

SENATE, No. 72

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator CASEY

1 AN ACT concerning water supply management, and amending and
2 supplementing P.L.1981, c.262.

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

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7 1. Section 6 of P.L.1981, c.262 (C.58:1A-6) is amended to read as
8 follows:

9 6. a. The department in developing the permit system established by
10 P.L.1981, c.262 (C.58:1A-1 et al.) shall:

11 (1) Permit privileges previously allowed pursuant to lawful
12 legislative or administrative action, except that the department may,
13 after notice and public hearing, limit the exercise of these privileges to
14 the extent currently exercised, subject to contract, or reasonably
15 required for a demonstrated future need. All diversion permits issued
16 by the Water Policy and Supply Council prior to August 13, 1981 shall
17 remain in effect until modified by the department pursuant to
18 P.L.1981, c.262 (C.58:1A-1 et al.). Persons having or claiming a right
19 to divert more than 100,000 gallons of water per day pursuant to prior
20 legislative or administrative action, including persons previously
21 exempted from the requirement to obtain a permit, shall renew that
22 right by applying for a diversion permit, or water usage certification,
23 as the case may be, no later than February 9, 1982. Thereafter, the
24 conditions of the new diversion permit or water usage certification
25 shall be deemed conclusive evidence of such previously allowed
26 privileges.

27 (2) Require any person diverting 100,000 or more gallons of water
28 per day for agricultural or horticultural purposes to obtain approval of
29 the appropriate county agricultural agent of a five-year water usage
30 certification program. This approval shall be based on standards and
31 procedures established by the department. This program shall include
32 the right to construct, repair or reconstruct dams or other structures,

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 the right to divert water for irrigation, frost protection, harvesting and
2 other agriculturally-related purposes, and the right to measure the
3 amount of water diverted by means of a log or other appropriate
4 record, and shall be obtained in lieu of any permit which would
5 otherwise be required by P.L.1981, c.262 (C.58:1A-1 et al.).

6 (3) Require any person diverting more than 100,000 gallons per
7 day of any waters of the State or proposing to construct any building
8 or structure which may require a diversion of water to obtain a
9 diversion permit. Prior to issuing a diversion permit, the department
10 shall afford the general public with reasonable notice of a permit
11 application, and with the opportunity to be heard thereon at a public
12 hearing held by the department.

13 b. In exercising the water supply management and planning
14 functions authorized by P.L.1981, c.262 (C.58:1A-1 et al.),
15 particularly in a region of the State where excessive water usage or
16 diversion present undue stress, or wherein conditions pose a significant
17 threat to the long-term integrity of a water supply source, including a
18 diminution of surface water supply due to excess groundwater
19 diversion, the commissioner shall, after notice and public hearing as
20 provided by and required pursuant to the "Administrative Procedure
21 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), designate that region as
22 an area of critical water supply concern.

23 In designating an area of critical water supply concern, the
24 department shall be required to demonstrate that the specific area is
25 stressed to a degree which jeopardizes the integrity and viability of the
26 water supply source or poses a threat to the public health, safety, or
27 welfare. This designation shall conform to and satisfy the criteria of an
28 area of critical water supply concern as defined in rules and regulations
29 adopted by the department pursuant to the "Administrative Procedure
30 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

31 Those specific areas previously designated by the department as
32 water supply critical and margin areas, considered as Depleted or
33 Threatened Zones, respectively, prior to the effective date of
34 P.L.1993, c.202 shall be considered to be areas of critical water supply
35 concern for the purposes of P.L.1981, c.262 (C.58:1A-1 et al.) or
36 P.L.1993, c.202 (C.58:1A-7.3 et al.).

37 In designating an area of critical water supply concern, the
38 department shall be required to provide for one or more State funding
39 sources to be utilized in financing the capital costs of implementing
40 adopted water supply management alternatives within that specific
41 area.

42 c. In designated areas of critical water supply concern, the
43 department, in consultation with affected permittees and local
44 governing bodies and after notice and public hearing, shall:

- 45 (1) study water supply availability;
46 (2) estimate future water supply needs;

1 (3) identify appropriate and reasonable alternative water supply
2 management strategies;

3 (4) select and adopt appropriate water supply alternatives; [and]

4 (5) identify one or more State funding sources to be utilized in
5 financing the capital costs of implementing adopted water supply
6 management alternatives; and

7 (6) require affected permittees to prepare water supply plans
8 consistent with the adopted water supply management alternatives.

9 d. Following implementation of the adopted water supply
10 management alternatives, the department shall monitor water levels
11 and water quality within the designated area of critical water supply
12 concern to determine the effectiveness of the alternative water supply
13 management strategies selected. If the department determines that the
14 alternatives selected are not effective in protecting the water supply
15 source of concern, the department may revise the designation and
16 impose further restrictions in accordance with the procedures set forth
17 in this section. The results of all monitoring conducted pursuant to this
18 section shall be reported to all affected permittees on an annual basis.

19 e. Nothing in P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993,
20 c.202 (C.58:1A-7.3 et al.) shall prevent the department from including,
21 or require the department to include, the presently non-utilized
22 existing privileges in any new, modified or future diversion permit
23 issued to the present holder of these privileges, except as otherwise
24 expressly provided in subsection b. of section 7 of P.L.1981, c.262
25 (C.58:1A-7).

26 (cf: P.L.1993, c.202, s.1)

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28 2. Section 9 of P.L.1981, c.262 (C.58:1A-9) is amended to read as
29 follows:

30 9. a. The Board of [Regulatory Commissioners] Public Utilities
31 shall fix just and reasonable rates for any public water supply system
32 subject to its jurisdiction, as may be necessary for that system to
33 comply with an order issued by the department or the terms and
34 conditions of a permit issued pursuant to P.L.1981, c.262 (C.58:1A-1
35 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.).

36 b. In any rate case pending before or on appeal from the Board of
37 Public Utilities as of the effective date of P.L.1995, c. (C. _____
38)(pending in the Legislature as this bill), which provides for the
39 inclusion in the rates of a public water supply system the capital costs
40 of implementing adopted water supply management alternatives in an
41 area of critical water supply concern designated by the Department of
42 Environmental Protection pursuant to section 6 of P.L.1981, c.262
43 (C.58:1A-6), the board shall not approve a rate increase to recover the
44 capital costs of implementing adopted water supply alternatives
45 extending over a time period less than the average useful life of the
46 water supply facilities developed pursuant thereto, or 30 years,

1 whichever is greater.

2 c. Any rate case providing for the inclusion in the rates of a public
3 water supply system the capital costs of implementing adopted water
4 supply management alternatives in an area of critical water supply
5 concern designated by the Department of Environmental Protection
6 pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6), which is on
7 appeal for review by the Superior Court, Appellate Division, pursuant
8 to R.S.48:2-46 as of the effective date of P.L.1995, c. (C. _____)
9 (pending in the Legislature as this bill), shall be remanded by the court
10 for reconsideration by the board based upon the standards set forth in
11 subsection b. of this section and the provisions of section 6 of
12 P.L.1981, c.262 (C.58:1A-6).

13 (cf: P.L.1993, c.202, s.8)

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15 3. Section 13 of P.L.1981, c.262 (C.58:1A-13) is amended to read
16 as follows:

17 13. a. [Within 180 days of the effective date of this act] No later
18 than February 9, 1982, the department shall prepare and adopt the
19 New Jersey Statewide Water Supply Plan, which plan shall be revised
20 and updated at least once every 5 years.

21 b. The plan shall include, but need not be limited to, the following:

22 (1) An identification of existing Statewide and regional ground and
23 surface water supply sources, both interstate and intrastate, and the
24 current usage thereof;

25 (2) Projections of Statewide and regional water supply demands for
26 the duration of the plan;

27 (3) Recommendations for improvements to existing State water
28 supply facilities, the construction of additional State water supply
29 facilities, and for the interconnection or consolidation of existing water
30 supply systems; [and]

31 (4) An identification of one or more State funding sources to be
32 utilized in financing the capital costs of implementing adopted water
33 supply management alternatives within a designated area of critical
34 water supply concern; and

35 (5) Recommendations for legislative and administrative actions to
36 provide for the maintenance and protection of watershed areas.

37 c. Prior to adopting the plan, the department shall:

38 (1) Prepare and make available to all interested persons a proposed
39 plan;

40 (2) Conduct public meetings in the several geographic areas of the
41 State on the proposed plan; and

42 (3) Consider the comments made at these meetings, make any
43 revisions to the proposed plan as it deems necessary, and adopt the
44 plan.

45 (cf: P.L.1981, c.262, s.13)

1 New Jersey, it is entirely proper for the State government to assume
2 the capital costs of State-mandated replacement water supply projects
3 such as the Tri-County Water Supply Project.

4 This bill would provide that whenever a public water supply system
5 capital cost rate case (such as that filed by the New Jersey-American
6 Water Company to recover its investment in the Tri-County Water
7 Supply Project) is pending before or on appeal from the Board of
8 Public Utilities, the Board could not approve a capital cost recovery
9 rate based on a timeframe shorter than the average useful life of the
10 water supply facilities developed under the project, or 30 years,
11 whichever is greater. This provision is intended to ensure that affected
12 ratepayers in areas of critical water supply concern are not subjected
13 to unreasonable debt repayment schedules.

14 Whenever any such a rate case is on appeal for review by the
15 Superior Court, Appellate Division, the bill provides that the case must
16 be remanded by the court for reconsideration by the Board based upon
17 these standards.

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22 Provides for State assumption of costs of certain water supply projects
23 in critical water supply areas.