SYNOPSIS
“Water Infrastructure Protection Act.”

CURRENT VERSION OF TEXT
As reported by the Assembly State and Local Government Committee on December 11, 2014, with amendments.
AN ACT concerning certain public water and wastewater assets, supplementing Title 58 of the Revised Statutes, and amending R.S.40:62-3.

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

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

2. (New section) The Legislature finds and declares that:
   a. The maintenance and operation of water and wastewater treatment and conveyance systems is vital to ensuring the protection of clean drinking water in New Jersey;
   b. There are public water and wastewater systems in the State that present serious risks to the integrity of drinking water and the environment because of issues such as aging combined sanitary and storm sewer overflow infrastructure systems, the threat of sodium intrusion, the deterioration of the physical assets of the systems, or damage to infrastructure so severe that it is beyond governmental capacity to restore;
   c. Under the appropriate circumstances, the transfer of these threatened water and wastewater assets to a capable private or public entity with the financial resources and expertise to improve management, operation, and continued maintenance of the assets would protect drinking water; and
   d. It is in the public interest that public entities have the option to transfer, lease, or sell water or wastewater assets if there exists emergent conditions that threaten drinking water or the environment.

3. (New section) As used in this act, “Board” means the Board of Public Utilities. “Capable private or public entity” means any private or public water system owner who, at the time of submitting a proposal to long-term lease or purchase public water or wastewater assets, currently (1) owns a system serving no less than the number of residential and commercial accounts as the system which the entity is proposing to lease or purchase, and (2) is not a significant noncomplier, as defined pursuant to section 3 of P.L.1977, c.7 (C.58:10A-3), is not currently the subject of a formal enforcement action initiated by the New Jersey Department of Environmental Protection.

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

Matter underlined thus is new matter. Matter enclosed in superscript numerals has been adopted as follows:

1Assembly ASL committee amendments adopted December 11, 2014.
Protection to address a material violation by the entity which has not been corrected over a reasonable period of time given the specific situation, or is not substantially out of compliance with an administrative consent order, settlement agreement, stipulation of settlement or judicial consent order entered into with the department.

“Department” means the Department of Environmental Protection.1

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


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

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

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

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

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

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

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

“Water or wastewater assets” means any system along with any other related buildings, equipment, or other infrastructure.
4. (New section) If an owner determines that emergent conditions exist, the owner may lease or sell its water or wastewater assets to a capable private or public entity pursuant to the provisions of sections 5 through 9 of P.L. , c. (C.) (pending before the Legislature as this bill). An owner may so lease or sell its water or wastewater assets without any referendum except as may be required pursuant to subsection of section 5 of P.L. , c. (C.) (pending before the Legislature as this bill).

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

b. Emergent conditions shall exist if at least one of the following conditions is met:
   (1) [ ] The system has a combined sanitary and storm sewer overflow system;
   (2) [ ] The system is located in an area designated by the Department of Environmental Protection as an Area of Critical Water Supply Concern I or II, or any future designation or newly added area of critical water supply concern;
   (3) [ ] The ground water has the potential for sodium intrusion that may impact the water supply system according to the New Jersey Statewide Water Supply Plan adopted pursuant to section 13 of P.L.1981, c.262 (C.58:1A-13) or the potential for any other intrusion that may negatively impact the system;
   (4) [ ] The owner of the system has received an environmental violation, has an existing unfulfilled noncomplier, as defined pursuant to section 3 of P.L.1997, c.7 (C.58:10A-3), has been the subject of a formal enforcement action initiated by the department, or is substantially out of compliance with an administrative consent order, settlement agreement, stipulation of settlement, or judicial consent order entered into with the Department of Environmental Protection, or has previously entered into an administrative consent order with the Department of Environmental Protection with respect to the operation of the system; department;
   (5) [ ] There is a present deficiency or violation of maximum contaminant levels established pursuant to the “Safe Drinking Water Act,” P.L.1977, c.224 (C.58:12A-1 et seq.).
concerning the availability or potability of water, or concerning the
provision of water at adequate volume or pressure, [5][and the owner
lacks the financial or structural capability to immediately and
adequately repair or otherwise alleviate the deficiency] or
distribution or treatment of wastewater[6]; [7][or
(6)] [4][There is [8]a demonstrated lack of historical investment,
repair, or sustainable maintenance as determined by the department,
or material damage to the infrastructure of the system [9][and the
owner lacks the financial or structural capability to immediately and
adequately repair or otherwise alleviate the damage]; or
(5) The system owner lacks the financial, technical, or
managerial capacity to adequately address any of the foregoing on a
sustainable basis or own and operate the system in a way that
supports economic activity in the municipality on a sustainable
basis[10].

c. [11]Should the owner determine that one or more emergent
conditions contained in subsection b. of this section exists and that
it is necessary to take steps to effectuate the sale or long-term lease
of its water or wastewater assets to a capable private or public
entity pursuant to this act to address these emergent conditions and
to operate and maintain the system, the owner shall through the
utilization of applicable public procurement laws of the State of
New Jersey retain the services of an independent financial advisor
to review, analyze and report on the value of the system and the
short and long term impacts to rate-payers of the cash-flow
structure of the proposed transaction and to provide an estimate as
to the financial requirements necessary to address the emergent
conditions and to operate and maintain the system. Upon
completion of the analysis and review, the independent financial
advisor shall transmit its report to the owner. Within 10 days of the
approval of the report by the owner, the owner shall transmit copies
to the board, the director, and the department and shall make the
report available for public review.

d. [12]After [13]an emergent conditions certification is made] the
independent financial advisor has completed its analysis of the
financial aspects of the proposed transaction and has presented its
report to the owner[14], a public hearing on the [15]proposed emergent
condition[16] certification shall be held. The owner shall provide
notice of the public hearing no less than [17][10] 30[18] days prior to the
date of the hearing. The notice shall prominently state [19]the findings
upon which the certification of emergent conditions is based, a
summary of the findings by the independent financial advisor and[20]
that the certification is in anticipation of a [21]proposed long-term[22]
lease or sale of water or wastewater assets to a [23]capable[24] private [25]
or public[26] entity. [27][If the owner is a municipality or municipal
utilities authority, notice[28] Notice[29] of the public hearing shall be
published on the official Internet website of the municipality and at least once in one or more newspapers circulating in the municipality. 1\{If the owner is a county utilities authority, notice 1\} Notice of the public hearing shall be published on the official Internet website of the county and at least once in one or more newspapers circulating in the county. 1\{If the owner is a regional utilities authority, notice of the public hearing shall be published on the official Internet website of the authority and at least once in one or more newspapers circulating in the region.\} If an applicable official website does not exist, notice of the public hearing shall be published on the official Internet website of the Department of Community Affairs.

1\{d.\} e. After the public hearing and after giving due consideration to the findings of the independent financial advisor, the governing body of the owner shall, by resolution adopted by at least two-thirds of its authorized membership, 1\{cause the emergent conditions certification to be submitted to the Department of Environmental Protection for approval. The Department of Environmental Protection shall approve or reject a certification within 30 days of receipt thereof. If no disposition is made within 30 days, the certification shall be deemed approved\} certify that one or more emergent conditions exist and that owner intends to sell or long-term lease its water or wastewater assets to a capable private or public entity to address these emergent conditions and to operate and maintain the system. Within five days of the adoption of the resolution, the governing body of the owner shall transmit a true copy of the resolution, to the department, the board, and the director. Within 30 days of receipt of the resolution by the department, the department shall approve or reject the owner’s emergent conditions certification as contained in the resolution. 1\{ If the owner is a municipality or municipal utilities authority, notice 1\} Notice of the approval shall be published on the official Internet website of the municipality and at least once in one or more newspapers circulating in the municipality, and shall prominently state that a petition may be filed within 1\{20\} 45 days after the publication of such notice to require a referendum before a resolution authorizing the lease or sale of water or wastewater assets may take effect. 1\{If the owner is a county utilities authority, notice of the
approval shall be published on the official Internet website of the county and at least once in one or more newspapers circulating in the county. If the owner is a regional utilities authority, notice of the approval shall be published on the official Internet website of the authority and at least once in one or more newspapers circulating in the region. If an applicable official website does not exist, notice of the approval shall be published on the official Internet website of the Department of Community Affairs.

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

6. (New section) A request for qualifications from a capable private or public entity wishing to be considered for the long-term lease or sale of the owner’s system shall be advertised pending approval of the emergent conditions certification pursuant to subsection d of section 5 of P.L., c. (pending before the Legislature as this bill), but no less than 30 days prior to the date on which responses to the request are due. If the owner is a municipality or municipal utilities authority, the advertisement of the request for qualifications shall be published on the official Internet website of the municipality and at least once in one or more newspapers circulating in the municipality. If the owner is a county utilities authority, the advertisement of the request for qualifications shall be published on the official Internet website of the county and at least once in one or more newspapers circulating in the county. If the owner is a regional utilities authority, the advertisement of the request for qualifications shall be published on the official Internet website of the authority and at least once in one or more newspapers circulating in the region. An owner shall also publish the advertisement of the request for qualifications at least once in one or more newspapers with Statewide circulation. If an applicable official website does not exist, the advertisement of the request for qualifications shall be published on the official Internet website of the Department of Community Affairs.
b. After an emergent conditions certification is †approved† pursuant to subsection †[d.] †c.† of section 5 of P.L. †, the owner shall determine the qualified respondents. The owner shall issue a request for proposals to each qualified respondent no less than 14 days prior to the date established for submission of the proposals. The request for proposals shall include relevant technical submissions, documents, and criteria including but not limited to a description of the facilities and the debt related thereto and the evaluation criteria to be used in the selection of the designated respondent. †The proposals shall include and shall be evaluated by, at a minimum, the following:

1. the documented deficiencies of the owner’s system upon which the emergent conditions certification is based and a description of the corrective measures to be undertaken by the respondent to address and correct the identified emergent conditions;
3. an analysis of the relevant expenditures associated with such activities and the projected impact on customer rates;
4. an analysis of any Internal Revenue Code or other tax code issues that may arise from the long-term lease or sale of a publicly funded water or wastewater asset, as well as any potential short-term or long-term costs arising there from;
5. a long-term capital improvement or asset management plan; and
6. any other pertinent information required of or deemed appropriate by the owner.

c. Upon a review of the proposals submitted by qualified respondents, the governing body of an owner shall, by resolution †adopted by at least two-thirds of its authorized membership†, designate one qualified respondent, whose proposal the governing body finds to be the most advantageous to the public, taking into consideration the evaluation criteria set forth in the request for proposals †and as specified under subsection b. of this section†.

The resolution shall include †a detailed summary of† the governing body’s findings that the proposal of the designated respondent is most advantageous to the public. †The summary shall be published
in accordance with the notification requirements of section 5 of
P.L. , c. (C. ) (pending before the Legislature as this bill).\textsuperscript{4}

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

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

(2)\textsuperscript{4} After an agreement on a proposed contract is reached
between the owner and the designated respondent, the governing
body of the owner shall, by resolution \textsuperscript{4} adopted by at least two-
thirds of its authorized membership\textsuperscript{4}, cause the proposed contract to
be submitted to the board for approval and cause the proposed use
of proceeds of the \long-term\ lease or sale to be submitted to the
director for approval.

c. (1) The proposed contract submitted to the board shall
include the rent or sale price, any appraisals supporting the rent or
sale price, documentation regarding the defeasance of debt, and any
other information requested by the board. The board shall approve
or reject the proposed contract within \textsuperscript{4} [30] 90\textsuperscript{4} days of receipt
thereof. If no disposition is made within \textsuperscript{4} [30] 90\textsuperscript{4} days, the
proposed contract shall be deemed approved.

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

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

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

(b) (i) The rent or sale price is within the range of any appraisals
obtained with respect to the \long-term\ lease or sale of the water or
wastewater assets; or

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

(3) In valuing the water or wastewater assets, appraisers shall
comply with the Uniform Standards of Professional Appraisal
Practice promulgated by the Appraisal Standards Board of the
Appraisal Foundation.
(4) In valuing the water or wastewater assets and for the purposes of rate making, the original source of funding for any part of the water or wastewater assets shall not be relevant.

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

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

8. (New section) After the proposed contract and proposed use of proceeds have been approved pursuant to subsection c. of section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill), the governing body of the owner may, by resolution adopted by at least two-thirds of its authorized membership, enter into a contract for the long-term lease or sale of the water or wastewater assets with the designated respondent.

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

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

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

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

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

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

(cf: P.L.1981, c.16, s.1)

11. This act shall take effect immediately.