

CHAPTER 42
(CORRECTED COPY)

AN ACT concerning stormwater utilities, supplementing Title 40A of the New Jersey Statutes, and amending various parts of the statutory law.

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

C.40A:26B-1 Short title.

1. Sections 1 through 18 of P.L.2019, c.42 (C.40A:26B-1 et seq.) shall be known and may be cited as the “Clean Stormwater and Flood Reduction Act.”

C.40A:26B-2 Findings, declarations relative to stormwater utilities.

2. a. The Legislature finds and declares that:

(1) The State of New Jersey faces an extensive set of problems due to inadequate stormwater infrastructure and management, and these problems directly affect the health, safety, economic well-being, and quality of life of New Jersey residents.

(2) When storms occur, rainwater runs off of impervious surfaces such as roads, roofs, and parking lots, and into stormwater management systems and waterways. This stormwater carries with it oil, pesticides, other chemicals, sediments, and bacteria that may contaminate State waters, potentially making them unsafe for drinking, fishing, and recreational purposes. It is estimated that up to 60 percent of the State’s existing water pollution is attributable to stormwater and nonpoint sources of pollution.

(3) Additionally, if a stormwater management system is not in place or is not able to adequately absorb, capture, or convey stormwater, then runoff in large volume and force may cause flooding and damage to homes, businesses, and property. A projected increase in sea level rise and more frequent and severe storms are expected to only increase flooding.

(4) New Jersey, in particular, is prone to pollution and flooding problems, with over 10 percent of its land area covered with impervious surfaces. These problems are particularly acute in the 21 urban New Jersey municipalities that have combined sewer systems, which routinely overflow and discharge untreated wastewater and stormwater into the State’s waters, contributing to water pollution and impairing the use and enjoyment of those waters.

(5) Stormwater infrastructure in New Jersey currently lacks a dedicated source of funding and, consequently, receives few upgrades and little maintenance once built. In some instances, stormwater infrastructure goes unmonitored and unattended until it breaks down; in other instances, it is simply inadequate to manage stormwater.

(6) Establishment of local stormwater utilities presents an effective management strategy to address stormwater issues. Currently, there are more than 1,500 stormwater utilities operating in 40 states across the country and the District of Columbia. Stormwater utilities are often authorized to assess fair and equitable fees to fund the development, improvement, and management of stormwater infrastructure.

b. The Legislature therefore determines that it is in the public interest to authorize the establishment of local stormwater utilities, and to allow those utilities to assess fees that are based on a fair and equitable approximation of the proportionate contribution of stormwater runoff from any real property, in order to finance the improvement of the State’s stormwater infrastructure, better control water pollution and flooding, restore and enhance the quality of the State’s waters, and protect the public health, safety, and welfare and the environment.

The Legislature further determines that green infrastructure is an effective approach to managing stormwater because it reduces and treats stormwater at its source while delivering other environmental, social, and economic benefits. The use of green infrastructure should

be encouraged and, where appropriate, required to help decrease pollutant loads and runoff volumes to receiving waters.

C.40A:26B-3 Definitions relative to stormwater utilities.

3. As used in sections 1 through 18 of P.L.2019, c.42 (C.40A:26B-1 et seq.):

“Authority” means a county or municipal sewerage authority established pursuant to P.L.1946, c.138 (C.40:14A-1 et seq.), a county or municipal utilities authority established pursuant to P.L.1957, c.183 (C.40:14B-1 et seq.), or a county improvement authority established pursuant to P.L.1960, c.183 (C.40:37A-44 et seq.).

“Department” means the Department of Environmental Protection.

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

“Green infrastructure” means a stormwater management system that treats stormwater runoff through infiltration into subsoil, treats stormwater runoff through filtration by vegetation or soil, or stores stormwater runoff for reuse.

“New Jersey Pollutant Discharge Elimination System permit” means any permit issued by the department pursuant to section 6 of P.L.1977, c.74 (C.58:10A-6).

“Stormwater” means water resulting from precipitation, including rain and snow, which runs off the land’s surface, is transmitted to the subsurface, or is captured by separate storm sewers or other sewage or drainage facilities, or conveyed by snow removal equipment.

“Stormwater management system” means any equipment, plant, structures, machinery, apparatus, management practices, design practices, planning activities, or land, or any combination thereof, acquired, used, constructed, implemented, or operated to convey stormwater, control or reduce stormwater runoff and associated pollutants or flooding, induce or control the infiltration of groundwater recharge of stormwater, or eliminate illicit or illegal nonstormwater discharges into stormwater conveyances.

C.40A:26B-4 Governing body may establish stormwater utility.

4. a. The governing body of any county or municipality may, by resolution or ordinance, as appropriate, establish a stormwater utility for the purposes of acquiring, constructing, improving, maintaining, and operating stormwater management systems in the county or municipality, consistent with State and federal laws, rules, and regulations.

b. Any stormwater utility that is established pursuant to this section shall be considered a “municipal public utility” for the purposes of Title 40A of the New Jersey Statutes. Notwithstanding any other law to the contrary, a county or municipality may establish a stormwater utility as a new department within the county or municipality, or as an operation of an existing department or departments having responsibility and control over stormwater management systems or portions thereof.

c. A county or municipality that establishes a stormwater utility pursuant to this section shall submit a copy of the resolution or ordinance adopted pursuant to subsection a. of this section to the Department of Environmental Protection and the Division of Local Government Services in the Department of Community Affairs. The establishment of a stormwater utility pursuant to this section shall not be construed to modify or otherwise affect a county or municipality’s obligations under any New Jersey Pollutant Discharge Elimination System permit or any other rule, regulation, order, or permit issued by the department.

C.40A:26B-5 Establishment of stormwater utility by municipal authorities.

5. a. The governing body or bodies of one or more municipalities that have established a municipal sewerage authority pursuant to P.L.1946, c.138 (C.40:14A-1 et seq.) or a municipal utilities authority pursuant to P.L.1957, c.183 (C.40:14B-1 et seq.) may, by ordinance, or parallel ordinances, as appropriate, request that the authority establish a stormwater utility for the purposes of acquiring, constructing, improving, maintaining, and operating stormwater management systems in the municipality or municipalities, consistent with State and federal laws, rules, and regulations.

b. Upon the request of a municipality or municipalities, an authority may establish a stormwater utility pursuant to a service agreement between the authority and the requesting municipality or municipalities, in accordance with the provisions of P.L.2019, c.42 (C.40A:26B-1 et al.) and the “Local Authorities Fiscal Control Law,” P.L.1983, c.313 (C.40A:5A-1 et seq.). The agreement shall set forth the powers, duties, and functions of the stormwater utility and any other matters that may be necessary for the agreement. A stormwater utility established pursuant to this section shall be considered a separate operation of the authority to be budgeted and accounted for separately.

c. An authority that establishes a stormwater utility pursuant to this section shall submit a copy of the service agreement to the Department of Environmental Protection and the Division of Local Government Services in the Department of Community Affairs. A municipality that contractually delegates to an authority any of its responsibilities under any New Jersey Pollutant Discharge Elimination System permit or any other rule, regulation, order, or permit issued by the department shall remain responsible for compliance with any such rules, regulations, orders, or permits if the authority fails to implement the requirements thereof.

C.40A:26B-6 Establishment of stormwater utility by county authorities.

6. a. The governing body of any county that has established a county sewerage authority pursuant to P.L.1946, c.138 (C.40:14A-1 et seq.), a county utilities authority pursuant to P.L.1957, c.183 (C.40:14B-1 et seq.), or a county improvement authority pursuant to P.L.1960, c.183 (C.40:37A-44 et seq.) may, by resolution, request that the authority establish a stormwater utility for the purposes of acquiring, constructing, improving, maintaining, and operating stormwater management systems in the county, consistent with State and federal laws, rules, and regulations.

b. Upon the request of a county, an authority may establish a stormwater utility pursuant to a service agreement between the authority and the requesting county, in accordance with the provisions of P.L.2019, c.42 (C.40A:26B-1 et al.) and the “Local Authorities Fiscal Control Law,” P.L.1983, c.313 (C.40A:5A-1 et seq.). The agreement shall set forth the powers, duties, and functions of the stormwater utility and any other matters that may be necessary for the agreement. A stormwater utility established pursuant to this section shall be considered a separate operation of the authority to be budgeted and accounted for separately.

c. An authority that establishes a stormwater utility pursuant to this section shall submit a copy of the service agreement to the Department of Environmental Protection and the Division of Local Government Services in the Department of Community Affairs. A county that contractually delegates to an authority any of its responsibilities under any New Jersey Pollutant Discharge Elimination System permit or any other rule, regulation, order, or permit issued by the department shall remain responsible for compliance with any such rules, regulations, orders, or permits if the authority fails to implement the requirements thereof.

C.40A:26B-7 Shared services agreement for stormwater management system.

7. a. The governing bodies of any two or more municipalities may, pursuant to the provisions of P.L.2007, c.63 (C.40A:65-1 et al.), enter into a shared services agreement to provide for the construction, improvement, maintenance, or operation of stormwater management systems in the municipalities, consistent with State and federal laws, rules, and regulations.

b. The governing body or bodies of one or more municipalities, and the county in which the municipality or municipalities are located may, pursuant to the provisions of P.L.2007, c.63 (C.40A:65-1 et al.), enter into a shared services agreement to provide for the construction, improvement, maintenance, or operation of stormwater management systems in the municipalities, consistent with State and federal laws, rules, and regulations.

c. Any county or municipality that enters into a shared services agreement pursuant to this section shall submit a copy of the agreement to the Department of Environmental Protection and the Division of Local Government Services in the Department of Community Affairs.

C.40A:26B-8 Collections of fees and charges.

8. a. Any county, municipality, or authority that establishes a stormwater utility pursuant to P.L.2019, c.42 (C.40A:26B-1 et al.) may charge and collect reasonable fees and other charges to recover the stormwater utility's costs for stormwater management. These fees and other charges may be charged to and collected from the owner or occupant, or both, of any real property from which originates stormwater runoff which directly or indirectly enters the stormwater management system or the waters of the State. The owner of any such real property shall be liable for and shall pay such fees and charges to the stormwater utility at the time when and place where the fees and charges are due and payable.

b. Any fee or other charge that a county, municipality, or authority charges and collects pursuant to this section shall be based on a fair and equitable approximation of the proportionate contribution of stormwater runoff from a real property.

c. In establishing fees and other charges pursuant to this section, a county, municipality, or authority shall provide for:

(1) a partial fee reduction in the form of a credit for any property that maintains and operates a stormwater management system that complies with the State and local stormwater management standards that were in place at the time the system was approved and that effectively reduces, retains, or treats stormwater onsite;

(2) an additional partial fee reduction in the form of a credit for any property which has installed and is operating and maintaining current stormwater best management practices that reduce, retain, or treat stormwater onsite and which are approved by the county, municipality, or authority;

(3) an additional partial fee reduction in the form of a credit for any property which has installed and is operating and maintaining green infrastructure that reduces, retains, or treats stormwater onsite and which exceeds any requirements for green infrastructure that may be applicable to that property under any rule or regulation adopted by the Department of Environmental Protection or the local stormwater control ordinance; and

(4) an exemption from fees and other charges for land actively devoted to agricultural or horticultural use that is valued, assessed, and taxed pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

d. Any county, municipality, or authority that collects fees and charges pursuant to this section shall remit to the State Treasurer annually an amount equal to five percent of all such fees and charges collected, or \$50,000, whichever amount is less. The State Treasurer shall deposit these moneys into the “Clean Stormwater and Flood Reduction Fund” established pursuant to section 17 of P.L.2019, c.42 (C.40A:26B-17).

e. Except as provided in section 5 of P.L.1983, c.111 (C.40A:4-35.1) or section 1 of P.L.2004, c.87 (C.40A:5A-12.1), as applicable, a county, municipality, or authority shall only use fees and other charges collected pursuant to this section to pay for or recover all or a portion of the cost of the following:

(1) initial establishment of a stormwater utility pursuant to P.L.2019, c.42 (C.40A:26B-1 et al.) and ongoing related administrative expenses;

(2) capital expenditures, including planning, design, engineering, acquisition, construction, and improvement of a stormwater management system;

(3) operation and maintenance expenditures of a stormwater management system;

(4) development and implementation of an asset management program for a stormwater management system;

(5) development and implementation of a stormwater management plan and stormwater control ordinances pursuant to section 1 of P.L.1981, c.32 (C.40:55D-93);

(6) any action required pursuant to any New Jersey Pollutant Discharge Elimination System permit;

(7) development and implementation of any long-term control plan to mitigate combined sewer overflows pursuant to State or federal law, rule, regulation, permit, or consent decree;

(8) monitoring, inspection, and enforcement activities to carry out the purposes of P.L.2019, c.42 (C.40A:26B-1 et al.);

(9) public education and outreach related to stormwater management; and

(10) any other purpose related to stormwater management as may be authorized by the department, the Division of Local Government Services in the Department of Community Affairs, or the Local Finance Board pursuant to rules, regulations, or permits.

f. In establishing fees and other charges and appropriate credits pursuant to this section, a county, municipality, or authority shall consult the guidance manual developed pursuant to section 16 of P.L.2019, c.42 (C.40A:26B-16), and other best practice guidance manuals published by industry organizations.

C.40A:26B-9 Unpaid fees, charges.

9. In the event that a stormwater utility fee or charge of any county, municipality, or authority with regard to any parcel of real property is not paid when due:

a. interest shall accrue and be due to the county or authority on the unpaid balance at the rate of one and one half percent per month until such fees and charges, and the interest thereon, shall be fully paid to the county or authority; interest shall accrue and be due to the municipality on the unpaid balance at a rate not to exceed that permitted under R.S.54:4-67;

b. the unpaid balance thereof and all interest accruing thereon shall be a lien on such parcel enforced in the same manner as delinquent property taxes and municipal charges. Such lien shall be superior and paramount to the interest in such parcel of any owner, lessee, tenant, mortgagee, or other person except the lien of State taxes and property taxes and shall be on a parity with and deemed equal to the lien on such parcel of State taxes and property taxes; and

c. the unpaid balance thereof and all interest accrued thereon, together with attorneys' fees and costs, may also be recovered by the county, municipality, or authority in a civil action, but not in lieu of enforcement as a delinquent municipal charge.

C.40A:26B-10 Issuance of bonds.

10. A county, municipality, or authority that establishes a stormwater utility pursuant to P.L.2019, c.42 (C.40A:26B-1 et al.) may provide, by ordinance or resolution, as appropriate, at one time, or from time to time, for the issuance of bonds for the purpose of raising funds to pay the cost of any part of the stormwater management system. The bonds shall be issued pursuant to each entity's respective authority under the "Local Bond Law," N.J.S.40A:2-1 et seq., P.L.1946, c.138 (C.40:14A-1 et seq.), P.L.1957, c.183 (C.40:14B-1 et seq.), P.L.1960, c.183 (C.40:37A-44 et seq.), or any other applicable law.

C.40A:26B-11 Posting of report on website; contents.

11. a. A county, municipality, or authority that establishes a stormwater utility pursuant to P.L.2019, c.42 (C.40A:26B-1 et al.) shall, within one year after establishment of the utility, and each year thereafter, prepare and submit to the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection a report in the form and manner determined by the department and the division pursuant to subsection b. of this section. Each county, municipality, or authority shall post the annual report on its Internet website.

b. Within 18 months after the effective date of this section, the division, in consultation with the department, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations outlining the substantive requirements for, and the form and manner of, the annual report required pursuant to subsection a. of this section. The annual report shall include, but need not be limited to, information on:

- (1) the stormwater utility's service area;
- (2) the schedule of fees, other charges, and credits that the county, municipality, or authority has established;
- (3) the number of properties subject to the stormwater utility's fees and other charges, and the number of properties of each land use type, including but not limited to residential, commercial, and industrial, that have been granted credits or exemptions from the fee, and the cumulative value of credits that have been granted to properties of each land use type;
- (4) the total revenues from stormwater utility fees and other charges collected by the county, municipality, or authority;
- (5) the percentage and amount of revenues from fees and other charges spent on each of the purposes authorized in subsection e. of section 8 of P.L.2019, c.42 (C.40A:26B-8); and
- (6) all stormwater management projects implemented in the previous fiscal year.

C.40A:26B-12 Acquisitions relative to stormwater utility.

12. a. A county, municipality, or authority that establishes a stormwater utility pursuant to P.L.2019, c.42 (C.40A:26B-1 et al.) may acquire by gift, grant, purchase, or condemnation, or in any other lawful manner, any privately-owned stormwater management system, or any real property necessary for the construction, improvement, operation, or maintenance of a stormwater management system.

b. If a county, municipality, or authority requires any payment as a condition of, or in connection with, assuming ownership, operation, or maintenance of any privately-owned

stormwater management system, the payment shall not exceed the costs attributable to the ownership, operation, or maintenance of that stormwater management system.

C.40A:26B-13 Existing stormwater management systems, dedication.

13. a. Notwithstanding the provisions of section 12 of P.L.2019, c.42 (C.40A:26B-12), the owner of a stormwater management system that complies with the State and local stormwater management standards that were in place at the time the system was approved may retain ownership and responsibility for the operation and maintenance of the system, or offer to dedicate the system to the county, municipality, or authority. The county, municipality, or authority may accept the dedication of, and assume operation and maintenance responsibility for, the stormwater management system.

b. Any person who dedicates a stormwater management system to a county, municipality, or authority pursuant to this section shall still be liable for paying any applicable stormwater utility fee imposed pursuant to section 8 of P.L.2019, c.42 (C.40A:26B-8).

C.40A:26B-14 Contracts with private entities.

14. A county, municipality, or authority that establishes a stormwater utility pursuant to P.L.2019, c.42 (C.40A:26B-1 et al.) may, pursuant to the “Local Public Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.), enter into a contract with a private entity for the planning, design, engineering, construction, improvement, maintenance, and operation of a stormwater management system.

C.40A:26B-15 Rules, regulations relative to wages; financial assistance.

15. Each county, municipality, and authority shall adopt rules and regulations requiring that not less than the prevailing wage rate be paid to workers employed in the performance of any construction contract undertaken in connection with financial assistance provided for the construction of a stormwater management system under P.L.2019, c.42 (C.40A:26B-1 et al.). The prevailing wage rate shall be the rate determined by the Commissioner of Labor pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.).

For the purposes of this section, “financial assistance” means any loan, bond, loan guarantee, grant, incentive, tax exemption, or other financial assistance approved, funded, authorized, administered, or provided by the municipality, county, or authority in connection with the construction of a stormwater management system.

C.40A:26B-16 Stormwater utility guidance manual.

16. a. Within 18 months after the effective date of this section, the Department of Environmental Protection, in consultation with the Board of Public Utilities, the Division of Local Government Services in the Department of Community Affairs, and stakeholders as the department deems appropriate, shall develop a stormwater utility guidance manual. The department shall periodically update the guidance manual as the department deems appropriate. The guidance manual shall include, but need not be limited to:

(1) technical assistance for counties, municipalities, and authorities seeking to establish a stormwater utility pursuant to P.L.2019, c.42 (C.40A:26B-1 et al.);

(2) factors for counties, municipalities, and authorities to consider when establishing and revising stormwater utility fees and other charges and appropriate credits;

(3) information on how to develop an asset management program for a stormwater management system; and

(4) information on how counties, municipalities, and authorities can conduct public education and outreach related to stormwater management.

b. Development of the stormwater utility guidance manual, and any updates thereto, shall not be subject to the requirements and provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.40A:26B-17 "Clean Stormwater and Flood Reduction Fund."

17. a. There is established in the General Fund a special nonlapsing account to be known as the "Clean Stormwater and Flood Reduction Fund." The State Treasurer shall credit to this account all moneys remitted to the State Treasurer by counties, municipalities, and authorities pursuant to subsection d. of section 8 of P.L.2019, c.42 (C.40A:26B-8). Pending the use thereof, moneys deposited in the fund may be invested or reinvested in such securities as are approved by the State Treasurer. Interest or other income earned on moneys deposited into the fund shall be credited to the fund for use as set forth in subsection b. of this section.

b. Moneys deposited in the "Clean Stormwater and Flood Reduction Fund" are specifically dedicated and shall be used by the Department of Environmental Protection only to fund planning, implementation, and coordination activities related to stormwater utilities in the State, water quality monitoring and assessment, point and non-point source water pollution reduction projects, implementation of the department's stormwater management program, and a public education and outreach program relating to stormwater management.

C.40A:26B-18 Rules, regulations.

18. The Department of Environmental Protection, the Division of Local Government Services in the Department of Community Affairs, and the Local Finance Board may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary for the implementation of P.L.2019, c.42 (C.40A:26B-1 et al.).

19. Section 1 of P.L.2017, c.290 (C.40:14A-4.2) is amended to read as follows:

C.40:14A-4.2 Provisions relative to budget of certain regional sewerage authorities.

1. a. Notwithstanding the provisions of any other law to the contrary, the budget of a regional sewerage authority that was created pursuant to the provisions of P.L.1946, c.138 (C.40:14A-1 et seq.), and that is located in a county of the first class with a population of over 600,000 and a population density of over 10,000 persons per square mile according to the latest federal decennial census shall be subject to the following provisions:

(1) (a) The percentage of growth in the fee-funded appropriations in the annual budget of a regional sewerage authority shall not exceed two percent per year; and the amount billed to customers of the authority, or the amount billed to a local unit for its proportional share of the authority's expenses, as the case may be, shall not exceed that amount billed in the previous budget year to each customer or local unit, as the case may be, by more than two percent for a similar amount of use or service of the sewerage system.

(b) A regional sewerage authority may add to the allowable growth in fee-funded appropriations in any one of the next three succeeding years, the amount of the difference between the maximum allowable increase in fee-funded appropriations for the current budget

year pursuant to subparagraph (a) of this paragraph and the actual amount of fee-funded appropriations for the current budget year.

(2) The percentage of growth in the fee-funded appropriations in the annual budget of a regional sewerage authority shall be determined without consideration of any amounts appropriated by the authority for:

(a) capital expenditures, including payment of principal or interest on bonds authorized or issued pursuant to the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et seq.);

(b) increases in pension contributions and accrued liability for pension contributions in excess of two percent over those expenditures for the previous budget year;

(c) increases in health care costs equal to that portion of the actual increase in total health care costs for the budget year that is in excess of two percent of total health care costs in the previous budget year, but is not in excess of the product of the total health care costs in the prior year and the average percentage increase of the State Health Benefits Program, P.L.1961, c.49 (C.52:14-17.25 et seq.), as annually determined by the Division of Pensions and Benefits in the Department of the Treasury;

(d) increases in energy cost expenditures in excess of two percent over those expenditures for the previous budget year;

(e) extraordinary costs that are directly related to an emergency;

(f) expenditures for the cost of services mandated by any order of court, by any federal or State statute, or by administrative rule, directive, order, permit, or other legally binding device issued by a State agency which identified the cost as a mandated expenditure on certification to the Local Finance Board by the State agency; and

(g) costs associated with the establishment of a stormwater utility pursuant to P.L.2019, c.42 (C.40A:26B-1 et al.) or for any of the purposes authorized in subsection e. of section 8 of P.L.2019, c.42 (C.40A:26B-8).

(3) Notwithstanding the limitations imposed by paragraph (1) of this subsection, a regional sewerage authority may apply to the Local Finance Board for a waiver to increase its rents, rates, fees, and charges to levels sufficient to compensate for loss of revenues due to reductions in the use or service of the sewerage system.

(4) Notwithstanding the limitations imposed by paragraph (1) of this subsection, the percentage of growth in the increase of the rents, rates, fees, and charges of a regional sewerage authority shall be determined without consideration of any amounts required to be raised for the purposes set forth in subparagraph (g) of paragraph (2) of this subsection.

As used in this section, "emergency" shall mean any purpose which is not foreseen at the time of the adoption of the annual budget, or for which adequate provision was not made therein, to meet a pressing need for public expenditure to protect or promote the public health, safety, morals, or welfare.

b. After the budget of a regional sewerage authority that is subject to the provisions of subsection a. of this section has been approved by the members of the regional sewerage authority, the budget shall be forwarded to the Director of the Division of Local Government Services for review and approval.

The director shall review the budget to ensure that the budget conforms with the requirements of subsection a. of this section and the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.), and that the budgeted expenditures are reasonable in cost and necessary for the performance of the regional sewerage authority.

If the director determines that the budget meets the requirements of this subsection, the director shall approve the budget. If the director does not approve the budget, the director

shall return the budget to the members of the regional sewerage authority with written information concerning the reasons for the disapproval of the budget.

To the extent that the provisions of subsection a. of this section conflict with the provisions of the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.), subsection a. of this section shall take precedence.

20. Section 5 of P.L.1983, c.111 (C.40A:4-35.1) is amended to read as follows:

C.40A:4-35.1 Transfer of surplus revenue.

5. To the extent there is available surplus revenue collected by a municipality pursuant to chapter 62 of Title 40 of the Revised Statutes for supplying a utility service which is regulated by the Board of Public Utilities pursuant to subsection d. of N.J.S.40A:31-23, or to the extent there is available surplus revenue collected by a county or municipality from a stormwater utility established pursuant to P.L.2019, c.42 (C.40A:26B-1 et al.), an amount not to exceed five percent of the annual costs of operation of the utility may be transferred annually from the accounts of the municipal utility or county utility, as appropriate, and included in the local budget pursuant to N.J.S.40A:4-35.

21. Section 1 of P.L.1999, c.440 (C.40A:11-4.1) is amended to read as follows:

C.40A:11-4.1 Purposes for which competitive contracting may be used by local units.

1. Notwithstanding the provisions of any law, rule, or regulation to the contrary, competitive contracting may be used by local contracting units in lieu of public bidding for procurement of specialized goods and services the price of which exceeds the bid threshold, for the following purposes:

a. The purchase or licensing of proprietary computer software designed for contracting unit purposes, which may include hardware intended for use with the proprietary software. This subsection shall not be utilized for the purpose of acquiring general purpose computer hardware or software;

b. The hiring of a for-profit entity or a not-for-profit entity incorporated under Title 15A of the New Jersey Statutes for the purpose of:

(1) the operation and management of a wastewater treatment system, a stormwater management system, or a water supply or distribution facility of the type described in subsection (37) of section 15 of P.L.1971, c.198 (C.40A:11-15), provided that competitive contracting shall not be used as a means of awarding contracts pursuant to P.L.1985, c.37 (C.58:26-1 et al.) and P.L.1985, c.72 (C.58:27-1 et al.);

(2) the operation, management or administration of recreation or social service facilities or programs, which shall not include the administration of benefits under the Work First New Jersey program established pursuant to P.L.1997, c.38 (C.44:10-55 et seq.), or under General Assistance;

(3) the operation, management or administration of data processing services; or

(4) the operation and management of a county hospital pursuant to the "Local Hospital Authority Law," P.L.2006, c.46 (C.30:9-23.15 et al.);

c. (Deleted by amendment, P.L.2009, c.4).

d. Homemaker--home health services;

e. Laboratory testing services;

f. Emergency medical services;

- g. Contracted food services;
- h. Performance of patient care services by contracted medical staff at county hospitals, correctional facilities and long-term care facilities;
- i. At the option of the governing body of the contracting unit, any good or service that is exempt from bidding pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);
- j. Concessions;
- k. The operation, management or administration of other services, with the approval of the Director of the Division of Local Government Services;
- l. Maintenance, custodial, and groundskeeping services;
- m. Consulting services;
- n. Emergency medical billing services;
- o. Property appraisal services;
- p. Reassessment or revaluation services;
- q. Grant writing services;
- r. Animal control services.

Any purpose included herein shall not be considered by a contracting unit as an extraordinary unspecifiable service pursuant to subparagraph (ii) of paragraph (a) of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5).

As used in this section, "stormwater management system" means the same as that term is defined in section 3 of P.L.2019, c.42 (C.40A:26B-3).

22. Section 15 of P.L.1971, c.198 (C.40A:11-15) is amended to read as follows:

C.40A:11-15 Duration of certain contracts.

15. All contracts for the provision or performance of goods or services shall be awarded for a period not to exceed 24 consecutive months, except that contracts for professional services pursuant to subparagraph (i) of paragraph (a) of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) shall be awarded for a period not to exceed 12 consecutive months. Contracts may be awarded for longer periods of time as follows:

- (1) Supplying of:
 - (a) (Deleted by amendment, P.L.1996, c.113.)
 - (b) (Deleted by amendment, P.L.1996, c.113.)
 - (c) Thermal energy produced by a cogeneration facility, for use for heating or air conditioning or both, for any term not exceeding 40 years, when the contract is approved by the Board of Public Utilities. For the purposes of this paragraph, "cogeneration" means the simultaneous production in one facility of electric power and other forms of useful energy such as heating or process steam;
- (2) (Deleted by amendment, P.L.1977, c.53.)
- (3) The collection and disposal of municipal solid waste, the collection and disposition of recyclable material, or the disposal of sewage sludge, for any term not exceeding in the aggregate, five years;
- (4) The collection and recycling of methane gas from a sanitary landfill facility, for any term not exceeding 25 years, when the contract is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.), and with the approval of the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection. The contracting unit shall award the contract to the highest responsible bidder, notwithstanding that the contract price may be

in excess of the amount of any necessarily related administrative expenses; except that if the contract requires the contracting unit to expend funds only, the contracting unit shall award the contract to the lowest responsible bidder. The approval by the Division of Local Government Services of public bidding requirements shall not be required for those contracts exempted therefrom pursuant to section 5 of P.L.1971, c.198 (C.40A:11-5);

(5) Data processing service, for any term of not more than seven years;

(6) Insurance, including the purchase of insurance coverages, insurance consulting or administrative services, claims administration services and including participation in a joint self-insurance fund, risk management program or related services provided by a contracting unit insurance group, or participation in an insurance fund established by a local unit pursuant to N.J.S.40A:10-6, or a joint insurance fund established pursuant to P.L.1983, c.372 (C.40A:10-36 et seq.), for any term of not more than three years;

(7) Leasing or servicing of (a) automobiles, motor vehicles, machinery, and equipment of every nature and kind, for a period not to exceed five years, or (b) machinery and equipment used in the generation of electricity by a municipal shared services energy authority established pursuant to section 4 of P.L.2015, c.129 (C.40A:66-4), or a contracting unit engaged in the generation of electricity, for a period not to exceed 20 years; provided, however, a contract shall be awarded only subject to and in accordance with the rules and regulations promulgated by the Director of the Division of Local Government Services in the Department of Community Affairs;

(8) The supplying of any product or the rendering of any service by a company providing voice, data, transmission, or switching services for a term not exceeding five years;

(9) Any single project for the construction, reconstruction, or rehabilitation of any public building, structure, or facility, or any public works project, including the retention of the services of any architect or engineer in connection therewith, for the length of time authorized and necessary for the completion of the actual construction;

(10) The providing of food services for any term not exceeding three years;

(11) On-site inspections and plan review services undertaken by private agencies pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) for any term of not more than three years;

(12) (Deleted by amendment, P.L.2009, c.4).

(13) (Deleted by amendment, P.L.1999, c.440.)

(14) (Deleted by amendment, P.L.1999, c.440.)

(15) Leasing of motor vehicles, machinery, and other equipment primarily used to fight fires, for a term not to exceed ten years, when the contract includes an option to purchase, subject to and in accordance with rules and regulations promulgated by the Director of the Division of Local Government Services in the Department of Community Affairs;

(16) The provision of water supply services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a water supply facility, or any component part or parts thereof, including a water filtration system, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs, the Board of Public Utilities, and the Department of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et al.), except that no approvals shall be required for those contracts otherwise exempted pursuant to subsection (30), (31), (34), (35) or (43) of this section. For the purposes of this subsection, "water supply services" means any service provided by a water supply facility; "water filtration system" means any equipment, plants, structures, machinery, apparatus, or

land, or any combination thereof, acquired, used, constructed, rehabilitated, or operated for the collection, impoundment, storage, improvement, filtration, or other treatment of drinking water for the purposes of purifying and enhancing water quality and insuring its potability prior to the distribution of the drinking water to the general public for human consumption, including plants and works, and other personal property and appurtenances necessary for their use or operation; and "water supply facility" means and refers to the real property and the plants, structures, or interconnections between existing water supply facilities, machinery and equipment and other property, real, personal, and mixed, acquired, constructed, or operated, or to be acquired, constructed, or operated, in whole or in part by or on behalf of a political subdivision of the State or any agency thereof, for the purpose of augmenting the natural water resources of the State and making available an increased supply of water for all uses, or of conserving existing water resources, and any and all appurtenances necessary, useful, or convenient for the collecting, impounding, storing, improving, treating, filtering, conserving, or transmitting of water and for the preservation and protection of these resources and facilities and providing for the conservation and development of future water supply resources;

(17) The provision of resource recovery services by a qualified vendor, the disposal of the solid waste delivered for disposal which cannot be processed by a resource recovery facility or the residual ash generated at a resource recovery facility, including hazardous waste and recovered metals and other materials for reuse, or the design, financing, construction, operation, or maintenance of a resource recovery facility for a period not to exceed 40 years when the contract is approved by the Division of Local Government Services in the Department of Community Affairs, and the Department of Environmental Protection pursuant to P.L.1985, c.38 (C.13:1E-136 et al.); and when the resource recovery facility is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production; and "residual ash" means the bottom ash, fly ash, or any combination thereof, resulting from the combustion of solid waste at a resource recovery facility;

(18) The sale of electricity or thermal energy, or both, produced by a resource recovery facility for a period not to exceed 40 years when the contract is approved by the Board of Public Utilities, and when the resource recovery facility is in conformance with a district solid waste management plan approved pursuant to P.L.1970, c.39 (C.13:1E-1 et seq.). For the purposes of this subsection, "resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production;

(19) The provision of wastewater treatment services or the designing, financing, construction, operation, or maintenance, or any combination thereof, of a wastewater treatment system, or any component part or parts thereof, for a period not to exceed 40 years, when the contract for these services is approved by the Division of Local Government Services in the Department of Community Affairs and the Department of Environmental Protection pursuant to P.L.1985, c.72 (C.58:27-1 et al.), except that no approvals shall be

required for those contracts otherwise exempted pursuant to subsection (36) or (43) of this section. For the purposes of this subsection, "wastewater treatment services" means any services provided by a wastewater treatment system, and "wastewater treatment system" means equipment, plants, structures, machinery, apparatus, or land, or any combination thereof, acquired, used, constructed, or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation, or other treatment of wastewater or sewage sludge, or for the final disposal of residues resulting from the treatment of wastewater, including, but not limited to, pumping and ventilating stations, facilities, plants and works, connections, outfall sewers, interceptors, trunk lines, and other personal property and appurtenances necessary for their operation;

(20) The supplying of goods or services for the purpose of lighting public streets, for a term not to exceed five years;

(21) The provision of emergency medical services for a term not to exceed five years;

(22) Towing and storage contracts, awarded pursuant to paragraph u. of subsection (1) of section 5 of P.L.1971, c.198 (C.40A:11-5) for any term not exceeding three years;

(23) Fuel for the purpose of generating electricity for a term not to exceed eight years;

(24) The purchase of electricity or administrative or dispatching services related to the transmission of electricity, from a supplier of electricity subject to the jurisdiction of a federal regulatory agency, from a qualifying small power producing facility or qualifying cogeneration facility, as defined by 16 U.S.C. s.796, or from any supplier of electricity within any regional transmission organization or independent system operator or from an organization or operator or their successors, by a contracting unit engaged in the generation of electricity for retail sale, as of May 24, 1991, for a term not to exceed 40 years, or by a contracting unit engaged solely in the distribution of electricity for retail sale for a term not to exceed ten years, except that a contract with a contracting unit, engaged solely in the distribution of electricity for retail sale, in excess of ten years, shall require the written approval of the Director of the Division of Local Government Services. If the director fails to respond in writing to the contracting unit within 10 business days, the contract shall be deemed approved;

(25) Basic life support services, for a period not to exceed five years. For the purposes of this subsection, "basic life support" means a basic level of prehospital care, which includes but need not be limited to patient stabilization, airway clearance, cardiopulmonary resuscitation, hemorrhage control, initial wound care, and fracture stabilization;

(26) (Deleted by amendment, P.L.1999, c.440.)

(27) The provision of transportation services to an elderly person, an individual with a disability, or an indigent person for any term of not more than three years. For the purposes of this subsection, "elderly person" means a person who is 60 years of age or older. "Individual with a disability" means a person of any age who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, are unable, without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected. "Indigent person " means a person of any age whose income does not exceed 100 percent of the poverty level, adjusted for family size, established and adjusted under section 673(2) of subtitle B, the "Community Services Block Grant Act," Pub.L.97-35 (42 U.S.C. s.9902 (2));

(28) The supplying of liquid oxygen or other chemicals, for a term not to exceed five years, when the contract includes the installation of tanks or other storage facilities by the supplier, on or near the premises of the contracting unit;

(29) The performance of patient care services by contracted medical staff at county hospitals, correction facilities, and long term care facilities, for any term of not more than three years;

(30) The acquisition of an equitable interest in a water supply facility pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or a contract entered into pursuant to the "County and Municipal Water Supply Act," N.J.S.40A:31-1 et seq., if the contract is entered into no later than January 7, 1995, for any term of not more than forty years;

(31) The provision of water supply services or the financing, construction, operation, or maintenance or any combination thereof, of a water supply facility or any component part or parts thereof, by a partnership or copartnership established pursuant to a contract authorized under section 2 of P.L.1993, c.381 (C.58:28-2), for a period not to exceed 40 years;

(32) Laundry service and the rental, supply, and cleaning of uniforms for any term of not more than three years;

(33) The supplying of any product or the rendering of any service, including consulting services, by a cemetery management company for the maintenance and preservation of a municipal cemetery operating pursuant to the "New Jersey Cemetery Act," N.J.S.8A:1-1 et seq., for a term not exceeding 15 years;

(34) A contract between a public entity and a private firm pursuant to P.L.1995, c.101 (C.58:26-19 et al.) for the provision of water supply services may be entered into for any term which, when all optional extension periods are added, may not exceed 40 years;

(35) A contract for the purchase of a supply of water from a public utility company subject to the jurisdiction of the Board of Public Utilities in accordance with tariffs and schedules of charges made, charged or exacted or contracts filed with the Board of Public Utilities, for any term of not more than 40 years;

(36) A contract between a public entity and a private firm or public authority pursuant to P.L.1995, c.216 (C.58:27-19 et al.) for the provision of wastewater treatment services may be entered into for any term of not more than 40 years, including all optional extension periods;

(37) The operation and management of a facility under a license issued or permit approved by the Department of Environmental Protection, including a wastewater treatment system, a stormwater management system, or a water supply or distribution facility, as the case may be, for any term of not more than ten years. For the purposes of this subsection, "wastewater treatment system" refers to facilities operated or maintained for the storage, collection, reduction, disposal, or other treatment of wastewater or sewage sludge, remediation of groundwater contamination, stormwater runoff, or the final disposal of residues resulting from the treatment of wastewater; "stormwater management system" means the same as that term is defined in section 3 of P.L.2019, c.42 (C.40A:26B-3); and "water supply or distribution facility" refers to facilities operated or maintained for augmenting the natural water resources of the State, increasing the supply of water, conserving existing water resources, or distributing water to users;

(38) Municipal solid waste collection from facilities owned by a contracting unit, for any term of not more than three years;

(39) Fuel for heating purposes, for any term of not more than three years;

(40) Fuel or oil for use in motor vehicles for any term of not more than three years;

(41) Plowing and removal of snow and ice for any term of not more than three years;

(42) Purchases made under a contract awarded by the Director of the Division of Purchase and Property in the Department of the Treasury for use by counties, municipalities, or other

contracting units pursuant to section 3 of P.L.1969, c.104 (C.52:25-16.1), for a term not to exceed the term of that contract;

(43) A contract between the governing body of a city of the first class and a duly incorporated nonprofit association for the provision of water supply services as defined in subsection (16) of this section, or wastewater treatment services as defined in subsection (19) of this section, may be entered into for a period not to exceed 40 years;

(44) The purchase of electricity generated through class I renewable energy or from a power production facility that is fueled by methane gas extracted from a landfill in the county of the contacting unit for any term not exceeding 25 years;

(45) The provision or performance of goods or services for the purpose of producing class I renewable energy or class II renewable energy, as those terms are defined in section 3 of P.L.1999, c.23 (C.48:3-51), at, or adjacent to, buildings owned by, or operations conducted by, the contracting unit, the entire price of which is to be established as a percentage of the resultant savings in energy costs, for a term not to exceed 15 years; provided, however, that a contract shall be entered into only subject to and in accordance with guidelines promulgated by the Board of Public Utilities establishing a methodology for computing energy cost savings and energy generation costs;

(46) A power supply contract, as defined pursuant to section 3 of P.L.2015, c.129 (C.40A:66-3), between a member municipality as defined pursuant to section 3 of P.L.2015, c.129 (C.40A:66-3), and the municipal shared services energy authority established pursuant to the provisions of P.L.2015, c.129 (C.40A:66-1 et al.) to meet the electric power needs of its members, for the lease, operation, or management of electric generation within a member municipality's corporate limits and franchise area or the purchase of electricity, or the purchase of fuel for generating units for a term not to exceed 40 years; and

(47) A contract entered into pursuant to paragraph (2) of subsection a. of section 6 of P.L.2006, c.46 (C.30:9-23.20) between a county hospital authority and a manager for the management, operation, and maintenance of a hospital owned by the authority or the county for a term not to exceed 20 years, provided, however, that a contract entered into pursuant to paragraph (2) of subsection a. of section 6 of P.L.2006, c.46 (C.30:9-23.20) may be renewed for two additional periods, not to exceed five years each.

Any contract for services other than professional services, the statutory length of which contract is for three years or less, may include provisions for no more than one two-year, or two one-year, extensions, subject to the following limitations: a. The contract shall be awarded by resolution of the governing body upon a finding by the governing body that the services are being performed in an effective and efficient manner; b. No contract shall be extended so that it runs for more than a total of five consecutive years; c. Any price change included as part of an extension shall be based upon the price of the original contract as cumulatively adjusted pursuant to any previous adjustment or extension and shall not exceed the change in the index rate for the 12 months preceding the most recent quarterly calculation available at the time the contract is renewed; and d. The terms and conditions of the contract remain substantially the same.

All multiyear leases and contracts entered into pursuant to this section, including any two-year or one-year extensions, except contracts involving the supplying of electricity for the purpose of lighting public streets and contracts for thermal energy authorized pursuant to subsection (1) above, construction contracts authorized pursuant to subsection (9) above, contracts for the provision or performance of goods or services or the supplying of equipment to promote energy conservation through the production of class I renewable

energy or class II renewable energy authorized pursuant to subsection (45) above, contracts for water supply services or for a water supply facility, or any component part or parts thereof authorized pursuant to subsection (16), (30), (31), (34), (35), (37), or (43) above, contracts for resource recovery services or a resource recovery facility authorized pursuant to subsection (17) above, contracts for the sale of energy produced by a resource recovery facility authorized pursuant to subsection (18) above, contracts for wastewater treatment services or for a wastewater treatment system or any component part or parts thereof authorized pursuant to subsection (19), (36), (37), or (43) above, contracts for the operation and maintenance of a stormwater management system authorized pursuant to subsection (37) above, and contracts for the purchase of electricity or administrative or dispatching services related to the transmission of electricity authorized pursuant to subsection (24) above, contracts for the purchase of electricity generated from a power production facility that is fueled by methane gas authorized pursuant to subsection (44) above, and power supply contracts authorized pursuant to subsection (46) respectively, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or contain an annual cancellation clause.

The Division of Local Government Services in the Department of Community Affairs shall adopt and promulgate rules and regulations concerning the methods of accounting for all contracts that do not coincide with the fiscal year.

All contracts shall cease to have effect at the end of the contracted period and shall not be extended by any mechanism or provision, unless in conformance with the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), except that a contract may be extended by mutual agreement of the parties to the contract when a contracting unit has commenced rebidding prior to the time the contract expires or when the awarding of a contract is pending at the time the contract expires.

23. Sections 19 through 22 shall take effect immediately and the remainder of this act shall take effect on the 180th day after the date of enactment.

Approved March 18, 2019.