

CHAPTER 184
(CORRECTED COPY)

AN ACT concerning the financing and operation of water systems, supplementing Title 40A of the New Jersey Statutes, and amending various parts of the statutory law.

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

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

C.40:14B-3 Definitions.

3. As used in P.L.1957, c.183 (C.40:14B-1 et seq.), unless a different meaning clearly appears from the context:

(1) "Municipality" shall mean any city of any class, any borough, village, town, township, or any other municipality other than a county or a school district, and except when used in section 4, 5, 6, 11, 12, 13, 42 or 45 of P.L.1957, c.183 (C.40:14B-4, C.40:14B-5, C.40:14B-6, C.40:14B-11, C.40:14B-12, C.40:14B-13, C.40:14B-42, or C.40:14B-45), any agency thereof or any two or more thereof acting jointly or any joint meeting or other agency of any two or more thereof;

(2) "County" shall mean any county of any class;

(3) "Governing body" shall mean, in the case of a county, the board of chosen freeholders, or in the case of those counties organized pursuant to the provisions of the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et seq.), the board of chosen freeholders and the county executive, the county supervisor or the county manager, as appropriate, and, in the case of a municipality, the commission, council, board or body, by whatever name it may be known, having charge of the finances of the municipality;

(4) "Person" shall mean any person, association, corporation, nation, state or any agency or subdivision thereof, other than a county or municipality of the State or a municipal authority;

(5) "Municipal authority," "authority," or "water reclamation authority" shall mean a public body created or organized pursuant to section 4, 5 or 6 of P.L.1957, c.183 (C.40:14B-4, C.40:14B-5, or C.40:14B-6) and shall include a municipal utilities authority created by one or more municipalities and a county utilities authority created by a county;

(6) Subject to the exceptions provided in section 10, 11 or 12 of P.L.1957, c.183 (C.40:14B-10, C.40:14B-11, or C.40:14B-12), "district" shall mean the area within the territorial boundaries of the county, or of the municipality or municipalities, which created or joined in or caused the creation or organization of a municipal authority;

(7) "Local unit" shall mean the county, or any municipality, which created or joined in or caused the creation or organization of a municipal authority;

(8) "Water system" shall mean the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by a municipal authority or by any person to whom a municipal authority has extended credit for this purpose for the purposes of the municipal authority, including reservoirs, basins, dams, canals, aqueducts, standpipes, conduits, pipelines, mains, pumping stations, water distribution systems, compensating reservoirs, waterworks or sources of water supply, wells, purification or filtration plants or other plants and works, connections, rights of flowage or division, and other plants, structures, boats, conveyances, and other real and personal property, and rights therein, and appurtenances necessary or useful and convenient for the accumulation, supply and redistribution of water.

The term "water system" shall include the replacement of service connections to a publicly-owned water system, from the distribution main onto privately-owned real property and into a privately-owned structure, when used in reference to a project undertaken for the purpose of replacing residential, commercial, and institutional lead service lines, regardless of possible private service connection ownership;

(9) "Sewerage system" shall mean the plants, structures, on-site wastewater systems and other real and personal property acquired, constructed or operated or to be acquired, constructed, maintained or operated by a municipal authority or by any person to whom a municipal authority has extended credit for this purpose for the purposes of the municipal authority, including sewers, conduits, pipelines, mains, pumping and ventilating stations, sewage treatment or disposal systems, plants and works, connections, outfalls, compensating reservoirs, and other plants, structures, boats, conveyances, and other real and personal property, and rights therein, and appurtenances necessary or useful and convenient for the collection, treatment, purification or disposal in a sanitary manner of any sewage, liquid or solid wastes, night soil or industrial wastes;

(10) "Utility system" shall mean a water system, solid waste system, sewerage system, or a hydroelectric system or any combination of such systems, acquired, constructed or operated or to be acquired, constructed or operated by a municipal authority or by any person to whom a municipal authority has extended credit for this purpose;

(11) "Cost" shall mean, in addition to the usual connotations thereof, the cost of acquisition or construction of all or any part of a utility system and of all or any property, rights, easements, privileges, agreements and franchises deemed by the municipal authority to be necessary or useful and convenient therefor or in connection therewith and the cost of retiring the present value of the unfunded accrued liability due and owing by a municipal authority, as calculated by the system actuary for a date certain upon the request of a municipal authority, for early retirement incentive benefits granted by the municipal authority pursuant to P.L.1991, c.230 and P.L.1993, c.181, including interest or discount on bonds, cost of issuance of bonds, engineering and inspection costs and legal expenses, cost of financial, professional and other estimates and advice, organization, administrative, operating and other expenses of the municipal authority prior to and during such acquisition or construction, and all such other expenses as may be necessary or incident to the financing, acquisition, construction and completion of said utility system or part thereof and the placing of the same in operation, and also such provision or reserves for working capital, operating, maintenance or replacement expenses or for payment or security of principal of or interest on bonds during or after such acquisition or construction as the municipal authority may determine, and also reimbursements to the municipal authority or any county, municipality or other person of any moneys theretofore expended for the purposes of the municipal authority or to any county or municipality of any moneys theretofore expended for or in connection with water supply, solid waste, water distribution, sanitation or hydroelectric facilities;

(12) "Real property" shall mean lands both within or without the State, and improvements thereof or thereon, or any rights or interests therein;

(13) "Construct" and "construction" shall connote and include acts of construction, reconstruction, replacement, extension, improvement and betterment of a utility system;

(14) "Industrial wastes" shall mean liquid or other wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resource, and shall include any chemical wastes or hazardous wastes;

(15) "Sewage" shall mean the water-carried wastes created in and carried, or to be carried, away from, or to be processed by on-site wastewater systems, residences, hotels, apartments,

schools, hospitals, industrial establishments, or any other public or private building, together with such surface or ground water and industrial wastes and leachate as may be present;

(16)"On-site wastewater system" means any of several facilities, septic tanks or other devices, used to collect, treat, reclaim, or dispose of wastewater or sewage on or adjacent to the property on which the wastewater or sewage is produced, or to convey such wastewater or sewage from said property to such facilities as the authority may establish for its disposal;

(17)"Pollution" means the condition of water resulting from the introduction therein of substances of a kind and in quantities rendering it detrimental or immediately or potentially dangerous to the public health, or unfit for public or commercial use;

(18)"Bonds" shall mean bonds or other obligations issued pursuant to P.L.1957, c.183 (C.40:14B-1 et seq.);

(19)"Service charges" shall mean water service charges, solid waste service charges, sewer service charges, hydroelectric service charges or any combination of such charges, as said terms are defined in section 21 or 22 of P.L.1957, c.183 (C.40:14B-21 or C.40:14B-22) or in section 7 of P.L.1980, c.34 (C.40:14B-21.1);

(20)"Compensating reservoir" shall mean the structures, facilities and appurtenances for the impounding, transportation and release of water for the replenishment in periods of drought or at other necessary times of all or a part of waters in or bordering the State diverted into a utility system operated by a municipal authority;

(21)"Sewage or water reclamation authority" shall mean a public body created pursuant to the "sewerage authorities law," P.L.1946, c.138 (C.40:14A-1 et seq.) or the acts amendatory thereof or supplemental thereto;

(22)"County sewer authority" shall mean a sanitary sewer district authority created pursuant to the act entitled "An act relating to the establishment of sewerage districts in first- and second-class counties, the creation of Sanitary Sewer District Authorities by the establishing of such districts, prescribing the powers and duties of any such authority and of other public bodies in connection with the construction of sewers and sewage disposal facilities in any such district, and providing the ways and means for paying the costs of construction and operation thereof," approved April 23, 1946 (P.L.1946, c.123), or the acts amendatory thereof or supplemental thereto;

(23)"Chemical waste" shall mean a material normally generated by or used in chemical, petrochemical, plastic, pharmaceutical, biochemical or microbiological manufacturing processes or petroleum refining processes, which has been selected for waste disposal and which is known to hydrolize, ionize or decompose, which is soluble, burns or oxidizes, or which may react with any of the waste materials which are introduced into the landfill, or which is buoyant on water, or which has a viscosity less than that of water or which produces a foul odor. Chemical waste may be either hazardous or nonhazardous;

(24)"Effluent" shall mean liquids which are treated in and discharged by sewage treatment plants;

(25)"Hazardous wastes" shall mean any waste or combination of waste which poses a present or potential threat to human health, living organisms or the environment. "Hazardous waste" shall include, but not be limited to, waste material that is toxic, corrosive, irritating, sensitizing, radioactive, biologically infectious, explosive or flammable;

(26)"Leachate" shall mean a liquid that has been in contact with solid waste and contains dissolved or suspended materials from that solid waste;

(27)"Recycling" shall mean the separation, collection, processing or recovery of metals, glass, paper, solid waste and other materials for reuse or for energy production and shall include resource recovery;

(28) "Sludge" shall mean any solid, semisolid, or liquid waste generated from a municipal, industrial or other sewage treatment plant, water supply treatment plant, or air pollution control facility, or any other such waste having similar characteristics and effects; "sludge" shall not include effluent;

(29) "Solid waste" shall mean garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including sludge, chemical waste, hazardous wastes and liquids, except for liquids which are treated in public sewage treatment plants and except for solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms;

(30) "Solid waste system" shall mean and include the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by an authority or by any person to whom a municipal authority has extended credit for this purpose pursuant to the provisions of P.L.1957, c.183 (C.40:14B-1 et seq.), including transfer stations, incinerators, recycling facilities, including facilities for the generation, transmission and distribution of energy derived from the processing of solid waste, sanitary landfill facilities or other property or plants for the collection, recycling or disposal of solid waste and all vehicles, equipment and other real and personal property and rights thereon and appurtenances necessary or useful and convenient for the collection, recycling, or disposal of solid waste in a sanitary manner;

(31) "Hydroelectric system" shall mean the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by an authority pursuant to the provisions of P.L.1957, c.183 (C.40:14B-1 et seq.), including all that which is necessary or useful and convenient for the generation, transmission and sale of hydroelectric power at wholesale;

(32) "Hydroelectric power" shall mean the production of electric current by the energy of moving water;

(33) "Sale of hydroelectric power at wholesale" shall mean any sale of hydroelectric power to any person for purposes of resale of such power;

(34) "Alternative electrical energy" shall mean electrical energy produced from solar, photovoltaic, wind, geothermal, or biomass technologies, provided that in the case of biomass technology, the biomass is cultivated and harvested in a sustainable manner;

(35) "Alternative electrical energy system" shall mean any system which uses alternative electrical energy to provide all or a portion of the electricity for the heating, cooling, or general electrical energy needs of a building;

(36) "Pilot county" shall mean a county of the second class having a population between 280,000 and 290,000, a population between 510,000 and 520,000, and a population between 530,000 and 540,000 according to the 2010 federal decennial census;

(37) "Pilot county utilities authority" shall mean a county utilities authority in a county designated as a pilot county;

(38) "Lead service line" means a water supply connection that is made of, or lined with, a material consisting of lead, and which connects a water main to a building inlet. A lead pigtail, lead gooseneck, or other lead fitting shall be considered to be a lead service line, regardless of the composition of the service line or other portions of piping to which such piece is attached. A galvanized service line shall be considered to be a lead service line. A lead service line may be owned by the public community water system, a property owner, or both.

2. Section 20 of P.L.1957, c.183 (C.40:14B-20) is amended to read as follows:

C.40:14B-20 Powers.

20. Every municipal authority shall be a public body politic and corporate constituting a political subdivision of the State established as an instrumentality exercising public and essential governmental functions to provide for the public health and welfare and shall have perpetual succession and have the following powers:

- (1) To adopt and have a common seal and to alter the same at pleasure;
- (2) To sue and be sued;
- (3) In the name of the municipal authority and on its behalf, to acquire, hold, use and dispose of its service charges and other revenues and other moneys;
- (4) In the name of the municipal authority but for the local unit or units, to acquire, rent, hold, lease as lessor, use and dispose of other personal property for the purposes of the municipal authority;
- (5) In the name of the municipal authority but for the local unit or units and subject to the limitations of P.L.1957, c.183 (C.40:14B-1 et seq.), to acquire by purchase, gift, condemnation or otherwise, or lease as lessee, real property and easements therein, necessary or useful and convenient for the purposes of the municipal authority, and subject to mortgages, deeds of trust or other liens, or otherwise, and to hold, lease as lessor, and to use the same, and to dispose of property so acquired no longer necessary for the purposes of the municipal authority;
- (6) To produce, develop, purchase, accumulate, distribute and sell water and water services, facilities and products within or without the district, provided that no water shall be sold at retail in any municipality or county without the district unless the governing body of such municipality or county shall have adopted a resolution requesting the municipal authority to sell water at retail in such municipality or county, and the board of public utility commissioners shall have approved such resolution as necessary and proper for the public convenience;
- (7) To provide for and secure the payment of any bonds and the rights of the holders thereof, and to purchase, hold and dispose of any bonds;
- (8) To accept gifts or grants of real or personal property, money, material, labor or supplies for the purposes of the municipal or county authority, and to make and perform such agreements and contracts as may be necessary or convenient in connection with the procuring, acceptance or disposition of such gifts or grants;
- (9) To enter on any lands, waters or premises for the purpose of making surveys, borings, soundings and examinations for the purposes of the municipal authority, and whenever the operation of a septic tank or other component of an on-site wastewater system shall result in the creation of pollution or contamination source on private property such that under the provisions of R.S.26:3-49, a local board of health would have the authority to notify the owner and require said owner to abate the same, representatives of an authority shall have the power to enter, at all reasonable times, any premises on which such pollution or contamination source shall exist, for the purpose of inspecting, rehabilitating, securing samples of any discharges, improving, repairing, replacing, or upgrading such septic tank or other component of an on-site wastewater system;
- (10) To establish an inspection program to be performed at least once every three years on all on-site wastewater systems installed within the district which inspection program shall contain the following minimum notice provisions: (i) not less than 30 days prior to the date of the inspection of any on-site wastewater system as described herein, the authority shall

notify the owner and resident of the property that the inspection will occur; and (ii) not less than 60 days prior to the date of the performance of any work other than an inspection, the municipal authority shall provide notice to the owner and resident of the property in which the work will be performed. The notice to be provided to such owner and resident under this subsection shall include a description of the deficiency which necessitates the work and the proposed remedial action, and the proposed date for beginning and duration of the contemplated remedial action;

(11) To prepare and file in the office of the municipal authority records of all inspections, rehabilitation, maintenance, and work, performed with respect to on-site wastewater disposal systems;

(12) To make and enforce bylaws or rules and regulations for the management and regulation of its business and affairs and for the use, maintenance and operation of the utility system and any other of its properties, and to amend the same;

(13) To do and perform any acts and things authorized by P.L.1957, c.183 (C.40:14B-1 et seq.) under, through, or by means of its own officers, agents and employees, or by contracts with any person;

(14) To enter into any and all contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the municipal authority or to carry out any power expressly given in P.L.1957, c.183 (C.40:14B-1 et seq.) subject to the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.);

(15) To extend credit or make loans to any person for the planning, designing, acquiring, constructing, reconstructing, improving, equipping, furnishing, and operating by that person of any part of a solid waste system, sewage treatment system, wastewater treatment or collection system for the provision of services and facilities within or without the district, which in the case of a solid waste system shall be in a manner consistent with the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) and in conformance with the solid waste management plans adopted by the solid waste management districts created therein. The credits or loans may be secured by loan and security agreements, mortgages, leases and any other instruments, upon such terms as the authority shall deem reasonable, including provision for the establishment and maintenance of reserve and insurance funds, and to require the inclusion in any mortgage, lease, contract, loan and security agreement or other instrument, provisions for the construction, use, operation and maintenance and financing of that part of the aforementioned systems as the authority may deem necessary or desirable;

(16) Upon the request of a customer: (i) to offer the customer the ability to receive or access, in electronic format, any periodic bill for service sent by the municipal authority to its customers and any additional information sent by the municipal authority to its customers as required by law, provided that any notice of disconnection, discontinuance or termination of service shall be sent to a customer in written form at the customer's legal mailing address in addition to being sent or being made available in electronic format; and (ii) to provide the customer the option of paying any such periodic bill via electronic means;

(17) In the case of an authority that is a pilot county utilities authority, to fund improvements to county infrastructure pursuant to the provisions of subsection b. of section 40 of P.L.1957, c.183 (C.40:14B-40); and

(18) To finance the replacement of service connections to a publicly-owned water system, from the distribution main onto privately-owned real property and into the privately-owned structure, for the purpose of replacing residential, commercial, and institutional lead service lines, regardless of possible private service connection ownership.

3. R.S.40:56-1 is amended to read as follows:

Local improvements; definition and enumeration, doing work as general improvement.

R.S.40:56-1. A local improvement is one, the cost of which, or a portion thereof, may be assessed upon the lands in the vicinity thereof benefited thereby.

Any municipality may undertake any of the following works as a local improvement; and the governing body thereof may make, amend, repeal and enforce ordinances for carrying into effect all powers granted in this section:

a. The laying out, opening or establishing of a new street, alley, or other public highway, or portion thereof.

b. The widening, straightening, extension, alteration or changing in any manner of the location of a street, alley or other public highway, or portion thereof.

c. The grading or alteration of the grade of a street, alley or other public highway, or portion thereof.

d. The paving, repaving, or otherwise improving or reimproving a street, alley or other public highway, or portion thereof.

e. The curbing or recurbing, guttering or reguttering of a sidewalk in, upon, or along a street, alley or other public highway, or portion thereof.

f. The construction, reconstruction, improvement and reimprovement of bridges and viaducts.

g. The construction, reconstruction, improvement, reimprovement or relocation of a public walk or driveway on any beach, or along the ocean or any river or other waterway.

h. The improvement or reimprovement of any beach or water front, and the providing of suitable protection to prevent damage to lands or property by the ocean or other waters, including the filling in and grading necessary for the protection of such improvements.

i. The construction, reconstruction, enlargement or extension of a sewer or drain in, under or along a street, alley or public highway, or portion thereof, or in, under or along any public or private lands; the construction, reconstruction, enlargement or extension of a system of sewerage or drainage or both combined; the construction, reconstruction, enlargement or extension of a system of drainage of the marshes and wet lowlands within the municipality; the construction, reconstruction, enlargement or alteration of a system of works for the sanitary disposal of sewage or drainage.

j. (1) The installation of service connections to a system of water, gas, light, heat or power works owned by a municipality or otherwise, including all such works as may be necessary for supplying water, gas, light, heat or power to real estate for whose benefit such services are provided. This authorization includes, but shall not be limited to, the installation of service connections to a publicly-owned water system, from the distribution main onto privately-owned real property and into the privately-owned structure, for the purpose of replacing residential, commercial, and institutional lead service lines, regardless of possible private service connection ownership;

(2) The installation of service connections including the laying, construction or placing of mains, conduits or cables in, under or along a street, alley or other public highway or portion thereof.

k. The construction, reconstruction, enlargement or extension of any water main or other works for the distribution of water supplied by the State or any of its political subdivisions, or any public agency of any of the same.

l. The installation of such lighting standards, appliances and appurtenances as may be required for the brilliant illumination of the streets in those parts of the municipality where

the governing body of the municipality may deem it necessary or proper to establish what is commonly called a "white way."

m. The widening, deepening or improvement of any stream, creek, river or other waterway.

n. The removal of obstructions in, and the constructing, reconstructing, enlarging or extending of any waterway, of enclosing walls, or of a pipe or conduit or any brook or watercourse, or part of same.

o. The defining of the location and the establishment of widths, grades and elevations of any stream, creek, river or other waterway, and the preventing of encroachments upon the same.

p. The reclaiming, filling and improving and bulkheading and filling in lands lying under tidal or other water, in whole or in part, within the municipality; the reclaiming or filling or bulkheading and filling those lands or lands adjacent to such reclaimed or filled lands; to dredge channels or improve harbor approaches in the waters abounding the lands to be reclaimed, filled and improved, or bulkheaded and filled; provided, the approval of the Tidelands Resource Council established pursuant to section 10 of P.L.1948, c.448 (C.13:1B-10), and when necessary, the permission of the federal authorities in charge of the district port in which the improvements are proposed to be made, to improve and dredge channels and construct and improve the harbor approaches to those lands, shall be first had and obtained.

The governing body may enter into agreements with the federal government for reimbursement to the municipality for all or a portion of the cost of dredging channels or improving harbor approaches in waters under the jurisdiction of the federal government.

If any portion of the amount assessed against the lands within the municipality for the improvement shall be reimbursed to the municipality by the federal government after the assessment has been made, then a credit shall be made on each assessment levied in proportion to the amount so received from the federal government; provided, the amount received by the municipality from the federal government shall be in excess of the amount fixed in the assessment to be borne by the municipality at large.

If any portion of the land included within lands benefited or improved by any work done in connection with the reclaiming, filling or bulkheading and filling shall be riparian lands or lands under water, for which the riparian grant has not theretofore been made by the State, the municipal board or body authorized to make assessments for improvements in accordance with this subtitle may include in any such assessment a prospective assessment against the riparian lands or lands under water, and a copy of such prospective assessment shall be filed with the Tidelands Resource Council and shall be a part of the records of that council. Upon the sale or grant by the State of the riparian rights to any such lands for which a prospective assessment has been filed with the council, the amount of such prospective assessment together with interest at the rate of five percent annually from the time of the confirmation of the assessment for the improvement shall be included by the Tidelands Resource Council in the purchase price fixed for such lands and made a part of the payment for the grant, and the amount of the assessment with interest, when paid, shall be turned over by the Tidelands Resource Council to the municipality making the assessment. Such prospective assessment shall also be included in the general assessment for and against any such riparian lands or lands under water for which an annual rental or fee is being charged or collected by the Tidelands Resource Council under any agreement by which the fee of any such riparian lands is passed, and when the fee does so pass by grant from the State the prospective assessment shall become immediately due and payable, together with interest thereon at the rate of five

percent annually from the time of the confirmation of the assessment for the improvement and the assessment shall become a lien upon those lands until paid and shall be collectible as other liens for public improvements in the municipality. Should the Tidelands Resource Council lease for a term of years any such riparian lands or lands under water, included within lands benefited or improved by any work done in connection with the reclaiming, filling or bulkheading and filling, it shall include in the annual rental to be charged therefor one-tenth of the amount of the prospective assessment for each year of the term not exceeding ten years until the prospective assessment and the interest thereon at the rate of five percent annually from the time of confirmation of the assessment for the improvement, shall be paid. If the lease shall be for a period less than ten years, such provision shall be contained in any and all extensions and renewals thereof, or in any new leases until the full prospective assessment with such interest shall have been paid. Nothing contained in this subparagraph shall apply to lands owned by a company whose rates are subject to regulation by the Board of Public Utilities.

Whenever convenient more than one of the works provided for in this section may be carried on as one improvement. Any municipality may undertake any or all of the works mentioned in this section as a general improvement to be paid for by general taxation, and any municipality may provide for the maintenance, repair and operation of any or all of said works by taxation whether the same are undertaken as local or general improvements.

4. R.S.40:56-35 is amended to read as follows:

Assessments, payment in installments; delinquent installments.

40:56-35. The governing body may by resolution provide that the owner of any real estate upon which any assessments for any improvement shall have been made may pay such assessments in such equal yearly or quarterly installments, not exceeding ten years in duration, except as hereinafter provided, with legal interest thereon, and at such time in each year as the governing body shall determine, but any person assessed may pay the whole of any assessment, or any balance of installments, with accrued interest thereon, at one time. If any such installment shall remain unpaid for 30 days after the time when the same shall have become due, either:

a. the whole assessment or balance due thereon shall become and be immediately due, shall draw interest at the rate imposed upon the arrearage of taxes in such municipality and be collected in the same manner as is provided by this subtitle for other past due assessments; or

b. the governing body may, by resolution, permit any person who is delinquent in the payment of such an installment to pay only the amount of the delinquent payment and any interest on the delinquent payment that has accrued from the date that the installment was due and payable until the date that payment of the delinquent installment is made. After the delinquent installment is satisfied, the person assessed shall be reinstated on a regular installment payment schedule.

Whenever any owner shall be given the privilege of paying any assessment in installments such assessment shall remain a lien upon the land described therein until the same with all installments and accrued interest thereon shall be paid, and no proceedings to collect or enforce the same need be taken until default shall be made in the payment of any installment as hereinbefore in this subtitle provided.

In any municipality which is constructing a local improvement with funds secured from the federal government, through the public works administration, under the terms of the

national recovery act, the governing body may provide that the assessments may be payable in yearly or quarterly installments, with legal interest thereon, over a period of years up to but in no event exceeding the term of years for which the funds therefor are borrowed from the Federal Government, and at such time in each year as the governing body shall determine. The governing body may fix the yearly installments in such amounts as in its opinion are equitable and just.

In any municipality in which the local improvement is being financed by the sale of bonds, the governing body may provide that the assessments may be payable in yearly or quarterly installments, with legal interest thereon, over a period of years up to but in no event exceeding the period of years for which the bonds were issued, or for 20 years, whichever shall be less, and at such time in each year as the governing body shall determine. In the case of assessments for the replacement of service connections to a publicly-owned water system, from the distribution main onto privately-owned real property and into a privately-owned structure, when used in reference to a project undertaken for the purpose of replacing residential, commercial, and institutional lead service lines, regardless of possible private service connection ownership, the period of years may be greater than 20 years but shall not exceed 30 years. The governing body may fix the yearly installments in such amounts as in its opinion are equitable and just.

5. N.J.S.40A:2-22 is amended to read as follows:

Maximum bond terms.

40A:2-22. The governing body of the local unit shall determine the period of usefulness of any purpose according to its reasonable life computed from the date of the bonds, which period shall not be greater than the following:

a. Buildings and structures.

1. Bridges, including retaining walls and approaches, or permanent structures of brick, stone, concrete or metal, or similar durable construction, 30 years.

2. Buildings, including the original furnishings and equipment therefor:

Class A: A building, of which all walls, floors, partitions, stairs and roof are wholly of incombustible material, except the window frames, doors, top flooring and wooden handrails on the stairs, 40 years;

Class B: A building, the outer walls of which are wholly of incombustible material, except the window frames and doors, 30 years;

Class C: A building which does not meet the requirements of Class A or Class B, 20 years.

3. Buildings or structures acquired substantially reconstructed or additions thereto, one-half the period fixed in this subsection for such buildings or structures.

4. Additional furnishings, five years.

b. Marine improvements.

1. Harbor improvements, docks or marine terminals, 40 years.

2. Dikes, bulkheads, jetties or similar devices of stone, concrete or metal, 15 years; of wood or partly of wood, 10 years.

c. Additional equipment and machinery.

1. Additional or replacement equipment and machinery, 15 years.

2. Voting machines, 15 years.

3. Information technology and telecommunications equipment, 7 years, except that for items with a unit cost of less than \$5,000, 5 years.

d. Real property.

1. Acquisition for any public purpose of lands or riparian rights, or both, and the original dredging, grading, draining or planting thereof, 40 years.

2. Improvement of airport, cemetery, golf course, park, playground, 15 years.

3. Stadia of concrete or other incombustible materials, 20 years.

e. Streets or thoroughfares.

1. Elimination of grade crossings, 35 years.

2. Streets or roads:

Class A: Rigid pavement. A pavement of not less than eight inches of cement concrete or a six-inch cement concrete base with not less than three-inch bituminous concrete surface course, or equivalent wearing surface, 20 years.

Flexible pavement. A pavement not less than 10 inches in depth consisting of five-inch macadam base, three-inch modified penetration macadam and three-inch bituminous concrete surface course or other pavements of equivalent strength, in accordance with the findings of the American Association of State Highway Officials (AASHO) Road Test, 20 years.

Class B: Mixed surface-treated road. An eight-inch surface of gravel, stone or other selected material under partial control mixed with cement or lime and fly ash, six inches in compacted thickness with bituminous surface treatment and cover, 10 years.

Bituminous penetration road. A five-inch gravel or stone base course and a three-inch course bound with a bituminous or equivalent binder, 10 years.

Class C: Mixed bituminous road. An eight-inch surface of gravel, stone, or other selected material under partial control mixed with bituminous material one inch or more in compacted thickness, five years.

Penetration macadam road. A road of sand, gravel or water-bound macadam, or surfacing with penetration macadam, five years.

3. Sidewalks, curbs and gutters of stone, concrete or brick, 10 years.

The period of usefulness in this subsection shall apply to construction and reconstruction of streets and thoroughfares.

f. Utilities and municipal systems.

1. Sewerage system, whether sanitary or storm water, water supply or distribution system, 40 years.

2. Electric light, power or gas systems, garbage, refuse or ashes incinerator or disposal plant, 25 years.

3. Communication and signal systems, 10 years.

4. Service connections to publicly-owned gas, water or sewerage systems from the service main in the street to the curb or property lines where not part of original installation, five years.

5. Service connections to publicly-owned water systems, from the distribution main onto privately-owned real property and into the privately-owned structure, for the purpose of replacing residential, commercial, and institutional lead service lines, 30 years.

g. Vehicles and apparatus.

1. Fire engines, apparatus and equipment, when purchased new, but not fire equipment purchased separately, 10 years.

2. Automotive vehicles, including original apparatus and equipment (other than passenger cars and station wagons), when purchased new, five years.

3. Major repairs, reconditioning or overhaul of fire engines and apparatus, ambulances, rescue vehicles, and similar public safety vehicles (other than passenger cars and station

wagons) which may reasonably be expected to extend for at least five years the period of usefulness thereof, five years.

h. The closure of a sanitary landfill facility utilized, owned or operated by a county or municipality, 15 years; provided that the closure has been approved by the Board of Public Utilities and the Department of Environmental Protection. For the purposes of this subsection "closure" means all activities associated with the design, purchase or construction of all measures required by the Department of Environmental Protection, pursuant to law, in order to prevent, minimize or monitor pollution or health hazards resulting from sanitary landfill facilities subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the costs of the placement of earthen or vegetative cover, and the installation of methane gas vents or monitors and leachate monitoring wells or collection systems at the site of any sanitary landfill facility.

i. (Deleted by amendment, P.L.2007, c.62.)

j. The prefunding of a claims account for environmental liability claims by an environmental impairment liability insurance pool pursuant to P.L.1993, c.269 (C.40A:10-38.1 et al.), 20 years.

C.40A:4-35.2 Periodic study of adequacy, reasonableness of certain charges for water system.

6. a. A local unit shall be required to conduct a periodic study of the adequacy and reasonableness of the rates, fees, rents, and charges for a water system that the local unit owns or operates through a utility. The Local Finance Board in the Department of Community Affairs shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the procedures, requirements, and frequency of the study. Each completed study shall be submitted to the Director of the Division of Local Government Services in the Department of Community Affairs along with the annual budget of the local unit.

b. The director may summon appropriate officials of the local unit to a hearing before the Local Finance Board if the director determines that the rates, fees, rents, or charges for a water system that the local unit owns or operates through a utility may not be adequate or reasonable as determined by the study conducted pursuant to subsection a. of this section, or if the local unit fails to conduct a study pursuant to subsection a. of this section. The Local Finance Board may require the production of papers, documents, witnesses, or information and may take or cause to be made an audit or investigation of the circumstances with respect to which the hearing was called. After the hearing, the Local Finance Board shall have the power to order the local unit to adjust the utility's water system-related rents, rates, fees, or charges, or take such other action as the Local Finance Board deems appropriate to ensure the integrity of the utility's water infrastructure, and this order shall be valid and enforceable notwithstanding any provision of R.S.48:2-1 et seq. to the contrary.

7. N.J.S.40A:4-43 is amended to read as follows:

Capital budgets; definition.

40A:4-43. The governing body may and shall, when directed by the local government board, prepare, approve and adopt a budget for the expenditure of public funds for capital purposes to give effect to general improvement programs.

A capital budget shall be a plan for the expenditure of public funds for capital purposes, showing as income the revenues, special assessments, free surplus, and down payment

appropriations to be applied to the cost of a capital project or projects, expenses of issuance of obligations, engineering supervision, contracts and any other related expenditures. The capital budget for a local unit that is required to prepare an asset management plan pursuant to section 7 of the "Water Quality Accountability Act," P.L.2017, c.133 (C.58:31-7) or that holds a permit pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) shall identify the infrastructure improvements to be undertaken in accordance with the local unit's asset management plan or pursuant to any rule or regulation pertaining to asset management adopted by the Commissioner of Environmental Protection pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), as applicable, and their cost.

8. N.J.S.40A:4-44 is amended to read as follows:

Form, arrangement and detail of capital budgets.

40A:4-44. The local government board shall adopt, and may from time to time amend, reasonable rules and regulations for capital budgets. Regulations may classify the type of budget required, according to the size of the local unit, the nature of the capital projects or any other reasonable basis of distinction, and shall require a statement of capital undertakings underway or projected for a period not greater than over the next ensuing 6 years as a general improvement program. The statement of capital undertakings for local unit that is required to prepare an asset management plan pursuant to section 7 of the "Water Quality Accountability Act," P.L.2017, c.133 (C.58:31-7) or that holds a permit pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) shall identify the infrastructure improvements to be undertaken in accordance with the local unit's asset management plan or pursuant to any rule or regulation pertaining to asset management adopted by the Commissioner of Environmental Protection pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), as applicable, and their cost.

After promulgation of regulations by the local government board, the governing body shall expend or incur obligations for capital purposes only after the adoption of a capital budget and in accordance with such budget except for the preliminary expense of plans, specifications and estimates.

9. N.J.S.40A:4-78 is amended to read as follows:

Approval of budget, exemptions.

40A:4-78. a. If the director finds that all requirements of law and of the regulations of the local government board have been met, the director shall approve the budget, otherwise the director shall refuse to approve it.

The director, in refusing to approve a budget, shall not substitute the director's discretion with respect to the amount of an appropriation when such amount is not made mandatory because of the requirements of law. If a budget fails to incorporate infrastructure improvements identified in an asset management plan required pursuant to section 7 of P.L.2017, c.133 (C.58:31-7) or any rule or regulation pertaining to asset management adopted by the Commissioner of Environmental Protection pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), as applicable, the director may order the inclusion of the improvements, along with any revenues or appropriations necessary to fund and effectuate the improvements. The director may order such other measures as the director deems necessary to ensure the integrity of the local unit's water infrastructure; however, the director

may take into account the local unit's fiscal circumstances in determining appropriate measures.

b. Notwithstanding the provisions of N.J.S.40A:4-10 and N.J.S.40A:4-76 through 40A:4-79, the Local Finance Board is authorized to adopt rules, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to exempt certain municipalities from the requirement that the director approve their annual budgets and to provide instead for a system of local examination and approval of such budgets by municipal officials, provided that:

(1) the director finds that such municipalities are fiscally sound and that their fiscal practices are conducted in accordance with law and sound administrative practice;

(2) the director shall examine the budgets of such municipalities in accordance with the provisions of N.J.S.40A:4-10 and N.J.S.40A:4-76 through 40A:4-79, at least every third year;

(3) the governing body and chief financial officer of each such municipality shall each file a certification with the director stating that, with reference to the adopted budget of the municipality, they have:

(a) examined the budget in the manner prescribed under N.J.S.40A:4-76;

(b) determined that the budget complies with the requirements set forth in N.J.S.40A:4-77; and

(c) determined that the budget complies with all other provisions of law, including, but not limited to, the "Local Budget Law," N.J.S.40A:4-1 et seq., P.L.1976, c.68 (C.40A:4-45.1 et seq.), and the regulations of the Local Finance Board;

(4) all budget documents required by law or the regulations adopted by the Local Finance Board shall be filed with the director on a timely basis;

(5) other criteria and responsibilities as established by the regulations adopted by the Local Finance Board are met.

c. The director shall act to require immediate compliance with the "Local Budget Law," N.J.S.40A:4-1 et seq., if the director finds that any such exemption impairs the fiscal integrity or solvency of any such municipality. Any appeal of a governing body's action in adopting an annual budget shall be made to the director.

d. If a municipality has received approval for a special emergency appropriation pursuant to subsection m. of N.J.S.40A:4-53, that municipality shall not be eligible for local examination and approval pursuant to subsection b. of this section until the fiscal year after the final appropriation is made.

10. Section 10 of P.L.1983, c.313 (C.40A:5A-10) is amended to read as follows:

C.40A:5A-10 Submission of budget.

10. a. Each authority shall submit a budget for each fiscal year to the director prior to its adoption thereof. The budget shall comply with the terms and provisions of any bond resolutions, and shall be in such form and detail as to items of revenue, expenditure and other content as shall be required by law or by rules and regulations of the Local Finance Board.

b. The Local Finance Board shall prescribe by rule or regulation the procedure for the adoption of budgets by authorities. The rules and regulations may include or be similar to any provisions of the "Local Budget Law" (N.J.S.40A:4-1 et seq.) which the Local Finance Board shall deem to be practicable or necessary, and may further include any other provisions and requirements which the Local Finance Board shall deem appropriate or

necessary. The rules and regulations shall provide for approval or disapproval of a budget within 45 days of the director's receipt thereof.

c. The Local Finance Board shall also prescribe by rule or regulation the procedures and requirements for execution of any budget after adoption, and for the administration of financial affairs of authorities. The rules and regulations may include, without limitation, any provisions of the "Local Budget Law" (N.J.S.40A:4-1 et seq.), and the "Local Fiscal Affairs Law" (N.J.S.40A:5-1 et seq.), which the Local Finance Board shall deem to be practicable and necessary.

d. Notwithstanding the provisions of subsection a. of this section and section 11 of P.L.1983, c.313 (C.40A:5A-11), the Local Finance Board is authorized to adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to exempt certain authorities from the requirement that the director approve their annual budgets and to provide instead for a system of local examination and approval of such budgets by authority officials, provided that:

(1) the director finds that such authorities are fiscally sound and that their fiscal practices are conducted in accordance with law and sound administrative practice;

(2) the director shall examine the budgets of such authorities in accordance with the provisions of this section and section 11 of P.L.1983, c.313 (C.40A:5A-11), at least every third year;

(3) the governing body and chief financial officer of each such authority shall each file a certification with the director stating that, with reference to the adopted budget of the authority, they have:

(a) examined the budget in the manner prescribed under this section and section 11 of P.L.1983, c.313 (C.40A:5A-11), and determined that the budget complies with requirements set forth therein; and

(b) determined that the budget complies with all other provisions of law, including, but not limited to, the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.), and the regulations of the Local Finance Board;

(4) all budget documents required by law or the regulations adopted by the Local Finance Board shall be filed with the director on a timely basis;

(5) other criteria and responsibilities as established by the regulations adopted by the Local Finance Board are met.

The director shall act to require immediate compliance with the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.), if the director finds that any such exemption impairs the fiscal integrity or solvency of any such authority. Any appeal of a governing body's action in adopting an annual budget shall be made to the director.

e. The budget for an authority that is required to prepare an asset management plan pursuant to section 7 of the "Water Quality Accountability Act," P.L.2017, c.133 (C.58:31-7) or that holds a permit pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) shall identify the infrastructure improvements to be undertaken in accordance with the authority's asset management plan or pursuant to any rule or regulation pertaining to asset management plans adopted by the Commissioner of Environmental Protection pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), as applicable.

C.40A:5A-10.1 Periodic study of adequacy, reasonableness for certain charges.

11. a. A municipal utilities authority with a water supply operation shall be required to conduct a periodic study of the adequacy and reasonableness of the rates, fees, rents, or charges for the operation. The Local Finance Board in the Department of Community

Affairs shall adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), the procedures, requirements, and frequency of the study. Each completed study shall be submitted to the Director of the Division of Local Government Services in the Department of Community Affairs along with the annual budget of the authority.

b. The director may summon appropriate officials of the authority to a hearing before the Local Finance Board if the director determines that the authority’s rates, fees, rents, or charges may not be adequate or reasonable as supported by a study conducted pursuant to subsection a. of this section, or if the authority fails to conduct a study pursuant to subsection a. of this section. The Local Finance Board may require the production of papers, documents, witnesses, or information and may take or cause to be made an audit or investigation of the circumstances with respect to which the hearing was called. After the hearing, the Local Finance Board shall have the power to order the authority to adjust the rents, rates, fees, or charges for its water supply operation, or take such other action as the Local Finance Board deems appropriate to ensure the integrity of the water infrastructure owned by the authority, and this order shall be valid and enforceable notwithstanding any provision of R.S.48:2-1 et seq. to the contrary.

12. Section 11 of P.L.1983, c.313 (C.40A:5A-11) is amended to read as follows:

C.40A:5A-11 Approval of budget.

11. No authority budget subject to the provisions of subsection a. of section 10 of P.L.1983, c.313 (C.40A:5A-10) shall be finally adopted until the director shall have approved same. In granting the approval, the director shall consider whether or not:

- a. All estimates of revenue are reasonable, accurate and correctly stated;
- b. Items of appropriation are properly set forth;
- c. In itemization, form and content, the budget will permit the exercise of the comptroller function within the authority;
- d. The schedule of rates, fees and charges then in effect will produce sufficient revenues, together with all other anticipated revenues, to satisfy all obligations to the holders of bonds of the authority, to meet operating expenses, capital outlays, debt service requirements, and to provide for such reserves, all as may be required by law, regulation or terms of contracts and agreements.

The director may require such documentation, records and other information, and undertake any audit or investigation, as the director may deem necessary in connection with the review.

If the director finds that all requirements of law and the rules and regulations of the Local Finance Board have been met, the director shall, within 45 days after receipt of the budget, approve it; otherwise the director shall within that time refuse to approve it. The director, in refusing to approve the budget, shall not substitute the director's discretion with respect to the amount of an appropriation when that amount is not made mandatory by law or regulation. If a budget fails to incorporate infrastructure improvements identified in an asset management plan required pursuant to section 7 of P.L.2017, c.133 (C.58:31-7) or any regulations adopted by the Commissioner of Environmental Protection pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.) pertaining to asset management, as applicable, the director may order the inclusion of the improvements, along with any revenues or appropriations necessary to fund and effectuate the improvements. The director may order other measures as the director deems necessary to ensure the integrity of the authority’s water infrastructure;

however, the director may take into account the authority's fiscal circumstances in determining appropriate measures.

Any decision of the director in the course of budget review under this section may be appealed to the Local Finance Board in the manner generally provided by law.

C.40A:5A-20.1 Appropriation of certain funds.

13. a. Whenever there is available an undesignated fund balance or unreserved retained earnings held by a municipal utilities authority with a water supply operation that is being dissolved by a municipality, no more than five percent of the annual costs of operation of the authority, as set forth in the final adopted budget of the authority, may be appropriated therefrom for uses not directly related to drinking water management, unless the Local Finance Board determines that the municipality has demonstrated a need for greater than five percent based on a showing of significant fiscal distress.

b. The Local Finance Board may condition its approval for a municipality's proposal to dissolve a municipal utilities authority on the municipality's proposal to comply with subsection a. of this section.

c. This section shall not apply to a regional authority.

14. N.J.S.40A:31-3 is amended to read as follows:

Definitions.

40A:31-3. As used in the "County and Municipal Water Supply Act," N.J.S.40A:31-1 et seq.:

a. "Bonds" means bond anticipation notes or bonds issued in accordance with the "Local Bond Law," N.J.S.40A:2-1 et seq.

b. "Cost" as applied to water supply facilities or extensions or additions thereto, means the cost of acquisition or the construction, including improvement, reconstruction, extension or enlargement, the cost of all labor materials, machinery and equipment, the cost of all lands, property, rights and easements acquired, the cost of demolition or removal of any buildings or structures thereon, financing charges, interest on bonds issued to finance water supply facilities prior to and during construction, the cost of plans and specifications, surveys or estimates of costs and revenues, the cost of engineering, legal services, and any other expenses necessary or incident to determining the feasibility of construction, administrative expenses and such other expenses as may be necessary or incident to the construction or acquisition of water supply facilities, and the financing thereof.

c. "Local unit" means a county or municipality.

d. "Water supply facilities" means the plants, structures or other real and personal property acquired, constructed or operated, or to be financed, acquired, constructed or operated, or any parts thereof, including reservoirs, basins, dams, canals, aqueducts, standpipes, conduits, pipelines, mains, pumping stations, water distribution systems, compensating reservoirs, waterworks, or sources of water supply, well, purification or filtration plants, or other plants or works, connections, rights of flowage or diversion, and other plants, structures, boats, conveyances and other real and personal property, or rights therein, and appurtenances necessary or useful for the accumulation, supply or distribution of water.

The term "water supply facilities" includes the replacement of service connections to a publicly-owned water system, from the distribution main onto privately-owned real property and into a privately-owned structure, when used in reference to a project undertaken for the

purpose of replacing residential lead service lines, regardless of possible private service connection ownership.

15. Section 5 of P.L.1995, c.101 (C.58:26-23) is amended to read as follows:

C.58:26-23 Notice of intent, review of proposals, negotiation of contract, terms.

5. a. A public entity shall publish notice of its intent to enter into a contract pursuant to P.L.1995, c.101 (C.58:26-19 et al.) in at least one newspaper of general circulation in the jurisdiction or service area that will receive water supply services under the terms of a contract and one newspaper of broad regional circulation, at least 60 days prior to conducting the public hearing required under section 6 of P.L.1995, c.101 (C.58:26-24). In addition, a public entity that intends to enter into a contract with a private firm for the provision of water supply services shall notify in writing the board, department and division of its intent.

b. The public notice required under subsection a. of this section shall describe the type of services desired and provide the name, address and phone number of the person who can provide additional information and a proposal document to an interested party. The notice shall specify a deadline, that shall be not less than 30 days from the date of the publication of the notice for the submission of proposals by private firms to the public entity. The public entity may at any time revise the proposal document and each private firm that received a proposal document shall be provided with the revised proposal document.

c. The public entity shall conduct a review of the proposals submitted by private firms to determine which proposals meet the minimum qualifications and standards. The review shall be conducted in a manner that avoids disclosure of the contents of a proposal to any private firm submitting a competing proposal. The public entity may conduct discussions with a private firm submitting a qualified proposal for the purpose of clarifying the information submitted in the proposal. The public entity may at any time revise its proposal document after the review of the submitted proposals if it notifies simultaneously and in writing each private firm that submitted a proposal of the revision and provides a uniform time within which a firm may submit a revised proposal for review.

d. A public entity shall select one qualified proposal from among those submitted. The public entity shall negotiate a contract with the private firm that submitted the selected proposal. If the public entity is unable to negotiate a satisfactory contract with the selected private firm, it may select another qualified proposal from among those submitted and proceed to negotiate a contract with the private firm that submitted the proposal. The public entity shall set forth in writing the reasons for the selection of the qualified proposal submitted by the private firm with which the public entity has negotiated a proposed contract and shall make this document available to the public along with the proposed contract upon request and during the public hearing conducted pursuant to section 6 of P.L.1995, c.101 (C.58:26-24).

e. A contract entered into pursuant to P.L.1995, c.101 (C.58:26-19 et al.) shall include provisions addressing the following:

- (1) The charges, rates, fees or formulas to be used to determine the charges, rates, or fees to be charged by the public entity for the water supply services to be provided;
- (2) The allocation of the risks of financing and constructing planned capital additions or upgrades to existing water supply facilities;
- (3) The allocation of the risks of operating and maintaining the water supply facility;
- (4) The allocation of the risks associated with circumstances or occurrences beyond the control of the parties to the contract;

(5) The defaulting and termination of the contract;

(6) The employment of current employees of the public entity whose positions or employment will be affected by the terms of the contract;

(7) The private firm's authority and the extent, or the procedures for the use, of that authority to initiate, negotiate and finalize the terms for a bulk sale of surplus water. The contract shall either grant the private firm such authority or specifically state that the firm is denied that authority. Nothing in P.L.1995, c.101 (C.58:26-19 et al.) shall be construed to authorize a public entity that enters into a contract pursuant to P.L.1995, c.101 (C.58:26-19 et al.) to provide for the bulk sale, lease or transfer of water if the water being transferred, leased or sold has been supplied to the public entity either by the New Jersey Water Supply Authority or by the North Jersey District Water Supply Commission, unless the authority pursuant to P.L.1981, c.293 (C.58:1B-1 et seq.) or the district pursuant to R.S.58:5-1 et seq., as appropriate, has agreed to the bulk sale, lease or transfer;

(8) The requirements for the provision of a performance bond by the private firm, if so required by the public entity; and

(9) The allocation of responsibility for compliance with the provisions of the "Water Quality Accountability Act," P.L.2017, c.133 (C.58:31-1 et seq.), if applicable.

A contract may contain any other terms and conditions that have been negotiated by the public entity and the private firm.

f. If a dispute over contract compliance, performance or termination cannot be resolved by the public entity and the private firm pursuant to the procedures set forth in the contract, either party to the contract may file with the Superior Court which has appropriate jurisdiction a request for an order either to terminate the contract based on the reasons stated in the request or for an order for other appropriate relief to the dispute. The court may take such action as it may deem necessary to facilitate the expeditious resolution of the dispute and an expeditious response to the request, including ordering the parties to undertake a dispute resolution or mediation process. The court shall use, as it deems necessary, the services of a financial expert in the area of water supply service contracts in its analysis of the contract and the issues before it. Within 90 days after the filing of a request, the court shall either grant the request or deny the request. If the request is granted, the court shall order such appropriate relief measures or remedies as it deems appropriate and necessary.

g. A public entity that has negotiated a contract with a private firm pursuant to P.L.1995, c.101 (C.58:26-19 et al.) shall obtain the written opinion of bond counsel as to effect of the contract on the tax exempt status of existing and future financing instruments executed by the public entity given the terms of the contract and the federal laws or regulations concerning this matter.

h. If a public entity entering a contract consists of multiple municipalities, a concession fee or other monetary benefit paid by a private firm as a result of the contract shall be paid directly to the municipalities constituting that public entity. Any concession fee or monetary benefit paid by a private firm to a public entity shall be used for the purpose of reducing or off-setting property taxes.

16. Section 7 of P.L.1995, c.101 (C.58:26-25) is amended to read as follows:

C.58:26-25 Approval of application.

7. a. Within 60 days of receipt of the application, the board and division shall approve, or conditionally approve, an application submitted by a public entity pursuant to subsection f. of section 6 of P.L.1995, c.101 (C.58:26-24). Within 60 days of receipt of the hearing report,

the department shall provide any comments on the hearing report it deems appropriate to the board, division and public entity. If the board or division fail to approve or conditionally approve the application within 60 days after receipt, the application shall be deemed approved, unless the public entity has agreed to an extension of the period.

b. If either the board or division conditionally approves the application, the board or division shall state in writing the revision to the proposed contract that is necessary in order for it to be approved. If the board or division determines that the required revision is substantial, the public entity shall hold a public hearing on the revision and adhere to the provisions of section 6 of P.L.1995, c.101 (C.58:26-24) in so doing. A substantial revision shall be a change that results in an increase in the charges, rates or fees of the private firm or that materially changes other terms and conditions of the contract. The proposed revision to the contract shall be submitted to the board, division and department 15 days prior to the date of the public hearing. If the board or division determines that the required revision in the conditional approval is not substantial, the public entity shall submit the proposed revision to the contract to the board and the division for approval and to the department for review. The revision shall be approved if found to be consistent with the conditions set forth in the conditional approval, or disapproved with a written explanation as to why the revision is not consistent, within 15 days after the next public meeting of the board or division.

c. In its review of a contract, the board shall apply the following criteria in determining whether to approve the contract:

(1) The private firm entering into the contract has the financial capacity and technical and administrative experience to ensure continuity of service over the term of the contract and that the standards and requirements contained in the application documents concerning the financial, technical and administrative capacity of the private firm are necessary and sufficient to protect the public interest.

(2) The terms of the contract are not unreasonable. In determining whether the terms of the contract are not unreasonable, the board shall review the fees and charges to be charged or assessed under the contract to determine that they are reasonable to the public entity, taking into consideration all of the obligations undertaken by the private firm and all the benefits obtained by the public entity. In making this determination, the board shall not use the traditional rate based rate of return methodology.

(3) The franchise customers of a public utility participating in a contract are protected from the risks of the proposed contract and that they are not subsidizing the contract. If a private firm is not a public utility, the board shall ensure that under the terms of the proposed contract the users of water outside of the jurisdiction or service area that will receive water supply services under the contract are also protected from the risks of the contract and that water users outside the jurisdiction or service area are not subsidizing the contract through increased charges, rates or fees for the supply of water.

(4) The contract contains the provisions required by paragraphs (1), (2) and (6) of subsection e. of section 5 of P.L.1995, c.101 (C.58:26-23).

Upon approval of a contract as proposed or as revised in response to a conditional approval, the jurisdiction of the board over the contract shall terminate until or unless the contract is amended to change the formula or other basis of determining charges contained therein.

d. In its review of a contract, the division shall apply the following criteria in determining whether to approve the contract:

(1) The terms of the proposed contract do not materially impair the ability of the public entity to punctually pay principal and interest due on its outstanding indebtedness and to supply other essential public improvements and services.

(2) A concession fee or other monetary benefit paid by a private firm as a result of the contract is paid directly to the municipalities constituting that public entity, if a public entity consisting of multiple municipalities has entered into a contract. Any concession fee or monetary benefit paid by a private firm to a public entity is used for the purpose of reducing or off-setting property taxes.

(3) The contract contains the provisions required by paragraphs (3), (4), (5), (7), (8), and (9) of subsection e. of section 5 of P.L.1995, c.101 (C.58:26-23).

The division shall also review and specifically approve any contract provision pursuant to which a public entity will or may execute a financing instrument for the purposes set forth in the contract.

e. The board or division may provide the public entity with any non-binding comments or advice during or after the review of the application as the board or division deem appropriate.

f. The board or division shall assess and the applicant shall pay a fee equal to the cost incurred by the board or division for an analysis of an application by an independent person who has expertise in the area of water supply services if during the review of an application the board or division determine that such an analysis is required and a person with the required expertise is not readily available from within any executive department of the State government.

g. If the public entity and private firm would like to amend a contract after approval of an application by the board and division, the public entity shall submit proposed amendments to the board and division for approval and to the department for review. At the next public meeting of the board and of the division after receipt of proposed amendments, the board and the division shall determine whether the proposed amendments are substantial. If the amendments are substantial in nature as determined by either the board or the division, the public entity shall conduct a hearing pursuant to section 6 of P.L.1995, c.101 (C.58:26-24). Within 60 days of the receipt of proposed amendments that are not determined to be substantial, or within 60 days of the receipt of an application for approval of proposed amendments that are determined to be substantial, the board and division shall approve or conditionally approve the amendments in accordance with the applicable procedures established for approval of an original contract pursuant to this section .

17. This act shall take effect immediately.

Approved July 22, 2021.