

48:2-23 et al

LEGISLATIVE HISTORY CHECKLIST

**NJSA:** 48:2-23 et al (Watershed protection property-- regulations and preservation)

**LAWS OF:** 1988 **CHAPTER:** 163

**BILL NO:** A3123

**SPONSOR(S):** Schuber and Roma

**Date Introduced:** May 9, 1988

**Committee:** **Assembly:** Appropriations; Conservation, Natural Resources and Energy.  
**Senate:** \_\_\_\_\_

**Amended during passage:** Yes Amendments during passage denoted by asterisks.

**Date of Passage:** **Assembly:** September 29, 1988  
**Senate:** October 3, 1988

**Date of Approval:** November 16, 1988

**Following statements are attached if available:**

<b>Sponsor statement:</b>		Yes	
<b>Committee statements:</b>	<b>Assembly</b>	Yes	
	<b>Senate</b>	No	9-22-88 and 6-13-88

**Fiscal Note:** No

**Veto Message:** No

**Message on Signing:** Yes

**Following were printed:**

<b>Reports:</b>	No
<b>Hearings:</b>	Yes

974.90 New Jersey. Legislature. Senate Committee on  
W329 Engergy and Environment.  
1988 Public hearing on S2492 . . . , held 6-9-88, Oradell, 1988.

RDV "Kean enacts law to safeguard state's drinking water supplies,"  
Star Ledger, November 18, 1988.

[SECOND REPRINT]

ASSEMBLY, No. 3123

STATE OF NEW JERSEY

INTRODUCED MAY 9, 1988

By Assemblymen SCHUBER and ROMA

1 AN ACT concerning the conservation and protection of  
watershed properties, supplementing Title 13 <sup>2</sup>and Title 48<sup>2</sup>  
3 of the Revised Statutes, <sup>2</sup>amending R.S. 48:2-23<sup>2</sup> and making  
appropriations.

5

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

1. <sup>2</sup>(New section)<sup>2</sup> For a period of 18 months commencing on  
9 the effective date of this act, no municipality, municipal utilities  
authority, or public utility shall <sup>1</sup>[sell] convey<sup>1</sup> <sup>2</sup>[, or commence  
11 or continue any residential, commercial, or industrial  
development on]<sup>2</sup> any land utilized for the purpose of the  
13 protection of a public water supply on the effective date of this  
act. <sup>2</sup>The provisions of this section shall not apply to land  
15 utilized for the purpose of the protection of a public water supply  
if the land is otherwise subject to regulation pursuant to P.L.  
17 1979, c. 111 (C.13:18A-1 et seq.) or P.L. 1973, c. 185, (C.13:19-1  
et seq.).<sup>2</sup>

19 2. <sup>2</sup>(New section)<sup>2</sup> a. There is established in the Department  
of Environmental Protection a Watershed Property Review Board,  
21 which shall consist of the Commissioner of the Department of  
Environmental Protection, the Commissioner of the Department  
23 of Community Affairs, and the President of the Board of Public  
Utilities. The Watershed Property Review Board shall be  
25 authorized to exempt from the provisions of section 1 of this act  
the <sup>2</sup>[sale or development] conveyance<sup>2</sup> of watershed property if  
27 the person applying for the exemption demonstrates to the  
Watershed Property Review Board that there is a compelling  
29 public need for the <sup>2</sup>[sale or development] conveyance<sup>2</sup> of the  
property, that the denial of the exemption would result in  
31 extraordinary hardship, or that the sale or development of the  
watershed property is otherwise consistent with the purposes of

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 ANR committee amendments adopted June 13, 1988.

<sup>2</sup> Assembly AAP committee amendments adopted September 22, 1988.

1 this act. <sup>2</sup>Any person applying for an exemption pursuant to the  
2 provisions of this section shall submit to the board appropriate  
3 documentation addressing the issue of buffer areas surrounding  
4 public water supplies, and shall also provide the board with  
5 proposals for the mitigation of any adverse environmental impact  
6 which would result from an exemption applied for pursuant to the  
7 provisions of this section.<sup>2</sup>

8 b. A determination by the Watershed Property Review Board  
9 to grant or deny an exemption from the provisions of section 1 of  
10 this act shall constitute the final agency action on the matter,  
11 <sup>1</sup>[andshall] and shall<sup>1</sup> be subject only to judicial review as  
12 provided in the Rules of Court.

13 c. Prior to making a final determination on an application for  
14 an exemption from the provisions of section 1 of this act, the  
15 Watershed Property Review Board may refer the application to  
16 the Office of Administrative Law, which shall conduct a hearing  
17 and issue recommendations based on findings of fact and  
18 conclusions of law for consideration by the Watershed Property  
19 Review Board in making its determination.

20 <sup>2</sup>[3. No person shall commence or continue any residential,  
21 commercial, or industrial development on land formerly owned by  
22 a municipality, municipal utilities authority, or public utility and  
23 utilized for the purpose of protecting a public water supply, <sup>1</sup>[or]  
24 and<sup>1</sup> acquired by the current owner less than five years prior to  
25 the effective date of this act, unless every residential dwelling  
26 unit, or every commercial or industrial establishment will be  
27 connected, on the date of initial occupancy or use, to a  
28 wastewater treatment system operated by a municipal treatment  
29 works as defined in section 3 of P.L.1977, c.74 (C.58:10A-3).]<sup>2</sup>

30 <sup>2</sup>[4. Within 9 months of the effective date of this act, the  
31 Department of Environmental Protection shall compile an  
32 inventory and determine the estimated market value of all land  
33 owned on the effective date of this act by a municipality,  
34 municipal utilities authority, or a public utility and utilized for  
35 the purpose of protecting a public water supply. Within one year  
36 of the effective date of this act, the department shall prepare  
37 and adopt a Watershed Land Preservation Master Plan, which  
38 shall identify watershed protection areas that should be  
39 maintained for watershed protection, open space, conservation,

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1 or recreation needs, and watershed land that is suitable for  
development pursuant to regulations adopted by the department  
3 pursuant to section 5 of this act.]<sup>2</sup>

5 <sup>2</sup>[5.] 3. (New section)<sup>2</sup> Within one year of the effective date  
of this act, the Department of Environmental Protection shall  
2[adopt, pursuant to the "Administrative Procedure Act," P.L.  
7 1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations  
establishing criteria for determining the extent of watershed  
9 protection areas to be maintained by a municipality, municipal  
utilities authority, or public utility to protect a public water  
11 supply, and criteria for development of land utilized on the  
effective date of this act for the purpose of protecting a public  
13 water supply] conduct a study to evaluate the effectiveness of  
establishing buffer zones around public water supply reservoirs  
15 for the purpose of protecting drinking water quality. The  
department, upon completion of the study conducted pursuant to  
17 this section, shall transmit the study to the Governor, the Board  
of Public Utilities, and the Legislature<sup>2</sup>.

19 <sup>2</sup>4. (New section) a. The Board of Public Utilities, in reviewing  
a request by a public utility to convey land utilized for the  
21 purpose of the protection of a public water supply to a  
corporation or other entity which is not subject to the jurisdiction  
23 of the board, shall request the Department of Environmental  
Protection to review and make recommendations on an  
25 assessment, prepared and submitted by the utility, of the impact  
that the conveyance, and the prospective use or uses of the land  
27 conveyed, would have on the water quality of the affected public  
water supply, and shall require the department to assess the  
29 impact of the conveyance on the State's open space,  
conservation, and recreation requirements. The department,  
31 upon receipt of a request by the board for an assessment and a  
review pursuant to this subsection, shall prepare and submit to  
33 the board the assessment and review within 12 months of the  
request therefor.

35 b. Any public utility requesting the board to approve a  
conveyance of land utilized for the purpose of the protection of a  
37 public water supply to a corporation or other entity which is not  
subject to the jurisdiction of the board shall submit to the board a  
39 document setting forth a detailed explanation of the prospective

1 use or uses of the land to be conveyed. The board, upon receipt of  
 2 this document, may require the public utility to submit any  
 3 additional information which the board deems appropriate.<sup>2</sup>

4 <sup>2</sup>5. R.S.48:2-23 is amended to read as follows:

5 48:2-23. The board may, after public hearing, upon notice, by  
 6 order in writing, require any public utility to furnish safe,  
 7 adequate and proper service, including furnishing and  
 8 performance of service in a manner that tends to conserve and  
 9 preserve the quality of the environment and prevent the pollution  
 10 of the waters, land and air of this State, and including furnishing  
 11 and performance of service in a manner which preserves and  
 12 protects the water quality of a public water supply, and to  
 13 maintain its property and equipment in such condition as to  
 14 enable it to do so.

15 The board may, pending any such proceeding, require any public  
 16 utility to continue to furnish service and to maintain its property  
 17 and equipment in such condition as to enable it to do so.

18 The board, in requiring any public water utility to furnish safe,  
 19 adequate and proper service, may require the public water utility  
 20 to retain in its rate base any property which the board determines  
 21 is necessary to protect the water quality of a public water supply.  
 (cf: P.L.1979, c.86, s.20)<sup>2</sup>

22 6. <sup>2</sup>(New section)<sup>2</sup> Within one year of the effective date of  
 23 this act, the <sup>2</sup>[Division of Rate Counsel in the Department of the  
 24 Public Advocate] Board of Public Utilities<sup>2</sup> shall conduct and  
 25 transmit to the Governor and the Legislature a study of the  
 26 rate-impact on customers of public water supply systems of  
 27 selling land currently utilized by a <sup>2</sup>[municipality, municipal  
 28 utilities authority, or]<sup>2</sup> public utility for protecting a public  
 29 water supply. This study shall also include an analysis of the  
 30 feasibility of establishing a mechanism under which customers of  
 31 a public <sup>2</sup>[water supply system] utility<sup>2</sup> would be allowed to  
 32 purchase land currently held for the protection of a public water  
 33 supply through increases in their water supply service fees or  
 34 charges.

35 7. a. There is appropriated from the General Fund to the  
 36 Department of Environmental Protection the sum of <sup>2</sup>[\$500,000]  
 37 \$300,000<sup>2</sup> to implement the provisions of sections <sup>2</sup>[4] 3<sup>2</sup> and <sup>2</sup>[5]  
 38 4<sup>2</sup> of this act.

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1       b. There is appropriated from the General Fund to the  
2 [Department of the Public Advocate] Board of Public Utilities<sup>2</sup>  
3 the sum of <sup>2</sup>[\$200,000] \$150,000<sup>2</sup> to implement the provisions of  
section 6 of this act.

5       8. This act shall take effect immediately.

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ENVIRONMENT

9

Natural Resources

11 Provides for the regulation and preservation of watershed  
protection property and appropriates \$450,000.

1 Legislature a study of the rate-impact on customers of public  
water supply systems of selling land currently utilized by a  
3 municipality, municipal utilities authority, or public utility for  
protecting a public water supply. This study shall also include an  
5 analysis of the feasibility of establishing a mechanism under  
which customers of a public water supply system would be  
7 allowed to purchase land currently held for the protection of a  
public water supply through increases in their water supply  
9 service fees or charges.

7. a. There is appropriated from the General Fund to the  
11 Department of Environmental Protection the sum of \$500,000 to  
implement the provisions of sections 4 and 5 of this act.

13 b. There is appropriated from the General Fund to the  
Department of the Public Advocate the sum of \$200,000 to  
15 implement the provisions of section 6 of this act.

8. This act shall take effect immediately.

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#### STATEMENT

21 This bill would establish a procedure to review and regulate the  
sale and development of land currently or formerly owned by  
23 municipalities, municipal utilities authorities or public utilities  
and utilized for protecting a public water supply system.

25 Specifically, this bill would require the Department of  
Environmental Protection to conduct an inventory of all land  
27 utilized for protecting a public water supply, and to adopt a  
Watershed Land Preservation Master Plan. The department  
29 would also be required to adopt regulations establishing criteria  
for the extent of watershed protection areas which must be  
31 maintained, and criteria for the development of watershed  
protection areas.

33 This bill would also prohibit, for a period of 18 months, the sale  
or development of any land owned on the effective date of the  
35 bill and utilized for the protection of a public water supply. This  
bill also establishes a Watershed Property Review Board,  
37 consisting of the Commissioners of Environmental Protection and  
Community Affairs, and the President of the Board of Public  
39 Utilities. The Watershed Property Review Board would be

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1 authorized to review and grant exemptions from the 18-month  
ban on the sale and development of watershed protection  
3 property.

This bill would also prohibit any commercial, industrial, or  
5 residential development on land formerly used for protecting a  
public water supply, or owned by the current owner for less than  
7 five years, unless the development would be serviced by a  
community wastewater treatment system. This provision would  
9 effectively ban the use of private septic systems in the  
development of these lands.

11 This bill also requires the Division of Rate Counsel in the  
Department of the Public Advocate to conduct a study of the  
13 rate impact on water users of selling land currently held for  
protecting a public water supply. This study would include an  
15 analysis of the feasibility of establishing a mechanism under  
which customers of public water supply system would be allowed  
17 to purchase land held for watershed protection through increases  
in their water bills.

19 The bill also appropriates \$500,000 to the Department of  
Environmental Protection, and \$200,000 to the Department of the  
21 Public Advocate to carry out their respective responsibilities  
under this bill.

23

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ENVIRONMENT  
Natural Resources

27

Provides for the regulation and preservation of watershed  
29 protection property.



ASSEMBLY COMMITTEE ON CONSERVATION,  
NATURAL RESOURCES AND ENERGY

STATEMENT TO

**ASSEMBLY, No. 3123**

with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 13, 1988

The Assembly Committee on Conservation, Natural Resources and Energy favorably reported Assembly Bill No. 3123 with amendments.

This bill would establish a procedure to review and regulate the sale and development of land currently or formerly owned by municipalities, municipal utilities authorities or public utilities and utilized for protecting a public water supply system.

Specifically, this bill would require the Department of Environmental Protection to conduct an inventory of all land utilized for protecting a public water supply, and to adopt a Watershed Land Preservation Master Plan. The department would also be required to adopt regulations establishing criteria for the extent of watershed protection areas which must be maintained, and criteria for the development of watershed protection areas.

This bill would also prohibit, for a period of 18 months, the sale or development of any land owned and utilized for the protection of a public water supply on the effective date of the bill. This bill also establishes a Watershed Property Review Board, consisting of the Commissioners of Environmental Protection and Community Affairs, and the President of the Board of Public Utilities. The Watershed Property Review Board would be authorized to review and grant exemptions from the 18-month ban on the sale and development of watershed protection property.

This bill would also prohibit any commercial, industrial, or residential development on land formerly used for protecting a public water supply that was owned by the current owner for less than five years unless the development would be serviced by a community wastewater treatment system. This provision would effectively ban the use of private septic systems in the development of these lands.

This bill also requires the Division of Rate Counsel in the Department of the Public Advocate to conduct a study of the rate impact on water users of selling land currently held for protecting a

public water supply. This study would include an analysis of the feasibility of establishing a mechanism under which customers of a public water supply system would be allowed to purchase land held for watershed protection through increases in their water rates.

The bill also appropriates \$500,000 to the Department of Environmental Protection, and \$200,000 to the Department of the Public Advocate to carry out their respective responsibilities under this act.

The committee amended the bill to make certain technical changes and to replace the term "sell" with the term "convey" as it relates to transfers of ownership of watershed land. The term "convey" is broader than the term sell as it includes any change of property ownership.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

**ASSEMBLY, No. 3123**

with Assembly committee amendments

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 22, 1988

The Assembly Appropriations Committee favorably reports Assembly Bill No. 3123 (1R) with Assembly committee amendments.

Assembly Bill No. 3123 (1R), as amended, establishes a procedure to review and regulate the sale and development of land utilized for protecting a public water supply system owned by municipalities, municipal utilities authorities or public utilities. In addition, the bill appropriates \$300,000 to the Department of Environmental Protection and \$150,000 to the Board of Public Utilities to effectuate the purposes of the bill.

Specifically, the bill requires the Department of Environmental Protection to conduct a study to determine the need for buffer zones around public water supplies. In addition, the bill prohibits, for a period of 18 months, the conveyance of any land owned on the effective date of the act by a municipality, municipal utilities authority, or a public utility and utilized for the protection of a public water supply. A Watershed Property Review Board is established, consisting of the Commissioners of Environmental Protection and Community Affairs, and the President of the Board of Public Utilities, to review and grant exemptions from the 18 month ban.

The bill authorizes the Board of Public Utilities, in reviewing a request by a public utility to convey property held for the purpose of the protection of a public water supply, to request the Department of Environmental Protection to review the utility's assessment of the environmental impact of the conveyance. However, the department would be required to assess the impact of the conveyance on the State's open space. Also, this bill authorizes the board, in requiring a public water utility to provide safe, adequate and proper service, to retain in its rate base land necessary to the protection of a public water supply.

Assembly Bill No. 3123 (1R), as amended, is identical to Senate Bill No. 2492 (2R).

FISCAL IMPACT

This bill, as amended, appropriates \$450,000 from the General Fund, of which \$300,000 is for the Department of Environmental Protection and \$150,000 is for the Board of Public Utilities to conduct studies.

COMMITTEE AMENDMENTS

The committee amendments, as suggested by the Department of Environmental Protection, provide that a public utility shall conduct an environmental impact assessment to be reviewed by the department. Other amendments suggested by the department are technical in nature. In addition, the committee amendments reduce the appropriation to both the Department of Environmental Protection and the Board of Public Utilities and require the department to assess the impact of a conveyance on the State's open space.

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OFFICE OF THE GOVERNOR

## NEWS RELEASE

Governor Thomas H. Kean  
TRENTON, N.J. 08625  
Release: THURS., 11/17/88

CN-001

Contact: JOHN SAMERJAN  
609-292-8956 OR 609-292-6000 EXT. 207

Governor Thomas H. Kean has signed legislation placing an 18-month moratorium on the conveyance of watershed properties that protect public water supplies.

The legislation, A-3123, sponsored by Assemblymen William Schuber, R-Bergen, Patrick Roma, R-Bergen and Senator Paul Contillo, D-Bergen, appropriates \$300,000 to the Department of Environmental Protection to study the effectiveness of buffer zones around public water supplies and \$150,000 to the Board of Public Utilities to study the effect the conveyance of such property would have on ratepayers.

"Preservation of open space is a top environmental priority of this Administration," Governor Kean stated, "and I want to commend Assemblymen William Schuber, Patrick Roma and Senator Paul Contillo for their diligent work on this important legislation."

"We must continue to work together to find ways to preserve and protect New Jersey's open space."

The legislation was introduced to protect 287 acres in Bergen County owned by the Hackensack Water Company from sale and development.

The legislation is effective immediately.

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