

CHAPTER 18
(CORRECTED COPY)

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:

C.58:30-1 Short title.

1. Sections 1 through 9 of this act shall be known and may be cited as the "Water Infrastructure Protection Act."

C.58:30-2 Findings, declarations relative to water and wastewater treatment and conveyance systems.

2. The Legislature finds and declares that:

a. The maintenance and operation of water and wastewater treatment and conveyance systems is vital to ensuring the protection of water quality and 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 infrastructure systems, the deterioration of the physical assets of the systems, or damage to infrastructure so severe that it is beyond governmental capacity to restore;

c. Under the appropriate circumstances, the transfer of these threatened water and wastewater assets to a capable private or public entity with the financial resources and expertise to improve management, operation, and continued maintenance of the assets could help ensure the protection of 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 exist emergent conditions that threaten drinking water or the environment.

C.58:30-3 Definitions relative to water and wastewater treatment and conveyance systems.

3. As used in this act,

"Board" means the Board of Public Utilities.

"Capable private or public entity" means any private or public water system owner who, at the time of submitting a proposal to long-term lease or purchase public water or wastewater assets, currently (1) owns a system serving no less than the number of residential and commercial accounts as the system which the entity is proposing to lease or purchase, and (2) is not a significant noncomplier, as defined pursuant to section 3 of P.L.1977, c.7 (C.58:10A-3), is not currently the subject of a formal enforcement action initiated by the New Jersey Department of Environmental Protection to address a material violation by the entity which has not been corrected over a reasonable period of time given the specific situation, or is not substantially out of compliance with an administrative consent order, settlement agreement, stipulation of settlement or judicial consent order entered into with the department.

"Department" means the Department of Environmental Protection.

"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.).

“Long-term lease” means a lease of longer than 30 years under which the municipal owner seeks to transfer ownership of the system at the end of the lease term.

“Owner” means any municipality, except a municipality that is a city of the first class with a population of 270,000 or more according to the latest federal decennial census, that owns water or wastewater assets. Municipalities constituting a joint meeting, and the joint meeting itself shall not be considered an owner for the purposes of this definition.

“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.

C.58:30-4 Sale, long-term lease of assets.

4. If an owner determines that emergent conditions exist, the owner may long-term lease or sell its water or wastewater assets to a capable private or public entity pursuant to the provisions of sections 5 through 9 of P.L.2015, c.18 (C.58:30-5 through C.58:30-9). An owner may so long-term lease or sell its water or wastewater assets without any referendum except as may be required pursuant to subsection g. of section 5 of P.L.2015, c.18 (C.58:30-5).

C.58:30-5 Determination of existence of emergent conditions.

5. a. The determination that emergent conditions exist shall be made by certification of the mayor, the mayor’s designee of the municipality, and a licensed engineer.

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

(1) The system is located in an area designated by the Department of Environmental Protection as an Area of Critical Water Supply Concern I or II, or any future designation or newly added area of critical water supply concern;

(2) The owner of the system is a significant noncomplier, as defined pursuant to section 3 of P.L.1977, c.7 (C.58:10A-3), has been the subject of a formal enforcement action initiated by the department, or is substantially out of compliance with an administrative consent order, settlement agreement, stipulation of settlement, or judicial consent order entered into with the department; or

(3) There is a present deficiency or violation of maximum contaminant levels established pursuant to the “Safe Drinking Water Act,” P.L.1977, c.224 (C.58:12A-1 et seq.), concerning the availability or potability of water, or concerning the provision of water at adequate volume or pressure, or distribution or treatment of wastewater;

(4) There is a demonstrated lack of historical investment, repair, or sustainable maintenance as determined by the department, or material damage to the infrastructure of the system; or

(5) The system owner lacks the financial, technical, or managerial capacity to adequately address any of the foregoing on a sustainable basis or own and operate the system in a way that supports economic activity in the municipality on a sustainable basis.

c. Should the owner determine that one or more emergent conditions contained in subsection b. of this section exists and that it is necessary to take steps to effectuate the sale or long-term lease of its water or wastewater assets to a capable private or public entity pursuant to this act to address these emergent conditions and to operate and maintain the system, the owner shall through the utilization of applicable public procurement laws of the State of New Jersey retain the services of an independent financial advisor to review, analyze and report on the value of the system and the short and long term impacts to rate-payers of the cash-flow structure of the proposed transaction and to provide an estimate as to the financial requirements necessary to address the emergent conditions and to operate and maintain the system. Upon completion of the analysis and review, the independent financial advisor shall transmit its report to the owner. Within 10 days of the approval of the report by the owner, the owner shall transmit copies to the board, the director, and the department and shall make the report available for public review.

d. After the independent financial advisor has completed its analysis of the financial aspects of the proposed transaction and has presented its report to the owner, a public hearing on the proposed emergent condition certification shall be held. The owner shall provide notice of the public hearing no less than 30 days prior to the date of the hearing. The notice shall prominently state the findings upon which the certification of emergent conditions is based, a summary of the findings by the independent financial advisor and that the certification is in anticipation of a proposed long-term lease or sale of water or wastewater assets to a capable private or public entity. 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. 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 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.

e. After the public hearing and after giving due consideration to the findings of the independent financial advisor, the governing body of the owner shall, by resolution adopted by at least two-thirds of its authorized membership, certify that one or more emergent conditions exist and that the owner intends to sell or long-term lease its water or wastewater assets to a capable private or public entity to address these emergent conditions and to operate and maintain the system. Within five days of the adoption of the resolution, the governing body of the owner shall transmit a true copy of the resolution, to the department, the board, and the director. Within 30 days of receipt of the resolution by the department, the department shall approve or reject the owner's emergent conditions certification as contained in the resolution.

f. Upon receipt of the approval of the emergent conditions certification by the Department of Environmental Protection, the owner shall publish notice of the approval if the owner chooses to proceed with the sale or long-term lease of its water or wastewater assets to a capable private or public entity. The notice shall prominently state that the certification is in anticipation of a long-term lease or sale of water or wastewater assets to a capable private or public entity. 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 45 days

after the publication of such notice to require a referendum before a resolution authorizing the long-term lease or sale of water or wastewater assets may take effect. 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.

g. A petition may be filed with the municipal clerk, no later than 45 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.

C.58:30-6 Request for qualifications.

6. a. A request for qualifications from a capable private or public entity wishing to be considered for the long-term lease or sale of the owner's system shall be advertised after the emergent conditions certification pursuant to subsection e. of section 5 of P.L.2015, c.18 (C.58:30-5), but no less than 30 days prior to the date on which responses to the request are due. 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. 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 made pursuant to subsection e. of section 5 of P.L.2015, c.18 (C.58:30-5), 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. The proposals shall include and shall be evaluated by, at a minimum, the following:

(1) the documented deficiencies of the owner's system upon which the emergent conditions certification is based and a description of the corrective measures to be undertaken by the respondent to address and correct the identified emergent conditions;

(2) a description of the financial, managerial, and technical capabilities of the respondent to operate and maintain the system in compliance with all applicable State and federal laws and regulations, as well as a description of all the respondent's outstanding and pending violations of the "Pollution Prevention Act," P.L.1991, c.235 (C.13:1D-35 et seq.); P.L.1942, c.308 (C.58:11-9.1 et seq.); "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et seq.); and the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.);

(3) an analysis of the relevant expenditures associated with such activities and the projected impact on customer rates;

(4) an analysis of any Internal Revenue Code or other tax code issues that may arise from the long-term lease or sale of a publicly funded water or wastewater asset, as well as any potential short-term or long-term costs arising there from;

- (5) a long-term capital improvement or asset management plan; and
- (6) any other pertinent information required of or deemed appropriate by the owner.

c. Upon a review of the proposals submitted by qualified respondents, the governing body of an owner shall, by resolution adopted by at least two-thirds of its authorized membership, 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 and as specified under subsection b. of this section. The resolution shall include a detailed summary of the governing body's findings that the proposal of the designated respondent is most advantageous to the public. The summary shall be published in accordance with the notification requirements of section 5 of P.L.2015, c.18 (C.58:30-5).

C.58:30-7 Negotiations for a contract for lease or sale.

7. 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. (1) Every proposed contract shall include a clause stating that to the extent it does not violate any existing collective bargaining agreements between the capable private or public entity and its employees, the capable private or public entity shall give first consideration in hiring to any public employees displaced by the long-term lease or sale of the water or waste water assets.

(2) 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 adopted by at least two-thirds of its authorized membership, cause the proposed contract to be submitted to the board for approval and cause the proposed use of proceeds of the long-term 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 90 days of receipt thereof. If no disposition is made within 90 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 long-term 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 long-term 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 amount required to defease debt, any costs associated with compliance with the Internal Revenue Code or other tax code that may arise from the long-term lease or sale of a publicly funded water or wastewater asset, the remaining proceeds after the defeasance of debt and Internal Revenue Service compliance costs, the amount dedicated to the following, in order of priority: compliance with the provisions of the "Pollution Prevention Act," P.L.1991, c.235 (C.13:1D-35 et seq.); P.L.1942, c.308 (C.58:11-9.1 et seq.); "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et seq.); and the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.), any outstanding fees or fines owed by the entity to any federal, State, county or local governmental units, capital improvements, community improvements, and general purposes of the owner. The amount dedicated to capital improvements shall comply with a previously adopted long-term capital improvement plan or asset management plan, and 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.

C.58:30-8 Contract for long-term lease or sale.

8. After the proposed contract and proposed use of proceeds have been approved pursuant to subsection c. of section 7 of P.L.2015, c.18 (C.58:30-7), the governing body of the owner may, by resolution adopted by at least two-thirds of its authorized membership, enter into a contract for the long-term lease or sale of the water or wastewater assets with the designated respondent.

C.58:30-9 Requirements for contractor, subcontractor.

9. Any contractor or subcontractor hired by the designated respondent, in the performance of a contract entered into pursuant to section 8 of P.L.2015, c.18 (C.58:30-8), shall:

a. (1) be paid, or pay any worker employed by the contractor or subcontractor, not less than the wage rate for their craft or trade as determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.) and shall comply with the requirements of section 2 of P.L.2007, c.343 (C.34:13B-2.1);

b. 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.); and

c. all contractors and subcontractors shall comply with the provisions of "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.).

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

Ordinance authorizing sale or lease; laws governing.

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 long-term lease or sell

such plant or system. Such a long-term 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 long-term 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.2015, c.18 (C.58:30-1 et seq.).

11. This act shall take effect immediately.

Approved February 5, 2015.