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CHAPTER 39

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An Act concerning interest and lien enforcement of certain utility payments during emergencies, amending various parts of the statutory law , and supplementing chapter 62 of Title 40 of the Revised Statutes

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. Section 21 of P.L.1946, c.138 (C.40:14A-21) is amended to read as follows:

C.40:14A-21 Interest on service charges; liens; enforcement.

21. (a) In the event that a service charge of any sewerage authority with regard to any parcel of real property shall not be paid as and when due, interest shall accrue and be due to the sewerage authority on the unpaid balance at the rate of 1 1/2 percent per month until such service charge, and the interest thereon, shall be fully paid to the sewerage authority.

(b) In the event that a service charge of any sewerage authority with regard to any parcel of real property owned by any person other than the State or an agency or subdivision thereof shall not be paid as and when due, the unpaid balance thereof and all interest accruing thereon shall be a lien on such parcel. Such lien shall be superior and paramount to the interest in such parcel of any owner, lessee, tenant, mortgagee or other person except the lien of municipal taxes and shall be on a parity with and deemed equal to the lien on such parcel of the municipality where such parcel is situate for taxes thereon due in the same year and not paid when due. Such lien shall not bind or affect a subsequent bona fide purchaser of such parcel for a valuable consideration without actual notice of such lien, unless the sewerage authority shall have filed in the office of the collector or other officer of said municipality charged with the duty of enforcing municipal liens on real property a statement showing the amount and due date of such unpaid balance and identifying such parcel, which identification may be sufficiently made by reference to the assessment map of said municipality. The information shown in such statement shall be included in any certificate with respect to said parcel thereafter made by the official of said municipality vested with the power to make official certificates of searches for municipal liens. Whenever such service charge and any subsequent service charge with regard to such parcel and all interest accrued thereon shall have been fully paid to the sewerage authority, such statement shall be promptly withdrawn or cancelled by the sewerage authority.

(c) In the event that a service charge of any sewerage authority with regard to any parcel of real property shall not be paid as and when due, the sewerage authority may, in its discretion, enter upon such parcel and cause the connection thereof leading directly or indirectly to the sewerage system to be cut and shut off until such service charge and any subsequent service charge with regard to such parcel and all interest accrued thereon shall be fully paid to the sewerage authority.

(d) In the event that a service charge of any sewerage authority with regard to any parcel of real property shall not be paid as and when due, the sewerage authority may, in accordance with section twenty-six of this act, cause the supply of water to such parcel to be stopped or restricted until such service charge and any subsequent service charge with regard to such parcel and all interest accrued thereon shall be fully paid to the sewerage authority. If for any reason such supply of water shall not be promptly stopped or restricted as required by section twenty-six of this act, the sewerage authority may itself shut off or restrict such supply and, for that purpose, may enter on any lands, waters or premises of any county, municipality or other person. The supply of water to such parcel shall, notwithstanding the provisions of this subsection, be restored or increased if the State Department of Health, upon application of the local board of health or health officer of the municipality where such parcel is situate, shall after public hearing find and shall certify to the sewerage authority that the continuance of such stopping or restriction of the supply of water endangers the health of the public in such municipality.

(e) The collector or other officer of every municipality charged by law with the duty of enforcing municipal liens on real property shall enforce, with and as any other municipal lien on real property in such municipality, all service charges and the lien thereof shown in any statement filed with him by any sewerage authority pursuant to subsection (b) of this section, and shall pay over to the sewerage

authority the sums or a pro rata share of the sums realized upon such enforcement or upon liquidation of any property acquired by the municipality by virtue of such enforcement.

(f) In the event that any service charge of a sewerage authority shall not be paid as and when due, the unpaid balance thereof and all interest accrued thereon, together with attorney's fees and costs, may be recovered by the sewerage authority in a civil action, and any lien on real property for such service charge and interest accrued thereon may be foreclosed or otherwise enforced by the sewerage authority by action or suit in equity as for the foreclosure of a mortgage on such real property.

(g) All rights and remedies granted by this act for the collection and enforcement of service charges shall be cumulative and concurrent.

(h) Notwithstanding the provisions of this section, if the Governor has declared a public health emergency pursuant to the "Emergency Health Powers Act," P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency, pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), or both, in response to a flood, hurricane, superstorm, tornado, natural or other disaster, or public health emergency, then, for the duration of the public health emergency, state of emergency, or both and for a period up to 90 days after the public health emergency, state of emergency, or both, are no longer in effect, the sewerage authority may, in its discretion, engage in any combination of the following: (1) not charge interest on the delinquent payment; (2) not place a lien on such parcel of real property for the unpaid balance for any service charge and all interest accruing thereon; or (3) not discontinue service of any property for the failure to pay any amount owing. A sewerage authority shall exercise the discretionary authority it is provided under this subsection consistently to all properties, or to all properties of the same use type or other appropriate category.

2. Section 41 of P.L.1957, c.183 (C.40:14B-41) is amended to read as follows:

C.40:14B-41 Interest on unpaid services charges.

41. a. In the event that a service charge of any municipal authority with regard to any parcel of real property shall not be paid as and when due, interest shall accrue and be due to the municipal authority on the unpaid balance at the rate of 1 1/2 percent per month until such service charge, and the interest thereon, shall be fully paid to the municipal authority.

b. Notwithstanding the provisions of subsection a. of this section regarding delinquent payments, if the Governor has declared a public health emergency pursuant to the "Emergency Health Powers Act," P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency, pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), or both, in response to a flood, hurricane, superstorm, tornado, natural or other disaster, or public health emergency that the municipal authority has experienced, then, for the duration of the public health emergency, state of emergency, or both and for a period up to 90 days after the public health emergency, state of emergency, or both, are no longer in effect, the municipal authority may, in its discretion, refrain from charging interest on the delinquent payment. A municipal authority shall exercise the discretionary authority it is provided under this subsection consistently to all properties, or to all properties of the same use type or other appropriate category.

3. Section 42 of P.L.1957, c.183, (C.40:14B-42) is amended to read as follows:

C.40:14B-42 Lien for service charge.

42. a. In the event that a service charge of any municipal authority with regard to any parcel of real property owned by any person other than the State or an agency or subdivision thereof shall not be paid as and when due, the unpaid balance thereof and all interest accruing thereon shall be a lien on such parcel. Such lien shall be superior and paramount to the interest in such parcel of any owner, lessee, tenant, mortgagee or other person except the lien of municipal taxes and shall be on a parity with and deemed equal to the lien on such parcel of the municipality where such parcel is situate for taxes thereon due in the same year and not paid when due. Such lien shall not bind or affect a subsequent bona fide purchaser of such parcel for a valuable consideration without actual notice of such lien, unless the municipal authority shall have filed in the office of the collector or other officer of said municipality charged with the duty of enforcing municipal liens on real property a statement showing the amount and due date of such unpaid balance and identifying such parcel, which identification may be sufficiently made by reference to the assessment map of said municipality. The information shown in such statement shall be included in any certificate with respect to said parcel thereafter made by the official of said municipality vested with the power to make official certificates of searches for municipal liens. Whenever such service charge and any subsequent service charge with regard to such parcel and all interest accrued thereon shall have been fully paid to the municipal authority, such statement shall be promptly withdrawn or canceled by the municipal authority.

b. Notwithstanding the provisions of subsection a. of this section regarding delinquent payments, if the Governor has declared a public health emergency pursuant to the "Emergency Health Powers Act," P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency, pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), or both, in response to a flood, hurricane, superstorm, tornado, natural or other disaster, or public health emergency that the municipal authority has experienced, then, for the duration of the public health emergency, state of emergency, or both and for a period up to 90 days after the public health emergency, state of emergency, or both, are no longer in effect, the municipal authority may, in its discretion, refrain from placing a lien on such parcel of real property for the unpaid balance for any service charge and all interest accruing thereon. A municipal authority shall exercise the discretionary authority it is provided under this subsection consistently to all properties, or to all properties of the same use type or other appropriate category.

4. N.J.S.40A:26A-12 is amended to read as follows:

Rates, rentals, connection fees, or other charges as lien on real property; discontinuance of service.

40A:26A-12. a. Rates, rentals, connection fees or other charges levied in accordance with N.J.S.40A:26A-10 and 40A:26A-11, shall be a first lien or charge against the property benefited therefrom. If any part of the amount due and payable in rates, rentals, connection fees or other charges remain unpaid for 30 days following the date for the payment thereof, interest upon the amount unpaid shall accrue at a rate of interest to be determined in accordance with N.J.S.40A:26A-17. The governing body or bodies of the local unit or units may

authorize payment of delinquent assessments on an installment basis in accordance with R.S.54:5-19. Liens levied in accordance with this section shall be enforceable in the manner provided for real property tax liens in chapter 5 of Title 54 of the Revised Statutes.

b. Nothing in this section shall be construed to limit the right of a local unit or local units to discontinue service of any property for the failure to pay any amount owing within 30 days after the date the amount is due and payable, if written notice of the proposed discontinuance of service and of the reasons therefor has been given, within at least 10 days prior to the date of discontinuance, to the owner of record of the property. In the event that notice is provided by mail, the notice requirements shall be satisfied if the mailing is made to the last known address of the owner of record and is postmarked at least 10 days prior to the date of discontinuance.

c. Notwithstanding the provisions of subsections a. and b. of this section, if the Governor has declared a public health emergency pursuant to the "Emergency Health Powers Act," P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency, pursuant to P.L.1942, c.251 (C.App:A:9-33 et seq.), or both, in response to a flood, hurricane, superstorm, tornado, natural or other disaster, or public health emergency, then, for the duration of the public health emergency, state of emergency, or both and for a period up to 90 days after the public health emergency, state of emergency, or both, are no longer in effect, the governing body or bodies of the local unit or units may, in its discretion, engage in any combination of the following: (1) not charge interest on the delinquent payment; (2) not place a lien on such parcel of real property for the unpaid balance for any service charge and all interest accruing thereon; or (3) not discontinue service of any property for the failure to pay any amount owing. The governing body shall exercise the discretionary authority it is provided under this subsection consistently to all properties, or to all properties of the same use type or other appropriate category.

5. N.J.S.40A:31-12 is amended to read as follows:

Rates, rentals, connection fees, or other charges as lien on real property; discontinuance of service.

40A:31-12. a. Rates, rentals, connection fees or other charges levied in accordance with N.J.S.40A:31-10 and 40A:31-11, shall be a first lien or charge against the property benefited therefrom. If any part of the amount due and payable in rates, rentals, connection fees or other charges remains unpaid for 30 days following the date for the payment thereof, interest upon the amount unpaid shall accrue at a rate of interest to be determined in accordance with N.J.S.40A:31-17. The governing body or bodies of the local unit or units may authorize payment of delinquent assessments on an installment basis in accordance with R.S.54:5-19. Liens levied in accordance with this section shall be enforceable in the manner provided for real property tax liens in chapter 5 of Title 54 of the Revised Statutes.

b. Nothing in this section shall be construed to limit the right of a local unit or local units to discontinue service to any property for the failure to pay any amount owing within 30 days after the date the amount is due and payable, if written notice of the proposed discontinuance of service and of the reasons therefor has been given, within at least 10 days prior to the date of discontinuance, to the owner of record of the property. In the event that notice is provided by mail, the notice requirements shall be satisfied if the mailing is made to the last known address of the owner of record and is postmarked at least 10 days prior to the date of discontinuance.

c. Notwithstanding the provisions of subsections a. and b. of this section, if the Governor has declared a public health emergency pursuant to the "Emergency Health Powers Act," P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency, pursuant to P.L.1942, c.251 (C.App.A.9-33 et seq.), or both, in response to a flood, hurricane, superstorm, tornado, natural or other disaster, or public health emergency, then, for the duration of the public health emergency, state of emergency, or both and for a period up to 90 days after the public health emergency, state of emergency, or both, are no longer in effect, the governing body or bodies of the local unit or units may, in its discretion, engage in any combination of the following: (1) not charge interest on the delinquent payment; (2) not place a lien on such parcel of real property for the unpaid balance for any service charge and all interest accruing thereon; or (3) not discontinue service of any property for the failure to pay any amount owing. The governing body shall exercise the discretionary authority it is provided under this subsection consistently to all properties, or to all properties of the same use type or other appropriate category.

C.40:62-83.2 Certain water, sewer systems, actions during public health or state of emergency.

6. Notwithstanding the provisions of any law to the contrary, if the Governor has declared a public health emergency pursuant to the "Emergency Health Powers Act," P.L.2005, c.222 (C.26:13-1 et seq.), or a state of emergency, pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.), or both, in response to a flood, hurricane, superstorm, tornado, natural or other disaster, or public health emergency, then, for the duration of the public health emergency, state of emergency, or both, and for a period up to 90 days after the public health emergency, state of emergency, or both, are no longer in effect, any municipality that owns and operates its water and sewer systems as one utility or that furnishes a supply of water or sewerage service, or both, to the inhabitants of another municipality, may, in its discretion, engage in any combination of the following: (1) not charge interest on the delinquent payment; (2) not place a lien on such parcel of real property for the unpaid balance for any service charge and all interest accruing thereon; or (3) not discontinue service of any property for the failure to pay any amount owing. A sewerage authority shall exercise the discretionary authority it is provided under this subsection consistently to all properties, or to all properties of the same use type or other appropriate category.

7. This act shall take effect immediately and shall apply retroactively to March 9, 2020.

Approved June 19, 2020.

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