

LEGISLATIVE HISTORY CHECKLIST

NJSA 40:36A-18 et al. (County sewerage authorities-- allow varied rates for service)

LAWS OF 1977 CHAPTER 378

Bill No. A442

Sponsor(s) Hollenbeck, Visotcky

Date Introduced Pre-filed

Committee: Assembly Municipal Government

Senate County & Municipal Gov't.

Amended during passage Yes ~~XX~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly Feb. 1, 1977

Senate June 20, 1977

Date of approval Feb. 8, 1978

Following statements are attached if available:

Sponsor statement Yes ~~XX~~

Committee Statement: Assembly Yes ~~XX~~

Senate ~~XX~~ No

Fiscal Note ~~XX~~ No

Veto message ~~XX~~ No

Message on signing ~~XX~~ No

Following were printed:

Reports ~~XX~~ No

Hearings ~~XX~~ No

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ASSEMBLY, No. 442

—•—
STATE OF NEW JERSEY
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PRE-FILED FOR INTRODUCTION IN THE 1976 SESSION

By Assemblymen HOLLENBECK and VISOTCKY

AN ACT to amend "An act relating to the establishment of sewerage districts in counties, the creation of sanitary sewer district authorities by the establishing of such districts, prescribing the powers and duties of any such authority and of other public bodies in connection with the construction of sewers and sewage disposal facilities in any such district, and providing the ways and means for paying the costs of construction and operation thereof," approved April 23, 1946 (P. L. 1946, c. 123), as said title was amended by P. L. 1968, c. 368.

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

1 1. Section 18 of P. L. 1946, c. 123 (C. 40:36A-18) is amended to
 2 read as follows:

3 18. An authority shall have power, in its discretion, to engage,
 4 or to contract for, the services of competent engineers or engineer-
 5 ing firms, and to do all other acts and things as may in the judgment
 6 of the authority be necessary or proper to effectuate and carry out
 7 the plans and purposes of this act, *or amendments or supplements*
 8 *thereto*; but such contract and employment shall not be for a longer
 9 period of time than 5 years; provided, however, that this provision
 10 shall not preclude an authority from extending any such contract
 11 and employment for additional periods of not exceeding 5 years
 12 each from the date of each such extension.

1 2. Section 30 of P. L. 1946, c. 123 (C. 40:36A-30) is amended to
 2 read as follows:

3 30. Any project report, maps, designs and estimates provided
 4 for in the preceding section shall also show:

5 (a) The location and route of the proposed district sewer
 6 system, including trunk, intercepting and outlet sewers, treatment
 7 plants, pumping stations and other plants and structures.

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

8 (b) The location and route of existing sewer systems, treatment
9 plants and like plants and structures, within the said sewer district,
10 and proposed points of connection thereof, with the proposed
11 district sewer system.

12 (c) Records or estimates of the volume of the amount of sewage
13 which could advantageously be discharged into the proposed
14 district sewer system by each and every existing municipal or
15 private sewer system within the said district.

16 (d) An estimate of a specified minimum percentage of the
17 volume of sewage estimated pursuant to subdivision (c) of this
18 section, the annual discharge of which into the proposed district
19 sewer system in the judgment of the authority must be assured, in
20 order to make possible and advisable the advantageous and
21 economical construction and operation of the proposed district
22 sewer system and the financing of the same, according to the plan
23 and purpose of this act. *Such estimate shall take into consideration*
24 *the estimated amounts payable in accordance with the terms of the*
25 *contracts entered into and proposed to be entered into with municipi-*
26 *palities, private sewer companies and industries.*

27 (e) Detailed estimates of the cost of the construction of the pro-
28 posed district sewer system which said cost shall include: (1) All
29 sums estimated by the authority be required for the payment of
30 interest accruing prior to the first fiscal year as hereinafter defined,
31 on indebtedness incurred for or in connection with such construc-
32 tion; (2) The cost of the issuance and sale of bonds authorized to
33 be issued pursuant to this act; (3) All expenses incurred or to be
34 incurred by the authority in preparing such project report; (4)
35 The cost of all construction of the proposed district sewer system,
36 the acquisition of all rights-of-way, all costs and expenses for
37 operating and maintaining the authority and sewer system from
38 the date of its inception to the beginning of its first fiscal year as
39 set forth in section 44 hereof.

40 (f) Estimates and schedules of the sums of money deemed by the
41 authority to be required in each and every year during the first 40
42 years from the estimated time for the commencement of operation
43 of the district sewer system, for the payment of principal and
44 interest of the bonds authorized to be issued pursuant to this act,
45 and for the cost and expense of the operation, maintenance, depre-
46 ciation and repair of the district sewer system.

47 (g) Estimates and schedules calculated as hereinafter provided,
48 of such rates to be charged in each year and to be paid to the
49 authority as shall be amply sufficient, together with the sums pre-

50 viously so paid to or otherwise received for the same purpose by,
 51 and remaining unexpended in the hands of the authority, *or*
 52 *estimated to be received by the authority*, to raise the sums of
 53 money required by the authority for at least the first 10 fiscal years,
 54 as defined herein, as shown by the estimates and schedules prepared
 55 in pursuance of subdivision (f) of this section.

56 (h) Such other information as the authority shall deem
 57 necessary.

1 3. Section 43 of P. L. 1946, c. 123 (C. 40:36A-43) is amended to
 2 read as follows:

3 43. After the commencement of operation of a district sewer
 4 system of an authority under this act the authority may prescribe
 5 and change from time to time rates, rents, fees or other charges to
 6 be charged for the discharge and disposal of sewage through its
 7 district sewer system. Said rates shall be prescribed and from time
 8 to time revised as hereinafter provided, so that an authority and
 9 each district sewer system shall be and always remain self-support-
 10 ing with earnings sufficient to provide for all expenses of operation,
 11 maintenance, depreciation and repair and the payment of the
 12 principal and interest of any bonds issued or to be issued pursuant
 13 to this act, so as to prevent the accrual of any deficit. Such rates
 14 being in the nature of use or service charges, shall be uniform,
 14A ***[to]*** **except as provided in this amendatory act,** ***[the extent**
 15 *that the authority shall deem the same to be practicable and*
 16 *equitable,]****** throughout a district for the same type, class and
 17 amount of use or service of a district sewer system and shall be
 18 based upon the total annual volume of sewerage from each munici-
 19 pality, private sewer company or institution; but may give weight
 20 to the characteristics of the sewage and other wastes and any other
 21 special matter affecting the cost of treatment and disposal thereof,
 22 including *peak flow*, chlorine demand, biochemical oxygen demand,
 23 concentration of solids and chemical composition. In order to
 24 assure the authority that it will be advantageous and economical to
 25 construct, finance and operate a district sewer system, any munici-
 26 pality, private sewer company or institution may guarantee that a
 27 stated minimum annual volume of sewerage will be deemed to be
 28 discharged into the district sewer system by it. For the purpose of
 29 establishing rates, the annual volume of sewerage from such
 30 municipality, private sewer company or institution shall be the
 31 actual volume or the guaranteed minimum volume, whichever is
 32 greater.

33 *Notwithstanding anything to the contrary contained in this sec-*
 34 *tion, whenever*, after the effective date of this amendatory act,**
 34A *such authority shall issue bonds pursuant to ***[this]*** *the* act *to*
 35 *which this act is amendatory* to pay the cost of the extension of its*
 36 *district sewer system or any part thereof to serve a ***[particular***
 36A *area of]* *municipality, portion of a municipality, private sewer*
 36B *company or industry newly joining* the district sewer system,*
 37 *the authority may*, by contract entered into with such*
 38 *newly joining participant, for a period of time specified*
 39 *in such contract,* vary its rates to be charged for the*
 40 *services of such system, effective upon the issuance of bonds as*
 41 *provided by this act, to pay the cost of the extension of its district*
 42 *sewer system or any part thereof to serve ***[a particular area of]****
 43 **such newly joining participant in* the district sewer system ***[so]****
 44 **in such manner* that the rates to be charged for services in the*
 45 *particular area to be served by such extension shall be calculated*
 46 *to produce *over the period specified in such contract,* ***[sufficient***
 47 *funds]* *an amount,* together with ***[such]*** *that* porton of any*
 48 *grants ***[;]*** or other funds***[,]*** applicable to such extension, as*
 49 ****[the authority]*** may ***[deem proper]*** be necessary to pay ***[at***
 50 *least]* the principal of and interest on the bonds issued to pay the*
 51 *cost of such extension ***[for that particular area, together with***
 52 *operation costs attributable thereto.]* *Such contract may also,*
 53 *with or without specifying any period of time, provide that the*
 54 *rates to be charged to such newly joining participant may be varied*
 55 *in such manner as to produce in each year an amount sufficient to*
 56 *cover the operating costs specifically attributable to the area of*
 57 *such newly joining participant for each such year.**

1 4. Section 47 of P. L. 1946, c. 123 (C. 40:36A-47) is amended to
 2 read as follows:

3 47. On or before January 17 in any year in which any such
 4 authority shall calculate any rate, such authority shall calculate
 5 and certify to each municipality, private sewer company and in-
 6 dustry, which shall have entered into a contract with it pursuant to
 7 section 50 of this act, the amount of money which it shall be required
 8 to pay to the authority during that year, under the terms and pro-
 9 visions of the contract so entered into by it. Such amount shall be
 10 calculated by such authority by applying the rate to the volume of
 11 sewage delivered and discharged into its district sewer system by
 12 the municipality, private sewer company or industry, during the
 13 yearly period ending on the last day of the preceding December,
 14 as shown by the records of such authority. If the terms and pro-

15 visions of a contract so entered into by a municipality, private
16 sewer company or industry require payment of any other or
17 different amount to an authority, then such other or different
18 amount shall be fixed and determined by such authority pursuant
19 to the contract and shall be certified to such municipality, private
20 sewer company or industry as hereinabove provided. If the terms
21 and provisions of a contract so entered into by any industry require
22 payments to an authority of a further amount in addition to the
23 amount of money calculated as hereinabove provided, then such
24 further and additional amount shall be fixed and determined by
25 such authority and added to the amount calculated by it as herein-
26 above provided and the sum of such amounts shall be certified to
27 such industry as hereinabove provided. In any year in which any
28 municipality, *or portion thereof*, private sewer company or in-
29 dustry shall not have used a district sewer system of an authority
30 under this act for a full year prior to such last day of December, the
31 volume of sewage to be used in calculating the amount which such
32 municipality, private sewer company, or industry shall pay to such
33 authority shall be the volume which such authority at such time
34 estimates will be delivered and discharged by such municipality,
35 private sewer company, or industry during the first full year of
36 operation of its district sewer system. In the event that any part
37 or parts of a district sewer system shall be put into operation prior
38 to the beginning of the first fiscal year such authority shall certify
39 from time to time to the municipalities, private sewer companies or
40 industries which may discharge sewage into said part or parts
41 prior to the first fiscal year an amount or amounts which in the
42 case of each such municipality, private sewer company and industry
43 shall be sufficient to pay its share of the cost of operation and
44 maintenance of said part or parts during the period of operation
45 prior to said fiscal year based upon its proportion of the total
46 volume of sewage so discharged into said part or parts of such
47 district sewer system.

1 5. Section 51 of P. L. 1946, c. 123 (C. 40:36A-51) is amended to
2 read as follows:

3 51. The contracts of an authority with municipalities, private
4 sewer companies and industries authorized by the next preceding
5 section shall be in form to be prescribed by the contracting au-
6 thority, shall upon execution be filed with the authority and shall
7 provide in substance that the contracting municipality, private
8 sewer company or industry shall, in the manner and at the time
9 and place within *or without* the sewer district to be designated by

10 such authority, permit the authority to connect the sewer or drain-
11 age system of such municipality, private sewer company or in-
12 dustry or the outfall thereof with, and thereafter deliver and dis-
13 charge all sewage arising within it or collected by it into, any trunk
14 or other sewer system or treatment plants or other plants or struc-
15 tures that such authority may specify and shall pay quarterly as
16 defined in such contract to such authority, for the services thus
17 rendered or to be rendered to it in the disposal of such sewage, the
18 sum of money which shall theretofore have been calculated and
19 certified to it by such authority as provided in section 47 of this
20 act and shall contain such other provisions as to the rights and
21 powers of such authority and the duties and liabilities of the con-
22 tracting municipal, private sewer company or industry in the
23 event that such sums of money are not paid as provided in such
24 contract or in the event of other default such contract on the part
25 of such municipality, private sewer company or industry as may
26 be prescribed by such authority, including without limitation pro-
27 visions empowering such authority to refuse to permit such con-
28 tracting municipality, private sewer company or industry to dis-
29 charge into its district sewer system the sewage arising or collected
30 in or by such contracting municipality, private sewer company or
31 industry.

1 6. This act shall take effect immediately.

26 be prescribed by such authority, including without limitation pro-
27 visions empowering such authority to refuse to permit such con-
28 tracting municipality, private sewer company or industry to dis-
29 charge into its district sewer system the sewage arising or collected
30 in or by such contracting municipality, private sewer company or
31 industry.

1 6. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to permit county sewer authorities to consider construction costs of projects, income estimated to be received during the year, and other equitable and practicable considerations in establishing rates to participants; to consider service contract terms in determining project economy; to use estimated flows for billing until a municipality is entirely served; to connect to a local system at a point outside the district and to make provision for engineering services to cover any amendments to the scope of the act.

A442 (1977)

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 442

STATE OF NEW JERSEY

DATED: NOVEMBER 23, 1976

Assembly Bill No. 442 would amend P. L. 1946, c. 123 (C. 40:36A-1 et seq.) to authorize county sewer district authorities to vary the rates charged to participants in order to take into account in the rate charged to newly joining participants (municipalities, portions of municipalities, private sewer companies, industries) the cost of extension of the system to such participants. The rates to be charged to such a participant shall be calculated to provide sufficient funds as the authority may deem proper to pay the principal of, and interest on, any bonds issued to finance the construction of the extension to that participant and any operation costs attributable to such participant. The bill specifically authorizes the authority to consider peak flow as a factor in establishing such rates. The bill would make several parallel changes in the law governing such authorities including allowing them: (1) to consider service contract terms in determining project economy; (2) to use estimated flows for billing until a municipality is entirely serviced; (3) to connect to a local system at a point outside the district; and (4) to make provision for engineering services to cover these changes in the act.

Currently, county sewer district authorities are not permitted to vary the rates charged to their participants. Rates must be uniform to all participants and are based upon the flow from the individual participating area. The amount charged to any one participant is based, therefore, on a "rate-times-flow factor."

The New Jersey Superior Court in *Ceva v. River Vale Township*, 119 N. J. Super. 593, 293 A. 2d 203 (1972), affirmed 62 N. J. 245, 300 A. 2d 151, prohibited county sewer district authorities from varying their rates in the manner provided in this bill. The Superior Court held:

Under statute providing that rates charged municipalities by sewer authority for discharge and disposal of sewage through sewer system shall be uniform and based upon total annual volume of sewage from each municipality, the only authorized general charge for service to municipality is the "rate-times-flow" charge, and authority was not

authorized to displace the rate-times-flow factor as the basic statutory element in fixing the charge in favor of an ad hoc cost-of-construction and service-to-the-municipality base charge.

In the case in point, a contract was entered into between a joining municipality and the county sewer district authority in which there was a primary provision for compensation on the basis of rate-times-flow, but this was made subject to a minimum "base charge." This "base charge" consisted of the amount aggregated by (1) the principal and interest payable by the authority on any bonds or other obligations issued to finance costs of construction of the extension to the municipality alone, and (2) that part of the costs estimated by the authority for operation and maintenance, etc., of the entire system for the year deemed properly attributable to the handling of the sewage and wastes delivered into the system by the municipality through the extension. If the net base charge for any fiscal year exceeded the charge resulting from rate-times-flow, the former charge would be applicable for that year.

The county sewer district authority in subjecting newly participating municipalities to such a "base charge" was attempting to insulate earlier participants from the costs of financing later extensions of the system, and to assure "that earlier participants shall be protected from rate increases which would accrue from admission of later ones." The Superior Court held that this was contrary to the "scheme of the act as a whole" (that is, P. L. 1946, c. 123), and that it constituted the creation of two classes of participants in the system:

One consists of true partners, paying uniformly and always an amount based on rate-times-flow (or less, as noted above); the other, of parties dealt with on a straight estimated cost of participation basis when it profits the authority to do so but on a rate-times-flow basis when that is more favorable to the authority.

The Superior Court held that a county sewer district authority may take into account costs of construction of extension to a municipality and increased operating costs which will accrue to the authority from the addition of such municipality in its decision as to whether or not to admit such municipality as a participating member, but once such municipality is admitted such additional construction costs and operating costs would have to be borne by all the municipalities participating in the system and be incorporated within the rate-times-flow factor charged to all municipalities.

Moreover, the Superior Court held that the primary purpose behind the creation of such county sewerage district authorities is not economic but that: the benefits to earlier participants of joinder in the system

by municipalities coming in later are not limited to the cost economy promoted by the addition of another member's sewage flow, but also, and perhaps of greater ultimate import, in reducing or eliminating the pollution of the common waterway by the previously unsewered newcomer.

The committee took note of the intent to amend P. L. 1946, c. 123 in such manner as to offset the consequences of the decision of the Superior Court discussed above. The committee decided to release the bill, but to amend it to eliminate the unilateral discretion of the authority in varying its rates, and in effect allow such rate variations only by contract between the authority and the newly joining participant.

The intent of the committee amendments to section 3 of the bill are :

1. To clarify that the authority may vary its rates only with respect to participants newly joining the district sewer system after the effective date of this amendatory act;

2. To require that such rate variation would be allowed only in instances where the authority enters into a contract with the newly joining participant to that effect;

3. To require that such contract specify the period of time over which the rates charged to such participant would be varied to pay for the principal and interest on the bonds issued to finance the extension;

4. To reduce the discretion of the authority over the manner in which these rates may be varied by substituting in the wording of the bill, "as may be necessary to pay the principal and interest on the bonds" for "as the authority may deem proper to pay at least the principal of and interest on the bonds;" and,

5. To make operating costs specifically attributable to the newly joining participant a separate and distinct factor to be provided for in a contract providing for such rate variations. The contract would not be required to specify any period of time over which the rates may be varied in order to cover such operating costs.