of transportation, or other public  
4 utility plant or system, may lease or sell such plant or system. Such  
5 a lease or sale to another municipality, a sanitary sewerage  
6 authority, a sewerage authority or any other authority, commission  
7 or public body shall be authorized by ordinance and may be made  
8 upon such terms as said ordinance shall provide and the provisions  
9 of R.S.40:62-4 and R.S.40:62-5 shall not apply thereto. Such a  
10 lease or sale to any person except another municipality, a sanitary  
11 sewerage authority, a sewerage authority or any other authority,  
12 commission or public body shall, except as otherwise provided by  
13 law, be made only upon compliance with the provisions of  
14 R.S.40:62-4 and R.S.40:62-5 and after the same is authorized by the  
15 legal voters of the municipality in accordance with said sections , or  
16 upon compliance with the provisions of section 2 of P.L.1981, c.16  
17 (C.40:62-3.1) or the "Water Infrastructure Protection Act," sections  
18 1 through 9 of P.L. , c. (C. ) (pending before the Legislature  
19 as this bill).  
20 (cf: P.L.1981, c.16, s.1)

21

22 11. This act shall take effect immediately.

23

24

25 STATEMENT

26

27 This bill, titled the "Water Infrastructure Protection Act," would  
28 authorize municipalities and municipal, county, and regional  
29 utilities authorities to lease or sell their water or wastewater assets  
30 to a private entity, without any referendum, if an emergent  
31 condition exists. The bill would provide these public entities with  
32 greater flexibility to address an emergent condition impacting its  
33 water or wastewater services if such condition may be better  
34 addressed by private operation of some or all of the public owner's  
35 water or wastewater assets.

36 Under the bill, emergent conditions would exist if either: (1) the  
37 system has a combined sanitary and storm sewer overflow system;  
38 (2) the system is located in Water Supply Critical Area I or II; (3)  
39 the ground water has the potential of sodium intrusion or any other  
40 intrusion that may negatively impact the system; (4) the system has  
41 received environmental violations, has existing unfulfilled  
42 administrative consent orders, or has previously entered into such  
43 consent order; (5) there is a present deficiency concerning the  
44 availability or potability of water, or the provision of water at  
45 adequate volume or pressure, and the public owner lacks the  
46 capacity to remedy the deficiency; or (6) there is material damage to  
47 the infrastructure of the system and the public owner lacks the  
48 capacity to remedy the damage. The appropriate public officials

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

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

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

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

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

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

ASSEMBLY STATE AND LOCAL GOVERNMENT  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 3628**

with committee amendments

**STATE OF NEW JERSEY**

DATED: DECEMBER 11, 2014

The Assembly State and Local Government Committee reports favorably and with committee amendments Assembly Bill No. 3628.

The amended bill, titled the “Water Infrastructure Protection Act,” authorizes municipalities to long-term lease or sell their water or waste water assets to a capable private or public entity, without any referendum, if an emergent condition exists. The bill provides municipalities with greater flexibility to address an emergent condition impacting its water or wastewater services if such condition may be better addressed by permitting a capable private or public entity to operate some or all of the public owner’s water or waste water assets.

Under the amended bill, emergent conditions would exist if either: (1) the system is located in an Area of Critical Water Supply Concern I or II, or any future designation or newly added area of critical water supply concern; (2) the owner of the system is a significant noncomplier, as defined pursuant to the “Water Pollution Control Act,” P.L.1977, c.7 (C.58:10A-1 et seq.), has been the subject of a formal enforcement action initiated by the Department of Environmental Protection (DEP) or is substantially out of compliance with an administrative consent order, settlement agreement, or stipulation of settlement or judicial consent order entered into with the DEP; (3) there is a present deficiency or violation of maximum contaminant levels established pursuant to the “Safe Drinking Water Act,” P.L.1977, c.224 (C.58:12A-1 et seq.) concerning the availability or potability of water, or concerning the provision of water at adequate volume or pressure, or distribution or treatment of wastewater; (4) there is a demonstrated lack of historical investment, repair, or sustainable maintenance as determined by the DEP, or material damage to the infrastructure of the system; or (5) the system owner lacks the financial, technical, or managerial capacity to adequately address any of the foregoing on a sustainable basis or own and operate the system in a way that supports economic activity in the municipality on a sustainable basis.

If a municipality determines that one or more emergent conditions exists and that it is necessary to take steps to sell or long-term lease its



water or wastewater assets to a capable public or private entity, it is required to retain the services of an independent financial advisor to review, analyze, and report on the value of the system, the short- and long-term impact to rate-payers of the cash-flow structure of the proposed transaction, and provide an estimate of any financial requirements necessary to address the emergent conditions and to operate and maintain the system. Upon completion, the independent financial advisor's analysis and review would be transmitted to the owner. Within 10 days of the approval of the report by the owner, the owner shall transmit copies of the report to the Board of Public Utilities ("board"), Director of the Division of Local Government Services ("director"), and the DEP, and shall make the report available for public review.

After the independent financial advisor has completed its analysis, and presented its report to the owner, a public hearing on the proposed emergent condition certification must be held. The owner must provide notice of the public hearing no less than 30 days prior to the date of the hearing. The notice is required to prominently state the findings upon which the certification is based, a summary of the findings by the independent financial advisor, and that the certification is in anticipation of a proposed long-term lease or sale of water or wastewater assets to a capable public private or public entity. If the municipality does not have a website, notice of the public hearing must be published on the website of the Department of Community Affairs.

After the public hearing, and after giving due consideration to the findings of the independent financial advisor, the governing body of the municipality shall, by resolution adopted by at least two-thirds of its authorized membership, certify that one or more emergent conditions exist and that the owner intends to sell or long-term lease its water or wastewater assets to a capable public or private entity to address the emergent conditions and to operate and maintain the system. A copy of the resolution must be transmitted to the board, director, and DEP within five days of adoption. Within 30 days of receipt of the resolution, the department must either approve or reject the owner's emergent condition certification.

If the emergent conditions certification is approved and the public owner decides to proceed with the sale, the owner must publish notice of the approval on its official Internet website and in one or more newspapers circulating in the municipality. A petition may be filed with the municipal clerk protesting the resolution authorizing the long-term lease or sale of water of wastewater assets without a public referendum within 45 days after notice of the approval of the emergent conditions certification is published. If the petition is signed by a number of legal voters of the municipality equal to at least 15% of the total votes cast in the municipality at the last election at which members of the General Assembly were elected, a resolution to long-term lease or sell water or wastewater assets would be suspended from

taking effect until the long-term lease or sale of such assets is approved in a public referendum in accordance with R.S.40:62-4 and R.S.40:62-5. If the petition is not filed within this timeframe, a resolution to long-term lease or sell water or wastewater assets would not be subject to a public referendum.

After the emergent conditions certification, the owner must advertise a request for qualifications from a capable public or private entity wishing to be considered for the long-term lease or sale of the owner's system. After an emergent conditions certification is made, the owner shall determine the qualified respondents. The owner shall issue a request for proposals to each qualified respondent no less than 14 days prior to the date established for the submission of proposals.

The proposals must include, and shall be evaluated based upon: (1) the documented deficiencies of the owner's system upon which the emergent conditions certification is based and a description of the corrective measures to be undertaken by the respondent to address and correct the identified emergent conditions; (2) a description of the financial, managerial, and technical capabilities of the respondent to operate and maintain the system in compliance with all applicable State and federal laws and regulations as well as a description of all the respondent's outstanding and pending violations of various State environmental laws; (3) an analysis of the relevant expenditures associated with such activities and the projected impact on consumer rates; (4) an analysis of any Internal Revenue Code or other tax code issues that may arise from the long-term lease or sale of a publicly funded water or wastewater asset, as well as any potential short-term or long-term costs arising therefrom; (5) a long-term capital improvement or asset management plan; and (6) any other pertinent information required of or deemed appropriate by the owner.

Upon a review of the proposals, the governing body of the owner shall, by resolution adopted by at least two-thirds of its authorized membership; designate one qualified respondent, whose proposal is found to be most advantageous to the public, taking into consideration the request for proposals criteria. The resolution must include a detailed summary of the governing body's findings that the proposal of the designated respondent is most advantageous to the public. The summary must be published in on its official Internet website and in one or more newspapers circulating in the municipality.

After the designated respondent is selected, negotiations for a contract for the long-term lease or sale of the water or wastewater assets would commence between the public owner and the designated respondent. As amended, the bill requires every proposed contract to include a clause requiring the designated respondent to give first consideration in hiring to any public employees displaced by the long-term lease or sale of the water or wastewater assets for any position added by the capable private or public entity to serve the newly acquired system.

After an agreement on a proposed contract is reached, the governing body of the owner shall, by resolution adopted by at least two-thirds of its authorized membership, submit the proposed contract to the board for approval and submit the proposed use of proceeds from the long-term lease or sale to the director for approval. The board has 90 days to approve or reject the proposed contract. If no action is taken within that timeframe the contract is deemed approved. After these matters are approved by the respective reviewing agencies, the governing body of the owner may, by resolution adopted by two-thirds of its authorized membership, enter into a contract for the long-term lease or sale of the water or wastewater assets with the designated respondent.

Each worker from an apprenticeable trade employed in the performance of the contract would have to be an apprentice participating in a registered apprenticeship program or have completed a registered apprenticeship program, unless the contractor or subcontractor certifies that each worker will be paid no less than the journeyman rate for the apprenticeable trade performed as established under the prevailing wage laws. The contractor or subcontractor must be paid, or pay a worker who it employs, no less than the prevailing wage rate determined by the Commissioner of Labor and Workforce Development pursuant to the “New Jersey Prevailing Wage Act,” P.L.1963, c.150 (C.34:11-56.25 et seq.). Any contractor subcontractor hired by a designated respondent in performance of such contract must also comply with the provisions of “The Public Works Contractor Registration Act,” P.L.1999, c.238 (C.34:11-56.48 et seq.).

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

- Define a “capable public or private entity” as any private or public water system owner, who, at the time of submitting a proposal to long-term lease or purchase public water or wastewater assets, currently (1) owns a system serving no less than the number of residential and commercial accounts as the system which the entity is proposing to lease or purchase, and (2) is not a significant noncomplier, as defined by the “Water Pollution Control Act,” P.L.1977, c.7 (C.58:10A-1 et seq.), is not currently the subject of a formal enforcement action initiated by the DEP to address a material violation by the entity which has not been corrected over a reasonable period of time given the specific situation, or is not substantially out of compliance with an administrative consent order, settlement agreement, stipulation of settlement or judicial consent order entered into with the department;

- Define “long-term lease” as a lease of longer than 30 years under which the municipal owner seeks to transfer ownership of the system at the end of the lease term;
- Remove municipal, county, and regional utilities authorities from the bill;
- Remove a municipality that is a city of the first class with a population of 270,000 or more according to the latest federal decennial census that owns water or wastewater assets and municipalities constituting a joint meeting from the bill;
- Provide that the mayor, a municipal officer designated by the mayor, and the licensed engineer must determine that emergent conditions exist;
- Narrow the circumstances under which a municipal water or wastewater utility can be sold or leased under a long-term agreement by revising the “emergent conditions” that must exist in order to utilize the procedures set forth in the bill;
- Require the owner, through the applicable State public procurement laws, to retain the services of an independent financial advisor to determine the value of the system, the impact of the long-term lease or sale on ratepayers and the cash flow of the system, and the financial requirements necessary to maintain the system;
- Require the municipality to transmit the independent financial advisor’s report to the board, director, and DEP and make the report available to the public;
- Require a public hearing on the proposed emergent conditions certification to be held after the independent financial advisor’s report is presented to the owner;
- Require the governing body of the owner to adopt a resolution, approved by two-thirds of its authorized membership, certifying that one or more emergent conditions exist and that the owner intends to sell or long-term lease its water or wastewater assets to a capable public or private entity and to transmit the resolution to the board, director, and DEP within five days of adoption;
- Require the DEP to approve or reject, within 30 days of receipt of the municipal resolution, the emergent conditions certification;
- Provide that a petition protesting the resolution authorizing the long-term lease or sale of water or wastewater assets without a public referendum must be filed with the municipal clerk within 45 days after

notice of the approval of the emergent conditions certification is published;

- Establish minimum standards for the content of, and the basis of evaluation for, the request for proposals issued by the owner;
- Require the governing body of the owner to adopt a resolution, approved by two-thirds of its authorized membership, designating one qualified respondent whose proposal is found to be most advantageous to the public;
- Require every proposed contract to include a clause requiring the designated respondent to give first consideration in hiring to any public employees displaced by the long-term lease or sale of the water or wastewater assets for any position added by the capable private or public entity to serve the newly acquired system;
- Require the governing body of the owner to adopt a resolution approved by at least two-thirds of its authorized membership, to submit the proposed contract to the board for approval and submit the proposed use of proceeds from the long-term lease or sale to be submitted to the director for approval;
- Regulate the proposed use of the proceeds of the long-term lease or sale and provide that any amount used for capital improvements must comply with a previously adopted long-term capital improvement plan or asset management plan;
- Permit the governing body of the owner to, by resolution adopted by two-thirds of its authorized membership, enter into a contract for the long-term lease or sale of the water or wastewater assets with the designated respondent;
- Require any contractor or subcontractor must be paid, or that they must pay a worker who they employ, no less than the prevailing wage rate determined by the Commissioner of Labor and Workforce Development pursuant to the “New Jersey Prevailing Wage Act,” P.L.1963, c.150 (C.34:11-56.25 et seq.); and
- Require any contractor or subcontractor hired by a designated respondent in performance of such contract must also comply with the provisions of “The Public Works Contractor Registration Act,” P.L.1999, c.238 (C.34:11-56.48 et seq.).

**SENATE, No. 2412**

**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

INTRODUCED SEPTEMBER 18, 2014

**Sponsored by:**

**Senator PAUL A. SARLO**

**District 36 (Bergen and Passaic)**

**Senator JOSEPH M. KYRILLOS, JR.**

**District 13 (Monmouth)**

**SYNOPSIS**

“Water Infrastructure Protection Act.”

**CURRENT VERSION OF TEXT**

As introduced.



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

S2412 SARLO, KYRILLOS

2

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

4

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

7

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

11

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

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

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

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

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

31

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

33 “Board” means the Board of Public Utilities.

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

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

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

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

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

**Matter underlined thus is new matter.**

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

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

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

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

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

20

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

29

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 40:62-3. Any municipality owning a sewer plant, water plant,  
3 heat, light or power plant, system of transportation, or other public  
4 utility plant or system, may lease or sell such plant or system. Such  
5 a lease or sale to another municipality, a sanitary sewerage  
6 authority, a sewerage authority or any other authority, commission  
7 or public body shall be authorized by ordinance and may be made  
8 upon such terms as said ordinance shall provide and the provisions  
9 of R.S.40:62-4 and R.S.40:62-5 shall not apply thereto. Such a  
10 lease or sale to any person except another municipality, a sanitary  
11 sewerage authority, a sewerage authority or any other authority,  
12 commission or public body shall, except as otherwise provided by  
13 law, be made only upon compliance with the provisions of  
14 R.S.40:62-4 and R.S.40:62-5 and after the same is authorized by the  
15 legal voters of the municipality in accordance with said sections , or  
16 upon compliance with the provisions of section 2 of P.L.1981, c.16  
17 (C.40:62-3.1) or the "Water Infrastructure Protection Act," sections  
18 1 through 9 of P.L. , c. (C. ) (pending before the Legislature  
19 as this bill).  
20 (cf: P.L.1981, c.16, s.1)

21

22 11. This act shall take effect immediately.

23

24

25

#### STATEMENT

26

27 This bill, titled the "Water Infrastructure Protection Act," would  
28 authorize municipalities and municipal, county, and regional  
29 utilities authorities to lease or sell their water or wastewater assets  
30 to a private entity, without any referendum, if an emergent  
31 condition exists. The bill would provide these public entities with  
32 greater flexibility to address an emergent condition impacting its  
33 water or wastewater services if such condition may be better  
34 addressed by private operation of some or all of the public owner's  
35 water or wastewater assets.

36 Under the bill, emergent conditions would exist if either: (1) the  
37 system has a combined sanitary and storm sewer overflow system;  
38 (2) the system is located in Water Supply Critical Area I or II; (3)  
39 the ground water has the potential of sodium intrusion or any other  
40 intrusion that may negatively impact the system; (4) the system has  
41 received environmental violations, has existing unfulfilled  
42 administrative consent orders, or has previously entered into such  
43 consent order; (5) there is a present deficiency concerning the  
44 availability or potability of water, or the provision of water at  
45 adequate volume or pressure, and the public owner lacks the  
46 capacity to remedy the deficiency; or (6) there is material damage to  
47 the infrastructure of the system and the public owner lacks the  
48 capacity to remedy the damage. The appropriate public officials

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

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

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

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

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

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10

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

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 2412**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: OCTOBER 9, 2014

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2412, with committee amendments.

As amended, this bill, titled the “Water Infrastructure Protection Act,” would authorize municipalities and municipal, county, and regional utilities authorities to lease or sell their water or wastewater assets to a private entity, without any referendum, if an emergent condition exists. The bill would provide these public entities with greater flexibility to address an emergent condition impacting its water or wastewater services if such condition may be better addressed by private operation of some or all of the public owner’s water or wastewater assets.

Under the bill, emergent conditions would exist if either: (1) the system has a combined sanitary and storm sewer overflow system; (2) the system is located in Water Supply Critical Area I or II; (3) the ground water has the potential of sodium intrusion or any other intrusion that may negatively impact the system; (4) the system has received environmental violations, has existing unfulfilled administrative consent orders, or has previously entered into such consent order; (5) there is a present deficiency concerning the availability or potability of water, or the provision of water at adequate volume or pressure, and the public owner lacks the capacity to remedy the deficiency; or (6) there is material damage to the infrastructure of the system and the public owner lacks the capacity to remedy the damage. The appropriate public officials and a licensed engineer would have to certify that one of these conditions exists. The certification would be the subject of a public hearing and have to be approved by the Department of Environmental Protection.

If the public owner is a municipality or municipal utilities authority, a petition may be filed with the municipal clerk protesting the resolution authorizing the lease or sale of water or wastewaters assets without a public referendum within 20 days after the notice of the approval of the emergent conditions certification is published. If the petition is signed by a number of legal voters of the municipality equal to at least 15% of the total votes cast in the municipality at the last election at which members of the General Assembly were elected,



a resolution to lease or sell water or wastewater assets would be suspended from taking effect until the lease or sale of such assets is approved in a public referendum in accordance with R.S.40:62-4 and R.S.40:62-5. If such petition is not filed within this timeframe, a resolution to lease or sell water or wastewater assets would not be subject to a public referendum.

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

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

Each worker from an apprenticeable trade employed in the performance of the contract would have to be an apprentice participating in a registered apprenticeship program or have completed a registered apprenticeship program, unless the contractor or subcontractor certifies that each worker will be paid no less than the journeyman rate for the apprenticeable trade performed established under the prevailing wage laws. The contractor or subcontractor must be paid, or pay a worker who it employs, no less than the prevailing wage rate determined by the Commissioner of Labor and Workforce Development pursuant to the "New Jersey Prevailing Wage Act," P.L.1963, c.150(C.34:11-56.25 et seq.). Any contractor or subcontractor hired by a designated respondent in performance of such a contract must also comply with the provisions of "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

COMMITTEE AMENDMENTS:

The committee amended the bill to require that of the proposed use of proceeds to be submitted to the Director of the Division of Local Government Services once an agreement on a proposed contract is reached between the public owner and the private entity, the amount dedicated to capital improvements must equal at least 50 percent of the remaining proceeds once the debt is defeased.

The committee amendments also require that any contractor or subcontractor, or any worker employed by the contractor or subcontractor, hired by a private entity pursuant to this bill be paid the prevailing wage rate. Any contractor or subcontractor hired by a private entity in performance of such a contract must also comply with the provisions of "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that the enactment of this legislation would have an indeterminate impact on State and local finances. Municipalities and local utilities authorities may choose to sell their water or wastewater assets using the process established by the bill. But they are not required to do so. Consequently, enactment of the bill would not by itself alter the sale of water or wastewater assets by municipalities and local utilities authorities. It is conceivable that the bill might impel some municipalities and local utilities authorities to utilize the new process for selling or leasing their water or wastewater assets. The OLS, however, does not speculate on the number of public entities that may invoke this optional authority and any resultant cost savings.

The use of any proceeds generated by the lease or sale of the water or wastewater assets must be approved by the Director of the Division of Local Government Services in the Department of Community Affairs. After the retirement of all utility or authority debt, the amount dedicated to community and capital improvements must represent at least 50 percent of the remaining proceeds. The bill provides no further direction regarding the purposes for which the proceeds of the sale or lease should be expended.

The lease or sale of water or wastewater assets by a municipality or local or regional utilities authority may also affect State revenues generated by collections of the Public Utility Excise Tax, the Public Utility Franchise Tax, and the Public Utility Gross Receipts Tax. Municipalities and local and regional authorities are currently exempted from the payment of these taxes. The sale of a water or wastewater system by a municipality or a local or regional authority to a private system operator would likely increase their tax liability, which, in turn would increase State excise, franchise, and gross receipts tax revenues.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

**SENATE, No. 2412**

## **STATE OF NEW JERSEY 216th LEGISLATURE**

DATED: OCTOBER 20, 2014

### SUMMARY

- Synopsis:** “Water Infrastructure Protection Act.”
- Type of Impact:** Indeterminate impact on State and local revenues. No impact on local costs.
- Agencies Affected:** Board of Public Utilities, Division of Local Government Services (Community Affairs), counties, municipalities, and local authorities.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Revenue</b>	Indeterminate Impact – See comments below		
<b>Local Cost</b>	No Fiscal Impact – See comments below		
<b>Local Revenue</b>	Indeterminate Impact – See comments below		

- Senate Bill No. 2412 (1R) establishes an alternative process by which municipalities and local utilities authorities may lease or sell their water or wastewater assets. Enactment of the bill by itself will not alter the sale of water or wastewater assets.
- The bill might prompt some municipalities and local utilities authorities to utilize the new process for selling or leasing their water or wastewater assets. The Office of Legislative Services (OLS), however, does not speculate on the number of public entities that may invoke this optional authority and any resultant cost savings.
- The lease or sale of water or wastewater assets by a municipality or a local or regional utilities authority may also affect State revenues generated by collections of the Public Utility Excise Tax, the Public Utility Franchise Tax, and the Public Utility Gross Receipts Tax.

### BILL DESCRIPTION

Senate Bill No. 2412 (1R) of 2014, the “Water Infrastructure Protection Act,” authorizes municipalities and municipal, county, and regional utilities authorities to lease or sell their water

or wastewater assets to a private entity, without any public referendum, if an emergent condition exists. Under the bill an emergent condition exists if either: (1) the system has a combined sanitary and storm sewer overflow system; (2) the system is located in Water Supply Critical Area I or II; (3) the ground water has the potential of sodium intrusion or any other intrusion that may negatively impact the system; (4) the system has received environmental violations, has existing unfulfilled administrative consent orders, or has previously entered into such consent order; (5) there is a present deficiency concerning the availability of potability of water, or the provision of water at adequate volume or pressure, and the public owner lacks the capacity to remedy the deficiency; or (6) there is material damage to the infrastructure of the system and the public owner lacks the capacity to remedy the damage. Appropriate public officials (i.e., mayor or chief operating officer of the local authority) would have to certify that one of these conditions exists. The certification would be the subject of a public hearing and have to be approved by the Department of Environmental Protection.

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

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

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

Each worker from an apprenticeable trade employed in the performance of a contract would have to be an apprentice participating in a registered apprenticeship program or have completed a registered apprenticeship program, unless the contractor or subcontractor certifies that each worker will be paid no less than the journeyman rate for the apprenticeable trade performed established under the prevailing wage laws.

## FISCAL ANALYSIS

### *EXECUTIVE BRANCH*

None received.

### *OFFICE OF LEGISLATIVE SERVICES*

The OLS concludes that the enactment of Senate Bill No. 2412 (1R) would have an indeterminate impact on State and local finances. Municipalities and local utilities authorities may choose to sell their water or wastewater assets using the process established by the bill, but they are not required to do so. Consequently, enactment of the bill would not, by itself, alter the sale of water or wastewater assets by municipalities and local utilities authorities. It is conceivable that the bill might impel some municipalities and local utilities authorities to utilize the new process for selling or leasing their water or wastewater assets. The OLS, however, does not speculate on the number of public entities that may invoke this optional authority and any resultant cost savings. The lease or sale of water or wastewater assets by a municipality or local or regional utilities authority also may affect State revenues generated by collections of the Public Community Water System Tax, Public Utility Franchise Tax, Public Utility Gross Receipts Tax, and the Public Utility Excise Tax.

According to a report issued by the nonprofit group *Facing Our Future*, entitled “Infrastructure Investments Necessary for Economic Success” in April 2013, there are more than 650 water utilities owned by private companies, municipal or other public authority systems, and small community water systems. Within that range of delivery organizations there are 31 investor-owned water utilities serving approximately 40 percent of the State. In 2008, the federal Environmental Protection Agency estimated that about \$41 billion was required to address New Jersey’s water supply, wastewater, and stormwater infrastructure needs over the next 20 years. Approximately \$17 billion was needed for wastewater, \$16 billion for stormwater, and \$8 billion for water supply. This amount includes \$4 billion to address needs associated with rainfall and snowmelt moving over and through the ground.

#### Local Fiscal Impact

Senate Bill 2412 (1R) is intended to provide municipalities and local utilities authorities with greater flexibility to address an emergent condition impacting its water or wastewater services if that condition may be better addressed by private operation of some or all of the public owner’s water or wastewater assets. The impact of the sale or lease of water or wastewater assets on local finances will depend on information that is specific to each situation, such as the current and projected capital and operating costs for the water or wastewater assets. Although a municipality or local authority that sells a water or wastewater system will no longer be responsible for its costs, these costs are recoverable from ratepayers. Therefore, the sale of the system should have no impact on local costs. A municipality or local utilities authority that decides to lease or sell its water or wastewater assets would have to conclude that it can achieve a better outcome for its ratepayers and the water or wastewater system by leasing or selling these assets to a designated respondent through this new process, instead of executing the sale through processes established in current law.

The OLS notes that the municipality or local utilities authority must submit, for review by the Director of the Division of Local Government Services, a document outlining the proposed use of the proceeds generated by the lease or sale of the water or wastewater assets. The document must include the rent or sale price, total debt payment amount, the remaining proceeds after the

debt payment, the amount dedicated to community and capital improvements, and the amount dedicated for the general purposes of the owner. Once the debt is defeased, the amount dedicated to capital improvements must represent at least 50 percent of the remaining proceeds. The bill provides no further direction regarding the purposes for which the proceeds of the sale or lease should be expended.

#### State Fiscal Impact

This enactment of Senate Bill No. 2412 (1R) also would have an indeterminate impact on State revenues generated by three taxes paid by privately owned utility companies: the Public Utility Excise Tax, the Public Utility Franchise Tax, and the Public Utility Gross Receipts Tax. Revenues generated by these taxes are deposited, along with revenues from taxes paid by other types of public utilities, into the Energy Tax Receipts Property Tax Relief Fund. A large portion of these funds are distributed to municipal governments as State Aid while the remainder used for general State purposes. Information published in the *2012 Annual Report* of the Division of Taxation in the Department of the Treasury indicates that the amount due from excise, franchise, and gross receipts taxes paid by 15 sewer companies and 32 water companies was approximately \$129.8 million.

Municipalities and local authorities do not pay excise, franchise, and gross receipts taxes. Section 63 of P.L.1957, c.183 (C.40:14B-63) declares that every utility system and all other property of a municipal authority or a political subdivision of the State and devoted to an essential public purposes is exempt from all taxes and special assessments of the State or any subdivision thereof. The sale of a water or wastewater system to a private operator will likely increase the operator's tax liability (and State excise, franchise, and gross receipts tax revenues) because systems owned by private operators are subject to State taxation. The OLS is unable to provide a more specific estimate because it cannot predict which local water or wastewater systems will be sold and how the acquisition of these systems will affect private operator liabilities under each tax.

*Section:* Local Government

*Analyst:* Scott A. Brodsky  
Senior Fiscal Analyst

*Approved:* David J. Rosen  
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

STATEMENT TO  
[First Reprint]  
**SENATE, No. 2412**

with Senate Floor Amendments  
(Proposed by Senator SARLO)

ADOPTED: DECEMBER 1, 2014

These floor amendments are intended to narrow the circumstances under which a municipal water or wastewater utility can be sold or leased under a long-term agreement without the necessity of a public referendum. The floor amendments remove utilities authorities from the bill, so that it would only be applicable to municipal utility owners (not including municipalities participating in a joint meeting), and require that any contract for the long-term lease or sale of water or wastewater assets include a clause stating that the new operator shall give first consideration in hiring to any public employees displaced by the long-term lease or sale of the water or wastewater assets. The floor amendments revise the "emergent conditions" that must exist in order to utilize the procedures set forth in the bill. For example, the floor amendments remove from "emergent conditions" the existence of a combined sanitary and storm sewer overflow system and the existence of merely trivial environmental violations.

STATEMENT TO  
[Second Reprint]  
**SENATE, No. 2412**

with Senate Floor Amendments  
(Proposed by Senator SARLO)

ADOPTED: DECEMBER 15, 2014

These floor amendments clarify that, under the bill, an owner is any municipality, except a municipality that is a city of a first eclass with a population of 270,000 or more according to the latest federal decennial census, that owns water or wastewater assets. They also require an owner to publish notice of the approval of the emergent conditions certification if it chooses to proceed with the sale or long-term lease of its water or wastewater assets to a capable public or private entity. The amendments require every proposed contract between a designated respondent and an owner to include a clause stating that to the extent the contract does not violate any existing collective bargaining agreements, between the capable public or private entity and its employees, the capable public or private entity shall give first consideration in hiring to any public employees displaced by the long-term lease or sale of the water or wastewater assets. The amendments also require any contractor or subcontractor hired by a designated respondent in the performance of a contract for the long-term lease or sale of the waster or wastewater assets to comply with section 2 of P.L.2007, c.243 (C.34:13B-2.1), regarding construction contractors engaged in construction work on a public utility.



# LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

## SENATE, No. 2412 STATE OF NEW JERSEY 216th LEGISLATURE

DATED: JANUARY 5, 2015

### SUMMARY

- Synopsis:** “Water Infrastructure Protection Act”
- Type of Impact:** Indeterminate impact on State and local revenues. No impact on local costs.
- Agencies Affected:** Board of Public Utilities, Division of Local Government Services (Community Affairs), and municipalities.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Revenue</b>	Indeterminate Impact – See comments below		
<b>Local Cost</b>	No Fiscal Impact – See comments below		
<b>Local Revenue</b>	Indeterminate Impact – See comments below		

- Senate Bill No. 2412 (3R) establishes an alternative process by which municipalities may lease or sell their water or wastewater assets. Enactment of the bill by itself will not alter the sale of water or wastewater assets.
- The bill might prompt some municipalities to utilize the new process for selling or leasing their water or wastewater assets. The Office of Legislative Services (OLS), however, does not speculate on the number of public entities that may invoke this optional authority and any resultant cost savings.
- The lease or sale of water or wastewater assets by a municipality may also affect State revenues generated by collections or the Public Utility Excise Tax, the Public Utility Franchise Tax, and the Public Utility Gross Receipts Tax.

## BILL DESCRIPTION

Senate Bill No. 2412 (3R) of 2014, the “Water Infrastructure Protection Act,” authorizes certain municipalities to lease or sell their water or wastewater assets to a capable private or public entity, without any public referendum, if an emergent condition exists. Under the bill an emergent condition exists if either: (1) the system is located in an Area of Critical Water Supply Concern I or II, or any future designation or any newly added area of critical water supply concern; (2) the owner of the system is a significant noncomplier, as defined pursuant to the “Water Pollution Control Act,” P.L.1977, c.74 (C.58:10A-1 et seq.), has been the subject of a formal enforcement action initiated by the Department of Environmental Protection (DEP) or is substantially out of compliance with an administrative consent order, settlement agreement, or stipulation of settlement or judicial consent order entered into with the DEP; (3) there is a present deficiency or violation of maximum containment levels established pursuant to the “Safe Drinking Water Act,” P.L.1977, c.224 (C.58:12A-1 et seq.) concerning the availability or potability of water, or concerning the provision of water at adequate volume or pressure, or distribution or treatment of wastewater; (4) there is a demonstrated lack of historical investment, repair, or sustainable maintenance as determined by the DEP, or material damage to the infrastructure of the system; or (5) the system owner lacks the financial, technical, or managerial capacity to adequately address any of the foregoing on a sustainable basis or to own and operate the system in a way that supports economic activity in the municipality on a sustainable basis.

Appropriate public officials (i.e., the mayor, a municipal official designated by the mayor, and a licensed engineer) would have to certify that one of these conditions exists. The municipality is then required to retain the services of an independent financial advisor to review, analyze, and report on the value of the system, the short- and long-term impact to ratepayers of the cash-flow structure of the proposed transaction, and provide an estimate of any financial requirements necessary to address the emergent conditions and to operate and maintain the system. Upon completion, the report would first be transmitted to the municipality for approval and then to the Board of Public Utilities and the Director of the Division of Local Government Services in the Department of Community Affairs and made available to the public.

After holding a public hearing on the proposed emergent conditions certification and considering the findings of an independent financial advisor, the governing body of the municipality, by a vote of at least two-thirds of its authorized membership, could adopt a resolution certifying that one or more emergent conditions exist and that the owner intends to sell or long-term lease its water or wastewater assets. The municipality would transmit the resolution to the DEP and within 30 days of receipt of the resolution, the DEP must either approved or reject the certification. If the emergent conditions certification is approved and the municipal governing body decides to proceed with the sale, the municipality must publish notice of the approval. The voters may file with the municipal clerk a petition protesting the lease or sale of water or wastewater assets, and seeking to place the question to a public referendum. within 45 days after the notice of the approval of the emergent conditions certification is published. If a petition is not filed within 45 days of publication of this notice, a resolution to lease or sell water or wastewater assets would not be subject to a public referendum.

After the emergent conditions certification, the municipality would advertise a request for qualifications, determine the qualified respondents, and issue a request for proposals. The request for proposals would have to include relevant technical submissions, documents, and criteria including, but not limited to, a description of the facilities and the debt related thereto and the evaluation criteria to be used in the selection of the designated respondent. The proposals would be evaluated based on the ability of the respondent to maintain the system and certain financial conditions enumerated in the bill. The governing body of the municipality would, by

resolution, select the respondent whose proposal is most advantageous to the public, based upon the evaluation.

The municipality would negotiate for a contract for the lease or sale of the water or wastewater assets with the designated respondent. After a proposed contract is negotiated, the governing body of the municipality would submit the proposed contract to the Board of Public Utilities for approval and submit the proposed use of proceeds to the Director of the Division of Local Government Services in the Department of Community Affairs for approval. The bill sets forth criteria upon which the board and the director would base their approvals. After these matters are approved by the respective reviewing agencies, the governing body of the municipality would be able to enter into a contract with the designated respondent for the lease or sale of the water or wastewater assets.

The bill requires every proposed contract to include a clause requiring the contractor to give first consideration in hiring to any public employees displaced by the long-term lease or sale of the water or wastewater assets. Each worker from an apprenticeable trade employed in the performance of a contract would have to be an apprentice participating in a registered apprenticeship program or have completed a registered apprenticeship program, unless the contractor or subcontractor certifies that each worker will be paid no less than the journeyman rate for the apprenticeable trade performed established under the prevailing wage laws.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concludes that the enactment of Senate Bill No. 2412 (3R) would have an indeterminate impact on State and local finances. Municipalities may choose to sell their water or wastewater assets using the process established by the bill, but they are not required to do so. Consequently, enactment of the bill would not, by itself, alter the sale of water or wastewater assets by municipalities. It is conceivable that the bill might impel some municipalities to utilize the new process for selling or leasing their water or wastewater assets. The OLS, however, does not speculate on the number of public entities that may invoke this optional authority and any resultant cost savings. The lease or sale of water or wastewater assets by a municipality also may affect State revenues generated by collections of the Public Community Water System Tax, Public Utility Franchise Tax, Public Utility Gross Receipts Tax, and the Public Utility Excise Tax.

According to a report issued by the nonprofit group *Facing Our Future*, entitled “Infrastructure Investments Necessary for Economic Success” in April 2013, there are more than 650 water utilities owned by private companies, municipalities or other public authority systems, and small community water systems. Within that range of delivery organizations there are 31 investor-owned water utilities serving approximately 40 percent of the State. In 2008, the federal Environmental Protection Agency estimated that about \$40 billion was required to address New Jersey’s water supply, wastewater, and stormwater infrastructure needs over the next 20 years. Approximately \$17 billion was needed for wastewater, \$16 billion for stormwater, and \$8 billion

for water supply. This amount includes \$4 billion to address needs associated with rainfall and snowmelt moving over and through the ground.

#### Local Fiscal Impact

Senate Bill 2412 No. (3R) is intended to provide certain municipalities with greater flexibility to address an emergent condition impacting its water or wastewater services if that condition may be better addressed by private operation of some or all of the municipality's water or wastewater assets. The impact of the sale or lease of water or wastewater assets on local finances will depend on information that is specific to each situation, such as the current and projected capital and operating costs for the water or wastewater assets. Although a municipality that sells a water or wastewater system will no longer be responsible for its costs, these costs are recoverable from ratepayers. Therefore, the sale of the system should have no impact on local costs. A municipality that decides to lease or sell its water or wastewater assets would have to conclude that it can achieve a better outcome for its ratepayers and the water or wastewater system by leasing or selling these assets to a designated respondent through this new process, instead of executing the sale through processes established in current law. The OLS notes that a municipality will incur additional costs associated with the hiring of an independent financial advisor.

The OLS notes that the municipality must submit, for review by the Director of the Division of Local Government Services in the Department of Community Affairs, a document outlining the proposed use of the proceeds generated by the lease or sale of the water or wastewater assets. The document must include the rent or sale price, total amount required to defease debt, costs associated with complying with State and federal tax laws, the amount required to comply with various environmental laws, and the amount required to pay outstanding fines owed to other government units. After these amounts are paid, any remaining proceeds from the sale of the water or wastewater assets may be used for the general purposes of the owner, but at least 50 percent must be dedicated for capital improvements, in compliance with a previously adopted long-term capital improvement plan or asset management plan.

#### State Fiscal Impact

The enactment of Senate Bill No. 2412 (3R) also would have an indeterminate impact on State revenues generated by three taxes paid by privately owned utility companies: Public Utility Excise Tax, the Public Utility Franchise Tax, and the Public Utility Gross Receipts Tax. Revenues generated by these taxes are deposited, along with revenues from taxes paid by other types of public utilities, into the Energy Tax Receipts Property Tax Relief Fund. A large portion of these funds are distributed to municipal governments as State Aid while the remainder used for general State purposes. Information published in the *2012 Annual Report* of the Division of Taxation in the Department of the Treasury indicates that the amount due from excise, franchise, and gross receipts taxes paid by 15 sewer companies and 32 water companies was approximately \$129.8 million.

Municipalities do not pay excise, franchise, and gross receipts taxes. Section 63 of P.L.1957, c.183 (C.40:14B-63) declares that every utility system and all other property of a municipal authority or a political subdivision of the State and devoted to an essential public purpose is exempt from all taxes and special assessments of the State or any subdivision thereof. The sale of a water or wastewater system to a private operator will likely increase the operator's tax liability (and State excise, franchise, and gross receipts tax revenues) because systems owned by private operators are subject to State taxation. The OLS is unable to provide a more specific estimate because it cannot predict which local water or wastewater systems will be sold and how the acquisition of these systems will affect private operator liabilities under each tax.

*Section: Local Government*

*Analyst: Scott A. Brodsky  
Senior Fiscal Analyst*

*Approved: David J. Rosen  
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).