

CHAPTER 190

AN ACT concerning the powers of certain local authorities, amending and supplementing P.L.1957, c.183.

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

C.40:14B-40.1 Findings, declarations relative to infrastructure maintenance.

1. The Legislature finds and declares that:

Infrastructure maintenance and repair are vital to the economy and quality of life in the State of New Jersey.

Infrastructure maintenance and repair continue to be insufficiently funded throughout the State.

Property taxes in this State continue to be a serious burden to local property taxpayers and so cannot be relied upon to fund necessary infrastructure maintenance and repairs.

It is in the public interest to develop additional funding sources to provide for necessary maintenance and repair of infrastructure within the State.

County utilities authorities with surplus funds offer one such additional funding source and a pilot program should be developed to explore the efficacy of using those surplus funds for these infrastructure purposes.

C.40:14B-40.2 Pilot program to allow county utilities authorities to fund infrastructure improvements.

2. a. There is established a pilot program to evaluate the efficiency and functionality of allowing county utilities authorities in certain counties, through the use of their undesignated fund balance or unreserved retained earnings, to fund improvements to county infrastructure in municipalities that are located in those counties and that are served by those county utilities authorities, as another method to repair or replace aging county infrastructure through a means other than the local property tax.

b. Under this pilot program created herein, the participating county utilities authorities shall be those created by the pilot counties.

c. Upon application to and approval by the Director of Local Government Services in the Department of Community Affairs, the pilot county utilities authorities shall be permitted to fund improvements within the counties, and each shall report to the Director of Local Government Services annually on the county projects that have been funded by the county utilities authorities.

3. 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 this act, 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 this act, 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 this act 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 this act, "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;

(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 this act;

(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 this act or in section 7 of this amendatory and supplementary act;

(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 hydrolyze, 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 this act, 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 this act, 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; and

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

4. Section 19 of P.L.1957, c.183 (C.40:14B-19) is amended to read as follows:

C.40:14B-19 Purposes, acquisition of facilities; alternative electrical energy.

19. (a) The purposes of every municipal authority shall be (1) the provision and distribution of an adequate supply of water for the public and private uses of the local units, and their inhabitants, within the district, and (2) the relief of waters in or bordering the State from pollution arising from causes within the district and the relief of waters in, bordering or entering the district from pollution or threatened pollution, and the consequent improvement of conditions affecting the public health, (3) the provision of sewage collection and disposal service within or without the district, and (4) the provision of water supply and distribution service in such areas without the district as are permitted by the provisions of this act, and (5) the provision of solid waste services and facilities within or without the district 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, and (6) the generation, transmission and sale of hydroelectric power at wholesale, (7) the operation and maintenance of utility systems owned by other governments located within the district through contracts with said governments, and (8) 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).

(b) Every municipal authority is hereby authorized, subject to the limitations of this act, to acquire, in its own name but for the local unit or units, by purchase, gift, condemnation or otherwise, lease as lessee, and, notwithstanding the provisions of any charter, ordinance or resolution of any county or municipality to the contrary, to construct, maintain, operate and use such reservoirs, basins, dams, canals, aqueducts, standpipes, conduits, pipelines, mains, pumping and ventilating stations, treatment, purification and filtration plants or works, trunk, intercepting and outlet sewers, water distribution systems, waterworks, sources of water supply and wells at such places within or without the district, such compensating reservoirs within a county in which any part of the district lies, and such other plants, structures, boats and conveyances, as in the judgment of the municipal authority will provide an effective and satisfactory method for promoting purposes of the municipal authority.

(c) Every municipal authority is hereby authorized and directed, when in its judgment its sewerage system or any part thereof will permit, to collect from any and all public systems within the district all sewage and treat and dispose of the same in such manner as to promote purposes of the municipal authority.

(d) Every municipal utilities authority is authorized to promote the production and use of alternative electrical energy by contracting with producers of alternative electrical energy for the installation, construction, maintenance, repair, renewal, relocation, or removal of alternative electrical energy systems, and for the purchase of excess alternative electrical energy generated by a producer of alternative electrical energy. Any purchase or sale of alternative electrical energy where such energy is distributed using the infrastructure of a public utility, as that term is defined in R.S.48:2-13, shall include the payment by the purchaser of all relevant non-bypassable charges as provided for in the "Electric Discount and Energy Competition Act," P.L.1999, c.23 (C.48:3-49 et al.).

5. 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 this act, 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 this act 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 this act 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; and

(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).

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

C.40:14B-40 Additional powers.

40. a. In addition to other powers conferred by this act or by any other law, and not in limitation thereof, every municipal authority, in connection with construction or operation of any part of a utility system, shall have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles or any other equipment and appliances (herein called "facilities") of any public utility, as defined in section 48:2-13 of the Revised

Statutes, in, on, along, over or under any real property, including public lands, waters, parks, roads, streets, highways, playgrounds and reservations. Whenever in connection with construction or operation of any part of a utility system, any municipal authority shall determine that it is necessary that any such facilities, which now are, or hereafter may be, located in, on, along, over or under any such real property, including public lands, waters, parks, roads, streets, highways, playgrounds and reservations, should be relocated in such real property, including public lands, waters, parks, roads, streets, highways, playgrounds and reservations, or should be removed therefrom, the public utility owning or operating such facilities shall relocate or remove the same in accordance with the order of the municipal authority, provided, however, that the cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location, or new locations, and the cost of any lands or any rights or interest in lands, or any other rights acquired to accomplish such relocation or removal, less the cost of any lands or any rights or interests in lands or any other rights of the public utility paid to the public utility in connection with the relocation or removal of such property, shall be paid by the municipal authority and may be included in the cost of such utility system. In case of any such relocation or removal of facilities, as aforesaid, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such facilities in their former location.

b. In addition to the powers conferred by subsection a. of this section, an authority that is a pilot county utilities authority also shall have the power to fund improvements to county infrastructure in municipalities that are located in the pilot county and are served by the pilot county utilities authority, through the pilot county utilities authority's undesignated fund balance or unreserved retained earnings. Any such infrastructure improvements shall only be made by written agreement between the pilot county utilities authority and the governing body of the pilot county, and only following application to and approval by the Director of Local Government Services in the Department of Community Affairs.

7. This act shall take effect immediately and shall expire four years following the date of enactment.

Approved January 17, 2014.