

CHAPTER 340

AN ACT concerning property transactions of certain telecommunications companies and amending R.S.48:3-7.

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

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

Utility property transactions.

48:3-7. a. Except as otherwise provided by subsections g. and h. of this section, a public utility shall not, 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 a sale, lease, or other disposition assumes the responsibility as will be sufficient to provide that all such obligations to those employees will be satisfied as they become due.

A 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 percent 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, a solid waste collector as defined in section 3 of P.L.1970, c.40 (C.48:13A-3) shall not, 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 of Environmental Protection, 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 of Environmental Protection 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 the department deems that the information is necessary. If no 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 of Environmental Protection 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 of Environmental Protection 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 of Environmental Protection 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 of Environmental Protection, purchase, finance, or lease any equipment, including collection or haulage vehicles.

(2) Any solid waste collector may, without the approval of the Department of Environmental Protection, sell or otherwise dispose of its collection or haulage vehicles; except that a solid waste collector shall not, without the approval of the department in the manner provided in subsection d. of this section, sell or dispose of 33 percent 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 of Environmental Protection 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 the 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 the parent or affiliate corporation does not itself provide regulated telecommunications service or the provision of telephone access line service, in this State, and the 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.

h. Nothing herein shall authorize the board to require any company that provides competitive telecommunications services as determined by the board and operating under an alternative form of regulation pursuant to P.L.1991, c.428 (C.48:2-21.16 et seq.) to submit for the board's review and approval any sale, conveyance, or lease by the corporation of any real or personal property, or any grant of an easement or like interest therein in this State. Notwithstanding anything to the contrary in this section, the board's authority, pursuant to P.L.1972, c.186 (C.48:5A-1 et seq.), to review and approve a sale, conveyance, or lease by the company of its facilities and rights-of-way, including poles, conduits, other equipment, and easements, shall continue and, pursuant to P.L.1972, c.186 (C.48:5A-1 et seq.), the board's jurisdiction over such facilities and rights of way shall continue.

2. This act shall take effect on the 30th day after the date of enactment, but the Board of Public Utilities may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

Approved January 16, 2018.