

# ASSEMBLY, No. 3628

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED SEPTEMBER 15, 2014

**Sponsored by:**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Burlington and Camden)**

**Assemblyman SEAN T. KEAN**

**District 30 (Monmouth and Ocean)**

**SYNOPSIS**

“Water Infrastructure Protection Act.”

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/10/2014)**

1 AN ACT concerning certain public water and wastewater assets,  
2 supplementing Title 58 of the Revised Statutes, and amending  
3 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) Sections 1 through 9 of this act shall be known  
9 and may be cited as the “Water Infrastructure Protection Act.”

10

11 2. (New section) The Legislature finds and declares that:

12 a. The maintenance of water and wastewater treatment and  
13 conveyance systems is vital to ensuring the protection of clean  
14 drinking water in New Jersey;

15 b. There are public water and wastewater systems in the State  
16 that present serious risks to the integrity of drinking water and the  
17 environment because of issues such as aging combined sanitary and  
18 storm sewer overflow systems, the threat of sodium intrusion, the  
19 deterioration of the physical assets of the systems, or damage to  
20 infrastructure so severe that it is beyond governmental capacity to  
21 restore;

22 c. The transfer of these threatened water and wastewater assets  
23 to a private entity with the financial resources and expertise to  
24 improve management, operation, and continued maintenance of the  
25 assets would protect drinking water; and

26 d. It is in the public interest that public entities have the option  
27 to transfer, lease, or sell water or wastewater assets if there exists  
28 emergent conditions that threaten drinking water or the  
29 environment.

30

31 3. (New section) As used in this act,

32 “Board” means the Board of Public Utilities.

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

35 “Governing body” means a “governing body” as defined in  
36 section 3 of the "New Jersey Wastewater Treatment Public-Private  
37 Contracting Act," P.L.1995, c.216 (C.58:27-19 through C.58:27-  
38 27).

39 “Licensed engineer” means a professional engineer licensed  
40 pursuant to P.L.1938, c.342 (C.45:8-27 et seq.).

41 “Municipal or county utilities authority” means a “municipal  
42 authority” as defined in section 3 of the "municipal and county  
43 utilities authorities law," P.L.1957, c.183 (C.40:14B-1 et seq.).

44 “Owner” means any municipality or municipal, county, or  
45 regional utilities authority that owns water or wastewater assets.

**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 “Regional utilities authorities” means any “regional authority” as  
2 defined in subsection a. of section 9 of P.L.2011, c.167 (C.40:56A-  
3 4.1).

4 “Registered apprenticeship program” means an apprenticeship  
5 program registered with and approved by the United States  
6 Department of Labor and which provides to each trainee combined  
7 classroom and on-the-job training under the direct and close  
8 supervision of a highly skilled worker in an occupation recognized  
9 as an apprenticeable trade, and which meets the program  
10 performance standards of enrollment and graduation under 29  
11 C.F.R. s.29.6.

12 “System” means the plants, structures, and other real and  
13 personal property of an owner that is, or is to be, acquired,  
14 constructed, or operated for the purpose of processing water or  
15 wastewater, including sewage, for distribution or treatment.

16 “Water or wastewater assets” means any system along with any  
17 other related buildings, equipment, or other infrastructure.

18

19 4. (New section) If an owner determines that emergent  
20 conditions exist, the owner may lease or sell its water or wastewater  
21 assets to a private entity pursuant to the provisions of sections 5  
22 through 9 of P.L. , c. (C. ) (pending before the Legislature  
23 as this bill). An owner may so lease or sell its water or wastewater  
24 assets without any referendum except as may be required pursuant  
25 to subsection f. of section 5 of P.L. , c. (C. ) (pending  
26 before the Legislature as this bill).

27

28 5. (New section) a. If the owner is a municipality, the  
29 determination that emergent conditions exist shall be made by  
30 certification of the mayor, or other chief executive officer of the  
31 municipality, and a licensed engineer. If the owner is a municipal,  
32 county, or regional utilities authority, the determination that  
33 emergent conditions exist shall be made by certification of the chair  
34 and chief operating officer of the authority, and a licensed engineer.

35 b. Emergent conditions shall exist if at least one of the following  
36 conditions is met:

37 (1) The system has a combined sanitary and storm sewer  
38 overflow system;

39 (2) The system is located in an area designated by the  
40 Department of Environmental Protection as within Water Supply  
41 Critical Area I or II;

42 (3) The ground water has the potential for sodium intrusion that  
43 may impact the water supply system according to the New Jersey  
44 Statewide Water Supply Plan adopted pursuant to section 13 of  
45 P.L.1981, c.262 (C.58:1A-13) or the potential for any other  
46 intrusion that may negatively impact the system;

47 (4) The system has received an environmental violation, has an  
48 existing unfulfilled administrative consent order with the

1 Department of Environmental Protection, or has previously entered  
2 into an administrative consent order with the Department of  
3 Environmental Protection with respect to the operation of the  
4 system;

5 (5) There is a present deficiency concerning the availability or  
6 potability of water, or concerning the provision of water at adequate  
7 volume or pressure, and the owner lacks the financial or structural  
8 capability to immediately and adequately repair or otherwise  
9 alleviate the deficiency; or

10 (6) There is material damage to the infrastructure of the system  
11 and the owner lacks the financial or structural capability to  
12 immediately and adequately repair or otherwise alleviate the  
13 damage.

14 c. After an emergent conditions certification is made, a public  
15 hearing on the certification shall be held. The owner shall provide  
16 notice of the public hearing no less than 10 days prior to the date of  
17 the hearing. The notice shall prominently state that the certification  
18 is in anticipation of a lease or sale of water or wastewater assets to a  
19 private entity. If the owner is a municipality or municipal utilities  
20 authority, notice of the public hearing shall be published on the  
21 official Internet website of the municipality and at least once in one  
22 or more newspapers circulating in the municipality. If the owner is  
23 a county utilities authority, notice of the public hearing shall be  
24 published on the official Internet website of the county and at least  
25 once in one or more newspapers circulating in the county. If the  
26 owner is a regional utilities authority, notice of the public hearing  
27 shall be published on the official Internet website of the authority  
28 and at least once in one or more newspapers circulating in the  
29 region. If an applicable official website does not exist, notice of the  
30 public hearing shall be published on the official Internet website of  
31 the Department of Community Affairs.

32 d. After the public hearing, the governing body of the owner  
33 shall, by resolution, cause the emergent conditions certification to  
34 be submitted to the Department of Environmental Protection for  
35 approval. The Department of Environmental Protection shall  
36 approve or reject a certification within 30 days of receipt thereof. If  
37 no disposition is made within 30 days, the certification shall be  
38 deemed approved.

39 e. Upon receipt of the approval of the emergent conditions  
40 certification by the Department of Environmental Protection, the  
41 owner shall publish notice of the approval. The notice shall  
42 prominently state that the certification is in anticipation of a lease  
43 or sale of water or wastewater assets to a private entity. If the  
44 owner is a municipality or municipal utilities authority, notice of  
45 the approval shall be published on the official Internet website of  
46 the municipality and at least once in one or more newspapers  
47 circulating in the municipality, and shall prominently state that a  
48 petition may be filed within 20 days after the publication of such

1 notice to require a referendum before a resolution authorizing the  
2 lease or sale of water or wastewater assets may take effect. If the  
3 owner is a county utilities authority, notice of the approval shall be  
4 published on the official Internet website of the county and at least  
5 once in one or more newspapers circulating in the county. If the  
6 owner is a regional utilities authority, notice of the approval shall  
7 be published on the official Internet website of the authority and at  
8 least once in one or more newspapers circulating in the region. If  
9 an applicable official website does not exist, notice of the approval  
10 shall be published on the official Internet website of the Department  
11 of Community Affairs.

12 f. If the owner is a municipality or municipal utilities authority,  
13 a petition may be filed with the municipal clerk, no later than 20  
14 days after the notice of the approval of the emergent conditions  
15 certification is published, protesting the lease or sale of water or  
16 wastewater assets without a public referendum. If the petition is  
17 signed by a number of legal voters of the municipality equal to at  
18 least 15% of the total votes cast in the municipality at the last  
19 election at which members of the General Assembly were elected, a  
20 resolution to lease or sell water or wastewater assets shall not take  
21 effect unless the lease or sale of such assets is approved pursuant to  
22 R.S.40:62-4 and R.S.40:62-5. If a petition is not filed pursuant to  
23 this subsection, a resolution to lease or sell water or wastewater  
24 assets shall not be subject to a public referendum.

25  
26 6. (New section) a. A request for qualifications shall be  
27 advertised pending approval of the emergent conditions certification  
28 pursuant to subsection d. of section 5 of P.L. , c. (C. )  
29 (pending before the Legislature as this bill), but no less than 30  
30 days prior to the date on which responses to the request are due. If  
31 the owner is a municipality or municipal utilities authority, the  
32 advertisement of the request for qualifications shall be published on  
33 the official Internet website of the municipality and at least once in  
34 one or more newspapers circulating in the municipality. If the  
35 owner is a county utilities authority, the advertisement of the  
36 request for qualifications shall be published on the official Internet  
37 website of the county and at least once in one or more newspapers  
38 circulating in the county. If the owner is a regional utilities  
39 authority, the advertisement of the request for qualifications shall  
40 be published on the official Internet website of the authority and at  
41 least once in one or more newspapers circulating in the region. An  
42 owner shall also publish the advertisement of the request for  
43 qualifications at least once in one or more newspapers with  
44 Statewide circulation. If an applicable official website does not  
45 exist, the advertisement of the request for qualifications shall be  
46 published on the official Internet website of the Department of  
47 Community Affairs.

1       b. After an emergent conditions certification is approved  
2 pursuant to subsection d. of section 5 of P.L. , c. (C. )  
3 (pending before the Legislature as this bill), the owner shall  
4 determine the qualified respondents. The owner shall issue a  
5 request for proposals to each qualified respondent no less than 14  
6 days prior to the date established for submission of the proposals.  
7 The request for proposals shall include relevant technical  
8 submissions, documents, and criteria including but not limited to a  
9 description of the facilities and the debt related thereto and the  
10 evaluation criteria to be used in the selection of the designated  
11 respondent.

12       c. Upon a review of the proposals submitted by qualified  
13 respondents, the governing body of an owner shall, by resolution,  
14 designate one qualified respondent, whose proposal the governing  
15 body finds to be the most advantageous to the public, taking into  
16 consideration the evaluation criteria set forth in the request for  
17 proposals. The resolution shall include the governing body's  
18 findings that the proposal of the designated respondent is most  
19 advantageous to the public.

20

21       7. (New section) a. After the designated respondent is selected,  
22 negotiations for a contract for the lease or sale of the water or  
23 wastewater assets may commence between the owner and the  
24 designated respondent.

25       b. After an agreement on a proposed contract is reached between  
26 the owner and the designated respondent, the governing body of the  
27 owner shall, by resolution, cause the proposed contract to be  
28 submitted to the board for approval and cause the proposed use of  
29 proceeds of the lease or sale to be submitted to the director for  
30 approval.

31       c. (1) The proposed contract submitted to the board shall  
32 include the rent or sale price, any appraisals supporting the rent or  
33 sale price, documentation regarding the defeasance of debt, and any  
34 other information requested by the board. The board shall approve  
35 or reject the proposed contract within 30 days of receipt thereof. If  
36 no disposition is made within 30 days, the proposed contract shall  
37 be deemed approved.

38       (2) For the purposes of rate making and recovery, the board  
39 shall accept the negotiated sale price between the owner and the  
40 designated respondent as the new rate base effective as of the date  
41 of the approval of the lease or sale, as may be the case, provided the  
42 price is deemed reasonable.

43       The rent or sale price shall be deemed reasonable if it meets the  
44 following conditions:

45       (a) The rent or sale price is sufficient to defease the debt of the  
46 owner; and either

1 (b) (i) The rent or sale price is within the range of any appraisals  
2 obtained with respect to the lease or sale of the water or wastewater  
3 assets; or

4 (ii) If there is little or no established rate base for the water or  
5 wastewater assets, the rent or sale price is reasonably comparable to  
6 a proxy rate base equivalent to the rate base of the designated  
7 respondent.

8 (3) In valuing the water or wastewater assets, appraisers shall  
9 comply with the Uniform Standards of Professional Appraisal  
10 Practice promulgated by the Appraisal Standards Board of the  
11 Appraisal Foundation.

12 (4) In valuing the water or wastewater assets and for the  
13 purposes of rate making, the original source of funding for any part  
14 of the water or wastewater assets shall not be relevant.

15 (5) Reasonable and prudent transaction, closing, and transition  
16 costs incurred by the designated respondent shall be recoverable in  
17 rates.

18 (6) The proposed use of proceeds submitted to the director shall  
19 include the rent or sale price, the total debt payment amount, the  
20 remaining proceeds after the debt payment, the amount dedicated to  
21 community and capital improvements, and the amount dedicated for  
22 general purposes of the owner. The amount dedicated to  
23 community and capital improvements must represent at least 50  
24 percent of the remaining proceeds once the debt is defeased. The  
25 director shall approve or reject the proposed use of proceeds within  
26 30 days of receipt thereof. If no disposition is made within 30 days,  
27 the proposed use of proceeds shall be deemed approved.

28  
29 8. (New section) After the proposed contract and proposed use  
30 of proceeds have been approved pursuant to subsection c. of section  
31 7 of P.L. , c. (C. ) (pending before the Legislature as this  
32 bill), the governing body of the owner may, by resolution, enter into  
33 a contract for the lease or sale of the water or wastewater assets  
34 with the designated respondent.

35  
36 9. (New section) Any contractor or subcontractor hired by the  
37 designated respondent, in the performance of a contract entered into  
38 pursuant to section 8 of P.L. , c. (C. ) (pending before the  
39 Legislature as this bill), shall only employ a worker from an  
40 apprenticeable trade who is either an apprentice participating in a  
41 registered apprenticeship program or who has completed a  
42 registered apprenticeship program, unless the contractor or  
43 subcontractor certifies that each such worker shall be paid no less  
44 than the journeyman rate established for the apprenticeable trade  
45 performed pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

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

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

21

22 11. This act shall take effect immediately.

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24

25

#### STATEMENT

26

27 This bill, titled the "Water Infrastructure Protection Act," would  
28 authorize municipalities and municipal, county, and regional  
29 utilities authorities to lease or sell their water or wastewater assets  
30 to a private entity, without any referendum, if an emergent  
31 condition exists. The bill would provide these public entities with  
32 greater flexibility to address an emergent condition impacting its  
33 water or wastewater services if such condition may be better  
34 addressed by private operation of some or all of the public owner's  
35 water or wastewater assets.

36 Under the bill, emergent conditions would exist if either: (1) the  
37 system has a combined sanitary and storm sewer overflow system;  
38 (2) the system is located in Water Supply Critical Area I or II; (3)  
39 the ground water has the potential of sodium intrusion or any other  
40 intrusion that may negatively impact the system; (4) the system has  
41 received environmental violations, has existing unfulfilled  
42 administrative consent orders, or has previously entered into such  
43 consent order; (5) there is a present deficiency concerning the  
44 availability or potability of water, or the provision of water at  
45 adequate volume or pressure, and the public owner lacks the  
46 capacity to remedy the deficiency; or (6) there is material damage to  
47 the infrastructure of the system and the public owner lacks the  
48 capacity to remedy the damage. The appropriate public officials



1 and a licensed engineer would have to certify that one of these  
2 conditions exists. The certification would be the subject of a public  
3 hearing and have to be approved by the Department of  
4 Environmental Protection.

5 If the public owner is a municipality or municipal utilities  
6 authority, a petition may be filed with the municipal clerk  
7 protesting the resolution authorizing the lease or sale of water or  
8 wastewaters assets without a public referendum within 20 days after  
9 the notice of the approval of the emergent conditions certification is  
10 published. If the petition is signed by a number of legal voters of  
11 the municipality equal to at least 15% of the total votes cast in the  
12 municipality at the last election at which members of the General  
13 Assembly were elected, a resolution to lease or sell water or  
14 wastewater assets would be suspended from taking effect until the  
15 lease or sale of such assets is approved in a public referendum in  
16 accordance with R.S.40:62-4 and R.S.40:62-5. If such petition is  
17 not filed within this timeframe, a resolution to lease or sell water or  
18 wastewater assets would not be subject to a public referendum.

19 The public owner would advertise a request for qualifications  
20 pending approval of the emergent conditions certification by the  
21 Department of Environmental Protection. If the certification is  
22 approved, the public owner would next determine the qualified  
23 respondents and issue a request for proposals. The request for  
24 proposals would have to include relevant technical submissions,  
25 documents, and criteria including but not limited to a description of  
26 the facilities and the debt related thereto and the evaluation criteria  
27 to be used in the selection of the designated respondent. After a  
28 review of the proposals submitted by qualified respondents, the  
29 governing body of the owner would, by resolution, designate one  
30 respondent, whose proposal is found to be most advantageous to the  
31 public, taking into consideration the request for proposals criteria.

32 After the designated respondent is selected, negotiations for a  
33 contract for the lease or sale of the water or wastewater assets  
34 would commence between the public owner and the designated  
35 respondent. After an agreement on a proposed contract is reached  
36 between the public owner and the designated respondent, the  
37 governing body of the public owner would then, by resolution,  
38 cause the proposed contract to be submitted to the Board of Public  
39 Utilities for approval and cause the proposed use of proceeds to be  
40 submitted to the Director of the Division of Local Government  
41 Services in the Department of Community Affairs for approval.  
42 After these matters are approved by their respective reviewing  
43 agencies, the governing body of the public owner would be able to,  
44 by resolution, enter into a contract with the designated respondent  
45 for the lease or sale of the water or wastewater assets.

46 Each worker from an apprenticeable trade employed in the  
47 performance of the contract would have to be an apprentice  
48 participating in a registered apprenticeship program or have

1 completed a registered apprenticeship program, unless the  
2 contractor or subcontractor certifies that each worker will be paid  
3 no less than the journeyman rate for the apprenticeable trade  
4 performed established under the prevailing wage laws.