

**SENATE, No. 2207**

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**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

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INTRODUCED MARCH 16, 2020

**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.



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:*  
7

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.  
40

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  
41 an 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.

10  
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)

33  
34 4. This act shall take effect immediately.

## 35 36 37 STATEMENT

38  
39 This legislation would provide municipalities with an  
40 additional procedural option to address future liabilities  
41 associated with deficient underground sewer and wastewater  
42 infrastructure. Rather than facing the prospect of immediately  
43 shouldering all of the costs associated with addressing decades of  
44 underfunding, or continuing to operate deteriorating wastewater  
45 systems without properly maintaining, repairing, and replacing  
46 failing infrastructure, this bill would permit a municipality to sell  
47 a sewerage system to a qualified public utility operator, which is  
48 subject to the oversight of the state Board of Public Utilities. By

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

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

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

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

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

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

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

1           constant or phase rates in over a period of time after the  
2           next base rate case.

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

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

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

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

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

32          Finally, the bill provides that depreciation on improvements,  
33          that a public utility places in service after acquiring a municipal  
34          sewerage system, would be deferred for book and rate-making  
35          purposes.