

SENATE, No. 3870

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED JUNE 3, 2019

Sponsored by:
Senator PAUL A. SARLO
District 36 (Bergen and Passaic)

SYNOPSIS

Authorizes alternative procedure for sale of municipal sewerage systems to public utilities.

CURRENT VERSION OF TEXT

As introduced.



S3870 SARLO

2

1 AN ACT concerning sales of municipal sewerage systems to public
2 utilities, supplementing Title 40 of the Revised Statutes, and
3 amending R.S.40:62-3.

4

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

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8 1. (New section) A municipality owning sewerage facilities
9 may sell the sewerage facilities to a public utility in accordance
10 with the provisions of section 2 of P.L. , c. (C.) (pending
11 before the Legislature as this bill), if the governing body of the
12 municipality adopts an ordinance authorizing the sale of the
13 sewerage facilities. The provisions of R.S.40:62-4 and R.S.40:62-5
14 shall not apply to a sale authorized by ordinance adopted pursuant
15 to this section, however, the terms of the sale and the ordinance
16 authorizing the sale shall be subject to review by, and the approval
17 of, the Board of Public Utilities.

18 As used in this section:

19 "Sewerage facilities" means the plants, structures, or other real
20 and personal property acquired, constructed, or operated, or to be
21 financed, acquired, constructed, or operated, or any parts thereof,
22 used for the storage, collection, reduction, reclamation, disposal,
23 separation, or other treatment of wastewater or sewage sludge or for
24 the final disposal of residues resulting from the treatment of
25 wastewater, including but not limited to, pumping and ventilating
26 stations, treatment plants and works, connections, outfall servers,
27 interceptors, trunk lines, and other appurtenances necessary for their
28 use or operation; and, in the case of a combined stormwater and
29 wastewater system, any assets of the stormwater management
30 system that are connected to or otherwise part of the sewerage
31 facilities.

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

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41 2. (New section) a. Notwithstanding any provision of law,
42 rule, or regulation to the contrary, the governing body of a
43 municipality and a public utility may enter into an agreement for
44 the sale of a sewerage system from the municipality to the public
45 utility. A public utility may not acquire a controlling interest in a

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

Matter underlined thus is new matter.

1 municipal sewerage system unless the Board of Public Utilities
2 authorizes the acquisition and finds that the acquisition is consistent
3 with the public convenience and necessity.

4 b. An agreement for the sale of a sewerage system from a
5 municipality to a public utility may provide that the fair market
6 value of the sewerage system shall be determined in accordance
7 with this section.

8 (1) The Board of Public Utilities shall establish and maintain a
9 list of qualified utility valuation experts from which the public
10 utility and the municipality shall each enter into a contract with a
11 valuation expert to conduct an appraisal of the sewerage system for
12 the purpose of determining the fair market value of the sewerage
13 system. Each sewerage system valuation appraisal shall be
14 completed in accordance with the Uniform Standards of
15 Professional Appraisal Practice, employing the cost, market, and
16 income approaches. The original source of funding for any part of
17 the sewerage system shall not be considered in determining the
18 value of the sewerage system.

19 (2) The public utility and the municipality shall jointly engage
20 the services of a licensed engineer or other appropriate qualified
21 professional to conduct an assessment of the tangible assets of the
22 sewerage system. The assessment shall be incorporated into the
23 appraisals under the cost approach required under paragraph (1) of
24 this subsection.

25 (3) Each utility valuation expert shall:

26 (a) deliver a draft appraisal of the sewerage system to the public
27 utility and to the municipality within 60 days of the execution of a
28 contract to conduct an appraisal of the sewerage system; and

29 (b) deliver a completed final appraisal of the sewerage system to
30 the public utility and to the municipality within 90 days of the
31 execution of a contract to conduct an appraisal of the sewerage
32 system.

33 c. A utility valuation expert shall not:

34 (1) derive any material financial benefit from the sale of the
35 sewerage system other than fees for services rendered; or

36 (2) be an immediate family member of a director, officer or
37 employee of either the public utility or the municipality within 12
38 months of the date of the execution of the contract to conduct an
39 appraisal of the sewerage system.

40 d. (1) Reasonable transaction and closing costs incurred by an
41 acquiring public utility shall be included in the rate-making rate
42 base of the public utility.

43 (2) Fees paid to utility valuation experts may be included in the
44 transaction and closing costs associated with acquisition by the
45 public utility, however, fees shall not exceed the greater of \$50,000
46 or five percent of the fair market value of the sewerage system.

1 e. As of the closing date of the acquisition, the rate-making
2 rate base of the sewerage system, including amounts included
3 pursuant to subsection d. of this section, shall be the lesser of:

- 4 (1) the purchase price negotiated by the public utility and the
5 municipality; or
6 (2) the fair market value of the sewerage system.

7 f. The rate-making rate base of the sewerage system thus
8 acquired shall be added to the total consolidated Statewide rate base
9 of the acquiring public utility during the public utility's next base
10 rate case for the purpose of setting a total consolidated revenue
11 requirement pursuant to the provisions of R.S.48:2-21.

12 g. (1) If a public utility and a municipality agree to use the
13 valuation process authorized in this section, the public utility shall
14 submit an application to the Board of Public Utilities for approval
15 of the acquisition, together with:

16 (a) copies of the two appraisals performed by the utility
17 valuation experts;

18 (b) the purchase price of the sewerage system as agreed to by
19 the acquiring public utility and the municipality;

20 (c) the rate-making rate base of the sewerage system determined
21 pursuant to subsections d. and e. of this section;

22 (d) the estimated transaction and closing costs incurred by the
23 public utility to be included in its rate base;

24 (e) a tariff containing a schedule of rates, service charges, and
25 any additional fees to be incurred by the customers of the sewerage
26 system at or immediately after the closing date of the acquisition;
27 and

28 (f) a rate stabilization plan, if applicable to the acquisition.

29 (2) The Board of Public Utilities shall issue a final order on an
30 application submitted under this subsection within six months of the
31 filing date of a complete application.

32 (3) When the board issues a final order approving an application
33 submitted under this subsection, the order shall include:

34 (a) the rate-making rate base of the sewerage system, as
35 determined under this section; and

36 (b) any conditions of approval that the board may require.

37 (4) The tariff submitted pursuant to subparagraph (e) of
38 paragraph (1) of this subsection shall remain in effect until such
39 time as new rates are approved for the public utility as the result of
40 a base rate case proceeding before the board. The board may
41 authorize an acquiring public utility to collect any appropriate
42 clause or mechanism charges, including any applicable system
43 improvement charge, at the time new rates are approved for the
44 public utility as the result of a base rate case proceeding, without
45 requiring a new application by the public utility making the
46 acquisition.

47 (5) The sewerage system's cost of service shall be determined as
48 part of the setting of the overall consolidated revenue requirement

1 of an acquiring public utility as part of the public utility's next base
2 rate case proceeding.

3 h. (1) The cost of an improvement placed in service by a
4 public utility after the date of an acquisition completed under this
5 section shall accrue a construction allowance after the date the cost
6 was incurred until the earlier of:

7 (a) four years after the improvement is placed in service; or

8 (b) the date the improvement is included in the public utility's
9 next base rate case.

10 (2) Depreciation on improvements placed in service by a public
11 utility after an acquisition completed under this section shall be
12 deferred for book and rate-making purposes.

13 i. As used in this section:

14 "Board" means the Board of Public Utilities.

15 "Construction allowance" means an accounting practice that
16 recognizes the capital costs, including debt and equity funds that an
17 acquiring public utility used to finance the construction costs of an
18 improvement to a sewerage system.

19 "Fair market value" means the average of the two appraisals
20 conducted by sewerage system valuation experts pursuant to
21 subsection b. of this section.

22 "Public utility" means a public utility regulated by the Board of
23 Public Utilities and defined pursuant to R.S.48:2-13.

24 "Rate-making rate base" means the dollar value of a sewerage
25 system which, for post-acquisition rate-making purposes, is
26 incorporated into the total consolidated rate base of an acquiring
27 public utility.

28 "Rate stabilization plan" means an acquiring public utility's plan
29 to implement rate changes incrementally over a period of time,
30 beginning after the acquiring public utility's next base rate case, to
31 minimize sudden rate increases and predictably achieve
32 consolidated pricing over time.

33 "Sewerage system" means the plants, structures, or other real and
34 personal property acquired, constructed, or operated, or to be
35 financed, acquired, constructed, or operated, or any parts thereof,
36 used for the storage, collection, reduction, reclamation, disposal,
37 separation, or other treatment of wastewater or sewage sludge or for
38 the final disposal of residues resulting from the treatment of
39 wastewater, including but not limited to, pumping and ventilating
40 stations, treatment plants and works, connections, outfall servers,
41 interceptors, trunk lines, and other appurtenances necessary for their
42 use or operation; and, in the case of a combined stormwater and
43 wastewater system, any assets of the stormwater management
44 system that are connected to or otherwise part of the sewerage
45 facilities.

46 "Stormwater management system" means any equipment, plant,
47 structures, machinery, apparatus, management practices, design
48 practices, planning activities, or land, or any combination thereof,

1 acquired, used, constructed, implemented, or operated to convey
2 stormwater, control or reduce stormwater runoff and associated
3 pollutants or flooding, induce or control the infiltration of
4 groundwater recharge of stormwater, or eliminate illicit or illegal
5 nonstormwater discharges into stormwater conveyances.

6 "Utility valuation expert" means a person hired by an acquiring
7 public utility or a municipality for the purpose of conducting an
8 economic valuation of a sewerage system to determine the fair
9 market value of the sewerage system.

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

12 40:62-3. Any municipality owning a sewer plant, water plant,
13 heat, light or power plant, system of transportation, or other public
14 utility plant or system, may long-term lease or sell such plant or
15 system. Such a long-term lease or sale to another municipality, a
16 sanitary sewerage authority, a sewerage authority or any other
17 authority, commission or public body shall be authorized by
18 ordinance and may be made upon such terms as said ordinance shall
19 provide and the provisions of R.S.40:62-4 and R.S.40:62-5 shall not
20 apply thereto. Such a long-term lease or sale to any person except
21 another municipality, a sanitary sewerage authority, a sewerage
22 authority or any other authority, commission or public body shall,
23 except as otherwise provided by law, be made only upon
24 compliance with the provisions of R.S.40:62-4 and R.S.40:62-5 and
25 after the same is authorized by the legal voters of the municipality
26 in accordance with said sections, or upon compliance with the
27 provisions of section 2 of P.L.1981, c.16 (C.40:62-3.1) ~~or~~, the
28 "Water Infrastructure Protection Act," sections 1 through 9 of
29 P.L.2015, c.18 (C.58:30-1 et seq.), or the provisions of sections 1
30 and 2 of P.L. , c. (C.) (pending before the Legislature as this
31 bill).

32 (cf: P.L.2015, c.18, s.10)

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34 4. This act shall take effect immediately.

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STATEMENT

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39 This legislation would provide municipalities with an additional
40 procedural option to address future liabilities associated with
41 deficient underground sewer and wastewater infrastructure. Rather
42 than facing the prospect of immediately shouldering all of the costs
43 associated with addressing decades of underfunding, or continuing
44 to operate deteriorating wastewater systems without properly
45 maintaining, repairing, and replacing failing infrastructure, this bill
46 would permit a municipality to sell a sewerage system to a qualified
47 public utility operator, which is subject to the oversight of the state
48 Board of Public Utilities. By allowing an alternate method to

1 determine the fair market value of a sewerage system, the bill
2 would enhance the ability of a municipality to sell a sewerage
3 system, thereby allowing municipalities to turn a future liability
4 into a current asset.

5 Current law authorizes a municipality to sell a municipal-owned
6 sewerage facility to an investor-owned public utility if the sale is
7 approved by voter referendum. This bill would allow a municipality
8 to authorize the sale of a municipal-owned sewerage facility by
9 adoption of an ordinance, subject to the review and approval of the
10 Board of Public Utilities. Current law authorizes municipalities to
11 sell other types of assets, such as buildings or heavy equipment, by
12 ordinance. By requiring the sale to be made to a public utility, the
13 bill provides ratepayers the additional safeguards of ongoing state
14 oversight and rate regulation by the Board of Public Utilities.
15 Under the bill, the Board of Public Utilities may not authorize an
16 acquisition unless it finds that the acquisition is consistent with the
17 public convenience and necessity.

18 The bill also authorizes a municipality and a public utility to
19 agree to determine the value of a sewerage system under an
20 alternate procedure. Under the bill, a municipality and a public
21 utility agreeing to use this alternate procedure would each retain the
22 services of a valuation expert to determine the fair market value of a
23 sewerage system. The sewerage system's fair market value would
24 be the average of the two appraisals.

25 As of the closing date of the acquisition, the rate-making rate
26 base of the sewerage system would be the lesser of the purchase
27 price negotiated by the public utility and the municipality; or the
28 fair market value of the sewerage system.

29 The rate-making rate base of the sewerage system would be
30 incorporated into the rate base of the acquiring public utility during
31 the public utility's next base rate case.

32 If a public utility and a municipality agree to use the bill's
33 valuation process, the public utility would submit an application to
34 the Board of Public Utilities for approval of the acquisition,
35 together with:

- 36 • copies of the two appraisals;
- 37 • the agreed-upon purchase price of the sewerage system;
- 38 • the rate-making rate base of the sewerage system;
- 39 • the estimated transaction and closing costs incurred by
40 the public utility to be included in its rate base;
- 41 • a tariff containing a schedule of rates, service charges,
42 and any additional fees to be incurred by the customers of
43 the sewerage system at or immediately after the closing
44 date of the acquisition; and
- 45 • a rate stabilization plan, if applicable to the acquisition.
46 A rate stabilization plan is a plan designed to hold rates
47 constant or phase rates in over a period of time after the
48 next base rate case.

1 The bill affords the Board of Public Utilities six months from the
2 filing of a complete application to issue a final order. A final order
3 would include:

- 4 • the rate-making rate base of the sewerage system; and
- 5 • any conditions of approval that the board may require.

6 Under the bill, the tariff to be incurred by the customers of the
7 sewerage system at or immediately after the closing date of
8 acquisition would remain in effect until the Board of Public Utilities
9 approves new rates as the result of a base rate case proceeding
10 before the board. The board may authorize an acquiring public
11 utility to collect a distribution system improvement charge at the
12 time new rates are approved for the public utility as the result of a
13 base rate case proceeding.

14 The bill provides that a sewerage system's cost of service would
15 be incorporated into the revenue requirement of an acquiring public
16 utility as part of the public utility's next base rate case proceeding.

17 The bill also provides that when a public utility places an
18 improvement in place after the date the utility acquires a municipal
19 sewerage system, the cost of the improvement would accrue a
20 construction allowance after the date the cost was incurred until the
21 earlier of: four years after the improvement is placed in service; or
22 the date the improvement is included in the public utility's next base
23 rate case. The bill defines the term "construction allowance" to
24 mean an accounting practice that recognizes the capital costs,
25 including debt and equity funds that are used to finance the
26 construction costs of an improvement made by a public utility after
27 acquiring a municipal sewerage system.

28 Finally, the bill provides that depreciation on improvements, that
29 a public utility places in service after acquiring a municipal
30 sewerage system, would be deferred for book and rate-making
31 purposes.