

ASSEMBLY, No. 4678

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED SEPTEMBER 17, 2020

Sponsored by:

Assemblyman GARY S. SCHAER

District 36 (Bergen and Passaic)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Co-Sponsored by:

Assemblywomen McKnight and Vainieri Huttle

SYNOPSIS

Prohibits certain utilities and authorities from increasing rates and assessing late or restoration fees or charges during and within 180 days after major public health emergency.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/17/2020)

1 AN ACT concerning certain utility and authority rates and fees or
2 charges during certain emergencies, and amending various parts
3 of the statutory law and supplementing Title 48 of the Revised
4 Statutes.

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

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

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

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

43 (c) In the event that a service charge of any sewerage authority
44 with regard to any parcel of real property shall not be paid as and
45 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.

1 such parcel and cause the connection thereof leading directly or
2 indirectly to the sewerage system to be cut and shut off until such
3 service charge and any subsequent service charge with regard to
4 such parcel and all interest accrued thereon shall be fully paid to the
5 sewerage authority.

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

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

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

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

45 (h) Notwithstanding the provisions of this section, [if the
46 Governor has declared a public health emergency pursuant to the
47 "Emergency Health Powers Act," P.L.2005, c.222 (C.26:13-1 et
48 seq.), or a state of emergency, pursuant to P.L.1942, c.251

1 (C.App.A:9-33 et seq.), or both, in response to a flood, hurricane,
2 superstorm, tornado, natural or other disaster, or a public health
3 emergency, then, for the duration of the **]** or of any other law, rule,
4 regulation, or order to the contrary, during and within 180 days
5 after the end of a declared major public health emergency **]**, state of
6 emergency, or both and for a period up to 90 days after the public
7 health emergency, state of emergency, or both, are no longer in
8 effect, the **]** a sewerage authority **]** may, in its discretion, engage in
9 any combination of the following **]** shall not: (1) **]** increase any
10 rate, fee, or similar charge for service rendered to a customer,
11 charge interest on [the] a delinquent payment , or assess to a
12 customer any late bill payment fee or similar charge, or any service
13 restoration fee or similar charge; (2) **]** place a lien on [such
14 parcel of] real property for the unpaid balance for any service
15 charge **]** and all interest accruing thereon; or (3) **]** discontinue
16 service of any property for the failure to pay any amount owing. A
17 sewerage authority shall [exercise the discretionary authority it is
18 provided under this subsection consistently to all properties, or to
19 all properties of the same use type or other appropriate category]
20 not include in its rate base any increase in those costs or expenses
21 incurred by the sewerage authority during a major public health
22 emergency. As used in this section, "major public health
23 emergency" means a health emergency that has resulted in the
24 Governor declaring a public health emergency, pursuant to section 3
25 of P.L.2005, c.222 (C.26:13-3), and a state of emergency, pursuant
26 to P.L.1942, c.251 (C.App.A:9-33 et seq.), within this State.
27 (cf: P.L.2020, c.39, s.1)

28
29 2. Section 41 of P.L.1957, c.183 (C.40:14B-41) is amended to
30 read as follows:

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

37 b. Notwithstanding the provisions of subsection a. of this
38 section **]** regarding delinquent payments, if the Governor has
39 declared a public health emergency pursuant to the "Emergency
40 Health Powers Act," P.L.2005, c.222 (C.26:13-1 et seq.), or a state
41 of emergency, pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.),
42 or both, in response to a flood, hurricane, superstorm, tornado,
43 natural or other disaster, or public health emergency that the
44 municipal authority has experienced, then, for the duration of the **]** ,
45 or of any other law, rule, regulation, or order to the contrary, during
46 and within 180 days after the end of a declared major public health
47 emergency **]**, state of emergency, or both and for a period up to 90

1 days after the public health emergency, state of emergency, or both,
2 are no longer in effect, the] a municipal authority [may, in its
3 discretion, refrain from charging] shall not (1) increase any rate,
4 fee, or similar charge for service rendered to a customer, charge
5 interest on [the] a delinquent payment, or assess to a customer any
6 late bill payment fee or similar charge, or any service restoration
7 fee or similar charge; (2) place a lien on real property for the unpaid
8 balance for any service charge; or (3) discontinue service to any
9 property for the failure to pay any amount owing. A municipal
10 authority shall [exercise the discretionary authority it is provided
11 under this subsection consistently to all properties, or to all
12 properties of the same use type or other appropriate category] not
13 include in its rate base any increase in those costs or expenses
14 incurred by the municipal authority during a major public health
15 emergency. As used in this section, “major public health
16 emergency” means a health emergency that has resulted in the
17 Governor declaring a public health emergency, pursuant to section 3
18 of P.L.2005, c.222 (C.26:13-3), and a state of emergency, pursuant
19 to P.L.1942, c.251 (C.App.A:9-33 et seq.), within this State.
20 (cf: P.L.2020, c.39, s.2)

21

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

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

1 paid to the municipal authority, such statement shall be promptly
2 withdrawn or canceled by the municipal authority.

3 b. Notwithstanding the provisions of subsection a. of this
4 section **【**regarding delinquent payments, if the Governor has
5 declared a public health emergency pursuant to the "Emergency
6 Health Powers Act," P.L.2005, c.222 (C.26:13-1 et seq.), or a state
7 of emergency, pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.),
8 or both, in response to a flood, hurricane, superstorm, tornado,
9 natural or other disaster, or public health emergency that the
10 municipal authority has experienced, then, for the duration of the **】** ,
11 or of any other law, rule, regulation, or order to the contrary, during
12 and within 180 days after the end of a declared major public health
13 emergency **【**, state of emergency, or both and for a period up to 90
14 days after the public health emergency, state of emergency, or both,
15 are no longer in effect, the~~】~~ a municipal authority **【**may, in its
16 discretion, refrain from placing~~】~~ shall not (1) increase any rate, fee,
17 or similar charge for service rendered to a customer, charge interest
18 on a delinquent payment, or assess to a customer any late bill
19 payment fee or similar charge, or any service restoration fee or
20 similar charge; (2) place a lien on **【**such parcel of~~】~~ real property for
21 the unpaid balance for any service charge **【**and all interest accruing
22 thereon~~】~~ ; or (3) discontinue service to any property for the failure
23 to pay any amount owing. A municipal authority shall **【**exercise the
24 discretionary authority it is provided under this subsection
25 consistently to all properties, or to all properties of the same use
26 type or other appropriate category~~】~~ not include in its rate base any
27 increase in those costs or expenses incurred by the municipal
28 authority during a major public health emergency. As used in this
29 section, "major public health emergency" means a health
30 emergency that has resulted in the Governor declaring a public
31 health emergency, pursuant to section 3 of P.L.2005, c.222
32 (C.26:13-3), and a state of emergency, pursuant to P.L.1942, c.251
33 (C.App.A:9-33 et seq.), within this State.
34 (cf: P.L.2020, c.39, s.3)

35

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

37 40A:26A-12. a. Rates, rentals, connection fees or other charges
38 levied in accordance with N.J.S.40A:26A-10 and 40A:26A-11, shall
39 be a first lien or charge against the property benefited therefrom. If
40 any part of the amount due and payable in rates, rentals, connection
41 fees or other charges remain unpaid for 30 days following the date
42 for the payment thereof, interest upon the amount unpaid shall
43 accrue at a rate of interest to be determined in accordance with
44 N.J.S.40A:26A-17. The governing body or bodies of the local unit
45 or units may authorize payment of delinquent assessments on an
46 installment basis in accordance with R.S.54:5-19. Liens levied in
47 accordance with this section shall be enforceable in the manner

1 provided for real property tax liens in chapter 5 of Title 54 of the
2 Revised Statutes.

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

14 c. Notwithstanding the provisions of subsections a. and b. of
15 this section, **【if the Governor has declared a public health**
16 **emergency pursuant to the "Emergency Health Powers Act,"**
17 **P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency,**
18 **pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), or both, in**
19 **response to a flood, hurricane, superstorm, tornado, natural or other**
20 **disaster, or public health emergency, then, for the duration of the】**
21 **or of any other law, rule, regulation, or order to the contrary, during**
22 **and within 180 days after the end of a declared major 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】** a governing body or bodies of the local
26 unit or units **【may, in its discretion, engage in any combination of**
27 **the following】 shall not:** (1) **【not】** **increase any rate, fee, or similar**
28 **charge for service rendered to a customer, charge interest on 【the】 a**
29 **delinquent payment , or assess to a customer any late bill payment**
30 **fee or similar charge, or any service restoration fee or similar**
31 **charge;** (2) **【not】** place a lien on **【such parcel of】** real property for
32 the unpaid balance for any service charge **【and all interest accruing**
33 **thereon】;** or (3) **【not】** discontinue service of any property for the
34 failure to pay any amount owing. The governing body shall
35 **【exercise the discretionary authority it is provided under this**
36 **subsection consistently to all properties, or to all properties of the**
37 **same use type or other appropriate category】** **not include in its rate**
38 **base any increase in those costs or expenses incurred by the**
39 **governing body during a major public health emergency. As used**
40 **in this section, "major public health emergency" means a health**
41 **emergency that has resulted in the Governor declaring a public**
42 **health emergency, pursuant to section 3 of P.L.2005, c.222**
43 **(C.26:13-3), and a state of emergency, pursuant to P.L.1942, c.251**
44 **(C.App.A:9-33 et seq.), within this State.**
45 (cf: P.L.2020, c.39, s.4)

46
47 5. N.J.S.40A:31-12 is amended to read as follows:

1 40A:31-12. a. Rates, rentals, connection fees or other charges
2 levied in accordance with N.J.S.40A:31-10 and 40A:31-11, shall be
3 a first lien or charge against the property benefited therefrom. If
4 any part of the amount due and payable in rates, rentals, connection
5 fees or other charges remains unpaid for 30 days following the date
6 for the payment thereof, interest upon the amount unpaid shall
7 accrue at a rate of interest to be determined in accordance with
8 N.J.S.40A:31-17. The governing body or bodies of the local unit or
9 units may authorize payment of delinquent assessments on an
10 installment basis in accordance with R.S.54:5-19. Liens levied in
11 accordance with this section shall be enforceable in the manner
12 provided for real property tax liens in chapter 5 of Title 54 of the
13 Revised Statutes.

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

25 c. Notwithstanding the provisions of subsections a. and b. of
26 this section, **【if the Governor has declared a public health**
27 **emergency pursuant to the “Emergency Health Powers Act,”**
28 **P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency,**
29 **pursuant to P.L.1942, c.251 (C.App.A.9-33 et seq.), or both, in**
30 **response to a flood, hurricane, superstorm, tornado, natural or other**
31 **disaster, or public health emergency, then, for the duration of the】**
32 **or of any other law, rule, regulation, or order to the contrary, during**
33 **and within 180 days after the end of a declared major public health**
34 **emergency **【,** state of emergency, or both and for a period up to 90**
35 **days after the public health emergency, state of emergency, or both,**
36 **are no longer in effect, the】 a governing body or bodies of the local**
37 **unit or units **【may, in its discretion, engage in any combination of****
38 **the following】 shall not: (1) **【not】 increase any rate, fee, or similar**
39 **charge for service rendered to a customer, charge interest on **【the】 a****
40 **delinquent payment, or assess to a customer any late bill payment**
41 **fee or similar charge, or any service restoration fee or similar**
42 **charge; (2) **【not】 place a lien on **【such parcel of】 real property for****
43 **the unpaid balance for any service charge **【and all interest accruing****
44 **thereon】; or (3) **【not】 discontinue service of any property for the****
45 **failure to pay any amount owing. The governing body shall**
46 ****【exercise the discretionary authority it is provided under this****
47 **subsection consistently to all properties, or to all properties of the******

1 same use type or other appropriate category] not include in its rate
2 base any increase in those costs or expenses incurred by the
3 governing body during a major public health emergency. As used
4 in this section, “major public health emergency” means a health
5 emergency that has resulted in the Governor declaring a public
6 health emergency, pursuant to section 3 of P.L.2005, c.222
7 (C.26:13-3), and a state of emergency, pursuant to P.L.1942, c.251
8 (C.App.A:9-33 et seq.), within this State.
9 (cf: P.L.2020, c.39, s.5)

10

11 6. Section 6 of P.L.2020. c.39 (C.40:62-83.2) is amended to
12 read as follows:

13 6. Notwithstanding the provisions of any law , rule, regulation,
14 or order to the contrary, **[if the Governor has declared a]** during
15 and within 180 days after the end of a declared major public health
16 emergency [pursuant to the "Emergency Health Powers Act,"
17 P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency,
18 pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), or both, in
19 response to a flood, hurricane, superstorm, tornado, natural or other
20 disaster, or public health emergency, then, for the duration of the
21 public health emergency, state of emergency, or both, and for a
22 period up to 90 days after the public health emergency, state of
23 emergency, or both, are no longer in effect, any] a municipality that
24 owns and operates its water and sewer systems as one utility or that
25 furnishes a supply of water or sewerage service, or both, to the
26 inhabitants of another municipality, [may, in its discretion, engage
27 in any combination of the following] shall not: (1) **[not]** increase
28 any rate, fee, or similar charge for service rendered to a customer,
29 charge interest on [the] a delinquent payment , or assess to a
30 customer any late bill payment fee or similar charge, or any service
31 restoration fee or similar charge; (2) **[not]** place a lien on [such
32 parcel of] real property for the unpaid balance for any service
33 charge [and all interest accruing thereon]; or (3) **[not]** discontinue
34 service of any property for the failure to pay any amount owing. A
35 **[sewerage authority shall exercise the discretionary authority it is**
36 **provided under this subsection consistently to all properties, or to**
37 **all properties of the same use type or other appropriate category]**
38 municipality shall not include in its rate base any increase in those
39 costs or expenses incurred by the municipality during a major
40 public health emergency. As used in this section, “major public
41 health emergency” means a health emergency that has resulted in
42 the Governor declaring a public health emergency, pursuant to
43 section 3 of P.L.2005, c.222 (C.26:13-3), and a state of emergency,
44 pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), within this
45 State.

46 (cf: P.L.2020, c.39, s.6)

1 7. (New section) Notwithstanding the provisions of R.S.48:2-
2 21 and R.S.48:2-21.1, or any other law, rule, regulation, or order to
3 the contrary, a public utility, as defined in R.S.48:2-13, shall not
4 increase any rate, fee, or similar charge for service rendered to a
5 customer during and within 180 days after the end of a declared
6 major public health emergency. A public utility shall not include in
7 its rate base any increase in those costs or expenses incurred by the
8 public utility during a major public health emergency. As used in
9 this section, "major public health emergency" means a health
10 emergency that has resulted in the Governor declaring a public
11 health emergency, pursuant to section 3 of P.L.2005, c.222
12 (C.26:13-3), and a state of emergency, pursuant to P.L.1942, c.251
13 (C.App.A:9-33 et seq.), within this State.
14

15 8. (New section) In addition to the provisions of section 1 of
16 P.L.2003, c.247 (C.48:3-2.3), a public utility, as defined in
17 R.S.48:2-13, shall not assess to a customer any late bill payment fee
18 or similar charge or any service restoration fee or similar charge
19 during and within 180 days after the end of a declared major public
20 health emergency. As used in this section, "major public health
21 emergency" means a health emergency that has resulted in the
22 Governor declaring a public health emergency, pursuant to section 3
23 of P.L.2005, c.222 (C.26:13-3), and a state of emergency, pursuant
24 to P.L.1942, c.251 (C.App.A:9-33 et seq.), within this State.
25

26 9. This act shall take effect immediately.
27
28

29 STATEMENT
30

31 This bill would prohibit public utilities and authorities from
32 increasing a rate, fee, or similar charge for service rendered to a
33 customer during and within 180 days after the end of a declared
34 "major public health emergency," as defined in the bill. A public
35 utility or authority would be prohibited from including in its rate
36 base any increase in those costs or expenses incurred by the public
37 utility or authority during a major public health emergency. The
38 bill also prohibits a public utility or authority, during and within
39 180 days after the end of a declared major public health emergency,
40 from charging interest on a delinquent payment, assessing to a
41 customer any late bill payment fee or similar charge or any service
42 restoration fee or similar charge, placing a lien on real property, or
43 discontinuing service for failure to pay an amount due and owing.