

ASSEMBLY, No. 1527

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Cumberland, Gloucester and Salem)

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District 20 (Union)

SYNOPSIS

Concerns Watershed Property Review Board in DEP.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning the conservation and protection of watershed
2 properties, and amending and supplementing P.L.1988, c.163.

3

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

6

7 1. Section 2 of P.L.1988, c.163 is amended to read as follows:

8 2. a. (1) There is established in the Department of
9 Environmental Protection a Watershed Property Review Board,
10 which shall consist of the Commissioner of **[the Department of]**
11 Environmental Protection or the commissioner's designee, the
12 Commissioner of **[the Department of]** Community Affairs or the
13 commissioner's designee, and the President of the Board of Public
14 Utilities or the president's designee.

15 (2) The Watershed Property Review Board shall be authorized to
16 exempt from the provisions of section 1 of **[this act]** P.L.1988,
17 c.163, as amended by section 1 of P.L.1990, c.19, the conveyance
18 of watershed property if the person applying for the exemption
19 demonstrates to the Watershed Property Review Board that there is
20 a compelling public need for the conveyance of the property, that
21 the denial of the exemption would result in extraordinary hardship,
22 or that the sale or development of the watershed property is
23 otherwise consistent with the purposes of **[this act]** P.L.1988,
24 c.163, as amended by P.L.1990, c.19. Any person applying for an
25 exemption pursuant to **[the provisions of this section]** this
26 paragraph shall submit to the board appropriate documentation
27 addressing the issue of buffer areas surrounding public water
28 supplies, **[and shall also provide the board]** with proposals for the
29 mitigation of any adverse environmental impact which would result
30 from an exemption applied for pursuant to the provisions of this
31 **[section]** paragraph.

32 (3) The Watershed Property Review Board shall also be
33 authorized at the request of the applicant to make a determination as
34 to whether the conveyance of any particular parcel of real property
35 is subject to the provisions of section 1 of P.L.1988, c.163, as
36 amended by section 1 of P.L.1990, c.19. Any person applying for a
37 determination of non-applicability pursuant to this paragraph shall
38 submit to the board appropriate documentation that demonstrates to
39 the satisfaction of the board that the real property in question is not
40 watershed property.

41 b. (1) A determination by the Watershed Property Review
42 Board to grant or deny an exemption from, or issue or not issue a
43 letter of non-applicability of, the provisions of section 1 of **[this act]**
44 shall constitute the final agency action on the matter, and shall

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.

1 P.L.1988, c.163, as amended by section 1 of P.L.1990, c.19, shall
2 be made within 90 days after receipt of an application for an
3 exemption or for a determination of non-applicability.

4 (2) (a) If the board denies a request for an exemption or a
5 determination of non-applicability, the person applying for the
6 exemption or determination of non-applicability may [be subject
7 only to judicial review as provided in the Rules of Court] , within
8 15 days after issuance of the decision by the board, file a written
9 request, as prescribed pursuant to subparagraph (b) of this
10 paragraph, with the board for reconsideration, reargument,
11 rehearing or further hearing of the matter. The board shall conduct
12 the reconsideration, reargument, rehearing or further hearing of the
13 matter within 30 days after receipt of the request.

14 (b) A request filed with the board pursuant to subparagraph (a)
15 of this paragraph shall (1) state in separately numbered paragraphs
16 the alleged errors of law or fact relied upon, (2) specify whether
17 reconsideration, reargument, rehearing or further hearing is
18 requested, (3) specify the ultimate relief sought, and (4) provide any
19 additional evidence to be relied upon by the applicant.

20 (c) The board shall adopt, pursuant to the “Administrative
21 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) any rules and
22 regulations that may be necessary to implement this paragraph.

23 (3) A final decision by the Watershed Property Review Board to
24 grant or deny an exemption from, or issue or not issue a letter of
25 non-applicability of, the provisions of section 1 of P.L.1988, c.163,
26 as amended by section 1 of P.L.1990, c.19, shall constitute the final
27 agency action on the matter, and shall be subject only to judicial
28 review as provided in the Rules of Court.

29 c. Prior to making a final **[determination]** decision on an
30 application for an exemption from, or a letter of non-applicability
31 of, the provisions of section 1 of [this act] P.L.1988, c.163, as
32 amended by section 1 of P.L.1990, c.19, the Watershed Property
33 Review Board may refer the application to the Office of
34 Administrative Law, which shall conduct a hearing and issue
35 recommendations based on findings of fact and conclusions of law
36 for consideration by the Watershed Property Review Board in
37 making its determination. Upon receipt of those recommendations,
38 the Watershed Property Review Board shall make its final decision
39 within the timeframes allowed for contested cases as set forth in
40 section 10 of P.L.1968, c.410 (C.52:14B-10) and any rules or
41 regulations adopted in accordance therewith.

42 d. The provisions of section 1 of P.L.1988, c.163, as amended
43 by section 1 of P.L.1990, c.19, shall not apply to any watershed
44 property conveyed to a municipal or county government entity for
45 the purposes of supporting open space, conservation or recreation or
46 through the Green Acres program or another similar State program,
47 as determined by the Department of Environmental Protection.

1 e. As used in this section:

2 “Conveyance” or “conveyed” means a transfer of title to
3 watershed property through sale, grant of a permanent leasehold
4 interest, or easement.

5 “Green Acres program” means the same as defined pursuant to
6 section 1 of P.L.1983, c.324 (C.13:1L-3), and any other similar
7 program created by law to promote the acquisition and development
8 of land for recreation and conservation purposes.

9 “Watershed property” means land utilized and owned by a
10 municipality, municipal utilities authority, or public utility for the
11 purpose of the protection of a public water supply, but shall not
12 include lands subject to regulation pursuant to P.L.1979, c.111
13 (C.13:18A-1 et seq.) or P.L.1973, c.185 (C.13:19-1 et seq.), or
14 lands utilized and owned by a municipality, municipal utilities
15 authority, or public utility for purposes other than the protection of
16 a public water supply.

17 (cf: P.L.1988, c.163, s.2)

18

19 2. Section 4 of P.L.1988, c.163 (C.48:2-23.1) is amended to
20 read as follows:

21 4. a. (1) The Board of Public Utilities, in reviewing a request
22 by a public utility to convey land utilized for the purpose of the
23 protection of a public water supply to a corporation or other entity
24 which is not subject to the jurisdiction of the board, shall request
25 the **[Department of Environmental Protection]** Watershed Property
26 Review Board to review and make recommendations on an
27 assessment, prepared and submitted by the utility, of the impact that
28 the conveyance, and the prospective use or uses of the land
29 conveyed, would have on the water quality of the affected public
30 water supply, and shall require the **[department]** Watershed
31 Property Review Board to assess the impact of the conveyance on
32 the State's open space, conservation, and recreation requirements.
33 The **[department]** Watershed Property Review Board, upon receipt
34 of a request by the **[board]** Board of Public Utilities for an
35 assessment and a review pursuant to this **[subsection]** paragraph ,
36 shall prepare and submit to the **[board]** Board of Public Utilities
37 the assessment and review within **[12 months]** 90 days of the
38 request therefor.

39 (2) The Board of Public Utilities, in reviewing a request by a
40 public utility to convey land utilized for the purpose of the
41 protection of a public water supply to a government entity, such as
42 a municipality or county, shall request the Watershed Property
43 Review Board to review and make recommendations on an
44 assessment, prepared and submitted by the utility, of the impact that
45 the conveyance, and the prospective use or uses of the land
46 conveyed, would have on the water quality of the affected public
47 water supply, and shall require the Watershed Property Review

1 Board to assess the impact of the conveyance on the State's open
2 space, conservation, and recreation requirements. The Watershed
3 Property Review Board, upon receipt of a request by the Board of
4 Public Utilities for an assessment and a review pursuant to this
5 paragraph, shall prepare and submit to the Board of Public Utilities
6 the assessment and review within 30 days of the request therefor.

7 b. Any public utility requesting the **【board】** Board of Public
8 Utilities to approve a conveyance of land utilized for the purpose of
9 the protection of a public water supply to a corporation, government
10 entity, or other entity which is not subject to the jurisdiction of the
11 **【board】** Board of Public Utilities shall submit to the **【board】** Board
12 of Public Utilities a document setting forth a detailed explanation of
13 the prospective use or uses of the land to be conveyed. The **【board】**
14 Board of Public Utilities, upon receipt of this document, may
15 require the public utility to submit any additional information which
16 the **【board】** Board of Public Utilities deems appropriate.

17 (cf: P.L.1988, c.163, s.4)

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19 3. (New section) a. The Watershed Property Review Board
20 shall be subject to the provisions of the “Senator Byron M. Baer
21 Open Public Meetings Act,” P.L.1975, c.231 (C.10:4-6).

22 b. All decisions, determinations, and rulings by the Watershed
23 Property Review Board, including any reasons set forth by the
24 board in making a decision, determination, or ruling, shall be
25 considered public records and posted on the Internet website of the
26 Department of Environmental Protection. The website shall also
27 provide information about the board, the watershed moratorium
28 established pursuant to section 1 of P.L.1988, c.163, as amended by
29 section 1 of P.L.1990, c.19, and the process for a public utility to
30 receive an exemption from the moratorium in order to convey land
31 utilized for the purpose of the protection of a public water supply.

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33 4. (New section) Within 180 days after the effective date of this
34 act, the Department of Environmental Protection shall adopt,
35 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410
36 (C.52:14B-1 et seq.), rules and regulations as necessary to
37 effectuate the purposes of this act.

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39 5. This act shall take effect immediately.

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STATEMENT

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44 This bill would make revisions to the Watershed Property
45 Review Board (hereinafter referred to as the “board”), created by
46 P.L.1988, c.163 as amended by P.L.1990, c.19, which has the
47 authority to exempt the conveyance of property from the watershed

1 moratorium established by that act. The bill would allow the board
2 members, consisting of the Commissioner of Environmental
3 Protection, Commissioner of Community Affairs, and President of
4 the Board of Public Utilities (BPU), to appoint their respective
5 designees to perform the duties required of the board.

6 The bill provides that a person applying for an exemption may
7 contest the decision of the board before an Administrative Law
8 Judge as a contested case in accordance with the “Administrative
9 Procedure Act.”

10 The bill would also provide that the moratorium would not apply
11 to any watershed property conveyed to a municipal or county
12 government entity for the purposes of supporting open space,
13 conservation or recreation or through the Green Acres program or
14 another similar State program as determined by the Department of
15 Environmental Protection (DEP).

16 Under the bill, the Watershed Property Review Board would also
17 be made subject to the “Senator Byron M. Baer Open Public
18 Meetings Act,” and would be required to post all rulings and
19 determinations and reasons therefor on the website of the DEP.
20 Any such rulings and determinations would be considered public
21 records. The bill would also require the board to act on an
22 application for exemption from the moratorium within 30 days.

23 Current law requires the BPU, in reviewing a request by a public
24 utility to convey land utilized for the purpose of the protection of a
25 public water supply to a corporation or other entity which is not
26 subject to the jurisdiction of the BPU, to request the DEP to review
27 and make recommendations on an assessment, prepared and
28 submitted by the utility, of the impact that the conveyance,
29 including the impact on open space, conservation, and recreation.
30 This bill would change the requirement that DEP submit the
31 assessment to the BPU within one year to instead be that the board
32 submit it to the BPU within 90 days. Additionally, the bill provides
33 that when a public utility wishes to convey land utilized for the
34 purpose of the protection of a public water supply to a government
35 entity, such as a municipality or county, the board would expedite
36 its submission to the BPU within 30 days.