

ASSEMBLY, No. 4126

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 4, 2020

Sponsored by:

Assemblyman JOSEPH V. EGAN

District 17 (Middlesex and Somerset)

Assemblywoman NANCY J. PINKIN

District 18 (Middlesex)

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 introduced.



1 AN ACT concerning interest and lien enforcement of certain utility
2 payments during emergencies and amending various parts of the
3 statutory law.

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

7
8 1. Section 21 of P.L.1946, c.138 (C.40:14A-21) is amended to
9 read as follows:

10 21. (a) In the event that a service charge of any sewerage
11 authority with regard to any parcel of real property shall not be
12 paid as and when due, interest shall accrue and be due to the
13 sewerage authority on the unpaid balance at the rate of 1 1/2 %
14 per month until such service charge, and the interest thereon, shall
15 be fully paid to the sewerage authority.

16 (b) In the event that a service charge of any sewerage authority
17 with regard to any parcel of real property owned by any person
18 other than the State or an agency or subdivision thereof shall not be
19 paid as and when due, the unpaid balance thereof and all interest
20 accruing thereon shall be a lien on such parcel. Such lien shall be
21 superior and paramount to the interest in such parcel of any owner,
22 lessee, tenant, mortgagee or other person except the lien of
23 municipal taxes and shall be on a parity with and deemed equal to
24 the lien on such parcel of the municipality where such parcel is
25 situate for taxes thereon due in the same year and not paid when
26 due. Such lien shall not bind or affect a subsequent bona fide
27 purchaser of such parcel for a valuable consideration without actual
28 notice of such lien, unless the sewerage authority shall have filed in
29 the office of the collector or other officer of said municipality
30 charged with the duty of enforcing municipal liens on real property
31 a statement showing the amount and due date of such unpaid
32 balance and identifying such parcel, which identification may be
33 sufficiently made by reference to the assessment map of said
34 municipality. The information shown in such statement shall be
35 included in any certificate with respect to said parcel thereafter
36 made by the official of said municipality vested with the power to
37 make official certificates of searches for municipal liens. Whenever
38 such service charge and any subsequent service charge with regard
39 to such parcel and all interest accrued thereon shall have been fully
40 paid to the sewerage authority, such statement shall be promptly
41 withdrawn or cancelled by the sewerage authority.

42 (c) In the event that a service charge of any sewerage authority
43 with regard to any parcel of real property shall not be paid as and
44 when due, the sewerage authority may, in its discretion, enter upon
45 such parcel and cause the connection thereof leading directly or

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 indirectly to the sewerage system to be cut and shut off until such
2 service charge and any subsequent service charge with regard to
3 such parcel and all interest accrued thereon shall be fully paid to
4 the sewerage authority.

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

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

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

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

44 (h) Notwithstanding the provisions of this section, if the
45 Governor has declared a public health emergency pursuant to the
46 “Emergency Health Powers Act,” P.L.2005, c.222 (C.26:13-1 et
47 seq.), or a state of emergency, pursuant to P.L.1942, c.251
48 (C.App.A.9-33 et seq.), or both, in response to a flood, hurricane,

1 superstorm, tornado, natural or other disaster, or public health
2 emergency, then, for the duration of the public health emergency,
3 state of emergency, or both and for a period up to 90 days after the
4 public health emergency, state of emergency, or both, are no longer
5 in effect, the sewerage authority may, in its discretion, engage in
6 any combination of the following: (1) not charge interest on the
7 delinquent payment; (2) not place a lien on such parcel of real
8 property for the unpaid balance for any service charge and all
9 interest accruing thereon; or (3) not discontinue service of any
10 property for the failure to pay any amount owing. A sewerage
11 authority shall exercise the discretionary authority it is provided
12 under this subsection consistently to all properties, or to all
13 properties of the same use type or other appropriate category.

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

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

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

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

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

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

44 42. a. In the event that a service charge of any municipal
45 authority with regard to any parcel of real property owned by any
46 person other than the State or an agency or subdivision thereof shall
47 not be paid as and when due, the unpaid balance thereof and all
48 interest accruing thereon shall be a lien on such parcel. Such lien

1 shall be superior and paramount to the interest in such parcel of any
2 owner, lessee, tenant, mortgagee or other person except the lien of
3 municipal taxes and shall be on a parity with and deemed equal to
4 the lien on such parcel of the municipality where such parcel is
5 situate for taxes thereon due in the same year and not paid when
6 due. Such lien shall not bind or affect a subsequent bona fide
7 purchaser of such parcel for a valuable consideration without actual
8 notice of such lien, unless the municipal authority shall have filed
9 in the office of the collector or other officer of said municipality
10 charged with the duty of enforcing municipal liens on real property
11 a statement showing the amount and due date of such unpaid
12 balance and identifying such parcel, which identification may be
13 sufficiently made by reference to the assessment map of said
14 municipality. The information shown in such statement shall be
15 included in any certificate with respect to said parcel thereafter
16 made by the official of said municipality vested with the power to
17 make official certificates of searches for municipal liens. Whenever
18 such service charge and any subsequent service charge with regard
19 to such parcel and all interest accrued thereon shall have been fully
20 paid to the municipal authority, such statement shall be promptly
21 withdrawn or canceled by the municipal authority.

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

39 (cf: P.L.1957, c.183, s.42)

40

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

42 40A:26A-12. a. Rates, rentals, connection fees or other charges
43 levied in accordance with N.J.S.40A:26A-10 and 40A:26A-11, shall
44 be a first lien or charge against the property benefited therefrom. If
45 any part of the amount due and payable in rates, rentals, connection
46 fees or other charges remain unpaid for 30 days following the date
47 for the payment thereof, interest upon the amount unpaid shall
48 accrue at a rate of interest to be determined in accordance with

1 N.J.S.40A:26A-17. The governing body or bodies of the local unit
2 or units may authorize payment of delinquent assessments on an
3 installment basis in accordance with R.S.54:5-19. Liens levied in
4 accordance with this section shall be enforceable in the manner
5 provided for real property tax liens in chapter 5 of Title 54 of the
6 Revised Statutes.

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

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

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

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

40 40A:31-12. a. Rates, rentals, connection fees or other charges
41 levied in accordance with N.J.S.40A:31-10 and 40A:31-11, shall be
42 a first lien or charge against the property benefited therefrom. If
43 any part of the amount due and payable in rates, rentals, connection
44 fees or other charges remains unpaid for 30 days following the date
45 for the payment thereof, interest upon the amount unpaid shall
46 accrue at a rate of interest to be determined in accordance with
47 N.J.S.40A:31-17. The governing body or bodies of the local unit or
48 units may authorize payment of delinquent assessments on an

1 installment basis in accordance with R.S.54:5-19. Liens levied in
2 accordance with this section shall be enforceable in the manner
3 provided for real property tax liens in chapter 5 of Title 54 of the
4 Revised Statutes.

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

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

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

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37 6. This act shall take effect immediately and shall apply
38 retroactively to March 9, 2020.

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STATEMENT

42

43 This bill would permit local units and authorities to waive
44 interest and lien enforcement for certain delinquent water and sewer
45 utility payments during emergency circumstances.

46 Whenever the Governor declares a public health emergency or a
47 state of emergency, or both, this bill would authorize that, for the
48 duration of one or both of the emergency declarations and for a

1 period up to 90 days thereafter, a sewerage authority, a county or
2 municipal utilities authority, or a county or municipality responsible
3 for the administration of a sewerage or water utility may, in its
4 discretion, refrain from any combination of the following actions:

- 5 (1) charging interest on a delinquent payment;
- 6 (2) placing a lien on a parcel of real property for the unpaid
7 balance for any service charge and all interest accruing thereon; or
- 8 (3) as applicable, discontinuing the service of any property for
9 the failure to pay any amount owing.

10 The bill requires that the discretionary authority provided to
11 local units and authorities would be applied consistently to all
12 properties, or to all properties of the same use type or other
13 appropriate category. In order for the discretionary authority
14 provided by the bill to be available, the emergency would have to
15 emerge in response to a flood, hurricane, superstorm, tornado,
16 natural or other disaster, or public health emergency.

17 The bill would take effect immediately and would be retroactive
18 to March 9, 2020.