

ASSEMBLY, No. 1199

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman DALTON

1 AN ACT concerning water supply, amending and supplementing  
2 P.L.1975, c.291, and supplementing P.L.1977, c.224 (C.58:12A-1  
3 et seq.).  
4

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

7  
8 1. Section 3.3 of P.L.1975, c.291 (C.40:55D-6) is amended to read  
9 as follows:

10 3.3. "Party immediately concerned" means for purposes of notice  
11 any applicant for development, the owners of the subject property and  
12 all owners of property and government agencies entitled to notice  
13 under section 7.1 of P.L.1975, c.291 (C.40:55D-12).

14 "Performance guarantee" means any security, which may be  
15 accepted by a municipality, including but not limited to surety bonds,  
16 letters of credit under the circumstances specified in section 16 of  
17 P.L.1991, c.256 (C.40:55D-53.5), and cash.

18 "Planned commercial development" means an area of a minimum  
19 contiguous size as specified by ordinance to be developed according  
20 to a plan as a single entity containing one or more structures with  
21 appurtenant common areas to accommodate commercial or office uses  
22 or both and any residential and other uses incidental to the  
23 predominant use as may be permitted by ordinance.

24 "Planned development" means planned unit development, planned  
25 unit residential development, residential cluster, planned commercial  
26 development or planned industrial development.

27 "Planned industrial development" means an area of a minimum  
28 contiguous size as specified by ordinance to be developed according  
29 to a plan as a single entity containing one or more structures with  
30 appurtenant common areas to accommodate industrial uses and any  
31 other uses incidental to the predominant use as may be permitted by  
32 ordinance.

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

**Matter underlined thus is new matter.**

1 "Planned unit development" means an area with a specified  
2 minimum contiguous acreage of 10 acres or more to be developed as  
3 a single entity according to a plan, containing one or more residential  
4 clusters or planned unit residential developments and one or more  
5 public, quasi-public, commercial or industrial areas in such ranges of  
6 ratios of nonresidential uses to residential uses as shall be specified in  
7 the zoning ordinance.

8 "Planned unit residential development" means an area with a  
9 specified minimum contiguous acreage of 5 acres or more to be  
10 developed as a single entity according to a plan containing one or  
11 more residential clusters, which may include appropriate commercial,  
12 or public or quasi-public uses all primarily for the benefit of the  
13 residential development.

14 "Planning board" means the municipal planning board established  
15 pursuant to section 14 of P.L.1975, c.291 (C.40:55D-23).

16 "Plat" means a map or maps of a subdivision or site plan.

17 "Preliminary approval" means the conferral of certain rights  
18 pursuant to sections 34, 36 and 37 of P.L.1975, c.291 (C.40:55D-46;  
19 C.40:55D-48; and C.40:55D-49) prior to final approval after specific  
20 elements of a development plan have been agreed upon by the planning  
21 board and the applicant.

22 "Preliminary floor plans and elevations" means architectural  
23 drawings prepared during early and introductory stages of the design  
24 of a project illustrating in a schematic form, its scope, scale and  
25 relationship to its site and immediate environs.

26 "Public areas" means (1) public parks, playgrounds, trails, paths and  
27 other recreational areas; (2) other public open spaces; (3) scenic and  
28 historic sites; and (4) sites for schools and other public buildings and  
29 structures.

30 "Public water system" means public water system as defined  
31 pursuant to section 3 of P.L.1977, c.224 (C.58:12A-3).

32 "Public development proposal" means a master plan, capital  
33 improvement program or other proposal for land development adopted  
34 by the appropriate public body, or any amendment thereto.

35 "Public drainage way" means the land reserved or dedicated for the  
36 installation of storm water sewers or drainage ditches, or required  
37 along a natural stream or watercourse for preserving the biological as  
38 well as drainage function of the channel and providing for the flow of  
39 water to safeguard the public against flood damage, sedimentation and  
40 erosion and to assure the adequacy of existing and proposed culverts  
41 and bridges, to induce water recharge into the ground where practical,  
42 and to lessen nonpoint pollution.

43 "Public open space" means an open space area conveyed or  
44 otherwise dedicated to a municipality, municipal agency, board of  
45 education, State or county agency, or other public body for  
46 recreational or conservational uses.

1 "Public utility" means any public utility regulated by the Board of  
2 Regulatory Commissioners and defined pursuant to R.S.48:2-13.

3 "Quorum" means the majority of the full authorized membership of  
4 a municipal agency.

5 "Residential cluster" means an area to be developed as a single  
6 entity according to a plan containing residential housing units which  
7 have a common or public open space area as an appurtenance.

8 "Residential density" means the number of dwelling units per gross  
9 acre of residential land area including streets, easements and open  
10 space portions of a development.

11 "Resubdivision" means (1) the further division or relocation of lot  
12 lines of any lot or lots within a subdivision previously made and  
13 approved or recorded according to law or (2) the alteration of any  
14 streets or the establishment of any new streets within any subdivision  
15 previously made and approved or recorded according to law, but does  
16 not include conveyances so as to combine existing lots by deed or  
17 other instrument.

18 (cf: P.L.1991, c.412, s.3)

19

20 2. (New section) a. An ordinance requiring approval by the  
21 planning board of a site plan may require, as a condition of preliminary  
22 or final approval of a proposed development, for which the water  
23 supply is to be provided by a public water system using water drawn  
24 from an aquifer situated in an area designated and established by the  
25 Department of Environmental Protection as an area of critical water  
26 supply concern as defined by the department pursuant to subsection b.  
27 of section 6 of P.L.1981, c.262 (C.58:1A-6), provision by the  
28 applicant to the approving authority of a certification obtained from  
29 the owner or operator of the public water system that the system is  
30 capable, or will be capable at the time of completion of the proposed  
31 development, of providing a safe and dependable yield of water for the  
32 proposed development for a 10-year period in accordance with the  
33 requirements of the "Water Supply Management Act," P.L.1981, c.262  
34 (C.58:1A-1 et seq.) and the "Safe Drinking Water Act," P.L.1977,  
35 c.224 (C.58:12A-1 et seq.), and any rules or regulations adopted  
36 pursuant thereto. If, in the department's judgment, the future  
37 availability of a safe and dependable yield of water may be  
38 demonstrated for less than a 10-year period so that an adequate  
39 quantity and quality of water will be available to residents of the  
40 development, then the municipality, by ordinance, may adopt the  
41 shorter period as the certification period.

42 If the public water system is not considered capable of providing a  
43 safe and dependable yield of water, preliminary or final approval of a  
44 site plan may be made conditional upon the provision by the applicant  
45 of proof that the applicant has secured an alternative source of potable  
46 water, evidenced by a signed agreement between the applicant and the

1 provider.

2 b. An ordinance requiring approval by the planning board of a site  
3 plan may require, as a condition of preliminary or final approval of a  
4 proposed development for which the water supply is to be provided by  
5 a source other than a public water system using water drawn from an  
6 aquifer situated in an area designated and established by the  
7 Department of Environmental Protection as an area of critical water  
8 supply concern as defined by the department pursuant to subsection b.  
9 of section 6 of P.L.1981, c. 262 (C.58:1A-6): (1) provision by the  
10 applicant to the approving authority of a certification obtained from  
11 the owner or operator of the public water system which supplies the  
12 municipality in which the proposed development is situated that the  
13 system is capable, or will be capable at the time of completion of the  
14 proposed development, of providing a safe and dependable yield of  
15 water to meet the demands of the proposed development for a 10-year  
16 period after completion of the development, or such shorter period as  
17 is adopted by the municipality, by ordinance, pursuant to subsection  
18 a. of this section, without negatively affecting the water supply or  
19 quality of any other existing development, of a stream or of a  
20 freshwater wetland as defined pursuant to section 3 of P.L.1987, c.156  
21 (C.13:9B-3), located within a radius of 1,000 feet of the proposed  
22 development; and (2) posts with the municipality a bond, irrevocable  
23 letter of credit or other guarantee acceptable to the approving  
24 authority and effective for a period of 10 years from the date of final  
25 approval of the site plan, which shall be in an amount sufficient to  
26 ensure provision of a safe and dependable water supply for the  
27 proposed development, and for any other existing development located  
28 within a radius of 1,000 feet thereof, in the event (a) the water supply  
29 for the proposed development proves to be not safe or dependable for  
30 any reason, or (b) the use of the water supply for the proposed  
31 development negatively affects the water supply or quality of any other  
32 existing development within a radius of 1,000 feet of the proposed  
33 development. The municipal approving authority shall determine the  
34 amount of any such bond or other guarantee. If the municipality  
35 adopts a shorter period of certification, the effective period of the  
36 board or letter of credit shall correspond to the period of certification.

37 If the water system is not considered capable of providing a safe  
38 and dependable yield of water, preliminary or final approval of a site  
39 plan may be denied by the approving authority.

40 c. This section shall not apply to any application for:

- 41 (1) minor site plan approval;  
42 (2) final approval of a site plan for a proposed development for  
43 which preliminary approval of the site plan was granted prior to the  
44 date of enactment of this act.

45

46 3. (New section) a. Upon request by an applicant for a

1 certification required pursuant to subsection a. of section 2 of P.L. ,  
2 c. (C. ) (pending before the Legislature as this bill), the owner or  
3 operator of a public water system shall, within 30 days of receiving the  
4 request or within such other time period as may be agreed to by the  
5 owner or operator of the system and the applicant: (1) evaluate the  
6 capacity of the public water system to provide a safe and dependable  
7 yield of water for the proposed development as set forth in the  
8 request, and (2) based upon that evaluation, either issue, issue with  
9 conditions, or decline to issue the requested certification, and state the  
10 reasons therefor. Any cost associated with the certification shall be  
11 borne by the applicant.

12 The owner or operator of a public water system may require an  
13 applicant to supply such information as the owner or operator of the  
14 system deems necessary in order to respond to any such request for a  
15 certification.

16 b. For the purposes of this section, "applicant" and "development"  
17 mean the same as those terms are defined respectively pursuant to  
18 sections 3 and 3.1 of P.L.1975, c.291 (C.40:55D-3 and C.40:55D-4).

19

20 4. This act shall take effect 180 days next following enactment.

21

22

23

#### STATEMENT

24

25 This bill would provide that an ordinance requiring approval by the  
26 planning board of a site plan for which the water supply is to be  
27 provided by a public water system drawn from an aquifer situated in  
28 an area of critical water supply concern shall not be granted unless the  
29 applicant provides to the approving authority a certification obtained  
30 from the owner or operator of the public water system that the system  
31 is capable, or will be capable at the time of completion of the proposed  
32 development, of providing a safe and dependable yield of water for the  
33 proposed development. An applicant may fulfill this requirement by  
34 entering into an agreement with an alternative provider in the event  
35 that the public water system has insufficient capacity to serve the  
36 development.

37 If, in the department's judgment, the future availability of a safe and  
38 dependable water supply may be demonstrated for less than a 10-year  
39 period, then the municipality may adopt the shorter period as the  
40 certification period.

41 The bill would also provide an ordinance requiring approval by the  
42 planning board of a site plan for a proposed development for which the  
43 water supply is provided by a source other than a public water system  
44 drawn from an aquifer situated in an area of critical water supply  
45 concern shall not be granted unless the applicant: (1) provides to the  
46 approving authority certification from the owner or operator of the

1 public water supply system which supplies the municipality that the  
2 system is capable or will be capable at the time of completion of the  
3 proposed development, a dependable yield of water to meet the needs  
4 of the proposed development for 10 years after completion of the  
5 development without negatively affecting the water supply or quality  
6 of any other existing development, or of a stream or freshwater  
7 wetland, located within a radius of 1,000 feet of the proposed  
8 development; and (2) posts with the municipality a bond, irrevocable  
9 letter of credit or other guarantee acceptable to the approving  
10 authority and effective for a period of 10 years from the date of final  
11 approval of the site plan, which shall be in an amount sufficient to  
12 ensure provision of a safe and dependable water supply for the  
13 proposed development, and for any other existing development located  
14 within a radius of 1,000 feet thereof, in the event (a) the water supply  
15 for the proposed development proves to be not safe or dependable for  
16 any reason, or (b) the use of the water supply for the proposed  
17 development negatively affects the water supply or quality of any other  
18 existing development within a radius of 1,000 feet of the proposed  
19 development. The approving authority shall determine the amount of  
20 any such bond or other guarantee.

21 The bill would not apply to any application for: (1) minor site plan  
22 approval; (2) final approval of a site plan for a proposed development  
23 for which preliminary approval of the site plan was granted prior to the  
24 enactment date of the bill.

25 Finally, the bill would provide that, upon request by an applicant for  
26 a certification, the owner or operator of a public water system shall,  
27 within 30 days of receiving the request or within such other time  
28 period as may be agreed to by the owner or operator of the system and  
29 the applicant: (a) evaluate the capacity of the public water system to  
30 provide a safe and dependable yield of water for the proposed  
31 development as set forth in the request, and (b) based upon that  
32 evaluation, either issue, issue with conditions, or decline to issue the  
33 requested certification, and state the reasons therefor. The owner or  
34 operator of a public water system would be authorized to require an  
35 applicant to supply such information as the owner or operator of the  
36 system deems necessary in order to respond to any such request for a  
37 certification. Any cost associated with the certification shall be borne  
38 by the applicant.

39

40

41

42

43 Requires proof of safe and adequate water supply as condition of  
44 development approval pursuant to "Municipal Land Use Law."