

**ASSEMBLY, No. 108**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblyman CHRISTOPHER P. DEPHILLIPS**

**District 40 (Bergen, Essex, Morris and Passaic)**

**Assemblyman KEVIN J. ROONEY**

**District 40 (Bergen, Essex, Morris and Passaic)**

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**District 37 (Bergen)**

**Co-Sponsored by:**

**Assemblymen Thomson, Peterson, Assemblywoman DiMaso,**

**Assemblymen Wirths, Space and Dancer**

**SYNOPSIS**

Revises and updates public utility franchise process; allows State's political subdivisions to revoke franchises; increases certain penalties.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 8/13/2020)**

1 AN ACT concerning public utility franchises and consents,  
2 increasing certain penalties, and amending R.S.48:2-14,  
3 R.S.48:2-23, and R.S.48:2-42.  
4

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

7  
8 1. R.S.48:2-14 is amended to read as follows:

9 48:2-14. **[No]** a. A privilege or franchise granted after **[May**  
10 first, one thousand nine hundred and eleven] the effective date of  
11 P.L. , c. (C. ) (pending before the Legislature as this bill),  
12 to any public utility by a political subdivision of this **[state]** State  
13 shall not exceed seven years and shall not be valid until approved  
14 by the board. A public utility shall submit to the board a certified  
15 copy of the privilege or franchise granted by a political subdivision  
16 that shall include, but not be limited to:

17 (1) the terms and conditions relating thereto and proof that all  
18 requirements relating to the attainment of the privilege or franchise  
19 have been met;

20 (2) a statement by the public utility giving the reason the public  
21 utility believes the privilege or franchise is necessary and proper for  
22 the public convenience and will properly protect the public interest;

23 (3) a provision that provides reasonable assurance that the  
24 public utility will continuously provide, pursuant to R.S.48:2-23,  
25 safe, adequate, and proper service at just and reasonable rates, as  
26 determined by the board;

27 (4) a provision that requires the maintenance of public utility  
28 property in good working order throughout the full term of the  
29 privilege or franchise; and

30 (5) a provision that the public utility shall protect the public  
31 interest in the continuous and uninterrupted public utility service  
32 during the term of the privilege or franchise.

33 **[Such]** b. (1) Board approval of a privilege or franchise  
34 submitted to it, pursuant to subsection a. of this section, shall be  
35 given when, after public hearing, the board determines that the  
36 privilege or franchise is necessary and proper for the public  
37 convenience and properly **[conserves the public interests]** protects  
38 the public interest. In granting its approval, the board **[may]** shall  
39 impose **[such]** conditions as to the construction, equipment,  
40 maintenance, service, or operation as the board determines the  
41 public convenience and interests may reasonably require.

42 (2) The board shall deny approval of a privilege or franchise  
43 submitted to it if the board finds, after public hearing, that the  
44 public utility seeking a privilege or franchise is not able to

**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 continuously provided safe, adequate, and proper service within that  
2 political subdivision at just and reasonable rates.

3 c. (1) A political subdivision of this State may revoke a  
4 privilege or franchise if the governing body of the political  
5 subdivision finds, after public hearing, that the public utility  
6 violated the terms and conditions of the privilege or franchise and  
7 passes a resolution, in a manner provided by law, revoking the  
8 privilege or franchise. If the political subdivision revokes a  
9 privilege or franchise, the political subdivision shall make  
10 provisions for the continuous and uninterrupted public utility  
11 service within that political subdivision, as determined by the  
12 board.

13 (2) A public utility operating in this State that seeks to provide  
14 service to a political subdivision that has revoked a privilege or  
15 franchise, pursuant to paragraph (1) of this subsection, shall submit  
16 to the board, pursuant to subsection a. of this section, a certified  
17 copy of the privilege or franchise granted by the political  
18 subdivision.

19 (3) If a political subdivision revokes a privilege or franchise,  
20 pursuant to paragraph (1) of this subsection, and chooses to provide  
21 electric, water, or sewer utility service within the political  
22 subdivision in a manner provided by law, the political subdivision  
23 shall submit to the board a certified copy of a statement attesting to  
24 that fact.

25 d. Nothing herein shall require the approval by the board of  
26 any consent of a municipality or board of boulevard commissioners  
27 for the operation of any autobus in effect March twenty-fourth, one  
28 thousand nine hundred and twenty-six, which did not then require  
29 such approval to be valid.

30 (cf: R.S.48:2-14)

31

32 2. R.S.48:2-23 is amended to read as follows:

33 48:2-23. The board may, after public hearing, upon notice, by  
34 order in writing, require any public utility to furnish safe, adequate,  
35 and proper service, including the furnishing and performance of  
36 service in a manner that tends to conserve and preserve the quality  
37 of the environment and prevent the pollution of the waters, land,  
38 and air of this State, and including furnishing and performance of  
39 service in a manner which preserves and protects the water quality  
40 of a public water supply, and to maintain its property and  
41 equipment in such condition as to enable it to do so.

42 The board **【may】 shall**, pending any such proceeding, require  
43 any public utility to continue to furnish service and to maintain its  
44 property and equipment in such condition as to enable it to do so.

45 The board, in requiring any public water utility to furnish safe,  
46 adequate, and proper service, may require **【the】 a** public water  
47 utility to retain in its rate base any property which the board

1 determines is necessary to protect the water quality of a public  
2 water supply.  
3 (cf: P.L.1988, c.163, s.5)  
4

5 3. R.S.48:2-42 is amended to read as follows:

6 48:2-42. [Any] a. Notwithstanding the provisions of any law,  
7 rule, regulation, or board order to the contrary, any person [or],  
8 public utility, or other person or entity subject to the jurisdiction of  
9 the board that shall fail to comply with [an] any law, rule,  
10 regulation, or order of the board [, except an order to resume  
11 service which has been discontinued,] shall be [subject to a penalty  
12 of one hundred dollars for every day during which the default  
13 continues. Any person or public utility that shall fail to comply  
14 with any order of the board directing the public utility to resume  
15 service which has been discontinued shall be subject to a penalty of  
16 two hundred and fifty dollars for every day during which such  
17 default continues. Such penalties shall be recovered in an action at  
18 law in the name of the state] liable for a civil administrative penalty  
19 not to exceed \$25,000 for each violation, except that any maximum  
20 civil penalty may not exceed \$2,000,000 for any related series of  
21 events. Each day during which the violation continues shall  
22 constitute an additional, separate, and distinct violation.

23 b. Any civil administrative penalty may be compromised by the  
24 board in an amount and with conditions the board deems  
25 appropriate. In determining the amount of the penalty, or the  
26 amount agreed upon in compromise, the board shall consider:

- 27 (1) the nature, circumstances, and gravity of the violation;  
28 (2) the degree of the violator's culpability;  
29 (3) any history of prior violations;  
30 (4) any good faith effort on the part of the violator in attempting  
31 to achieve compliance; and  
32 (5) any other factors the board determines to be appropriate.

33 c. Pursuit of any remedy specified in this section shall not  
34 preclude the pursuit of any other remedy provided by any other law  
35 except if the penalty amount set forth in any other law, rule,  
36 regulation, or board order is less than the amount set forth in  
37 P.L. , c. (C. ) (pending before the Legislature as this bill),  
38 then amounts set forth in P.L. , c. (C. ) (pending before the  
39 Legislature as this bill) shall control.

40 d. Civil administrative penalties may be recovered, if  
41 necessary, in a summary proceeding pursuant to the "Penalty  
42 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).  
43 The Superior Court shall have jurisdiction to enforce the provisions  
44 of the "Penalty Enforcement Law of 1999" in connection with  
45 P.L. , c. (C. ) (pending before the Legislature as this bill).

46 e. Notwithstanding the provisions of any law, rule, regulation,  
47 or order to the contrary, there is hereby established in the board a

1 nonlapsing, special revenue fund called the “Utilities Civil Penalty  
2 Fund” into which penalties imposed or obtained pursuant to  
3 P.L. , c. (C. ) (pending before the Legislature as this bill)  
4 shall be deposited. The monies in the “Utilities Civil Penalty Fund”  
5 shall be credited to public utility customers in a manner to be  
6 determined by board regulation. Each customer shall be awarded a  
7 pro-rata share of the funds through a credit on the public utility bill  
8 of a customer within 60 days after the date the board receives  
9 penalty monies recovered from a public utility. Any monies  
10 received by the board that are not credited to public utility  
11 customers shall be used by a public utility to improve public utility  
12 service quality and reliability in the best interests of public utility  
13 customers in a manner specified by the board.

14 f. Consistent with section 1 of P.L.1988, c.100 (C.48:2-21.14),  
15 any civil administrative penalty imposed under this section shall not  
16 be recoverable from ratepayers.

17 (cf: R.S.48:2-42)

18

19 4. The Board of Public Utilities shall adopt rules and  
20 regulations, pursuant to the "Administrative Procedure Act,"  
21 P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to implement the  
22 provisions of P.L. , c. (C. ) (pending before the Legislature  
23 as this bill).

24

25 5. This act shall take effect immediately.

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STATEMENT

29

30 This bill updates the laws concerning the awarding of a public  
31 utility (utility) privilege or franchise (franchise) by political  
32 subdivisions of the State and the process of approving the franchise  
33 by the Board of Public Utilities (BPU). Under the bill, all new  
34 franchises are to be for a term no longer than seven years. The bill  
35 provides in statute and enhances existing BPU rules and regulations  
36 on the process, terms, and conditions by which the BPU is to review  
37 and approve a franchise. The bill requires the BPU to deny  
38 approving a franchise granted by a political subdivision if the board  
39 finds that the utility is not able to continuously afford safe,  
40 adequate, and proper service within the political subdivision at just  
41 and reasonable rates.

42 The bill allows a political subdivision of this State to revoke a  
43 franchise granted to a utility if the governing body of the political  
44 subdivision finds, after public hearing, that the utility has violated  
45 the terms and conditions of the franchise and passes a resolution, in  
46 a manner provided by law, revoking the franchise. If the political  
47 subdivision revokes a franchise, the political subdivision is to make  
48 provisions for the continuous and uninterrupted utility service

1 within the political subdivision as determined by the BPU. Another  
2 utility operating in the State seeking to provide utility service to  
3 that political subdivision is to submit to the BPU a certified copy of  
4 the privilege or franchise granted by the political subdivision. If a  
5 political subdivision revokes a privilege or franchise and chooses to  
6 provide electric, water, or sewer utility service within the political  
7 subdivision in a manner provided by law, the political subdivision  
8 is to submit to the BPU a certified copy of a statement attesting to  
9 that fact.

10 Further, the bill amends existing law to increase the civil  
11 penalties paid by a utility, person, or entity subject to the  
12 jurisdiction of the BPU for violating any law, rule, regulation, or  
13 order of the BPU. Civil penalties are to be increased from \$100 a  
14 day to \$25,000 for each violation, but penalties are not to exceed  
15 \$2,000,000 for any series of related events. The bill establishes the  
16 “Utilities Civil Penalty Fund” in the BPU, into which the civil  
17 penalties collected are to be deposited. The monies in the fund are  
18 to be credited to utility customers in a manner to be determined by  
19 BPU regulation. Each customer is to be awarded a pro-rata share of  
20 the funds through a credit on the utility bill of a customer within 60  
21 days after the date the BPU receives penalty monies recovered from  
22 a utility. Any monies received by the BPU that are not credited to  
23 utility customers shall be used by a public utility to improve utility  
24 service quality and reliability in the best interests of utility  
25 customers in a manner specified by the BPU. The bill prohibits  
26 civil penalties assessed against a utility from being recoverable  
27 from its ratepayers.