

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2412

STATE OF NEW JERSEY 216th LEGISLATURE

DATED: OCTOBER 20, 2014

SUMMARY

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

Office of Legislative Services Estimate

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

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

BILL DESCRIPTION

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

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

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

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

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

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

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

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

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

Local Fiscal Impact

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

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

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

State Fiscal Impact

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

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

Section: Local Government

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