

58:4-5

**LEGISLATIVE HISTORY CHECKLIST**  
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(Dams & reservoirs--  
public hearings)

**NJSA:** 58:4-5

**LAWS OF:** 1994 **CHAPTER:** 84

**BILL NO:** A316

**SPONSOR(S):** Bagger and Augustine

**DATE INTRODUCED:** Pre-filed

**COMMITTEE:** **ASSEMBLY:** Environment and Energy  
**SENATE:** Natural Resources

**AMENDED DURING PASSAGE:** Yes Amendments during passage  
First reprint enacted denoted by superscript numbers

**DATE OF PASSAGE:** **ASSEMBLY:** March 28, 1994  
**SENATE:** June 20, 1994

**DATE OF APPROVAL:** August 3, 1994

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes  
**SENATE:** Yes

**FISCAL NOTE:** No

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** No

KBG:pp

[FIRST REPRINT]  
ASSEMBLY, No. 316

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Assemblymen BAGGER and AUGUSTINE

1 AN ACT concerning the decommissioning of dams and reservoirs,  
2 and amending R.S.58:4-5, R.S.58:4-9 and R.S.58:4-10.

3

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

6 1. R.S.58:4-5 is amended as follows:

7 58:4-5. If, in the judgment of the commissioner, <sup>1</sup>[such] any<sup>1</sup>  
8 reservoir or dam is not sufficiently strong to resist the pressure  
9 of water upon it or there is reasonable cause to believe that  
10 danger to life or property may be anticipated from the reservoir  
11 or dam, or if for any other cause the commissioner shall  
12 determine the reservoir or dam to be unsafe <sup>1</sup>[,]<sup>1</sup> or improperly  
13 maintained <sup>1</sup>[he] , the commissioner<sup>1</sup> shall determine whether the  
14 water in <sup>1</sup>[such] the<sup>1</sup> reservoir or above <sup>1</sup>[such] the<sup>1</sup> dam shall be  
15 drawn off in whole or in part, and what alterations, additions and  
16 repairs are necessary to be made to the reservoir or dam to make  
17 <sup>1</sup>[the same] it<sup>1</sup> safe and properly maintained. The commissioner  
18 shall forthwith in writing order the owner or person having  
19 control of the reservoir or dam to cause <sup>1</sup>[such] the<sup>1</sup> alterations,  
20 additions and repairs to be made within the time to be limited in  
21 the order [, and]. The commissioner also may order the water  
22 <sup>1</sup>[above the dam or]<sup>1</sup> in the reservoir <sup>1</sup>or above the dam<sup>1</sup> to be  
23 drawn off in whole or in part as [he] the commissioner may  
24 determine <sup>1</sup>[, provided that, if] . The commissioner shall not  
25 approve<sup>1</sup> the decommissioning of <sup>1</sup>[the dam or] a<sup>1</sup> reservoir <sup>1</sup>[is  
26 required,] or dam until the commissioner has provided<sup>1</sup> 30 days  
27 prior notice <sup>1</sup>[is provided by publication of the] and the  
28 commissioner has complied with the provisions of R.S.58:4-10 as  
29 applicable. The<sup>1</sup> notice <sup>1</sup>of the proposed decommissioning shall  
30 be published at least 30 days prior to the decommissioning of the  
31 reservoir or dam<sup>1</sup> in at least one newspaper of general circulation  
32 in the <sup>1</sup>[municipality] municipality<sup>1</sup> in which the reservoir <sup>1</sup>or  
33 dam<sup>1</sup> is located <sup>1</sup>[, and, prior to any decommissioning, the  
34 commissioner has complied with the provisions of R.S.58:4-10]<sup>1</sup>.  
35 The commissioner shall have the right to enter upon any and all  
36 properties for the purpose of obtaining information about the  
37 safety and proper maintenance of any reservoir, dam or  
38 appurtenant structures located therein.

39 (cf: P.L.1981, c.249, s.7)

40 2. R.S.58:4-9 is amended to read as follows:

41 58:4-9. Where a reservoir or dam has been in existence 20  
42 years and the owners of land along the shores above <sup>1</sup>[such] the<sup>1</sup>  
43 dam or on <sup>1</sup>[such] the<sup>1</sup> reservoir have made or shall have made

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly AEN committee amendments adopted March 21, 1994.

1 permanent improvements on <sup>1</sup>[said] the<sup>1</sup> land or where the shores  
2 have become a populated community, depending upon the  
3 permanency of the condition created, or where the <sup>1</sup>[dam or]<sup>1</sup>  
4 reservoir <sup>1</sup>or dam<sup>1</sup> has become a valuable resource for the  
5 quality of life in the municipality in which the <sup>1</sup>[dam or]<sup>1</sup>  
6 reservoir <sup>1</sup>or dam<sup>1</sup> is located, and a petition signed by a majority  
7 of the landowners along the shore of any pond formed by the  
8 reservoir or dam <sup>1,1</sup> or by any number of residents <sup>1</sup>[and the  
9 governing body]<sup>1</sup> of the municipality in which the <sup>1</sup>[dam or]<sup>1</sup>  
10 reservoir <sup>1</sup>or dam<sup>1</sup> is located, or <sup>1</sup>[both groups of interested  
11 parties] by the governing body of the municipality<sup>1</sup> , protesting  
12 against the removal of the reservoir, water or dam <sup>1</sup>or the  
13 decommissioning of the reservoir or dam<sup>1</sup> has been filed with the  
14 commissioner, the owner or owners of the reservoir or dam shall  
15 not, without the consent of the commissioner, tear down, destroy  
16 or abandon the reservoir or dam, or <sup>1</sup>, except for the purpose of  
17 making necessary repairs,<sup>1</sup> withdraw the water below the usual  
18 low-water mark, or maintain <sup>1</sup>[such a condition , except for the  
19 purpose of necessary repairs] the water at the reduced level<sup>1</sup>.

20 (cf: P.L.1981, c.249, s.10)

21 3. R.S.58:4-10 is amended to read as follows:

22 58:4-10. When a petition has been filed protesting against the  
23 removal of any reservoir, water or dam <sup>1</sup>or against the  
24 decommissioning of any reservoir or dam<sup>1</sup> as provided in [section]  
25 R.S.58:4-9 [of this Title] , the commissioner shall [grant] hold a  
26 public hearing, upon [20] 30 <sup>1</sup>[days'] days<sup>1</sup> notice to all parties  
27 interested, and following prior notice published 30 days before  
28 the hearing in at least one newspaper of general circulation in the  
29 municipality in which the <sup>1</sup>[dam or]<sup>1</sup> reservoir <sup>1</sup>or dam<sup>1</sup> is  
30 located. Following this public hearing, the commissioner may  
31 make a determination concerning the <sup>1</sup>removal of the reservoir,  
32 water or dam or<sup>1</sup> decommissioning of the <sup>1</sup>[dam or] reservoir or  
33 dam<sup>1</sup> and may then establish and fix a permanent low-water  
34 mark. Should it appear that the maintenance of <sup>1</sup>[such] the  
35 reservoir or<sup>1</sup> dam would be an undue burden upon the owner  
36 thereof, the commissioner shall enter into negotiations with the  
37 landowners interested around the reservoir or above the dam  
38 [may, in the discretion of the commissioner, be ordered to pay a  
39 part or all of the expenses of maintenance] , the governing body  
40 of the <sup>1</sup>[municipality] municipality<sup>1</sup> in which the reservoir <sup>1</sup>or  
41 dam<sup>1</sup> is located, and any other parties to the petition <sup>1</sup>[to  
42 prevent] filed with the commissioner protesting against the  
43 removal of the reservoir, water or dam or<sup>1</sup> the decommissioning  
44 of the <sup>1</sup>[dam or] reservoir or dam<sup>1</sup>, for the purpose of  
45 determining how and by whom the expenses of maintenance shall  
46 be paid.

47 (cf: P.L.1981, c.249, s.11)

48 4. This act shall take effect immediately.

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53 Establishes a municipality as an interested party in the  
54 decommissioning of a dam or reservoir; requires public hearing  
55 and 30 days notice thereof.

1 governing body of the municipality in which the dam or reservoir  
2 is located, or both groups of interested parties, protesting against  
3 the removal of the reservoir, water or dam has been filed with  
4 the commissioner, the owner or owners of the reservoir or dam  
5 shall not, without the consent of the commissioner, tear down,  
6 destroy or abandon the reservoir or dam, or withdraw the water  
7 below the usual low-water mark, or maintain such a condition,  
8 except for the purpose of necessary repairs.

9 (cf: P.L.1981, c.249, s.10)

10 3. R.S.58:4-10 is amended to read as follows:

11 58:4-10. When a petition has been filed protesting against the  
12 removal of any reservoir, water or dam as provided in [section]  
13 R.S.58:4-9 [of this Title] , the commissioner shall [grant] hold a  
14 public hearing, upon [20] 30 days' notice to all parties interested,  
15 and following prior notice published 30 days before the hearing in  
16 at least one newspaper of general circulation in the municipality  
17 in which the dam or reservoir is located. Following this public  
18 hearing, the commissioner may make a determination concerning  
19 the decommissioning of the dam or reservoir and may then  
20 establish and fix a permanent low-water mark. Should it appear  
21 that the maintenance of such a dam would be an undue burden  
22 upon the owner thereof, the commissioner shall enter into  
23 negotiations with the landowners interested around the reservoir  
24 or above the dam [may, in the discretion of the commissioner, be  
25 ordered to pay a part or all of the expenses of maintenance] , the  
26 governing body of the municipality in which the reservoir is  
27 located, and any other parties to the petition to prevent the  
28 decommissioning of the dam or reservoir, for the purpose of  
29 determining how and by whom the expenses of maintenance shall  
30 be paid.

31 (cf: P.L.1981, c.249, s.11)

32 4. This act shall take effect immediately.

#### 35 STATEMENT

36  
37 This bill provides that a municipality and its residents in which  
38 a dam or reservoir is located may be interested parties in the  
39 decommissioning of that dam or reservoir and requires the  
40 Commissioner of the Department of Environmental Protection  
41 and Energy to provide 30 day public notice of any plans to  
42 decommission the dam or reservoir. The bill also requires the  
43 commissioner to enter into negotiations with the landowners,  
44 residents and governing officials of the municipality, and any  
45 other interested parties to determine how and by whom repair  
46 and maintenance expenses will be met, if the owner of the dam or  
47 reservoir chooses to allow the decommissioning in lieu of  
48 repairing or altering the dam or reservoir.

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53 Establishes a municipality as an interested party in the  
54 decommissioning of a dam or reservoir; requires public hearing  
55 and 30 days notice thereof.

ASSEMBLY ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 316

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 21, 1994

The Assembly Environment and Energy Committee favorably reports Assembly Bill No. 316 with committee amendments.

The bill provides that a municipality and its residents in which a reservoir or dam is located may be interested parties in the decommissioning of the reservoir or dam, and requires the Commissioner of the Department of Environmental Protection and Energy to provide 30-day public notice of any plans to decommission a reservoir or dam.

The bill also requires the commissioner to enter into negotiations with the landowners, residents and governing officials of the municipality, and any other interested parties, to determine how and by whom repair and maintenance expenses will be met, if the owner of the reservoir or dam chooses to allow the decommissioning in lieu of repairing or altering the reservoir or dam.

Current law provides that only the landowners on the shores of the reservoir or along the shores above the dam are interested parties in the reservoir or dam decommissioning. It further provides that, if the landowners protest the removal of the reservoir or dam and the owner has accepted the removal in lieu of making required alterations or repairs, the landowners would assume part or all of the maintenance costs of the dam, at the commissioner's discretion.

The committee amendments made technical and clarifying corrections to the bill.

This bill was pre-filed for introduction in the 1994-95 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

SENATE NATURAL RESOURCES, TRADE AND  
ECONOMIC DEVELOPMENT COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 316

STATE OF NEW JERSEY

DATED: MAY 19, 1994

The Senate Natural Resources, Trade and Economic Development Committee favorably reports Assembly Bill No. 316 (1R).

The bill provides that a municipality and its residents in which a reservoir or dam is located may be interested parties in the decommissioning of the reservoir or dam, and requires the Commissioner of the Department of Environmental Protection to provide 30-day public notice of any plans to decommission a reservoir or dam.

The bill also requires the commissioner to enter into negotiations with the landowners, residents and governing officials of the municipality, and any other interested parties, to determine how and by whom repair and maintenance expenses will be met, if the owner of the reservoir or dam chooses to allow the decommissioning in lieu of repairing or altering the reservoir or dam.

Current law provides that only the landowners on the shores of the reservoir or along the shores above the dam are interested parties in the reservoir or dam decommissioning. It further provides that, if the landowners protest the removal of the reservoir or dam and the owner has accepted the removal in lieu of making required alterations or repairs, the landowners would assume part or all of the maintenance costs of the dam, at the commissioner's discretion.