

[Second Reprint]

**ASSEMBLY, No. 4345**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED DECEMBER 14, 2009

**Sponsored by:**

**Assemblyman JERRY GREEN**

**District 22 (Middlesex, Somerset and Union)**

**Assemblyman FREDERICK SCALERA**

**District 36 (Bergen, Essex and Passaic)**

**Co-Sponsored by:**

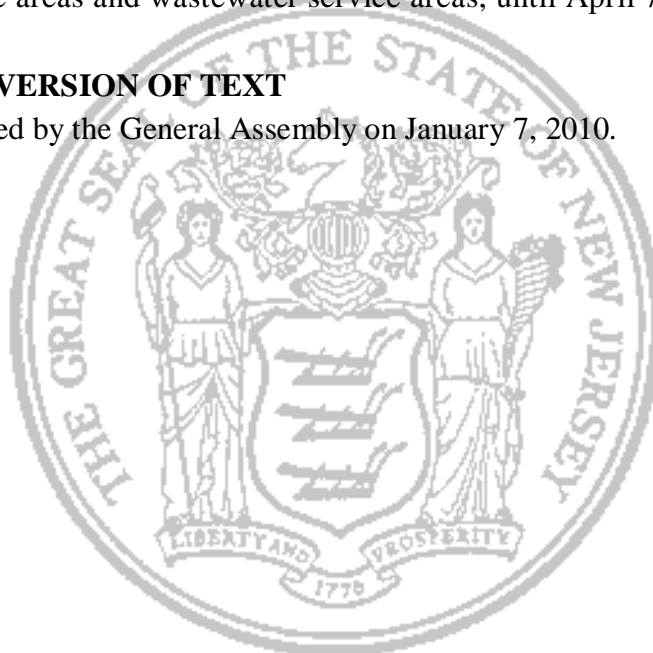
**Senators Sarlo, Oroho and Haines**

**SYNOPSIS**

Extends requirement of wastewater management planning agencies to establish or update wastewater management plans, and extends validity of sewer service areas and wastewater service areas, until April 7, 2011.

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on January 7, 2010.



**(Sponsorship Updated As Of: 1/12/2010)**

1 AN ACT concerning wastewater management plans and sewer  
2 service area and wastewater service area designations <sup>1</sup>[,  
3 creating a Wastewater Planning Oversight Board in the  
4 Department of Environmental Protection,]<sup>1</sup> and supplementing  
5 P.L.1977, c.75 (C.58:11A-1 et seq.).  
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State  
8 of New Jersey:  
9

10 1. The Legislature finds and declares that:

11 a. On May 21, 2008, the Department of Environmental  
12 Protection readopted with amendments the Water Quality  
13 Management Planning rules, N.J.A.C.7:15-1.1 et seq., effective July  
14 7, 2008, which rules are developed and administered by the  
15 department as part of the continuous planning process required  
16 pursuant to Sections 208 and 303 of the federal Clean Water Act of  
17 1977, Pub.L.95-217, 33 U.S.C. s.1251 et seq., and the “Water  
18 Quality Planning Act,” P.L.1977, c.75 (C.58:11A-1 et seq.).

19 b. These Water Quality Management Planning rules and  
20 regulations require county governments to prepare and submit to the  
21 department wastewater management plans or wastewater  
22 management plan updates by April 7, 2009, or where a municipal  
23 government assumes the responsibility from the county, by July 7,  
24 2009.

25 c. If a county or municipal government fails to meet the  
26 applicable deadline, wastewater service areas in wastewater  
27 management plans, and sewer service areas in water quality  
28 management plans where no wastewater management plan was  
29 previously prepared, will be withdrawn.

30 d. In areas where sewer service areas or wastewater service  
31 areas are withdrawn, most development projects and activities will  
32 be deemed inconsistent with the applicable water quality  
33 management plan, which will preclude the issuance of permits or  
34 approvals for development projects and activities by the department  
35 including projects and activities where municipal, county, and State  
36 planning entities have already reviewed and accepted proposed  
37 project-specific amendments or revisions to wastewater  
38 management plans and water quality management plans.

39 e. Financing available to municipal utilities authorities and  
40 sewerage authorities is dependent upon the existence of approved  
41 sewer service areas and would be jeopardized if sewer service areas  
42 are withdrawn.

**EXPLANATION** – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AHO committee amendments adopted January 4, 2010.

<sup>2</sup>Assembly floor amendments adopted January 7, 2010.

1 f. The State and the nation are engulfed in an economic  
2 recession that is drastically affecting various segments of the New  
3 Jersey economy, and as a result of the crisis in the real estate  
4 finance sector of the economy, real estate developers and  
5 redevelopers, including homebuilders, and commercial, office and  
6 industrial developers, have experienced an industry-wide decline,  
7 including reduced demand, cancelled orders, declining sales and  
8 rentals, price reductions, increased inventory, fewer buyers who  
9 qualify to purchase homes, layoffs, and scaled back growth plans.

10 g. Financial institutions that lent money to property owners,  
11 builders, and developers are experiencing erosion of collateral and  
12 depreciation of their assets.

13 h. The construction industry and related trades are sustaining  
14 severe economic losses, and the lapsing of government development  
15 approvals due to loss of sewer service would, if not addressed,  
16 exacerbate those losses.

17 i. County and municipal governments throughout the State are  
18 suffering from the national and Statewide economic crisis and are  
19 experiencing revenue shortfalls, and given this fiscal crisis, many  
20 county and municipal governments may be unable to dedicate the  
21 financial and human resources necessary to submit a wastewater  
22 management plan or wastewater management plan update to the  
23 Department of Environmental Protection by April 7, 2009 or July 7,  
24 2009, as the case may be.

25 j. In addition, county and municipal governments have not  
26 been provided with all of the information and data in a manner  
27 necessary to facilitate the timely submission of these plans, and as a  
28 result, large-scale, Statewide withdrawal of sewer service areas and  
29 wastewater service areas may occur.

30 k. The reconciliation of State and local data and mapping is a  
31 very time consuming and complex process that involves all levels of  
32 government.

33 l. The withdrawal of wastewater service areas on a Statewide  
34 basis would have a severe negative economic impact and would  
35 further exacerbate the current economic recession, precluding  
36 development projects and activities, which would otherwise  
37 generate jobs, act as sources of fee generating activities for  
38 sewerage authorities and other public and private utilities, and act  
39 as a source of tax and other revenues. Such an occurrence would  
40 hamper the State's ability to recover from the economic recession,  
41 slowing job creation and redevelopment that are normally a source  
42 of revenue, increasing the revenue shortfall in the State's budget,  
43 and further hampering the State's ability to provide for the general  
44 welfare needs of its residents.

45 m. Further, many areas are proposed for withdrawal from future  
46 sewer service areas, although the areas are within current sewer  
47 service areas and are based upon sound local planning decisions.  
48 There is currently no procedure in place to notify the affected

1 property owners, and the removal of property from current sewer  
2 service areas will diminish property values and affect local tax  
3 revenues.

4 n. It is the purpose of this act to ameliorate the procedural  
5 problems of the readopted Water Quality Management Planning  
6 rules, as evident in the ongoing implementation of these rules by the  
7 department, counties and municipalities. However, it is not the  
8 intent of this act to affect the substantive aspects of the Water  
9 Quality Management Planning rules, or the intent or purposes of  
10 any of the underlying statutory authorities, including the Water  
11 Quality Planning Act and the federal Clean Water Act.

12 o. It is also the purpose of this act, and essential to the public  
13 good given the present unfavorable economic conditions, to defer  
14 the additional economic burden on county and municipal  
15 governments and to prevent the catastrophic economic impacts that  
16 would occur in connection with large-scale, Statewide withdrawal  
17 of wastewater service areas, by providing additional time for county  
18 and municipal governments to prepare and submit a wastewater  
19 management plan or a wastewater management update to the  
20 Department of Environmental Protection and maintaining the  
21 validity of sewer service areas and wastewater service areas during  
22 this additional time period.

23

24 2. As used in this act:

25 “Department” means the Department of Environmental  
26 Protection.

27 “Extension period” means the time period beginning on April 7,  
28 2009 and ending on April 7, <sup>1</sup>[2012] 2011.

29 “Sewer service area” means the land area identified in an  
30 areawide water quality management plan from which wastewater  
31 generated is designated to flow to a domestic treatment works or  
32 industrial treatment works.

33 “Wastewater management plan” means a written and graphic  
34 description of existing and future wastewater related jurisdictions,  
35 wastewater service areas, and selected environmental features and  
36 treatment works.

37 “Wastewater management planning agency” means a  
38 governmental unit that has responsibility to prepare, submit, and  
39 periodically update a wastewater management plan pursuant to the  
40 department’s rules and regulations.

41 “Wastewater service area” means a sewer service area, a general  
42 service area approved for wastewater facilities with planning flows  
43 of less than 20,000 gallons per day which discharge to groundwater,  
44 and a general service area for wastewater facilities with planning  
45 flows of less than 2,000 gallons per day which discharge to  
46 groundwater as designated in any wastewater management plan or  
47 water quality management plan.

1 “Water quality management plan” means a plan prepared  
2 pursuant to Sections 208 and 303 of the federal Clean Water Act of  
3 1977, Pub.L.95-217, 33 U.S.C. s.1251 et seq., and the “Water  
4 Quality Planning Act,” P.L.1977, c.75 (C.58:11A-1 et seq.), and  
5 includes Statewide, areawide and county water quality management  
6 plans as defined by the Department of Environmental Protection in  
7 the Water Quality Management Planning rules, N.J.A.C.7:15-1.1 et  
8 seq.

9  
10 3. a. Notwithstanding any other law, or rule or regulation  
11 adopted pursuant thereto, to the contrary, the time period within  
12 which a wastewater management planning agency shall prepare and  
13 submit to the department a wastewater management plan or  
14 wastewater management plan update pursuant to the Water Quality  
15 Management Planning rules, N.J.A.C.7:15-1.1 et seq., adopted by  
16 the department effective July 7, 2008, is extended for the duration  
17 of the extension period.

18 b. All wastewater service area designations, including all sewer  
19 service area designations in portions of areawide water quality  
20 management plans where no wastewater management plan was  
21 previously prepared, in effect at any time during the extension  
22 period shall remain in effect until such time as the applicable  
23 wastewater management planning agency adopts a new, revised, or  
24 updated wastewater management plan, as applicable, and the plan is  
25 approved by the department.

26 c. All wastewater service area designations, including all sewer  
27 service area designations in portions of areawide water quality  
28 management plans where no wastewater management plan was  
29 previously prepared, withdrawn pursuant to the Water Quality  
30 Management Planning rules, N.J.A.C.7:15-1.1 et seq., adopted by  
31 the department effective July 7, 2008, prior to the date of enactment  
32 of this act shall be reinstated and shall be in effect during the  
33 extension period.

34  
35 4. During the extension period, the department shall, within 90  
36 days after receipt of a complete application, review and <sup>2</sup>[approve]  
37 act upon<sup>2</sup> site specific or project specific amendments or revisions  
38 to wastewater management plans and water quality management  
39 plans submitted by or on behalf of any party, including but not  
40 limited to a county, municipality or individual landowner. For any  
41 request pending with the department on the date of enactment of  
42 this act, the department shall complete review of the request within  
43 90 days after the date of enactment of this act.

44  
45 5. Nothing in this act shall preclude a wastewater management  
46 planning agency from preparing and submitting a wastewater  
47 management plan or a wastewater management plan update to the  
48 department during the extension period pursuant to the “Water

1 Quality Planning Act,” P.L.1977, c.75 (C.58:11A-1 et seq.) and the  
2 Water Quality Management Planning rules, N.J.A.C.7:15-1.1 et  
3 seq., adopted by the Department of Environmental Protection,  
4 effective July 7, 2008.

5  
6 ‘6. Nothing in this act shall preclude the person or entity  
7 identified on the municipal tax record as the owner of real property  
8 from petitioning the department and the applicable wastewater  
9 management planning agency, in writing during the extension  
10 period, for a change to the sewer service area designation for the  
11 real property identified in the petition. A petition submitted  
12 pursuant to this section shall identify the specific parcel of real  
13 property and include any available documentation regarding the  
14 current status of the property and any applicable permits.

15 Notwithstanding any provision of this act, any other law, or any  
16 rule or regulation adopted pursuant thereto to the contrary, upon  
17 approval of both the department and the applicable wastewater  
18 management planning agency of a petition submitted pursuant to  
19 this section, the change to the sewer service area designation for the  
20 property identified in the petition shall take effect immediately, and  
21 shall be included in the wastewater management plan or wastewater  
22 management plan update submitted to the department pursuant to  
23 the Water Quality Management Planning rules, N.J.A.C.7:15-1.1 et  
24 seq.<sup>1</sup>

25  
26 ‘7. During the extension period, whenever the State, a local  
27 government unit, or a qualifying tax exempt nonprofit organization  
28 is contemplating the acquisition of a specific parcel of land for  
29 recreation and conservation purposes or farmland preservation  
30 purposes using public funds, or a landowner is contemplating the  
31 sale or other transfer of land for such purposes, the governmental  
32 entity, nonprofit organization, or landowner may request in writing  
33 of the department to decide, in consultation with the applicable  
34 wastewater management planning agency, and within 180 days after  
35 receipt of the request, whether the specific parcel of land will or  
36 will not be included in a sewer service area to be designated under a  
37 wastewater management plan or wastewater management plan  
38 update to be prepared and submitted to the department pursuant to  
39 the Water Quality Management Planning rules, N.J.A.C.7:15-1.1 et  
40 seq., adopted by the department effective July 7, 2008. If the  
41 landowner disagrees with the decision of the department, the  
42 landowner may appeal it in the same manner as provided pursuant  
43 to paragraph (3) of subsection b. of section 8 of this act.

44 The decision of the department, in consultation with the  
45 applicable wastewater management planning agency, pursuant to  
46 this section regarding the status of a specific parcel of land with  
47 respect to sewer service area designation shall be used to assist in

1 the valuation of the parcel for possible preservation under open  
2 space and farmland preservation programs.

3 For the purposes of this section: “land,” “farmland preservation  
4 purposes,” “local government unit,” “qualifying tax exempt  
5 nonprofit organization,” and “recreation and conservation purposes”  
6 mean the same as those terms are defined respectively pursuant to  
7 section 3 of P.L.1999, c.152 (C.13:8C-3); and “landowner” means  
8 the person or entity identified on the municipal tax record as the  
9 owner of the real property.<sup>1</sup>

10

11 <sup>1</sup>[6.] 8.<sup>1</sup> a. If the department provides sewer service area  
12 mapping, data, models, or any other information to a wastewater  
13 management planning agency as the basis for, or in connection  
14 with, the update of a wastewater management plan, and the  
15 materials propose, recommend or otherwise contemplate the  
16 removal of real property from a sewer service area, the department  
17 or the applicable wastewater management planning agency shall  
18 provide written notice of the proposed removal of real property  
19 from the sewer service area to the person or entity identified on the  
20 municipal tax record as the owner of the real property.

21 b. (1) No real property may be removed from a sewer service  
22 area or wastewater service area, as applicable, approved by the  
23 department and in effect on July 7, 2008, unless the department or  
24 the applicable wastewater management planning agency provides  
25 written notice, by certified mail, return receipt requested, of the  
26 proposed removal of real property from the sewer service area or  
27 wastewater service area, as applicable, to the person or entity  
28 identified on the municipal tax record as the owner of the real  
29 property.

30 The notice provided to the property owner pursuant to this  
31 subsection shall provide detailed information specifying the reason  
32 the real property is proposed for removal from the sewer service  
33 area or wastewater service area, as applicable, including but not  
34 limited to any mapping, data, models, or other information that may  
35 have been provided by the department to the applicable wastewater  
36 management planning agency.

37 (2) Upon receipt of written notification pursuant to this  
38 subsection, the owner of the property shall have 30 days to respond  
39 to the department and the applicable wastewater management  
40 planning agency and provide information as to why the property  
41 should not be removed from the sewer service area or wastewater  
42 service area, as applicable, including any documentation regarding  
43 the current status of the property and any applicable permits.

44 (3) If, after receipt of a response by the owner of the property,  
45 the department and the applicable wastewater management planning  
46 agency intend to pursue removal of the property from the approved  
47 sewer service area or wastewater service area, as applicable, the  
48 owner of the property may appeal the decision to the Office of

1 Administrative Law. Upon receipt, the Office of Administrative  
2 Law shall assign the request to an administrative law judge for a  
3 hearing. The provisions of the "Administrative Procedure Act,"  
4 P.L.1968, c.410 (C.52:14B-1 et seq.) shall apply to hearings and  
5 appeals pursuant to this section.

6 (4) If the department and the applicable wastewater management  
7 planning agency do not receive a response from the owner of the  
8 property within 30 days after the owner's receipt of the certified  
9 notice as evidenced by the return receipt, the department and the  
10 applicable wastewater management planning agency may proceed  
11 with the removal of the property from the sewer service area or  
12 wastewater service area, as applicable, in accordance with the  
13 applicable provisions of the Water Quality Management Planning  
14 rules, N.J.A.C.7:15-1.1 et seq.

15

16 '[7.] 9.' a. Notwithstanding any other law, or rule or regulation  
17 adopted pursuant thereto, to the contrary, a sewer service area shall  
18 include all property for which at least one of the following  
19 approvals were issued prior to the applicable wastewater  
20 management planning agency adopting a new, revised, or updated  
21 wastewater management plan, as appropriate, and that plan is  
22 approved by the department:

23 (1) preliminary or final site plan approval, preliminary or final  
24 subdivision approval, municipal building or construction permit, or  
25 general development plan approval, issued pursuant to the  
26 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.);

27 (2) a treatment works approval issued pursuant to the "Water  
28 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.); or

29 (3) a New Jersey Pollutant Discharge Elimination System permit  
30 issued pursuant to the "Water Pollution Control Act," P.L.1977,  
31 c.74 (C.58:10A-1 et seq.).

32 b. If a sewer service area within a new, revised or updated  
33 wastewater management plan, as appropriate, does not include  
34 property as provided in subsection a. of this section, the affected  
35 property owner or any other interested party, including but not  
36 limited to a contract purchaser for the property, may submit a  
37 written request to the wastewater management planning agency,  
38 with a copy to the department, to include the property within the  
39 sewer service area through an administrative correction. If at least  
40 one of the approvals identified in subsection a. of this section is  
41 valid as of the date of the request, the wastewater management  
42 planning agency shall revise the sewer service area to include the  
43 property in question and shall submit a notice of administrative  
44 correction of the sewer service area to the department. The  
45 department shall issue written approval of the corrected sewer  
46 service area no later than 30 days after receipt of the submission by  
47 the wastewater management planning agency, or the request shall  
48 be deemed automatically approved.

1 c. In addition to environmental factors, the department and the  
2 wastewater management planning agency shall consider the  
3 following factors when making a determination regarding the  
4 inclusion of property in, or the exclusion of property from, a sewer  
5 service area under any new, revised or updated wastewater  
6 management plan:

7 (1) the zoning of the property;

8 (2) the existing development and land use surrounding and in  
9 the vicinity of the property;

10 (3) the existing infrastructure and availability of utilities;

11 (4) any affordable housing obligations;

12 (5) redevelopment opportunities and objectives;

13 (6) the designation of the property pursuant to the State  
14 Development and Redevelopment Plan adopted pursuant to  
15 P.L.1985, c.398 (C.52:18A-196 et al.); and

16 (7) any prior or existing development or partial development on  
17 or associated with the property.

18  
19 **'[8.] 10.'** During the extension period, the department shall  
20 continue to provide needed mapping, models, and staff support for  
21 the preparation and review of wastewater management plans,  
22 updates and amendments thereto.

23  
24 **'[9.] 11.'** During the extension period, every wastewater  
25 management planning agency shall be required to submit written  
26 reports to the department regarding the wastewater management  
27 planning agency's progress in preparing a wastewater management  
28 plan or wastewater management plan update.

29  
30 **'[10.] 12.'** The department shall, within 30 days after the date  
31 of enactment of this act, place a notice in the New Jersey Register  
32 implementing the provisions of the extension period in conformance  
33 with section 3 of this act.

34  
35 **'[11. a.** There is established the Wastewater Planning Oversight  
36 Board in, but not of, the Department of Environmental Protection.  
37 The board shall consist of 11 members as follows:

38 (1) the Commissioner of Environmental Protection, or a  
39 designee;

40 (2) the Smart Growth Ombudsman appointed pursuant to section  
41 2 of P.L.2004, c.89 (C.52:27D-10.3); and

42 (3) nine members of the public, who are residents of the State,  
43 to be appointed by the Governor with the advice and consent of the  
44 Senate as follows:

45 (a) two members of the New Jersey County Planners  
46 Association;

- 1 (b) two representatives or members of the building industry with  
2 recognized expertise and specialization in wastewater management  
3 planning issues;
- 4 (c) two representatives of the environmental community with  
5 recognized expertise and specialization in wastewater management  
6 planning issues;
- 7 (d) one representative of a municipal utilities authority or a  
8 sewerage authority located in the State; and
- 9 (e) two representatives of the public having no affiliation with  
10 any of the other representative members appointed pursuant to this  
11 paragraph.
- 12 b. The board shall evaluate, study and review the accuracy,  
13 validity, feasibility, and practicability of sewer service area  
14 mapping, data, models, or any other information provided by the  
15 department to wastewater management planning agencies as the  
16 basis for, or in connection with, the creation of a wastewater  
17 management plan, and to make recommendations to wastewater  
18 management planning agencies based on this review.
- 19 c. The members of the board shall serve without compensation,  
20 but may be reimbursed for necessary expenses incurred in the  
21 performance of their duties, within the limits of funds appropriated  
22 or otherwise made available to the board for its purposes.
- 23 d. Any vacancy in the membership of the board shall be filled  
24 in the same manner as the original appointment.
- 25 e. The board shall organize as soon as possible after the  
26 appointment of its members, and shall select annually a chairperson  
27 from among its members and a secretary who need not be a member  
28 of the board.
- 29 f. A majority of the membership of the board shall constitute a  
30 quorum for the transaction of business. Action may be taken by the  
31 board upon the affirmative vote of a majority of the full membership  
32 of the board.
- 33 g. The board shall be entitled to the assistance and service of  
34 the employees of any State, county or municipal department, board,  
35 bureau, commission, authority or agency as it may require and as  
36 may be available to it for its purposes, and to employ stenographic  
37 and clerical assistance and to incur traveling or other miscellaneous  
38 expenses as may be necessary in order to perform its duties, within  
39 the limits of funds appropriated or otherwise made available to it  
40 for its purposes. The department shall provide primary staff  
41 support for the board.
- 42 h. The board shall meet monthly or at the call of the  
43 chairperson of the board or when requested by any three or more  
44 members of the board. ]<sup>1</sup>

45  
46 <sup>1</sup>[12.] 13.<sup>1</sup> This act shall take effect immediately.