

58:11-59

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 1999 **CHAPTER:** 296

NJSA: 58:11-59 (Sewer companies—takeover)

BILL NO: A1172 (Substituted for S1134)

SPONSOR(S): Myers

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Solid & Hazardous Waste

SENATE: Environment

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** November 15, 1999

SENATE: July 1, 1999

DATE OF APPROVAL: December 23, 1999

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL:](#) 2nd Reprint
(Amendments during passage denoted by superscript numbers)

A1172

[SPONSORS STATEMENT:](#) (Begins on page 9 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

S1134

[SPONSORS STATEMENT:](#) (Begins on page 9 of original bill) [Yes](#)
Bill and Sponsors statement identical to A1172

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: [Yes](#)
Identical to Assembly Statement for A1172

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING:

Yes

FOLLOWING WERE PRINTED:

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REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

No

P.L. 1999, CHAPTER 296, *approved December 23, 1999*
Assembly, No. 1172 (*Second Reprint*)

1 AN ACT concerning small water companies and small sewer
2 companies, amending P.L.1981, c.347 and P.L.1981, c.389, and
3 supplementing Title 58 of the Revised Statutes.

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

7
8 1. The title of P.L.1981, c.347 is amended to read as follows:

9 AN ACT concerning improvements to the facilities and services of
10 small water companies and small sewer companies and
11 supplementing Title 58 of the Revised Statutes.

12
13 2. Section 1 of P.L.1981, c.347 (C.58:11-59) is amended to read
14 as follows:

15 1. a. Whenever **[any]** a small water company or a small sewer
16 company, or both, is found**[, after notice and public hearing,]** to have
17 failed to comply**[, within a specified time,]** with **[any order]**
18 **¹[orders] any unstayed order¹** of the Department of Environmental
19 Protection concerning the availability of water, the potability of water
20 **[and] ¹[or].¹ ²or²** the provision of water at adequate volume and
21 pressure, **¹or ²any unstayed order finding a small water company or a**
22 **small sewer company or both² a significant noncomplier or ²requiring²**
23 **the abatement of a serious violation, as those terms are defined**
24 **pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3),¹** which the
25 department is authorized to enforce pursuant to Title 58 of the
26 Revised Statutes, **¹[or with any applicable federal or State water**
27 **pollution control and safe drinking water statutes and regulations,]¹**
28 the department and the Board of Public Utilities **[shall] may, after**
29 **30 days** notice to capable proximate public or private water or sewer
30 companies, municipal utilities authorities established pursuant to
31 P.L.1957, c.183 (C.40:14B-1 et seq.), municipalities or any other
32 suitable **[governmental] public or private** entities wherein the small
33 water company, small sewer company, or both, provides service,
34 conduct a joint public hearing to **[determine] announce:** the actions
35 that may be taken and the expenditures that may be required, including
36 acquisition costs, to make all improvements necessary to assure the
37 availability of water, the potability of water and the provision thereof

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ASH committee amendments adopted February 10, 1998.

² Senate SEN committee amendments adopted May 6, 1999.

1 at adequate volume and pressure, and the compliance with all
2 applicable federal and State water pollution control requirements for
3 a small sewer company, including, but not necessarily limited to, the
4 acquisition of the small water company or small sewer company, or
5 both, by the most suitable public or private entity.

6 At the hearing the department and the board shall state the costs
7 that are expected to be borne by the current users of the small water
8 company, small sewer company, or both. The department shall
9 propose an administrative consent order setting forth an agreed upon
10 time schedule by which the acquiring entity would be required to make
11 improvements required to resolve existing violations of federal and
12 State safe drinking water and water pollution control statutes and
13 regulations. The administrative consent order shall stipulate that the
14 acquiring entity shall not be liable for any fines or penalties for
15 continuing violations arising from the deficiencies, obsolescence or
16 disrepair of the facilities at the time of the acquisition, provided that:

17 (1) the stipulation shall be conditioned upon compliance by the
18 acquiring entity with the timeframes established for improving the
19 facilities and eliminating the existing violations; and

20 (2) the stipulation shall not include any violation to the extent
21 caused by operational error, lack of preventive maintenance or careless
22 or improper operation by the acquiring entity.

23 Under no circumstances shall the acquiring entity be liable for
24 violations ¹~~【occurring】~~ occurring¹ prior to the acquisition.

25 At the conclusion of a hearing conducted pursuant to this section
26 the record of the hearing shall be kept open for 30 days to allow for
27 the submission of additional comments. **【As used in this act, "small**
28 water company" means any company, purveyor or entity, other than
29 a governmental agency, that provides water for human consumption
30 and which regularly serves less than 1,000 customer connections. **】**

31 b. As used in sections 1 through 4 of P.L.1981, c.347 (C.58:11-59
32 through 58:11-62):

33 "Small water company" means any company, purveyor or entity,
34 other than a governmental agency, that provides water for human
35 consumption and which regularly serves less than 1,000 customer
36 connections ; and

37 "Small sewer company" means any company, business, or entity,
38 other than a governmental agency, which is a public utility as defined
39 pursuant to R.S.48:2-13, that collects, stores, conveys, or treats
40 primarily domestic wastewater, and that regularly serves less than
41 1,000 customer connections.

42 (cf: P.L.1994, c.58, s.57)

43

44 3. Section 2 of P.L.1981, c.347 (C.58:11-60) is amended to read
45 as follows:

46 2. a. Compensation for the acquisition of a small water company,

1 small sewer company, or both, shall be determined:

2 **【a.】** (1) By agreement between the parties, subject to the approval
3 of the Board of Public Utilities, in consultation with the Department
4 of Environmental Protection, and after the holding of a joint public
5 hearing by the board and the department; or

6 **【b.】** (2) Through use of the power of eminent domain by the
7 appropriate agencies or, the provisions of section 34 of P.L.1957,
8 c.183 (C.40:14B-34) to the contrary notwithstanding, the designated
9 acquiring public or private entity.

10 b. Compensation shall be the commercially reasonable value as
11 determined by agreement between the small water company, small
12 sewer company, or both, and the designated acquiring public or private
13 entity, as approved by the board and the department, or the appraised
14 value as established through eminent domain proceedings. Upon
15 remittance of the compensation as set forth herein, the designated
16 acquiring public or private entity shall obtain title to the assets of the
17 small water company, small sewer company, or both, free and clear of
18 all liens, claims and encumbrances, judgments, security interests, fines,
19 penalties, and outstanding taxes incurred by the small water company,
20 small sewer company, or both. The acquiring public or private entity
21 shall place in escrow or deposit in court so much of the compensation
22 amount as necessary to satisfy any liens, claims and encumbrances,
23 judgments, security interests, fines, penalties, and outstanding taxes
24 which are of record or of which the designated acquiring public or
25 private entity has actual knowledge.

26 Nothing contained herein shall waive, or impair the right of any
27 creditor, including a secured creditor, to obtain payment directly from
28 the owner or operator of the small water company or small sewer
29 company from the proceeds of any acquisition concluded pursuant to
30 the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of
31 P.L.1981, c.389 (C.58:11-63) and P.L., c. (C. _____)(pending in
32 the Legislature as this bill).

33 No fines or penalties incurred by the owner or operator of a small
34 water company or small sewer company shall be a liability of the
35 owner or operator of the designated acquiring public or private entity,
36 of the service users of the acquired small water company or small
37 sewer company or any service user of the water supply or sewer
38 system of the designated acquiring public or private entity. Any such
39 incurred penalties shall remain the sole liability of the owner or
40 operator who incurred the penalties.

41 **【d.】** c. If a small water company and a small sewer company serve
42 a common residential development², were² established by the
43 developer to service that development²,² and are under common
44 control and ownership, and if the small water company or the small
45 sewer company, or both, has failed to comply with an order of the
46 Department of Environmental Protection and is subject to the

1 provisions of section 1 of P.L.1981, c.347 (C.58:11-59), they may be
2 treated as one company for the purposes of sections 1 through 4 of
3 P.L.1981, c.347 (C.58:11-59 through 58:11-62), section 1 of
4 P.L.1981, c.389 (C.58:11-63) and P.L. , c. (C.) (pending
5 in the Legislature as this bill), provided that the proceeds of the
6 acquisition shall be segregated and distributed based on the ² [fair
7 market value] commercially reasonable² or appraised value of each
8 company.
9 (cf: P.L.1981, c.347, s.2)

10

11 4. Section 3 of P.L.1981, c.347 (C.58:11-61) is amended to read
12 as follows:

13 3. a. The Department of Environmental Protection and the Board
14 of Public Utilities, upon a determination that the costs of
15 improvements to and the acquisition of the small water company, small
16 sewer company, or both, are necessary and reasonable, **[shall] may**
17 order the acquisition of the small water company, small sewer
18 company, or both, by the most suitable public or private entity
19 pursuant to ² [section 2 of P.L.1981, c.347 (C.58:11-60)] this section².
20 This order shall provide for the immediate inclusion in the rates of the
21 designated acquiring **[company]** public or private entity the
22 anticipated costs of necessary improvements, or, if the determination
23 of acquisition costs has been deferred, as soon as possible thereafter
24 as may be practicable and feasible. No order may be issued pursuant
25 to this section until at least 30 days following the date of the hearing
26 conducted pursuant to section 1 of P.L.1981, c.347 (C.58:11-59).

27 b. The Board of Public Utilities shall extend the franchise area of
28 the designated acquiring public or private **[water company]** entity to
29 the extent necessary to cover the service area of the small water
30 company, small sewer company, or both, taken over pursuant to **[this**
31 **act]** the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section
32 1 of P.L.1981, c.389 (C.58:11-63) and P.L. , c.
33 (C.) (pending in the Legislature as this bill). The governing
34 body of the municipality in which the small water company, small
35 sewer company, or both, are located shall provide the board with the
36 municipal consent that allows the designated acquiring public or
37 private entity to operate within the franchise area. The board shall
38 approve any municipal consent granted pursuant to this subsection
39 necessary to cover the service area of the small water company, small
40 sewer company, or both, acquired pursuant to the provisions of
41 P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389
42 (C.58:11-63) and P.L. , c. (C.) (pending in the Legislature
43 as this bill).

44 c. An order issued ² **[by the board]**² pursuant to this section
45 designating a public or private entity to acquire a small water

1 company, small sewer company, or both, shall authorize the public or
2 private entity to commence eminent domain proceedings in accordance
3 with P.L.1971, c.361 (C.20:3-1 et seq.), without further petition to,
4 or further order by, the board. Prior to commencing eminent domain
5 proceedings, an appropriate officer of the designated acquiring public
6 or private entity shall transmit notice to the board, the department, and
7 all parties affected by the order issued pursuant to this section,
8 including, without limitation, any person or entity having a recorded
9 interest in the land or property which may be subject to eminent
10 domain proceedings pursuant to the provisions of P.L.1981, c.347
11 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63) and
12 P.L. , c. (C.)(pending in the Legislature as this bill). Notice
13 provided to such parties pursuant to this section shall satisfy the notice
14 requirements set forth in R.S.48:3-17.

15 d. An order issued ²[by the board]² pursuant to this section shall
16 constitute revocation by the board of the franchise of the small water
17 company, small sewer company, or both, to be acquired and shall
18 render the owner or operator of the acquired small water company,
19 small sewer company, or both, unfit to hold any other water or sewer
20 franchise or municipal consent to provide water or sewer service.
21 (cf: P.L.1981, c.347, s.3)

22

23 5. Section 4 of P.L.1981, c.347(C.58:11-62) is amended to read as
24 follows:

25 4. Any water company, sewer company, municipal utilities
26 authority **【, municipality】** or other suitable **【governmental】** public or
27 private entity which receives an order pursuant to section 3 of **【this**
28 **act】** P.L.1981, c.347 (C.58:11-61) shall acquire the small water
29 company, small sewer company, or both, and shall make the necessary
30 improvements to assure the availability of water, the potability of the
31 water and the provision of water at adequate volume and pressure and
32 the compliance with all applicable federal and State water pollution
33 control requirements in the case of a small sewer company. The small
34 water company, small sewer company, or both, as the case may be,
35 shall immediately comply with the order and shall facilitate its sale to
36 the water company, sewer company, municipal utilities authority,
37 **【municipality】** or other suitable **【governmental】** public or private
38 entity ordered to acquire the small water company, the small sewer
39 company, or both, as the case may be.

40 (cf: P.L.1981, c.347, s.4)

41

42 6. Section 1 of P.L.1989, c.389 (C.58:11-63) is amended to read
43 as follows:

44 1. Whenever the Department of Environmental Protection and the
45 Board of Public Utilities order the acquisition of a small water
46 company, small sewer company, or both, by the most suitable public

1 or private entity pursuant to **law** the provisions of P.L.1981, c.347
2 (C.58:11-59 et seq.) and P.L. , c. (C.)(pending in the
3 Legislature as this bill), the board may, in its discretion, allow the
4 designated acquiring **company** public or private entity to charge and
5 collect a differential rate from the customers of the small water
6 company, small sewer company, or both, for the use or service of the
7 acquiring **company's** public or private entity's water supply system
8 or facilities, sewage system or facilities, or both.

9 As used in this section "small water company" and "small sewer
10 company" shall have the same meaning as in section 1 of P.L.1981,
11 c.347 (C.58:11-59).

12 (cf: P.L.1981, c.389, s.1).

13

14 7. (New Section) a. Whenever a public or private entity receives
15 an order pursuant to section 3 of P.L.1981, c.347 (C.58:11-61) to
16 acquire a small sewer company, the cost to the designated acquiring
17 public or private entity of the improvements to the acquired small
18 sewer company necessary to assure the compliance with all applicable
19 federal and State water pollution control requirements for a small
20 sewer company shall be eligible for financing pursuant to the "New
21 Jersey Environmental Infrastructure Trust Act," P.L.1985, c.334
22 (C.58:11B-1 et seq.)¹, as amended by P.L.1997, c.224¹. Any loan
23 application made by an acquiring public entity pursuant to this
24 subsection shall be expedited by the New Jersey Environmental
25 Infrastructure Trust and the Department of Environmental Protection,
26 to the maximum extent feasible while still maintaining compliance with
27 all applicable laws, rules and regulations.

28 b. Whenever a public or private entity receives an order pursuant
29 to section 3 of P.L.1981, c.347 (C.58:11-61) to acquire a small water
30 company, the cost to the designated acquiring public or private entity
31 of the improvements to the acquired small water company necessary
32 to assure the availability of water, the potability of water, and the
33 provision thereof at adequate volume and pressure and compliance
34 with all applicable federal and State safe drinking water requirements
35 for a small water company, shall be eligible for financing pursuant to
36 the "New Jersey Environmental Infrastructure Trust Act," P.L.1985,
37 c.334 (C.58:11B-1 et seq.)¹, as amended by P.L.1997, c.224¹. Any
38 loan application made by an acquiring public entity pursuant to this
39 subsection shall be expedited by the New Jersey Environmental
40 Infrastructure Trust and the Department of Environmental Protection,
41 to the maximum extent feasible while still maintaining compliance with
42 all applicable laws, rules and regulations.

43 c. The provisions of any other law or rule or regulation adopted
44 pursuant thereto to the contrary notwithstanding, improvements to an
45 acquired small water company pursuant to the provisions of P.L.1981,
46 c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63)

1 and P.L. , c. (C.)(pending in the Legislature as this bill) shall
2 constitute a water supply project for the purposes of P.L.1981, c.261,
3 as amended by P.L.1983, c.355 and P.L.1997, c.223.

4 d. As used in this section "small water company" and "small sewer
5 company" shall have the same meaning as in section 1 of P.L.1981,
6 c.347 (C.58:11-59).

7
8 8. (New Section) The provisions of any law, or rule or regulation
9 adopted pursuant thereto to the contrary notwithstanding, whenever
10 a public or private entity receives an order pursuant to section 3 of
11 P.L.1981, c.247 (C.58:11-61) to acquire a small water company, small
12 sewer company, or both, the designated acquiring public or private
13 entity shall not be deemed the discharger or responsible party for a
14 discharge of a hazardous substance that occurred prior to the
15 acquisition and is attributed to the facilities being acquired, and shall
16 not be liable for any required cleanup and removal costs or damages
17 resulting from any such discharge of a hazardous substance. As a
18 condition of, and at the time of the acquisition, the designated
19 acquiring public or private entity shall conduct a preliminary
20 assessment and a site investigation of the facilities to be acquired to
21 ascertain the presence and the levels of any hazardous substance.
22 Neither the designated acquiring public or private entity, the service
23 users of the small water company or small sewer company being
24 acquired, or the users of the designated acquiring public or private
25 entity's services shall have any liability for cleanup and removal costs
26 relating to any hazardous discharge identified by the site investigation
27 conducted pursuant to this section as being a pre-acquisition
28 hazardous discharge, provided that the designated acquiring public or
29 private entity shall exercise reasonable care in addressing any
30 environmental contamination at the facilities upon acquisition.

31 The exemption from liability granted to an acquiring public or
32 private entity pursuant to this section shall not apply to the designated
33 acquiring public or private entity's liability, pursuant to any law or rule
34 or regulation, for arranging for the off-site disposal or treatment of a
35 hazardous substance or for transporting and disposing of a hazardous
36 substance at an off-site facility selected by the designated acquiring
37 public or private entity.

38 Nothing in this section shall prohibit or limit the right of the
39 Department of Environmental Protection to undertake a cleanup of the
40 property or to obtain a lien on the property for the cost of a cleanup
41 pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f). Any
42 recovery of cleanup and removal costs from an acquiring public or
43 private entity pursuant to a lien obtained by the Department of
44 Environmental Protection shall be limited to the actual financial benefit
45 realized by the designated acquiring public or private entity solely due
46 to a cleanup or removal action. Recovery by the Department of

1 Environmental Protection shall be conditioned upon the department
2 providing a detailed financial analysis to the designated acquiring
3 public or private entity demonstrating that the actual financial gain
4 realized by the designated acquiring public or private entity is due
5 solely to the cleanup or removal action. The acquiring entity shall
6 have 30 days to notify the department, in writing, of any dispute
7 relating to the financial analysis or the department's determination of
8 actual financial gain. The Department of Environmental Protection
9 shall negotiate, for a period not to exceed 30 days, with the designated
10 acquiring public or private entity to resolve any dispute relating to the
11 financial analysis or the department's determination of actual financial
12 gain identified by the designated acquiring public or private entity
13 prior to imposition of a lien. The department may waive any lien or
14 recovery if warranted by the circumstances.

15 As used in this section "small water company" and "small sewer
16 company" shall have the same meaning as in section 1 of P.L.1981,
17 c.347 (C.58:11-59).

18

19 9. (New Section) Any owner or operator of a small water
20 company, small sewer company, or both, who violates the provisions
21 of P.L.1981, c.347 (C.58:11-59 et seq.^{2 2}), section 1 of P.L.1981,
22 c.389 (C.58:11-63), or P.L.1997, c. (C.) (before the Legislature
23 as this bill), or fails to comply with any order issued pursuant to
24 section 3 of P.L.1981, c.347 (C.58:11-61), shall be subject upon order
25 of a court to a civil penalty not to exceed \$50,000 per day of such
26 violation, and each day's continuance of the violation shall constitute
27 a separate violation. Any penalty incurred pursuant to this section may
28 be recovered with costs, and, if applicable, interest charges, in a
29 summary proceeding pursuant to "the penalty enforcement law"
30 (N.J.S.2A-58-1 et seq.). The Board of Public Utilities or the
31 Department of Environmental Protection may also commence a civil
32 action in Superior Court for any other appropriate relief, including
33 without limitation, a temporary or permanent injunction, and the
34 reasonable costs of preparing and litigating the case. Use of any of the
35 remedies in this section shall not preclude the use of any other remedy
36 available to the Board of Public Utilities or the Department of
37 Environmental Protection under this section or under any other
38 applicable law. As used in this section "small water company" and
39 "small sewer company" shall have the same meaning as in section 1 of
40 P.L.1981, c.347 (C.58:11-59).

41

42 ²10. (New section) Nothing in the provisions of P.L.1981, c.347
43 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63), or
44 P.L. c. (C.) (pending in the Legislature as this bill) shall be
45 construed to prohibit the Board of Public Utilities from determining,
46 after notice and hearing, that a franchise or other authority to operate
47 should be revoked for good cause or that penalties as may otherwise

1 ~~be authorized, should be imposed.~~²

2

3 ²[10.] 11.² This act shall take effect immediately.

4

5

6

7

8 Establishes procedure for takeover of certain small sewer companies.

ASSEMBLY, No. 1172

STATE OF NEW JERSEY
208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Assemblywoman CONNIE MYERS

District 23 (Warren, Hunterdon and Mercer)

SYNOPSIS

Establishes procedure for takeover of certain small sewer companies.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



A1172 MYERS

2

1 AN ACT concerning small water companies and small sewer
2 companies, amending P.L.1981, c.347 and P.L.1981, c.389, and
3 supplementing Title 58 of the Revised Statutes.

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

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8 1. The title of P.L.1981, c.347 is amended to read as follows:

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10 small water companies and small sewer companies and
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13 2. Section 1 of P.L.1981, c.347 (C.58:11-59) is amended to read
14 as follows:

15 1. a. Whenever **[any]** a small water company or a small sewer
16 company, or both, is found **[,** after notice and public hearing, **]** to
17 have failed to comply **[,** within a specified time, **]** with **[any order]**
18 orders of the Department of Environmental Protection concerning the
19 availability of water, the potability of water **[and]** or the provision of
20 water at adequate volume and pressure, which the department is
21 authorized to enforce pursuant to Title 58 of the Revised Statutes, or
22 with any applicable federal or State water pollution control and safe
23 drinking water statutes and regulations, the department and the Board
24 of Public Utilities **[shall]** may, after 30 days notice to capable
25 proximate public or private water or sewer companies, municipal
26 utilities authorities established pursuant to P.L.1957, c.183
27 (C.40:14B-1 et seq.), municipalities or any other suitable
28 **[governmental]** public or private entities wherein the small water
29 company, small sewer company, or both, provides service, conduct a
30 joint public hearing to **[determine]** announce: the actions that may be
31 taken and the expenditures that may be required, including acquisition
32 costs, to make all improvements necessary to assure the availability of
33 water, the potability of water and the provision thereof at adequate
34 volume and pressure, and the compliance with all applicable federal
35 and State water pollution control requirements for a small sewer
36 company, including, but not necessarily limited to, the acquisition of
37 the small water company or small sewer company, or both, by the
38 most suitable public or private entity.

39 At the hearing the department and the board shall state the costs
40 that are expected to be borne by the current users of the small water
41 company, small sewer company, or both. The department shall
42 propose an administrative consent order setting forth an agreed upon

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

Matter underlined thus is new matter.

1 time schedule by which the acquiring entity would be required to make
2 improvements required to resolve existing violations of federal and
3 State safe drinking water and water pollution control statutes and
4 regulations. The administrative consent order shall stipulate that the
5 acquiring entity shall not be liable for any fines or penalties for
6 continuing violations arising from the deficiencies, obsolescence or
7 disrepair of the facilities at the time of the acquisition, provided that:

8 (1) the stipulation shall be conditioned upon compliance by the
9 acquiring entity with the timeframes established for improving the
10 facilities and eliminating the existing violations; and

11 (2) the stipulation shall not include any violation to the extent
12 caused by operational error, lack of preventive maintenance or careless
13 or improper operation by the acquiring entity.

14 Under no circumstances shall the acquiring entity be liable for
15 violations occurring prior to the acquisition.

16 At the conclusion of a hearing conducted pursuant to this section
17 the record of the hearing shall be kept open for 30 days to allow for
18 the submission of additional comments. [As used in this act, "small
19 water company" means any company, purveyor or entity, other than
20 a governmental agency, that provides water for human consumption
21 and which regularly serves less than 1,000 customer connections.]

22 b. As used in sections 1 through 4 of P.L.1981, c.347 (C.58:11-59
23 through 58:11-62):

24 "Small water company" means any company, purveyor or entity,
25 other than a governmental agency, that provides water for human
26 consumption and which regularly serves less than 1,000 customer
27 connections ; and

28 "Small sewer company" means any company, business, or entity,
29 other than a governmental agency, which is a public utility as defined
30 pursuant to R.S.48:2-13, that collects, stores, conveys, or treats
31 primarily domestic wastewater, and that regularly serves less than
32 1,000 customer connections.

33 (cf: P.L.1994, c.58, s.57)

34

35 3. Section 2 of P.L.1981, c.347 (C.58:11-60) is amended to read
36 as follows:

37 2. a. Compensation for the acquisition of a small water company,
38 small sewer company, or both, shall be determined:

39 **[a.]** (1) By agreement between the parties, subject to the approval
40 of the Board of Public Utilities, in consultation with the Department
41 of Environmental Protection, and after the holding of a joint public
42 hearing by the board and the department; or

43 **[b.]** (2) Through use of the power of eminent domain by the
44 appropriate agencies or, the provisions of section 34 of P.L.1957,
45 c.183 (C.40:14B-34) to the contrary notwithstanding, the designated
46 acquiring public or private entity.

1 b. Compensation shall be the commercially reasonable value as
2 determined by agreement between the small water company, small
3 sewer company, or both, and the designated acquiring public or private
4 entity, as approved by the board and the department, or the appraised
5 value as established through eminent domain proceedings. Upon
6 remittance of the compensation as set forth herein, the designated
7 acquiring public or private entity shall obtain title to the assets of the
8 small water company, small sewer company, or both, free and clear of
9 all liens, claims and encumbrances, judgments, security interests, fines,
10 penalties, and outstanding taxes incurred by the small water company,
11 small sewer company, or both. The acquiring public or private entity
12 shall place in escrow or deposit in court so much of the compensation
13 amount as necessary to satisfy any liens, claims and encumbrances,
14 judgments, security interests, fines, penalties, and outstanding taxes
15 which are of record or of which the designated acquiring public or
16 private entity has actual knowledge.

17 Nothing contained herein shall waive, or impair the right of any
18 creditor, including a secured creditor, to obtain payment directly from
19 the owner or operator of the small water company or small sewer
20 company from the proceeds of any acquisition concluded pursuant to
21 the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of
22 P.L.1981, c.389 (C.58:11-63) and P.L., c. (C. _____)(pending in
23 the Legislature as this bill).

24 No fines or penalties incurred by the owner or operator of a small
25 water company or small sewer company shall be a liability of the
26 owner or operator of the designated acquiring public or private entity,
27 of the service users of the acquired small water company or small
28 sewer company or any service user of the water supply or sewer
29 system of the designated acquiring public or private entity. Any such
30 incurred penalties shall remain the sole liability of the owner or
31 operator who incurred the penalties.

32 [d.] c. If a small water company and a small sewer company serve
33 a common residential development established by the developer to
34 service that development and are under common control and
35 ownership , and if the small water company or the small sewer
36 company, or both, has failed to comply with an order of the
37 Department of Environmental Protection and is subject to the
38 provisions of section 1 of P.L.1981, c.347 (C.58:11-59), they may be
39 treated as one company for the purposes of sections 1 through 4 of
40 P.L.1981, c.347 (C.58:11-59 through 58:11-62), section 1 of
41 P.L.1981, c.389 (C.58:11-63) and P.L. , c. (C. _____)(pending
42 in the Legislature as this bill), provided that the proceeds of the
43 acquisition shall be segregated and distributed based on the fair market
44 value or appraised value of each company.

45 (cf: P.L.1981, c.347, s.2)

1 4. Section 3 of P.L.1981, c.347 (C.58:11-61) is amended to read
2 as follows:

3 3. a. The Department of Environmental Protection and the Board
4 of Public Utilities, upon a determination that the costs of
5 improvements to and the acquisition of the small water company, small
6 sewer company, or both, are necessary and reasonable, ~~【shall】~~ may
7 order the acquisition of the small water company, small sewer
8 company, or both, by the most suitable public or private entity
9 pursuant to section 2 of P.L.1981, c.347 (C.58:11-60). This order
10 shall provide for the immediate inclusion in the rates of the designated
11 acquiring ~~【company】~~ public or private entity the anticipated costs of
12 necessary improvements, or, if the determination of acquisition costs
13 has been deferred, as soon as possible thereafter as may be practicable
14 and feasible. No order may be issued pursuant to this section until at
15 least 30 days following the date of the hearing conducted pursuant to
16 section 1 of P.L.1981, c.347 (C.58:11-59).

17 b. The Board of Public Utilities shall extend the franchise area of
18 the designated acquiring public or private ~~【water company】~~ entity to
19 the extent necessary to cover the service area of the small water
20 company, small sewer company, or both, taken over pursuant to ~~【this~~
21 act】 the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section
22 1 of P.L.1981, c.389 (C.58:11-63) and P.L. , c.
23 (C.) (pending in the Legislature as this bill). The governing
24 body of the municipality in which the small water company, small
25 sewer company, or both, are located shall provide the board with the
26 municipal consent that allows the designated acquiring public or
27 private entity to operate within the franchise area. The board shall
28 approve any municipal consent granted pursuant to this subsection
29 necessary to cover the service area of the small water company, small
30 sewer company, or both, acquired pursuant to the provisions of
31 P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389
32 (C.58:11-63) and P.L. , c. (C.) (pending in the
33 Legislature as this bill).

34 c. An order issued by the board pursuant to this section designating
35 a public or private entity to acquire a small water company, small
36 sewer company, or both, shall authorize the public or private entity to
37 commence eminent domain proceedings in accordance with P.L.1971,
38 c.361 (C.20:3-1 et seq.), without further petition to, or further order
39 by, the board. Prior to commencing eminent domain proceedings, an
40 appropriate officer of the designated acquiring public or private entity
41 shall transmit notice to the board, the department, and all parties
42 affected by the order issued pursuant to this section, including,
43 without limitation, any person or entity having a recorded interest in
44 the land or property which may be subject to eminent domain
45 proceedings pursuant to the provisions of P.L.1981, c.347
46 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63) and

1 P.L. , c. (C. _____)(pending in the Legislature as this bill).
2 Notice provided to such parties pursuant to this section shall satisfy
3 the notice requirements set forth in R.S.48:3-17.

4 d. An order issued by the board pursuant to this section shall
5 constitute revocation by the board of the franchise of the small water
6 company, small sewer company, or both, to be acquired and shall
7 render the owner or operator of the acquired small water company,
8 small sewer company, or both, unfit to hold any other water or sewer
9 franchise or municipal consent to provide water or sewer service.

10 (cf: P.L.1981, c.347, s.3)

11

12 5. Section 4 of P.L.1981, c.347(C.58:11-62) is amended to read as
13 follows:

14 4. Any water company, sewer company, municipal utilities
15 authority **[, municipality]** or other suitable **[governmental]** public or
16 private entity which receives an order pursuant to section 3 of **[this**
17 **act]** P.L.1981, c.347 (C.58:11-61) shall acquire the small water
18 company, small sewer company, or both, and shall make the necessary
19 improvements to assure the availability of water, the potability of the
20 water and the provision of water at adequate volume and pressure and
21 the compliance with all applicable federal and State water pollution
22 control requirements in the case of a small sewer company. The small
23 water company, small sewer company, or both, as the case may be,
24 shall immediately comply with the order and shall facilitate its sale to
25 the water company, sewer company, municipal utilities authority,
26 **[municipality]** or other suitable **[governmental]** public or private
27 entity ordered to acquire the small water company, the small sewer
28 company, or both, as the case may be.

29 (cf: P.L.1981, c.347, s.4)

30

31 6. Section 1 of P.L.1989, c.389 (C.58:11-63) is amended to read
32 as follows:

33 1. Whenever the Department of Environmental Protection and the
34 Board of Public Utilities order the acquisition of a small water
35 company, small sewer company, or both, by the most suitable public
36 or private entity pursuant to **[law]** the provisions of P.L.1981, c.347
37 (C.58:11-59 et seq.) and P.L. , c. (C. _____)(pending in the
38 Legislature as this bill), the board may, in its discretion, allow the
39 designated acquiring **[company]** public or private entity to charge and
40 collect a differential rate from the customers of the small water
41 company, small sewer company, or both, for the use or service of the
42 acquiring **[company's]** public or private entity's water supply system
43 or facilities, sewage system or facilities, or both.

44 As used in this section "small water company" and "small sewer

1 company" shall have the same meaning as in section 1 of P.L.1981,
2 c.347 (C.58:11-59).

3 (cf: P.L.1981, c.389, s.1).

4

5 7. (New Section) a. Whenever a public or private entity receives
6 an order pursuant to section 3 of P.L.1981, c.347 (C.58:11-61) to
7 acquire a small sewer company, the cost to the designated acquiring
8 public or private entity of the improvements to the acquired small
9 sewer company necessary to assure the compliance with all applicable
10 federal and State water pollution control requirements for a small
11 sewer company shall be eligible for financing pursuant to the "New
12 Jersey Environmental Infrastructure Trust Act," P.L.1985, c.334
13 (C.58:11B-1 et seq.). Any loan application made by an acquiring
14 public entity pursuant to this subsection shall be expedited by the New
15 Jersey Environmental Infrastructure Trust and the Department of
16 Environmental Protection, to the maximum extent feasible while still
17 maintaining compliance with all applicable laws, rules and regulations.

18 b. Whenever a public or private entity receives an order pursuant
19 to section 3 of P.L.1981, c.347 (C.58:11-61) to acquire a small water
20 company, the cost to the designated acquiring public or private entity
21 of the improvements to the acquired small water company necessary
22 to assure the availability of water, the potability of water, and the
23 provision thereof at adequate volume and pressure and compliance
24 with all applicable federal and State safe drinking water requirements
25 for a small water company, shall be eligible for financing pursuant to
26 the "New Jersey Environmental Infrastructure Trust Act," P.L.1985,
27 c.334 (C.58:11B-1 et seq.). Any loan application made by an
28 acquiring public entity pursuant to this subsection shall be expedited
29 by the New Jersey Environmental Infrastructure Trust and the
30 Department of Environmental Protection, to the maximum extent
31 feasible while still maintaining compliance with all applicable laws,
32 rules and regulations.

33 c. The provisions of any other law or rule or regulation adopted
34 pursuant thereto to the contrary notwithstanding, improvements to an
35 acquired small water company pursuant to the provisions of P.L.1981,
36 c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63)
37 and P.L. , c. (C.) (pending in the Legislature as this bill)
38 shall constitute a water supply project for the purposes of P.L.1981,
39 c.261, as amended by P.L.1983, c.355 and P.L.1997, c.223.

40 d. As used in this section "small water company" and "small sewer
41 company" shall have the same meaning as in section 1 of P.L.1981,
42 c.347 (C.58:11-59).

43

44 8. (New Section) The provisions of any law, or rule or regulation
45 adopted pursuant thereto to the contrary notwithstanding, whenever
46 a public or private entity receives an order pursuant to section 3 of

1 P.L.1981, c.247 (C.58:11-61) to acquire a small water company, small
2 sewer company, or both, the designated acquiring public or private
3 entity shall not be deemed the discharger or responsible party for a
4 discharge of a hazardous substance that occurred prior to the
5 acquisition and is attributed to the facilities being acquired, and shall
6 not be liable for any required cleanup and removal costs or damages
7 resulting from any such discharge of a hazardous substance. As a
8 condition of, and at the time of the acquisition, the designated
9 acquiring public or private entity shall conduct a preliminary
10 assessment and a site investigation of the facilities to be acquired to
11 ascertain the presence and the levels of any hazardous substance.
12 Neither the designated acquiring public or private entity, the service
13 users of the small water company or small sewer company being
14 acquired, or the users of the designated acquiring public or private
15 entity's services shall have any liability for cleanup and removal costs
16 relating to any hazardous discharge identified by the site investigation
17 conducted pursuant to this section as being a pre-acquisition
18 hazardous discharge, provided that the designated acquiring public or
19 private entity shall exercise reasonable care in addressing any
20 environmental contamination at the facilities upon acquisition.

21 The exemption from liability granted to an acquiring public or
22 private entity pursuant to this section shall not apply to the designated
23 acquiring public or private entity's liability, pursuant to any law or rule
24 or regulation, for arranging for the off-site disposal or treatment of a
25 hazardous substance or for transporting and disposing of a hazardous
26 substance at an off-site facility selected by the designated acquiring
27 public or private entity.

28 Nothing in this section shall prohibit or limit the right of the
29 Department of Environmental Protection to undertake a cleanup of the
30 property or to obtain a lien on the property for the cost of a cleanup
31 pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f). Any
32 recovery of cleanup and removal costs from an acquiring public or
33 private entity pursuant to a lien obtained by the Department of
34 Environmental Protection shall be limited to the actual financial benefit
35 realized by the designated acquiring public or private entity solely due
36 to a cleanup or removal action. Recovery by the Department of
37 Environmental Protection shall be conditioned upon the department
38 providing a detailed financial analysis to the designated acquiring
39 public or private entity demonstrating that the actual financial gain
40 realized by the designated acquiring public or private entity is due
41 solely to the cleanup or removal action. The acquiring entity shall
42 have 30 days to notify the department, in writing, of any dispute
43 relating to the financial analysis or the department's determination of
44 actual financial gain. The Department of Environmental Protection
45 shall negotiate, for a period not to exceed 30 days, with the designated
46 acquiring public or private entity to resolve any dispute relating to the

1 financial analysis or the department's determination of actual financial
2 gain identified by the designated acquiring public or private entity
3 prior to imposition of a lien. The department may waive any lien or
4 recovery if warranted by the circumstances.

5 As used in this section "small water company" and "small sewer
6 company" shall have the same meaning as in section 1 of P.L.1981,
7 c.347 (C.58:11-59).

8
9 9. (New Section) Any owner or operator of a small water
10 company, small sewer company, or both, who violates the provisions
11 of P.L.1981, c.347 (C.58:11-59 et seq), section 1 of P.L.1981, c.389
12 (C.58:11-63), or P.L.1997, c. (C.) (before the Legislature as
13 this bill), or fails to comply with any order issued pursuant to section
14 3 of P.L.1981, c.347 (C.58:11-61), shall be subject upon order of a
15 court to a civil penalty not to exceed \$50,000 per day of such
16 violation, and each day's continuance of the violation shall constitute
17 a separate violation. Any penalty incurred pursuant to this section may
18 be recovered with costs, and, if applicable, interest charges, in a
19 summary proceeding pursuant to "the penalty enforcement law"
20 (N.J.S.2A-58-1 et seq.). The Board of Public Utilities or the
21 Department of Environmental Protection may also commence a civil
22 action in Superior Court for any other appropriate relief, including
23 without limitation, a temporary or permanent injunction, and the
24 reasonable costs of preparing and litigating the case. Use of any of the
25 remedies in this section shall not preclude the use of any other remedy
26 available to the Board of Public Utilities or the Department of
27 Environmental Protection under this section or under any other
28 applicable law. As used in this section "small water company" and
29 "small sewer company" shall have the same meaning as in section 1 of
30 P.L.1981, c.347 (C.58:11-59).

31
32 10. This act shall take effect immediately.

33
34
35 STATEMENT

36
37 This bill would establish a procedure under which the Department
38 of Environmental Protection and the Board of Public Utilities could
39 order the acquisition and takeover of a small sewer company with a
40 record of environmental violations by another private or public water
41 or sewer company. This takeover procedure is established by revising
42 the so-called Small Water Company Takeover Act (P.L.1981, c.347;
43 C.58:11-59 et seq.) to authorize the takeover of problematic small
44 sewer companies. In addition to bringing small sewer companies
45 under the purview of the 1981 act, this bill would also clarify the
46 takeover procedure, which would apply henceforth to small water

1 companies as well as small sewer companies. The takeover procedure
2 established in this bill would be used only in instances of small water
3 or sewer companies with a serious record of violations of
4 environmental laws and failure to comply with Department of
5 Environmental Protection (DEP) orders concerning the safe and
6 efficient operation of the water supply or sewer facility.

7 The essentials of the takeover procedure as set forth in this bill are
8 as follows. The DEP and the Board of Public Utilities (BPU) would
9 hold a public hearing to announce the actions to be taken concerning
10 a small water company or sewer company which has failed to comply
11 with DEP orders concerning the operation of the water or sewer
12 company. These actions could include the acquisition of the small
13 water or sewer company by the most suitable public or private entity,
14 which under most circumstances would be another private or public
15 water or sewer system. At the public hearing the DEP would propose
16 an administrative consent order setting forth the details of the
17 acquisition. The compensation to the owner of the small water or
18 sewer company would be determined by an agreement between the
19 parties or by the use of eminent domain. The bill makes clear that any
20 outstanding fines or penalties levied against the owner or operator of
21 the small water or sewer company will not be the liability of the
22 designated acquiring public or private entity. These fines and
23 penalties, as well as delinquent taxes, would be paid out of the
24 proceeds from the acquisition. This bill also makes clear that a public
25 or private entity acquiring a small water or sewer company pursuant
26 to this bill would not be responsible for the cleanup of hazardous
27 discharges that occurred on the site of the small water or sewer
28 company prior to the acquisition.

29 The bill also provides that upgrades necessary for the proper
30 operation of a small sewer company acquired pursuant to this bill
31 would be eligible for financing under the "New Jersey Environmental
32 Infrastructure Trust Act," (P.L.1985, c.334; C.58:11B-1 et seq.) and
33 upgrades necessary for the proper operation of a small water company
34 would be eligible for financing as a water supply project with moneys
35 from the "Water Supply Bond Act of 1981," (P.L.1981, c.261, as
36 amended by P.L.1983, c.355 and P.L.1997, c.223), to the maximum
37 extent feasible while still maintaining compliance with all applicable
38 laws, rules and regulations.

ASSEMBLY SOLID AND HAZARDOUS WASTE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1172

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 10, 1998

The Assembly Solid and Hazardous Waste Committee favorably reports Assembly Bill No. 1172 with committee amendments.

Assembly Bill No. 1172 would establish a procedure under which the Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) could order the acquisition and takeover of a small sewer company with a record of environmental violations by another private or public water or sewer company. This takeover procedure is established by revising the so-called Small Water Company Takeover Act (P.L.1981, c.347; C.58:11-59 et seq.) to authorize the takeover of problematic small sewer companies. In addition to bringing small sewer companies under the purview of the 1981 act, this bill would also clarify the takeover procedure, which would apply henceforth to small water companies as well as small sewer companies. The takeover procedure established in this bill would be used only in instances of small water or sewer companies with a serious record of violations of environmental laws and failure to comply with DEP orders concerning the safe and efficient operation of the water supply or sewer facility.

The essentials of the takeover procedure as set forth in this bill are as follows. The DEP and the BPU would hold a public hearing to announce the actions to be taken concerning a small water company or sewer company which has failed to comply with DEP orders concerning the operation of the water or sewer company. These actions could include the acquisition of the small water or sewer company by the most suitable public or private entity, which under most circumstances would be another private or public water or sewer system. At the public hearing the DEP would propose an administrative consent order setting forth the details of the acquisition. The compensation to the owner of the small water or sewer company would be determined by an agreement between the parties or by the use of eminent domain. The bill makes clear that any outstanding fines or penalties levied against the owner or operator of the small water or sewer company will not be the liability of the designated acquiring public or private entity. These fines and penalties, as well as delinquent taxes, would be paid out of the proceeds from the acquisition. The bill

also makes clear that a public or private entity acquiring a small water or sewer company pursuant to the provisions of this bill would not be responsible for the cleanup of hazardous discharges that occurred on the site of the small water or sewer company prior to the acquisition.

The bill also provides that upgrades necessary for the proper operation of a small sewer company acquired pursuant to the provisions of this bill would be eligible for financing under the "New Jersey Environmental Infrastructure Trust Act," (P.L.1985, c.334; C.58:11B-1 et seq.) and upgrades necessary for the proper operation of a small water company would be eligible for financing as a water supply project with moneys from the "Water Supply Bond Act of 1981," (P.L.1981, c.261, as amended by P.L.1983, c.355 and P.L.1997, c.223), to the maximum extent feasible while still maintaining compliance with all applicable laws, rules and regulations.

Assembly committee amendments make several technical changes to the bill.

This bill was pre-filed for introduction in the 1998 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1172

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 6, 1999

The Senate Environment Committee favorably reports Assembly Bill No. 1172 (1R) with committee amendments.

This bill would establish a procedure under which the Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) could order the acquisition and takeover of a small sewer company with a record of environmental violations by another private or public water or sewer company. This takeover procedure is established by revising the so-called Small Water Company Takeover Act (P.L.1981, c.347; C.58:11-59 et seq.) to authorize the takeover of problematic small sewer companies. In addition to bringing small sewer companies under the purview of the 1981 act, this bill would also clarify the takeover procedure, which would apply henceforth to small water companies as well as small sewer companies. The takeover procedure established in this bill would be used only in instances of small water or sewer companies with a serious record of violations of environmental laws and failure to comply with DEP orders concerning the safe and efficient operation of the water supply or sewer facility.

The essentials of the takeover procedure as set forth in this bill are as follows. The DEP and the BPU would hold a public hearing to announce the actions to be taken concerning a small water company or sewer company which has failed to comply with DEP orders concerning the operation of the water or sewer company. These actions could include the acquisition of the small water or sewer company by the most suitable public or private entity, which under most circumstances would be another private or public water or sewer system. At the public hearing the DEP would propose an administrative consent order setting forth the details of the acquisition. The compensation to the owner of the small water or sewer company would be determined by an agreement between the parties or by the use of eminent domain. The bill makes clear that any outstanding fines or penalties levied against the owner or operator of the small water or sewer company will not be the liability of the designated acquiring

public or private entity. These fines and penalties, as well as delinquent taxes, would be paid out of the proceeds from the acquisition. The bill also makes clear that a public or private entity acquiring a small water or sewer company pursuant to the provisions of this bill would not be responsible for the cleanup of hazardous discharges that occurred on the site of the small water or sewer company prior to the acquisition.

The bill also provides that upgrades necessary for the proper operation of a small sewer company acquired pursuant to the provisions of this bill would be eligible for financing under the "New Jersey Environmental Infrastructure Trust Act," (P.L.1985, c.334; C.58:11B-1 et seq.) and upgrades necessary for the proper operation of a small water company would be eligible for financing as a water supply project with moneys from the "Water Supply Bond Act of 1981," (P.L.1981, c.261, as amended by P.L.1983, c.355 and P.L.1997, c.223), to the maximum extent feasible while still maintaining compliance with all applicable laws, rules and regulations.

The committee amendments would clarify that the procedures established in this bill would not preclude the Board of Public Utilities from determining that a franchise or other authority to operate should be revoked or that penalties as may otherwise be authorized, should be imposed. The committee amendments also make technical corrections to the bill.

With the committee amendments, this bill is identical to Senate Bill No. 1134, as amended by the committee.

SENATE, No. 1134

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MAY 28, 1998

Sponsored by:

Senator DIANE ALLEN

District 7 (Burlington and Camden)

Senator WILLIAM E. SCHLUTER

District 23 (Warren, Hunterdon and Mercer)

SYNOPSIS

Establishes procedure for takeover of certain small sewer companies.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/7/1999)

S1134 ALLEN, SCHLUTER

2

1 AN ACT concerning small water companies and small sewer
2 companies, amending P.L.1981, c.347 and P.L.1981, c.389, and
3 supplementing Title 58 of the Revised Statutes.

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

7
8 1. The title of P.L.1981, c.347 is amended to read as follows:

9 AN ACT concerning improvements to the facilities and services of
10 small water companies and small sewer companies and
11 supplementing Title 58 of the Revised Statutes.

12
13 2. Section 1 of P.L.1981, c.347 (C.58:11-59) is amended to read
14 as follows:

15 1. a. Whenever [any] a small water company or a small sewer
16 company, or both, is found [, after notice and public hearing,] to
17 have failed to comply [, within a specified time,] with [any order] any
18 unstayed order of the Department of Environmental Protection
19 concerning the availability of water, the potability of water [and] , the
20 provision of water at adequate volume and pressure, or a significant
21 noncomplier or the abatement of a serious violation, as those terms are
22 defined pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3), which
23 the department is authorized to enforce pursuant to Title 58 of the
24 Revised Statutes, the department and the Board of Public Utilities
25 [shall] may, after 30 days notice to capable proximate public or private
26 water or sewer companies, municipal utilities authorities established
27 pursuant to P.L.1957, c.183 (C.40:14B-1 et seq.), municipalities or
28 any other suitable [governmental] public or private entities wherein
29 the small water company, small sewer company, or both, provides
30 service, conduct a joint public hearing to [determine] announce: the
31 actions that may be taken and the expenditures that may be required,
32 including acquisition costs, to make all improvements necessary to
33 assure the availability of water, the potability of water and the
34 provision thereof at adequate volume and pressure, and the compliance
35 with all applicable federal and State water pollution control
36 requirements for a small sewer company, including, but not necessarily
37 limited to, the acquisition of the small water company or small sewer
38 company, or both, by the most suitable public or private entity.

39 At the hearing the department and the board shall state the costs
40 that are expected to be borne by the current users of the small water
41 company, small sewer company, or both. The department shall
42 propose an administrative consent order setting forth an agreed upon
43 time schedule by which the acquiring entity would be required to make

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 improvements required to resolve existing violations of federal and
2 State safe drinking water and water pollution control statutes and
3 regulations. The administrative consent order shall stipulate that the
4 acquiring entity shall not be liable for any fines or penalties for
5 continuing violations arising from the deficiencies, obsolescence or
6 disrepair of the facilities at the time of the acquisition, provided that:

7 (1) the stipulation shall be conditioned upon compliance by the
8 acquiring entity with the timeframes established for improving the
9 facilities and eliminating the existing violations; and

10 (2) the stipulation shall not include any violation to the extent
11 caused by operational error, lack of preventive maintenance or careless
12 or improper operation by the acquiring entity.

13 Under no circumstances shall the acquiring entity be liable for
14 violations occurring prior to the acquisition.

15 At the conclusion of a hearing conducted pursuant to this section
16 the record of the hearing shall be kept open for 30 days to allow for
17 the submission of additional comments. [As used in this act, "small
18 water company" means any company, purveyor or entity, other than
19 a governmental agency, that provides water for human consumption
20 and which regularly serves less than 1,000 customer connections.]

21 b. As used in sections 1 through 4 of P.L.1981, c.347 (C.58:11-59
22 through 58:11-62):

23 "Small water company" means any company, purveyor or entity,
24 other than a governmental agency, that provides water for human
25 consumption and which regularly serves less than 1,000 customer
26 connections ; and

27 "Small sewer company" means any company, business, or entity,
28 other than a governmental agency, which is a public utility as defined
29 pursuant to R.S.48:2-13, that collects, stores, conveys, or treats
30 primarily domestic wastewater, and that regularly serves less than
31 1,000 customer connections.

32 (cf: P.L.1994, c.58, s.57)

33
34 3. Section 2 of P.L.1981, c.347 (C.58:11-60) is amended to read
35 as follows:

36 2. a. Compensation for the acquisition of a small water company,
37 small sewer company, or both, shall be determined:

38 [a.] (1) By agreement between the parties, subject to the approval
39 of the Board of Public Utilities, in consultation with the Department
40 of Environmental Protection, and after the holding of a joint public
41 hearing by the board and the department; or

42 [b.] (2) Through use of the power of eminent domain by the
43 appropriate agencies or, the provisions of section 34 of P.L.1957,
44 c.183 (C.40:14B-34) to the contrary notwithstanding, the designated
45 acquiring public or private entity.

46 b. Compensation shall be the commercially reasonable value as

1 determined by agreement between the small water company, small
2 sewer company, or both, and the designated acquiring public or private
3 entity, as approved by the board and the department, or the appraised
4 value as established through eminent domain proceedings. Upon
5 remittance of the compensation as set forth herein, the designated
6 acquiring public or private entity shall obtain title to the assets of the
7 small water company, small sewer company, or both, free and clear of
8 all liens, claims and encumbrances, judgments, security interests, fines,
9 penalties, and outstanding taxes incurred by the small water company,
10 small sewer company, or both. The acquiring public or private entity
11 shall place in escrow or deposit in court so much of the compensation
12 amount as necessary to satisfy any liens, claims and encumbrances,
13 judgments, security interests, fines, penalties, and outstanding taxes
14 which are of record or of which the designated acquiring public or
15 private entity has actual knowledge.

16 Nothing contained herein shall waive, or impair the right of any
17 creditor, including a secured creditor, to obtain payment directly from
18 the owner or operator of the small water company or small sewer
19 company from the proceeds of any acquisition concluded pursuant to
20 the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of
21 P.L.1981, c.389 (C.58:11-63) and P.L., c. (C. _____)(pending in
22 the Legislature as this bill).

23 No fines or penalties incurred by the owner or operator of a small
24 water company or small sewer company shall be a liability of the
25 owner or operator of the designated acquiring public or private entity,
26 of the service users of the acquired small water company or small
27 sewer company or any service user of the water supply or sewer
28 system of the designated acquiring public or private entity. Any such
29 incurred penalties shall remain the sole liability of the owner or
30 operator who incurred the penalties.

31 [d.] c. If a small water company and a small sewer company serve
32 a common residential development established by the developer to
33 service that development and are under common control and
34 ownership , and if the small water company or the small sewer
35 company, or both, has failed to comply with an order of the
36 Department of Environmental Protection and is subject to the
37 provisions of section 1 of P.L.1981, c.347 (C.58:11-59), they may be
38 treated as one company for the purposes of sections 1 through 4 of
39 P.L.1981, c.347 (C.58:11-59 through 58:11-62), section 1 of
40 P.L.1981, c.389 (C.58:11-63) and P.L. , c. (C. _____)(pending
41 in the Legislature as this bill), provided that the proceeds of the
42 acquisition shall be segregated and distributed based on the fair market
43 value or appraised value of each company.

44 (cf: P.L.1981, c.347, s.2)

45

46 4. Section 3 of P.L.1981, c.347 (C.58:11-61) is amended to read

1 as follows:

2 3. a. The Department of Environmental Protection and the Board
3 of Public Utilities, upon a determination that the costs of
4 improvements to and the acquisition of the small water company, small
5 sewer company, or both, are necessary and reasonable, [~~shall~~] may
6 order the acquisition of the small water company, small sewer
7 company, or both, by the most suitable public or private entity
8 pursuant to section 2 of P.L.1981, c.347 (C.58:11-60). This order
9 shall provide for the immediate inclusion in the rates of the designated
10 acquiring [~~company~~] public or private entity the anticipated costs of
11 necessary improvements, or, if the determination of acquisition costs
12 has been deferred, as soon as possible thereafter as may be practicable
13 and feasible. No order may be issued pursuant to this section until at
14 least 30 days following the date of the hearing conducted pursuant to
15 section 1 of P.L.1981, c.347 (C.58:11-59).

16 b. The Board of Public Utilities shall extend the franchise area of
17 the designated acquiring public or private [~~water company~~] entity to
18 the extent necessary to cover the service area of the small water
19 company, small sewer company, or both, taken over pursuant to [~~this~~
20 act] the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1
21 of P.L.1981, c.389 (C.58:11-63) and P.L. _____, c.
22 (C. _____) (pending in the Legislature as this bill). The governing
23 body of the municipality in which the small water company, small
24 sewer company, or both, are located shall provide the board with the
25 municipal consent that allows the designated acquiring public or
26 private entity to operate within the franchise area. The board shall
27 approve any municipal consent granted pursuant to this subsection
28 necessary to cover the service area of the small water company, small
29 sewer company, or both, acquired pursuant to the provisions of
30 P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389
31 (C.58:11-63) and P.L. _____, c. (C. _____) (pending in the Legislature as
32 this bill).

33 c. An order issued by the board pursuant to this section designating
34 a public or private entity to acquire a small water company, small
35 sewer company, or both, shall authorize the public or private entity to
36 commence eminent domain proceedings in accordance with P.L.1971,
37 c.361 (C.20:3-1 et seq.), without further petition to, or further order
38 by, the board. Prior to commencing eminent domain proceedings, an
39 appropriate officer of the designated acquiring public or private entity
40 shall transmit notice to the board, the department, and all parties
41 affected by the order issued pursuant to this section, including,
42 without limitation, any person or entity having a recorded interest in
43 the land or property which may be subject to eminent domain
44 proceedings pursuant to the provisions of P.L.1981, c.347
45 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63) and
46 P.L. _____, c. (C. _____) (pending in the Legislature as this bill). Notice

1 provided to such parties pursuant to this section shall satisfy the notice
2 requirements set forth in R.S.48:3-17.

3 d. An order issued by the board pursuant to this section shall
4 constitute revocation by the board of the franchise of the small water
5 company, small sewer company, or both, to be acquired and shall
6 render the owner or operator of the acquired small water company,
7 small sewer company, or both, unfit to hold any other water or sewer
8 franchise or municipal consent to provide water or sewer service.

9 (cf: P.L.1981, c.347, s.3)

10
11 5. Section 4 of P.L.1981, c.347(C.58:11-62) is amended to read as
12 follows:

13 4. Any water company, sewer company, municipal utilities
14 authority [, municipality] or other suitable [governmental] public or
15 private entity which receives an order pursuant to section 3 of [this
16 act] P.L.1981, c.347 (C.58:11-61) shall acquire the small water
17 company, small sewer company, or both, and shall make the necessary
18 improvements to assure the availability of water, the potability of the
19 water and the provision of water at adequate volume and pressure and
20 the compliance with all applicable federal and State water pollution
21 control requirements in the case of a small sewer company. The small
22 water company, small sewer company, or both, as the case may be,
23 shall immediately comply with the order and shall facilitate its sale to
24 the water company, sewer company, municipal utilities authority,
25 [municipality] or other suitable [governmental] public or private entity
26 ordered to acquire the small water company, the small sewer company,
27 or both, as the case may be.

28 (cf: P.L.1981, c.347, s.4)

29
30 6. Section 1 of P.L.1989, c.389 (C.58:11-63) is amended to read
31 as follows:

32 1. Whenever the Department of Environmental Protection and the
33 Board of Public Utilities order the acquisition of a small water
34 company, small sewer company, or both, by the most suitable public
35 or private entity pursuant to [law] the provisions of P.L.1981, c.347
36 (C.58:11-59 et seq.) and P.L. , c. (C.)(pending in the Legislature
37 as this bill), the board may, in its discretion, allow the designated
38 acquiring [company] public or private entity to charge and collect a
39 differential rate from the customers of the small water company, small
40 sewer company, or both, for the use or service of the acquiring
41 [company's] public or private entity's water supply system or facilities,
42 sewage system or facilities, or both.

43 As used in this section "small water company" and "small sewer

1 company" shall have the same meaning as in section 1 of P.L.1981,
2 c.347 (C.58:11-59).

3 (cf: P.L.1981, c.389, s.1).

4

5 7. (New Section) a. Whenever a public or private entity receives
6 an order pursuant to section 3 of P.L.1981, c.347 (C.58:11-61) to
7 acquire a small sewer company, the cost to the designated acquiring
8 public or private entity of the improvements to the acquired small
9 sewer company necessary to assure the compliance with all applicable
10 federal and State water pollution control requirements for a small
11 sewer company shall be eligible for financing pursuant to the "New
12 Jersey Environmental Infrastructure Trust Act," P.L.1985, c.334
13 (C.58:11B-1 et seq.), as amended by P.L.1997, c.224. Any loan
14 application made by an acquiring public entity pursuant to this
15 subsection shall be expedited by the New Jersey Environmental
16 Infrastructure Trust and the Department of Environmental Protection,
17 to the maximum extent feasible while still maintaining compliance with
18 all applicable laws, rules and regulations.

19 b. Whenever a public or private entity receives an order pursuant
20 to section 3 of P.L.1981, c.347 (C.58:11-61) to acquire a small water
21 company, the cost to the designated acquiring public or private entity
22 of the improvements to the acquired small water company necessary
23 to assure the availability of water, the potability of water, and the
24 provision thereof at adequate volume and pressure and compliance
25 with all applicable federal and State safe drinking water requirements
26 for a small water company, shall be eligible for financing pursuant to
27 the "New Jersey Environmental Infrastructure Trust Act," P.L.1985,
28 c.334 (C.58:11B-1 et seq.), as amended by P.L.1997, c.224. Any loan
29 application made by an acquiring public entity pursuant to this
30 subsection shall be expedited by the New Jersey Environmental
31 Infrastructure Trust and the Department of Environmental Protection,
32 to the maximum extent feasible while still maintaining compliance with
33 all applicable laws, rules and regulations.

34 c. The provisions of any other law or rule or regulation adopted
35 pursuant thereto to the contrary notwithstanding, improvements to an
36 acquired small water company pursuant to the provisions of P.L.1981,
37 c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63)
38 and P.L. , c. (C.)(pending in the Legislature as this bill) shall
39 constitute a water supply project for the purposes of P.L.1981, c.261,
40 as amended by P.L.1983, c.355 and P.L.1997, c.223.

41 d. As used in this section "small water company" and "small sewer
42 company" shall have the same meaning as in section 1 of P.L.1981,
43 c.347 (C.58:11-59).

44

45 8. (New Section) The provisions of any law, or rule or regulation
46 adopted pursuant thereto to the contrary notwithstanding, whenever

1 a public or private entity receives an order pursuant to section 3 of
2 P.L.1981, c.247 (C.58:11-61) to acquire a small water company, small
3 sewer company, or both, the designated acquiring public or private
4 entity shall not be deemed the discharger or responsible party for a
5 discharge of a hazardous substance that occurred prior to the
6 acquisition and is attributed to the facilities being acquired, and shall
7 not be liable for any required cleanup and removal costs or damages
8 resulting from any such discharge of a hazardous substance. As a
9 condition of, and at the time of the acquisition, the designated
10 acquiring public or private entity shall conduct a preliminary
11 assessment and a site investigation of the facilities to be acquired to
12 ascertain the presence and the levels of any hazardous substance.
13 Neither the designated acquiring public or private entity, the service
14 users of the small water company or small sewer company being
15 acquired, or the users of the designated acquiring public or private
16 entity's services shall have any liability for cleanup and removal costs
17 relating to any hazardous discharge identified by the site investigation
18 conducted pursuant to this section as being a pre-acquisition
19 hazardous discharge, provided that the designated acquiring public or
20 private entity shall exercise reasonable care in addressing any
21 environmental contamination at the facilities upon acquisition.

22 The exemption from liability granted to an acquiring public or
23 private entity pursuant to this section shall not apply to the designated
24 acquiring public or private entity's liability, pursuant to any law or rule
25 or regulation, for arranging for the off-site disposal or treatment of a
26 hazardous substance or for transporting and disposing of a hazardous
27 substance at an off-site facility selected by the designated acquiring
28 public or private entity.

29 Nothing in this section shall prohibit or limit the right of the
30 Department of Environmental Protection to undertake a cleanup of the
31 property or to obtain a lien on the property for the cost of a cleanup
32 pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f). Any
33 recovery of cleanup and removal costs from an acquiring public or
34 private entity pursuant to a lien obtained by the Department of
35 Environmental Protection shall be limited to the actual financial benefit
36 realized by the designated acquiring public or private entity solely due
37 to a cleanup or removal action. Recovery by the Department of
38 Environmental Protection shall be conditioned upon the department
39 providing a detailed financial analysis to the designated acquiring
40 public or private entity demonstrating that the actual financial gain
41 realized by the designated acquiring public or private entity is due
42 solely to the cleanup or removal action. The acquiring entity shall
43 have 30 days to notify the department, in writing, of any dispute
44 relating to the financial analysis or the department's determination of
45 actual financial gain. The Department of Environmental Protection
46 shall negotiate, for a period not to exceed 30 days, with the designated

1 acquiring public or private entity to resolve any dispute relating to the
2 financial analysis or the department's determination of actual financial
3 gain identified by the designated acquiring public or private entity
4 prior to imposition of a lien. The department may waive any lien or
5 recovery if warranted by the circumstances.

6 As used in this section "small water company" and "small sewer
7 company" shall have the same meaning as in section 1 of P.L.1981,
8 c.347 (C.58:11-59).

9
10 9. (New Section) Any owner or operator of a small water
11 company, small sewer company, or both, who violates the provisions
12 of P.L.1981, c.347 (C.58:11-59 et seq), section 1 of P.L.1981, c.389
13 (C.58:11-63), or P.L.1997, c. (C.) (before the Legislature as
14 this bill), or fails to comply with any order issued pursuant to section
15 3 of P.L.1981, c.347 (C.58:11-61), shall be subject upon order of a
16 court to a civil penalty not to exceed \$50,000 per day of such
17 violation, and each day's continuance of the violation shall constitute
18 a separate violation. Any penalty incurred pursuant to this section may
19 be recovered with costs, and, if applicable, interest charges, in a
20 summary proceeding pursuant to "the penalty enforcement law"
21 (N.J.S.2A-58-1 et seq.). The Board of Public Utilities or the
22 Department of Environmental Protection may also commence a civil
23 action in Superior Court for any other appropriate relief, including
24 without limitation, a temporary or permanent injunction, and the
25 reasonable costs of preparing and litigating the case. Use of any of the
26 remedies in this section shall not preclude the use of any other remedy
27 available to the Board of Public Utilities or the Department of
28 Environmental Protection under this section or under any other
29 applicable law. As used in this section "small water company" and
30 "small sewer company" shall have the same meaning as in section 1 of
31 P.L.1981, c.347 (C.58:11-59).

32
33 10. This act shall take effect immediately.
34
35

36 STATEMENT
37

38 This bill would establish a procedure under which the Department
39 of Environmental Protection (DEP) and the Board of Public Utilities
40 (BPU) could order the acquisition and takeover of a small sewer
41 company with a record of environmental violations by another private
42 or public water or sewer company. This takeover procedure is
43 established by revising the so-called Small Water Company Takeover
44 Act (P.L.1981, c.347; C.58:11-59 et seq.) to authorize the takeover
45 of problematic small sewer companies. In addition to bringing small
46 sewer companies under the purview of the 1981 act, this bill would

1 also clarify the takeover procedure, which would apply henceforth to
2 small water companies as well as small sewer companies. The takeover
3 procedure established in this bill would be used only in instances of
4 small water or sewer companies with a serious record of violations of
5 environmental laws and failure to comply with DEP orders concerning
6 the safe and efficient operation of the water supply or sewer facility.

7 The essentials of the takeover procedure as set forth in this bill are
8 as follows. The DEP and the BPU would hold a public hearing to
9 announce the actions to be taken concerning a small water company
10 or sewer company which has failed to comply with DEP orders
11 concerning the operation of the water or sewer company. These
12 actions could include the acquisition of the small water or sewer
13 company by the most suitable public or private entity, which under
14 most circumstances would be another private or public water or sewer
15 system. At the public hearing the DEP would propose an
16 administrative consent order setting forth the details of the acquisition.
17 The compensation to the owner of the small water or sewer company
18 would be determined by an agreement between the parties or by the
19 use of eminent domain. The bill makes clear that any outstanding fines
20 or penalties levied against the owner or operator of the small water or
21 sewer company will not be the liability of the designated acquiring
22 public or private entity. These fines and penalties, as well as delinquent
23 taxes, would be paid out of the proceeds from the acquisition. The bill
24 also makes clear that a public or private entity acquiring a small water
25 or sewer company pursuant to the provisions of this bill would not be
26 responsible for the cleanup of hazardous discharges that occurred on
27 the site of the small water or sewer company prior to the acquisition.

28 The bill also provides that upgrades necessary for the proper
29 operation of a small sewer company acquired pursuant to the
30 provisions of this bill would be eligible for financing under the "New
31 Jersey Environmental Infrastructure Trust Act," (P.L.1985, c.334;
32 C.58:11B-1 et seq.) and upgrades necessary for the proper operation
33 of a small water company would be eligible for financing as a water
34 supply project with moneys from the "Water Supply Bond Act of
35 1981," (P.L.1981, c.261, as amended by P.L.1983, c.355 and
36 P.L.1997, c.223), to the maximum extent feasible while still
37 maintaining compliance with all applicable laws, rules and regulations.

SENATE ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE, No. 1134

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 6, 1999

The Senate Environment Committee favorably reports Senate Bill No. 1134 with committee amendments.

This bill would establish a procedure under which the Department of Environmental Protection (DEP) and the Board of Public Utilities (BPU) could order the acquisition and takeover of a small sewer company with a record of environmental violations by another private or public water or sewer company. This takeover procedure is established by revising the so-called Small Water Company Takeover Act (P.L.1981, c.347; C.58:11-59 et seq.) to authorize the takeover of problematic small sewer companies. In addition to bringing small sewer companies under the purview of the 1981 act, this bill would also clarify the takeover procedure, which would apply henceforth to small water companies as well as small sewer companies. The takeover procedure established in this bill would be used only in instances of small water or sewer companies with a serious record of violations of environmental laws and failure to comply with DEP orders concerning the safe and efficient operation of the water supply or sewer facility.

The essentials of the takeover procedure as set forth in this bill are as follows. The DEP and the BPU would hold a public hearing to announce the actions to be taken concerning a small water company or sewer company which has failed to comply with DEP orders concerning the operation of the water or sewer company. These actions could include the acquisition of the small water or sewer company by the most suitable public or private entity, which under most circumstances would be another private or public water or sewer system. At the public hearing the DEP would propose an administrative consent order setting forth the details of the acquisition. The compensation to the owner of the small water or sewer company would be determined by an agreement between the parties or by the use of eminent domain. The bill makes clear that any outstanding fines or penalties levied against the owner or operator of the small water or sewer company will not be the liability of the designated acquiring public or private entity. These fines and penalties, as well as delinquent taxes, would be paid out of the proceeds from the acquisition. The bill

also makes clear that a public or private entity acquiring a small water or sewer company pursuant to the provisions of this bill would not be responsible for the cleanup of hazardous discharges that occurred on the site of the small water or sewer company prior to the acquisition.

The bill also provides that upgrades necessary for the proper operation of a small sewer company acquired pursuant to the provisions of this bill would be eligible for financing under the "New Jersey Environmental Infrastructure Trust Act," (P.L.1985, c.334; C.58:11B-1 et seq.) and upgrades necessary for the proper operation of a small water company would be eligible for financing as a water supply project with moneys from the "Water Supply Bond Act of 1981," (P.L.1981, c.261, as amended by P.L.1983, c.355 and P.L.1997, c.223), to the maximum extent feasible while still maintaining compliance with all applicable laws, rules and regulations

The committee amendments would clarify that the procedures established in this bill would not preclude the Board of Public Utilities from determining that a franchise or other authority to operate should be revoked or that penalties as may otherwise be authorized, should be imposed. The committee amendments also make technical corrections to the bill.

With the committee amendments, this bill is identical to Assembly Bill No. 1172 (1R), as amended by the committee.

Office of the Governor
NEWS RELEASE

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RELEASE: December 23, 1999

Governor Signs Bill Protecting Senior Citizens from Fraud And Murder Victims' Rights, Among Other Legislation

Governor Christie Whitman today signed "Nielsa's Law" which amends the murder statute in New Jersey to permit the display of a photograph of a murder victim at the sentencing portion of the murder trial. The Governor also signed the Senior Citizens Fraudulent Claims Act that seeks to amend the New Jersey Consumer Fraud Act to impose heightened penalties against individuals who defraud senior citizens.

Neilsa's Law

"The passage of Nielsa's Law doesn't bring back Nielsa Mason or ease the tremendous pain and suffering of the Mason family, but I believe the bill will ensure that murder victims, who obviously can't be present at trial, are represented in a dignified matter," said Gov. Whitman. "It's something the Mason family wanted at the trial on their murdered daughter's behalf - and we listened to their pleas to make the system more accommodating for survivors."

This bill amends the murder statute to permit the display of a photograph of a murder victim at the sentencing portion of the murder trial, in capital and non-capital murders. It would authorize such a photograph to be shown to a jury during the death penalty phase of a capital case, as well as to a judge during the sentencing portion of a non-capital case.

It also amends the law that permits crime victims to make "victim impact" statements to the sentencing court - authorizing victims to display photographs as part of their victim impact statements to the court in homicide cases.

Under previous law, victims could make victim impact statements to the sentencing court and to the penalty phase jury in a death penalty case. The law was silent as to whether photographs could be displayed and, as a result, some courts permitted such displays while others prohibited them in the absence of statutory guidance on this subject. Nielsa's Law authorizes the Supreme Court to issue court rules governing these displays to ensure uniformity regarding the photo's size, the permissible duration of the display and where in the courtroom the display may take place.

Nielsa's Law, **A-17**, was sponsored by Assembly Members Jack Collins (R-Salem/Cumberland/Gloucester) and Melvin Cottrell (R-Burlington/Monmouth/Ocean) and Senators Diane B. Allen (R-Burlington/Camden), Dr. Gerald Cardinale (R-Bergen) and Raymond J. Zane (D-Salem/Cumberland/Gloucester).

Senior Citizens Fraudulent Claims Act

Referring to her passage of the Senior Citizens Fraudulent Claims Act, Gov. Whitman said "We need to protect the many faces in our New Jersey family - and that includes our elderly family members. Our state has one of the largest senior citizen populations in the nation - and it's growing. That's why I applaud this Act and its goal of protecting our seniors from fraud."

Introduced following a Feb.1997 report by the Division of Consumer Affairs' Elder Fraud Task Force, the Senior Citizens Fraudulent Claims Act applies to seniors over 60 years old and aims to amend the New Jersey Consumer Fraud Act through enhanced penalties for fraud.

If the Attorney General's Office were to successfully bring an action to enforce the Consumer Fraud Act on behalf of a senior citizen, the courts will now have to order restitution at twice the amount wrongfully acquired from the senior citizen. Also, any person who fails to make such a court-ordered restitution is subject to punishment for criminal contempt. The bill amends the Consumer Fraud Act to clarify that any penalties imposed under the Act are to be exclusive of (and in addition to) any monies or property that are ordered to be paid or restored.

The Senior Citizens Fraudulent Claims Act legislation, **A- 1512**, was sponsored by Assembly Members Joseph R. Malone (R-Burlington/Monmouth/Ocean) and Melvin Cottrell (R-Burlington/Monmouth/Ocean) and Senator Norman M. Robertson (R- Essex/Passaic).

In addition, Gov. Whitman signed today these pieces of legislation:

S-1235, sponsored by Senators Dr. Gerald Cardinale (R-Bergen) and Leonard T. Connors (R-Atlantic/Burlington/Ocean) and Assemblyman John V. Kelly (R-Bergen/Essex/Passaic), clarifies the 30-year rent control exemption for certain rental multiple dwelling units constructed without initial mortgage financing. The bill's purpose is to increase the availability of newly constructed rental housing for New Jersey residents and clarify the original intent of the Legislature in providing this exemption when it was enacted in 1987.

S-1808, sponsored by Senator Dr. Gerald Cardinale (R-Bergen) and Assembly Members Jeffrey W. Moran (R-Atlantic/Burlington/Ocean) and Anthony Impreveduto (D-Bergen/Hudson), exempts fair market value commercial leases and terminal rental adjustment clause (TRAC) leases from the provisions of the "Consumer Protection Leasing Act." The initiative is designed to increase leasing opportunities for State businesses as it recognizes that the consumer protections in the Act are not needed for businesses that establish "bargained-for" contracts. Most other states, including New York and California, exempt commercial leases from their leasing statutes.

ACS, A-1352 and A-200, sponsored by Assembly Members Carol J. Murphy (R-Essex/Morris/Passaic), Alan M. Augustine (R-Middlesex/Morris/Somerset/Union), George F. Geist (R-Camden/Gloucester), Nicholas Asselta (R-Cape May/Atlantic/Cumberland) and Charles K. Zisa (D-Bergen) and Senator John J. Matheussen (R-Camden/Gloucester), clarifies the crime of hindering a prosecution. Hindering is a crime of the third or fourth degree, or a disorderly persons offense, depending on the underlying circumstances. The bill amends the statute to say that hindering: 1) is when a person provides false information to a police officer regardless of whether the information is volunteered or is in response to an inquiry; (2) applies when false information is provided to hinder

detention or investigation of a criminal defense; and (3) includes false information given to a police officer connected with a violation of the motor vehicle laws and a civil State investigator in connection with the violation of the Fraud Prevention Act.

SCS, A-1793, sponsored by Assemblyman Paul DiGaetano (R-Bergen/Essex/Passaic), authorizes the creation of a non-lapsing recreation trust fund by counties and municipalities that have not established a board of recreation commissioners. The fund is to be used to offset the costs of operating county or municipal recreational programs. Currently, only counties or municipalities with an established board of recreation commissioners can create a dedicated fund for recreational purposes. The bill gives flexibility to those who do not wish to establish a full board of commissioners.

A-1172, sponsored by Assemblywoman Connie Myers (R-Warren/Hunterdon/Mercer) and Senators Diane B. Allen (R-Burlington/Camden) and William E. Schluter (R-Warren/Hunterdon/Mercer), creates procedures for the takeover of certain small sewer companies. The bill allows the Department of Environmental Protection and the Board of Public Utilities to order the takeover of a small sewer company where there is a record of significant, unresolved environmental violations. Currently, the BPU can order the takeover of a small water company by another public or private entity, if it determines that the former can't adequately serve its customers.

This legislation authorizes the DEP and BPU to order the acquisition of both a small water company and a small sewer company if either company has a record of significant, unresolved violations, provided both companies serve a common residential development, were established by a developer to service that development and are under common control and ownership.

Entities taking over a small water sewer company will not be held liable for prior environmental liabilities, including penalties or levies against the previous owner. Public entities will be given expedited access to capital financing provided by the Environmental Infrastructure Trust for upgrades necessary for the proper operation of the small sewer of water company.

A-2395, sponsored by Assembly Members David C. Russo (R-Bergen/Passaic) and John S. Wisniewski (D-Middlesex) and Senator Joseph A. Palaia (R-Monmouth), provides certain protections for dismissed non-tenured, certified school employees whose names are required to be maintained on a list. The list, maintained by the State Board of Examiners, contains the names and Social Security numbers of these employees, and the reason for dismissal.

The bill clarifies existing law by providing that a name will only be placed on the list if the employee is dismissed prior to the end of the year for just cause as a result of misconduct in office. If a disciplinary grievance arbitration is conducted, an employee's name can only be placed on the list if just cause due to misconduct is found by the arbitrator.

Also, an employee must be notified if his or her name is placed on the list and must be told when a chief school administrator seeks such information. The bill limits those who can obtain information from this list and says that a person may petition their name being included on the list to the Commissioner of Education. Finally, upon application a person's name will be removed if it has been on the list for at least three years.

Governor Whitman conditionally vetoed this legislation in June of this year. The Governor's recommendations were met and the legislation now clarifies the role of the Commissioner of Education. Specifically, the Commissioner can rule on whether a name is properly on a list, however it does not expand his jurisdiction in determining misconduct.