

27: 7-21.1

LEGISLATIVE HISTORY CHECKLIST

(State to pay damages to homeowners for dry wells)

HJSA 27:7-21.1

LAWS OF 1977

CHAPTER 453

Bill No. A1989

Sponsor(s) Kozloski

Date Introduced May 27, 1976

Committee: Assembly State Gov't, Federal & Interstate Relations

Senate Transportation & Communications

Amended during passage Yes

~~xxx~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly May 2, 1977

Senate Sept. 19, 1977

Date of approval March 2, 1978

Following statements are attached if available:

Sponsor statement Yes ~~xxx~~

Committee Statement: Assembly Yes ~~xxx~~

Senate Yes ~~xxx~~

Fiscal Note Yes ~~xxx~~

Veto Message ~~xxx~~ No

Message on signing ~~xxx~~ No

Following were printed:

Reports ~~xxx~~ No

Hearings ~~xxx~~ No

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[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 1989

STATE OF NEW JERSEY

INTRODUCED MAY 27, 1976

By Assemblyman KOZLOSKI

Referred to Committee on State Government, Federal and
Interstate Relations

AN ACT concerning payment of compensation for damage to ***[wa-
ter wells]*** **certain bodies and supplies of water** caused by
State highway projects in certain cases ***[and]*** **,** amending
section 1 of P. L. 1942, c. 22 ***[(C. 27:7-21.1 et seq.)]*** **and
repealing section 2 thereof**.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 1 of P. L. 1942, c. 22 (C. 27:7-21.1) is amended to
2 read as follows:

3 1. Whenever ***[as a result of]*** the construction or maintenance
4 undertaken by the Department of Transportation of a State high-
5 way shall result in the destruction or contamination ***[to the extent**
6 **of rendering the water supply below standards for potable water**
7 **as promulgated by the New Jersey Department of Health]*** of a
8 well ***[used for potable water supply upon]*** **, spring, pond, reser-*
9 *voir or other like collection, body, store or supply of water which*
10 *is necessary for the use or enjoyment of** private property or pub-
11 lic, ***[which well gave an adequate and satisfactory supply of water**
12 **prior to the construction or maintenance by the Department of**
13 **Transportation with respect to the said State highway,]*** and
14 whenever the State Highway Engineer shall determine that the
15 construction or maintenance by the Department of Transportation
16 with respect to the said State highway, was the primary cause of
17 ***[the]*** **said** destruction or contamination ***[of the well and that**
18 **it is necessary to construct a new well or to provide a substitute**
19 **potable water supply]*** and shall evidence such determination by
20 a proper certificate so stating, the Commissioner of the Department

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

21 of Transportation, in order to relieve the owner of a serious hard-
 22 ship, is authorized **to compensate said owner for said destruction*
 23 *or contamination, or, where the collection, body, store or supply*
 24 *of water is used for potable water supply,** to pay such part of the
 25 cost of constructing a new ***[well]*** **,** or providing a substitute*,*
 26 potable water supply as, in the opinion of the Commissioner of the
 27 Department of Transportation, the principles of right and justice
 28 may require. The Commissioner of the Department of Transporta-
 29 tion is authorized to make such payment only in the event that a
 30 new ***[well]*** or substitute potable water supply is actually con-
 31 structed or otherwise secured and under no circumstance shall he
 32 authorize any payment in excess of the actual cost of construction
 33 or otherwise securing a substitute potable water supply.

34 **The State Highway Engineer shall make said determination*
 35 *and certification to the commissioner within 45 days, and the*
 36 *commissioner shall make said determination as to construction*
 37 *or compensation within 90 days, of the receipt of a complaint.*
 38 *If the commissioner fails to make a determination within the said*
 39 *90 days, the claim for compensation shall be deemed to be approved*
 40 *and shall constitute an obligation of the commissioner to pay such*
 41 *claim.*

42 *If the Commissioner of the Department of Transportation denies*
 43 *a claim for compensation, the Commissioner of Environmental*
 44 *Protection, upon request of the owner, shall cause a geological*
 45 *investigation to be made by the State Geologist. The Commissioner*
 46 *of Environmental Protection shall certify the results of said in-*
 47 *vestigation to the Commissioner of the Department of Transporta-*
 48 *tion, and if it is certified that the State highway construction*
 49 *caused damage to the collection, body, store or supply of water,*
 50 *the Commissioner of the Department of Transportation shall make*
 51 *such payment of compensation.**

52 If municipal or private water companies have water facilities
 53 and water mains within a reasonable distance from the property
 54 affected by reason of the destruction of ***[the]*** **a** potable water
 55 supply so that the cost of extending the water mains to the property
 56 so affected would be less or substantially equal to the cost of con-
 57 structing a new ***[well or wells]*** **potable water supply**, the
 58 Commissioner of the Department of Transportation, in lieu of
 59 constructing a new ***[well]*** **potable water supply**, may pay the
 60 cost of extending such water main to the property so affected.

61 Any funds heretofore or hereafter appropriated to the Depart-
 62 ment of Transportation for the purpose of acquiring right-of-way
 63 may be used to make payments under this act. When several
 64 ~~["wells"]~~ *potable water supplies* have been destroyed by the
 65 same State highway construction or maintenance by the Depart-
 66 ment of Transportation and the Commissioner of the Department
 67 of Transportation deems it to be in the best interests of the State,
 68 the Commissioner of the Department of Transportation is autho-
 69 rized to enter into a contract or contracts for the purpose of actually
 70 constructing new ~~["wells"]~~ **,* or providing ~~["the"]~~ substitute*,**
 71 potable water ~~["supply"]~~ *supplies* or for the purpose of extend-
 72 ing the water facilities or laterals for the property or properties
 73 affected. Chapter 34 of Title 52 of the Revised Statutes shall apply
 74 to any contracts which may be let for any construction referred to
 75 herein or the cost of extending the water mains together with the
 76 lateral under this act unless immediate relief is required to abate
 77 a nuisance or condition detrimental to the health of the persons
 78 utilizing said ~~["wells"]~~ *potable water supplies* in which case
 79 the contract may be awarded. ~~["The"]~~ *["Except as provided in sec-*
 80 *tion 2 of this act, the* judgment of the Commissioner of the Depart-
 81 ment of Transportation on the question of whether or not any
 82 compensation shall be made under this act shall be final. ~~"]~~*

1 ~~["2. Section 2 of P. L. 1942, c. 22 (C. 27:7-21.2) is amended to~~
 2 read as follows:

3 2. Nothing contained in this act shall be construed to apply to
 4 any case where a part of the lands of a property owner upon which
 5 a well is located has been taken for the construction of the State
 6 highway which is claimed to be responsible for the damage. Nothing
 7 contained in this act shall be construed to apply to any well that
 8 does not go dry within ~~["3 months"]~~ *2 years* from the date of the
 9 excavation alleged to have caused the damage, or to any well
 10 located more than 450 feet from the right of way line of the State
 11 highway in question *unless, as to any well located more than 450*
 12 *feet from the right of way, the Commissioner of Environmental*
 13 *Protection on the basis of a geological investigation, made by the*
 14 *State Geologist, certifies to the Commissioner of Transportation*
 15 *that the State highway construction caused the damage, or to any*
 16 well that was not in existence at the time that the contract was let
 17 for construction of the State highway in question. The ~~["State~~
 18 ~~Highway"]~~ *Commissioner of Transportation* is not empowered to
 19 make payment on any claim that is predicated upon the destruction

20 of any well or wells prior to January 1, **[1941]** 1973. Upon the
21 request of the owner of lands on which a well, located more than
22 450 feet from the right of way, is alleged to have been damaged by
23 State highway construction work, the Commissioner of Environ-
24 mental Protection shall cause a geological investigation to be made
25 by the State Geologist and shall report or certify the results thereof
26 to the owner and to the Commissioner of Transportation.]*

1 *2. Section 2 of P. L. 1942, c. 22 (C. 27:7-21.2) is repealed.*

1 3. This act shall take effect immediately.

8 does not go dry within **[3 months]** *2 years* from the date of the
 9 excavation alleged to have caused the damage, or to any well
 10 located more than 450 feet from the right of way line of the State
 11 highway in question *unless, as to any well located more than 450*
 12 *feet from the right of way, the Commissioner of Environmental*
 13 *Protection on the basis of a geological investigation, made by the*
 14 *State Geologist, certifies to the Commissioner of Transportation*
 15 *that the State highway construction caused the damage, or to any*
 16 well that was not in existence at the time that the contract was let
 17 for construction of the State highway in question. The **[State**
 18 **Highway]** *Commissioner of Transportation* is not empowered to
 19 make payment on any claim that is predicated upon the destruction
 20 of any well or wells prior to January 1, **[1941]** *1973. Upon the*
 21 *request of the owner of lands on which a well, located more than*
 22 *450 feet from the right of way, is alleged to have been damaged by*
 23 *State highway construction work, the Commissioner of Environ-*
 24 *mental Protection shall cause a geological investigation to be made*
 25 *by the State Geologist and shall report or certify the results thereof*
 26 *to the owner and to the Commissioner of Transportation.*

1 3. This act shall take effect immediately.

STATEMENT

State highway construction during the past 3 years has caused a small number of wells to go dry, particularly in the area of Route 18 in Colts Neck, Monmouth County. The reason the wells have gone dry is due to the excavation for the Route 18 roadbed which resulted in a truncation of the aquifer and a consequent lowering of the water table. The homeowners whose wells were affected have paid up to \$2,800.00 each to restore their wells. The State is unable to reimburse these homeowners for the damage it caused because of the overly strict wording of the present law which was enacted in 1942. This bill amends the present law so as to bring it in line with present knowledge in hydrogeology, and to permit the State to pay for any damage it has caused. The burden of proof that the damage was caused by the State will remain on the homeowner.

A1989 (1977)

ASSEMBLY STATE GOVERNMENT, FEDERAL
AND INTERSTATE RELATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1989

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 6, 1976

The purpose of this bill is to remedy an inequity in existing law concerning the payment of compensation for damage to water wells caused by State highway projects. At the present time, the Commissioner of Transportation is authorized to pay for the construction of a new well, or the provision of a new water supply, when the State Highway Engineer determines that a well used for potable water supply has been destroyed or contaminated as the result of State highway construction or maintenance. Such compensation, however, is limited to property owners whose wells go dry within three months from the date of excavation for a State highway project and are located within 450 feet of "the right of way line of the State highway in question"

Under Assembly Bill No. 1989 as introduced, *any* property owner whose well goes dry within two years of the excavation for a State highway can seek compensation from the State for damages, provided, however, that the destruction has occurred since January 1, 1973. If the well is located more than 450 feet from the right of way, the Commissioner of Environmental Protection must first certify to the Commissioner of Transportation, on the basis of a geological investigation made by the State Geologist, that the State highway project caused the damage.

The committee amended the bill so that it conforms to another bill presently pending in the General Assembly, the Senate Committee Substitute for Senate Bill No. 874. This was done at the request of the sponsor for the purpose of his cosponsorship of the Senate bill pursuant to Assembly Rule 15:20. As amended, Assembly Bill No. 1989 authorizes the Commissioner of Transportation to compensate a property owner for the "destruction or contamination" not simply of a well used for potable water supply, as at present, but of "a well, spring, pond, reservoir or other like collection, body, store or supply of water which is necessary for the use or enjoyment of private property or public" The bill as amended provides that the State Highway Engineer shall make his determination and certification of the damage within 45 days

of the receipt of a complaint, and the Commissioner of Transportation shall make his determination within 90 days of the receipt of a complaint regarding compensation for any destruction or contamination or for the construction of a new or substitute potable water supply.

The bill as amended further provides an appeals procedure if the Commissioner of Transportation denies a claim for compensation. In such a case, the Commissioner of Environmental Protection, upon request of the property owner, shall cause a geological investigation to be made by the State Geologist and shall certify the results of the investigation to the Commissioner of Transportation. If the determination is that the damage was indeed caused by State highway construction, the Commissioner of Transportation is mandated to make compensation to the property owner.

Under the committee's amendments, reference to a particular time period during which destruction occurred or an area within which such destruction occurred is eliminated because, it seems, such criteria are no longer meaningful. The techniques of hydrogeological investigation are sufficiently sophisticated to ascertain whether or not damage or contamination to wells and water supplies is actually caused by State highway construction, whatever the distance a well is from the highway and at whatever time any destruction occurs.

SENATE TRANSPORTATION AND COMMUNICATIONS
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1989

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STATE OF NEW JERSEY

DATED: JUNE 27, 1977

This legislation concerns the payment of compensation for damage to certain bodies and supplies of water caused by State highway projects. It provides that whenever the construction or maintenance of a State highway by the Department of Transportation results in the destruction or contamination of a well, spring, pond, reservoir or other like body of water necessary for the use or enjoyment of private or public property, the Commissioner is authorized to compensate the owner for such destruction or contamination. In cases where the body of water is used for a potable water supply, the Commissioner is authorized to pay, in whole or in part, for the construction of a new, or make provision for a substitute, potable water supply.

The State Highway Engineer shall, within 45 days of the receipt of a complaint, determine whether construction or maintenance of a State highway was the primary cause of such destruction or contamination and shall forward such determination to the Commission. The Commissioner, within 90 days of the receipt of a complaint, shall make a determination as to construction or compensation. If the Commissioner fails to make a determination within 90 days, the claim for compensation shall be deemed to be approved.

If the Commissioner of the Department of Transportation shall deny a claim for compensation, the owner may appeal to the Commissioner of the Department of Environmental Protection who shall cause a geographical investigation to be made by the State Geologist. If it is determined that State highway construction caused damage to the body of water, the Commissioner of Transportation shall compensate the owner.

Reference to a particular time period during which damage occurred or an area within which such damage occurred has been eliminated from this act.

FISCAL NOTE TO
ASSEMBLY, No. 1989

STATE OF NEW JERSEY

DATED: SEPTEMBER 16, 1977

The Official Copy Reprint of Assembly Bill No. 1989 provides payment of compensation for damage to water wells caused by State highway projects.

The Department of Transportation estimates that enactment of this legislation would require a State expenditure of \$44,000.00 for funding the first year and \$22,000.00 yearly thereafter.

Previously the Department of Transportation had provided estimates for funding of Senate Bill No. 874 which dealt with the same subject. The estimates for the Official Copy Reprint of Assembly Bill No. 1989 are increased due to the elimination of distance limits, increase in time limitations and environmental considerations stimulated by expansion of coverage to include additional bodies of water.

The department wants it understood that adequate historical data are not available to make precise estimate of costs involved. As of 1976, approximately 10 known claims are on record for well damages that will now be covered by this legislation.

The fiscal note is based on an estimate of costs rather than actual cost information.

In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.