

27:7-21.1

September 4, 1970

LEGISLATIVE HISTORY OF R.S. 27:7-21.1
(State replace local water supply it contaminates)

Similar bills introduced (1966-1969):

copy 2

1969 - S305

L.1969 - Chapt. 204 - S534

Introduced February 17 by Dumont and Hiering

Bill had statement (copy enclosed)

Cond. veto by Governor (copy enclosed)

The bill supported, with reasons, in:

974.905 State Federation District Boards of Education

L51 Legislative bulletin

Vol. 17, No. 3, March 31, 1969 (copy enclosed)

RSL/AS

DEPOSITORY COPY
Do Not Remove From Library

SENATE, No. 534

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 17, 1969

By Senators DUMONT and HIERING

Referred to Committee on Transportation and Public Utilities

AN ACT concerning the State Department of Transportation's responsibility with respect to the destruction of wells used for a potable water supply and to amend "An act concerning the State Highway Department," approved March 16, 1942 (P. L. 1942, c. 22).

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, chapter 22 (C. 27:7-21.1) is amended
2 to read as follows:

3 1. Whenever *as a result of the construction or maintenance*
4 *taken by the Department of Transportation of a State highway*
5 *shall result in the destruction or contamination to the extent of*
6 *rendering the water supply below standards for potable water as*
7 *promulgated by the New Jersey Department of Health of a well*
8 *used for potable water supply upon private property or prop-*
9 *erty owned by any school district, which well gave an adequate*
10 *and satisfactory supply of water prior to the construction or*
11 *maintenance by the Department of Transportation with respect*
12 *to [of] the said State highway, and whenever the State High-*
13 *way Engineer shall determine that the construction or main-*
14 *tenance by the Department of Transportation with respect to [of]*
15 *the said State highway, was the [sole] primary cause of the de-*
16 *struction or contamination of the well and that it is necessary to*
17 *construct a new well or provide a substitute potable water supply*
18 *and shall evidence such determination by a proper certificate so*
19 *stating, the [State Highway] Commissioner of the Department of*
20 *Transportation, in order to relieve the owner of a serious hardship,*
21 *is authorized to pay such part of the cost of constructing a new*
22 *well or providing a substitute potable water supply as, in the*
23 *opinion of the [State Highway] 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.

24 *of Transportation*, the principles of right and justice may require.
 25 The **【State Highway】** *Commissioner of the Department of Trans-*
 26 *portation is authorized* to make such payment only in the event
 27 that a new well *or substitute potable water supply* is actually con-
 28 structed and under no circumstance shall he authorize any payment
 29 in excess of the actual cost of *construction* **【constructing the new**
 30 **well】**.

31 If municipal or private water companies have water facilities and
 32 water mains within a reasonable distance from the property affected
 33 by reason of the destruction of the potable water supply so that the
 34 cost of extending the water mains to the property so affected would
 35 be less or substantially equal to the cost of constructing a new well
 36 or wells, the **【State Highway】** *Commissioner of the Department of*
 37 *Transportation*, in lieu of constructing a new well, may pay the
 38 cost of extending such water main to the property so affected.

39 Any funds heretofore or hereafter appropriated to the **【State**
 40 **Highway】** *Department of Transportation* for the purpose of acquir-
 41 ing right of way may be used to make payments under this act.
 42 When several wells have been destroyed by the same State highway
 43 *construction or maintenance by the Department of Transportation*
 44 and the **【State Highway】** *Commissioner of the Department of*
 45 *Transportation* deems it to be in the best interests of the State, the
 46 **【State Highway】** *Commissioner of the Department of Trans-*
 47 *portation* is authorized to enter into a contract or contracts for
 48 the purpose of actually constructing new wells *or providing the*
 49 *substitute potable water supply* or for the purpose of extending the
 50 water facilities or laterals for the property or properties affected.
 51 Chapter 34 of Title 52 of the Revised Statutes shall apply to any
 52 contracts which may be let for **【the】** *any construction* **【or any well】**
 53 *referred to herein* or the cost of extending the water mains together
 54 with the lateral under this act *unless immediate relief is required*
 55 *to abate a nuisance or condition detrimental to the health of the*
 56 *persons utilizing said wells in which case the contract may be*
 57 *awarded.* The judgment of the **【State Highway】** *Commissioner of*
 58 *the Department of Transportation* on the question of whether or
 59 not any compensation shall be made under this act shall be final.

1 2. This act shall take effect immediately.

STATEMENT

Certain maintenance operations of the New Jersey Department of Transportation, more particularly the storing of salt and other chemicals for road maintenance, resulted in a permeation of the subsoil beneath which said materials have been stored, resulting

in the contamination in nearby wells. Senate Bill No. 305 which already has passed the Senate authorizes the Commissioner of Transportation to remedy the situation and make compensation in cases of the contamination of wells upon private property. This bill includes the provisions of Senate Bill No. 305 and in addition extends the authority of the commissioner to remedy the situation and make compensation in cases of the contamination of wells upon property owned by a school district.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

November 17, 1969

SENATE BILL NO. 534

To the Senate:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Senate Bill No. 534, with my objections, for reconsideration.

The Commissioner of Transportation has had, since 1942, the authority to replace or reconstruct a well on private property destroyed by highway construction (P.L. 1942, c. 22). In 1966, he was given the option to connect the property to the line of any nearby water company, instead of reconstructing the well. Senate Bill No. 305 of this year, approved as P.L. 1969, c. 39, was intended to deal with cases in which the well was contaminated, although not destroyed, and no longer produced potable water. Senate Bill No. 305 also inadvertently introduced a problem of interpretation, since it allowed the Commissioner of Transportation to pay for a well destroyed or contaminated by "construction or maintenance heretofore undertaken" (emphasis added). This could be read to limit compensation under the act to cases arising before its date of approval, March 12, 1969. Moreover, although the doctrine of implied repeal is not favored by the courts, the language of Senate Bill No. 305 casts a cloud on the ability of the Commissioner to exercise the powers conferred upon him in 1942 to compensate for a destroyed well.

The bill presently before me, Senate Bill No. 534, would make some additional changes. First, it would allow compensation for the destruction or contamination of the water supply of a school district, as well as that of private parties. Second, it would require that the construction or maintenance activities of the Department of Transportation only be a primary cause, not the sole cause for the damage. Third, the options of the Commissioner would be expanded to allow him to provide a "substitute water supply", not necessarily limiting him to digging a new well or connecting a line to an existing water company outlet. Finally,

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Senate Bill No. 534

-2-

in the case of emergencies where health was threatened, in his discretion, he could provide the alternate water supply without regard to public bidding.

All of these changes are desirable. The Commissioner of Transportation should certainly have the power to compensate persons for harm done. Moreover, since such payments are entirely within his discretion, the public is protected from unreasonable and unlimited claims or expenditures.

However, it would appear both desirable and prudent to correct the defects of P.L. 1969, c. 39. As Senate Bill No. 534 would confer on the Commissioner of Transportation all of the powers of P.L. 1969, c. 39, the latter should be repealed.

Furthermore, it is not apparent to me why compensation should be limited to school districts. It would appear that if the water supply of any public body is contaminated or destroyed, an equitable distribution of the cost of public activity between the State and any other public body would require that compensation be paid by the State when the State is at the cause of the damage.

With these factors in mind, I respectfully recommend the following changes in Senate Bill No. 534:

1. Amend the title so that it shall read "An Act concerning the State Department of Transportation's responsibility with respect to the destruction or contamination of wells used for a potable water supply and to amend 'An Act concerning the State Highway Department,' approved March 16, 1942 (P.L. 1942, c. 22), and to repeal 'An Act concerning the State Department of Transportation's responsibility with respect to the destruction of wells used for a potable water supply,' approved March 12, 1969 (P.L. 1969, c. 39)."
 2. Page 1, Section 1, Line 4: Omit "taken" and substitute in lieu thereof the word "undertaken".
 3. Page 1, Section 1, Lines 8 and 9: Omit "or property owned by any school district", and substitute in lieu thereof "or public".
 4. Page 2, Section 1, Line 28: Insert after the word "constructed" and before the word "and", the phrase "or otherwise secured".
 5. Page 2, Section 1, Line 30: Add "or otherwise securing a substitute potable water supply".
-

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Senate Bill No. 534

-3-

6. Page 2 -- Add a new Section 3 as follows:

"3. Chapter 39 of the Laws of 1969 is hereby repealed, except that any actions taken or payments made pursuant to said act prior to the effective date of this act are herewith validated, approved and confirmed."

Respectfully,

/s/ Richard J. Hughes

GOVERNOR

Attest:

/s/ Alan J. Karcher

Acting Secretary to the Governor

S-574 Diment, Haring—February 17—Requires the State to pay for a substitute potable water supply when the water supply of a municipality or a school is contaminated by the State.

February 17—Transportation and Public Utilities Committee.
March 24—Reported, 2nd reading.

Certain maintenance operations of the New Jersey Department of Transportation, more particularly the storing of salt and other chemicals for road maintenance, resulted in a permeation of the subsoil beneath which said

materials have been stored, resulting in the contamination in nearby wells. Senate Bill Number 305 which already has passed the Senate authorizes the Commissioner of Transportation to remedy the situation and make compensation in cases of the contamination of wells upon private property. This bill includes the provisions of Senate Bill Number 305 and in addition extends the authority of the commissioner to remedy the situation and make compensation in cases of the contamination of wells on property owned by a school district.

The Legislative Committee urges support.

Legislative Bulletin
vol 17, no.3., March 31, 1969

State Federation
District Boards of Education

974.905
L 51