

## CHAPTER 87

**AN ACT** concerning the review and approval of certain transactions of parent or affiliate corporations of telecommunications and cable television companies 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 1 of P.L.1984, c.2 (C.48:2-51.1) is amended to read as follows:

C.48:2-51.1 Acquisition of control of public utility; approval of board of public utilities; exceptions.

1. a. Except as otherwise provided by subsection b. of this section, no person shall acquire or seek to acquire control of a public utility directly or indirectly through the medium of an affiliated or parent corporation or organization, or through the purchase of shares, the election of a board of directors, the acquisition of proxies to vote for the election of directors, or through any other manner, without requesting and receiving the written approval of the Board of Public Utilities. Any agreement reached, or any other action taken, in violation of this act shall be void. In considering a request for approval of an acquisition of control, the board shall evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. The board shall accompany its decision on a request for approval of an acquisition of control with a written report detailing the basis for its decision, including findings of fact and conclusions of law.

b. Nothing herein shall require the review or approval by the board of any parent or affiliate corporation of a telecommunications company if such parent or affiliate corporation does not itself provide regulated telecommunications service or telephone access line service, in this State, and seeks to combine, merge, or consolidate with, or acquire or acquire control of, another corporation or other organization which:

(1) does not directly provide regulated telecommunications services or telephone access line service, in this State; and

(2) does not directly or through one or more affiliates, own a controlling interest in another corporation or other organization which provides regulated telecommunications service or telephone access line service, in this State.

2. R.S.48:3-7 is amended to read as follows:

Utility property transactions.

48:3-7. a. Except as otherwise provided by subsection g. of this section, no public utility shall, without the approval of the board, sell, lease, mortgage, or otherwise dispose of or encumber its property, franchises, privileges, or rights, or any part thereof; or merge or consolidate its property, franchises, privileges, or rights, or any part thereof, with that of any other public utility.

Where, by the proposed sale, lease, or other disposition of all or a substantial portion of its property, any franchise or franchises, privileges, or rights, or any part thereof or merger or consolidation thereof as set forth herein, it appears that the public utility or a wholly owned subsidiary thereof may be unable to fulfill its obligation to any employees thereof with respect to pension benefits previously enjoyed, whether vested or contingent, the board shall not grant its approval unless the public utility seeking the board's approval for such sale,

lease, or other disposition assumes such responsibility as will be sufficient to provide that all such obligations to employees will be satisfied as they become due.

Every sale, mortgage, lease, disposition, encumbrance, merger, or consolidation made in violation of this section shall be void.

Nothing herein shall prevent the sale, lease, or other disposition by any public utility of any of its property in the ordinary course of business, nor require the approval of the board to any grant, conveyance, or release of any property or interest therein heretofore made or hereafter to be made by any public utility to the United States, State or any county or municipality or any agency, authority, or subdivision thereof, for public use.

The approval of the board shall not be required to validate the title of the United States, State, or any county or municipality or any agency, authority, or subdivision thereof, to any lands or interest therein heretofore condemned or hereafter to be condemned by the United States, State, or any county or municipality or any agency, authority or subdivision thereof for public use.

b. Notwithstanding any law, rule, regulation, or order to the contrary, an autobus public utility regulated by and subject to the provisions of Title 48 of the Revised Statutes may, without the approval of the Department of Transportation, sell, lease, mortgage, or otherwise dispose of or encumber its property, or any part thereof, except that approval of the Department of Transportation shall be required for the following:

- (1) the sale of 60% or more of its property within a 12-month period;
- (2) a merger or consolidation of its property, franchises, privileges, or rights; or
- (3) the sale of any of its franchises, privileges or rights.

Notice of the sale, purchase or lease of any autobus or other vehicle subject to regulation under Title 48 of the Revised Statutes shall be provided to the Department of Transportation as the department shall require.

c. Except as otherwise provided in subsection e. of this section, no solid waste collector as defined in section 3 of P.L.1970, c.40 (C.48:13A-3) shall, without the approval of the Department of Environmental Protection:

(1) sell, lease, mortgage, or otherwise dispose of or encumber its property, including customer lists; or

(2) merge or consolidate its property, including customer lists, with that of any other person or business concern, whether or not that person or business concern is engaged in the business of solid waste collection or solid waste disposal pursuant to the provisions of P.L.1970 c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et al.), P.L.1991, c.381 (C.48:13A-7.1 et al.) or any other act.

d. Any solid waste collector seeking approval for any transaction enumerated in subsection c. of this section shall file with the department, on forms and in a manner prescribed by the department, a notice of intent at least 30 days prior to the completion of the transaction.

(1) The department shall promptly review all notices filed pursuant to this subsection. The department may, within 30 days of receipt of a notice of intent, request that the solid waste collector submit additional information to assist in its review if it deems that such information is necessary. If no such request is made, the transaction shall be deemed to have been approved. In the event that additional information is requested, the department shall outline, in writing, why it deems such information necessary to make an informed decision on the impact of the transaction on effective competition.

(2) The department shall approve or deny a transaction within 60 days of receipt of all requested information. In the event that the department fails to take action on a transaction within the 60-day period specified herein, then the transaction shall be deemed to have been approved.

(3) The department shall approve a transaction unless it makes a determination pursuant to the provisions of section 19 of P.L.1991, c.381 (C.48:13A-7.19) that the proposed sale, lease, mortgage, disposition, encumbrance, merger, or consolidation would result in a lack of effective competition.

The department shall prescribe and provide upon request all necessary forms for the implementation of the notification requirements of this subsection.

e. (1) Any solid waste collector may, without the approval of the department, purchase, finance, or lease any equipment, including collection or haulage vehicles.

(2) Any solid waste collector may, without the approval of the department, sell or otherwise dispose of its collection or haulage vehicles; except that no solid waste collector shall, without the approval of the department in the manner provided in subsection d. of this section, sell or dispose of 33% or more of its collection or haulage vehicles within a 12-month period.

f. (1) The owner or operator of a privately-owned sanitary landfill facility may, without the approval of the Department of Environmental Protection, sell or otherwise dispose of its assets except that the prior approval of the department shall be required: (a) to sell all assets associated with the sanitary landfill facility or a portion thereof sufficient to transfer the operation of the sanitary landfill facility to a new owner or operator; (b) to sell a controlling ownership interest in the sanitary landfill facility; or (c) to merge or consolidate its property with that of any other person or business concern, whether or not that person or business concern is engaged in the business of solid waste disposal pursuant to the provisions of P.L.1970, c.39 (C.13:1E-1 et seq.), P.L.1970, c.40 (C.48:13A-1 et al.) or any other act.

(2) Any owner or operator seeking approval for any transaction enumerated in this subsection shall file with the department an application therefor, on forms and in a manner prescribed by the department. The department shall promptly review all applications filed pursuant to this subsection and shall serve requests for information regarding any transaction within 30 days following the filing of an application if the department deems that such information is necessary. The department shall approve or deny the transaction within 60 days of receipt of all requested information. In the event that the department fails to take action on a transaction within the 60-day period specified herein, then the transaction shall be deemed to have been approved.

As used in this section, "business concern" means any corporation, association, firm, partnership, sole proprietorship, trust, or other form of commercial organization; and "privately-owned sanitary landfill facility" means a commercial sanitary landfill facility which is owned and operated by a private person, corporation, or other organization and includes all appurtenances and related improvements used at the site for the transfer, processing, or disposal of solid waste.

g. Nothing herein shall require the review or approval by the board of any parent or affiliate corporation of a telecommunications company if such parent or affiliate corporation does not itself provide regulated telecommunications service or the provision of telephone access line service, in this State, and such parent or affiliate corporation seeks to sell, lease, mortgage, or otherwise to dispose of or to permit the encumbrance of any of its property, franchises, privileges or rights, or any part thereof; or to merge, or consolidate its property,

franchises, privileges or rights, or any part thereof, with that or those of another corporation or other organization which:

(1) does not directly provide regulated telecommunications services or telephone access line service, in this State; and

(2) does not directly or through one or more affiliates, own a controlling interest in another corporation or other organization which provides regulated telecommunications service or telephone access line service, in this State.

3. R.S.48:3-9 is amended to read as follows:

Security transactions.

48:3-9. a. Except as otherwise provided by subsection b. of this section, no public utility shall, unless it shall have first obtained authority from the board so to do:

(1) Issue any stocks, or any bonds, notes, or other evidence of indebtedness payable more than 12 months after the date or dates thereof, or extend or renew any bond, note, or any other evidence of indebtedness so that any extension or renewal thereof shall be payable later than 12 months after the date of the original instrument ; or

(2) Permit any demand note to remain unpaid for a period of more than 12 months after the date thereof.

The board shall approve any such proposed issue, with or without hearing at its discretion, when satisfied that such issue is to be made in accordance with law and the purpose thereof is approved by the board.

The provisions of this subsection shall not apply to any public utility operating, managing, or controlling a railroad or a railway express which is subject to the rules and regulations from time to time issued by the federal Surface Transportation Board or any successor agency.

The provisions of this subsection shall not apply to autobus public utilities under the jurisdiction of the Department of Transportation.

The provisions of this subsection shall not apply to any solid waste collector as defined in section 3 of P.L.1970, c.40 (C.48:13A-3).

The provisions of this subsection shall not apply to any privately-owned sanitary landfill facility as defined in section 3 of P.L.2003, c.169 (C.48:13A-7.26).

b. Nothing herein shall require the review or approval by the board of any parent or affiliate corporation of a telecommunications company if such parent or affiliate corporation seeks to issue any stocks, bonds, notes, or other evidence of indebtedness payable more than 12 months after the date or dates thereof, or to extend or renew any bond, note, or other evidence of indebtedness so that any extension or renewal thereof shall be payable later than 12 months after the date of the original instrument, or to permit any demand note to remain unpaid for a period of more than 12 months after the date thereof, if the parent or affiliate corporation of the telecommunications company which seeks to engage in any of the aforementioned transactions does not itself provide regulated telecommunications services over a telecommunications network or telephone access line service, but does directly or through one or more affiliates own a controlling interest in a telecommunications network or does otherwise control or exercise responsibility for, through any arrangement, the management and operation of such a telecommunications network, or owns a controlling interest in a telecommunications company that provides regulated telecommunications service or telephone access line service.

4. R.S.48:3-10 is amended to read as follows:

Sale or transfer of stock unless authorized by board prohibited; exceptions.

48:3-10. a. Except as otherwise provided by subsection b. of this section, no public utility incorporated under the laws of this State shall sell, nor shall any such public utility make or permit to be made upon its books any transfer of any share or shares of its capital stock, to any other public utility, unless authorized to do so by the board. Nor shall any public utility incorporated under the laws of this State sell any share or shares of its capital stock or make or permit any transfer thereof to be made upon its books, to any corporation, domestic or foreign, or any person, the result of which sale or transfer in itself or in connection with other previous sales or transfers shall be to vest in such corporation or person a majority in interest of the outstanding capital stock of such public utility corporation unless authorized to do so by the board.

Every assignment, transfer, contract, or agreement for assignment or transfer, by or through any person or corporation to any corporation or person in violation of any of the provisions hereof shall be void and of no effect, and no such transfer shall be made on the books of any public utility corporation. Nothing herein contained shall be construed to prevent the holding of stock lawfully acquired before March 5, 1935.

Where, by the proposed assignment, transfer, contract, or agreement for assignment or transfer of capital stock as set forth herein, it appears that the public utility or a wholly owned subsidiary thereof may be unable to fulfill its obligation to any employees thereof with respect to pension benefits previously enjoyed, whether vested or contingent, the board shall not grant its authorization unless the public utility seeking the board's authorization assumes such responsibility as will be sufficient to provide that all such obligations to employees will be satisfied as they become due.

Nothing herein shall require the approval of the Department of Transportation to any sale or transfer by any public utility of any share or shares of its capital stock to the New Jersey Transit Corporation or any subsidiary thereof for public use.

b. Nothing herein shall require the review and approval by the board of any parent or affiliate corporation of a telecommunications company if such parent or affiliate corporation seeks to sell, or to make or permit to be made upon its books any transfer of any share or shares of its capital stock, to any other public utility, if the telecommunications company which seeks to engage in any of the aforementioned transactions does not itself provide regulated telecommunications services over a telecommunications network or telephone access line service, but does directly or through one or more affiliates own a controlling interest in such a telecommunications network or does otherwise control or exercise responsibility for, through any arrangement, the management and operation of such a telecommunications network, or owns a controlling interest in a telecommunications company that provides regulated telecommunications service or telephone access line service.

5. Section 38 of P.L.1972, c.186 (C.48:5A-38) is amended to read as follows:

C.48:5A-38 Combinations, mergers, consolidations, acquisition of control, certain circumstances; approval of board.

38. a. Except as otherwise provided by subsection b. of this section, no CATV company shall combine, merge, or consolidate with, or acquire control of, another organization without first obtaining the approval of the board, which shall be granted only after an investigation and finding that such proposed combination, merger, consolidation, or acquisition is in the public interest.

b. Nothing herein shall require the review or approval by the board of any parent or affiliate corporation of a company that provides cable television service over a cable television system if such parent or affiliate corporation does not itself provide cable television service in this State and seeks to combine, merge, or consolidate with, or to acquire control of, another corporation or other organization that:

- (1) does not directly provide cable television service in this State; and
- (2) does not directly or through one or more affiliates, own a controlling interest in another corporation or other organization that provides cable television service in this State.

6. Section 40 of P.L.1972, c.186 (C.48:5A-40) is amended to read as follows:

C.48:5A-40 Sale, mortgage, lease, disposition, encumbrance, merger, consolidation, certain circumstances, approval by board.

40. a. Except as otherwise provided by subsections b. and c. of this section, no CATV company shall, without the approval of the board, sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part thereof; or merge or consolidate its property, franchises, privileges or rights, or any part thereof, with that of any other CATV company. Every sale, mortgage, lease, disposition, encumbrance, merger or consolidation made in violation of this section shall be void.

b. Nothing herein shall prevent the sale, lease or other disposition by any CATV company of any of its property in the ordinary course of business, nor require the approval of the board to any grant, conveyance or release or any property or interest therein heretofore made or hereafter to be made by any CATV company to the United States, the State or any county or municipality or any agency, authority or subdivision thereof, for public use. The approval of the board shall not be required to validate the title of the United States, the State or any county or municipality or any agency, authority or subdivision thereof, to any lands or interest therein heretofore condemned or hereafter to be condemned by the United States, the State or any county or municipality or any agency, authority or subdivision thereof for public use.

c. Nothing herein shall require the review or approval by the board of any parent or affiliate corporation of a company that provides cable television service over a cable television system if such parent or affiliate corporation does not itself provide cable television service in this State and seeks to sell, lease, mortgage, or otherwise to dispose of or to permit the encumbrance of any of its property, franchises, privileges, or rights, or any part thereof; or to merge or consolidate its property, franchises, privileges, or rights, or any part thereof, with that or those of another corporation or other organization which:

- (1) does not directly provide cable television service in this State; and
- (2) does not directly or through one or more affiliates own a controlling interest in another corporation or other organization which provides cable television service in this State.

7. Section 42 of P.L.1972, c.186 (C.48:5A-42) is amended to read as follows:

C.48:5A-42 Issuance, renewal of stocks, bonds, notes, other evidences of indebtedness, certain circumstances; review by board.

42. Except as otherwise provided by subsection c. of this section, no CATV company shall, unless it shall have first obtained authority from the board to do so:

a. Issue any stocks, bonds, notes or other evidence of indebtedness payable more than 12 months after the date or dates thereof, or extend or renew any bond, note or other evidence of indebtedness so that any extension or renewal thereof shall be payable later than 12 months after the date of the original instrument; or

b. Permit any demand note to remain unpaid for a period of more than 12 months after the date thereof.

The board shall approve any such proposed issue, with or without hearing at its discretion, when satisfied that such issue is to be made in accordance with law and the purpose thereof is approved by the board.

c. Nothing herein shall require the review or approval by the board of any parent or affiliate corporation of a company that provides cable television service over a cable television system if such parent or affiliate corporation seeks to issue any stocks, bonds, notes, or other evidence of indebtedness payable more than 12 months after the date or dates thereof, or to extend or renew any bond, note, or other evidence of indebtedness so that any extension or renewal thereof shall be payable later than 12 months after the date of the original instrument, or to permit any demand note to remain unpaid for a period of more than 12 months after the date thereof, if the company which seeks to engage in any of the aforementioned transactions does not itself provide cable television service over a cable television system but does directly or through one or more affiliates own a controlling interest in such a cable television system or does otherwise control or exercise responsibility for, through any arrangement, the management and operation of such a cable television system.

8. This act shall take effect immediately.

Approved September 15, 2008.