

ASSEMBLY, No. 3111

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

SYNOPSIS

Restricts use of eminent domain by private pipeline companies to those demonstrating pipeline is in the public interest and that agree to certain regulation by BPU.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the use of eminent domain by certain pipeline
2 companies and amending R.S.48:2-13 and R.S.48:10-1.

3
4 BE IT ENACTED by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. R.S.48:2-13 is amended to read as follows:

8 48:2-13. a. The board shall have general supervision and
9 regulation of and jurisdiction and control over all public utilities as
10 defined in this section and their property, property rights,
11 equipment, facilities and franchises so far as may be necessary for
12 the purpose of carrying out the provisions of this Title.

13 The term "public utility" shall include every individual,
14 copartnership, association, corporation or joint stock company, their
15 lessees, trustees or receivers appointed by any court whatsoever,
16 their successors, heirs or assigns, that now or hereafter may own,
17 operate, manage or control within this State any railroad, street
18 railway, traction railway, autobus, charter bus operation, special bus
19 operation, canal, express, subway, pipeline, gas, electricity
20 distribution, water, oil, sewer, solid waste collection, solid waste
21 disposal, telephone or telegraph system, plant or equipment for
22 public use, under privileges granted or hereafter to be granted by
23 this State or by any political subdivision thereof.

24 The term "public interest private pipeline" shall mean every
25 private pipeline company, association, and corporation that both
26 demonstrates to the board that its proposed pipeline is in the public
27 interest and agrees to be subject to the eminent domain provisions
28 of sections 48, 49, and 63 of P.L.1962, c.198 (C.48:3-17.6 through
29 48:3-17.8). In determining that a proposed pipeline is in the public
30 interest, the board, at a minimum, shall consider the following
31 factors:

32 (1) the enhancement of competitive transportation alternatives;

33 (2) the possibility of overbuilding;

34 (3) the avoidance of unnecessary disruptions to the
35 environment; and

36 (4) the avoidance of the unnecessary exercise of eminent
37 domain.

38 b. Nothing contained in this Title shall extend the powers of
39 the board to include any supervision and regulation of, or
40 jurisdiction and control over any vehicles engaged in ridesharing
41 arrangements with a maximum carrying capacity of not more than
42 15 passengers, including the driver, where the transportation of
43 passengers is incidental to the purpose of the driver or any vehicles
44 engaged in the transportation of passengers for hire in the manner
45 and form commonly called taxicab service unless such service

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 becomes or is held out to be regular service between stated termini;
2 hotel buses used exclusively for the transportation of hotel patrons
3 to or from local railroad or other common carrier stations, including
4 local airports, or bus employed solely for transporting school
5 children and teachers, to and from school, or any autobus with a
6 carrying capacity of not more than 10 passengers now or hereafter
7 operated under municipal consent upon a route established wholly
8 within the limits of a single municipality or with a carrying capacity
9 of not more than 20 passengers operated under municipal consent
10 upon a route established wholly within the limits of not more than
11 four contiguous municipalities within any county of the fifth or
12 sixth class, which route in either case does not in whole or in part
13 parallel upon the same street the line of any street railway or
14 traction railway or any other autobus route.

15 c. Except as provided in section 7 of P.L.1995, c.101 (C.58:26-
16 25), the board shall have no regulatory authority over the parties to
17 a contract negotiated between a public entity and a private firm
18 pursuant to P.L.1995, c.101 (C.58:26-19 et al.) in connection with
19 the performance of their respective obligations thereunder. Nothing
20 contained in this title shall extend the powers of the board to
21 include any supervision and regulation of, or jurisdiction and
22 control over, any public-private contract for the provision of water
23 supply services established pursuant to P.L.1995, c.101 (C.58:26-19
24 et al.).

25 d. Unless otherwise specifically provided pursuant to P.L.1999,
26 c.23 (C.48:3-49 et al.), all services necessary for the transmission
27 and distribution of electricity and gas, including but not limited to
28 safety, reliability, metering, meter reading and billing, shall remain
29 the jurisdiction of the Board of Public Utilities. The board shall
30 also maintain the necessary jurisdiction with regard to the
31 production of electricity and gas to assure the reliability of
32 electricity and gas supply to retail customers in the State as
33 prescribed by the board or any other federal or multi-jurisdictional
34 agency responsible for reliability and capacity in the State.

35 e. Notwithstanding the provisions of subsection a. of this
36 section, the board shall have the authority to classify as regulated
37 the sale of any thermal energy service by a cogenerator or district
38 heating system, for the purpose of providing heating or cooling to a
39 residential dwelling if, after notice and hearing, it determines that
40 the customer does not have sufficient space on its property to install
41 an alternative source of equivalent thermal energy, there is no
42 contract governing the provision of thermal energy service for the
43 relevant period of time, and that sufficient competition is no longer
44 present, based upon consideration of such factors as: ease of
45 market entry; presence of other competitors; and the availability of
46 like or substitute services in the relevant geographic area. Upon
47 such a classification, the board may determine such rates for the
48 thermal energy service for the purpose of providing heating or

1 cooling to a residential dwelling as it finds to be consistent with the
2 prevailing cost of alternative sources of thermal energy in similar
3 situations. The board, however, shall continue to monitor the
4 thermal energy service to such residential dwellings and, whenever
5 the board finds that the thermal energy service has again become
6 sufficiently competitive pursuant to the criteria listed above, the
7 board shall cease to regulate the sale or production of the service.
8 The board shall not have the authority to regulate the sale or
9 production of steam or any other form of thermal energy, including
10 hot and chilled water, to non-residential customers.

11 f. Nothing contained in this Title shall extend the powers of
12 the board to include supervision and regulation of, or jurisdiction
13 and control over, an entity engaged in the provision or use of
14 sewage effluent for the purpose of providing a cooling medium to
15 an end user or end users on a single site, which provision results in
16 the conservation of potable water which would otherwise have been
17 used for such purposes.

18 g. Except as provided herein, the board shall have no
19 regulatory authority over the parties to a contract entered into
20 between the governing body of a city of the first class and a duly
21 incorporated nonprofit association in connection with the
22 performance of their respective obligations thereunder when the
23 governing body of a city of the first class shall determine by
24 ordinance that it is in the public interest to contract with that duly
25 incorporated nonprofit association for the provision of water supply
26 services as defined in subsection (16) of section 15 of P.L.1971,
27 c.198 (C.40A:11-15), or for the provision of wastewater treatment
28 services as defined in subsection (19) of section 15 of P.L.1971,
29 c.198 (C.40A:11-15), or the designing, financing, construction,
30 operation, or maintenance, or any combination thereof, of a water
31 supply facility as defined in subsection (16) of section 15 of
32 P.L.1971, c.198 (C.40A:11-15) or a wastewater treatment system as
33 defined in subsection (19) of section 15 of P.L.1971,
34 c.198 (C.40A:11-15), or any component part or parts thereof,
35 including a water filtration system as defined in subsection (16) of
36 section 15 of P.L.1971, c.198 (C.40A:11-15), upon approval of the
37 contract pursuant to the provisions of section 6 of P.L.2002,
38 c.47 (C.58:28-7).

39 Notwithstanding any other provision of P.L.2002, c.47 whenever
40 the governing body of a city of the first class enters into a contract
41 with a duly incorporated nonprofit association for the provision of
42 water supply services as defined in subsection (16) of section 15 of
43 P.L.1971, c.198 (C.40A:11-15), or the designing, financing,
44 construction, operation, or maintenance, or any combination
45 thereof, of a water supply facility as defined in subsection (16) of
46 section 15 of P.L.1971, c.198 (C.40A:11-15), and that governing
47 body operates water supply facilities as authorized pursuant to the
48 provisions of N.J.S.40A:31-4, which supply water to customers

1 within another local unit, the nonprofit association or governing
2 body shall be subject to the jurisdiction, rate regulation and control
3 of the Board of Public Utilities as provided in N.J.S.40A:31-23, to
4 the extent the nonprofit association or governing body supplies
5 water to customers within that other local unit.

6 (cf: P.L.2002, c.47, s.10)

7
8 2. R.S.48:10-1 is amended to read as follows:

9 48:10-1. **【Pipe line】** Pipeline companies, associations and
10 corporations that are regulated by the New Jersey Board of Public
11 Utilities as public interest private pipelines may acquire by
12 condemnation land and other property necessary for public use for
13 right of way in the manner prescribed by chapter 1 of the title
14 Eminent Domain (s. 20:1-1 et seq.).

15 Nothing in this section shall be construed to limit or affect the
16 power or jurisdiction of the state water policy commission.

17 (cf: R.S.48:10-1)

18
19 3. This act shall take effect immediately.
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22 STATEMENT

23
24 This bill would limit the use of eminent domain by private pipe
25 line companies to those companies that demonstrate to the New
26 Jersey Board of Public Utilities (BPU) that a proposed pipeline is in
27 the public interest and that the company agrees to be subject to the
28 same eminent domain and condemnation rules as are applicable to
29 public utilities regulated by the BPU. Currently, pursuant to section
30 48 of P.L.1962, c.198 (C.48:3-17.6), pipelines that are public
31 utilities may exercise eminent domain, subject to certain oversight
32 by the BPU. Under R.S.48:10-1, private pipeline companies that
33 are not public utilities are also permitted to exercise eminent
34 domain, but it is not clear whether they are subject to the same BPU
35 oversight as public utility pipelines when exercising eminent
36 domain. This bill would ensure that a private pipeline use is in the
37 public interest for which the exercise of the power of eminent
38 domain is appropriate.