

58:16A-1 et al

LEGISLATIVE HISTORY CHECKLIST

HJSA 58:16A-1 et al. ("Flood Control Facilities Act")

LAWS OF 1979 CHAPTER 358

Bill No. S1492

Sponsor(s) Feldman

Date Introduced Dec. 4, 1978

Committee: Assembly Energy and Natural Resources

Senate Energy and Environment

Amended during passage Yes Amendments during passage denoted by asterisks

Date of Passage: Assembly Dec. 10, 1979

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Following statements are attached if available:

Sponsor statement Yes

Committee Statement: Assembly Yes

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Fiscal Note No

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Message on signing Yes

Following were printed:

Reports No

Hearings No

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SENATE, No. 1492

STATE OF NEW JERSEY

INTRODUCED DECEMBER 4, 1978

By Senator FELDMAN

Referred to Committee on Energy and Environment

AN ACT to amend the title of "An act authorizing the State of New Jersey to participate in a Federal program of flood control, making an appropriation for the same purpose," approved September 8, 1948 (P. L. 1948, c. 351; C. 58:16A-1 et seq.) so that the same shall read "An act authorizing the Department of Environmental Protection to acquire, construct and operate flood control facilities," and to amend, supplement and repeal portions of the body of said act and repealing parts of the statutory law.

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

1 1. The title of P. L. 1948, c. 351 is amended to read as follows:

2 AN ACT authorizing the [State of New Jersey to participate
3 in a Federal program of flood control, making an appropriation
4 for the same purpose.] *Department of Environmental Protection*
5 *to acquire, construct and operate flood control facilities.*

1 2. Section 1 of P. L. 1948, c. 351 (C. 58:16A-1) is amended to
2 read as follows:

3 *a. This act shall be known and may be cited as the "State Flood*
4 *Control Facilities Act."*

5 *b. It is hereby declared that the State deems it advisable to*
6 *participate in a [Federal] program of flood control in the State*
7 *of New Jersey in the manner hereinafter described.*

1 3. (New section) The Commissioner of Environmental Protection
2 is authorized to plan, acquire, construct and operate flood control
3 facilities upon concluding that the public safety, health and welfare
4 can best be assured by the acquisition or construction of such a
5 facility and that the flood control facility will contribute to the
6 overall management of the surface water of the river basin or

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

7 subbasin to be affected by such a facility. The commissioner may
8 construct any such facility either separately or in conjunction with
9 the Federal Government or with any municipality, county or any
10 agency or instrumentality of any of the above.

1 4. Section 5 of P. L. 1948, c. 351 (C. 58:16A-5) is amended to
2 read as follows:

3 5. The **[commissioner of conservation]** *Commissioner of En-*
4 *vironmental Protection* is hereby authorized and directed for and
5 in behalf of the State to carry out the State's participation in a
6 Federal program of flood control, if and when such program shall
7 be authorized by law, to sign all necessary agreements, and to do
8 and perform all necessary acts in connection therewith to consum-
9 mate the intent and purpose running with the approval by the
10 Federal Government of flood control projects in the State of New
11 Jersey and the allotment of moneys for such projects, if, as and
12 when made by the Federal Government. He is authorized and em-
13 powered, notwithstanding any other law of this State, to carry
14 out the provisions of this act and to perform and do such other
15 and further acts not hereby specifically provided in this act as
16 may be necessary to carry out the projects herein authorized and
17 so as to conform with the act and the rules, regulations and require-
18 ments of the Federal Government made to govern the expenditures.
19 Work, except work which shall be done under and pursuant to
20 section 7 of this act, may be carried out by contract or by depart-
21 ment forces or by a combination of these two methods. However,
22 if the commissioner **[of conservation]** deems it to be in the interest
23 of the public, he may agree with a **[municipal corporation]** *local*
24 *government* affected by such work, to have its contractor or its
25 forces and equipment perform such work, upon such terms as the
26 commissioner **[of conservation]** may deem advantageous to the
27 State. The commissioner **[of conservation]** shall exercise his
28 powers and duties with respect to the said flood control projects
29 in a manner that will comply with any Act of Congress applicable
30 thereto and any rules and regulations made and promulgated by
31 virtue thereof.

1 5. Section 6 of P. L. 1948, c. 351 (C. 58:16A-6) is amended to
2 read as follows:

3 6. The commissioner **[of conservation]** shall carry out the
4 relocation and reconstruction of streets, sidewalks, public grounds,
5 parks, cemeteries, water supply systems, sewer systems and light-
6 ing systems of municipal corporations, county roads, and town and
7 township highways made necessary by the construction of
8 **[Federal]** *State* flood control projects. The total cost of such

9 relocation and reconstruction for a flood control project shall be
10 paid by the State.

1 6. Section 7 of P. L. 1948, c. 351 (C. 58:16A-7) is amended to
2 read as follows:

3 7. The governing body of any municipality *or county or any*
4 *agency or instrumentality thereof* may participate with the State
5 of New Jersey in a **【Federal】** program of flood control and, in such
6 case, the cost to be borne by the **【municipality】** *local government*
7 shall be determined in written agreement executed between the
8 commissioner **【of conservation】** and the **【municipality】** *local gov-*
9 *ernment*. The money so required shall be paid by *the State to such*
10 *local government or by such 【municipality】 local government* to
11 the State and, *in the latter case*, shall be raised by tax or pursuant
12 to the local finance law, or in accordance with any local charter
13 or law, as the case may be. All such funds *receivable by the State*
14 shall be deposited with the State Treasurer and shall be payable
15 on the audit and warrant of the Treasurer on vouchers approved
16 by the commissioner **【of conservation】**.

1 7. Section 8 of P. L. 1948, c. 351 (C. 58:16A-8) is amended to
2 read as follows:

3 8. Whenever the commissioner **【of conservation】** shall determine
4 that the construction of a **【Federal】** flood control project requires
5 the removal, relocation and reconstruction of any plants, works,
6 holders, pumping stations, pipes, mains, tunnels, bridges, tracks,
7 generating or switching stations, substations, transformers,
8 conduits, cables, wires, towers, poles, or other structures, equip-
9 ment, apparatus, or appurtenances (herein called "facilities") of
10 any public utility, as defined in R. S. 48:2-13, the public utility
11 owning or operating such facilities shall remove, relocate and
12 reconstruct the same, upon the order of the commissioner **【of con-**
13 **servation】**, and the total cost and expense of the removal, reloca-
14 tion and reconstruction of such facilities, including the cost of
15 installing such facilities in a new location or new locations, and
16 the cost of any lands or any rights or interests in lands, or any
17 other rights, required to accomplish such removal, relocation and
18 reconstruction, shall be considered as a part of the cost of the
19 work. In case of any such removal, relocation and reconstruction
20 of facilities, as aforesaid, the public utility owning or operating
21 the same, its successors or assigns, may maintain and operate such
22 facilities, with the necessary appurtenances, in the new location
23 or new locations for as long a period and upon the same terms
24 and conditions as it had the right to maintain and operate such
25 facilities in their former location. No order of the commissioner

26 **of conservation** for the removal, relocation and reconstruction
 27 of any such facilities shall be effective unless such order shall have
 28 been approved by the Board of Public **Utility Commissioners**
 29 *Utilities*.

1 8. Section 9 of P. L. 1948, c. 351 (C. 58:16A-9) is amended to
 2 read as follows:

3 9. (1) **Commissioner of conservation** *The commissioner*, for
 4 the people of the State of New Jersey, shall acquire any property
 5 or interest therein necessary for purposes connected with the flood
 6 control project by gift, devise or purchase, or by condemnation in
 7 the manner provided **in chapter 1 of the Title Eminent Domain**
 8 (20:1-1 et seq.), and enter upon and take property in advance of
 9 making compensation therefor where for any reason he cannot
 10 acquire the property by agreement with the owner. Upon the
 11 commissioner of conservation exercising the right of condemnation
 12 and entering upon and taking land in advance of making compensa-
 13 tion therefor, he shall present a petition and proceedings shall be
 14 had to fix the compensation, to be paid to the owner, as provided
 15 in said chapter 1 of the Title Eminent Domain **by the "Eminent**
 16 *Domain Act of 1971," (P. L. 1971, c. 361; C. 20:3-1 et seq.)*.

17 (2) Awards and judgments after condemnation proceedings shall
 18 be paid out of State treasury from moneys appropriated for
 19 purposes connected with flood control projects.

20 (3) The expense of such acquisitions including the cost of making
 21 surveys, and preparing descriptions and maps of property to be
 22 acquired, serving notices of appropriation, making appraisals and
 23 agreements and of searches ordered and examinations and readings
 24 of title, and expenses incurred by the commissioner or Attorney
 25 General in proceedings for removal of owners and occupants, shall
 26 be deemed part of the cost of such flood control projects.

27 (4) Notwithstanding the provisions of any general, special or
 28 local law, the commissioner **of conservation**, his officers or agents,
 29 and the officers, agents or contractor of the United States when
 30 engaged on flood control projects, may enter upon property for the
 31 purpose of making surveys, test pits, test borings, or other investi-
 32 gations. Claim for any damage caused by such work may be ad-
 33 justed by agreement by the commissioner **of conservation** with-
 34 out taking such property, and payment shall be made in like manner
 35 as provided in this act for property taken for flood control purposes.

1 9. Section 10 of P. L. 1948, c. 351 (C. 58:16A-10) is amended to
 2 read as follows:

3 10. The commissioner **of conservation** (a) may determine
 4 whether any property taken for any of the purposes connected

5 with flood control projects pursuant to this act may be leased,
6 sold or exchanged on terms beneficial to the State, and in all cases
7 of such determination he may lease, sell or exchange such property;
8 in order to carry any such lease, sale or exchange into effect the
9 commissioner **[of conservation]** is hereby authorized to execute
10 and deliver, in the name of the people of the State, a quit-claim
11 or lease of such property.

12 (b) May also convey to the United States for flood control
13 purposes all right, title and interest of the State in and to any
14 property heretofore or hereafter so taken for any of such purposes
15 for which reimbursement by the United States is made in accord-
16 ance with section 2 of the Federal Flood Control Act of 1938
17 being public, numbered 761, Seventy-Fifth Congress, and including
18 improvements made thereon for such purposes. Such conveyance
19 shall be by deed or instrument of quit-claim, executed by the com-
20 missioner **[of conservation]** in the name of the people of the State,
21 delivered to the Federal authority having jurisdiction. This para-
22 graph shall not prevent reservations, if any, in such a conveyance,
23 agreed to by such commissioner and Federal authority, to protect
24 leases or easement, if any, theretofore lawfully made or created
25 by such commissioner. Whenever the United States, acting by and
26 through said Federal authority having jurisdiction, shall cause
27 to be filed in the office of the Secretary of State of this State, a
28 duplicate original of the deed or instrument of conveyance to the
29 United States of any such property for the purposes therein
30 specified, such jurisdiction as may be required for flood control
31 purposes is thereupon ceded to the United States over the property
32 described in said deed or instrument of conveyance, during the
33 time that the United States shall be or remain the owner thereof
34 and shall use such property for flood control purposes.

35 (c) Is hereby authorized to agree with the United States as to
36 the value of the property taken and for legal damages caused by
37 any such taking thereof, as and for reimbursement by the United
38 States and the commissioner **[of conservation]** is authorized to
39 convey such property to the United States, in the manner herein
40 provided, specifying in such conveyance that the consideration
41 stated therein is the agreed value of such property and legal
42 damages, and is in full reimbursement thereof by the United States.

1 10. Section 12 of P. L. 1948, c. 351 (C. 58:16A-12) is amended
2 to read as follows:

3 12. If the **[Commissioner of Conservation and Economic De-**
4 **velopment]** *commissioner* shall determine subsequent to the taking

5 of a temporary easement right in property that the purposes for
 6 which such easement right was acquired have been accomplished
 7 and that the use and occupancy of said property for flood control
 8 purposes are no longer necessary, and that, therefore, the term
 9 of such easement should be further limited, or if the taking of such
 10 easement was for an indefinite period, that such period should be
 11 fixed and determined, or that the period of such easement has by
 12 its terms expired, he shall make his certificate that the use and
 13 occupancy of such property for flood control purposes are no longer
 14 necessary, that the property in which such easement right was
 15 acquired is surrendered back to the affected owner of said property
 16 and that such easement rights are thereupon terminated, released
 17 and extinguished. The said commissioner shall cause a copy of
 18 such certificate to be filed in the office of the Clerk of the Superior
 19 Court. Upon the filing of such certificate in the office of the Clerk
 20 of the Superior Court all rights acquired by the State in such
 21 property shall cease and determine. The said commissioner shall
 22 cause a copy of such certificate together with notice of the filing
 23 thereof in the office of the Clerk of the Superior Court to be mailed
 24 to the owner of the property affected, as certified by the Attorney
 25 General, if the place of residence of such owner is known or can
 26 be ascertained by a reasonable effort. A further copy of such
 27 certificate and notice of filing shall be filed in the office of the record-
 28 ing officer of each county wherein the property affected is situated.
 29 On the filing of such certificate and notice with such officer it shall
 30 be the duty of such officer to record same in the books used for
 31 recording deeds in the office of such officer.

1 11. Section 14 of P. L. 1948, c. 351 (C. 58:16A-14) is amended
 2 to read as follows:

3 14. After the completion of *any Federal* flood control **【projects】**
 4 *project* or a portion thereof and after such project or portion
 5 thereof has been formally turned over to the State by the Federal
 6 Government, such completed works shall be maintained by the
 7 commissioner **【of conservation】** under the controlling principle
 8 that flood control is the primary purpose.

1 12. Section 15 of P. L. 1948, c. 351 (C. 58:16A-15) is amended
 2 to read as follows:

3 15. The moneys hereby appropriated shall be payable on the
 4 audit and **【wararnt】** *warrant* of the treasurer on vouchers ap-
 5 proved by the commissioner **【of conservation】**.

- 1 13. The following sections, acts and parts of acts are repealed:
2 R. S. 58:16-1
3 R. S. 58:16-3 and 58:16-4
4 P. L. 1948, c. 351, §§ 3, 4, 13 ***[and 16]*** (C. 58:16A-3, 4, 13***[**,
4A 16**]***)
5 P. L. 1971, c. 110 (C. 58:16B-1 et seq.)
6 P. L. 1949, c. 105 (C. 58:18-18 et seq.)
7 P. L. 1955, c. 219 (C. 58:19-1 et seq.)
1 14. This act shall take effect immediately.
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- 1 13. The following sections, acts and parts of acts are repealed:
 2 R. S. 58:16-1
 3 R. S. 58:16-3 and 58:16-4
 4 P. L. 1948, c. 351, §§ 3,4,13 and 16 (C. 58:16A-3,4,13,16)
 5 P. L. 1971, c. 110 (C. 58:16B-1 et seq.)
 6 P. L. 1949, c. 105 (C. 58:18-18 et seq.)
 7 P. L. 1955, c. 219 (C. 58:19-1 et seq.)
 1 14. This act shall take effect immediately.

Sponsor's

 STATEMENT

This bill amends a 30-year old statute which authorized the Commissioner of Environmental Protection to participate in Federal flood control projects with legislative approval. The bill now authorizes the commissioner to acquire, construct and operate flood control facilities either separately or in conjunction with the Federal Government or any municipality or county when the commissioner finds that the flood control facility will contribute to the overall management of the surface water of the river basin or subbasin. The bill also repeals redundant parts of the statutory law.

S. 1492 (1979)

ASSEMBLY ENERGY AND NATURAL RESOURCES
COMMITTEE

STATEMENT TO
SENATE, No. 1492

STATE OF NEW JERSEY

DATED: JUNE 28, 1979

This bill amends the existing law that would authorize the Commissioner of the Department of Environmental Protection to acquire, construct and operate flood control facilities, either separately or in conjunction with any other level of government whenever the commissioner finds that the flood control facility would be beneficial to the overall management of the surface water of the river basin or sub-basin. In addition, this legislation repeals certain archaic and redundant portions of the statutory law.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

FEBRUARY 1, 1980

PAT SWEENEY

Governor Brendan Byrne has signed two bills, sponsored by Senator Matthew Feldman (D-Bergen), which will enhance the State's ability to control flood areas.

S-1492, amends a 32-year old statute which authorizes the Commissioner of Environmental Protection to participate in federal flood control projects with legislative approval.

The bill authorizes the Commissioner to acquire, construct and operate flood control facilities either separately or in conjunction with the federal government or any municipality or county.

The bill makes it clear that the State can construct, acquire and operate flood control facilities rather than just "participate" in flood control projects with the federal government.

A companion bill, S-1494, provides for the integration of the State stream encroachment program, with municipal, county, state and federal flood hazard area control programs.

These have been merged because they both have the same objective, which is to control land use in the flood-carrying portions of stream beds in order to protect areas down stream.

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