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District 5 (Camden and Gloucester)

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SYNOPSIS
Permits local units and authorities to waive interest and lien enforcement for certain delinquent water and sewer utility payments during emergency circumstances.

CURRENT VERSION OF TEXT
As reported by the Assembly Appropriations Committee on May 11, 2020, with amendments.
AN ACT concerning interest and lien enforcement of certain utility
payments during emergencies ¹ showing various parts
of the statutory law ¹ and supplementing chapter 62 of Title 40
of the Revised Statutes¹

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

1. Section 21 of P.L.1946, c.138 (C.40:14A-21) is amended to
read as follows:
21. (a) In the event that a service charge of any sewerage
authority with regard to any parcel of real property shall not be
paid as and when due, interest shall accrue and be due to the
sewerage authority on the unpaid balance at the rate of 1 1/2 %
per month until such service charge, and the interest thereon, shall
be fully paid to the sewerage authority.
(b) In the event that a service charge of any sewerage authority
with regard to any parcel of real property owned by any person
other than the State or an agency or subdivision thereof shall not be
paid as and when due, the unpaid balance thereof and all interest
accruing thereon shall be a lien on such parcel. 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
municipal taxes and shall be on a parity with and deemed equal to
the lien on such parcel of the municipality where such parcel is
situate for taxes thereon due in the same year and not paid when
due. Such lien shall not bind or affect a subsequent bona fide
purchaser of such parcel for a valuable consideration without actual
notice of such lien, unless the sewerage authority shall have filed in
the office of the collector or other officer of said municipality
charged with the duty of enforcing municipal liens on real property
a statement showing the amount and due date of such unpaid
balance and identifying such parcel, which identification may be
sufficiently made by reference to the assessment map of said
municipality. The information shown in such statement shall be
included in any certificate with respect to said parcel thereafter
made by the official of said municipality vested with the power to
make official certificates of searches for municipal liens. Whenever
such service charge and any subsequent service charge with regard
to such parcel and all interest accrued thereon shall have been fully
paid to the sewerage authority, such statement shall be promptly
withdrawn or cancelled by the sewerage authority.
(c) In the event that a service charge of any sewerage authority
with regard to any parcel of real property shall not be paid as and
when due, the sewerage authority may, in its discretion, enter upon

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

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
¹Assembly AAP committee amendments adopted May 11, 2020.
such parcel and cause the connection thereof leading directly or
indirectly to the sewerage system to be cut and shut off until such
service charge and any subsequent service charge with regard to
such parcel and all interest accrued thereon shall be fully paid to
the sewerage authority.

(d) In the event that a service charge of any sewerage authority
with regard to any parcel of real property shall not be paid as and
when due, the sewerage authority may, in accordance with section
twenty-six of this act, cause the supply of water to such parcel to
be stopped or restricted until such service charge and any
subsequent service charge with regard to such parcel and all
interest accrued thereon shall be fully paid to the sewerage
authority. If for any reason such supply of water shall not be
promptly stopped or restricted as required by section twenty-six of
this act, the sewerage authority may itself shut off or restrict such
supply and, for that purpose, may enter on any lands, waters or
premises of any county, municipality or other person. The supply
of water to such parcel shall, notwithstanding the provisions of this
subsection, be restored or increased if the State Department of
Health, upon application of the local board of health or health
officer of the municipality where such parcel is situate, shall after
public hearing find and shall certify to the sewerage authority that
the continuance of such stopping or restriction of the supply of
water endangers the health of the public in such municipality.

(e) The collector or other officer of every municipality charged
by law with the duty of enforcing municipal liens on real property
shall enforce, with and as any other municipal lien on real property
in such municipality, all service charges and the lien thereof shown
in any statement filed with him by any sewerage authority pursuant
to subsection (b) of this section, and shall pay over to the sewerage
authority the sums or a pro rata share of the sums realized upon
such enforcement or upon liquidation of any property acquired by
the municipality by virtue of such enforcement.

(f) In the event that any service charge of a sewerage authority
shall not be paid as and when due, the unpaid balance thereof and
all interest accrued thereon, together with attorney's fees and costs,
may be recovered by the sewerage authority in a civil action, and
any lien on real property for such service charge and interest
accrued thereon may be foreclosed or otherwise enforced by the
sewerage authority by action or suit in equity as for the foreclosure
of a mortgage on such real property.

(g) All rights and remedies granted by this act for the collection
and enforcement of service charges shall be cumulative and
concurrent.

(h) Notwithstanding the provisions of this section, if the
Governor has declared a public health emergency pursuant to the
seq.), or a state of emergency, pursuant to P.L. 1942, c. 251
(C.App.A.9-33 et seq.), or both, in response to a flood, hurricane, superstorm, tornado, natural or other disaster, or public health emergency, then, for the duration of the public health emergency, state of emergency, or both and for a period up to 90 days after the public health emergency, state of emergency, or both, are no longer in effect, the sewerage authority may, in its discretion, engage in any combination of the following: (1) not charge interest on the delinquent payment; (2) not place a lien on such parcel of real property for the unpaid balance for any service charge and all interest accruing thereon; or (3) not discontinue service of any property for the failure to pay any amount owing. A sewerage authority shall exercise the discretionary authority it is provided under this subsection consistently to all properties, or to all properties of the same use type or other appropriate category.

(cf: P.L.1981, c.530, s.1)

2. Section 41 of P.L.1957, c.183 (C.40:14B-41) is amended to read as follows:

41. a. In the event that a service charge of any municipal authority with regard to any parcel of real property shall not be paid as and when due, interest shall accrue and be due to the municipal authority on the unpaid balance at the rate of 1 1/2 \% per month until such service charge, and the interest thereon, shall be fully paid to the municipal authority.

b. Notwithstanding the provisions of subsection a. of this section regarding delinquent payments, if the Governor has declared a public health emergency pursuant to the “Emergency Health Powers Act,” P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency, pursuant to P.L.1942, c.251 (C.App.A.9-33 et seq.), or both, in response to a flood, hurricane, superstorm, tornado, natural or other disaster, or public health emergency that the municipal authority has experienced, then, for the duration of the public health emergency, state of emergency, or both and for a period up to 90 days after the public health emergency, state of emergency, or both, are no longer in effect, the municipal authority may, in its discretion, refrain from charging interest on the delinquent payment. A municipal authority shall exercise the discretionary authority it is provided under this subsection consistently to all properties, or to all properties of the same use type or other appropriate category.

(cf: P.L.1981, c.530, s.2)

3. Section 42 of P.L.1957, c.183, (C.40:14B-42) is amended to read as follows:

42. a. In the event that a service charge of any municipal authority with regard to any parcel of real property owned by any person other than the State or an agency or subdivision thereof shall not be paid as and when due, the unpaid balance thereof and all
interest accruing thereon shall be a lien on such parcel. 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
municipal taxes and shall be on a parity with and deemed equal to
the lien on such parcel of the municipality where such parcel is
situate for taxes thereon due in the same year and not paid when
due. Such lien shall not bind or affect a subsequent bona fide
purchaser of such parcel for a valuable consideration without actual
notice of such lien, unless the municipal authority shall have filed
in the office of the collector or other officer of said municipality
charged with the duty of enforcing municipal liens on real property
a statement showing the amount and due date of such unpaid
balance and identifying such parcel, which identification may be
sufficiently made by reference to the assessment map of said
municipality. The information shown in such statement shall be
included in any certificate with respect to said parcel thereafter
made by the official of said municipality vested with the power to
make official certificates of searches for municipal liens. Whenever
such service charge and any subsequent service charge with regard
to such parcel and all interest accrued thereon shall have been fully
paid to the municipal authority, such statement shall be promptly
withdrawn or canceled by the municipal authority.

b. Notwithstanding the provisions of subsection a. of this
section regarding delinquent payments, if the Governor has declared
a public health emergency pursuant to the “Emergency Health
Powers Act,” P.L.2005, c.222 (C.26:13-1 et seq.), or a state of
emergency, pursuant to P.L.1942, c.251 (C.App.A.9-33 et seq.), or
both, in response to a flood, hurricane, superstorm, tornado, natural
or other disaster, or public health emergency that the municipal
authority has experienced, then, for the duration of the public health
emergency, state of emergency, or both and for a period up to 90
days after the public health emergency, state of emergency, or both,
are no longer in effect, the municipal authority may, in its
discretion, refrain from placing a lien on such parcel of real
property for the unpaid balance for any service charge and all
interest accruing thereon. A municipal authority shall exercise the
discretionary authority it is provided under this subsection
consistently to all properties, or to all properties of the same use
type or other appropriate category.
(cf: P.L.1957, c.183, s.42)

4. N.J.S.40A:26A-12 is amended to read as follows:

40A:26A-12. a. Rates, rentals, connection fees or other charges
levied in accordance with N.J.S.40A:26A-10 and 40A:26A-11, shall
be a first lien or charge against the property benefited therefrom. If
any part of the amount due and payable in rates, rentals, connection
fees or other charges remain unpaid for 30 days following the date
for the payment thereof, interest upon the amount unpaid shall
accrue at a rate of interest to be determined in accordance with N.J.S.40A:26A-17. The governing body or bodies of the local unit or units may authorize payment of delinquent assessments on an installment basis in accordance with R.S.54:5-19. Liens levied in accordance with this section shall be enforceable in the manner provided for real property tax liens in chapter 5 of Title 54 of the Revised Statutes.

b. Nothing in this section shall be construed to limit the right of a local unit or local units to discontinue service of any property for the failure to pay any amount owing within 30 days after the date the amount is due and payable, if written notice of the proposed discontinuance of service and of the reasons therefor has been given, within at least 10 days prior to the date of discontinuance, to the owner of record of the property. In the event that notice is provided by mail, the notice requirements shall be satisfied if the mailing is made to the last known address of the owner of record and is postmarked at least 10 days prior to the date of discontinuance.

c. Notwithstanding the provisions of subsections a. and b. of this section, if the Governor has declared a public health emergency pursuant to the “Emergency Health Powers Act,” P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency, pursuant to P.L.1942, c.251 (C.App.A.9-33 et seq.), or both, in response to a flood, hurricane, superstorm, tornado, natural or other disaster, or public health emergency, then, for the duration of the public health emergency, state of emergency, or both and for a period up to 90 days after the public health emergency, state of emergency, or both, are no longer in effect, the governing body or bodies of the local unit or units may, in its discretion, engage in any combination of the following: (1) not charge interest on the delinquent payment; (2) not place a lien on such parcel of real property for the unpaid balance for any service charge and all interest accruing thereon; or (3) not discontinue service of any property for the failure to pay any amount owing. The governing body shall exercise the discretionary authority it is provided under this subsection consistently to all properties, or to all properties of the same use type or other appropriate category.

(cf: N.J.S.40A:26A-12)

5. N.J.S.40A:31-12 is amended to read as follows:

40A:31-12. a. Rates, rentals, connection fees or other charges levied in accordance with N.J.S.40A:31-10 and 40A:31-11, shall be a first lien or charge against the property benefited therefrom. If any part of the amount due and payable in rates, rentals, connection fees or other charges remains unpaid for 30 days following the date for the payment thereof, interest upon the amount unpaid shall accrue at a rate of interest to be determined in accordance with N.J.S.40A:31-17. The governing body or bodies of the local unit or
units may authorize payment of delinquent assessments on an installment basis in accordance with R.S.54:5-19. Liens levied in accordance with this section shall be enforceable in the manner provided for real property tax liens in chapter 5 of Title 54 of the Revised Statutes.

b. Nothing in this section shall be construed to limit the right of a local unit or local units to discontinue service to any property for the failure to pay any amount owing within 30 days after the date the amount is due and payable, if written notice of the proposed discontinuance of service and of the reasons therefor has been given, within at least 10 days prior to the date of discontinuance, to the owner of record of the property. In the event that notice is provided by mail, the notice requirements shall be satisfied if the mailing is made to the last known address of the owner of record and is postmarked at least 10 days prior to the date of discontinuance.

c. Notwithstanding the provisions of subsections a. and b. of this section, if the Governor has declared a public health emergency pursuant to the “Emergency Health Powers Act,” P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency, pursuant to P.L.1942, c.251 (C.App.A.9-33 et seq.), or both, in response to a flood, hurricane, superstorm, tornado, natural or other disaster, or public health emergency, then, for the duration of the public health emergency, state of emergency, or both and for a period up to 90 days after the public health emergency, state of emergency, or both, are no longer in effect, the governing body or bodies of the local unit or units may, in its discretion, engage in any combination of the following: (1) not charge interest on the delinquent payment; (2) not place a lien on such parcel of real property for the unpaid balance for any service charge and all interest accruing thereon; or (3) not discontinue service of any property for the failure to pay any amount owing. The governing body shall exercise the discretionary authority it is provided under this subsection consistently to all properties, or to all properties of the same use type or other appropriate category.

(cf: N.J.S.40A:31-12)

6. (New section) Notwithstanding the provisions of any law to the contrary, if the Governor has declared a public health emergency pursuant to the “Emergency Health Powers Act,” P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency, pursuant to P.L.1942, c.251 (C.App.A.9-33 et seq.), or both, in response to a flood, hurricane, superstorm, tornado, natural or other disaster, or public health emergency, then, for the duration of the public health emergency, state of emergency, or both, and for a period up to 90 days after the public health emergency, state of emergency, or both, are no longer in effect, any municipality that owns and operates its water and sewer systems as one utility or that
furnishes a supply of water or sewerage service, or both, to the
inhabitants of another municipality, may, in its discretion, engage in
any combination of the following: (1) not charge interest on the
delinquent payment; (2) not place a lien on such parcel of real
property for the unpaid balance for any service charge and all
interest accruing thereon; or (3) not discontinue service of any
property for the failure to pay any amount owing. A sewerage
authority shall exercise the discretionary authority it is provided
under this subsection consistently to all properties, or to all
properties of the same use type or other appropriate category.¹

¹[6.] ²¹ This act shall take effect immediately and shall apply
retroactively to March 9, 2020.