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Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

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District 30 (Monmouth and Ocean)

SYNOPSIS

“Water Infrastructure Protection Act.”

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning certain public water and wastewater assets, supplementing Title 58 of the Revised Statutes, and amending R.S.40:62-3.

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

1. (New section) Sections 1 through 9 of this act shall be known and may be cited as the “Water Infrastructure Protection Act.”
2. (New section) The Legislature finds and declares that:
 - a. The maintenance of water and wastewater treatment and conveyance systems is vital to ensuring the protection of clean drinking water in New Jersey;
 - b. There are public water and wastewater systems in the State that present serious risks to the integrity of drinking water and the environment because of issues

such as aging combined sanitary and storm sewer overflow systems, the threat of sodium intrusion, the deterioration of the physical assets of the systems, or damage to infrastructure so severe that it is beyond governmental capacity to restore;

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

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

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

“Board” means the Board of Public Utilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The system has received an environmental violation, has an existing unfulfilled administrative consent order with the Department of Environmental Protection, or has previously entered into an administrative consent order with the Department of Environmental Protection with respect to the operation of the system;

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

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

c. After an emergent conditions certification is made, a public hearing on the certification shall be held. The owner shall provide notice of the public hearing no less than 10 days prior to the date of the hearing. The notice shall prominently state that the certification is in anticipation of a lease or sale of water or wastewater assets to a private entity. If the owner is a municipality or municipal utilities authority, notice of the public hearing shall be published on the official Internet website of the municipality and at least once in one or more newspapers circulating in the municipality. If the owner is a county utilities authority, notice of the public hearing shall be published on the official Internet website of the county and at least once in one or more newspapers circulating in the county. If the owner is a regional utilities authority, notice of the public hearing shall be published on the official Internet website of the authority and at least once in one or more newspapers circulating in the region. If an applicable official website does not exist, notice of the public hearing shall be published on the official Internet website of the Department of Community Affairs.

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

e. Upon receipt of the approval of the emergent conditions certification by the Department of Environmental Protection, the owner shall publish notice of the approval. The notice shall prominently state that the certification is in anticipation of a lease or sale of water or wastewater assets to a private entity. If the owner is a municipality or municipal utilities authority, notice of the approval shall be published on the official Internet website of the municipality and at least once in one or more newspapers circulating in the municipality, and shall prominently state that a petition may be filed within 20 days after the publication of such notice to require a referendum before a resolution authorizing the lease or sale of water or wastewater assets may take effect. If the owner is a county utilities authority, notice of the approval shall be published on the official Internet website of the county and at least once in one or more newspapers circulating in the county. If the owner is a regional utilities authority, notice of the approval shall be published on the official Internet website of the authority and at least once in one or more newspapers circulating in the region. If an applicable official website does not exist, notice of the approval shall be published on the official Internet website of the Department of

Community Affairs.

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

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

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

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

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

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

c. (1) The proposed contract submitted to the board shall include the rent or sale price, any appraisals supporting the rent or sale price, documentation regarding

the defeasance of debt, and any other information requested by the board. The board shall approve or reject the proposed contract within 30 days of receipt thereof. If no disposition is made within 30 days, the proposed contract shall be deemed approved.

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

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

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

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

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

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

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

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

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

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

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

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

40:62-3. Any municipality owning a sewer plant, water plant, heat, light or power plant, system of transportation, or other public utility plant or system, may lease

or sell such plant or system. Such a lease or sale to another municipality, a sanitary sewerage authority, a sewerage authority or any other authority, commission or public body shall be authorized by ordinance and may be made upon such terms as said ordinance shall provide and the provisions of R.S.40:62-4 and R.S.40:62-5 shall not apply thereto. Such a lease or sale to any person except another municipality, a sanitary sewerage authority, a sewerage authority or any other authority, commission or public body shall, except as otherwise provided by law, be made only upon compliance with the provisions of R.S.40:62-4 and R.S.40:62-5 and after the same is authorized by the legal voters of the municipality in accordance with said sections , or upon compliance with the provisions of section 2 of P.L.1981, c.16 (C.40:62-3.1) or the “Water Infrastructure Protection Act,” sections 1 through 9 of P.L. , c. (C.) (pending before the Legislature as this bill). (cf: P.L.1981, c.16, s.1)

11. This act shall take effect immediately.

STATEMENT

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

Under the bill, emergent conditions would exist if either: (1) the system has a combined sanitary and storm sewer overflow system; (2) the system is located in Water Supply Critical Area I or II; (3) the ground water has the potential of sodium intrusion or any other intrusion that may negatively impact the system; (4) the system has received environmental violations, has existing unfulfilled administrative consent orders, or has previously entered into such consent order; (5) there is a present deficiency concerning the availability or potability of water, or the provision of water at adequate volume or pressure, and the public owner lacks the capacity to remedy the deficiency; or (6) there is material damage to the infrastructure of the system and the public owner lacks the capacity to remedy the damage. The appropriate public officials and a licensed engineer would have to certify that one of these conditions exists. The certification would be the subject of a public hearing and have to be approved by the Department of Environmental Protection.

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

The public owner would advertise a request for qualifications pending approval of the emergent conditions certification by the Department of Environmental

Protection. If the certification is approved, the public owner would next determine the qualified respondents and issue a request for proposals. The request for proposals would have to include relevant technical submissions, documents, and criteria including but not limited to a description of the facilities and the debt related thereto and the evaluation criteria to be used in the selection of the designated respondent. After a review of the proposals submitted by qualified respondents, the governing body of the owner would, by resolution, designate one respondent, whose proposal is found to be most advantageous to the public, taking into consideration the request for proposals criteria.

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

Each worker from an apprenticeable trade employed in the performance of the contract would have to be an apprentice participating in a registered apprenticeship program or have completed a registered apprenticeship program, unless the contractor or subcontractor certifies that each worker will be paid no less than the journeyman rate for the apprenticeable trade performed established under the prevailing wage laws.